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THE ABORTION CONTROVERSY: LEGISLATIVE AND JUDICIAL ACTIONS FOLLOWING THE SUPREME COURT'S INVALIDATION OF RESTRICTIONS UPON ACCESS TO ABORTIONS, ANALYSIS AND INTERPRETATION, 1974

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April 1, 1974

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INTRODUCTION

This report will survey significant abortion-related judicial decisions and legislative considerations which have occurred since the U.S. Supreme Court's momentous abortion decisions of Roe v. Wade, 410 U.S. 113 (1973) and Doe v. Bolton, 410 U.S. 179 (1973). Decisions of the U.S. Supreme Court as well as other federal and state courts will be included in the survey. Also, federal and state legislative action will be reviewed. Congressional action through all of 1973 and part of 1974 will be included. State statutes enacted since Wade and Bolton and recently reported will also be included. The contents of this report are summarized below.

Summary - U.S. Supreme Court Action

Following Wade and Bolton, and to date, the Supreme Court has not issued a written abortion opinion of any appreciable length. To the contrary, the Court chose to summarily vacate and remand, or otherwise dispose of, several remaining abortion appeals, commanding the lower courts to reconsider their opinions in light of Wade and Bolton.

Summary - Congressional Action

Congress responded to the abortion decisions in Wade and Bolton in several ways. It enacted legislation directly affecting abortion, attempting to limit the impact of Wade and Bolton. It considered, but has yet to pass, other legislation. And it has entertained, but not yet considered, numerous other bills and proposed constitutional amendments.

Congress has passed the Health Programs Extension Act of 1973 (S. 1136; P.L. 93-45; signed by the President June 18, 1973) which, inter alia, generally insulates an individual and institutional recipient of certain federal funds from being compelled, contrary to religious or moral beliefs, to perform abortions and sterilizations. Congress also included an abortion-related proviso in the 1973 Foreign Assistance Act (S. 1443; P.L. 93-189; signed by the President on December 17, 1973). The proviso prohibits funds authorized by the Act from being used to pay for an abortion or to motivate or coerce any person to practice abortion. Finally, the National Science Foundation Authorization Act (H.R. 8510; P.L. 93-96; signed by the President on August 16, 1973) contains a proviso that prohibits funds authorized by the Act or previous acts from being used to conduct or support research in this country or abroad on a living human fetus outside the mother's womb.

Congress has also considered, but not yet passed, other abortion-related measures. The Senate on November 30, 1973, passed H.R. 3153, the Social Security Amendments of 1973, with provisos that (1) prohibit federal Medicaid funds from being used to pay for abortions and (2) insure that individual and institutional recipients of Social Security moneys may not be compelled, contrary to religious or moral beliefs, to perform abortions or sterilizations. H.R. 3153 now awaits conference action.

The House of Representatives, on May 31, 1973 passed H.R. 7724, a bill to fund medical research and training, with a proviso prohibiting research in the U.S. and abroad on a human fetus which is outside the uterus of its mother and which has a beating heart. The Senate passed H.R. 7724 on September 11, 1973 modifying the proviso so as to temporarily ban the use of federal funds or facilities for studies involving any fetus removed from the mother's body in the course of a therapeutic abortion. H.R. 7724 now awaits conference action.

Also awaiting conference action is H.R. 7824, the Legal Services Corporation Act, passed by the House on June 21, 1973 and the Senate on January 30, 1974. Both bodies attached similar but not identical amendments to the bill so as to restrict the participation of legal services attorneys in abortion litigation. The House proviso provides that no funds made available by the Corporation under the Act may be used to

> provide legal assistance with respect to any proceeding or litigation which seeks to procure a non-therapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution.

The Senate provision prohibits legal services attorneys from providing

> legal assistance with respect to any proceeding or litigation which seeks to procure an abortion unless the same be necessary to save the life of the mother, or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individuals or institutions.

The reader should consult pp. 13-48 of this report for a summary and digest of abortion-related bills and resolutions introduced in the Ninety-third Congress upon which no action has been taken.

In addition to the above, Rep. Hogan has filed a motion to discharge subcommittee No. 4 of the House Judiciary Committee from consideration of H.J. Res. 261. H.J. Res. 261 is a proposed Constitutional amendment intended to nullify the Supreme Court abortion decision. This discharge petition, to date lacks the necessary signatures of a majority of the House members. The effect of the petition, should it receive the required number of signatures, would be to force immediate consideration of H.J. Res. 261 by the House of Representatives.

Summary - Federal and State Judicial Action

Federal and state judicial decisions since Wade and Bolton have begun fleshing out the bare bones principles enunciated in those two opinions. Many of the decisions suggest that the following restrictions, in addition to those enunciated in Wade and Bolton, apply to the state regulation of abortion:

1. Several decisions to date indicate that a state may not require that a pregnant woman obtain the consent of either her husband, the father of the fetus or her parents, as a precondition to her receiving an abortion. Coe. v. Gerstein, Civ. No. 72-1842 (S.D. Fla. Aug. 14, 1973); Jones v. Smith, 278 So. 2d 339 (Fla. Dist. Ct. App. 1973); Doe v. Bellin Memorial Hospital, 479 F. 2d 756, 759 (7th Cir. 1973); Doe v. Rampton, 366 F. Supp. 189, 193 (D. Utah 1973); Matter of P.J. (Superior Ct. for the District of Columbia, Fam. Div. Feb. 6, 1973). The Gerstein and Smith decisions have been appealed to the U.S. Supreme Court. See, respectively, 42 U.S.L.W. 3441 (U.S. Feb. 5, 1974) (No. 73-1157) and 42 U.S.L.W. 3434 (U.S. Jan. 29, 1974)(No. 73-1133).

2. While many state Medicaid agencies do, in fact, limit payments for abortions, see 2 Family Planning Population Reporter 82 (Aug. 1973), recent decisions indicate that a state may not constitutionally limit or prohibit Medicaid payments for abortions. Klein v. Nassau County Medical Center, 347 F. Supp. 496 (E.D.N.Y. 1972), aff'd in part 412 U.S. 924 and vacated and remanded in part for further consideration in light of Roe v. Wade and Doe v. Bolton, 412 U.S. 925-926. Doe v. Rampton, 336 F. Supp. 189 (D. Utah 1973); Poe v. Norton, Civ. No. 15,712 (D. Conn. April 4, 1973.) See generally note, Abortion on Demand in a Post-Wade Context: Must the State Pay the Bills? 41 Fordham L. Rev. 921 (1973).

3. With the elevation of the abortion decision to the level of a constitutional right in Roe v. Wade and in light of Eisenstadt v. Baird, 405

U.S. 438 (1972) striking down a Massachusetts statute relating to the distribution of contraceptive devices, state and federal statutes restricting or prohibiting the dissemination of information regarding birth control devices or abortion have, recently, been found to be unconstitutional. Associated Students v. Attorney General No. 72-1327 (C.D. Cal. Nov. 28, 1973); Atlanta Cooperative News Project v. United States Postal Service, 350 F. Supp. 234 (N.D. Ga. 1972); Mitchell Family Planning Inc. v. City of Royal Oak, 335 F. Supp. 738 (E.D. Mich. 1972); Comprehensive Family Planning and Therapeutic Abortion Association v. Mitchell, No. Civ. 71-725 (W.D. Okla. Mar. 12, 1973); Doe v. Rampton, 366 F. Supp. 189 (D. Utah 1973); State v. New Times, 20 Ariz App. 183, 511 P. 2d 196 (1973); People v. Orser, 107 Cal. Rptr. 458 (Cal. Ct. App. 1973); Women of Rhode Island v. Israel, Civ. No. 4605 (D.R.I. Feb. 7, 1973). However, the Virginia Supreme Court recently upheld the conviction of one Bigelow for encouraging or prompting the procuring of abortion by an advertisement in a weekly newspaper. Bigelow v. Commonwealth, 200 S.E. 2d 680 (Va. Sup. Ct. 1973).

4. It appears that a state may not invest a public hospital with authority to refuse to perform abortions or sterilizations, Hathaway v. Worcester City Hospital, 475 F. 2d 701 (1st Cir. 1973); Nyberg v. City of Virginia, 361 F. Supp. 932 (D. Minn. 1973) but that private hospitals may be excepted from providing such services. Doe v. Bellin Memorial Hospital, 479 F. 2d 756 (7th Cir. 1973); Allen v. Sisters of St. Joseph, 361 F. Supp. 1212 (N.D. Tex. 1973). Compare 42 U.S.C.A. §300a-7 (Supp. Oct. 1973) and two judicial decisions in support thereof reprinted in 184 Cong. Rec. S21465-S21467 (daily ed., Nov. 29, 1973). While no decisions have decided the precise question, it has been suggested that individuals would not be compelled to participate in abortions. Nyberg v. City of Virginia, 361 F. Supp. 932, 939 (D. Minn. 1973); Action Kit For Hospital Law, Abortion: The Supreme Court's

Attempt at a Solution, at 16-17 (Feb. 1973); Gutman, Can Hospitals Constitutionally Refuse to Permit Abortions and Sterilizations? 2 Family Planning Population Reporter 146 (Dec. 1973).

5. While States no doubt may draft legislation to prohibit abortions by non-physicians, Roe v. Wade, 410 U.S. 113, 165 (1973), several state restrictive abortion statutes in existence at the time of the Wade decision, were subsequently declared invalid, resulting in the release of non-physicians who had been convicted of performing abortions. Commonwealth v. Page, 303 A. 2d 215 (Pa. Sup. Ct. 1973); People v. Frey, 294 N.E. 257 (Ill. Sup. Ct. 1973); State v. Hultgren, 204 N.W. 2d 197 (Minn. Sup. Ct. 1973). However, some state courts interpreted their statutes so as to prohibit abortions by non-physicians. May v. Arkansas, 492 S.W. 2d 888 (Ark. Sup. Ct. 1973) cert. den 42 U.S.L.W. 3290 (U.S. Nov. 13, 1973)(No. 73-355).

6. A State may not statutorily declare that human life begins at the moment of conception and that such life is a person within the Fourteenth Amendment, in an effort to evade the proscriptions of Roe v. Wade. Doe v. Israel, 358 F. Supp. 1193 (D. R. I. 1973); Doe v. Israel, 482 F. 2d 156 (1st Cir. 1973).

7. It has been held that a State may not require that an abortion recipient's name be made a matter of public record. Doe v. Rampton, 366 F. Supp. 189 (D. Utah 1973); Schulman v. N.Y.C. Health and Hospital's Corp., 346 N.Y.S. 2d 920 (N.Y. Sup. Ct. 1973).

Summary - State Legislation

Since Wade and Bolton, approximately 23 states have enacted abortion legislation in response to those decisions. This, of course, means that 27 jurisdictions and the District of Columbia retain abortion statutes which pre-date Wade and Bolton. These older statutes are probably unenforceable to the extent

that they prohibit physician-performed abortions in approximately the first six months of pregnancy and also prohibit physician-performed abortions, where necessary to preserve the life or health of the mother, in approximately the last three months of pregnancy. The guiding principles for abortions performed in jurisdictions with pre-Wade and Bolton statutes would appear to be those enunciated in the decisions and set out in this report at pp. 9-12.

Of those states which have enacted abortion legislation since Wade and Bolton, Louisiana, North Dakota, Rhode Island, and Utah have prohibited abortions at any stage of pregnancy unless required by varying conditions of the woman's life and health. These statutes appear to be the most restrictive in relation to those recent statutes adopted in other jurisdictions. Indeed, the Rhode Island and Utah statutes have been declared unconstitutional. See, respectively, Doe v. Israel 358 F. Supp. 1193 (D.R.I. 1973) and Doe v. Rampton, 366 F. Supp. 189 (D. Utah 1973).

In enacting abortion legislation, the states appear to have the following purposes in mind: (1) allowing private, as well as public, hospitals to refuse to perform abortions; (2) allowing medical personnel to refuse to participate in abortions, without suffering adverse discrimination therefrom, in employment; (3) providing measured immunity to hospitals and personnel from civil or criminal liability for refusing to perform abortions; (4) enacting into statutory law the general principles enunciated in the Wade decision which control the degree to which states may regulate abortion; (5) authorizing a multiple physician approval system (MPAS) for abortions in the latter months of pregnancy; (6) requiring physicians to counsel women seeking abortions on the effects thereof and possible alternatives; (7) controlling the locus of the abortion act; (8) requiring a waiting period before an abortion can be performed; (9) requiring the consent of the spouse or parents of the woman seeking the abortion; (10) requiring the reporting of abortions to a central state agency;

(11) protecting the fetal product of abortions by requiring the application of life saving techniques to fetuses which are the product of abortions, by prohibiting research on fetuses and by requiring, in certain instances, fetal birth and death certificates.

The above topical areas form the basis of a post Wade and Bolton state abortion statutes chart which appears at the conclusion of this report. All available and reported state abortion statutes, enacted since Wade and Bolton are reproduced following the chart.

U. S. SUPREME COURT

The Supreme Court abortion decisions of January 22, 1973 were, cumulatively, the precipitating influence for the contemporary abortion controversy. In Roe v. Wade, 410 U.S. 113 (1973), the court struck down a restrictive Texas abortion statute which prohibited abortions except for the purpose of saving the life of the mother. In Doe v. Bolton, 410 U.S. 179 (1973), a companion decision to Wade, the Court invalidated a more liberal Georgia statute which was patterned after the American Law Institute's Model Penal Code. Essentially, the Wade decision conclusively decided that a state may not prohibit abortions in approximately the first six months of pregnancy. In Bolton, the Court essentially ruled that a state may not encumber this new right to an abortion with certain statutory procedural requirements. In summary, the Wade court held that

> 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;
> 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;
> 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.

The Wade court also held that the unborn are not "persons" for the purposes of enforcing Fourteenth Amendment rights.

Briefly, the Bolton decision struck down Georgia statutory procedural requirements that (1) an abortion be performed in a hospital accredited by the Joint Commission on Accreditation of Hospitals; (2) the procedure be

approved by the hospital staff abortion committee; and (3) the performing physician's judgment be confirmed by the independent examinations of the patient by two other licensed physicians. Additionally, the Court struck down a requirement that a woman seeking an abortion in Georgia be a bonafide resident of that state.

On February 26, 1973, the Court declined to reconsider the Wade and Bolton decisions. 410 U.S. 959. On the same date, the Court began to clear its docket of a backlog of abortion-related appeals which had accumulated. The Court sent back to lower federal and state courts, appealed abortion decisions which had been decided before Wade and Bolton. The Court commanded the lower courts to reconsider their earlier holdings in light of the principles enunciated in Wade and Bolton. See Markle v. Abele, 410 U.S. 951 rehearing denied 411 U.S. 940 (No. 72-730) (Conn.); Hanrahan v. Doe and Heffernan v. Doe, 410 U.S. 950 (Ill.); Sasaki v. Kentucky, 410 U.S. 951 (Ky.); Crossen v. Attorney General of Kentucky, 410 U.S. 950 (Ky.); Rodgers v. Danforth, 410 U.S. 949 (Mo); Corkey v. Edwards, 410 U.S. 950 (N.C.); Kruze v. Ohio, 410 U.S. 951 (Ohio); Munson v. South Dakota, 410 U.S. 950 (S.D.); Thompson v. Texas, 410 U.S. 950 (Texas). Doe v. Rampton 410 U.S. 950 (Utah). Another order, similar to those above, was entered on May 21, 1973, Rosen v. Louisiana State Board of Medical Examiners, 412 U.S. 902 (La.). Additionally, on February 26, the Court sent back one abortion decision for consideration by the lower court of the question of mootness. Markle v. Abele, 410 U.S. 951 rehearing denied 411 U.S. 940 (No. 72-56)(Conn.). The Court also dismissed another appealed abortion decision for want of a substantial federal question. Byrn v. New York City Health and Hospitals Corp., 410 U.S. 949 rehearing denied 411 U.S. 940. All of the above noted appeals raised fundamental issues which were similar to, if not identical with, the issues settled in Wade and Bolton.

On March 19, 1973, the Court denied certiorari (thus letting stand

the lower court decision) to an appeal from an Indiana State Supreme Court decision which upheld the abortion conviction of a non-physician. Cheaney v. Indiana, 410 U.S. 991.

On April 16, 1973 and again on May 4, 1973, the Court declined to intervene in lower court litigation concerning, respectively, the right of a public hospital to refuse to perform sterilizations, and the right of a private hospital to refuse to perform abortions. The Justices initially refused to stay a mandate of the Court of Appeals for the First Circuit holding that a Massachusetts city hospital may not refuse its facilities to patients requesting a sterilization. See Worcester City Hospital v. Hathaway, 411 U.S. 929, the Justices refusing to intercede in 475 F. 2d 701 (1st Cir. 1973). Subsequently, the Court refused to vacate a stay of a Wisconsin federal district court's decision that a private hospital may not refuse its facilities for abortions. The stay had been granted by the Court of Appeals for the Seventh Circuit which eventually reversed the district court and held that a private hospital need not provide its facilities for an abortion. See Doe v. Bellin Memorial Hospital, 411 U.S. 960, the Justices refusing to interercede in 479 F. 2d 756 (7th Cir. 1973).

On June 4, 1973, the Supreme Court affirmed in part and vacated in part, the decision of a three-judge federal district court in New York that it is unconstitutional to prohibit the use of medicaid funds to pay for "elective abortions not medically indicated." See Klein v. Nassau County Medical Center, 347 F. Supp. 496 (E.D.N.Y. 1972). The three-judge decision in Klein was appealed to the Supreme Court in three parts. The Court affirmed that portion of the three-judge opinion which held that the interests of the unborn, if any, do not bar abortions, Ryan v. Klein, 412 U.S. 924 and vacated and remanded the remainder of the three-judge holding for reconsideration in light of Wade and Bolton. Commissioner of Social Services of New York v. Klein, 412 U.S. 925 and Nassau County Medical Center v. Klein, 412 U.S. 925.

The Supreme Court, on June 25, 1973, vacated and remanded a Virginia Supreme Court decision which upheld the conviction of a Virginia man for violating a state statute prohibiting the publication of information concerning the procuring of an abortion. In effect, the U.S. Supreme Court was asking the Virginia high court to reconsider its 1972 holding in light of the 1973 Wade and Bolton decisions. Bigelow v. Virginia, 413 U.S. 909.

On October 10, 1973 and again on November 12, 1973, the Supreme Court denied certiorari (thus letting stand the lower court opinion) to two abortion-related appeals. The October denial of certiorari let stand a lower federal court decision that Maryland's Therapeutic Abortion Act was unconstitutional in light of Wade and Bolton. See Hardy v. Vuitch, 42 U.S.L.W. 3194 (U.S. Oct. 9, 1973) (No. 72-1542). The November 12 action let stand an Arkansas Supreme Court determination that that state's abortion statute is still valid to the extent that it prohibits laymen from performing abortions. See May v. Arkansas, 42 U.S.L.W. 3290 (U.S. Nov. 13, 1973) (No. 73-355). What appears to have been the Supreme Court's final abortion decision of 1973 occurred on November 19, 1973, when the Court affirmed a federal district court decision that Missouri's abortion laws were unconstitutional. See Danforth v. Rodgers, 42 U.S.L.W. 3305 (U.S. Nov. 20, 1973)(No. 73-426).

Remaining for disposition by the Court are appeals from lower court abortion decisions raising the issues of whether a state may require a pregnant woman to obtain either spousal or parental consent prior to an abortion, Jones v. Smith, 42 U.S.L.W. 3434 (U.S. Jan 29, 1974) (No. 73-1133); Gerstein v. Coe, 42 U.S.L.W. 3441 (U.S. Feb. 5, 1974) (No. 73-1157) and whether a federal court should have abstained from hearing an abortion suit until the state courts have an opportunity to review the same issues. Kugler v. Young Women's Christian Assn., 42 U.S.L.W. 3336 (U.S. December 4, 1973) (No. 73-838).

CONGRESS

Below we outline abortion-related activity of the Congress since the Wade and Bolton decisions. The main tool used in describing such action is the material and debates submitted in the Congressional Record.

Proposed Bills And Resolutions Upon Which No Action Has Been Taken

H. J. Res. 261 - Hogan Proposed Constitutional Amendment

On January 30, 1973, soon after the Supreme Court's abortion decisions of Wade and Bolton, Representative Larry Hogan introduced H. J. Res. 261 in the House of Representatives. As a proposed Constitutional Amendment intended to negate the Supreme Court's abortion holdings, H. J. Res. 261 provides the following:

> Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as a part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:
>
> "Article-
>
> "Section 1. Neither the United States nor any State shall deprive any human being, from the moment of conception, of life without due process of law; nor deny to any human being, from the moment of conception, within its jurisdiction, the equal protection of the laws.
>
> "Section 2. Neither the United States nor any State shall deprive any human being of life on account of illness, age, or incapacity.
>
> "Section 3. Congress and the several States shall have the power to enforce this article by appropriate legislation."

Proposed amendments

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Below we outline abortion-related activity of the Congress since the Wade and Bolton decisions. The main tool used in describing such action is the material and debates submitted in the Congressional Record.

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>
> "Section 3. Congress and the several States shall have the power to enforce this article by appropriate legislation."

Rep. Hogan included the following remarks in the Congressional Record upon introducing H.J. Res. 261 (See 16 Cong. Rec. H570-H573 (daily ed., Jan. 30, 1973)):

SUPREME COURT AND LEGALIZING ABORTION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. HOGAN) is recognized for 60 minutes.

Mr. HOGAN. Mr. Speaker, I address the House today still badly shaken following the decision of the U.S. Supreme Court on January 22 legalizing abortion.

I have been a foe of abortion because I cannot accept that it can be right—that it can be legal—to end one human life for the personal convenience of another human being.

I must stand up and protest this gross disregard for human life which is now the official law of the United States of America. I have lived 44 years, and I have always deeply loved my country. This is the first time in all those years that I have been in deep despair over the future of my country.

Mr. Speaker, I have introduced today a constitutional amendment—House Joint Resolution 261—which would offset the recent Supreme Court decision on abortion.

If I had been alive in Nazi Germany, I like to think that I would have had the courage to stand up and protest the inhumane actions of my government. I feel very much the same today. My initial reaction to the Supreme Court's decision was that I did not want to be a part of a government which abandoned all respect for life. I seriously considered resigning from Congress. But then I decided that the preferable course would be to stay and do whatever I can to remedy the Court's action. The vehicle I have chosen in order to turn around this shocking new policy of our Government, of which I am so deeply ashamed, is to stay and fight for adoption of the constitutional amendment—House Joint Resolution 261—which I introduced today.

I am speaking today for those who cannot speak. I am speaking on behalf of our unborn children. Those who are concerned with equality of rights should not forget a group who are now in more need of constitutional protection than any other in our society—our most helpless minority, our unborn children.

The fundamental right of life itself is being neglected and denied to many of our fellow humans. To remedy this grave situation, I have introduced today a constitutional amendment — House Joint Resolution 261—that will insure that the unborn, the aged, the ill, and the incapacitated have a right to life that is every bit as valid as that guaranteed all of us under the 14th amendment.

Because of the Supreme Court's decisions in Roe against Wade and Doe against Bolton both decided January 22, 1973, the necessity for this amendment is now clearly evident. It is the only effective recourse open to those of us who value every human being's right to life.

Mr. Speaker, I urge our colleagues to read these decisions in their entirety, but I insert a summary of them in the RECORD at this point:

[Supreme Court of the United States]

DOE ET AL. v. BOLTON, ATTORNEY GENERAL OF GEORGIA, ET AL

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

(No. 70-40. Argued December 13, 1971—Reargued October 11, 1972—Decided January 22, 1973)

Georgia law proscribes an abortion except as performed by a duly licensed Georgia physician when necessary in "his best clinical judgment" because continued pregnancy would endanger a pregnant woman's life or injure her health; the fetus would likely be born with serious defects; or the pregnancy resulted from rape. § 26-1202 (a) of Ga. Criminal Code. In addition to a requirement that the patient be a Georgia resident and certain other requirements, the statutory scheme poses three procedural conditions in § 26-1202 (b): (1) that the abortion be performed in a hospital accredited by the Joint Committee on Accreditation of Hospitals (JCAH); (2) that the procedure be approved by the hospital staff abortion committee; and (3) that the performing physician's judgment be confirmed by independent examinations of the patient by two other licensed physicians. Appellant Doe, an indigent married Georgia citizen, who was denied an abortion after eight weeks of pregnancy for failure to meet any of the § 26-1202 (a) conditions, sought declaratory and injunctive relief, contending that the Georgia laws were unconstitutional. Others joining in the complaint included Georgia-licensed physicians (who claimed that the Georgia statutes "chilled and deterred" their practices), registered nurses, clergymen, and social workers. Though holding that all the plaintiffs had standing, the District Court ruled that only Doe presented a justiciable controversy. In Doe's case the court gave declaratory, but not injunctive, relief, invalidating as an infringement of privacy and personal liberty the limitation to the three situations specified in § 26-1202 (a) and certain other provisions but holding that the State's interest in health protection and the existence of a "*potential* of independent human existence" justified regulation through § 26-1202 (b) of the "manner of performance as well as the quality of the final decision to abort." The appellants, claiming entitlement to broader relief, directly appealed to this Court. *Held:*

1. Doe's case presents a live, justiciable controversy and she has standing to sue, *Roe v. Wade, ante, p.* —, as do the physician-appellants (who, unlike the physician in *Wade*, were not charged with abortion violations), and it is therefore unnecessary to resolve the issue of the other appellants' standing. Pp. 7-9.

