

11/01/1977
Pregnancy Test Results Disclosure
Sex Determination Pre Natal

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AUGUSTA, MAINE 04333

May 3, 1977

Honorable David G. Huber
Assistant Majority Leader
Maine Senate

Re: L.D. 1297

Dear Senator Huber:

You have requested an opinion on the constitutionality of L.D. 1297, which would make it a crime to disclose information obtained by amniocentesis or other scientific prenatal tests regarding the probable sex of the fetus, if such information might result in an abortion. Based on the United States Supreme Court's decision in Roe v. Wade, 35 L. Ed. 2d 147 (1973), such an interference with the decision of a woman and her physician to terminate a pregnancy, at least during the first and second trimesters, is unconstitutional.

In the Roe case, the Supreme Court held that the Right of Privacy incorporated in the Fourteenth Amendment included a woman's decision whether or not to terminate her pregnancy. Recognizing that this right was not absolute, and that the State had an interest in protecting the mother's health, and, at some point, the life of the fetus, the Court addressed itself explicitly to the balancing of these interests.

In the first trimester of pregnancy,

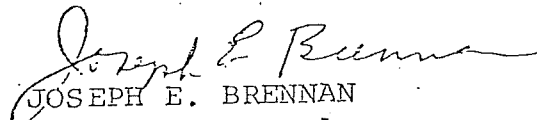
"the attending physician, in consultation with his patient, is free to determine, without regulation by the state, that in his medical judgment the patient's pregnancy should be terminated." Roe, supra, 183 (emphasis supplied)

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The clear meaning of this language is that a State cannot constitutionally pass a law which interferes with the right of the physician and the woman to make a decision regarding abortion in the first trimester of pregnancy. In the second trimester, the State has a recognized interest in the health of the mother, and it "may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health." Roe, Supra, 182 (emphasis added.)

L.D. 1297, by prohibiting the pregnant woman from obtaining information she may need to make a decision regarding abortion, and by prohibiting her physician from providing her with information regarding her condition, sets up State regulation of the kind forbidden by the Constitution. The bill would unconstitutionally place limits in an area which the Supreme Court has expressly ruled that the State may not limit.

Sincerely,


JOSEPH E. BRENNAN
Attorney General

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cc: Hon. Ann Boudreau