

Hoagland. I understand the comments that Senator DeCamp is making and it is a question of whether or not the two cases deal with the same subject matter and both deal with definition. Assuming for the moment that they do, while one decision did not overturn the other one, is there a general practice in terms of when a more recent decision comes down on the same subject matter that, if there is a period of like six or seven years, not talking about a hundred years as Senator DeCamp talked about, but six or seven that, one is preferred over another one or is it merely free for the attorney to choose which ever one they want?

SENATOR HOAGLAND: I think in a situation like this where the court only six weeks ago has addressed the same issue it addressed in Roe v. Wade many years ago, why the court obviously means for the more recent language to be the better, more constitutional language.

SENATOR SIMON: So then the question then becomes in terms in my mind whether or not, as Senator DeCamp is saying, the more recent decision, the Colautti decision does in effect deal directly with the definition of viability as compared to the Roe v. Wade and since I do not have a copy of either one I am going to have to try and take a look at it and make the best decision I can. Thank you.

SENATOR MARSH: Senator Johnson, will you please close?

SENATOR JOHNSON: Yes, Madam Chairman. My amendment is an amendment which basically is designed to soften the Chambers' amendment in a way that Colautti recognizes. My amendment does not allow the judgement of the physician to be conclusive because there can be some physicians who literally act in bad faith. That is, they abort a fetus that they know to be a viable fetus. My amendment merely says that the judgement of the physician is conclusive when that physician acts in good faith and in good faith is a term of art that has been used for years and years and years and it essentially means that physician applying his skills or her skills, his knowledge or her knowledge, and exercising a responsible judgement in ascertaining whether or not the fetus is viable for the purposes of performing an abortion. My amendment is a very positive amendment to the Chambers' amendment which is designed to give the State of Nebraska a constitutional law, a constitutional law so that in fact we have on our books a law that deals with this subject in a responsible and rightful way. I would certainly urge your support for my amendment.