2. A woman's constitutional right to an abortion is not absolute. *Roe v. Wade, supra.* P. 9.

3. The requirement that a physician's decision to perform an abortion must rest upon "his best clinical judgment" of its necessity is not unconstitutionally vague, since that judgment may be made in the light of *all* the attendant circumstances. *United States v. Vuitch*, 402 U.S. 62, 71-72. Pp. 10-12.

4. The three procedural conditions in § 26-1202(b) violate the Fourteenth Amendment. Pp. 12-19.

(a) The JCAH accreditation requirement is invalid, since the State has not shown the only hospitals (let alone those with JCAH accreditation) meet its interest in fully protecting the patient; and a hospital requirement failing to exclude the first trimester of pregnancy would be invalid on that ground alone, see *Roe v. Wade, supra.* Pp. 12-15.

(b) The interposition of a hospital committee on abortion, a procedure not applicable as a matter of state criminal law to other surgical situations, is unduly restrictive of the patient's rights, which are already safeguarded by her personal physician. Pp. 15-17.

(c) Required acquiescence by two co-practitioners also has no rational connection with a patient's needs and unduly infringes on her physician's right to practice. Pp. 17-19.

5. The Georgia residence requirement violates the Privileges and Immunities Clause by denying protection to persons who enter Georgia for medical services there. Pp. 19-20.

6. Appellants' equal protection argument centering on the three procedural conditions in § 26-1202(b), invalidated on other grounds, is without merit. P. 20.

7. No ruling is made on the question of injunctive relief. Cf. *Roe v. Wade, supra.* P. 20.

319 F. Supp. 1048, modified and affirmed.

[Supreme Court of the United States]

ROE ET AL. v. WADE, DISTRICT ATTORNEY OF DALLAS COUNTY

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

(No. 70-18. Argued December 13, 1971—Reargued October 11, 1972—Decided January 22, 1973)

A pregnant single woman (Roe) brought a class action challenging the constitutionality of the Texas criminal abortion laws, which proscribe procuring or attempting an abortion except on medical advice for the purpose of saving the mother's life. A licensed physician (Hallford), who had two state abortion prosecutions pending against him, was permitted to intervene. A childless married couple (the Does), the wife not being pregnant, separately attacked the laws, basing alleged injury on the future possibilities of contraceptive failure, pregnancy, unpreparedness for parenthood, and impairment of the wife's health. A three-judge District Court, which consolidated the actions, held that Roe and Hallford, and members of their classes, had standing to sue and presented justiciable controversies. Ruling that declaratory, though not injunctive, relief was warranted, the court declared the abortion statutes void as vague and overbroadly infringing those plaintiffs' Ninth and Fourteenth Amendment rights. The court ruled the Does' complaint not justiciable. Appellants directly appealed to this Court on the injunctive rulings, and appellee cross-appealed from the District Court's grant of declaratory relief to Roe and Hallford. *Held:*

1. While 28 U.S.C. § 1253 authorizes no direct appeal to this Court from the grant or denial of declaratory relief alone, review is not foreclosed when the case is properly before the Court on appeal from specific denial of injunctive relief and the arguments as to both injunctive and declaratory relief are necessarily identical. P. 8.

2. Roe has standing to sue; the Does and Hallford do not. Pp. 9-14.

(a) Contrary to appellee's contention, the natural termination of Roe's pregnancy did not moot her suit. Litigation involving pregnancy, which is "capable of repetition, yet evading review," is an exception to the usual federal rule that an actual controversy must exist at review stages and not simply when the action is initiated. Pp. 9-10.

(b) The District Court correctly refused injunctive, but erred in granting declaratory, relief to Hallford, who alleged no federally protected right not assertable as a defense against the good-faith state prosecutions pending against him. *Samuels v. Mackell*, 401 U.S. 66.

(c) The Does' complaint, based as it is on contingencies, any one or more of which may not occur, is too speculative to present an actual case or controversy. Pp. 12-14.

3. State criminal abortion laws, like those involved here, that except from criminality only a life-saving procedure on the mother's behalf without regard to the stage of her pregnancy and other interests involved violate the Due Process Clause of the Fourteenth Amendment, which protects against state action the right to privacy, including a woman's qualified right to terminate her pregnancy. Though the State cannot override that right, it has legitimate interests in protecting both the pregnant woman's health and the potentiality of human life, each of which interests grows and reaches a "compelling" point at various stages of the woman's approach to term. Pp. 36-49.

(a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician. Pp. 36-47.

(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. Pp. 43-44.

(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 necessary, in appropriate medical judgment, for the preservation of the life or health of the mother. Pp. 44-48.

4. The State may define the term "physician" to mean only a physician currently licensed by the State, and may proscribe any abortion by a person who is not a physician as so defined. Pp. 34-35, 48.

5. It is unnecessary to decide the injunctive relief issue since the Texas authorities will doubtless fully recognize the Court's ruling that the Texas criminal abortion statutes are unconstitutional. P. 51.

314 F. Supp. 1217, affirmed in part and reversed in part.

BLACKMUN, J., delivered the opinion of the Court, in which BURGER, C. J. and DOUGLAS, BRENNAN, STEWART, MARSHALL, and POWELL, JJ., joined. BURGER, C. J. and DOUGLAS and STEWART, JJ., filed concurring opinions. WHITE, J., filed a dissenting opinion, in which REHNQUIST, J., joined. REHNQUIST, J., filed a dissenting opinion.

The constitutional amendment—House Joint Resolution 261—which I introduced today, Mr. Speaker, would negate the above-summarized decisions and would reestablish the right of all human beings, regardless of age, to life. I include the text of my Constitutional I include the text of my constitutional 261—at this point in the RECORD:

HOUSE JOINT RESOLUTION 261

Proposing an amendment to the Constitution of the United States guaranteeing the right to life to the unborn, the ill, the aged, or the incapacitated.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as a part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"Section 1: Neither the United States nor any State shall deprive any human being, from the moment of conception, of life without due process of law; nor deny to any human being, from the moment of conception, within its jurisdiction, the equal protection of the laws.

"Section 2: Neither the United States nor any State shall deprive any human being of life on account of illness, age, or incapacity.

"Section 3: Congress and the several States shall have the power to enforce this article by appropriate legislation."

By its incredible 7-to-2 decision, denying the equal protection of the law to the unborn child, the U.S. Supreme Court

has, in one stroke, canceled the right which the Declaration of Independence says is the first of all the rights of man—the inalienable right to life which is self-evident.

The Declaration of Independence does not say that all men are "born" equal. It says that all men are "created" equal.

Human life begins at conception and not at birth. Even advocates of abortion admit this fact.

A pro-abortion editorial in the Journal of California Medicine, September 1970, freely speaks of—

The scientific fact, which everyone really knows, that human life begins at conception and is continuous whether intra—or extra-uterine until death. The very considerable semantic gymnastics which are required to rationalize abortion as anything but taking a human life would be ludicrous if they were not often put forth under socially impeccable auspices. It is suggested that this schizophrenic sort of subterfuge is necessary because while a new ethic is being accepted the old one has not yet been rejected.

Mr. Speaker, it seems, everyone really knows except the U.S. Supreme Court. Indeed, the Court seems not to have even looked at the reality of when human life begins. The Court passes over the facts and lamely states that—

We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any concensus, the judiciary at this point in the development of man's knowledge, is not in a position to speculate as to the answer.

No speculation was necessary. New York courts have already acknowledged that, in the contemporary medical view, the child begins a separate life from the moment of conception. The U.S. Supreme Court should have determined whether and when we can legally kill a being who is acknowledged to be human by all sides, instead of passing over this issue.

Apart from strictly scientific facts, everybody does, indeed, know that a human infant is always the natural result of a human pregnancy. No concensus from any disciplines are required to know this. Even a woman who seeks an abortion does so because she does not want to have a baby, not because she is disturbed by any mere "piece of tissue"—or whatever euphemism is used to avoid speaking of the child as human. Abortion always kills a living human being. The abortionists themselves speak of an unwanted "child," not of something else that is unwanted but an unwanted "child."

But now, Mr. Speaker, the U.S. Supreme Court has, in effect, declared that if a human being is unwanted, he can be eliminated. Where will the line be drawn between those who can legally be eliminated and those who cannot? The line our highest Court itself attempts to draw, that the law might take some notice of the child who has "the capability of meaningful life outside the mother's womb"—curiously, the Court itself calls her a "mother"—is purely arbitrary. As Dr. Eugene Diamond has said arbitrary time limits based on so-called viability are about as sacred as the 4-minute mile and, indeed, it is well-known that some legally aborted babies have lived.

We have a shocking history in recent years of babies that have been aborted alive. My colleagues might remember when I called their attention to a baby that had been aborted alive at the Washington Hospital Center. An attendant found it squirming in a refrigerator. There were 26 babies aborted alive in the first few months after New York legalized abortions. Some of them have been adopted and are living with loving families today.

So let us not deceive ourselves as to what it is we are talking about. We are talking about human beings. And when the Supreme Court in its decisions refers to the "potentiality of life," it is ignoring the medical and scientific facts. What we are talking about is the "reality"—the "actuality" of life, not the "potentiality" of human life.

The High Court refers in its decisions to "meaningful life." Inherent in that is one of the greatest dangers facing our country. The ominous phrase, "meaningful life," can be applied to other lives besides those of the unborn—the sick, the unfit, the feebleminded, the old, the senile. If they are unwanted and their lives are not "meaningful," how can they claim protection under the law according to the new criteria of the U.S. Supreme Court? My amendment—House Joint Resolution 261—would protect them as well.

Who of us is competent to assess whose life is meaningful? Is the man who comes home from work and falls asleep drinking beer before the television set leading a "meaningful" life? Is an unemployed migratory farmworkers leading a "meaningful" life? Is a person who is crippled "meaningful"? Is a child who is retarded "meaningful"? Who judges? Who decides? Who has the power and the audacity to say that another individual has a "meaningful" life and another human being does not.

But that is what the Supreme Court, in its shocking decision, has done. Threats of so-called mercy killing and other types of elimination of the unfit are not idle threats. Extermination policies of this kind, beginning with abortion, have been massively carried out within all too recent memory in Nazi Germany.

For nearly a generation, the world has been asking itself, "How could the German people under Hitler have stood by while the smoke poured from the chimneys of the Nazi death camps? How could this tremendous horror happen in the 20th century of civilization? How could civilized people slaughter 6 million other human beings because they were Jewish?"

Mr. Speaker, that shocks the conscience of the world and will continue to do so throughout history. But we ought to remember the warning of George Santayana, who said:

Those who cannot remember the past are condemned to repeat it.

And let us look at recent world history, let us look at Nazi Germany. Where did they begin? They began with abortion. And then they went on to exterminating those who were infirm and retarded and in mental institutions. They conducted medical experimentation that resulted in the deaths of these other human beings who did not, in the judgment of the Nazi regime, lead "meaningful" lives. And it was a short step from there to exterminating the Jews, who, in the judgment of the Nazi regime, did not lead "meaningful" lives and did not fit in with the concept of super race.

Well, we are on the first step, with this decision, toward the same kind of calamity for the United States of America. Can we allow it to happen to the greatest nation in the history of the world? Can Americans stand idly by while our carnage through abortion mounts? More human lives have been slaughtered through abortion than in all the wars in our history. Think about that.

The Supreme Court has proved by this single decision that the Justices, who are the final arbiters of the judicial meaning of our Constitution, have not only abandoned any pretense to respect the spirit of that Constitution, with equal justice under the law, but they have, as they have as with so many other recent decisions, ignored the will of the American people.

This decision comes at a time when legislators, politically responsive to the people by whom they were elected, have repeatedly repudiated liberalized abortion. Some 37 State legislatures have rejected liberalized abortion proposals. In New York, which had enacted its liberalized abortion law by one vote, the legislature reversed its decision and repealed that law, and it would have died, except that Governor Rockefeller vetoed it.

Connecticut and Pennsylvania's legislatures have also changed their minds on liberalized abortion laws they had previously passed. Governor Shapp also vetoed the action of the Pennsylvania legislature. Last November in North Dakota the people, by referendum, rejected abortion by a vote of 77 percent. The voters rejected it in Michigan by a 63-percent vote. The people have rejected proposed laws which the U.S. Supreme Court, by judicial fiat, has now imposed on the entire country.

I wonder if these Supreme Court Justices reflected upon the social consequences of trying to impose on the Nation a legal abortion policy which cannot and will not be accepted by millions upon millions of Americans. This has brought upon the Supreme Court and the Government itself disgrace and contempt which neither the Court nor the legal system or the Government can afford at this time when lack of confidence in our Government presents such a crisis.

The Supreme Court has not resolved the abortion issue by this decision. The Court has instead opened up another fissure in our already divided society.

Mr. Speaker, 116 years ago, the U.S. Supreme Court handed down another infamous decision—also by a lopsided majority, a decision of which we as Americans have been deeply ashamed ever since. That was the Dred Scott decision, which declared that all Americans were equal under the law, unless they were black and were born in slavery. One human being had the legal right

to own another human being. Slavery was constitutional because of the Dred Scott decision. But now we have gone beyond that. If it was shocking to think that one human being could own another, what is it to say that one human being can legally kill another with impunity. That is where we are today with the Supreme Court decision on abortion.

Because this infamous new decision denies, cancels, and nullifies and declares of no effect whatsoever the constitutional rights that have always been accorded within our legal system to the unborn, it will go down as "the Dred Scott decision of the 20th century." Its consequences are incalculable.

Civilized nations have always tried to protect their minorities. The advance of civilization has often been equated with the law's increased protection of its weakest and most helpless members. To declare now that one of our minority groups, the most helpless of all, can be legally exterminated on demand is shocking indeed.

Mr. Speaker, this is not the rule of law; it is the law of the jungle when one human being can decide to destroy another human being for his convenience.

Unborn children have traditionally, under our judicial system, had legal rights which have been protected. They have had the right to sue for injuries which they sustained before birth. They have had the right to inherit equally with their brothers and sisters when their father died before their birth. They have had the right to have guardians appointed to protect their interests. There have been decisions upheld by the same Supreme Court where parents, because of their religious beliefs, refused to have transfusions of blood in order to save an unborn child. The courts have declared that such a parent must have these transfusions of blood to save that unborn child whose right to live is superior to their right to practice their religious beliefs.

All this legal history has now been jettisoned by the Supreme Court decision on abortion.

What value will the Supreme Court uphold if it cannot uphold the value of human life itself. What good are property-rights, which the unborn have always had, if they do not have the right to life?

Mr. Speaker, I hope all Americans are as shocked as I am by this black mark on American history, and will support the Constitutional amendment—House Joint Resolution 261—which I introduced today. Let us prove that America is not morally bankrupt, even if the Supreme Court is. Let us prove that we still cherish and value human life, even if the Supreme Court does not.

The Supreme Court has made its decision. Now the Congress, the State legislatures, and the American people themselves must make their decision to override the Supreme Court decision by amending the Constitution.

S.J. Res. 119 - Buckley Proposed Constitutional Amendment

On May 31, 1973, the Senate received a proposed Constitutional Amendment introduced by Senator Buckley. Also intended to nullify the Supreme Court's abortion rulings, Buckley's proposed amendment, S.J. Res. 119, reads as follows:

> Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:
>
> "Article-
>
> "Section 1. With respect to the right to life, the word 'person', as used in this article and in the fifth and fourteenth articles of amendment to the Constitution of the United States, applies to all human beings, including their unborn offspring at every stage of their biological development, irrespective of age, health, function, or condition of dependency.
>
> "Section 2. This article shall not apply in an emergency when a reasonable medical certainty exists that continuation of the pregnancy will cause the death of the mother.
>
> "Section 3. Congress and the several States shall have power to enforce this article by appropriate legislation within their respective jurisdictions."

Senator Buckley included the following remarks and materials in the Congressional Record upon introducing S.J. Res. 119 (See 82 Cong. Rec. S9973-S9992 (daily ed., May 31, 1973)):

PROTECTION OF THE UNBORN—INTRODUCTION OF A JOINT RESOLUTION

Mr. BUCKLEY. Mr. President, about 4 months ago, the Supreme Court, in a pair of highly controversial, precedent-shattering decisions, Roe against Wade and Doe against Bolton, ruled that a pregnant woman has a constitutional right to destroy the life of her unborn child. In so doing, the Court not only contravened the express will of every State legislature in the country; it not only removed every vestige of legal protection hitherto enjoyed by the child in the mother's womb; but it reached its result through a curious and confusing chain of reasoning that, logically extended, could apply with equal force to the genetically deficient infant, the re-

tarded child, or the insane or senile adult.

After reviewing these decisions, I concluded that, given the gravity of the issues at stake and the way in which the Court had carefully closed off alternative means of redress, a constitutional amendment was the only way to remedy the damage wrought by the Court. My decision was not lightly taken for I believe that only matters of permanent and fundamental interest are properly the subject for constitutional amendment. I regret the necessity for having to take this serious step, but the Court's decisions, unfortunately, leave those who respect human life in all its stages from inception to death with no other recourse.

To those who argue that an amendment to the Constitution affecting abortion and related matters would encumber the document with details more appropriately regulated by statute, I can only reply that the ultimate responsibility must be borne by the High Court itself. With Mr. Justice White, who dissented so vigorously in the abortion cases:

> I find nothing in the language or history of the Constitution to support the Court's judgment.

The Court simply carved out of thin air a previously undisclosed right of "privacy" that is nowhere mentioned in the Constitution, a right of privacy which, oddly, can be exercised in this instance only by destroying the life and, therefore, the privacy of an unborn child. As Mr. Justice White remarked last January:

> As an exercise of raw judicial power, the Court perhaps has authority to do what it does today; but in my view its judgment is an improvident and extravagant exercise of the power of judicial review which the Constitution extends to this Court.

In the intervening weeks since the Court's decisions, I have sought the advice of men and women trained in medicine, ethics, and the law. They have given me the most discriminating and exacting counsel on virtually every aspect of the issues involved and have provided invaluable assistance in drawing up an amendment that reflects the latest and best scientific fact, and that comports with our most cherished legal traditions.

Mr. President, before discussing the specific language of my proposed amendment, I believe it necessary first to analyze the effect and implications of Wade and Bolton, and then to place them in the context of current attacks on our traditional attitudes toward human life. At the outset, it is necessary to discuss with some care what the Court in fact held in its abortion decisions. This is, I must confess, not an easy task. For parsing the Court's opinions in these cases requires that one attempt to follow a labyrinthine path of argument that simultaneously ignores or [illegible] a long line of legal precedent and [illegible] the face of well-established [illegible] fact.

The Court's labored reasoning in these cases has been a source of considerable puzzlement to all who have the slightest familiarity with the biological facts of human life before birth or with the legal protections previously provided for the unborn child. The Court's substantial errors of law and fact have been so well documented by others that it would be superfluous for me to attempt to add anything of my own. I shall simply refer Senators to the most incisive summary of the Court's errors that I have encountered. It is in the form of a legal brief filed by the attorneys in the Byrn case that was on appeal to the Supreme Court at the time it handed down its opinions in Wade and Bolton. It presents a devastating historical, legal and scientific indictment of the Court's errors of commission and omission. I ask unanimous consent that this document be printed at the end of my remarks as Appendix A, and urge Senators to give most careful study to its arguments.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See Appendix A.)

Mr. BUCKLEY. Mr. President, the full import of the Court's action is as yet incompletely understood by large segments of the public and by many legislators and commentators. It seems to be rather widely held, for example, that the Court authorized abortion on request in the first 6 months of pregnancy, leaving the States free to proscribe the act thereafter. But such is far from the truth. The truth of the matter is that, under these decisions, a woman may at any time during pregnancy exercise a constitutional right to have an abortion provided only that she can find a physician willing to certify that her "health" requires it; and as the word "health" is defined, that in essence means abortion on demand.

The Court's attempts to distinguish three stages of pregnancy, but upon examination this attempt yields, in practical effect, distinctions without a difference. In the first 3 months, in the words of the Court, "the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician." This means, for all intents and purposes, abortion on request. During the second trimester of pregnancy, the State may—but it need not—regulate the abortion procedure in ways that are reasonably related to maternal health. The power of the State's regulation here is effectively limited to matters of time, place and perhaps manner.

Thus, through approximately the first 6 months of pregnancy, the woman has a constitutionally protected right to take the life of her unborn child, and the State has no "compelling interest" that would justify prohibiting abortion if a woman insists on one.

After the period of "viability", which the Court marks at 6, or alternatively 7, months of pregnancy, the State "may"—but again it need not—proscribe abortion except where it is necessary for the preservation of the life or health of the mother. [illegible] provision, which appears at first glance to be an important restriction, turns out to be none at all, as the Court defines health to include "psychological as well as physical well-being," and states that the necessary "medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being" of the mother. The Court, in short, has included under the umbrella of "health" just about every conceivable reason a woman might want to advance for having an abortion.

It is clear, then, that at no time prior to natural delivery is the unborn child considered a legal person entitled to constitutional protections; at no time may the unborn child's life take precedence over the mother's subjectively-based assertion that her well-being is at stake.

In reaching these findings, the Court in effect wrote a statute governing abortion for the entire country, a statute more permissive than that enacted by the hitherto most permissive jurisdiction in the country; namely, my own State of New York. Nor is that all. In the course of its deliberations, the Court found it necessary to concede a series of premises that can lead to conclusions far beyond the immediate question of abortion itself. These premises have to do with the conditions under which human beings, born or unborn, may be said to possess fundamental rights.

I shall have a good deal to say about these extended implications of the Court's decisions in the months ahead, but for the moment, I would like to touch briefly on one or two basic points:

First, it would now appear that the question of who is or is not a "person" entitled to the full protection of the law is a question of legal definition as opposed to practical determination. Thus, contrary to the meaning of the Declaration of Independence, contrary to the intent of the framers of the 14th amendment, and contrary to previous holdings of the Court, to be created human is no longer a guarantee that one will be possessed of inalienable rights in the sight of the law. The Court has extended to government, it would seem, the power to decide the terms and conditions under which membership in good standing in the human race is determined. This statement of the decisions' effect may strike many as overwrought, but it will not appear as such to those who have followed the abortion debate carefully or to those who have read the Court's decisions in full. When, for example, the Court states that the unborn are not recognized by the law as "persons in the whole sense," and when, further, it uses as a precondition for legal protection the test whether one has a "capability of meaningful life," a thoughtful man is necessarily invited to speculate on what the logical extension of such arguments might be.

If constitutional rights are deemed to hinge on one's being a "person in the whole sense", where does one draw the line between "whole" and something less than "whole"? It is simply a question of physical or mental development? If so, how does one distinguish between the child in his 23d week of gestation who is lifted alive from his mother's womb and allowed to die in the process of abortion by hysterotomy, and the one that is pre-

maturely born and rushed to an incubator? It is a well known scientific fact that the greater part of a child's cerebral cortex is not formed, that a child does not become a "cognitive person", until some months after normal delivery. Might we not someday determine that a child does not become a "whole" person until sometime after birth, or never become "whole" if born with serious defects? And what about those who, having been born healthy, later lose their mental or physicial capacity? Will it one day be found that a person, by virtue of mental illness, or serious accident, or senility, ceases to be a "person in the whole sense", or ceases to have the "capability for meaningful life," and as such no longer entitled to the full protection of the law?

Mr. President, the list of such questions is virtually endless. The Court in attempting to solve one problem has ended up by creating 20 others. One can read the Court's opinions in the abortion cases from beginning to end and back again, but he will not find even the glimmer of an answer to these questions; indeed, one will not even find the glimmer of an indication that the Court was aware that such questions might be raised or might be considered important.

A second general consideration I should like to raise, Mr. President, has to do with the Court's definition of "health" as involving "all factors—physical, emotional, psychological familial, and the woman's age—relevant to . . . well-being." It is a little remarked but ultimately momentous part of the abortion decisions that the Court, consciously or unconsciously, has adopted wholesale the controversial definition of "health" popularized by the World Health Organization. According to the WHO, "health" is "a state of complete physical, mental, and social well-being, not simply the absence of illness and disease." In this context, the Court's definition acquires a special importance, not only because it can be used to justify abortion any time a woman feels discomfited by pregnancy, but because the Court made pointed reference to the "compelling interest" of the State in matters of health in general and maternal health in particular. One is bound to wonder whether the State's interest in maternal health would ever be sufficiently "compelling" to warrant an abortion against a pregnant woman's will. This is no mere academic matter. An unwed, pregnant teenage girl was ordered by a lower court in Maryland just last year, against her will, to have an abortion. The girl was able to frustrate the order by running away. The order was later overturned by a Maryland appellaate court; but the important point is that an analog to the compelling State interest argument was used by the lower court to justify its holding.

Let us consider, for example, the case of a pregnant mental patient. Would the State's compelling interest in her health ever be sufficient to force on abortion upon her? What of the unmarried mother on welfare who is already unable to cope with her existing children? Again, Mr. President, I am not raising an academic point for the sake of disputation. In the abortion cases, the Supreme Court breathed life into the notorious precedent of Buck against Bell. The Bell case, it will be recalled, upheld the right of a State to sterilize a mental incompetent without her consent.

The Court held in that case that—

> The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes.

