

# THE QUESTION OF ABORTION

By

## State Senator Thomas Laverne

### WHAT IS MY STAND ON ABORTION REPEAL?

I voted for repeal of the State's abortion law at the last session of the State Legislature.

I chose repeal over the alternative, reform, which involved permitting abortions in only such instances as rape, incest, pregnant minors, defective fetuses, or where mental health is impaired. The reform approach did not work in the 13 states that have adopted it. Because it covers a small number of cases it encourages fraud in order to obtain necessary affidavits and also it fails to wipe out the backroom abortionist.

I believe that abortion repeal should stand until such time as any abuses are uncovered. Like many statutes in a very sensitive area, the situation is being watched closely by all.

My decision to support this repeal was not an easy one. As a Catholic, I have always been opposed to abortion. I would not permit it within my own family. As an attorney, I have always counseled against abortion and will continue to do so.

### WHY DID I SUPPORT REPEAL OF THE ABORTION LAW?

I did so because the criminal sanctions against abortion did not prevent abortions and had spawned a serious public health problem. These sanctions against abortion subsidized a perverted, expensive, and dangerous profession, that of the backroom abortionist. Last year 350,000 women in the United States required hospitalization after botched abortion attempts. More than 8,000 women died. Estimates of the number of illegal abortions in the United States run as high as 1.25 million, accounting, in New York City, for 40% of all maternal deaths.

In view of the prevalent illegal and foreign abortion practice, repeal of the penalties against abortion will not necessarily lead to more abortions than would have been performed under existing law. Abortion repeal will remove the reason for the existence of the backroom abortionist. It will permit the troubled woman who would otherwise be his victim to seek the legal advice of a physician, lawyer, social worker, clergy and others which could discourage many women from having abortions who would have gone ahead without such advice and it will at least provide proper medical attention to the women determined to go ahead. The new law will also remove the inequity of the old law which permitted abortions only for the rich, who could travel to other jurisdictions and pay the high price of a legal abortion.

### DID THE LEGISLATURE REPEAL ALL CRIMINAL SANCTIONS AGAINST ABORTION?

No. The measure retained penalties against any abortion performed without the advice and consent of a physician or if performed after 24 weeks of pregnancy. The 24 weeks provision should not be construed as legislative approval of abortion up to that date. The penalties against abortion were divided at the 24 week mark. The Legislature repealed only those penalties for abortions performed with a physician prior to 24 weeks and re-enacted prohibitions against abortions after 24 weeks. The Legislature intended to let medical practice rules determine whether to perform an abortion at any time up to 24 weeks.

But many physicians have been subject to criticism for denying requests for abortion late in a pregnancy. Some physicians have suggested that the Legislature reduce the time limit to 18 weeks to correct this situation. I will give my full consideration to this approach.

### DID ABORTION REPEAL REMOVE PROTECTION TO THE UNBORN CHILD?

No. The only real protection for the unborn child is the will of the mother. Her morality is the best protection for a child she carries. The criminal sanctions not only did not protect the child when women were determined to have an abortion but also endangered the life of a woman who was forced to resort to the backroom abortionist.

Because the total dependence of the fetus on the mother removes it from effective governmental protection, abortion becomes a much different matter than Euthanasia or other mercy killing. After birth, a person can be protected by law. This fact and the fact that society almost universally condemns mercy killing or Euthanasia while not condemning abortion makes those arguments which imply that abortion repeal will lead to legalized mercy killing appear to be no more than *reductio ad absurdum*.

By opening new sources of legal advice to the woman the abortion repeal actually may work to increase the protection available to the unborn child.

The debate on the abortion question has also stimulated overdue efforts on the part of concerned clergy to address themselves to the morality of abortion and offer increased consultation to troubled women.

We may also expect vigorous efforts to remove the social and economic situations which lead women to seek abortions. As the Rochester Catholic Courier reported on September 30, 1970, "The Bishop has called for all Catholics to dedicate themselves to solve problems that bring women to consider abortion such as poverty, unemployment, lack of housing and the inequities of society."

