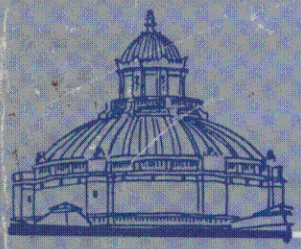
ABORTION: JUDICIAL AND LEGISLATIVE CONTROL. 1981.

ISSUE BRIEF NUMBER IB74019

Issue Brief



CRS

CONGRESSIONAL RESEARCH SERVICE
LIBRARY OF CONGRESS

ABORTION: JUDICIAL AND LEGISLATIVE CONTROL

ISSUE BRIEF NUMBER IB74019

AUTHOR:

Lewis, Karen J.

American Law Division

Rosenberg, Morton

American Law Division

Porter, Allison I.

American Law Division

THE LIBRARY OF CONGRESS

CONGRESSIONAL RESEARCH SERVICE

MAJOR ISSUES SYSTEM

DATE ORIGINATED 02/05/74
DATE UPDATED 05/11/81

FOR ADDITIONAL INFORMATION CALL 287-5700

0513

ISSUE DEFINITION

In 1973 the U.S. Supreme Court held that the Constitution protects a woman's decision whether or not to terminate her pregnancy, Roe v. Wade, 410 U.S. 113, and that a State may not unduly burden the exercise of that fundamental right by regulations that prohibit or substantially limit access to the means of effectuating that decision, Doe v. Bolton, 410 U.S. 179. But rather than settling the issue, the Court's rulings have kindled heated debate and precipitated a variety of governmental actions at the national, State and local levels designed either to nullify the rulings or hinder their effectuation. These governmental regulations have, in turn, spawned further litigation in which resulting judicial refinements in the law have been no more successful in dampening the controversy. Thus the 97th Congress promises to again be a forum for proposed legislation and constitutional amendments aimed at limiting or prohibiting the practice of abortion and 1981 will see court dockets, including that of the Supreme Court, filled with an ample share of challenges to State and local actions.

BACKGROUND AND POLICY ANALYSIS

The background section of this issue brief is organized under five categories, as follows:

I. JUDICIAL HISTORY
- A. Development and Status of the Law Prior to 1973
- B. The Supreme Court's 1973 Abortion Rulings

II. U.S. SUPREME COURT DECISIONS SUBSEQUENT TO "ROE" AND "DOE"
- A. Informed Consent, Spousal Consent, Parental Consent, and Reporting Requirements
- B. Parental Notice
- C. Advertising of Abortion Services
- D. Abortions by Non-Physicians
- E. Abortions in Public and Private Hospitals
- F. The Definition of Viability

III. THE PUBLIC FUNDING OF ABORTIONS
- A. The 1977 Trilogy -- Restrictions on Public Funding of Nontherapeutic or Elective Abortions
- B. The Public Funding of Therapeutic or Medically Necessary Abortions -- The Supreme Court's Decisions in McRae and Zbaraz

IV. UNRESOLVED ISSUES RELATING TO ABORTION

V. LEGISLATION
- A. Constitutional Amendments
- B. Hyde-Type Amendments to Appropriations Bills
- C. Hyde-Type Amendments to Substantive Bills
- D. Limitation on Federal Court Jurisdiction
- E. Early Developments in the 97th Congress
- F. Public Laws

I. JUDICIAL HISTORY

A. Development and Status of the Law Prior to 1973

The moral and legal issues raised by the practice of abortion has tested the philosophers, theologians, and statesmen of every age since the dawn of civilization. The Stoics' belief that abortion should be allowed up to the moment of birth was vigorously opposed by the Pythogoreans who believed that the soul was infused into the body at conception and that to abort a fetus would be to commit murder. Early Roman law was silent as to abortion; and abortion and infanticide was common in Rome, especially among the uppper classes. Opposition by scholars and the growing influence of the Christian religion brought about the first prohibition of abortion during the reign of Severus (193-211 A.D.). These laws made abortion a high criminal offense and subjected a woman who violated the provisions to banishment. During the European Middle Ages major church theologians differentiated between an embryo informatus (prior to endowment of a soul) and an embryo formatus (after endowment with a soul). The distinction was used to assess punishments for abortion, fines being levied if abortion occurred before animation but death ordered if it was aborted at any time after.

The English common law adopted the doctrine of "quickening" i.e., the first movement of the fetus in the mother's womb, to pinpoint the time when abortion could incur sanctions. Generally, at common law, abortion performed before quickening was not an indictable offense. There is dispute whether abortion of a quick fetus was a felony. The predominant view is that abortion of a quick fetus was, at most, a minor offense. In the United States, the law in all but a few States until the mid-19th Century adopted the pre-existing English common law. Thus, no indictment would occur for aborting a fetus for a consenting female prior to quickening. However, there could be an indictment afterward. Also, as was the case under the common law, a woman herself was not indictable for submitting to an abortion, or for aborting herself, before quickening.

By the time of the Civil War, however, an influential antiabortion movement began to affect legislation by inducing States to add to or revise their statutes in order to prohibit abortion at all stages of gestation. By 1910 every State had antiabortion laws, except Kentucky whose courts judicially declared abortions to illegal. In 1967, 49 of the States and the District of Columbia classified the crime of abortion as a felony. The concept of quickening was no longer used to determine criminal liability but was retained in some States to set punishment. Non-therapeutic abortions were essentially unlawful. The States varied in their exceptions for therapeutic abortions. Forty-two States permitted abortions only if necessary to save the life of the mother. Other States allowed abortion to save a woman from "serious and permanent bodily injury" or her "life and health." Three States allowed abortions that were not "unlawfully performed" or that were not "without lawful justification", leaving interpretation of those standards to the courts.

This, however, represented the highwater mark in restrictive abortion laws in the United States, for 1967 saw the first victory of an abortion reform movement with the passage of liberalizing legislation in Colorado. The legislation was based upon the Model Penal Code. The movement started in the

early 1950s and centered its efforts on a proposed criminal abortion statute developed by the American Law Institute that would allow abortions when childbirth posed grave danger to the physical or mental health of a woman, when there was high likelihood of fetal abnormality, or when pregnancy resulted from rape or incest.

Between 1967 and the Supreme Court's 1973 decisions in Roe and Doe, approximately one-third of the States had adopted, either in whole or in part, the Model Penal Code's provisions allowing abortions in instances other than where only the mother's life was in danger. Also, by the end of 1970, four States (Alaska, Hawaii, New York, and Washington) had repealed criminal penalties for abortions performed in early pregnancy by a licensed physician, subject to stated procedural and health requirements.