One is necessarily bound to wonder whether, by analogous extension, the principle that sustains compulsory sterilization of mental patients is broad enough to cover compulsory abortion of mental patients; and if of mental patients, then why not, as the lower court in Maryland suggested, of unwed minor girls? And if of unwed minor girls, then why not of any other woman? Just how "compelling" is the state's interest in matters of "health"? Where does the power begin or end? In the abortion cases, Bell, curiously, is cited for the proposition that a woman does not have an unlimited right to her own body, whence the only inference to be drawn is that the reason she doesn't have an unlimited right is that the state may qualify that right because of its "compelling interest" in "health." I find that a strange doctrine to be celebrated by the proponents of women's liberation.

These larger and deeply troubling considerations, Mr. President, may in the long run be as important to us as the special concern that many of us have with the matter of abortion itself. Every premise conceded by the Court in order to justify the killing of an unborn child can be extended to justify the killing of anyone else if, like the unborn child, he is found to be less than a person in the "whole" sense or incapable of "meaningful" life. The removal of all legal restrictions against abortion must, in short, be seen in the light of a changing attitude regarding the sanctity of individual life, the effects of which will be felt not only by the unborn child who is torn from its mother's womb but as well by all those who may someday fall beyond the arbitrary boundaries of the Court's definition of humanity.

This wider context of the abortion controversy was brought to my attention most forcefully by an unusually candid editorial entitled "A New Ethic for Medicine and Society" that was published two and a half years ago in California Medicine, the official journal of the California Medical Association. It was occasioned, as I understand it, by the debate then taking place in our largest State regarding the liberalization of the abortion law.

The thrust of the editorial is simply this: That the controversy over abortion represents the first phase of a head-on conflict between the traditional, Judeo-Christian medical and legal ethic—in which the intrinsic worth and equal value of every human life is secured by law, regardless of age, health or condition of dependency—and a new ethic, according to which human life can be taken for what are held to be the compelling social, economic or psychological needs of others. Mr. President, I ask unanimous consent that the editorial referred to be printed in the RECORD at the conclusion of my remarks as appendix B.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See appendix B.)

Mr. BUCKLEY. Let me for a moment dwell on a crucial point in that editorial. The author writes:

> The process of eroding the old ethic and substituting the new has already begun. It may be seen most clearly in changing attitudes toward human abortion. In defiance of the long held Western ethic of intrinsic and equal value for every human life regardless of its stage, condition, or status, abortion is becoming accepted by society as moral, right, and even necessary. It is worth noting that this shift in public attitude has affected the churches, the laws and public policy rather than the reverse. Since the old ethic has not yet been fully displaced it has been necessary to separate the idea of abortion from the idea of killing, which continues to be socially abhorrent. The result has been a curious avoidance of the scientific fact, which everyone really knows, that human life begins at conception and is continuous whether intra- or extra-uterine until death. The very considerable semantic gymnastics which are required to rationalize abortion as anything but taking a human life would be ludicrous if they were not often put forth under socially impeccable auspices. It is suggested that this schizophrenic sort of subterfuge is necessary because while a new ethic is being accepted the old one has not yet been rejected.

Lest there be any ambiguity as to the ultimate thrust of the "new ethics," the California Medicine editorial went on to state the following in discussing the growing role of physicians in deciding who will and will not live:

> One may anticipate further development of these roles as the problems of birth control and birth selection are extended inevitably to death selection and death control whether by the individual or by society . . .

I find the editorial of a powerful, eloquent, and compeling statement of the ultimate questions involved in the abortion controversy. The question in issue—the Supreme Court to the contrary notwithstanding—is not to determine when life begins, for that is one of scientific fact requiring neither philosophical nor theological knowledge to answer. The question, rather, is what value we shall place on human life in general and whether unborn human life in particular is entitled to legal protection.

Whether or not our society shall continue its commitment to the old ethnic, or transfer its allegiance to the new, is not a question to be decided by a transitory majority of the Supreme Court, but by the people acting through their political processes. I concur in Mr. Justice White's condemnation of the Wade decision as "an exercise of raw judicial power" that is "improvident and extravagant." I concur in finding unacceptable the Court's action in "interposing a constitutional barrier to State efforts to protect human life and—in—investing mothers and doctors with the constitutionally protected right to exterminate it."

The majority of the Court, however, has rendered its decision. We as a people have been committed by seven men to the "new ethic"; and because of the finality

of their decisions, because there are now no practical curbs on the killing of the unborn to suit the convenience or whim of the mother, those who continue to believe in the old ethnic have no recourse but to resort to the political process. That is why I intend to do what I can to give the American people the opportunity to determine for themselves which ethnic will govern this country in what is, after all, quite literally a matter of life or death. That is why I send my proposed Human Life Amendment to the desk and ask that it be printed and appropriately referred.

In doing so, Mr. President, may I say how deeply gratified I am to be joined in introducing this amendment by my distinguished colleagues from Oregon, Iowa, Utah, Nebraska, Oklahoma, and North Dakota. Senators HATFIELD, HUGHES, BENNETT, BARTLETT, CURTIS, and YOUNG are known in this body and elsewhere as exceptionally thoughtful and dedicated men whose day-to-day political activities are informed by devotion to first principles. When such a geographically, ideologically, and religiously diverse group of Senators can agree on a major issue like this, it suggests that opposition to abortion is truly ecumenical and national in scope. These Senators honor me by their cosponsorship, and I consider it a privilege to work together with them in this great cause. I would simply like to take this occasion to extend to each of them my personal gatitude for their help and cooperation and to say how much I look forward to working jointly with them in the months ahead.

The text of our amendment reads as follows:

ARTICLE —

SECTION 1. With respect to the right to life, the word 'person', as used in this Article and in the Fifth and Fourteenth Articles of Amendment to the Constitution of the United States, applies to all human beings, including their unborn offspring at every stage of their biological development, irrespective of age, health, function or condition of dependency.

SEC. 2. This Article shall not apply in an emergency when a reasonable medical certainty exists that continuation of the pregnancy will cause the death of the mother.

SEC. 3. Congress and the several States shall have power to enforce this Article by appropriate legislation within their respective jurisdictions.

The amendment's central purpose is to create, or rather, as will be made clear below, to restore a constitutionally compelling identity between the biological category "human being" and the legal category "person". This has been made necessary by two factors: First, the more or less conscious dissemblance on the part of abortion proponents, by virtue of which the universally agreed upon facts of biology are made to appear as questions of value—a false argument that the Supreme Court adopted wholesale; and second, the holding of the Court in Wade and Bolton that the test of personhood is one of legal rather than of biological definition. The amendment addresses these difficulties by making the biological test constitutionally binding, on the ground that only such a test will restrain the tendency of certain courts and legislatures to arrogate to themselves the power to determine who is or who is not human and, therefore, who is or is not entitled to constitutional protections. The amendment is founded on the belief that the ultimate safeguard of all persons, born or unborn, "normal or defective, is to compel courts and legislatures to rest their decisions on scientific fact rather than on political, sociological, or other opinion.

Such a test will return the law to a position compatible with the original understanding of the 14th amendment. As the debates in Congress during consideration of that amendment make clear, it was precisely the intention of Congress to make "legal person" and "human being" synonymous categories. By so doing, Congress wrote into the Constitution that understanding of the Declaration of Independence best articulated by Abraham Lincoln; namely, that to be human is to possess certain rights by nature, rights that no court and no legislature can legitimately remove. Chief among these, of course, is the right to life.

On the specific subject of abortion, it is notable that the same men who passed the 14th amendment also enacted an expanded Assimilative Crimes Statute, April, 1866, which adopted recently passed State antiabortion stautes. These statutes, in turn, had been enacted as a result of a concerted effort by medical societies to bring to legislators' attention the recently discovered facts of human conception. The Court's opinion in Wade totally misreads—if the Court was aware of it at all—the fascinating medico-legal history of the enactment of 19th century antiabortion statutes, and ignores altogether the fundamental intention which animated the framers of the 14th amendment.

Section 1 of the proposed amendment would restore and make explicit the biological test for legal protection of human life. The generic category is "human being," which includes, but is not limited to, "unborn offspring—at every stage of their biological development." It is a question of biological fact as to what constitutes "human being" and as to when "offspring" may be said to come into existence. While the basic facts concerning these matters are not in dispute among informed members of the scientific community, the ways in which these facts are to be ascertained in any particular case will depend on the specifications contained in implementing legislation passed consistent with the standard established by the amendment. Such legislation would have to consider, in the light of the best available scientific information, the establishment of reasonable standards for determining when a woman is in fact pregnant, and if so, what limitations are to be placed on the performance of certain medical procedures or the administering of certain drugs.

Some proponents of abortion will seek to characterize the amendment as prohibiting methods of contraception. To such charge, the answer is twofold:

First, there is nothing in the amendment which would, directly or indirectly, expressly or impliedly, proscribe any mode of contraception:

Second, under the amendment, the test in each case will be a relatively simple one; that is, whether an "unborn offspring" may be said to be in existence at the time when a potentially abortive technique or medicine is applied. Particular standards on this point are to be worked out in implementing legislation.

Section 1, it will also be noted, reaches the more general case of euthanasia. This is made necessary because of the widespread and growing talk of legalizing "death with dignity," and because of the alarming dicta in the Wade opinion by which legal protection seems to be conditioned on whether one has the "capability of meaningful life" or whether one is a "person in the whole sense." Such language in the Court's opinion, when combined with the Court's frequent references to the State's "compelling interest" in matters of "health," is pointedly brought to our attention by the revival in Wade of the notorious 1927 case of Buck against Bell—which upheld the right of the State to sterilize a mentally defective woman without her consent. The Wade and Bolton opinions taken as a whole seem to suggest that unborn children are not the only ones whose right to life is now legally unprotected. Thus, the proposed amendment explicitly extends its protections to all those whose physical or mental condition might make them especially vulnerable victims of the "new ethic."

Regarding the specific subject of abortion, section 2 makes an explicit exception for the life of the pregnant woman. There seems to be a widespread misimpression that pregnancy is a medically dangerous condition, when the truth of the matter is that under most circumstances a pregnant woman can deliver her child with minimal risk to her own life and health. There is, however, an exceedingly small class of pregnancies where continuation of pregnancy will cause the death of the woman. The most common example is the ectopic or tubal pregnancy. It is our intention to exempt this unique class of pregnancies, without opening the door to spurious claims of risk of death.

Under the amendment, there must be an emergency in which reasonable medical certainty exists that continuation of pregnancy will cause the death of the woman. This is designed to cover the legitimate emergency cases, such as the ectopic pregnancy, while closing the door to unethical physicians who in the past have been willing to sign statements attesting to risk of death when in fact none exists or when the prospect is so remote in time or circumstance as to be unrelated to the pregnancy. Contrary to the opinion of the Supreme Court, which assumes that pregnancy is a pathological state, modern obstetrical advances have succeeded in removing virtually every major medical risk once associated with pregnancy. As Dr. Alan Guttmacher himself remarked nearly a decade ago, modern obstetrical practice has eliminated almost all medical indications for abortion. In certain limited instances, however, a genuine threat to the woman's

life remains, and it is felt that excepting such situations is compatible with long-standing moral custom and legal tradition.

Mr. President, there is today a broad and growing concern over the consequences of the Wade and Bolton decisions. Scarcely 4 months have passed since the Court's ruling, but already 10 States have petitioned the Congress to adopt an amendment to nullify their effect. They are Maine, North Dakota, South Dakota, Maryland, Utah, Indiana, Nebraska, Minnesota, New Jersey, and Idaho. Moreover, within a few days after the ruling, 17 States joined as amicus curiae in a petition filed by the State of Connecticut seeking, in effect, a reversal of Wade and Bolton. They were Arizona, California, Colorado, Georgia, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Rhode Island, Utah and West Virginia. Several States have refused to adopt new laws to conform with the dictates of the Supreme Court, their legislators being simply unwilling to bring themselves to ratify the Court's actions. A number of constitutional amendments have already been introduced into the House of Representatives designed to restore protection to the unborn. One of these, the amendment introduced by Congressman LAWRENCE J. HOGAN of Maryland has already drawn widespread national attention. It seems clear, in short, that the Supreme Court has done anything but "settle" the abortion issue, as some had hoped.

I therefore urge the Committee on the Judiciary to schedule early hearings on my proposed amendment, as well as the Hogan and other amendments which seek to restore the full protection of the law for human life at every stage of development from the time a distinct biologically identifiable human being first comes into existence.

I know there are those, Mr. President, who would argue that it would simply be a waste of time to schedule hearings on proposals for a human life amendment. It is continually being asserted these days that public opinion on the abortion issue has turned the corner, that the Supreme Court decisions in fact reflect current American acceptance of abortion-on-demand. Thus, it is argued, any serious attempt to enact a corrective constitutional amendment would be an exercise in futility.

Some polls have been cited in support of this contention, but these are refuted by the most detailed study of the matter made in recent months. I speak of the one conducted by the University of Michigan's Institute of Social Research last fall which found, among other things, that 58 percent of Americans continue to oppose liberalized abortion, as do a majority of non-Catholic Americans. I mention this last fact in passing, because so many today have "bought" the charge made by the proabortionists that only Roman Catholics today oppose what the Supreme Court has accomplished through judicial fiat. For the benefit of those, Mr. President, who may nevertheless feel that the impetus behind the antiabortion movement is exclusively Catholic, I ask unanimous consent that there be printed in the RECORD, at the conclusion of my remarks, as appendix C, excerpts from various non-Catholic sources affirming the rights of the unborn and condemning liberalized abortion. I also ask unanimous consent that an article in the April 17, 1973, issue of the Washington Star-News describing the University of Michigan study be printed in the RECORD at the conclusion of my remarks as appendix D.)

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See appendix C and D.)

Mr. BUCKLEY. Mr. President, of much greater significance than this study, Mr. President, are the results of referendums last November in which the people of two States, Michigan and North Dakota, were asked to vote on the adoption of liberalized abortion laws. The issue was widely debated, and on election day the people spoke with a decisive voice. They voted to reject permissive abortion by a margin of 3 to 2 in the case of Michigan, and of 3 to 1 in the case of North Dakota.

These votes are of particular significance, because they indicate that the commitment of Americans to the traditional Judeo-Christian ethic is apt to be strengthened after the public has had the advantage of the intensive educational process that results from any actively debated issue. The voters of Michigan and North Dakota came to know the biological facts of human development. By the time they cast their ballots, they had absorbed a knowledge of the subject of abortion and of its implications that is shared today by too few Americans.

Mr. President, I profoundly believe that such popularity, as the idea of abortion as acquired, derives from the ability of the proponents of abortion to dissemble the true facts concerning the nature of unborn life and the true facts concerning what is actually involved in abortion. I further believe that when these facts are fully made known to the public, they will reject abortion save under the most exigent circumstances; that is, those in which the physical life of the mother is itself at stake. In recent weeks, in discussing this matter with friends and colleagues, I have found that, like many of the rest of us, they labor under certain misimpressions created by the proponents of permissive abortion. I, therefore, believe that it would be useful for me to call our colleagues' attention to clinical evidence upon these points.

First, I will quote a particularly felicitous description of the biological and physical character of the unborn child by Dr. A. W. Liley, research professor in fetal physiology at National Women's Hospital, Auckland, New Zealand, a man renowned throughout the world as one of the principal founders and masters of the relatively new field of fetology. Dr. Liley writes:

In a world in which adults control power and purse, the fetus is at a disadvantage being small, naked, nameless and voiceless. He has no one except sympathetic adults to speak up for him and defend him—and equally no one except callous adults to condemn and attack him. Mr. Peter Stanley of Langham Street Clinic, Britain's largest and busiest private abortorium with nearly 7,000 abortions per year, can assure us that "under 28 weeks the foetus is so much garbage—there is no such thing as a living foetus." Dr. Bernard Nathanson, a prominent New York abortionist, can complain that it is difficult to get nurses to aid in abortions beyond the twelfth week because the nurses and often the doctors emotionally assume that a large foetus is more human than a small one. But when Stanley and Nathanson profit handsomely from abortion we can question their detachment because what is good for a doctor's pocket may not be best for mother or baby.

Biologically, at no stage can we subscribe to the view that the foetus is a mere appendage of the mother. Genetically, mother and baby are separate individuals from conception. Physiologically, we must accept that the conceptus is, in very large measure, in charge of the pregnancy, in command of his own environment and destiny with a tenacious purpose.

It is the early embryo who stops mother's periods and proceeds to induce all manner of changes in maternal physiology to make his mother a suitable host for him. Although women speak of their waters breaking or their membranes rupturing, these structures belong to the foetus and he regulates his own amniotic fluid volume. It is the foetus who is responsible for the immunological success of pregnancy—the dazzling achievement by which foetus and mother, although immunological foreigners, tolerate each other in parabiosis for nine months. And finally it is the foetus, not the mother, who decides when labour should be initiated.

One hour after the sperm has penetrated the ovum, the nuclei of the two cells have fused and the genetic instructions from one parent have met the complementary instructions from the other parent to establish the whole design, the inheritance of a new person. The one cell divides into two, the two into four and so on while over a span of 7 or 8 days this ball of cells traverses the Fallopian tube to reach the uterus. On reaching the uterus, this young individual implants in the spongy lining and with a display of physiological power suppresses his mother's menstrual period. This is his home for the next 270 days and to make it habitable the embryo develops a placenta and a protective capsule of fluid for himself. By 25 days the developing heart starts beating, the first strokes of a pump that will make 3,000 million beats in a lifetime. By 30 days and just 2 weeks past mother's first missed period, the baby, ¼ inch long, has a brain of unmistakable human proportions, eyes, ears, mouth, kidneys, liver and umbilical cord and a heart pumping blood he has made himself. By 45 days, about the time of mother's second missed period, the baby's skeleton is complete, in cartilage not bone, the buds of the milk teeth appear and he makes his first movements of his limbs and body—although it will be another 12 weeks before mother notices movements. By 63 days he will grasp an object placed in his palm and can make a fist.

Most of our studies of foetal behavior have been made later in pregnancy, partly because we lack techniques for investigation earlier and partly because it is only the exigencies of late pregnancy which provide us with opportunities to invade the privacy of the foetus. We know that he moves with a delightful easy grace in his buoyant world, that foetal comfort determines foetal position. He is responsive to pain and touch and cold and sound and light. He drinks his amniotic fluid, more if it is artificially sweetened and less if it is given an unpleasant taste. He gets hiccups and sucks his thumb. He wakes and sleeps. He gets bored with

repetitive signals but can be taught to be alerted by a first signal for a second different one. Despite all that has been written by poets and song writers, we believe babies cry at birth because they have been hurt. In all the discussions that have taken place on pain relief in labour, only the pain of mothers have been considered—no one has bothered to think of the baby.

This then is the foetus we know and indeed each once were. This is the foetus we look after in modern obstetrics, the same baby we are caring for before and after birth, who before birth can be ill and need diagnosis and treatment just like any other patient. This is also the foetus whose existence and identity must be so callously ignored or energetically denied by abvocates of abortion.

For those who seek further information on the points raised by Dr. Liley, I would refer them to the detailed description of the umborn child contained in the brief filed as amicus curiae by more than 200 members of the American College of Obstetrics and Gynecology. Mr. President, I ask unanimous consent that the relevant portions of that brief be printed at the conclusion of my remarks as appendix E.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See appendix E.)

Mr. BUCKLEY. Mr. President, finally, for the benefit of those who wish to learn what is actually involved in abortion procedures, I ask unanimous consent that there be provided at the conclusion of my remarks, as appendix F, a recent paper by Dr. Joseph Stanton, M.D., entitled "Abortion—Death Before Birth." Dr. Stanton is associate clinical professor of medicine at Tufts Medical School.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See appendix F.)

Mr. BUCKLEY. So much, Mr. President, for the scientific facts of prenatal life and for the techniques now used to destroy it. They illuminate the true nature of the distinctions we are asked to make in the name of a "new ethic." I urge my colleagues to study these facts with special care in the light of the truly radical implications for our society of the Supreme Court decisions. I ask them to keep in mind that the American people were not consulted before seven justices of the Supreme Court took it upon themselves to overturn a commitment to the sanctity of human life that has been central to our civilization for more than 2,000 years. I urge them to understand that if—as I profoundly believe—a majority of the American people continue to believe in the old ethic, they have no effective recourse except through the amendatory process. I believe, at the very least, we have a duty to give consideration of a human life amendment our highest priority.

Mr. President, one final note, if I may. Opponents of abortion are frequently characterized as being indifferent or callous toward the plight of women with what are called problem pregnancies—such as the pregnant, unwed teenager, or the woman who conceives an unplanned child. I believe such a characterization to be wholly unwarranted. To oppose abortion—save the mother's life is at stake—is by no means to be indifferent to the problems of pregnant women. It is our belief that abortion is in fact a spurious remedy to the problem pregnancy. The substantial medical risks attending abortion, the well-documented phychological trauma which accompanies the destruction of a child in utero, the continuing possibility of repeated problem pregnancies throughout the rest of a fertile woman's life—all these factors suggest that ethical considerations aside, abortion is a superficial and highly dangerous nonsolution to what is admittedly a most serious problem.

I profoundly believe that opponents of abortion have a positive obligation to assist pregnant women who are troubled. The private sector has already produced a number of organizations whose central purpose it is to provide counseling and medical assistance to pregnant women, as well as for the placement of any child who after birth is still unwanted. The most prominent organization of this type is called Birthright, with chapters in many cities and towns across the land. I fully endorse these efforts to provide truly humanitarian assistance to those in need, and I intend to assist their growth in whatever ways I can.

Mr. President, I have spoken at some length because I consider this issue to be of paramount importance. As we stand here on this day, quite literally thousands of unborn children will be sacrificed before the sun sets in the name of the new ethic. Such a situation cannot continue indefinitely without doing irreparable damage to the most cherished principles of humanity and to the moral sensibilities of our people. The issue at stake is not only what we do to unborn children, but what we do to ourselves by permitting them to be killed. With every day that passes, we run the risk of stumbling, willy-nilly, down the path that leads inexorably to the devaluation of all stages of human life, born or unborn. But a few short years ago, a moderate liberalization of abortion was being urged upon us. The most grievous hypothetical circumstances were cast before us to justify giving in a little bit here, a little bit there; and step by step, with the inevitability of gradualness, we were led to the point where, now, we no longer have any valid legal constraints on abortion.

What kind of society is it that will abide this sort of senseless destruction? What kind of people are we that can tolerate this mass extermination? What kind of Constitution is it that can elevate this sort of conduct to the level of a sacrosanct right, presumptively endowed with the blessings of the Founding Fathers, who looked to the laws of nature and of nature's God as the foundation of this Nation?

Abortion, which was once universally condemned in the Western World as a heinous moral and legal offense, is now presented to us as not only a necessary, sometime evil, but as a morally and socially beneficial act. The Christian counsel of perfection which teaches that the greatest love consists in laying down one's life for one's friend, has now become, it seems, an injunction to take another's life for the security and comfort of one's own. Men who one day argue against the killing of innocent human life in war will be found the next arguing in praise of killing innocent human life in the womb. Doctors foresworn to apply the healing arts to save life now dedicate themselves and their skills to the destruction of life.

To enter the world of abortion on request, Mr. President, is to enter a world that is upside down. It is a world in which black becomes white, and right wrong, a world in which the powerful are authorized to destroy the weak and defenseless, a world in which the child's natural protector, his own mother, becomes the very agent of his destruction.

Mr. President, I urge my colleagues to join me in protecting the lives of all human beings, born and unborn, for their sake, for our own sake, for the sake of our children, and for the sake of all those who may someday become the victims of the new ethic.

APPENDIX A

[In the Supreme Court of the United States, October Term, 1972—No. 72-434]

MOTION TO POSTPONE JURISDICTION UNTIL A HEARING ON THE MERITS

On Appeal From the Court of Appeals of the State of New York

(Robert M. Byrn, as Guardian ad Litem for Infant Roe, an unborn child of less than 24 weeks gestation, whose life is about to be terminated by induced abortion at a municipal hospital of New York City Health & Hospitals Corporation, etc., *Appellant*, versus New York City Health & Hospitals Corporation, Jan Roe and John Roe, parents of said unborn Infant Roe, whose true names are presently unknown, the Hon. Louis J. Lefkowitz, Atty. General of the State of New York, *Appellees*, and Ruth Charney, *et al.*, *Intervcners-Appellees*)

Appellant respectfully moves that the Court postpone determination of the question of jurisdiction and of the motions pending before the Court to affirm or dismiss appellant's appeal until a hearing of the case on the merits.

Appellant is the court-appointed guardian *ad litem* for a continuing class of unborn children scheduled for abortion in the municipal hospitals of appellee, New York City Health & Hospitals Corporation. On behalf of his wards, appellant challenged the constitutionality of New York's Elective Abortion Law (New York Penal Law, Sec. 125.05, subdiv. 3); the New York Court of Appeals upheld the validity of the Law, and granted final judgment on the merits to appellees. Appellant's appeal to this Court was docketed on September 14, 1972.[1]

On January 22, 1973, this Court struck down antiabortion statutes in Texas and Georgia in *Roe v. Wade*, No. 70-18 (hereinafter "Wade") and *Doe v. Bolton*, No. 70-40 (hereinafter "Bolton"). Although unborn children were not parties in either *Wade* or *Bolton*, the opinions of the Court raise doubts affecting the determination of jurisdiction in the instant appeal. The standing or right of appellant's wards to a hearing is inextricably intertwined with the merits of their case (Juris. State., pp. [illegible]-39a, 65a). That being so, there must not be a prejudgment that the guardian may not be heard because his wards are non-persons. Since jurisdiction in the case at bar depends on the ultimate resolution of that issue, for the reasons hereinafter set forth, determination of jurisdiction should not be made until after a full hearing on the merits.