### BY REPEALING ABORTION DID THE LEGISLATURE LEGALIZE MURDER?

No. Abortion was never treated as murder by the law. When performed by an abortionist, it was punished by less than seven years imprisonment. Self abortion prior to 24 weeks was considered only a misdemeanor punishable by up to a maximum of only 30 days in prison. But, no woman was ever convicted. A fetus is also not a "person" in a legal sense. While some legal rights accrue to a fetus prior to birth, these rights do not mature unless the fetus survives. The fetus is also not always considered a "person" in a religious sense. The time of "ensoulment" has troubled theologians and philosophers for ages and will continue to do so.

### AS A CATHOLIC LEGISLATOR HOW COULD YOU SUPPORT A POSITION CONTRARY TO YOUR CHURCH?

While abortion is a serious violation of my Catholic beliefs, I recognize that Catholic morality on this issue was not uniformly shared by society. As a legislator, I must represent all my constituents. In view of the pressing public health problem perpetuated by the prohibition on abortions and the widespread demands for repeal, I decided not to impose my personal beliefs as a Catholic on all others through public law. As a Catholic I believe that Catholic morality on abortion must stand on its own merits. Many Catholics in this ecumenical age, representing a wide variety of opinion, have agreed with my beliefs.

When as a Catholic, the late John F. Kennedy, then a candidate for the Presidency, was asked the same questions concerning abortions, birth control and divorce, *Richard Cardinal Cushing* answered in his defense, "We do not need the protection of civil law in order to practice our religious beliefs and we do not seek to impose them on any

other members of society." He also asserted that no Catholic public official should be required to vote according to his religious beliefs.

And no less a Catholic political thinker than *William F. Buckley, Jr.*, with whom I do not share many beliefs, stated, "There is great pressure to ease the abortion laws, and it is being said that the Catholic Church prevents its being done. If that is the case, the Catholic Church should reconsider its position in the light of the Vatican Council's clarification last year of the meaning of religious freedom . . . surely the principal meaning of the religious liberty pronouncements of Vatican II is that other men must be left free to practice the dictates of their own conscience, and if other religions and other individuals do not believe that under certain circumstances abortion is wrong, it would appear to contradict the burden of the Vatican's position to put pressure on the law to maintain the supremacy of one's own position . . . Some Catholics may understand themselves to be pleading as defenders of the rights of unborn children of whatever faith, and their stand is honorable, but not viable: and the means by which the case is pleaded should be suasive rather than coercive. Not viable because the positive law, the law in effect, does not recognize an unborn child as a human entity, possessing rights—which is why penalties against illegal abortions are less than those against murder." (*National Review*, April 5, 1966, page 308).

I must also point out that the official Catholic position on abortion is not shared by all Catholics or by other religious groups. Indeed, *Time Magazine* (6/6/69) reported on a nationwide poll which showed 60% of all Catholics in favor of abortion repeal. Over 50 other religious groups, including the New York State Council of Churches, the Protestant Council of NYC, the NYS Federation of Reform Synagogues, Association of Reform Rabbis; NY Chapter of the United Synagogue of America, as well as several lay groups, many women's, health and social groups demanded repeal.

### WILL YOU HAVE TO ANSWER TO YOUR VOTERS FOR YOUR DECISION?

As a public official I am, of course, responsible to the voters for this decision. And while some of my constituents have objected to this decision, I am confident that men of good will, whether or not they agree with my decision on the abortion question, will not judge me on the basis of it alone. I have made thousands of difficult decisions as a legislator, some of which have not pleased all my constituents. It is against the balance of my overall record and experience and against alternatives to my brand of leadership that I would expect to be judged by the electorate.

As a result of my decision, I have been subjected to much sincere criticism from those who hold otherwise. I have accepted this criticism and answered in good conscience. But I have also been subjected to hysterical attack. Photos have been circulated showing in ghastly detail, allegedly discarded unborn fetuses, implying that I am a child murderer. Of course, photos of mutilated women and unwanted children could be displayed to invoke the same kind of horror and disgust on the other side. At best, such presentations are calculated to bypass reason and to excite passion. At worst, they are a cheap and tawdry effort to gain political advantage. I will not resort to such tactics, which are beyond the bounds of decency, to defend my position.

In conclusion, this decision was made after literally years of agonizing debate and intensive study. Above all, it was made in good conscience as the only responsible answer to a major public problem, without regard to politics. Whatever the personal outcome, I fully believe my choice was the correct one.

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