The first U.S. Supreme Court decision dealing with abortion was rendered in 1971. U.S. v. Vuitch, 402 U. S. 62. In Vuitch, the Court denied a vagueness challenge to the District of Columbia abortion statute. The net effect of the Vuitch decision was to expand the availability of abortions under the D.C. law's provision allowing abortions where "necessary for the preservation of the mother's ...health."

B. The Supreme Court's 1973 Abortion Rulings

Between 1968 and 1972 the constitutionability of restrictive abortion statutes of many States were challenged on the grounds of vagueness, violation of the fundamental right of privacy, and denial of equal protection under these laws. These challenges met with mixed success in the lower courts. However, on Jan. 22, 1973, the Supreme Court issued its rulings in Roe v. Wade and Doe v. Bolton. In those cases the Court found that Texas and Georgia statutes regulating abortion interfered to an unconstitutional extent with a woman's right to decide whether to terminate her pregnancy. The Texas statute forbade all abortions not necessary "for the purpose of saving the life of the mother." The Georgia enactment permitted abortions when continued pregnancy seriously threatened the woman's life or health, when the fetus was very likely to have severe birth defects, or when the pregnancy resulted from rape. The Georgia statute required, however, that abortions be performed only at accredited hospitals and only after approval by a hospital committee and two consulting physicians.

The Court's decisions were delivered by Mr. Justice Blackmun for himself and six other Justices. Justices White and Rehnquist dissented. The Court ruled that States may not categorically proscribe abortions by making their performance a crime, and that States may not make abortions unnecessarily difficult to obtain by prescribing elaborate procedural guidelines. The constitutional basis for the decisions rested upon the conclusion that the Fourteenth Amendment right of personal privacy embraced a woman's decision whether to carry a pregnancy to term. The Court noted that its prior decisions had "found at least the roots of ... a guarantee of personal privacy" in various amendments to the Constitution or their penumbras (i.e., protected offshoots) and characterized the right to privacy as grounded in "the Fourteenth Amendment's concept of personal liberty and restrictions upon State action." Roe v. Wade, 410 U. S. 113, 152, 153 (1973). Regarding the scope of that right, the Court stated that it included "only personal rights that can be deemed 'fundamental' or 'implicit in the concept of ordered liberty'" and "bears some extension to activities related to marriage, procreation, contraception, family relationship, and child rearing and education." Id. at 152-153. Such a right, the Court concluded, "is broad

enough to encompass a woman's decision whether or not to terminate her pregnancy." Id. at 153.

With respect to protection of the right against State interference, the Court held that since the right of personal privacy is a fundamental right, only a "compelling State interest" could justify its limitation by a State. Thus while it recognized the legitimacy of the State interest in protecting maternal health and the preservation of the fetus' potential life, Id. at 148-150, and the existence of a rational connection between these two interests and the State's antiabortion law, the Court held these interests insufficient to justify an absolute ban on abortions. Instead, the Court emphasized the durational nature of pregnancy and held the State's interests to be sufficiently compelling to permit curtailment or prohibition of abortion only during specified stages of pregnancy. The High Court concluded that until the end of the first trimester an abortion is no more dangerous to maternal health than childbirth itself, and found that:

> W ith respect to the State's important and legitimate interest in the health of the mother, the "compelling" point, in light of present medical knowledge, is at approximately the end of the first trimester. Id. at 163.

Only after the first trimester does the State's interest in protecting maternal health provide a sufficient basis to justify State regulation of abortion, and then only to protect this interest. Id. at 163-164.

The "compelling" point with respect to the State's interest in the potential life of the fetus "is at viability." Following viability, the State's interest permits it to regulate and even proscribe an abortion except when necessary, in appropriate medical judgment, for the preservation of the life or health of the mother. =Id. at 163-164. The Court defined viability as the point at which the fetus is "potentially able to live outside the mother's womb, albeit with artificial aid." Id. at 160. The Court summarized its holding as follows:

> (a) For the stage prior to approximately the end of the first trimester of pregnancy , the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician.
> (b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.
> (c) For the stage subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.
>
> 410 U.S. at 164-165

In Doe v. Bolton, 410 U.S. 179 (1973), the Court reiterated its holding in Roe v. Wade that the basic decision of when an abortion is proper rests with the pregnant mother and her physician, but extended Roe by warning that just as States may not prevent abortion by making the performance a crime, States

may not make abortions unreasonably difficult to obtain by prescribing elaborate procedural barriers. In Doe, therefore, the Court struck down State requirements that abortions be performed in licensed hospitals; that abortions be approved beforehand by a hospital committee; and that two physicians concur in the abortion decision. Id. at 196-199. The Court appeared to note, however, that this would not apply to a statute that protected the religious or moral beliefs of denominational hospitals and their employees. Id. at 197-98.

The Court in Roe also dealt with the question whether a fetus is a person under the Fourteenth Amendment and other provisions of the Constitution. The Court indicated that the Constitution never specifically defines "person," but added that in nearly all the sections where the word person appears, "...the use of the word is such that it has application only post-natally. None indicates, with any assurance, that it has any possible pre-natal application." 410 U.S. at 157. The Court emphasized that given the fact that in the major part of the 19th century prevailing legal abortion practices were far freer than today, the Court was persuaded "that the word 'person,' as used in the Fourteenth Amendment, does not include the unborn." Id. at 158.

The Court did not, however, resolve the question of when life actually begins. While noting the divergence of thinking on this issue, it, instead, articulated the legal concept of "viability," which is defined as the point at which the fetus is potentially able to live outside the womb, although the fetus may require artificial aid. Id. at 160.

The Supreme Court's decisions in Roe v. Wade and Doe v. Bolton did not address a number of important abortion-related issues which have subsequently been raised by State actions seeking to restrict the scope of the Court's rulings. These include the issues of informed consent, spousal consent, parental consent, and reporting requirements. In addition, Roe and Doe never resolved the question of what, if any, type of abortion procedures may be required or prohibited by statute. Moreover, there remained the matter of whether fetal protection statutes were constitutional. Unanswered by the 1973 cases as well was the constitutionality of three other types of statutes affecting access to abortion: (1) those proscribing the advertising regarding the availability of an abortion or abortion-related services in another State; (2) those prohibiting abortions by non-physicians; and (3) those allowing private hospitals to refuse to perform abortions. In addition, since Roe and Doe, questions have arisen with respect to the constitutionality of: (1) the experimental use of fetuses; (2) waiting period requirements; (3) termination of parental rights; (4) the right of a physician to refuse to participate in an abortion; and (5) notice requirements. Finally, the entire matter of the Government funding of abortions was not dealt with in Roe and Doe, since public funding was not possible at that time.