Footnotes at end of article.

CRS-24

GROUNDS FOR THE MOTION

I. *Wade* and *Bolton* are neither controlling nor persuasive as to the claims of right of appellant's wards:

A. Unborn children were not parties, individually or as a class, in *Wade* and *Bolton* and those cases are not *res judicata* as to their rights and status. (See, *infra*, IA).

B. *Wade* and *Bolton* contain fundamental errors with respect to crucial issues upon which appellant had previously briefed the Court. Appellant's arguments were not answered in *Wade* and *Bolton*. (See, *infra*, IB).

II. *Fundamental fairness* requires that before an entire class of living human beings be deprived of the protection of law, their claims of right be heard. (See, *infra*, II).

III. *Wade* and *Bolton* contain dangerous implications which threaten the continued viability of the Due Process and Equal Protection clauses of the Fourteenth Amendment wherein the claims of right of appellant's wards are rooted. (See, *infra*, III).

The holding in Wade and Bolton does not affect the right of absent parties, including appellant's wards, to a hearing on the merits before this Court on their federal constitutional rights.

The opinions of the Court in *Wade* and *Bolton* are not decisive of the instant appeal because unborn children were not parties in either case and no guardian was before the Court to represent their interests. *Griswold* v. *Connecticut* is not to the contrary. In that case, this Court recognized the standing of the Planned Parenthood League of Connecticut and a physician to raise the constitutional rights of married people with whom they had a professional relationship. *Griswold* v. *Connecticut*, 381 U.S. 479 (1965). However, *Griswold* involved a defense to a criminal prosecution and this Court noted that if declaratory relief were sought "the requirements of standing should be strict, lest the standards of 'case or controversy' in Article III of the Constitution become blurred." 381 U.S. 479, 481. It seems clear that a decision in *Griswold* adverse to the constitutional rights of those married people (who were not parties) would *not* be *res judicata* in any pending or subsequent suit by married people to assert and vindicate their rights. *Hansberry* v. *Lee*, 311 U.S. 32, 40 (1940).

In *Wade*, the constitutional rights of unborn children were raised by the Texas Attorney General to support Texas' compelling interest in its anti-abortion statute.[1] The Attorney General argued that the question as to when human life begins was unanswerable and best left to the legislature.[2] But the issue before this Court is not when human life begins. It is recognition of the constitutional fact that at the time an abortional decision is executed, death is inflicted, not on potential human life, but on an individual human life with all its potential, that has already begun.

In all, thirteen judges in New York passed on the merits of appellant's case. Although divided in their decisions on the legal issues, on the factual issue of the individual humanity of the unborn child, they found, on an uncontradicted—indeed conceded—factual record of expert evidence, that each of appellant's wards is a "live human being" (Queens County Supreme Court, Juris. State., p. 68a), a "child [with] a separate life" (Appellate Division, Second Department, Juris. State., p. 41a, 38 A.D. 2d 316, 328, 329 N.Y.S. 2d 722, 729 [1972]), a "human" who is "unquestionably alive" and "has an autonomy of development and character" (N.Y. Court of Appeals, Juris. State., p. 29a, 31 N.Y. 2d 194, 199, 335 N.Y.S. 2d 390, 392, 286 N.E. 2d 887, 888 [1972]).

It cannot be said that the Texas Attorney General stood in essentially the same position as the case of unborn children whose rights he purported to assert. Clearly he is not a member of the class and he cannot adequately represent the class. *Hansberry* v. *Lee*, 311 U.S. 32, 41, 43. As a public official, his interest is ever subject to the vagaries of legislative action and potentially in conflict with the interests of the unborn child. Appellant-guardian asserts that the interests and nature of the unborn child constitutionally mandate state protection—a position an attorney general, jealous of state's rights, could hardly sponsor. The potentially conflicting interests of State Attorney Generals is clearly illustrated by the recent history of abortion in New York. In 1969, the Attorney General of the State of New York asserted the interests of the unborn child in supporting a law which permitted abortions only when necessary to preserve the life of the mother. *Hall* v. *Lefkowitz*, U.S.D.C., So. Dist. N.Y., 305 Fed. Supp. 1030 (1969). As appellee herein, he now supports New York's elective abortion law which subordinates the lives of appellant's wards to the unfettered discretion of pregnant women and their doctors. A party possessing such potentially conflicting interests cannot represent the fundamental personal interests of an absent party or fairly insure their protection. *Hansberry* v. *Lee*, 311 U.S. 32, 44, 45. Wright and Miller, *Federal Practice and Procedure*, Vol. 7A, No. 1789 at pp. 178–9. Mr. Justice White writing for the Court in *Blonder-Tongue Labs.* v. *University Foundation*, squarely stated the governing principle in these words:

"Some litigants—those who never appeared in a prior action—may not be collaterally estopped without litigating the issue. They have never had a chance to present their evidence and arguments on the claim. Due process prohibits estopping them despite one or more existing adjudications of the identical issue which stand squarely against their position." 402 U.S. 313, 329 (1971).

I(B). THE FUNDAMENTAL ERRORS.

The Court in *Wade* erred at the threshold when it decline to resolve the crucial question of whether abortion as a matter of fact kills a live human being, even though this is a fact upon which constitutional issues rest (page 15, *infra*). This fundamental error was evidently caused by the Court's misapprehension of the common law of abortion (page 8, *infra*) and the motivation behind early American anti-abortion statutes (page 10, *infra*) which led the Court to ignore the intent of the Framers of the Fourteenth Amendment: to bring within the aegis of the Due Process and Equal Protection Clauses every member of the human race regardless of age, stage or condition of wantedness (page 14, *infra*). The Court left itself without any reliable historical basis for its constitutional interpretation with the result that the Court both omitted to allude to its own prior interpretation of "person" under Section One of the Fourteenth Amendment (page 17, *infra*), and mistook the general status in law of unborn children (page 17, *infra*). Instead, the Court adverted to a number of criteria which it erroneously interpreted as proof that the unborn child is not a person under Section One of the Fourteenth Amendment (pages 19–23, *infra*).

The threshold error is the crucial error. As appellant demonstrates in this motion, the claims of constitutional right of appellant's wards turn on the issue of whether they are all live human beings. When the personal constitutional rights of a party depend on a fact in controversy, the duty rests upon this Court to resolve the fact in controversy for itself. *Napue* v. *Illinois*, 360 U.S. 264, 272 (1959). The Court cannot abdicate that duty without sapping its authority as fact-finder, judge and ultimate arbiter of federal rights.

Referring to another question of life-or-death import, Mr. Justice Marshall observed, "While this fact cannot affect our ultimate decision, it necessitates that the decision be free from any possibility of error" *Furman* v. *Georgia*, 408 U.S. 238, 316 (1972). *Wade* and *Bolton* are not free from error.

1. The historical errors

(a.) *Apparent acceptance of the pro-abortionist thesis that abortion was not a crime at common law (Wade, p. 21)*,[4] *and may even have been a "right" (Wade, p. 25), when Appellant had previously briefed the Court on the better view of history which is to the contrary.* Apparently relying on a single law review article, the Court in *Wade* concluded that it is "doubtful that abortion was ever firmly established as a common law crime even with respect to the destruction of a quick fetus." (*Wade*, pp. 20–21)

The Court is in error. Appellant has briefed the Court extensively on the common law history of abortion (Appellant's Brief, pp. A-8 to A-24). Appellant's Brief shows (i) that at least from Bracton's time onward, the common law sought ways to protect the unborn child from abortion from the moment his existence as a separate, live, biological human being could be scientifically demonstrated; (ii) that problems of proving that the unborn child had been alive when the abortional act was committed and that the abortion had been the cause of the child's death were, in the early law, considered insuperable barriers to prosecution; (iii) that thereafter quickening evolved in the law, not as a substantive judgment on when human life begins, but as an evidentiary device to prove that the abortional act had been an assault on a live human being; (iv) that outside the criminal law, the common law, unburdened of problems of proof, regarded the unborn child as in all respects a human being;[5] (v) that abortion after quickening, though a crime, was not homicide at common law (unless the child were born alive and then died) only because of the difficulty of proving that the abortional act had been the cause of the child's death; (vi) that the liability of the abortionist to a murder conviction, if the aborted child were born alive and then died, establishes that the unborn child was in law a person prior to birth because the common law defined crime as "generally constituted only from concurrence of an evil-meaning mind with an evil-doing hand" (*Morissette* v. *U.S.*, 342 U.S. 246, 251–52 [1952]), and the rule of concurrence means necessarily that the intrauterine victim of the abortional act was at the time of the act a human person, else the result could not be called murder; (vii) that problems of proof aside, abortion at any stage of pregnancy was considered *malum in se*, a secular crime against unborn human life, as evidenced by the application of the common law felony-murder rule to the death of the aborted woman (even prior to quickening)[6]—the theory being "that at common law the act of producing an abortion was always an assault for the double reason that a woman was not deemed able to assent to an unlawful act against herself, and for the further reason that *she was incapable of consenting to the murder of an unborn infant* * * *." *State* v. *Farnum*, 82 Ore. 211, 161 Pac. 417, 419 (1916) (emphasis added) (Motion for a Stay, pp. 7a–8a); (viii) that the application of the felony-murder rule to abortion belies the Court's statement in *Wade* that "abortion was viewed with less disfavor than under most American statutes currently in effect," (*Wade*, p. 25);[7] (ix) that in the face of the abortion-murder rule and the general medical disapproval of abortion, it cannot be assumed that "throughout the major portion of the 19th century prevailing legal abortion practices were far freer than they are today * * *." (*Wade*, p. 43), and finally, (x) that the common law is totally consistent with the claims of right of appellant's wards herein.

Footnotes at end of article.

(b.) *Apparent acceptance of the pro-abortionist thesis that 19th century anti-abortion legislation was intended solely to protect the pregnant woman (Wade, p. 36, citing only one case), when Appellant had previously briefed the Court on the overwhelming majority of State court decisions to the contrary.* The 19th century American anti-abortion legislation is a continuum of the efforts of the common law to protect the unborn child from abortion from the moment his existence as a separate, live, biological human being could be scientifically demonstrated.

The Court in *Wade* asserts that the American Medical Association's outcries against abortion, spanning the years 1859–1871, "may have played a significant rule in the enactment of stringent criminal abortion legislation during that period." (*Wade*, p. 26).[8] Yet while so admitting, the Court concludes that "the few state courts called upon to interpret their laws in the late 19h and early 20th centuries focused on the State's interest in protecting the woman's health rather than in preserving the embryo and fetus." (*Wade*, p. 36, citing only *State v. Murphy*, 27 N.J.L. 112, 114 [1858]). It is inconceivable that appellant's wards should be bound by such a finding when appellant has heretofore briefed the Court on:

(1) the amendment of the New Jersey abortion statute in 1972 designed "to protect the life of the child also, and inflict the same punishment, in case of its death, as if the mother should die." *State v. Gedicke*, 43 N.J.L. 86, 90 (1881). (Motion for a Stay, pp. 4a–6a).

(2) decisions from ten other states—all of which were rendered prior to the abortion "reform" movement of the 1960's (six prior to 1920, three between 1930 and 1940, and one in 1950)—which explicitly state that protection of the life of the unborn child was at least one of the purposes of the respective States' 19th century anti-abortion statutes. (Appendix A)*.

(3) decisions and statutes from nine other States (only one of the key decisions being later than 1907) which clearly imply the same intent. (Appendix A).[9]

(4) the better interpretation of early New York anti-abortion statutes as having as at least one of their purposes the protection of unborn children (in refutation of one of the law review articles upon which the Court relied) (Appellant's Brief, pp. (A29–A37).

Further, appellant submits that it is inconsistent for the Court in *Wade*, on the one hand, to admit that the A.M.A. statements may have influenced the passage of restrictive abortion legislation, and on the other hand, to find, in effect, that the Framers of the Fourteenth Amendment acted in defiance of both the 1859 A.M.A. statement and State legislation and deliberately created an unarticulated right of privacy which included the right to kill unborn children whom the Framers intended to exclude from Fourteenth Amendment protection. If that had been the intent of the Framers, one could hardly imagine three quarters of the State Legislatures ratifying the amendment while they were at the same time contemplating (or had already enacted) restrictive abortion legislation designed to protect unborn human children—especially if such legislation was the product of the A.M.A. statements cited by the Court. Then too, what evidence is there that the Framers did not share "[t]he anti-abortion mood prevalent in this country in the late 19th century * * *" (*Wade*, p. 26)?

Statutory law, common law and the prevalent mood converged in an Iowa case decided in 1868, the year in which the Fourteenth Amendment was ratified. *State v. Moore*, 25 Iowa 128 (1868) (Motion for a Stay, pp. 10a–11a), affirmed a conviction of murder for causing the death of a woman by an illegal abortion. The trial court had charged the jury:

"To attempt to produce a miscarriage, except when in proper professional judgment it is necessary to preserve the life of the woman, is an unlawful act. *It is known to be a dangerous act, generally producing one and sometimes two deaths—I mean the death of the unborn infant and the death of the mother.* Now, the person who does this is guilty of doing an unlawful act. If the death of the woman does not ensue from it, he is liable to fine and imprisonment in the county jail (act March 15, 1858, Revision, sec. 4221); and if the death of the woman does ensue from it, though there be no specific intention to take her life, he becomes guilty of the crime of murder in the second degree. The guilt has its origin, in such cases, in the unlawful act which the party designs to commit, and if the loss of life attend it as incident or consequence, the crime and guilt of murder will attach to the party committing such an unlawful act." 25 Iowa at 131–32 (emphasis added).

In upholding the charge, the Iowa court said: "We have quoted the court's language in order to say that it has our approval as being a correct statement of the law of the land." 25 Iowa at 132.

and further: ***"The common law is distinguished, and is to be commended, for its all-embracing and salutary solicitude for the sacredness of human life and the personal safety of every human being. This protecting, paternal care, enveloping every individual like the air he breathes, not only extends to persons actually born, but, for some purposes, to infants in ventre sa mere:*** **1 Bla. Com. 129.**

The right to life and to personal safety is not only sacred in the estimation of the common law, but it is inalienable. It is no defense to the defendant that the abortion was procured with the consent of the deceased.

The common law stands as a general guardian holding its aegis to protect the life of all. Any theory which robs the law of this salutary power is not likely to meet with favor." 25 Iowa at 135–36 (emphasis added).

Although the abortion in *State v. Moore* occurred after quickening, "no mention is made of the fact in the opinion," *State v. Harris*, 90 Kan. 807, 136 Pac. 264, 266 (1913), and the court was obviously speaking of the "sacred" and "inalienable" right to live of *all* unborn children.

(c) *Omission to allude to the recorded statements of intent of the Fourteenth Amendment Framers.* Unfortunately, the Court's errors in *Wade* are cumulative. Having been led astray on the common law and the motivation for 19th century anti-abortion legislation, the Court apparently (and, as it turns out, erroneously) felt that it could safely expound the status of the unborn child under the Fourteenth Amendment without reference to the intent of the Framers.

Fortunately we need not guess at the Framer's intent. It was to protect every live human being regardless of age, stage, or condition of wantedness. Congressman John A. Bingham who sponsored the Amendment in the House of Representatives noted that it is "universal" and applies to "any human being" (Appellant's Brief, p. 38). Congressman Bingham's counterpart in the Senate, Senator Jacob Howard, emphasized that the guarantee of equality in the Amendment protects "the humblest, the poorest, the most despised of the race." (*Id.*)

Appellant submits that it was error for the Court to expound the status of unborn children under the Fourteenth Amendment without reference to the expressed intent of the Framers, as further illuminated by the better view of the common law, the real motivation for the 19th century statutes, and the prevalent mood of the time—that the life of every unborn child is "sacred" and "inalienable." *State v. Moore, supra;* A.M.A. Statements, *supra.*

2. The errors on the questions of human life and human-legal person

(a) *Failure to resolve the threshold question of fact of whether an abortion kills a live human being.* The Framers intended that every life human being, every member of the human race, even the most unwanted, fall within the aegis of the Due Process and Equal Protection Clauses. History does not support the proposition that the Framers intended to exclude unborn children. The Court observed in *Wade* that "We need not resolve the difficult question of when life begins." (*Wade*, p. 44). But the Court erred at the threshold when it failed to determine whether an individual human life has already begun before an abortion takes place. That was precisely the constitutional fact to be resolved by the Court before it could even address itself to the rights of unborn children. "There is a long line of judicial construction which establishes as a principle that the duty rests on the court to decide for itself facts or constructions upon which federal constitutional issues rest." *Napue v. Illinois*, 360 U.S. 264, 272 (1949). (Appellant's Brief, pp. 7–8). What is at issue in the instant appeal is not a "theory of life" (cf. *Wade*, p. 47), but the "fact of life." The lack of "consensus" among those trained in the respective disciplines of medicine, philosophy, and theology" (*Wade*, p. 44) is not a lack of consensus on the fact of the existence of human life before birth—that is established beyond cavil by the unchallenged biological-medical-genetic-fetological evidence in the case at bar—but on the value of a human life already in existence.[10] That value judgment was made over one hundred years ago, on a constitutional level, and as a matter of binding law, by the Framers of the Fourteenth Amendment. A "consensus" is not relevant. "One's right to life * * * depend[s] on the outcome of no elections." *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 638 (1943). (Appellant's Brief, p. 44)

The Court in *Wade* erroneously omitted to resolve the threshold issue of fact—that abortion kills a live human being—which is, by virtue of the statements of intent of the Framers, a fact upon which constitutional issues rest.

(b.) *Failure to advert to the Court's own explication of "person" as that term is used in Section One of the Fourteenth Amendment.* Heretofore, the Court's explication of "person" in Section One of the Fourteenth Amendment has been consistent with the intent of the Framers. In *Levy v. Louisiana*, 391 U.S. 68, 70 (1968), the Court identified such persons as those who "are humans, live and have their being." By rational, modern, biological-genetic-medical-fetological standards, Appellants wards are humans, live and have their being. (See page 5, *supra*, and see Appellants Brief, pp. 8–19). It is this evidence, not personal or legislative predilection, that controls. "To say that the test of equal protection should be the 'legal' rather than the biological relationship is to avoid the issue. For the Equal Protection Clause necessarily limits the authority of a State to draw such 'legal' lines as it chooses." *Glona v. American Guarantee Co.*, 391 U.S. 73, 75–76 (1968). (Appellant's Brief, pp. 33–36)

(c.) ***That statement that, "In areas other than criminal abortion the law has been reluctant to endorse any theory that life, as we recognize it, begins before birth or to accord legal rights to the unborn except in narrowly defined situations when the rights are contingent upon live birth."*** **(*Wade*, p. 46). The Court erred. Appellant has heretofore briefed the Court on cases**

Footnotes at end of article.

in which an unwilling pregnant woman was required to submit to a blood transfusion, despite her religious objections, because "the unborn child is *entitled* to the law's protection." (Appellant's Brief, pp. 21–30, citing, *inter alia*, *Raleigh Fitkin-Paul Morgan Memorial Hospital v. Anderson*, 42 N.J. 421, 201 A.2d 537, 538, *cert. den.*, 377 U.S. 985 [1964], emphasis added). Obviously, the unborn children in these cases were recognized as human persons before birth—only persons are "entitled" to the law's protection—and just as obviously, their rights were not contingent upon birth.

The common law regarded the unborn child as a live human being in all situations except that in the criminal law problems of proof gave rise to the quickening dichotomy. *Hall v. Hancock*, *supra*. The "traditional rule of tort law" that "denied recovery for prenatal injuries even though the child was born alive." (*Wade*, p. 46) is no tradition at all. It was first promulgated in 1884 (*Dietrich v. Inhabitants of Northampton*, 138 Mass. 14); it was severely criticized in a scholarly New York Law Revision Commission Study for its misunderstanding of law and science (*Communication of the Law Revision Commission to the Legislature Relating to Prenatal Injuries* 5–6, 24–25 [1935], reprinted in Law Revision Commission: Report, Recommendations and Studies, 449, 453–54, 472–73 [1935]); it was totally discredited in 1946 on the ground that, "From the viewpoint of the civil law and the law of property, a child *en ventre sa mere* is not only regarded as [a] human being, but as such form the moment of conception—which it is in fact," (*Bonbrest v. Kotz*, 65 F. Supp. 138, 140 [D.D.C.]); and it is now in all but total disrepute. (Appellant's Brief, p. 36)

The whole thrust in the law, outside the abortion "reform" movement, is to recognize the unborn child for exactly what he is—a live human being.

3. *The errors in the interpretation of criteria purportedly negativing the personhood of unborn children*

(a.) *The statement that "appellee conceded on reargument that no case could be cited that holds that a fetus is a person within the meaning of the Fourteenth Amendment."* (*Wade*, p. 41, footnote omitted). Appellant herein would make two observations:

First, the inability of appellee in *Wade* to cite a case in answer to a question does not mean that the case does not exist, nor can it govern the rights of appellant's wards herein. Appellant has cited to the Court the statement in *Steinberg v. Brown*, 321 F.Supp. 741, 746–47 (N.D. Ohio 1970) that, "Once human life has commenced, the constitutional protection found in the Fifth and Fourteenth Amendments impose upon the state the duty of safeguarding it." (Appellant's Brief, p. 5) (Of course an attempt *might* be made to denigrate the *Steinberg* statement as *dictum* and not holding, but this hardly seems relevant in the context of the Court's question in *Wade*.) Appellant has also called to the Court's attention statements in *State v. Moore*, 25 Iowa 128 (1868) (Motion for a Stay, pp. 10a–11a); *People v. Sessions*, 58 Mich. 594, 26 N.W. 291 (1885) (Appellant's Brief, p. A–17; Motion for a Stay, pp. 13a–14a), and *Gleitman v. Cosgrove*, 49 N.J. 22, 227 A.2d 689 (1967) (Appellant's Brief, pp. 65–66) which, in paraphrase of the Declaration of Independence, characterize the lives of unborn children of all gestational ages as "sacred" and "inalienable." The Constitution incorporates the basic guarantees of the Declaration (Appellant's Brief, p. 68). Unless we are to assume that the Framers of the Fourteenth Amendment intended to strip live human beings of their sacred and inalienable right to live, *Moore*, *Sessions* and *Gleitman* must be interpreted as holding that appellant's wards are persons under Section One of the Fourteenth Amendment. Appellant has also cited to the Court the cases requiring a pregnant woman to undergo a blood transfusion because the unborn child is "entitled" to the law's protection. Only human persons are "entitled" to the law's protection, and the blood transfusion cases must be taken as decisions of Fourteenth Amendment significance.

Second, the absence of any such decision should not be influential. As Mr. Justice Brennan stated in another life-or-death context, "The constitutionality of death itself under the Cruel and Unusual Punishments clause is before this Court for the first time; we cannot avoid the question by recalling past cases that never directly considered it." *Furman v. Georgia*, 408 U.S. 238, 285 (1972).

(b.) *The statement that, "We are not aware that in the taking of any census under this clause, a fetus has ever been counted."* (*Wade*, p. 42, note 53). Appellant submits that corporations are not counted in a census either, but they too are Fourteenth Amendment persons (discussed under a separate point heading in Appellant's Brief, p. 49).

(c.) *The statement that, "When Texas urges that a fetus is entitled to Fourteenth Amendment protection as a person, it faces a dilemma. Neither in Texas nor in any other States are all abortions prohibited."* (*Wade*, p. 42, note 54). Appellant has discussed the relevant doctrine of legal necessity (which applies to postnatal as well as prenatal human beings) under a separate point heading at pages 52–54 of Appellant's Brief.

(d.) *The statement that, "Further, the penalty for criminal abortion specified by Art. 1195 is significantly less than the maximum penalty for murder prescribed by Art. 1257 of the Texas Penal Code. If the fetus is a person, may the penalties be different?"* (*Wade*, pp. 42–43, note 54). Indeed, the penalties may be and are different because States are free to recognize "degrees of evil" and treat offenders accordingly. *Skinner v. Oklahoma*, 316 U.S. 535, 540 (1942). Killing an unborn child may, in legislative judgment, involve less personal malice than killing a child after birth even though the result is the same (discussed under a separate point heading in Appellant's Brief, pp. 50–51).

(e.) *The statement that, "It has already been pointed out, n. 49, supra, that in Texas the woman is not a principal or an accomplice with respect to an abortion upon her."* (*Wade*, p. 42, note 54). The reasons appear to be historical and pragmatic, and totally unrelated to the personhood of the unborn child. *Historically*, abortion was viewed as an assault upon the woman because she "was not deemed able to assent to an unlawful act against herself," *State v. Farnum*, 82 Ore. 211, 161 Pac. 417, 419 (1916). As a result the woman was considered a victim rather than a perpetrator of the abortion.[11] *Pragmatically*, conviction of the abortionist would frequently depend upon the testimony of the aborted woman, especially if a subjective element like quickening were at issue. The woman could hardly be expected to testify if her testimony automatically incriminated her. *People v. Nixon*, —— Mich. App. ——, 201 N.W. 2d 635, 645–46 (Mich. 1972, concurring and dissenting opinion of Burns, J.). The omission to incriminate the woman is no more than a statutory grant of immunity.

