

## Why does NEA support *Roe v. Wade*? You may be surprised by the answer!

***If an unwed teacher becomes pregnant as the result of a rape, can a school board fire her because she chooses not to have an abortion?***

This is not some hypothetical case; a teacher (and a member of NEA) actually was fired for choosing childbirth rather than abortion. And consistent with its policy in favor of reproductive freedom, NEA, along with its state affiliate, provided legal assistance to the teacher who successfully argued that her firing was illegal.

This case powerfully illustrates why NEA's policy supporting the right to reproductive freedom is not "pro-abortion" but pro-choice. The constitutional right to reproductive freedom includes the right to choose childbirth rather than abortion.

The facts of Jeanne Eckmann's case were circulated widely in the national media in the early 1990s. Eckmann had spent two years preparing to be a nun in a St. Louis convent before leaving to become a teacher. She taught in Catholic schools for six years before taking a job in the public schools. In November 1980, Eckmann was raped while returning from a religious retreat. In December Eckmann discovered she was pregnant and told her superintendent, who suggested she keep her pregnancy quiet. After all, people in the small Illinois district might talk.

To avoid any risk to her job, Eckmann could have gotten an abortion. But "as a devout Catholic," she would later say, "I would not even consider abortion." Eckmann took medical leave in April 1981. A month before her delivery, the board president and school superintendent paid her a visit. According to Eckmann, the president "said I should resign because I was immoral." When Eckmann said she'd been raped, he answered, "You may be asked to certify that."

Instead of resigning, Eckmann contacted her NEA UniServ Director, a professional advocate. He went to the next school board meeting to argue against any adverse action. But in July the board began the dismissal process. Eckmann received a notice alleging, among other things, that she was "guilty of immorality...your conduct in becoming pregnant outside the state of marriage has lessened your ability to teach and ability of your students to learn their lessons from you."

On the next day Eckmann's son was born.

Eckmann returned to teaching in the fall of 1981 but was fired in January 1982. With the help of NEA and the Illinois Education Association, she challenged her dismissal before a state hearing officer. NEA and IEA eventually spent \$36,000 in legal fees. Noting that it is unconstitutional to fire a teacher for having a child out of wedlock, the hearing officer ruled that Eckmann had been illegally dismissed and ordered her reinstated with full back pay.

Eckmann then retained her own attorney and sued the school board for violating her constitutional rights. **The trial judge ruled that the right to choose childbirth rather than abortion is part of the constitutional right to privacy established by *Roe v. Wade*.** "If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child," the court said. In July 1985, the jury found for Eckmann.

**Of the three NEA-funded federal appeals defending members' rights under *Roe v. Wade*, none involved the right to abortion. Rather, all three asserted other privacy rights grounded in *Roe*, including the right to nurture a child, to bear a child, and to divorce.**

In *Dike v. School Board of Orange County, Fla.* (1981), for example, NEA challenged a school board decision forbidding a teacher to breastfeed her baby on school grounds during her duty-free lunch period. NEA argued that the right to rear children is encompassed in the right to privacy recognized by *Roe v. Wade*. Calling breastfeeding "the most elemental form of parental care," the Fifth Circuit Court of Appeals held that – like "individual decisions respecting marriage, procreation, contraception [and] abortion" – breastfeeding is constitutionally protected.

The issue in *Littlejohn v. Rose* (1985) was whether a school board violated a teacher's right to privacy by refusing to renew her contract because she was involved in a divorce. NEA argued that the right to divorce is constitutionally protected under *Roe v. Wade*. The Sixth Circuit Court of Appeals agreed. Citing *Roe*, the court held that "matters relating to marriage and family relationships involve privacy rights that are constitutionally protected against unwarranted governmental interference...*Roe* clearly established ...a constitutionally

protected right to privacy which included matter relating to procreating and marriage.

Finally, in *Avery v. Homewood City of Board of Education* (1982), NEA relied on *Roe* in arguing that the dismissal of a teacher because of an unwed pregnancy violated her right to procreation. The Fifth Circuit Court of Appeals agreed that such a termination was unconstitutional, but based its decision on equal protection rather than privacy grounds.

Many observers agree that the Rehnquist-led Supreme Court eventually will severely restrict or overturn *Roe v. Wade*. The demise of *Roe* will have serious consequences for teachers and other education employees. Compelled completion of pregnancy will result in more teachers being fired for “Immorality.”

Even worse, the legal argument that saved the jobs of Eckmann and Avery may no longer succeed: If the right to privacy does not protect the right to choose abortion, it may not protect the right to choose childbirth.

Finally, as the privacy cases funded by NEA illustrate, *Roe v. Wade* is the cornerstone of many fundamental rights we now take for granted: Marriage, procreation, childbearing, and family life, to name a few. Once that cornerstone is removed, other privacy rights are at risk.

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