II. U.S. SUPREME COURT DECISIONS SUBSEQUENT TO "ROE" AND "DOE"

A. Informed Consent, Spousal Consent, Parental Consent, and Reporting Requirements

In Planned Parenthood v. Danforth, 428 U.S. 52 (1976), the Court held that informed consent statutes, which require a doctor to obtain the written consent of a woman after informing her of the dangers of abortion and

possible alternatives, are constitutional if the requirements are related to maternal health and are not overbearing. 428 U.S. 52, 65-66. The fact that the informed consent laws must define their requirements very narrowly in order to be constitutional was later confirmed by the Supreme Court in 1979 when it summarily affirmed an Eighth Circuit Court of Appeals decision holding to that effect in Freiman v. Ashcroft, 584 F.2d 247, 251 (8th Cir. 1978) aff'd mem., 99 S.Ct. 1416 (1979). The requirements of an informed consent statute must also be narrowly drawn so as not to unduly interfere with the physician-patient relationship, although the type of information required to be given to a woman of necessity may vary according to the trimester of her pregnancy.

In addition to informed consent, the Danforth decision dealt with the issue of spousal consent. The Supreme Court found that spousal consent statutes, which require a written statement by the father of the fetus affirming his consent to the abortion, are unconstitutional if the statutes allow the husband to unilaterally prohibit the abortion in the first trimester. 428 U.S. 52, 69. It should be noted that on the same day that the Supreme Court decided Danforth, it also summarily affirmed the lower court decision in Coe v. Gerstein, 376 F. Supp. 695 (S.D. Fla. 1974), aff'd, 428 U.S. 901 (1976), which held unsonstitutional a spousal consent law regardless of the stage of the woman's pregnancy.

With respect to parental consent statutes, the Supreme Court held in Danforth that those statutes that allow a parent or guardian to absolutely prohibit an abortion to be performed on a minor child were unconstitutional. Subsequently, in Belotti v. Baird, 443. U.S. 622 (1979), the Court ruled that while a State may require a minor to obtain parental consent, the State must also provide an alternative procedure to procure authorization if parental consent is denied or the minor does not want to seek it. From the reasoning used in Belotti, it appears that the Court felt a minor is entitled to some proceeding which allows her to prove her ability to make an informed decision independent of her parents, or that even if she is incapable of making the decision, at least showing that the abortion would be in her best interests.

The Court in Danforth also ruled that reporting requirements in statutes requiring doctors and health facilities to provide information to States regarding each abortion performed, are constitutional. The Court specified, however, that these reporting requirements relate to maternal health, remain confidential, and may not be overbearing. 428 U.S. 52, 80-81.

Another aspect in the Danforth case related to the constitutionality of abortion procedure statutes that prohibit the use of saline amniocentesis to obtain an abortion. The Court held such statutes unconstitutional because it believed that a procedure as widely accepted in medical circles as that requiring the use of saline amniocentesis could not be prohibited. Moreover, the State statute in question was held to be inconsistent in its proscription, since it allowed other more dangerous procedures while prohibiting some that were safer, more effective, and more widely accepted by the medical profession.

Finally, another significant ruling made by the Court in Danforth was that fetal protection statutes were generally overbroad and unconstitutional if they pertained to pre-viable fetuses. Such statutes require a doctor performing an abortion to use available means and medical skills to save the life of the fetus. In a subsequent decision, Colautti v. Franklin, 439 U.S. 379 (1979), the Supreme Court held that such fetal protection statutes could only apply to viable fetuses and that the statute must be precise in setting

forth the standard for determining viability. In addition, the Court in Colautti stressed that in order to meet the constitutional test of sufficient certainty, fetal protection laws had to define whether a doctor's paramount duty was to the patient or whether the physician had to balance the possible danger to the patient against the increased odds of fetal survival. 439 U.S. S 379, 397-401.

B. Parental Notice

The Supreme Court did attempt to provide further clarification of the parental consent and notification issues in its decision in Bellotti v. Baird, 443 U.S. 622 (1979). There the Court held unconstitutional a Massachusetts statute that required parental consultation or notification in every instance without affording the pregnant minor an opportunity to receive an independent judicial determination that she was mature enough to consent or that the abortion would be in her best interests. The Court also found unconstitutional a statutory provision that permitted judicial authorization for an abortion to be withheld from a minor who is found by the court to be mature and fully competent to make the decision whether or not to terminate her pregnancy independently. However, in an effort to provide some future guidelines, the court, in dicta, suggested that if a State wished to use parental notification, it must afford the minor the option of proceeding directly to court, without parental notification, where she must show that she is a mature minor or that, if she is found not able to make the decision independently, the desired abortion is in her best interests. Four of the eight justices objected to this suggestion on the ground that it was an advisory opinion.

On Mar. 23, 1981, the Court upheld a Utah State law making it a crime for doctors to perform an abortion on an unemancipated, dependent minor without notifying her parents. In H.L. v. Matheson, 79-5903, a 6-to-3 decision, the Court examined the narrow question of the facial constitutionality of a statute requiring a physician to give notice to parents, "if possible," prior to performing an abortion on their minor daughter, (a) when the girl is living with and dependent upon her parents, (b) when she is not emancipated by marriage or otherwise, and (c) when she has made no claim or showing as to her maturity or as to her relationship with her parents. The Supreme Court cited the interest in preserving family integrity and protecting adolescents in allowing States to require that parents be informed that their daughter is seeking an abortion, and emphasized that the statute in question did not give a veto power over the minor's abortion decision. Chief Justice Burger reasoned that the Utah law, "as applied to immature and dependent minors ... serves the important considerations of family integrity and protecting adolescents." In addition, parental notice provides "... an opportunity for parents to supply essential medical and other important information to a physician. The medical, emotional, and psychological consequences of an abortion are serious and can be lasting; this is particulary so when the patient is immature." The Court rejected the minor woman's contention that abortion was being singled out for special treatment in contrast to other surgical procedures, like childbirth, which do not require parental notice. The Chief Justice responded that the situations differed and "if the pregnant girl elects to carry her child to term, the medical decisions to be made entail few -- perhaps none -- of the potentially grave emotional and psychological consequences of the decision to abort." Thus, the Court found the Utah law to be constitutional, since it served important State interests, was narrowly drawn to protect only those interests, and did not in any way violate any of the guarantees of the Constitution. Still directly

unanswered, however, is the question whether parental notification can be required in the case of a mature, emancipated minor. The implication of the Bellotti and Matheson rulings is that such a law would be constitutionally suspect.

C. Advertisement of Abortion Services

The Supreme Court held in Bigelow v. Virginia, 421 U.S. 809 (1975), that a State may not proscribe advertising regarding the availability of an abortion or abortion-related services in another State. The Court found that the statute in question was unconstitutional because the State of Virginia, where the advertisement appeared, had only a minimal interest in the health and medical practices of New York, the State in which the legal abortion services were located.