(f.) *The statement that, "Montana v. Rogers, 278 F.2d 68, 72 (CA 7 1960), aff'd sub nom. Montana v. Kennedy, 366 U.S. 308 (1961)" "is in accord" with the proposition "that the word 'person' as used in the Fourteenth Amendment, does not include the unborn."* (*Wade*, p. 43, footnote omitted.) *Montana* was decided under the Citizenship Clause, not the Due Process and Equal Protection Clauses, and is therefore irrelevant (discussed under a separate point heading in Appellant's Brief, pp. 49–50, and see *Byrn v. N.Y.C. Health & Hospitals Corp.*, 38 A.D. 2d 316, 329, 329 N.Y.S.2d 722, 734 [1972]).

(g.) *The statement that "Keeler v. Superior Corut, —— Cal. ——, 470 P.2d 617 (1970) and State v. Dickinson, 23 Ohio App. 2d 259, 275 N.E.2d 599 (1970)" are "in accord with" the proposition "that the word 'person,' as used in the Fourteenth Amendment, does not include the unborn."* (*Wade*, p. 43, footnote omitted). Neither *Dickinson* nor *Keeler* was an abortion case. Under a separate point heading in Appellant's Brief, pages 54–55, three reasons are given why the cases are both irrelevant to the instant appeal and correct on their facts. Appellant will not repeat the reasons here.

None of the seven negative criteria cited by the Court (pages 19 through 22, *supra*) supports a finding that the unborn child is not a person under Section One of the Fourteenth Amendment.

* * * * *

In previous papers submitted to the Court on the instant appeal, appellant has provided the answer to virtually every erroneous proposition advanced by the Court in *Wade*. Appellant submits that fundamental fairness requires that the claims of right of appellant's wards not be summarily dismissed on the basis of precedent containing these fundamental errors; rather appellant ought to be accorded a full hearing on the merits.

II. FUNDAMENTAL FAIRNESS REQUIRES A HEARING.

The constitutional right of life of unborn children was not, and could not, be "inferentially determined in *Vuitch*," (*Wade*, p. 43) and should not be determined by *obiter* in *Wade* and *Bolton*. If the Court should dismiss the instant appeal on the authority of *Wade* and *Bolton*, unborn children, including appellant's wards, will be left rightless without ever having been heard. Such a holding would lower a judicial iron curtain in every court in the nation against the future standing of unborn children to claim protection for their lives. A judicial holding that condemns an entire class of live human beings to oblivion without a hearing is lacking in the fundamental fairness that is the very foundation of due process.

The crucial constitutional fact before the Court is not when life begins but recognition that an individual human life has begun before the abortion takes place. At least for purposes of postponing jurisdiction until after a hearing on the merits, that fact is as worthy of judicial notice as the notice taken by the Court of "the normal 266-day human gestation period" (*Wade*, p. 10) for purposes of giving standing to *Roe*.

Byrn is the only case that directly presents the voice of unborn children, themselves, to the Court. It is certainly not an ordinary case. It is a case of first impression presenting a constitutional issue of great magnitude—the extent to which human life itself is protected under the Constitution. The Court has indicated its awareness "of the well known facts of fetal development" (*Wade*, p. 41), and knows that ova, sperm and zygotes are not being aborted under New York's Elective Abortion Law. No troublesome judicial notice need be taken in *Byrn*.[12] The medical and scientific testimony of experts is in the record and directly before the Court. It is uncontradicted and was accepted by all of the judges in the Courts below. Only in *Byrn* are the unborn children, whose lives depend on the outcome, directly before the Court. The vital criterion as to the standing of those children is not birth but that they live. There is no superior element in the crude fact of expulsion from a uterus that would render it a satisfactory 20th Century determinant of legal human existence. Live, not birth, is the essential element worthy of recognition.

A matter so grave as excluding live human beings from basic constitutional protections should not become part of the fabric of our

Footnotes at end of article.

jurisprudence without full opportunity for the affected human beings, themselves, to be heard.

Fundamental fairness requires that this Court afford that opportunity to appellant's wards.

III. THE DANGEROUS IMPLICATIONS

A. Compulsory abortion

In *Wade*, the court grounded its holding in "the right of personal privacy," but noted that "this right is not unqualified and must be considered against important state interests in regulation." (*Wade*, p. 39) in support of this qualification and as an example of an appropriate state limitation on the right of privacy, the Court cited *Buck* v. *Bell*, 274 U.S. 200 (1927) which upheld the validity of a state statute providing for compulsory sterilization of mental defectives whose affliction was hereditary (*Wade*, p. 39). *By implication in* Wade *the Court espoused the constitutional validity of State-imposed compulsory abortion of unborn children diagnosed intrautero as mentally defective.* Neither the child's constitutional rights (of which the Court could find none) nor the mother's right of privacy (which the Court found limited by the State's "interest" in preventing the birth of mental defectives) could, according to *Wade*, be interposed to challenge such a statute. The spectre of compulsory abortion assumes additional substance when one reads (within a page of a citation to *Buck* v. *Bell*) that certain enumerated situations "make an early abortion the only civilized step to take." (Douglas, J., concurring in *Wade* and *Bolton*, p. 8). Presumably, under *Wade*, the State would have an interest, sufficiently compelling, to mandate "the only civilized step to take," *i.e.*, abortion.

B. Execution of a sentence of death upon a pregnant woman

In *Furman* v. *Georgia*, 408 U.S. 238 (1972) it was speculated that capital punishment might not be unconstitutional so long as it was mandatorily imposed (408 U.S. at 413, dissenting opinion of Blackmun, J.). Assuming this to be true, *Wade* would permit a State to execute a pregnant woman (under an appropriate mandatory capital punishment statute) at any time during pregnancy up to the moment before the birth of a child. The sense of reverence for the life of an unborn child, which in the past has underpinned state policies of delaying execution of an condemned pregnant woman until the birth of her child (see Appellant's Brief, pp. 30–32, 62–64, A24–A28), is nowhere evident in *Wade*.

C. Involuntary euthanasia

The Court in *Wade* refused "to resolve the difficult question of when life begins" because "medicine, philosophy and theology are unable to arrive at any consensus," (*Wade*, p. 44)[12] even though the Court had before it in briefs of appellee and *amici* "at length and in detail the well-known facts of fetal development." (*Wade*, p. 41). These well-known facts include the fact that an eight week old unborn child (for instance) is in genetics, in biology, in medical science, and in appearance nothing less than an individuated, irreversible, live human being. (See Appellant's Brief, pp. 8–10) The controversy to which the Court refers, involves not whether abortion kills a live human being, but whether that live human being is worth keeping alive or, to put it another way, whether he may be killed with impunity. The factual judgment is clear and inevitable; what is at issue is a subjective, individual judgment of whether the life of a human being distinguished from other human beings only by dependency, is "meaningful" (cf. *Wade*, p. 84).[14] The same kind of controversy could, of course, arise at the end of life. Because of illness, age or incapacity a live human being, indistinguishable from other live human beings except by dependency, might be claimed by some in the disciplines of medicine, philosophy and theology to be no longer alive in a "meaningful" way.[15] On the precedent of *Wade* and the Court's unwillingness to recognize the fact of life unless there is a "consensus," a State would seem to be free to remove a live human being (*e.g*, a senile elderly individual) from the law's protection, and the "process of death" (compare the "process of conception." *Wade*, p. 45)' could then be hastened by those who found that the care of this live human being had forced upon them "a distressful life and future." (Compare *Wade*, p. 38).

The prospect of involuntary euthanasia is no mere hobgoblin. It results from the Court's abandonment in *Wade* of the constitutional fact doctrine set forth in *Napue* v. *Illinois* (page 16 *supra*). The Court's refusal to resolve the crucial question of the fact of life, because of a lack of "consensus," establishes a precedent that is as far reaching as involuntary euthanasia.

D. Selectivity in Recognizing only some human beings as fourteenth amendment persons

To the extent that *Wade* is to be read to mean that not all live human beings are "persons" within the Fourteenth Amendment Equal Protection and Due Process clauses, it is a dangerous departure from the intent of the Framers and the Court's own prior interpretation of the word "person" as used therein (Appellant's Brief pp. 33–38). Once these clauses cease to have universal application to all who are humans, live and have their being, the Fourteenth Amendment ceases to be viable. Every unwanted person may justly feel imperiled.

CONCLUSION

Traditional reverence for human life cannot long survive in a society that surrenders to doctors, or anyone else, a choice to determine who shall live and who shall die. Forty-five years ago this Court upheld compulsory sterilization of the feeble-minded in these words:

"The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes." *Buck* v. *Bell*, 274 U.S. 200, 207.

The analogy is clear. *The principle that sustains termination of unwanted pregnancies is broad enough to cover the termination of unwanted lives.*

In Germany, earlier in this century, doctors advanced medico-sociological "final solutions" to the problems of the unwanted. In this way mercy killing of the senile and the incurably insane became an accepted part of "good" medicine. Great numbers of sane intellectuals and middle class professional people accepted a new ethic that demanded "life have quality", and then proceeded to carry that ethic to its logical conclusion until the "Judgment at Nuernberg." Only at its peril does society strike, as ours has started to do, at the fundamental conscience of its doctors. It is not the doctor's province to make a value judgment of a human life. His task is to help where he can, relieve pain and continue to treat illness which is beyond cure. This Court should not give impetus to a new ethic foreign to our traditions and to the reverence for all life embedded in the Declaration of Independence. *Wade* and *Bolton* should be courageously "re-examined without fear and revised without reluctance rather than to have the character of our law impaired, and the beauty and harmony of the system destroyed by the perpetuity of error." 1 Kent's Commentaries 13th Ed. 477.

Wherefore, it is respectfully requested that the Court postpone determination of the question of jurisdiction and of the motions now pending before it to affirm or dismiss the appeal herein until a hearing of the case on the merits.

APPENDIX A

I. Courts which have declared unambigously that one of the purposes of their early anti-abortion statutes was the protection of unborn children:

Alabama—Trent v. *State*, 15 Ala. App. 485, 73 So. 834 *cert. den.*, 198 Ala. 695, 73 So. 1002 (1916)

Colorado—Dougherty v. *People*, 1 Colo. 514 (1872)

Idaho—Nash v. *Meyer*, 54 Idaho 283, 31 P. 2d 273 (1934)

Kansas—State v. *Miller*, 90 Kan. 230, 133 Pac. 878 (1913)

New Jersey—State v. *Gedicke*, 43 N.J.L. 86 (1881)

Ohio—State v. *Tippie*, 89 Ohio St. 35, 105 N.E. 75 (1913)

Oklahoma—Bowlan v. *Lunsford*, 176 Okla. 115, 54 P.2d 666 (1936)

Oregon—State v. *Ausplund*, 86 Ore. 121, 167 Pac. 1019 (1917), *rehearing den.*, 87 Ore. 649, 171 Pac. 395 (1917) *appeal dismissed* on consent, 251 U.S. 563 (1919)

Vermont—State v. *Howard*, 32 Vt. 380 (1859)

Virginia—Anderson v. *Commonwealth*, 190 Va. 665, 58 S.E. 2d 72 (1950)

Washington—State v. *Cox*, 197 Wash. 67, 84 P.2d 357 (1938)

II. Courts which have clearly implied that that one of the purposes of their early anti-abortion statutes was the protection of unborn children:

Iowa—State v. *Moore*, 25 Iowa 128 (1868) (1 Harris 631) (1850) (common law)

Maine—Smith v. *State*, 33 Maine 48 (1851)

Maryland—Worthington v. *State*, 92 Md. 222, 48 Atl. 355 (1901)

Michigan—People v. *Sessions*, 58 Mich. 594, 26 N.W. 291 (1886)

Indiana—Montgomery v. *State*, 80 Ind. 338 (1881)

Nebraska—Edwards v. *State*, 79 Neb. 251, 112 NW 611 (1907)

New Hampshire—Bennet v. *Hymers*, 101 N.H. 483, 147 A.2d 108 (1958)

Pennsylvania—Mills v. *Commonwealth*, 13 Pa. St. 630 (1 Harris 631) (1850) (common law)

Utah—State v. *Crook*, 16 Utah 212, 51 Pac. 1091 (1898)

FOOTNOTES

[1] The proceedings below and the prior proceedings before the Court are set forth in appellant's Jurisdictional Statement (hereinafter referred to as Juris. State.) filed September 14, 1972, appellant's Motion to Expedite Consideration of Jurisdiction, filed September 14, 1972 and denied October 10, 1972, appellant's Brief in Opposition to Motions to Dismiss, filed October 21, 1972 (hereinafter referred to as Appellant's Brief), and appellant's Application for a Temporary Restraining Order (hereinafter referred to as Motion for a Stay), filed January 5, 1973 and denied by Mr. Justice Marshall January 11, 1973 and by the Court, January 22, 1973 (A–721).

[2] During reargument of *Bolton*, October 11, 1972, the Assistant Attorney General of Georgia stated, "I do not directly represent the unborn children here * * * their representation by a guardian ad litem was denied by the court below." *Doe* v. *Bolton*, Tr. of Rearg. 21–22.

[3] *Roe* v. *Wade*, Tr. of Rearg. pp. 38–39.

[4] Unless otherwise indicated, page references are to the slip opinions in *Wade* and *Bolton*.

[5] "We are also of opinion that the distinction between a woman being pregnant, and being quick with child, is applicable mainly, if not exclusively, to criminal cases * * *." *Hall* v. *Hancock*, 15 Pick. 255, 257 (Mass. 1834).

[6] See the cases collected in *State v. Harris*, 90 Kan. 807, 136 Pac. 264 (1913).

[7] The Court also erred when it concluded that prior to the incrimination of pre-quickening abortions in the 19th century, "a woman enjoyed a broader right to terminate a pregnancy than she does today." (*Wade*, p. 25). A lack of criminal prosecution cannot be translated into an historical right. At common law, larceny by false promise was not a crime, *Chaplin v. U.S.*, 157 F. 2d 697, (D.C. Cir. 1946), but few would claim that a thief "enjoyed a broader right" to commit a fraudulent larceny than he does today.

[8] The outcries, of course, were against "the destruction of human life." (*Wade*, p. 26, quoting the 1859 report of the A.M.A. Committee on Criminal Abortion), whether before or after quickening. "We had to deal with human life. In a matter of less importance we could entertain no compromise. An honest judge on the bench would call things by their proper names. We could do no less." (*Wade*, p. 27, quoting the 1871 report of the A.M.A. Committee on Criminal Abortion). No subsequent medical society or bar association statement, referred to by the Court (see *Wade*, pp. 27–32), denies that abortion, as a matter of fact, kills a live human being.

[9] The cases are also set forth in Appellant's Motion for a Stay, pp. 1a–9a and 10a–18a.

[10] Appellant would also point out that the existence of each of his wards has been confirmed by a pregnancy test. (Appellant's Brief, p. 10). We do not deal here with "obscurity," but with the "known rather than the unknown." (Cf. concurring opinion of Douglas, J. in *Wade* and *Bolton*, p. 10). See *State v. Sudol*, 43 N.J. Super. 481, 129 A.2d 29, 33, *cert. den.*, 25 N.J. 132, 135 A.2d 248 (1957), *cert. den.*, 355 U.S. 964 (1957), holding that modern science has advanced to a point where a court is justified in taking judicial notice of the accuracy of a confirmed pregnancy test. (See Motion for a Stay, p. 5a)

Appellant, of course, would not concede that *any* human life is *de minimis*.

[11] There is, however some authority that "the mother may be guilty of the murder of a child in *ventre sa mere*, if she takes poison with an intent to poison it, and the child is born alive, and afterwards dies of the poison." *Beale v. Beale*, 1 P.Wms. 244, 246, 24 English Reports 373 (ch. 1713).

[12] Chief Justice Burger, concurring in *Wade* and *Bolton* noted "I am somewhat troubled that the Court has taken notice of various scientific and medical data in reaching its conclusion." Slip Opinion p. 1.

[13] But see *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 638 (1943): "One's right to life * * * depend[s] on the outcome of no elections."

[14] See, *e.g.*, *Editorial*, California Medicine, Vol. 113, No. 3, p. 68 (Sept. 1970) (Appendix B).

[15] See, *e.g.*, Fletcher, *Indicators of Humanhood*, The Hastings Center Report, vol. 2, No. 5, p. 1 (November 1972).

APPENDIX B

(This editorial is preprinted from "California Medicine," Official Journal of the California Medical Association, Volume 113, Number 3, Pages 67–68, September, 1970)

A NEW ETHIC FOR MEDICINE AND SOCIETY

The traditional Western ethic has always placed great emphasis on the intrinsic worth and equal value of every human life regardless of its stage or condition. This ethic has had the blessing of the Judeo-Christian heritage and has been the basis for most of our laws and much of our social policy. The reverence for each and every human life has also been a keystone of Western medicine and is the ethic which has caused physicians to try to preserve, protect, repair, prolong and enhance every human life which comes under their surveillance. This traditional ethic is still clearly dominant, but there is much to suggest that it is being eroded at its core and may eventually even be abandoned. This of course will produce profound changes in Western medicine and in Western society.

There are certain new facts and social realities which are becoming recognized, are widely discussed in Western society and seem certain to undermine and transform this traditional ethic. They have come into being and into focus as the social by-products of unprecedented technologic progress and achievement. Of particular importance are, first, the demographic data of human population expansion which tends to proceed uncontrolled and at a geometric rate of progression; second, an ever growing ecological disparity between the numbers of people and the resources available to support these numbers in the manner to which they are or would like to become accustomed; and third, and perhaps most important a quite new social emphasis on something which is beginning to be called the quality of life, a something which becomes possible for the first time in human history because of scientific and technologic development. These are now being seen by a growing segment of the public as realities which are within the power of humans to control and there is quite evidently an increasing determination to do this.

What is not yet so clearly perceived is that in order to bring this about hard choices will have to be made with respect to what is to be preserved and strengthened and what is not, and that this will of necessity violate and ultimately destroy the traditional Western ethic with all that this portends. It will become necessary and acceptable to place relative rather than absolute values on such things as human lives, the use of scarce resources and the various elements which are to make up the quality of life or of living which is to be sought. This is quite distinctly at variance with the Judeo-Christian ethic and carries serious philosophical, social, economic and political implications for Western society and perhaps for world society.

The process of eroding the old ethic and substituting the new has already begun. It may be seen most clearly in changing attitudes toward human abortion. In defiance of the long held Western ethic of intrinsic and equal value for every human life regardless of its stage, condition or status, abortion is becoming accepted by society as moral, right and even necessary. It is worth noting that this shift in public attitude has affected the churches, the laws and public policy rather than the reverse. Since the old ethic has not yet been fully displaced it has been necessary to separate the idea of abortion from the idea of killing, which continues to be socially abhorrent. The result has been a curious avoidance of the scientific fact, which everyone really knows, that human life begins at conception and is continuous whether intra- or extra-uterine until death. The very considerable semantic gymnastics which are required to rationalize abortion as anything but taking a human life would be ludicrous if they were not often put forth under socially impeccable auspices. It is suggested that this schizophrenic sort of subterfuge is necessary because while a new ethic is being accepted the old one has not yet been rejected.

It seems safe to predict that the new demographic, ecological and social realities and aspirations are so powerful that the new ethic of relative rather than of absolute and equal values will ultimately prevail as man exercises ever more certain and effective control over his numbers, and uses his always comparatively scarce resources to provide the nutrition, housing, economic support, education and health care in such ways as to achieve his desired quality of life and living. The criteria upon which these relative values are to be based will depend considerably upon whatever concept of the quality of life or living is developed. This may be expected to reflect the extent that quality of life is considered to be a function of personal fulfillment; of individual responsibility for the common welfare, the preservation of the environment, the betterment of the species; and of whether or not, or to what extent, these responsibilities are to be exercised on a compulsory or voluntary basis.

The part which medicine will play as all this develops is not yet entirely clear. That it will be deeply involved is certain. Medicine's role with respect to changing attitudes toward abortion may well be a prototype of what is to occur. Another precedent may be found in the part physicians have played in evaluating who is and who is not to be given costly long-term renal dialysis. Certainly this has required placing relative values on human lives and the impact of the physician to this decision process has been considerable. One may anticipate further development of these roles as the problems of birth control and birth selection are extended inevitably to death selection and death control whether by the individual or by society, and further public and professional determinations of when and when not to use scarce resources.

Since the problems which the new demographic, ecologic and social realities pose are fundamentally biological and ecological in nature and pertain to the survival and well-being of human beings, the participation of physicians and of the medical profession will be essential in planning and decision-making at many levels. No other discipline has the knowledge of human nature, human behavior, health and disease, and of what is involved in physical and mental well-being which will be needed. It is not too early for our profession to examine this new ethic, recognize it for what it is and will mean for human society, and prepare to apply it in a rational development for the fulfillment and betterment of mankind in what is almost certain to be a biologically oriented world society.

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[From California Medicine, September 1970]

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APPENDIX C

CONTEMPORARY VIEWS ON PROTECTING UNBORN LIFE AND ANTIABORTION

United Nations Declaration on the Rights of the Child, (promulgated by the General Assembly in 1959.) It reads, in relevant part:

"The child . . . shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate *pre-natal and post-natal care.*" And elsewhere in the same document it states:

"the child by reason of his physical and mental immaturity, needs special safeguards and care, *including appropriate legal protection, before as well as after birth.*"

"Declaration of Geneva", (medical oath adopted by the General Assembly of the World Medical Association in 1948.) It states, in relevant part:

"I will maintain the utmost respect for human life, from the time of conception; even under threat, I will not use my medical knowledge contrary to the laws of humanity."

Karl Barth, (considered by many to be the pre-eminent Protestant theologian of this century): "The unborn child," he wrote, "is from the very first a child. It is still developing and has no independent life. But it is a man and not a thing . . . He who kills germinating life kills a man."

Dietrich Bonhoeffer, (the famed Protestant philosopher and theologian who ended his days in a Nazi concentration camp): "To raise the question whether we are here concerned with a human being or not is merely to confuse the issue. The simple fact is that God certainly intended to create a human being and that this innocent human being has been deliberately deprived of his life. And that is nothing but murder."

Dr. George Hunton Williams, (Hollis Professor of Divinity at Harvard University): "The Catholic Church is here defending the very frontier of what constitutes the mystery of our being. At the other end of this front line is the struggle against euthanasia (in the district and deliberate sense). Unless these frontiers are vigilantly defended, the future is grim with all the prospects of man's cunning and contrived manipulation of himself and others. Next to the issue of peace in the world, I feel the opposition to abortion and euthanasia constitutes the second major moral issue of our society (racial integration and the preservation of the family being third and fourth in the American perspective of priorities). In the cause of defending the rights of the unborn, all Christians should be rallied.

"The Catholic position on abortion should not be assailed as 'sectarian' or deplored by some Protestants as "too harsh' in the present ecumenical climate. Historically the position is in fact Judeo-Christian."

Dr. Billy Graham, (widely known and respected contemporary Protestant evangelist): "Murder is murder, whether you shoot the victim with a revolver, or disconnect his life support mechanisms.

"Abortion, like many other questionable things, is a symptom of something more serious than the act itself. It has long been allowed by society, when the life of the mother is endangered, but today, all too often, it is occasioned by the breaking of God's laws on sex. Unwanted pregnancy is the result, not the cause of the difficulty. If you really want to stop 'runaway' abortion, then you must first start with the human heart, not the body. The Bible says, 'Keep thy heart with all diligence, for out of it are the issues of life.' (Proverbs 4:23).

"Physicians say that the complications from a 'vacuum abortion' are relatively few. But when you tamper with the body in what some have called the 'voiceless injustice," it is also possible to damage the soul.

"Few women plan to have an abortion. It suddenly appears as the answer to a dilemma. But, ask the woman who has had one—it carriers a heavy price.

"Even if abortion were legalized, no law could take away the feelings of guilt which inevitably accompany it. You don't violate the sacredness of life with impunity. Any position which doesn't respect the rights of the unborn is a position which opposes those rights. As Deuteronomy 30:19 says, 'See, I have set before you life and death . . . choose life.' "

The Conference of Rabbis of the Chief Rabbinate of the Holy Land: "Abortion, except when necessary to save the mother's life, is in the category of the killing of innocent human life."

The Rabbinical Alliance of America, (supported by the entire Orthodox Rabbinate as well as by Jewish lay groups such as the Agudah Women of America and the National Council of Young Israel) urged the immediate repeal of New York's liberalized abortion law, which it described as "the most vicious and barbaric law" in the history of the state. "Abortion is not as its advocates say a private, personal matter in which the law should not interfere. Where human life is at stake, the law has always interfered and must continue to interfere . . ."

APPENDIX D

[From the Evening Star and Daily News, Apr. 17, 1973]

WOMEN LEAD OPPOSITION TO ABORTION

(By John Lear)

Although the recent Supreme Court decision upholding the legality of abortion was based largely on the argument that women have a constitutional right to make a personal decision concerning the children they will bear. American women themselves are not as determined to exercise that right as men are to guarantee it.

This is perhaps the most surprising finding of a public opinion survey just reported by political scientists at the University of Michigan's Institute for Social Research.