D. Abortions by Non-Physicians

In Connecticut v. Menillo, 429 U.S. 9 (1975), the Supreme Court ruled that State statutes similar to the Texas law challenged in Roe were constitutional to the extent that the statutes forbid non-physicians from performing abortions. The Roe decision made it clear that a State could not interfere with a woman's decision, made in consultation with and upon the advice of her doctor, to have an abortion in the first trimester of her pregnancy. The Menillo Court found that pre-Roe restrictive abortion laws were still enforceable against non-physicians. 423 U.S. 9, 11.

E. Abortions in Public and Private Hospitals

In Poelker v. Doe, 432 U.S. 519 (1977) (per curiam), the Supreme Court held that the policy of the City of St. Louis in refusing to allow the performance of nontherapeutic abortions in its public hospitals, and of staffing those hospitals with personnel opposed to the performance of abortions, did not violate the equal protection clause of the Constitution. Poelker, however, did not deal with the question of private hospitals and their authority to prohibit abortion services. In Poelker, the Court dealt with the right of a municipality to elect to provide publicly financed hospital services for childbirth without providing corresponding services for non-therapeutic abortions. The Court approved this practice.

No cases have been reported challenging State laws which allow doctors to refuse to participate in abortion procedures. This may be explained by the fact that a woman can always seek out another physician who could perform an abortion, should a doctor initially refuse because of religious or other beliefs.

To date the Supreme Court has not rendered a decision regarding the constitutionality of State statutes that allow private hospitals to refuse to participate in abortions; however, Federal district courts have ruled on this issue. See, e.g., Jones v. Eastern Me. Med. Center, 448 F. Supp. 1156 (D. Me. 1978), where the court upheld such a law.

F. The Definition of Viability

The Supreme Court's articulation of the concept of viability has required

further elaboration, particularly with regard to the critical question of who defines at what point a fetus has reached viability. In Roe the Court defined viability as the point at which the fetus is "potentially able to live outside the mother's womb, albeit with artificial aid." 410 U.S. at 160. Such potentiality, however, must be for "meaningful life" and this cannot encompass simply momentary survival. 410 U.S. at 163. The Court also noted that while viability is usually placed at about 28 weeks, it can occur earlier and essentially left the point flexible for anticipated advances in medical skill. Finally, Roe stressed the central role of the pregnant woman's doctor, emphasizing that "the abortion decision in all its aspects is inherently, and primarily, a medical decision." 410 U.S. at 160. Similar themes were stressed in =Planned Parenthood of Central Missouri v. Danforth=, 428 U.S. 52 (1976), in which a Missouri law, which defined viability as "that stage of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life support systems", was attacked as an attempt to advance the point of viability to an earlier stage of gestation. The Court disagreed, finding the statutory definition consistent with Roe. It re-emphasized that viability is "a matter of medical judgment, skill, and technical ability" and that Roe meant to preserve the flexibility of the term. 428 U.S. at 64. Moreover, the Danforth Court held that "it is not the proper function of the legislature or the courts to place viability, which is esentially a medical concept, at a specific point in the gestation period. The time when viability is achieved may vary with each pregnancy, and the determination of whether a particular fetus is viable is, and must be, a matter for the judgment of the attending physician." 428 U.S. at 64. The physician's central role in determining viability, and the lack of such definitional authority in the legislatures and courts, was most recently reaffirmed by the Court in Colautti v. Franklin, 439 U.S. 379 (1979).

III. THE PUBLIC FUNDING OF ABORTIONS

Two categories of public funding cases have been heard and decided by the Supreme Court: (1) those involving funding restrictions for nontherapeutic (elective) abortions and (2) those involving funding limitations for therapeutic (medically necessary) abortions.

A. The 1977 Trilogy -- Restrictions on Public Funding of Nontherapeutic or Elective Abortions

On June 20, 1977, the Supreme Court, in three related decisions, ruled on the question whether the Medicaid statute or the Constitution requires public funding of nontherapeutic (elective) abortions for indigent women or access to public facilities for the performance of such abortions. The Court held that the States have neither a statutory nor a constitutional obligation in this regard. Beal v. Doe, 432 U.S. 438 (1977); Maher v. Roe, 432 U.S. 464 (1977); and Poelker v. Doe, 432 U.S. 519 (1977) (per curiam).

In Beal v. Doe, the Supreme Court dealt with the question of whether Title XIX of the Social Security Act required the funding of nontherapeutic abortion as a condition of participation in the Medicaid program established by the Act. The Court held that nothing in the language or legislative history of Title XIX requires a participating State to fund every medical procedure falling within the delineated categories of medical care. Each State is given broad discretion to determine the extent of medical assistance that is "reasonable" and "consistent with the obligations" of Title XIX. The

Court ruled that it was not inconsistent with the Act's goals to refuse to fund unnecessary medical services. The Court recognized the State's interest in encouraging normal childbirth and found no congressional intent to undercut that interest by subsidizing the costs of nontherapeutic abortions. However, the Court did indicate that Title XIX left a State free to include coverage for nontherapeutic abortions should it choose to do so.

In Maher v. Roe, the Supreme Court resolved a constitutional challenge to Connecticut's refusal to reimburse Medicaid recipients for abortion expenses except where the attending physician certifies the abortion to have been medically or psychiatrically necessary. The Court held that the Equal Protection Clause does not require a State participating in the Medicaid program to pay expenses incident to nontherapeutic abortions simply because the State has made a policy choice to pay expenses incident to childbirth. More particularly, Connecticut's policy of favoring childbirth over abortion was held not to impinge upon the fundamental right of privacy recognized in Roe v. Wade, which protects a woman from undue interference in her decision to terminate a pregnancy. According to the Court, the State's choice did not handicap an indigent woman desiring an abortion, since she could continue, as before, to look to private abortion services and private sources of funding. In essence, the Court found no absolute bar for an indigent woman seeking an abortion.

In Poelker v. Doe, the Court upheld a regulation of the municipalities of St. Louis that denied indigent pregnant women nontherapeutic abortions at public hospitals. In an unsigned per curiam opinion, the Court stated that it held "for the reasons stated in Maher, that the Constitution does not forbid a State or city, pursuant to democratic processes, from expressing a preference for normal childbirth as St. Louis has done." 432 U.S. at 521.

B. The Public Funding of Therapeutic or Medically Necessary Abortions -- The Supreme Court's Decisions in McRae and Zbaraz

The 1977 Supreme Court decisions left open the question whether Federal law, such as the Hyde Amendment, or similar State laws, could validly prohibit governmental funding of therapeutic abortions.

On June 30, 1980, in a 5-4 decision, the U.S. Supreme Court ruled that the Hyde Amendment's abortion funding restrictions were constitutional. The Court's majority found that the Hyde Amendment neither violated the due process or equal protection guarantees of the Fifth Amendment nor the Establishment Clause of the First Amendment. The Court also upheld the right of a State participating in the Medicaid program to fund only those medically necessary abortions for which it received Federal reimbursement. Harris v. McRae, 100 S.Ct. 2671 (1980). In companion cases raising similar issues, the Court held that a State of Illinois statutory funding restriction comparable to the Federal Hyde Amendment also did not contravene the constitutional restrictions of the equal protection clause of the Fourteenth Amendment. Williams v. Zbaraz; Miller v. Zbaraz; U.S. v. Zbaraz, 100 S.Ct. 2694 (1980). The Court's rulings in McRae and Zbaraz mean there is no statutory or constitutional obligation on the States or the Federal Government to fund all medically necessary abortions.

IV. UNRESOLVED ISSUES RELATING TO ABORTION

Among the abortion issues not yet addressed by the Supreme Court are the

constitutionality of State statutes regarding: (1) the experimental use of fetuses; (2) waiting period requirements; (3) termination of parental rights; and (4) the right to refuse to provide abortion services by physicians and/or private hospitals.

The subject of the experimental use of fetuses was challenged in Wynn v. Scott, 449 F.Supp. 1302 (1978), appeal dismissed, 439 U.S. 8 (1979). In Wynn, the district court upheld as constitutional a State law that prohibited live nonviable or certain dead viable fetuses from being used for experimental purposes. 449 F.Supp. at 1322. The Court further found that the provisions in the law being challenged did "not impose any burden on the woman who is deciding whether to terminate her pregnancy." Id. Moreover, the Court in Wynn ruled that the parties challenging the statute's validity failed to prove that a rational relationship did not exist between the provision in the law and the State's interest in regulating the practice of medicine.

The question of the constitutional validity of State laws restricting fetal research is likely to recur. To date, there are approximately 19 States with laws that attempt to limit fetal research. Thus, other court challenges may be anticipated.

Another issue relating to abortion that has yet to reach resolution in the Supreme Court is that involving State laws requiring women to wait between 24 and 72 hours prior to receiving their abortions. Most of the cases have held that such waiting period requirements which apply to all women were constitutional. Wolfe v. Schroering, 541 F. 2d 523 (6th Cir. 1976); Wynn v. Scott, 449 F.Supp. 1302 (N.D. Ill. 1978). One court found that a waiting period which applied only to minors was unconstitutional. Wynn v. Carey, 599 F. 2d 193 (7th Cir. 1979). The court reasoned that the statute in question was invalid because it was underinclusive by excluding married minors, and overinclusive by including mature, emancipated minors. More recently, the U.S. Court of Appeals for the First Circuit ordered the State of Massachusetts to suspend a requirement that women wait 24 hours after signing a mandatory consent form before an abortion can be performed, pending a lower court ruling on the merits. The court held that although the delay was "extremely brief," it constituted a "substantial State-created burden on a woman's fundamental right" to have an abortion. Planned Parenthood v. Bellotti, 80-1580, 1st Cir., Feb. 19, 1981.

A number of States have laws that automatically terminate parental rights if a live infant results from an attempted abortion. These laws have uniformly been held unconstitutional. Wynn v. Carey, 599 F. 2d 193 (7th Cir. 1979); Wynn v. Scott, 449 F.Supp. 1302, 1322 (N.D. Ill. 1978). These courts have generally reasoned that such statutes are invalid because the provisions threaten women with a cut-off of parental rights without according them procedural due process. There are two States, Indiana and Minnesota, that have provisions for voluntary termination of parental rights which have not been challenged to date.

A final area in dispute involves the question of the constitutional validity of State laws that allow doctors and/or private hospitals to refuse to participate in an abortion. No cases have been reported challenging State statutes allowing physicians to refuse to perform an abortion. There have been challenges to State laws allowing private hospitals to refuse to participate in abortions. Such statutes have generally withstood court challenges. In one case a Federal court invalidated the provision because it found that the private hospital in question was sufficiently intermingled

with the Government to constitute State action. The presence of State action caused the court to rule that the private hospital had to admit patients for abortions. Doe v. Charleston Area Med. Ctr., Inc. 529 F. 2d 638 (4th Cir. 1975). See also, Jones v. Eastern Me. Med. Center, 448 F.Supp. 1156 (D.Me. 1978).

Public hospitals, however, do not have to allow abortions in certain circumstances. See Poelker v. Doe, 432 U.S. 519 (1977), where the Supreme Court held that the City of St. Louis had the right to refuse to provide publicly financed hospital services for nontherapeutic abortions.

V. LEGISLATION

In the 96th Congress, 73 bills were introduced containing some type of restrictive abortion provision. Thus far in the 97th Congress, 30 bills have been submitted. The proposals may be divided into four general categories:

A. Bills that seek a constitutional amendment prohibiting abortion;

B. Hyde-type amendments to appropriations bills;

C. Hyde-type amendments to substantive bills; and

D. Bills that limit Federal court jurisdiction over abortion-related issues.

An examination of the bills in each of the four categories helps clarify the different issues and methods proposed to restrict the availability of abortion. The same patterns have held true in the 97th Congress with the exception of the introduction of proposals for a "human life statute," which would overrule Roe v. Wade by legislation rather than constitutional amendment.

A. Constitutional Amendments

Since 1973, constitutional amendments have been introduced in Congress in an attempt to overrule the Court's decision in Roe v. Wade. These constitutional amendments have fallen into two areas: The "State's rights" or State option type of amendment and the so-called "right to life" or "human life amendment (HLA)" proposal. The "State's rights" amendment would result in abortion standards that would vary from State to State. Some States might prohibit abortions entirely; other could have no restrictions at all. In effect, such an amendment would restore to the States the same control over abortion rights that existed prior to the Supreme Court's decision in Roe v. Wade in 1973. This option is not as popular as it once was. No "State's rights" amendments have been introduced in the 96th and 97th Congresses.

The typical "right to life" amendment would create a new right in the unborn (personhood) which the Supreme Court has declared is not guaranteed in the Constitution at present. Presently, the Fifth and Fourteenth Amendments prohibit only the Federal and State governments from depriving anyone of life without due process of law. Some provisions of proposed "right to life" amendments would extend the prohibition to include private individuals as well. The proposed amendments utilize a variety of terms to define the time the right attaches: "conception," "moment of fertilization" or "at any stage of biological development."