The survey disclosed that only a short time before the Supreme Court in January voted 7–2 in support of the view that the Constitution protects the right to abortion, a majority of the eligible voters of the country were opposed to abortion.

The data came from computer analysis of answers given by a sample of 2,738 citizens questioned between Sept. 15 and Nov. 6, 1972

by ISR surveyors. The sample was statistically representative of the whole electorate, and the weight of preference against abortion was roughly 3-2.

When the responses to the ISR questionnaire were separated according to sex, women in all three of the age brackets covered were found to be slightly more opposed to abortion than were men. Here are the figures:

Over age 60—men 67, women 72.

30 to 60 years of age—men 58, women 60.

Under 30 years of age—men 43, women 49.

Among the respondents in the under-30 age group, where a majority of both sexes favored abortion, the number of women opposed to abortion was 6 percent higher than the number of men.

In June, during the California primary, Dr. Warren Miller of ISR's Center for Political Studies, decided to include the abortion question in the 1972 edition of a pre-election survey ISR has been conducting regularly for a quarter century. By then, abortion not only had attained the status of a nationally debated social problem but seemed likely to become an active issue in the presidential campaign. The ISR survey received the following percentages of favorable responses to these four statements:

Abortion should never be forbidden—25 percent.

Abortion should be allowed in any case in which the prospective mother would have difficulty in bringing up her child—17 percent.

Abortion should be permitted only when the life of the mother would be endangered by the birth—47 percent.

Abortion should never be allowed—11 percent.

Although those absolutely in favor of abortion were more than twice as numerous as those absolutely opposed, the holders of the two extreme positions, together totaled only a shade more than one-third of the population sample.

Since those who expressed a more moderate view accounted for almost two-thirds of the sample, analysts agreed that the most accurate separation of the data would combine the responses to the first two statements and juxtapose them against the combined responses to the last two. The result was 42 percent favorable to abortion, 58 percent opposed.

Because opposition to abortion is a tenent of modern Roman Catholic teaching, a substantial component of the opposition sentiment could be expected to be Catholic. The ISR data confirmed that expectation.

Of Catholics in the sample, 67 percent were opposed to abortion. But Catholics make up something less than a quarter of the population of the country and obviously could not alone account for an electoral majority in opposition. The balance had to be made up by non-Catholics. And when all Protestants were counted together, 59 percent of them were found to be lined up with the Catholics. Only Jews were steadfastly in favor of abortion and overwhelmingly so (82 percent).

Other differences became noticeable when the so-called "establishment" Protestants (Congressionalists, Episcopalians, Lutherans, Presbyterians, and several smaller groups) were split off from the more fundamentalist Protestant denominations. The Protestant "establishment" then was seen to have a 1 percent majority in favor of abortion while 63 percent of the far more numerous fundamentalists were opposed.

An even more interesting difference surfaced when the attitudes of Catholics, "establishment" Protestants, and Protestant fundamentalists were measured in terms of frequency of worship. Of "establishment" Protestants who went to church every week or almost every week, 57 percent opposed abortion; of those who appeared in church only a few times a year or not at all, 59 percent favored abortion.

Catholics who went to church every week or almost every week were 83 percent opposed to abortion; those who got to church but once or twice a year or never were 51 percent in favor of abortion. It was the Protestant fundamentalists who most resisted abortion regardless of the regularity of their attendance at church.

Among those who worshipped every week or almost every week, 75 percent were opposed to abortion; when church attendance dropped to only a few times a year or ceased altogether, 56 percent of the Protestant fundamentalists still opposed abortion.

What other elements influential in defining traditional morality in America can be identified in the ISR abortion data?

One is the immediate environment into which people are born and in which they grow up. Within the ISR sample, 72 percent of those reared in a rural setting opposed abortion, 55 percent of those who grew up in towns or small cities opposed abortion, and 54 percent of those who lived in big cities favored abortion.

Education is another factor in moral definition. The more schooling people have the less willing they are to see abortion as an evil. College people are three times as favorable to abortion as are those whose education stopped in grade school. However, those at the college level favor abortion by only a 7 percent margin.

A third face of traditional morality is social class. Sixty-five percent of those who consider themselves members of the working class are opposed to abortion. Those who characterize themselves as middle class are so evenly split on abortion that a majority cannot be said to exist on either side of the question.

Race is a factor, too. Blacks are more antiabortion than whites are, although only slightly so.

In view of what the ISR study has already revealed, it is not surprising to learn that the older people are, the more they oppose abortion. Here the attitudes are expressed by age bracket:

Percent in opposition

Over 60 years	72
30 to 60 years	60
Under 30 years	47

[Supreme Court of the United States, October Term, 1971]

No. 70-18

JANE ROE, ET AL., APPELLANTS, VS. HENRY WADE, APPELLEE, ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

No. 70-40

MARY DOE, ET AL., APPELLANTS, VS. ARTHUR K. BOLTON, ET AL., APPELLEES, ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

Motion for leave to file brief amicus curiae.

PURPOSE OF THE MOTION

All parties in No. 70-18 (the Texas case) have given their written consent to Dr. Bart Heffernan, one of the amici herein, to file an *amicus curiae* brief.[1] The appellants in No. 70-40 (the Georgia case) have never responded to a request for consent. The appellees do not object to these *amici* filing in this cause.[2]

INTEREST OF THE AMICI

1. Identification of the *amici*. Dr. Bart Heffernan has an appeal presently pending before this Court in the case of *Heffernan, et al. v. Doe, et al.*, docketed as No. 70-106 October 1971 term, which case involves the constitutionality of the Illinois criminal abortion statute, and is similar to both *Jane Roe, et al. v. Wade*, No. 70-18, and *Mary Doe, et al. v. Bolton*, No. 70-40. The Jurisdictional Statement in the *Heffernan* case was filed on March 29, 1971, but no action was taken thereon during the last term of Court.

Any ruling on the merits in the Georgia and Texas cases could profoundly and perhaps adversely affect the outcome of the Illinois case, in which case Dr. Heffernan was appointed *guardian ad litem* for the class of unborn children. He asks leave of this Court to file this *amicus curiae* brief on behalf of his wards.

The other *amici* are physicians, professors and certain Fellows of the American College of Obstetrics and Gynecology who seek to place before this Court the scientific evidence of the humanity of the unborn so that the Court may know and understand that the unborn are developing human persons who need the protection of law just as do adults.

These *amici* also desire to bring to the Court's attention the medical complications of induced abortion, both in terms of maternal morbidtiy and mortality (as well as the mortality to the child), and to show that these are questions of considerable debate in medicine.

2. The Legal Position of these *Amici* in these cases. The unborn child is a developing human being who is entitled to the law's protection just as is an adult.

3. Justification for Participation as *Amici*. As previously stated, the issues in these cases, as well as the pending case of *Heffernan v. Doe*, No. 70-106, October 1971 term, are of the most profound significance dealing with the most basic and fundamental of human rights: The Right to Life.

In reviewing the Briefs filed in both cases it appears that no attempt was made to advise the Court of the scientific facts of life from conception to birth, or of the medical complications of induced abortion, and it is urged that presentation of this information is a reasonable justification for participation by these *amici*.

CONCLUSION

For the reasons stated and for additional reasons as contained in and expanded upon in the Brief itself, these *amici* respectfully request this Court to grant this Motion and grant leave for filing this Brief served herewith.

Respectfully submitted,

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[1] Written consents have been filed with the clerk of this court.

[2] Response of appellees has been filed with the clerk of this court.

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APPENDIX E

[Supreme Court of the United States, October Term 1971]

No. 70–18

JANE ROE, ET AL., APPELLANTS, VS HENRY WADE, APPELLEE, ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

No. 70–40

MARY DOE, ET AL., APPELLANTS, VS. ARTHUR K. BOLTON, ET AL., APPELLEES, ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

Brief amicus curiae of certain physicians, professors and fellows of the American College of Obstetrics and Gynecology in support of appellees

(NOTE.—Figures referred to are not printed in the RECORD.)

I. THE HUMANITY OF THE UNBORN OFFSPRING OF HUMAN PARENTS HAS BEEN THE CRITICAL ISSUE IN LOWER FEDERAL COURT ABORTION CASES

The immediate and intended consequence of an induced abortion is the destruction of life of the unborn. It is in the light of this reality that this Court must consider and decide the profound and far-reaching issues in these abortion cases.

The *amici* are concerned physicians, many of whom are fellows of the American College of Obstetrics and Gynecology (FACOG), who *urge* this Court to consider the current medical and scientific evidence of the humanity of the unborn which is contained in this Brief.

The *amici* also urge this Court to give careful consideration to the section of this Brief concerning the medical complications of legally induced abortions. Any consideration of the "safety" of legally induced abortions must consider the full range of medical complications including early and late physical and psychological complications, as well as maternal and *child* mortality.

The Courts below reached their conclusions without considering whether the victim, i.e. the unborn, of the abortion has constitutionally protected rights. In *Roe v. Wade*,[1] the U.S. District Court for the Northern District of Texas, without once mentioning, discussing or considering whether the unborn is a "person" under the Fifth and Fourteenth Amendments, or otherwise has legally protected interests involved, concluded that the Texas Abortion Laws must be declared unconstitutional because they deprive single women and married couples of their right, secured by the Ninth Amendment, to choose whether to have children."

In *Doe v. Bolton*,[2] the U.S. District Court for the Northern District of Georgia touched, but only in passing, upon the primary issue in this litigation, i.e. the legal "personality" of the unborn for constitutional purposes. At one point in the opinion, the Court wrote that it did not "... (posit) the existence of a new being with its own identity and federal constitutional rights, . . ."[3] Elsewhere in the opinion the Court, in denying a reconsideration of the Court's previous order revoking another's appointment as *guardian ad litem* for the unborn person, wrote that ". . . the Court does not postulate the existence of a new being with federal constitutional rights at any time during gestation".

The *Bolton* Court was thus able to conclude that, while procedures for obtaining an abortion may be controlled, the "reasons for which an abortion may be obtained" may not be regulated "because such action unduly restricts a decision sheltered by the constitutional right to privacy".[4]

The *Bolton* Court did point out that once conception has occurred and the embryo has formed, ". . . the decision to abort its development cannot be considered a purely private one affecting only husband and wife, man and woman".[5]

Other three-judge federal courts presented with the same clash of "rights" between mother and the unborn have not ignored the developments of many areas of the law which have foud legal rights in the unborn. For example, in *Steinberg v. Brown*[6] the majority gave careful consideration to both the rights of the woman and the unborn, and concluded that ". . . the state has a legitimate interest to legislate for the purpose of affording an embryonic or fetal organism an opportunity to survive."[7] This Court concluded that the state did have that right ". . . and on balance it is superior to the claimed right of a pregnant woman or anyone else to destroy the fetus except when necessary to preserve her own life."[8]

In *Rosen v. Louisiana State Board of Medical Examiners*[9] the Court recognized that it was not dealing merely with the question whether a woman has a generalized right to choose whether to bear children ". . . but instead with the more complicated question whether a pregnant woman has the right to cause the abortion of the embryo or fetus she carries in her womb."[10] Without deciding whether the unborn per se is a person protected by the constitution since that was not the issue that Court faced, the *Rosen* Court concluded that the state of Louisiana had intended to and could legitimately protect fetal life against destruction.[11]

In *Corkey v. Edwards*[12] the Court concluded also that the issue involved ultimately a consideration of more than just the issue of whether a woman has a right not to bear children:

"The basic distinction between a decision whether to bear children which is made before conception and one which is made after conception is that the first contemplates the creation of a new human organism, but the latter contemplates the destruction of such an organism already created."[13]

Finding protection of fetal life an adequate state interest in invading the woman's claimed right of privacy, the *Corkey* Court concluded:

"To determine the state interest we shall not attempt to choose between extreme positions. Whether possessing a soul from the moment of conception or mere protoplasm, the fertilized egg is, we think, 'unique as a physical entity', Lucas, Federal Constitutional Limitations of the Enforcement and Administration of State Abortion Statutes, 46 N. C. L. Rev. 730, 744 (1968), with the potential to become a person. Whatever that entity is, the state has chosen to protect its very existence. The state's power to protect children is a well established constitutional maxim. See, *Shelton v. Tucker*, 364 U.S. 479, 485, 81 S. Ct. 247, 5 L. Ed. 2d 231 (1960); *Prince v. Massachusetts*, 321 U.S. 158, at 166–168, 64 S. Ct. 438, 88 L. Ed. 645. That this power should be used to protect a fertilized egg or embryo or fetus during the period of gestation embodies no logical infirmity, but would seemingly fall within the 'plenary power of government'. *Poe v. Ullman*, 367 U.S. 497, at 539, 81 S. Ct. 1752, 6 L. Ed. 2d 989 (Harlan, J., dissenting). That there is a state interest has until recently been taken for granted. History sides with the state."[14]

Even this brief review of five federal decisions involving the constitutionality of state abortion laws makes it clear that whether or not the Court considers the developing humanity of the unborn is critical in its resolution of the issues.[15]

The *amici* therefore ask this Court to consider the material in this Brief concerning the modern medical discoveries of the development of the unborn.

An expansion of the right to privacy to include the right of a woman to have an abortion without considering the interests of the unborn person decides this question against the unborn. The necessary consequence of that expansion would be a direct and unavoidable conflict between the unborn person's right to life and the woman's extended right of privacy. Assuming such a conflict, it is the position of the *amici* that the more fundamental and established of the conflicting rights must prevail where they clash. The right to life is most certainly the most fundamental and established of the rights involved in the cases facing the Court today.

FOOTNOTES

[1] *Roe v. Wade*, 314 F. Supp. 1217 (1970) at 1221 (N. D. Tex. 1970).

[2] *Doe v. Bolton*, 319 F. Supp. 1048 (N. D. Ga. 1970).

[3] *Ibid.* p. 1055.

[4] *Ibid.* p. 1076.

[5] *Ibid.* p. 1055.

[6] 321 F. Supp. 741 (N. D. Ohio 1970) (J. Green dissenting).

[7] *Ibid.* p. 746.

[8] *Ibid.* p. 746.

[9] 318 F. Supp. 1217 (E. D. Louisiana 1970) (J. Cassibry dissenting).

[10] *Ibid.* p. 1223.

[11] *Ibid.* p. 1225.

[12] *Corkey v. Edwards*, 322 F. Supp. 1248 (N. D. North Carolina 1971).

[13] *Ibid.* p. 1252.

[14] *Ibid.* p. 1253.

[15] Even the *Bolton* Court preserved the Georgia statute after alluding in its decision to the creation of a new life after conception, thus making any decision involving abortion one affecting the state since it involved developing human life.

II. THE UNBORN OFFSPRING OF HUMAN PARENTS IS AN AUTONOMOUS HUMAN BEING[1]

Even before implantation in the wall of the uterus the unborn child is responsible for the maintenance of the pregnant state in the maternal metabolism (1). The child whose tissue is antigenically different from the mother sets up protective mechanisms to prevent maternal immunologic responses from causing fetal distress (2). The newly formed child has a remarkable degree of metabolic autonomy (3). For example, the fetal endocrine system functions autonomously (4).

[1] Footnotes at end of article.

The recent recognition of this autonomy has led to the development of new medical specialties concerning the unborn child from the earliest stages of the pregnancy (66).

Modern obstetrics has discarded as unscientific the concept that the child in the womb is but tissue of the mother. As Dr. H. M. I. Liley, the New Zealand pediatrician, and research assistant to her famous husband, Dr. Albert Liley who perfected the intrauterine transfusion, has said:

"Another medical fallacy that modern obstetrics discards is the idea that the pregnant woman can be treated as a patient alone. No problem in fetal health or disease can any longer be considered in isolation. At the very least two people are involved, the mother and her child." (5 at p. 207.)

The courts have also abandoned that concept (7):

"We ought to be safe in this respect in saying that legal separability should begin where there is biological separability. We know something more of the actual process of conception and foetal development now than when some of the common law cases were decided; and what we knew makes it possible to demonstrate clearly that separability begins at conception.

The mother's biological contribution from conception on is nourishment and protection; but the foetus has become a separate organism and remains so throughout its life. That it may not live if its protection and nourishment are cut off earlier than the viable stage of its development is not to destroy its separability; it is rather to describe the conditions under which life will not continue."

Yet the attack on the statutes below assume this discredited scientific concept and argues that abortions should be considered no differently than any medical measure taken to protect maternal health (see Texas appellant's brief, pp. 94–98), thus completely ignoring the developing human being in the mother's womb.

It is our task in the next subsections to show how clearly and conclusively modern science—embryology, fetology, genetics, perinatology, all of biology—establishes the humanity of the unborn child. We submit that the data not only shows the constitutionality of the legislature's effort to save the unborn from indiscriminate extermination, *but in fact suggests a duty to do so.* We submit also that no physician who understands this will argue that the law is vague, uncertain or overbroad for he will understand that the law calls upon him to exercise his art for the benefit of his *two* patients; mother *and* child.

A. The Unborn Person Is Also a Patient.

From conception the child is a complex, dynamic, rapidly growing organism. By a natural and continuous process the single fertilized ovum will, over approximately nine months, develop into the trillions of cells of the newborn. The natural end of the sperm and ovum is death unless fertilization occurs. At fertilization a new and unique being is created which, although receiving one-half of its chromosomes from each parent, is really unlike either (8) (6) (9) (10 at p. 18).

About seven to nine days after conception, when there are already several hundred cells of the new individual formed, contact with the uterus is made and implantation begins. Blood cells begin at 17 days and a heart as early as 18 days. This embryonic heart which begins as a simple tube starts irregular pulsations at 24 days, which, in about one week, smooth into a rhythmic contraction and expansion (8) (9) (10) (6).

Straus, et al. have shown that the ECG on a 23 mm embryo (7.5 weeks) presents the existence of a functionally complete cardiac system and the possible existence of a Myoneural or humoral regulatory mechanism. All the classic elements of the adult ECG were seen (11). Marcel and Exchaquet observed occasional contractions of the heart in a 6 mm (2 week) embryo. They also obtained tracing exhibiting the classical elements of the ECG tracings of an adult in a 15 mm embryo (5 weeks) (12).

One commentator has indicated that about 4 days postconception under a special microscope the prospective sex can already be determined (10 at p. 23).

Commencing at 18 days the developmental emphasis is on the nervous system even though other vital organs, such as the heart, are commencing development at the same time. Such early development is necessary since the nervous system integrates the action of all other systems. By the end of the 20th day the foundation of the child's brain, spinal cord and entire nervous system will have been established. By the 6th week after conception this system will have developed so well that it is controlling movements of the baby's muscles, even though the woman may not be aware that she is pregnant. By the 33rd day the cerebral cortex, that part of the central nervous system that governs motor activity as well as intellect may be seen (8) (13) (10).

The baby's eyes begin to form at 19 days. By the end of the first month the foundation of the brain, spinal cord, nerves and sense organs is completely formed. By 28 days the embryo has the building blocks for 40 pairs of muscles situated from the base of its skull to the lower end of its spinal column. By the end of the first month the child has completed the period of relatively greatest size increase and the greatest physical change of a lifetime. He or she is ten thousand times larger than the fertilized egg and will increase its weight six billion times by birth, having in only the first month gone from the one cell state to millions of cells (8) (9) (10) (6) (13). [See Fig. 1.]

Shettles and Rugh describe this first month of development as follows:

"This, then, is the great planning period, when out of apparently nothing comes evidence of a well integrated individual, who will form along certain well-tried patterns, but who will, in the end, be distinguishable from every other human being by virtue of ultra microscopic chromosomal differences." (10 at p. 35.)

By the beginning of the second month the unborn child; small as it is, looks distinctly human. (See Fig. 1.) Yet, by this time the child's mother is not even aware that she is pregnant (6).

As Shettles and Rugh state:

"And as for the question, 'when does the embryo become human?' the answer is that it *always* had human potential, and *no other*, from the instant the sperm and the egg came together because of its chromosomes." (Emphasis in original.) (10 at p. 40.)

At the end of the first month the child is about ¼ of an inch in length. At 30 days the primary brain is present and the eyes, ears and nasal organs have started to form. Although the heart is still incomplete, it is beating regularly and pumping blood cells through a closed vascular system (8). The child and mother do not exchange blood, the child having from a very early point in its development its own and complete vascular system (8) (9) (10) (12) (13).

Earliest reflexes begin as early as the 42nd day. The male penis begins to form. The child is almost ½ inch long and cartilage has begun to develop (8) (9). [See Fig. 2.]

Even at 5½ weeks the fetal heartbeat is essentially similar to that of an adult in general configuration (12) (13). The energy output is about 20% that of the adult, but the fetal heart is functionally complete and normal by 7 weeks (12) (13). Shettles and Rugh describe the child at this point of its development as a 1-inch miniature doll with a large head, but gracefully formed arms and legs and an unmistakably human face (10 at p. 54). [See Fig. 2]

By the end of the seventh week we see a well proportioned small scale baby. In its seventh week, it bears the familiar external features and all the internal organs of the adult, even though it is less than an inch long and weighs only 1/30th of an ounce. The body has become nicely rounded, padded with muscles and covered by a thin skin. The arms are only as long as printed exclamation marks, and have hands with fingers and thumbs. The slower growing legs have recognizable knees, ankles and toes (8) (9) (10) (6). [See Figs. 3 and 4]

The new body not only exists, it also functions. The brain in configuration is already like the adult brain and sends out impulses that coordinate the function of the other organs. The brain waves have been noted at 43 days [14]. The heart beats sturdily. The stomach produces digestive juices. The liver manufactures blood cells and the kidneys begin to function by extracting uric acid from the child's blood (13) (49). The muscles of the arms and body can already be set in motion (15).

After the eighth week no further primordia will form; *everything* is already present that will be found in the full term baby (10 at p. 71). As one author describes this period:

"A human face with eyelids half closed as they are in someone who is about to fall asleep. Hands that soon will begin to grip, feet trying their first gentle kicks." (10 at p. 71)

From this point until adulthood, when full growth is achieved somewhere between 25 and 27 years, the changes in the body will be mainly in dimension and in gradual refinement of the working parts (8) (46).

The development of the child, while very rapid, is also very specific. The genetic pattern set down in the first day of life instructs the development of a specific anatomy. The ears are formed by seven weeks and are specific, and may resemble a family pattern (16). The lines in the hands start to be engraved by eight weeks and remain a distinctive feature of the individual (45) (49). [See Fig 3]

The primitive skeletal system has completely developed by the end of six weeks (8) (9). This marks the end of the child's embryonic (from Greek, to swell or teem within) period. From this point, the child will be called a fetus (Latin, young one or offspring) (9). [See Fig. 2]

In the third month, the child becomes very active. By the end of the month he can kick his legs, turn his feet, curl and fan his toes, make a fist, move his thumb, bend his wrist, turn his head, squint, frown, open his mouth, press his lips tightly together (15). He can swallow and drinks the amniotic fluid that surrounds him. Thumb sucking is first noted at this age. The first respiratory motions move fluid in and out of his lungs with inhaling and exhaling respiratory movements (13) (15). [See Fig. 5]

The movement of the child has been recorder at this early stage by placing delicate shock recording devices on the mother's abdomen and direct observations have been made by the famous embryologist, Davenport Hooker, M.D. Over the last thirty years, Dr. Hooker has recorded the movement of the child on film, some as early as six weeks of age. His films show that prenatal behavior develops in an orderly progression (15) (17) (18).

The prerequisites for motion are muscles and nerves. In the sixth to seventh weeks, nerves and muscles work together for the first time (8). If the area of the lips, the first to become sensitive to touch, is gently stroked, the child responds by bending the upper body to one side and making a quick backward motion with his arms. This is called a total pattern response because it

involves most of the body, rather than a local part. Localized and more appropriate reactions such as swallowing follow in the third month. By the beginning of the ninth week, the baby moves spontaneously without being touched. Sometimes his whole body swings back and forth for a few moments. By eight and a half weeks the eyelids and the palms of the hands become sensitive to touch. If the eyelid is stroked, the child squints. On stroking the palm, the fingers close into a small fist (17) (15) (13) (64).

In the ninth and tenth weeks, the child's activity leaps ahead. Now if the forehead is touched, he may turn his head away and pucker up his brow and frown. He now has full use of his arms and can bend the elbow and wrist independently. In the same week, the entire body becomes sensitive to touch (7) (13). [See Fig. 6]

The twelfth week brings a whole new range of responses. The baby can now move his thumb in opposition to his fingers. He now swallows regularly. He can pull up his upper lip: the initial step in the development of the sucking reflex (5). By the end of the twelfth week, the quality of muscular response is altered. It is no longer marionette-like or mechanical—the movements are now graceful and fluid, as they are in the newborn. The child is active and the reflexes are becoming more vigorous. *All this is before the mother feels any movement* (5) (64). [See Figs. 5 and 7]

The phenomenon of "quickening" reflects maternal sensitivity and not fetal competence.[3] Dr. Hooker states that fetal activity occurs at a very early age normally in utero and some women may feel it as early as thirteen weeks. Others feel very little as late as twenty weeks and some are always anxious because they do not perceive movement (17).