Some amendments introduced allow abortion to save the life of the mother. Some provide no exceptions. The following "right to life" constitutional amendments were introduced in the 96th Congress: H.J.Res. 9, H.J.Res. 17, H.J.Res. 45, H.J.Res. 49, H.J.Res. 51, H.J.Res. 56, H.J.Res. 64, H.J.Res. 90, H.J.Res. 101, H.J.Res. 108, H.J.Res. 116, H.J.Res. 124, H.J.Res. 132, H.J.Res. 135, H.J.Res. 138, H.J.Res. 139, H.J.Res. 142, H.J.Res. 165, H.J.Res. 197, H.J.Res. 211, H.J.Res. 214, H.J.Res. 232, H.J.Res. 236, H.J.Res. 250, H.J.Res. 294, H.J.Res. 297, H.J.Res. 300, H.J.Res. 323, H.J.Res. 354, H.J.Res. 475, H.J.Res. 479, H.J.Res. 576, H.J.Res. 621, H.J.Res. 626, S.J.Res. 12, and S.J.Res. 22. None of the proposed amendments in the 96th Congress received any action.

In the 97th Congress, the following proposed constitutional amendments have been introduced: H.J.Res. 13, H.J.Res. 27, H.J.Res. 32, H.J.Res. 39, H.J.Res. 50, H.J.Res. 62, H.J.Res. 92, H.J.Res. 99, H.J.Res. 104, H.J.Res. 106, H.J.Res. 122, H.J.Res. 125, H.J.Res. 127, H.J.Res. 133, H.J.Res. 198, H.R. 392, S.J.Res. 17, S.J.Res. 18, and S.J.Res. 19.

The only hearings held prior to the 97th Congress were conducted periodically from 1974 to 1976 without any recommendation being made. In this Congress, hearings were held by the Senate Judiciary Subcommittee on Separation of Powers on Apr. 23 and 24, 1981, to address the question of when life begins. More hearings by the Subcommittee are expected in late May or early June.

B. Hyde-Type Amendments to Appropriations Bills

Congress has attached abortion restrictions to appropriations bills, the first being the Foreign Assistance Act of 1973, P.L. 93-189. However, more recently the focus of attention has been on restricting the availability of abortions under the Medicaid program. The latter series of restrictions have popularly become known as the Hyde Amendments. To date, there have been four enactments of this limitation on Federal funding of abortions under the annual Departments of Labor (DOL) and Health, Education and Welfare (HEW) appropriations bills.

The first version of the Hyde Amendment was enacted as a rider to the FY77 Labor/HEW Appropriation Act, P.L. 94-439. Section 209 of the law provided that,

> None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered in the fetus were carried to term.

During the first session of the 95th Congress, another restrictive provision was attached to the FY78 Labor/HEW Appropriations Act. This measure, P.L. 95-205, provided in part that:

> None of the funds provided for in this paragraph shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health

> service; or except in those instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term when so determined by two physicians.
>
> Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of an ectopic pregnancy.

This provision thus broadened the use of appropriated funds to include medical procedures for promptly reported cases of rape and incest, long lasting physical health damage to the mother, and other matters.

The Labor/HEW abortion policy for FY79 is found in Section 210 of P.L. 95-480. This third enactment of the Hyde Amendment was essentially the same as that of FY78.

For FY80, the Labor/HEW abortion policy was changed by enactment of the fourth version of the Hyde Amendment, which excluded abortions "where severe and long lasting physical health damage would result if the pregnancy were carried to term," but retained the other provisions enacted for FY78 and FY79. See P.L. 96-123, Section 109.

The House and Senate were unable to reach agreement on final FY81 funding contained in the Labor/HHS appropriations measure. After a protracted debate, a continuing resolution was adopted that contains a Hyde Amendment which differs from the most recent restrictions in two respects. First, a rape must be reported to a law enforcement agency or public health service within 72 hours. Second, and most significant, the States were released from the obligation to fund any abortion if they so choose. Prior to this provision the courts had interpreted the Medicaid statute to require the States to fund all abortions allowed under the Hyde Amendment. See P.L. 93-536. The continuing resolution expires on June 6, 1981.

Restrictions on the Federal funding of abortion has had a significant impact on the number of abortions performed under the Medicaid statute. Prior to the enactment of the Hyde Amendment, the Office of Population Affairs, DHEW, prepared very rough estimates of Federal funds expended for abortions under the Medicaid program. The Office of Population Affairs estimated that in 1974 Medicaid financed between 220,000 and 278,000 abortions at a cost of $40-50 million. For 1976, the Office estimated that Medicaid financed abortion procedures at an annual rate of 250,000 to 300,000 at a cost of $45-55 million. According to the Medicaid data branch of the Office of Policy, Planning and Research, DHEW, from Feb. 14, 1978 through Dec. 31, 1978, 2,328 abortions were funded at a cost of $777,158 to State and Federal governments.

The Hyde Amendment process has not been limited to the annual Labor/HHS appropriations bill. During the 95th and 96th Congresses, Hyde-type abortion limitations were enacted into law as Section 863 of the Department of Defense Appropriations Act of 1979 (See P.L. 95-457, 95th Congress, 2d session (1978)) and as amendments to the District of Columbia appropriation bill for FY80. (See P.L. 96-93, 96th Congress, 1st session, (1979).)

Section 863 of the 1979 Department of Defense Appropriation Act is referred to as the Dornan Amendment. It uses language identical to that of FY78 and FY79 Labor/HEW appropriations. The Dornan Amendment restricts the

use of military appropriations for abortions, and the restrictions specifically apply to military personnel and their dependents.

The abortion restriction for Federal funds provided to the District of Columbia (D.C.) stated:

> None of the Federal funds provided in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service. Nor are payments prohibited for drugs or devices to prevent implantation of the fertilized ovum, or for medical procedures necessary for the termination of an ectopic pregnancy.

This limitation does not appear to restrict the use of non-Federal funds at the disposal of the District of Columbia. The same funding restriction was continued in the District's FY81 appropriation. P.L. 96-530, Section 118. As yet, no restrictions have been attached to appropriations bills in the 97th Congress.

C. Hyde-Type Amendments to Substantive Bills

The abortion restrictions added to H.R. 4962 (96th Congress), the Child Health Assurance Program (CHAP), marked the first time a prohibition on Medicaid-funded abortions had been included on an authorization bill. All other Medicaid-related abortion amendments were contained in appropriations bills.

Two controversial abortion amendments were added by the House to H.R. 4962; one banning Medicaid abortions except to save the life of the mother, the other providing that States were not required to use State funds for abortions. The bill never reached the Senate floor.

Two prohibitive provisions were added to S. 210 (H.R. 2444), the bill establishing the Department of Education. The first amendment would have prohibited the Department from providing abortions to employees and their dependents at remote locations (such as overseas schools for military dependents), except to save the life of the mother. The second amendment would, in effect, have prohibited the Department from providing buildings and other facilities to universities that used mandatory student fees to pay for abortions. Both provisions were deleted in conference and the bill became P.L. 96-88.