Dr. Liley states:

"Historically 'quickening' was supposed to delineate the time when the fetus became an independent human being possessed of a soul. Now, however, we know that while he may have been too small to make his motions felt, the unborn baby is active and independent long before his mother feels him. Quickening is a maternal sensitivity and depends on the mother's own fat, the position of the placenta and the size and strength of the unborn child." (5 at pp. 37, 38)

Every child shows a distinct individuality in his behavior by the end of the third month. This is because the actual structure of the muscles varies from baby to baby. The alignment of the muscles of the face, for example, follow an inherited pattern. The facial expressions of the baby in his third month are already similar to the facial expression of his parents (13) (14) (49). [See Figs. 5 and 7]

Dr. Arnold Gesell states that: "By the end of the first trimester (12th week) the fetus is a sentient moving being. We need not pause to speculate as to the nature of his psychic attributes but we may assert that the organization of his psychosomatic self is now well under way." (49 at p. 65)

Further refinements are noted in the third month. The fingernails appear. The child's face becomes much prettier. His eyes, previously far apart, now move closer together. The eyelids close over the eyes. Sexual differentiation is apparent in both internal and external sex organs, and primitive eggs and sperm are formed. The vocal cords are completed. In the absence of air they cannot produce sound; the child cannot cry aloud until birth, although he is capable of crying before (8) (13) (9) (5).

Dr. Liley relates the experience of a doctor who injected an air bubble into unborn baby's (eight months) amniotic sac in an attempt to locate the placenta on x-ray. It so happened that the air bubble covered the unborn baby's face. The moment the unborn child had air to inhale, his vocal cords became operative and his crying became audible to all present, including the physician and technical help. The mother telephoned the doctor later to report that whenever she lay down to sleep, the air bubble got over the unborn baby's face and he was crying so loudly he was keeping both her and her husband awake (5 at p. 50) (15 at p. 75).

The taste buds and salivary glands develop in this month, as do the digestive glands in the stomach. When the baby swallows amniotic fluid, its contents are utilized by the child. The child starts to urinate (8) (13) (19).

From the twelfth to the sixteenth week, the child grows very rapidly (50). His weight increases six times, and he grows to eight to ten inches in height. For this incredible growth spurt the child needs oxygen and food. This he receives from his mother through the placental attachment—much like he receives food from her after he is born. His dependence does not end with expulsion into the external environment (8) (9) (13) (6) (10). We now know that the placenta belongs to the baby, not the mother, as was long thought (5). [See Fig. 8]

In the fifth month, the baby gains two inches in height and ten ounces in weight. By the end of the month he will be about one foot tall and will weigh one pound. Fine baby hair begins to grow on his eyebrows and on his head and a fringe of eyelashes appear. Most of the skeleton hardens. The baby's muscles become much stronger, and as the child becomes larger his mother finally perceives his many activities (8). The child's mother comes to recognize the movement and can feel the baby's head, arms and legs. She may even perceive a rhythmic jolting movement—fifteen to thirty per minute. This is due to the child hiccoughing (13) (6) (6). The doctor can already hear the heartbeat with his stethoscope (8) (13) (6). [See Figs. 9 and 10]

The baby sleeps and wakes just as it will after birth (63) (5). When he sleeps he invariably settles into his favorite position called his "lie". Each baby has a characteristic lie (5). When he awakens he moves about freely in the buoyant fluid turning from side to side, and frequently head over heel. Sometimes his head will be up and sometimes it will be down. He may sometimes be aroused from sleep by external vibrations. He may wake up from a loud tap on the tub when his mother is taking a bath. A loud concert or the vibrations of a washing machine may also stir him into activity (13). The child hears and recognizes his mother's voice before birth (19) (20). Movements of the mother, whether locomotive, cardiac or respiratory, are communicated to the child (19).

In the sixth month, the baby will grow about two more inches, to become fourteen inches tall. He will also begin to accumulate a little fat under his skin and will increase his weight to a pound and three-quarters. This month the permanent teeth buds come in high in the gums behind the milk teeth. Now his closed eyelids will open and close, and his eyes look up, down and sideways. Dr. Liley feels that the child may perceive light through the abdominal wall (20). *Dr. Still has noted that electroencephalographic waves have been obtained in forty-three to forty-five day old fetuses, and so conscious experience is possible after this date* (*14*).

The electrophysiologic rhythm develops early. Detailed EEG tracings have been taken directly from the head end of the 16mm (crown rump) human embryo at 40-odd days of gestation in Japan (172).

As one writer said:

"Thus at an early prenatal stage of life the EEG reflects a distinctly individual pattern that soon becomes truly personalized." (173)

In the sixth month, the child develops a strong muscular grip with his hands. He also starts to breathe regularly and can maintain respiratory response for twenty-four hours if born prematurely. He may even have a slim chance of surviving in an incubator. The youngest children known to survive were between twenty to twenty-five weeks old (13). The concept of viability is not a static one. Dr. Andre Hellegers of Georgetown University states that 10% of children born between twenty weeks and twenty-four weeks gestation will survive (44A and 44B). Modern medical intensive therapy has salvaged many children that would have been considered non-viable only a few years ago. The concept of an artificial placenta may be a reality in the near future and will push the date of viability back even further, and perhaps to the earliest stages of gestation (43) (48). After twenty-four to twenty-eight weeks the child's chances of survival are much greater.

Our review has covered the first six months of life. By this time the individuality of this human being is clear to all unbiased observers. Dr. Arnold Gesell has said:

"Our own repeated observation of a large group of fetal infants (an individual born and living at any time prior to forty weeks gestation) left us with no doubt that psychologically they were individuals. Just as no two looked alike, so no two behaved precisely alike. One was impassive when another was alert. Even among the youngest there were discernible differences in vividness, reactivity and responsiveness. These were genuine individual differences, already prophetic of the diversity which distinguishes the human family." (49 at p. 172)

B. The Doctor Treats the Unborn Just as He Does Any Patient

When one views the present state of medical science, we find that the artificial distinction between born and unborn has vanished. As Dr. Liley says:

"In assessing fetal health, the doctor now watches changes in maternal function very carefully, for he has learned that it is actually the mother who is a passive carrier, while the fetus is very largely in charge of the pregnancy." (5 at p. 202) (65)

The new specialty of fetology is being replaced by a newer specialty called perinatology which cares for its patients from conception to about one year of extrauterine existence (56). The Cumulative Index Medicus for 1969 contains over 1400 separate articles in fetology. For the physician, the life process is a continuous one, and observation of the patient must start at the earliest period of life. (See 42 U.S.C. 289(d).)

A large number of sophisticated tools have been developed that now allow the physician to observe and measure the child's reactions from as early as ten weeks. At ten weeks it is possible to obtain the electrocardiogram of the unborn child (22) (11) (12). At this stage also the heart sounds can be detected with new ultrasonic techniques (45). The heart has already been pumping large volumes of blood to the fast growing child for six weeks. With present day technology, the heart of the child is now monitored during critical periods of the pregnancy by special electronic devices, including radiotelemetry (23) (60). Computer analysis of the child's ECG has been devised and promises more accurate monitoring and evaluation of fetal distress (14). A number of abnormal electrocardiographic patterns have been found before birth. These patterns forewarn the physician of trouble after delivery (57) (58) (62). Analysis of heart sounds through phonocardiography is also being done (25) (53).

With the new optical equipment, a physician can now look at the amniotic fluid

Footnotes at end of article.

through the cervical canal and predict life-threatening problems that are reflected by a change in the fluid's color and turbidity (26) (27). In the future, the physician will undoubtedly be able to look directly at the growing child using new fiber optic devices (through a small puncture in the uterus) and thereby diagnose and prescribe specific treatment to heal or prevent illness or deformity (21) (55).

For the child with severe anemia, the physician now gives blood, using an unusual technique developed by Dr. A. Liley of New Zealand. This life saving measure is carried out by using new image intensifier x-ray equipment. A needle is placed through the abdominal wall of the mother and into the abdominal cavity of the child. For this procedure the child must be sedated (via maternal circulation) and given pain relieving medication, since it experiences pain from the puncture and would move away from the needle if not premedicated. As Dr. H. M. I. Liley states:

"When doctors first began invading the sanctuary of the womb, they did not know that the unborn baby would react to pain in the same fashion as a child would. But they soon learned that he would. By no means a 'vegetable' as he has so often been pictured, the unborn knows perfectly well when he has been hurt, and he will protest it just as violently as would a baby lying in a crib." (5 at p. 50)

The gastro-intestinal tract of the child is outlined by a contrast media that was previously placed in the amniotic fluid and then swallowed by the child (52). We know that the child starts to swallow as early as fourteen weeks (5).

Some children fail to get adequate nutrition when in utero. This problem can be predicted by measuring the amount of estradiol in the urine of the mother and the amount of PSP excreted after it is injected into the child (29). Recent work indicates that these nutritional problems may be solved by feeding the child more directly by introducing nutrients into the amniotic fluid which the child normally swallows (250 to 700 cc a day). In a sense, we well may be able to offer the child that is starving because of a placental defect a nipple to use before birth (30).

The amniotic fluid surrounding the unborn child offers the physician a convenient and assessable fluid that he can now test in order to diagnose a long list of diseases, just as he tests the urine and blood of his adult patients. The doctor observes the color and volume of amniotic fluid and tests it for cellular element enzymes and other chemicals. He can tell the sex of his patient and gets a more precise idea of the exact age of the child from this fluid. He can diagnose conditions such as the adrenogenital syndrome, hemolytic anemia, adrenal insufficiency, congenital hyperanemia and glycogen storage disease. Some of these, and hopefully in the future all of these, can be treated before birth (31) (32) (33) (34) (35) (36) (37).

At the time of labor, the child's body can be obtained from scalp veins and the exact chemical balance determined before birth. These determinations have saved many children who would not have been considered in need of therapy had these tests not been done (38) (39). The fetal EEG has also been monitored during delivery (61).

A great deal of work has been done to elucidate the endocrinology of the unborn child. Growth hormone is elaborated by the child at seventy-one days, and ACTH has been isolated at eleven weeks gestation (40). The thyroid gland has been shown to function at ten and a half weeks (51), and the adrenal glands also at about this age (40). The sex hormones—estrogen and andiogen—are also found as early as nine weeks (40).

Surgical procedures performed on the unborn child are few. However, surgical cannulation of the blood vessels in an extremity of the child has been carried out in order to administer blood. Techniques are now being developed on animals that will be applicable to human problems involving the unborn child. Fetal surgery is now a reality in the animal laboratory, and will soon offer help to unborn patients (28) (41) (42).

The whole thrust of medicine is in support of the notion that the child in its mother is a distinct individual in need of the most diligent study and care, and that he is also a patient whom science and medicine treats just as it does any other person (21) (5).

This review of the current medical status of the unborn serves us several purposes. Firstly, it shows conclusively the humanity of the fetus by showing that human life is a continuum which commences in the womb. There is no magic in birth. The child is as much a child in those several days before birth as he is those several days after. The maturation process, commenced in the womb, continues through the post-natal period, infancy, adolescence, maturity and old age. Dr. Arnold Gesell points out in his famous book that no king ever had any other beginning than have had all of us in our mother's womb (49).

Secondly, we have shown that quickening is a relative concept which depends upon the sensitivity of the mother, the position of the placenta, and the size of the child. At the common law, the fetus was not considered alive before quickening,[3] and therefore we can understand why commentators like Bracton and Coke placed so much emphasis on quickening. But modern science has proven conclusively that any law based upon quickening is based upon shifting sands—a subjective standard even different among races. We now know that life precedes quickening; that quickening is nothing other than the mother's first subjective feeling of movement in the womb. Yet the fetus we know has moved before this. In spite of these advances in medicine, some courts and legislatures have continued to consider quickening as the point when life is magically infused into the unborn. (See *Babbitz v. McCann*, 310 F. Supp. 2830). No concept could be further from the scientific truth.

Thirdly, we have seen that viability is also a flexible standard which changes with the advance of these new medical disciplines some of which are hardly a half dozen years old. New studies in artificial placentas indicates that viability will become an even more relative concept and children will survive outside of the womb at even earlier ages than the 20–28 weeks in the past. Fetology and perinatology are only a few years old as specialties. Obstetrics is only sixty years old as a specialty.

Fourthly, we have seen that the unborn child is as much a patient as is the mother. In all the literature opting for permissive abortion, this simple truth is ignored. There are many doctors who know that the unborn is also their patient and that they must exercise their art for the benefit of both mother and child. When the physician accepts that he has two patients, he has no difficulty applying his skill for the benefit of child *and* mother. Every doctor practicing can tell this court when in his medical judgment an abortion is necessary to preserve life. There is no medical mystery on that point. A review of the relevant obstetrics texts will list the indications—psychiatric as well—for therapeutic abortion.[4] When the doctor makes the decision he must not consider the unborn as "mere tissue of the mother" or he will certainly weigh it no more in the balance than any other replaceable tissue of the mother.

FOOTNOTES

[1] In this section the citations are according to medical journal practices. The numbers in the parenthesis refer to the correspondingly numbered work in the medical bibliography.

[2] If the Court is interested in the actual medical history of nineteenth century legislative opposition to abortion, it may consult the American Medical Association, *1846–1952 Digest of Official Actions* (edited F. J. L. Blasingame 1959), p. 66, where a list of the repeated American Medical Association attacks on abortion are compiled. It will be seen that the great medical battle of the nineteenth century was to persuade legislatures to eliminate the requirement of quickening and to condemn abortion from conception, see Isaac M. Quimby *Introduction to Medical Jurisprudence*, Journal of American Medical Association, August 6, 1887, Vol. 9, p. 164 and H. C. Markham *Foeticide and Its Prevention*, ibid, Dec. 8, 1888, Vol. 11, p. 805. It will be seen that the Association unanimously condemned abortion as the destruction of "human life" American Medical Association, *Minutes of the Annual Meeting 1859*, The American Medical Gazette 1859, Vol. 10, p. 409.

[3] See 4 Blackstone, *Commentaries on the Laws of England*, 394–95 (1769) where it is said:

"In case this plea is made in stay of execution, the judge must direct a jury of twelve matrons or discreet women to inquire the fact, and if they bring in their verdict 'quick with child' (for barely, 'with child', unless it be alive in the womb, is not sufficient, . . .)"

[4] See Quay, *Justifiable Abortion*, 49 Georgetown Law Journal 173, 1960, pp. 180–241, where the medical reasons for therapeutic abortions as stated in the standard obstetric works from 1903 to 1960 are stated and analyzed. Dr. Guttmacher has stated:

"On the whole, the over-all frequency of therapeutic abortion is on the decline. This is due to two facts: first, cures have been discovered for a number of conditions which previously could be cured only by termination of pregnancy; and second, there has been a change in medical philosophy. Two decades ago, the accepted attitude of the physicians was that if a pregnant woman were ill, the thing to do would be to rid her of her pregnancy. Today it is felt that unless the pregnancy itself intensifies the illness, nothing is accomplished by the abortion." (66 at p. 13) (See also 67).

Dr. Guttmacher has also said:

"Today it is possible for almost any patient to be brought through pregnancy alive, unless she suffers from a fatal illness such as cancer or lukemia and, if so, abortion would be unlikely to prolong, much less save, life." (68 at p. 9).

Dr. Guttmacher has also said:

"There is little evidence that pregnancy in itself worsens a psychosis, either intensifying it or rendering prognosis for full recovery less likely." (69 at p. 121).

APPENDIX F

ABORTION—DEATH BEFORE BIRTH

(By Joseph R. Stanton, M.D., F.A.C.P.)

The magnificent Life Magazine Series "Life Before Birth" with the pictures of the human embryo and fetus by Lennart Nilsson began with the following statement, "The Birth of a Human Life Really Occurs at the Moment the Mother's Egg Cell Is Fertilized by One of the Father's Sperm Cells."

Abortion attempts to destroy the life that begins with conception. It usually but not always results in the death of the growing child within the womb. After the first six months of liberalized abortion in New York City, the Health Department reported "eleven live births after abortion procedure, all infants died within the next day or so.

Two living infants were discharged from hospitals" having to be classified as live births rather than as abortions.

During the first 12 weeks of life, abortion is carried out by either (A) D&C or (B) Suction Curettage. After twelve weeks, the fetus is too large to be removed by (A) or (B), so abortion is attempted by (C) Saline Injection, and, if this is not effective, (D) Hysterotomy is carried out.

No method of abortion is carried out in any significant number of cases without hazard to the mother. A recent paper from England makes the following statement: "The morbidity and fatal potential of criminal abortion is widely accepted while at the same time the public is misled into believing that legal abortion is a trivial incident, even a lunch hour procedure which can be used as a mere extension of contraceptive practice. There has been almost a conspiracy of silence regarding risks."

Listed as immediate complications are:

1. The birth of a living child.
2. Cervical lacerations—4.2%.
3. Uterine performances—1.7%.
4. Fever—15%.
5. Peritonitis—7.2%.
6. Retained products of conception requiring D&C—5%.
7. Septicemia—0.37%.
8. Endometritis—2.5%.
9. Urinary tract infection.
10. Pulmonary embolism.
11. Amniotic fluid embolism.
12. Hemorrhage greater than 500cc. in 9–17% of abortions done by various methods.

Later, additional complications are depressive reactions, subsequent sterility, subsequent abnormalities of placental implantation and a predisposition to premature labor in future pregnancies. A paper from Czechoslovakia states: "We find the immediate acute inflammatory complications in about 5% of cases—permanent complications in 20–30% of all women who had pregnancy interruptions."

It is believed that this presentation shows abortion for what it is—a negative and destructive approach to life and one of its problems. Those who have portrayed abortion as safe, easy, and almost without psychic trauma have not spoken from the facts. The current efforts of the American drug industry now spending millions of dollars to perfect the prostaglandins so that abortions may be made microscopic should be no less objectionable than the destruction of life at 8 weeks or 12 weeks or 24 weeks—before or after birth. Each one of us began life as a single cell and that biological process has continued without interruption to the moment this line is read. Abortion interrupts, despoils and destroys human life.

A. D&C OR DILATION AND CURETTAGE

A brief history is taken, the blood typed and a consent form signed by the patient. The patient is premedicated and an intravenous is started. Anesthesia, either regional or intravenous pentothal is induced. The operative area is cleansed with antiseptics, a retractor is inserted and the mouth of the womb or cervix is grasped with a tenaculum or clamp. A sound or calibrated measure is inserted to measure the depth of the womb. The mouth of the womb is then dilated—"The amount of dilation will depend on the size of the products of conception." A sharp curette—like a long spoon with sharp serrated edges is introduced and the interior of the womb methodically scraped. "Often little tissue comes away at first but the products of conception are loosened and the ovum forceps is used to remove them." An oxytocic is then given to shrink down the uterus and lessen bleeding. The patient is watched until recovery from anesthesia occurs and then sent back to her room. The pathetic pulp in the photos above, what were once fragile, living objects of simple innocence and complex wonder, are consigned to furnace or sewer . . . unwanted, undefended, unknown. What greater sacrifice could the innocent unborn but to lay down their lives for their mothers' convenience.

B. SUCTION CURETTAGE

Preoperative medication and preparation the same as for D&C. Anesthesia is induced usually with intravenous pentothal. A speculum is inserted in the vagina. The cervix (mouth of the womb, ed.) is grasped with a tenaculum. Pitressin, to cause the womb to contract—is injected. The cervix is forcibly dilated. The suction curette, a tube, is inserted into the uterus, the suction turned on, present at 70 mm Hg. negative pressure. The curette is worked in and out rotating it slowly. "Because the curette and tubing are transparent, the site of implantation can be ascertained from the amount of tissue withdrawn from different areas of the uterus. . . . The procedure is completed by concentrating in the area from which the bulk is obtained." The end point of the procedure is reached when no further tissue is obtained by suction. The embryonic parts, broken and crushed are caught in a tissue trap attached to the machine. A physician long accustomed to witnessing suffering and death has said of suction curettage, that in all his life he has known nor more horrible sight or sound than that produced as the little human parts thud into and are caught by the tissue trap.

C. SALINE INJECTION

After twelve weeks, the fetus is so large that D&C and Suction Curettage are too dangerous to the mother. At twelve weeks, there is not enough amniotic fluid in the sac in which the little aquanaut lives and moves to do amniocentisis safely. Usually the physician waits until the unborn child has grown to 16 weeks size. Life Magazine states that it is now 5½ inches long and, "quite recognizable now as a human baby." After the patient has emptied her bladder, the abdomen is then prepared with antiseptics. The skin and subcutaneous tissues are injected with a local anesthetic. A long 18 [illegible] gauge needle is inserted through the abdominal wall and the wall of the uterus into the amniotic sac of fluid surrounding the fetus. Four to five ounces of fluid are withdrawn and 5–7 ounces of toxic salt solution 20% saline (more than 23 times the concentration of salt solution that is used for intravenous therapy normally—ed.) is injected. The patient is then given oxytocics to contract the uterus and often also an antibiotic. After the toxic solution is injected, electrocardiographic studies in a New York hospital show that it takes 45 to 120 minutes for the unborn child's heart to stop. When the child dies or the uterus is sufficiently irritated, after a latent period of hours—labor begins and the dead child is born 24 to 28 hours later. A New York physician who does saline abortions has said of this procedure, "I hate to do saline injections—when you inject the saline you see an increase of fetal movements—it's horrible." That increase of fetal movements occurs as the unborn child struggles in his or her death throes.

D. HYSTEROTOMY

If Saline injection is ineffective or cannot be completed because of technical difficulty or reaction, abortion is accomplished by Hysterotomy. Hysterotomy has been called the "miniature Caesarean section". The patient is prepared and anesthetized, the abdomen and womb are opened. The fetus is lifted out. The cord is clamped. The fetus struggles for a moment and dies. This is obviously unpalatable, particularly to nurses, so much so that Kaye states "The large fetuses aborted at greater than 22 weeks gestation become abhorrent to the nursing staff. This necessitated the change in policy limiting abortion up to the 20th week." Hysterotomy or Caesarean section has a long and honored history in medicine, often saving the life of the mother and the child. When deliberately used to abort, it destroys the life of the child. Occasionally, at least, it also leads to the loss of the life of the mother.

TERMS AND DERIVATIONS

Abortion—Latin Ab-orior, orire, ortus sum—the one kept from arising.

Embryo—Latin Embryon—the offspring before its birth.

Fetus—Latin Foetus—the young one.

"Products of Conception"—the abortionists' term for the embroyo or fetus.

Termination of Pregnancy—abortionists' term for the act of abortion.

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H.J. Res. 427 - Whitehurst Proposed Constitutional Amendment

In addition to H.J. Res. 261 and S.J. Res. 119, proposed Constitutional amendments which are intended to nullify the Supreme Court's abortion rulings and generally prohibit abortions, there has been introduced a proposed Constitutional amendment which is intended to nullify the rulings and return regulatory authority concerning abortions to the States. H.J. Res. 427, introduced by Rep. Whitehurst, is intended to restore the basic power of the States to legislate with regard to abortion. H.J. Res. 427 states the following:

> Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date of final passage of this joint resolution:
>
> "Article-
>
> "Section 1. Nothing in this Constitution shall bar any State or territory or the District of Columbia, with regard to any area over which it has jurisdiction, from allowing, regulating, or prohibiting the practice of abortion."

On the occasion of introducing H.J. Res. 427, Rep. Whitehurst included the following remarks in the Congressional Record (See 39 Cong. Rec. H1694-H1695 (daily ed., Mar. 13, 1973)):

ABORTION: RESTORING THE PEOPLE'S RIGHT TO DECIDE

The SPEAKER pro tempore (Mr. MAZZOLI). Under a previous order of

the House, the gentleman from Virginia (Mr. WHITEHURST) is recognized for 10 minutes.

Mr. WHITEHURST. Mr. Speaker, after months of research, the Supreme Court recently delivered a scholarly essay which examined the laws governing abortion throughout history, then invalidated nearly all existing State regulation of this subject.

I have no quarrel with the Court's recommendation that pregnancy be treated differently at various stages under the law. The decision probably reflects good medical thinking at the present time. I do object, however, to the Court's usurping what is clearly a legislative prerogative simply because the elected Representatives of the people had reached a different conclusion. By this ruling, the Court has insisted on imposing its legislative judgment on the Nation as a whole, depriving the people of the opportunity to adjust their laws to reflect the different attitudes toward abortion that exist in various parts of the country.

My objection is shared by thoughtful members of the Court itself. Mr. Justice White, dissenting in the abortion case, said:

> The Court apparently values the convenience of the pregnant mother more than the continued existence and development of the life or potential life which she carries. Whether or not I might agree with that marshalling of values, I can in no event join the Court's judgment because I find no constitutional warrant for imposing such an order of priorities on the people and the legislatures of the States.
>
> In a sensitive area such as this, involving as it does issues over which reasonable men may easily and heatedly differ, I cannot accept the Court's exercise of its clear power of choice by imposing a constitutional barrier to state efforts to protect human life by investing mothers and doctors with the constitutionally protected right to exterminate it. This issue, for the most part, should be left with the people and to the political processes the people have devised to govern their affairs.

Mr. Speaker, the Constitution has established ways to check the exercise of excess powers by all three branches of Government. The appropriate response to this decision which Justice Rehnquist and Justice White called an improvident and extravagant exercise of the power of judicial review, is to amend the Constitution to expressly guarantee the people's right to have this issue decided by Representatives directly accountable to the people.

I am therefore introducing today a measure which will guarantee this right. My amendment states:

> Nothing in this Constitution shall bar any State or Territory or the District of Columbia, with regard to any area over which it has jurisdiction, from allowing, regulating, or prohibiting the practice of abortion.