Since 1973 several authorization bills have been adopted by Congress that directly relate to the abortion issue. The Health Services Extension Act of 1973, P.L. 93-45, contained a conscience clause, a provision that prohibits complying institutions and individuals that receive Federal funds to perform or participate in abortion or sterilization procedures from discriminating against applicants because of their beliefs on abortion. The Foreign Assistance Act of 1973, P.L. 93-189, prohibited the use of funds to pay for the performance of abortions or to coerce any person to practice abortion.

Bills introduced in the 96th Congress that contained some type of conscience clause were H.R. 3436, H.R. 3849 and S. 664 (all amending the

Health Programs Extensions Act of 1973), and P.L. 96-76 (S. 230/H.R. 3633), the Nurse Training Amendments of 1979. No conscience clause bills have been introduced in the 97th Congress.

S. 2337 (96th Congress), the Legal Services Corporation Act Amendments of 1980, prohibited the Corporation from providing legal assistance on any litigation relating to abortion, the performance of which is prohibited by law enacted by Congress (current law prohibits the Corporation from providing assistance for nontherapeutic abortions). S. 2337 passed the Senate but never received House action.

H.R. 360 and H.R. 361 of the 96th Congress permitted the parent or guardian of a minor child to inspect personal medical files of the minor except for that portion of the file that relates to family planning services (including abortion) sought and received by such minor. H.R. 1059 and H.R. 1060 have been introduced in this Congress. Neither bill has come out of committee.

In the 96th Congress, a different approach was proposed in H.R. 6028 (S. 1808), H.R. 7445, and H.R. 7955, the Family Protection Act. The bills required federally-funded abortion and venereal disease treatment centers to notify parents of unmarried minors that such minors have requested an abortion, contraceptives, or are undergoing treatment for a venereal disease. The bills have been reintroduced as H.R. 311 this Congress. H.R. 2446 of the 97th Congress would amend Title X of the Public Health Service Act to deny grants and contracts to any entity that provides abortion counseling to minors without the knowledge and consent of their parents or guardians. H.R. 2647 does not limit the restriction to Title X facilities.

The final bill in this category, H.R. 2040, would have amended title XIX (Medicaid) of the Social Security Act to prohibit Federal payments for abortion except to prevent the death of the mother.

D. Limitation on Federal Court Jurisdiction

Several bills were introduced in the 96th Congress proposing limitations on the power of Federal courts. H.R. 5440, H.R. 7307, and S. 1238 would have prohibited Federal courts (excluding the Supreme Court) from issuing injunctive relief in any case dealing with abortion. This Congress, H.R. 73, H.R. 900, S. 158 and S. 583 have been introduced. In the 96th Congress, H.R. 993 would have removed the jurisdiction of the Supreme Court and Federal district courts to prohibit the consideration of any abortion case. In the 97th Congress, H.R. 867 has been introduced.

E. Early Developments in the 97th Congress

Patterns of legislative activity established in previous Congresses are being maintained. By the end of April 1981, 19 proposed right to life constitutional amendments were introduced. Seven would provide no specific exception for procedures to save the life of the mother: H.J. Res. 13, H.J.Res. 32, H.J.Res. 50, H.J.Res. 104, H.J.Res. 106, H.R. 392, S.J.Res. 19. Eleven would make the amendment inapplicable to laws permitting medical procedures required to save the life of the mother: H.J.Res. 27, H.J.Res. 39, H.J.Res. 62, H.J.Res. 92, H.J.Res. 99, H.J. Res. 122, H.J.Res. 125, H.J.Res. 127, H.J.Res. 133, S.J.Res. 17, S.J. Res. 18. In a different twist, H.J.Res. 198 permits an abortion to save the life of the mother, but requires

that reasonable efforts be made to perserve the life of the person who is the subject of the abortion. Again, no State's rights constitutional amendments have been introduced. Four bills have been introduced to curtail Federal court jurisdiction. One measure (H.R. 867) would eliminate all Federal court jurisdiction, including the Supreme Court, to review any case arising out of State law or action relating to abortion. Others prohibit any Federal court except the Supreme Court from issuing an injunction in any case arising out of a Federal, State or local law that prohibits or regulates abortion or the provision of public assistance for the performance of abortions.

Finally, in a novel approach, three bills, H.R. 900, S. 158 and H.R. 3225, have been introduced that would define the term person to include the unborn for the purposes of the Fourteenth Amandment. These Right to Life Statutes therefore seek to overrule the contrary holding of Roe v. Wade by legislation rather than constitutional amendment on the basis that such legislation is authorized under Section 5 of the Fourteenth Amendment, which provides that "the Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

F. Public Laws

93rd Congress

Five public laws governing abortion were enacted during the 93rd Congress: (1) P.L. 93-45, the Health Service Extension Act of 1973, approved June 18, 1973; (2) P.L. 93-96, the National Science Foundation Authorization Act for FY74, approved Aug. 16, 1973; (3) P.L. 93-189, the Foreign Assistance Act of 1973, approved Dec. 17, 1973; (4) P.L. 93-348, the Biomedical Research Act of 1974, approved July 12, 1974; and (5) P.L. 93-355, the Legal Services Corporation Act of 1974, approved July 25, 1974.

94th Congress

Two public laws were enacted during the 94th Congress: (1) P.L. 94-63, the Nurses Training Act of 1975, approved July 29, 1975; and (2) P.L. 94-439, the Labor-HEW Appropriations Act for FY77, approved Sept. 30, 1976.

95th Congress

During the 95th Congress, eight measures containing abortion restrictions were signed into law: (1) P.L. 95-205, the Continuing Appropriations for FY78, approved Dec. 9, 1977; (2) P.L. 95-215, the Health Services Act Amendments of 1977, approved Dec. 19, 1977; (3) P.L. 95-424, the International Development and Food Assistance Act of 1978, approved Oct. 6, 1978; (4) P.L. 95-444, the Civil Rights Commission Act, approved Oct. 13, 1978; (5) P.L. 95-457, the Defense Department Appropriations Act for FY79, approved Oct. 13, 1978; (6) P.L. 95-480, the Labor-HEW Appropriations Act for FY79, approved Oct. 18, 1978; (7) P.L. 95-481, Foreign Assistance Appropriations Act, approved Oct. 18, 1978; and (8) P.L. 95-555, the Pregnancy Disability Act of 1978, approved Oct. 31, 1978.

96th Congress

In the 96th Congress, nine public laws contained abortion restrictions: (1) P.L. 96-76, the Nurse Training Act Amendments of 1979, approved Sept. 29, 1979; (2) P.L. 96-86, the Continuing Appropriations Act for FY80, approved Oct. 12, 1979; (3) P.L. 96-93, the District of Columbia Appropriations Act for FY80, approved Oct. 30, 1979; (4) P.L. 96-123, the Further Continuing Appropriations Act for FY80, approved Nov. 20, 1979; (5) P.L. 96-154, the Department of Defense Appropriations Act for FY80, approved Dec. 21, 1979; (6) P.L. 96-306, the Supplemental Appropriations and Recission Act of 1980, approved July 8, 1980; (7) P.L. 96-369, the Continuing Appropriations Act for FY81, approved Oct. 1, 1980; (8) P.L. 96-580, the District of Columbia Appropriations Act for FY81, approved Dec. 13, 1981; (9) P.L. 96-536, the Continuing Appropriations Act for FY81, approved Dec. 16, 1981.

LEGISLATION

H.R. 900 (Hyde et al.), H.R. 3225 (Mazzoli et al.)/S. 158 (Helms et al.) Defines "person" to include the unborn for the purpose of the right to life guarantee under the Fourteenth Amendment. Prohibits any inferior Federal court from issuing injunctive relief in any case arising out of State or local law that prohibits or regulates abortion or the provisions of public assistance for the performance of abortions. H.R. 900 introduced Jan. 19, 1981; H.R. 3225 introduced Apr. 10, 1981; referred to Committee on the Judiciary. S. 158 introduced Jan. 19, 1981; referred to Committee on the Judiciary; hearings held by Subcommittee on Separation of Powers Apr. 23-24, 1981.

HEARINGS

U.S. Congress. House. Committee on the Judiciary. Subcommittee on Civil and Constitutional Rights. Proposed constitutional amendments on abortion. Hearings, 94th Congress, 2d session. Feb. 4, 5; Mar. 22-27, 1976.

U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Constitutional Amendments. Abortion. Hearings, 93d Congress, 2d session, on S.J.Res. 119 and S.J.Res. 130. Part 1. Washington, U.S. Govt. Print. Off., 1974. 729 p.
Hearings held Mar. 6 and 7, Apr. 10, 1975.

----- Abortion. Hearings, 93d Congress, 2d session, on S.J. Res. 119 and S.J. Res. 130. Part 2. Washington, U.S. Govt. Print. Off., 1975.
Hearings held Apr. 25, May 7, June 4 and 26, July 24, Aug. 21, Sept. 12, and Oct. 8, 1974.

----- Abortion. Hearings, 93d Congress, 2d session, on S.J.Res. 119 and S.J.Res. 130. Part 3. Washington, U.S. Govt. Print. Off., 1975. 475 p. LRS75-22721

----- Abortion. Hearings, 94th Congress, 1st session, on S.J.Res. 6, S.J.Res. 10 and 11, and S.J.Res. 91. Part 4. Washington, U.S. Govt. Print. Off., 1976. 1001 p.
Hearings held Mar. 10, Apr. 11, May 9, June 19, and July 8, 1975.

CHRONOLOGY OF EVENTS

03/23/81 -- The Supreme Court upheld a Utah statute that required a physician to give notice to parents before performing an abortion upon an unemancipated, dependent minor.

09/17/80 -- Supreme Court refused to reconsider a June 30 decision upholding Congressional restrictions on the use of Medicaid funds to pay for abortions.

06/30/80 -- The U.S. Supreme Court rules that the Hyde Amendment abortion restrictions are constitutionally valid.

01/16/80 -- The annual abortion restriction to Labor/HEW appropriation bills was held unconstitutional by a U.S. district court in Brooklyn, N.Y. (McRae v. Secretary, HEW).

ADDITIONAL REFERENCE SOURCES

Buckley, James L. "A Human Life Amendment," 1 Human Life Review 7-20 (Winter, 1975).

Byrn, Robert M. "An American Tragedy: The Supreme Court on Abortion," 41 Fordham Law Review 807-862 (1973).

Cohen, Leslie A. "Fetal Viability and Individual Automony: Resolving Medical and Legal Standards for Abortion," 27 U.C.L.A. Law Review 1346 (1980).

Crocker, Royce. "Abortion, 1980-1981: Public Opinion," CRS Issue Brief IB81052.

Dale, Charles. "Potential Implications of S. 158 for the Legal Rights of the Unborn in Traditional Areas of Tort, Property, and Criminal Law," CRS American Law Division Report, Apr. 21, 1981.

Ely, John Hart. "The Wages of Crying Wolf: a comment on Roe v. Wade," 82 Yale Law Journal 920-949 (April, 1973).

Fost, N., Chudarn, D. and Wikler, D. "The Limited Significance of 'Fetal Viability'," Hasting Center Report, 10-13 (December, 1980).

Galebach, Stephen H. "A Human Life Statute," 7 Human Life Review 5-33 (Winter, 1981).

Gorby, John D. "The 'Right' to an Abortion, the Scope of Fourteenth Amendment 'Personhood' and the Supreme Court's Birth Requirement," 1979 Southern Illinois University Law Journal 1 (1979).

Gordon, Irving A. "The Nature and Uses of Congressional Power under Section 5 of the Fourteenth Amendment to

overcome Decisions of the Supreme Court," 72 Northwestern Law Review 656-705 (1977).

Griffin, Eugene. "Viability and Fetal Life in State Criminal Abortion Laws," 72 Journal of Criminal Law and Criminology 324 (1981).

Lewis K.J. and Rosenberg, M. "Legal Analysis of Congress' Authority to Enact a Human Life Statute," CRS American Law Division Report, Feb. 20, 1981.

----- "Constitutional Authority to Enact a Human Life Statute: A Constitutional Analysis of S. 158," CRS American Law Division Report, Apr. 17, 1981.

Means, Cyril C., Jr. "The Law of New York Concerning Abortion and the Status of the Fetus, 1664-1968: a Case of Cessation of Constitutionality." 14 New York Law Forum 411-415 (Fall, 1968).

Mohr, James C. Abortion in America: the Origins and Evolution of National Policy, 1800-1900 (Oxford University Press, Inc. 1978).

Noonan, John T., Jr., ed. The Morality of Abortion: Legal and Historical Perspectives. Cambridge, Harvard University Press, 1970; "The Supreme Court and Abortion: 1. Upholding Constitutional Principles," Hastings Center Report, 14-16 (December 1980).

----- "Why a Constitutional Amendment?" 1 Human Life Review 26 (Winter, 1975).

Paul, Eve W. and Schaap, Paula. "Abortion and the Law in 1980." 25 New York Law School Law Review 497-525 (1980).

Quay, Eugene. "Justifiable Abortion -- Medical and Legal Foundations," 49 Georgetown Law Journal 173 (Winter, 1960).

----- "Justifiable Abortion -- Medical and Legal Foundations," 49 Georgetown Law Journal 395 (Spring, 1961).

Note, "Parental Notice Statutes: Permissible State Regulation of a Minor's Abortion Decision," 49 Fordham Law Review 81 (1980).

Note, "Survey of Abortion Law," 1 Arizona State Law Journal 67-216 (1980).