This language would permit the enactment of a wide range of legislative approaches to abortion. It would not relieve the legislatures of the obligation to enact such laws in language which would not be impermissibly vague. Nor would it dispense with the procedural requisities of the Bill of Rights and Due Process. It would simply restore the basic power of the States to legislate with regard to abortion.

This is not a partisan issue, nor even a liberal-conservative one. In the last election, both President Nixon and Senator MCGOVERN advocated State rather than Federal action in this field.

Mr. Speaker, in a democracy, questions of life, death, and belief cannot be decided from above. Only by giving the people a voice in issues like this can we hope to develop solutions that will be acceptable. I invite my colleagues to join me in restoring that voice to the people.

H. Res. 585 - Proposed Resolution Establishing Select Committee to Study Abortion Decision

In addition to proposed Constitutional Amendments, it has also been suggested, e.g. via H. Res. 585, that a select Committee of Congress be established to study the impact and ramifications of the Supreme Court's decisions on abortion. Commenting on H. Res. 585, Rep. Froehlich, a co-sponsor along with Reps. Keating and Roncallo, noted that "[t]he select committee which I have proposed will permit a careful consideration of the pros and cons of all the various approaches [to the abortion question] that have been suggested." See 150 Cong. Rec. E6339 (daily ed., Oct. 9, 1973)). Reproduced below is H. Res. 585 as that resolution appears in the Congressional Record, id:

RESOLUTION

Creating a Select Committee to study the impact and ramifications of the Supreme Court decisions on Abortion.

Resolved, That there is hereby created a select committee to be composed of eleven Members of the House of Representatives to be appointed by the Speaker, one of whom he shall designate as chairman. Any vacany occurring in the membership of the committee shall be filled in the same manner in which the original appointment was made.

The committee is authorized and directed to conduct a full and complete study of the constitutional basis of the January 22, 1973, United States Supreme Court decisions on abortion, the ramifications of such decisions on the power of the several States to enact abortion legislation, and the need for remedial action by Congress on the subject of abortions.

For the purpose of carrying out this resolution the committee, or any subcommittee thereof authorized by the committee to hold hearings, is authorized to sit and act during the present Congress at such times and places within the United States, including any Commonwealth or possession thereof, whether the House is in session, has recessed, or had adjourned, to hold such hearings, and to require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents, as it deems necessary; except that neither the committee nor any subcommittee thereof may sit while the House is meeting unless special leave to sit shall have been obtained from the House. Subpenas may be issued under the signature of the chairman of the committee or any member of the committee designated by him, and may be served by any person designated by such chairman or member. The committee or any subcommittee thereof authorized by the committee to hold hearings shall publish reports of the hearings, and shall have authority to report legislation to the Congress.

The committee shall report to the House within six months of adoption of this resolution the results of its study, together with such recommendation as it deems advisable. Any such report which is made when the House is not in session shall be filed with the Clerk of the House.

Of course, other bills and resolutions have been introduced in Congress in addition to those discussed above. The following table (1) lists those bills and resolutions, (2) identifies sponsors and co-sponsors, (3) identifies the date of introduction as well as (4) the relevant House or Senate committee to which the bill was referred. Additionally, the table provides a brief digest summary of the bill or resolution.

ABORTION BILLS & RESOLUTIONS INTRODUCED IN THE 93rd CONGRESS, 1st SESSION

SENATE JOINT RESOLUTIONS

S. J. Res. 64. Mr. Church; 2/15/73.
Labor and Public Welfare.
Cosp: Bayh, Beall, Bennett, Bible, Biden, Cook, Domenici, Eastland, Ervin, Hansen, Hughes, McClellan, McGovern, Proxmire, Randolph.

Makes it the policy of the Federal Government, in the administration of all Federal programs, that religious beliefs which proscribe the performance of abortions or sterilization procedures (or limit the circumstances under which abortions or sterilizations may be performed) shall be respected.

Provides that any provision of law, regulation, contract, or other agreement to the contrary notwithstanding, on and after the enactment of this joint resolution, shall not be imposed, applied, or enforced, in or in connection with the administration of any program established or financed totally or in part by the Federal Government which provides or assists in paying for health care services for individuals or assists hospitals or other health care institutions which would result in causing or attempting to cause, or in obligating, any physician, other health care personnel, or any hospital or other health care institution, to perform, assist in the performance, or make facilities or personnel available for or to assist in the performance, of any abortion or sterilization procedure on any individual, if the performance of such abortion or sterilization procedure on such individual would be contrary to the religious beliefs of such physician or other health care personnel, or of the person or group sponsoring or administering such hospital or other institution.

S. J. Res. 119. Mr. Buckley; 5/31/73. Judiciary.
Cosp: Bartlett, Bennett, Curtis, Eastland, Hatfield, Hughes, Young.

Constitutional Amendment - Provides that with respect to the right to life, the word "person", as used in this article and in the fifth and fourteenth articles of amendment to the U.S. Constitution applies to all human beings, including their unborn offspring at every stage of their biological development, irrespective of age, health, function, or condition of dependency.

Provides that this article shall not apply in an emergency when a reasonable medical certainty exists that continuation of the pregnancy will cause the death of the mother.

S. J. Res. 130. Mr. Helms; 6/29/73. Judiciary.

Constitutional Amendment - Provides that neither the United States nor any State shall deprive any human being, from the moment of conception, of life without due process of law; nor deny to any human being, from the moment of conception, within its jurisdiction, the equal protection of the laws.

States that neither the United States nor any State shall deprive any human being of life on account of illness, age, or incapacity.

Stipulates that Congress and the several States shall have the power to enforce this article by appropriate legislation.

BILLS AND RESOLUTIONS - 93rd CONGRESS

HOUSE JOINT RESOLUTIONS

H. J. Res. 261. Mr. Hogan; 1/30/73. Judiciary.

Constitutional Amendment - Provides that neither the United States nor any State shall deprive any human being, from the moment of conception, of life without due process of law; nor deny to any human being, from the moment of conception, within its jurisdiction, the equal protection of the laws.

States that neither the United States nor any State shall deprive any human being of life on account of illness, age, or incapacity.

Stipulates that Congress and the several States shall have the power to enforce this article by appropriate legislation.

H. J. Res. 281. Mr. Zwach; 1/31/73. Judiciary.

Constitutional Amendment - Provides that neither the United States nor any State shall deprive any human being, from conception, of life without due process of law; nor deny to any human being, from conception, within its jurisdiction, the equal protection of the laws.

Provides that neither the United States nor any State shall deprive any human being of life on account of age, illness, or incapacity.

H. J. Res. 284. Mr. Zwach; 2/1/73. Judiciary.

See Digest of H. J. Res. 281.

H. J. Res. 290. Mr. Delaney; 2/5/73. Judiciary.

Constitutional Amendment - Provides that no person, from the moment of conception, shall be deprived of life, liberty, or property without due process of law; nor shall any person, from the moment of conception, be denied equal protection of the laws.

Provides that neither the United States nor any State shall deprive any human being of life on account of age, illness, or incapacity.

H. J. Res. 298. Mr. Zablocki; 2/5/73. Judiciary.

See Digest of H. J. Res. 261.

H. J. Res. 364. Mr. Erlenborn; 2/21/73. Judiciary.

See Digest of H. J. Res. 281.

H. J. Res. 394. Mr. Roncallo; 2/28/73. Judiciary.

See Digest of H. J. Res. 281.

H. J. Res. 423. Mr. Dominick V. Daniels; 3/13/73. Judiciary

See Digest of H. J. Res. 261.

H. J. Res. 427. Mr. Whitehurst; 3/13/73. Judiciary.

Constitutional Amendment - Provides that nothing in the U.S. Constitution shall bar any State or territory or the District of Columbia, with regard to any area over which it has jurisdiction, from allowing, regulating, or prohibiting the practice of abortion.

H. J. Res. 468. Mr. Whitehurst; 3/28/73. Judiciary.
Cosp: Archer, Bevill, Broyhill (Va.), Butler, Derwinski, Gerald R. Ford, Hastings Huber, Hunt, Ketchum, Mazzoli, Parris, Sikes, Steiger (Ariz.), Won Pat, Zion.

See Digest of H. J. Res. 427.

H. J. Res. 471. Mr. Whitehurst; 3/29/73. Judiciary.
Cosp: Holt, Treen.

See Digest of H. J. Res. 427.

H. J. Res. 473. Mr. Hogan; 4/2/73. Judiciary.
Cosp: Bevill, Camp, Huber, Keating, Lujan, Mazzoli, Won Pat.

See Digest of H. J. Res. 261.

H. J. Res. 476. Mr. O'Brien; 4/3/73. Judiciary.

Constitutional Amendment - Provides that nothing in the U.S. Constitution shall bar any State, or the Congress with regard to any area over which it is granted the power to exercise exclusive legislation, from enacting laws respecting the life of an unborn child from the time of conception.

H. J. Res. 485. Mr. Ichord; 4/4/73. Judiciary.

Constitutional Amendment - Grants the States the power to regulate or forbid the voluntary termination of human pregnancy.

H. J. Res. 488. Mr. Whitehurst; 4/4/73. Judiciary.
Cosp: Abdnor, Cleveland.

See Digest of H. J. Res. 427.

H. J. Res. 509. Mr. Biaggi; 4/16/73. Judiciary.

See Digest of H. J. Res. 261.

H. J. Res. 520. Mr. Whitehurst; 4/18/73. Judiciary.
Cosp: Gunter, Farick, Wampler, Wright.

See Digest of H. J. Res. 427.

H. J. Res. 537. Mr. O'Brien; 5/2/73. Judiciary.
Cosp: Burgener, Hanrahan, Huber, Mazzoli.

See Digest of H. J. Res. 476.

H. J. Res. 544. Mr. Whitehurst; 5/7/73. Judiciary.
Cosp: McCollister.

See Digest of H. J. Res. 427.

H. J. Res. 561. Mr. Gaydos; 5/21/73. Judiciary.

See Digest of H. J. Res. 261.

H. J. Res. 599. Mr. King; 6/6/73. Judiciary.

Constitutional Amendment - Provides that with respect to **the right to life**, the word "person", as used in this **article** and in the fifth and fourteenth articles of **amendment** to the U.S. Constitution applies to all human **beings**, including their unborn offspring at every stage of **their** biological development, irrespective of age, health, **function**, or condition of dependency.

Provides that this article shall not apply in an **emergency** when a reasonable medical certainty exists that **continuation** of the pregnancy will cause the death of the **mother**.

H. J. Res. 603. Mr. Quie; 6/7/73. Judiciary.

See Digest of H. J. Res. 599.

H. J. Res. 631. Mr. O'Brien; 6/21/73. Judiciary.

See Digest of H. J. Res. 261.

H. J. Res. 646. Mr. McEwen; 6/27/73. Judiciary.

See Digest of H. J. Res. 599.

H. J. Res. 647. Mr. Harvey; 6/28/73. Judiciary.

See Digest of H. J. Res. 427.

H. J. Res. 659. Mr. Sandman; 7/11/73. Judiciary.
Cosp: McEwen, Roncallo.

See Digest of H. J. Res. 261.

H. J. Res. 711. Mr. McCollister; 8/3/73. Judiciary.

See Digest of H. J. Res. 599.

H. J. Res. 717. Mr. Landgrebe; 9/11/73. Judiciary.

See Digest of H. J. Res. 599.

H. J. Res. 759. Mr. Vander Jagt; 10/9/73. Judiciary.

See Digest of H. J. Res. 427.

H. J. Res. 769. Mr. Burke (Mass.); 10/12/73. Judiciary.

Constitutional Amendment - Provides that with respect to the right to life, the word 'person', as used in this article and in the fifth and fourteenth articles of amendment to the Constitution of the United States, applies to all human beings, including their unborn offspring at every stage of their biological development, irrespective of age, health, function, or condition of dependency.

Prohibits abortions from being performed by any person except under and in conformance with law permitting an abortion to be performed only in an emergency when a reasonable medical certainty exists that continuation of pregnancy will cause the death of the mother and requiring that person to make every reasonable effort, in keeping with good medical practice, to preserve the life of her unborn offspring.

H. J. Res. 782. Mr. Seiberling; 10/18/73. Judiciary.

Constitutional Amendment. Provides that neither the United States nor any State shall deprive any human being of life on account of illness, age, or incapacity.

H. J. Res. 827. Mr. Whitehurst; 11/14/73. Judiciary.
Cosp: Dennis.

See Digest of H. J. Res. 427.

HOUSE RESOLUTIONS

H. Res. 585. Mr. Froehlich; 10/9/73. Rules.
Cosp: Keating, Roncallo.

Creates a select committee of the House of Representatives to study the impact and ramifications of the Supreme Court decisions on abortion.

H. Res. 683. Mr. Gude; 11/6/73. Rules.

See Digest of H. Res. 585.

H. Res. 691. Mr. Anderson (Calif.); 11/12/73. Rules.

See Digest of H. Res. 585.

H. Res. 697. Mr. Froehlich; 11/13/73. Rules.
Cosp: Bauman, Holt, Huber, Hudnut, Keating, Landgrebe, Lott, Mazzoli, Minshall, O'Brien, Powell, Regula, Roe, Roncallo, Sebelius, Shoup St Germain, Thone, Vanik, Walsh, Whitehurst, Won Pat.

See Digest of H. Res. 585.

BILLS AND RESOLUTIONS - 93rd CONGRESS

HOUSE BILLS

H. R. 224. Mrs. Abzug; 1/3/73. Armed Services.

Provides that medical care for former members of the uniformed service shall include abortions, sterilizations, and family planning services and authorizes such medical treatment to be performed in facilities of the uniformed services. [Amends 10 U.S.C. 1074, 1089]

H. R. 254. Mrs. Abzug; 1/3/73. Judiciary.
Cosp: Badillo, Conyers, Gibbons, Harrington, McCloskey, Podell, Rangel.

Abortion Rights Act - Provides that in order to secure the constitutional right of privacy and to prevent its unauthorized infringement, as guaranteed by the rights of due process and equal protection of the law, neither the United States nor any state shall enact or enforce any law, State constitutional provision, regulation, policy, or other device which infringes the right of any female to terminate a pregnancy that she does not wish to continue, or which deprives any female of access to adequate medical assistance in the exercise of such right.

Provides that the district courts of the United States shall have exclusive jurisdiction over actions brought to enforce the provisions of this Act, including but not limited to jurisdiction to grant injunctive relief to enforce the provisions of this Act.

States that if any provision or application of the Act is judicially determined to be invalid, the remainder of the Act with regard to the application of the provision to other persons or circumstances shall not be affected by such determination.

H. R. 4797. Mrs. Heckler; 2/27/73.
Interstate and Foreign Commerce.

Rights of Conscience in Abortion Procedures Act - Requires Medical institutions to provide a certificate indicating respect for an individual employee's right not to participate in abortions contrary to that individual's conscience as a requirement for hospital eligibility for Federal financial assistance.

H. R. 5708. Mrs. Heckler; 3/15/73.
Interstate and Foreign Commerce.
Cosp: Archer, Burke (Mass.), Cronin, Delaney, Derwinski, Don H. Clausen, Esch, Forsythe, Gale Gunter, Hanrahan, Hansen (Idaho), Helstoski, Holifield, Holt, Howard, Huber, Hudnut, Jordan, Ketchum, Kuykendall, Lujan, Madigan, Mazzoli.

See Digest of H. R. 4797.

H. R. 5709. Mrs. Heckler; 3/15/73.
Interstate and Foreign Commerce.
Cosp: J. William Stanton, McCollister, Mink, Moakley, Nedzi, Obey, Powell, Quie, Rhodes, Rinaldo, Roncallo, Roy, Ryan, Sullivan, Whitehurst, Zwach.

See Digest of H. R. 4797.

H. R. 5811. Mr. Steiger (Wisc.); 3/19/73.
Interstate and Foreign Commerce.

Requires medical institutions to provide a certificate indicating respect for an individual employee's right not to participate in abortions contrary to that individual's conscience as a requirement for hospital eligibility for Federal financial assistance.

H. R. 6219. Mr. Conte; 3/28/73.
Interstate and Foreign Commerce.

See Digest of H. R. 4797.

H. R. 6445. Mrs. Heckler; 4/2/73.
Interstate and Foreign Commerce.

Rights of Conscience in Abortion Procedures Act - Declares it to be the policy of the Federal Government that religious beliefs or moral convictions regarding the performance of abortions or sterilization procedures shall be respected in the administration of Federal programs. Provides that respect for an individual's right not to participate in abortions contrary to that individual's conscience shall be a requirement for hospital eligibility for Federal financial assistance. Requires the hospital to certify such honoring of the employee's wishes without discrimination.

H. R. 6849. Mr. Roncallo; 4/11/73. Judiciary.

Makes it a Federal crime to carry out any research activity on a human fetus or to intentionally take any action to kill or hasten the death of a human fetus in any Federally supported facility or activity. Provides criminal penalties for violation of this Act. [Adds 18 U.S.C. 246]

H. R. 7227. Mrs. Heckler; 4/19/73.
Interstate and Foreign Commerce.
Cosp: Broomfield, Mayne, O'Neill, Sisk.

See Digest of H. R. 4797.

H. R. 7235. Mr. Murphy (N. Y.); 4/19/73.
Interstate and Foreign Commerce.

See Digest of H. R. 6445.

H. R. 7340. Mrs. Heckler; 4/30/73.
Interstate and Foreign Commerce.
Cosp: Boland, Burke (Mass.), Chisholm, Frenzel, Grasso, Huber, Madigan, McCollister, McKay, Moakley, O'Brien, Pritchard, Sisk, Studds, Whitehurst.

See Digest of H. R. 6445.

H. R. 7478. Mr. Karth; 5/3/73.
Interstate and Foreign Commerce.

See Digest of H. R. 4797.

H. R. 7542. Mr. Conte; 5/7/73.
Interstate and Foreign Commerce.

See Digest of H. R. 6445.

H. R. 7601. Mr. Mazzoli; 5/8/73.
Interstate and Foreign Commerce.

See Digest of H. R. 6445.

H. R. 7725. Mr. Roncallo; 5/10/73. Judiciary.
Cosp: Anderson (Ill.), Burgener, Clancy, Delaney, Denholm, Dominick V. Daniels, Eilberg, Froehlich, Grasso, Heckler, Hogan, J. William Stanton, Ketchum, Mazzoli, Mitchell (N. Y.), Murphy (Ill.), Nedzi, O'Brien, Peyser, Sullivan Walsh, Won Pat, Wydler, Zwach.

See Digest of H. R. 6849.

H. R. 7752. Mr. Denholm; 5/10/73. Judiciary.

Provides that the words "person" and "whoever" include corporations, companies, associations, firms, partnerships, socities, and joint stock companies, as well as individuals, and pursuant to and for the purposes of the "due process" and "equal protection" clauses of the Constitution of the United States shall mean any animate combination of viable human cells capable of becoming or being an actual independent living human (singular or plural) entity.

H. R. 7850. Mr. Roncallo; 5/15/73.
Interstate and Foreign Commerce.

Prohibits the use of appropriated Federal funds to carry out or assist research on living human fetuses which are outside of the mother's womb.

H. R. 8242. Mr. Hillis; 5/30/73.
Interstate and Foreign Commerce.

See Digest of H. R. 6445.

H. R. 8681. Mr. Froehlich; 6/14/73.
Interstate and Foreign Commerce.

See Digest of H. R. 4797.

H. R. 8682. Mr. Froehlich; 6/14/73. Judiciary.

Provides that nothing in the fourteenth article of amendment to the Constitution of the United States shall be construed to bar any State from exercising the power to regulate or prohibit the practice of abortion, except that no State may prohibit an abortion that is necessary to save the life of the pregnant woman.

States that no court established by Act of Congress shall have jurisdiction in any case or controversy in which a right to abortion is maintained contrary to the law of a State.

H. R. 8683. Mr. Froehlich; 6/14/73. Ways and Means.

Prohibits under the Social Security Act, title XIX (grants to States for medical assistance programs) medical payments for abortions except in cases of medical necessity.

H. R. 8778. Mr. Roncallo; 6/18/73.
Interstate and Foreign Commerce.
Cosp: Addabbo, Archer, Burgener, Clancy, Cleveland, Delaney, Denholm, Dominick V. Daniels, Erlenborn, Fauntroy, Froehlich, Giaimo Grover, Guyer, Heckler, Hillis, Hogan, Ketchum, Maraziti, Mazzoli, Mitchell (N. Y.), Murphy (Ill.), Nedzi, O'Brien.

See Digest of H. R. 7850.

H. R. 8779. Mr. Roncallo; 6/18/73.
Interstate and Foreign Commerce.
Cosp: O'Hara, Peyser, Sullivan, Walsh, Won Pat, Wydler, Young (Ill.), Zablocki, Zwach.

See Digest of H. R. 7850.

H. R. 8780. Mr. Roncallo; 6/18/73. Judiciary.
Cosp: Addabbo, Archer, Cleveland, Grover, Guyer Hillis, Lent, Maraziti, Mazzoli, O'Hara, Young (Ill.), Zablocki.

See Digest of H. R. 6849.

H. R. 8852. Mr. Roe; 6/20/73.
Interstate and Foreign Commerce.

See Digest of H. R. 4797.

H. R. 9459. Mr. Roncallo; 7/20/73. Judiciary.
Cosp: Bafalis, Jones (Okla.), Powell.

See Digest of H. R. 5349.

H. R. 9489. Mr. Roncallo; 7/23/73.
Interstate and Foreign Commerce.
Cosp: Bafalis, Jones (Okla.), Powell.

See Digest of H. R. 7950.

Enacted Legislation

Abortion-Related "Conscience Clause" in the Health Programs Extension Act of 1973

(For a more thorough review of this legislation, see CRS/American Law Division AP-§259)

Spurred by a federal district court decision in Montana which enjoined a Catholic hospital from refusing its facilities for the performance of a sterilization, see Taylor v. St. Vincents Hospital, No. 1090 (D. Mont. Nov. 1, 1972), Senator Church, on March 27, 1973, proposed a so-called "Conscience Clause" to S. 1136, (a bill relating to health appropriations), which would ensure that institutions and individuals would, merely because they received certain federal funds, not be compelled to perform or participate in sterilization or abortion procedures if such practice was contrary to moral or religious beliefs. The Senate debated and adopted the Church Amendment, see 47 Cong. Rec. S5717-S5727, S5741 (daily ed., March 27, 1973). The House reported a modified version of the amendment in H.R. 7806, see H.R. Rep. No. 93-227, 93d Cong. 1st Sess. 10-11, 15-16 (1973), which was debated and adopted as amended by the House on May 31, 1973. See 82 cong. Rec. H. 4143-H4164 (daily ed., May 31, 1973). The Senate, on June 5, 1973, then voted to agree with the House version. See 85 Cong. Rec. S 10400-S10405 (daily ed., June 5, 1973). The "Conscience Clause" was then enacted into law as Title IV (b) and (c) of the Health Programs Extension Act of 1973. See P.L. 93-45, 87 Stat. 91, signed by President Nixon on June 18, 1973. The "Conscience Clause" is codified at 42 U.S.C.A. §300a-7 (Supp., Oct. 1973). As enacted, the "Conscience Clause" reads as follows:

(b) The receipt of any grant, contract, loan, or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Services and Facilities Construction Act by any individual or entity does not authorize any court or any public official or other public authority to require—

(1) such individual to perform or assist in the performance of any sterilization procedure or abortion if his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions; or

(2) such entity to—

(A) make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions, or

(B) provide any personnel for the performance or assistance in the performance of any sterilization procedure or abortion if the performance or assistance in the performance of such procedure or abortion by such personnel would be contrary to the religious beliefs or moral convictions of such personnel.

(c) No entity which receives a grant, contract, loan, or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Services and Facilities Construction Act after the date of enactment of this Act may—

(1) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or

(2) discriminate in the extension of staff or other privileges to any physician or other health care personnel,

because he performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions.

Abortion Funding Ban in The Foreign Assistance Act of 1973

On October 1, 1973, Senator Jesse Helms submitted an amendment to S. 2335, the Foreign Assistance Act of 1973. Helms' amendment was intended to prevent the use of Agency for International Development funds in the practice and promotion of abortion. Helms' amendment, as introduced, read as follows:

> Sec. 116. Prohibiting Use of Funds for Abortions- None of the funds made available to carry out this part shall be used in any manner, directly, or indirectly, to pay for abortions, abortifacient drugs, or devices, the promotion of the practice of abortion, or the support of research designed to develop methods of abortion. The provisions of this section shall not apply to any funds obligated prior to the date of its enactment. (See 145 Cong. Rec. S18272 (daily ed., Oct 1, 1973))

Senator Helms submitted the following remarks and materials in the Congressional Record on the occasion of submitting his amendment. (See 145 Cong. Rec. S18272-S18283 (daily ed., Oct. 1, 1973)):

Mr. HELMS. Mr. President, the amendment which I propose is very simple and straightforward. It is intended to prevent the use of AID funds—that is to say, funds collected from the taxpayers of the United States—in the practice and promotion of abortion.

At the present time, AID supports abortion in at least three major ways. First, AID supports, in many individual countries, population programs in which abortion is one of the approved methods of population control. Second, AID is a major supporter of international organizations and funding mechanisms which provide training programs, hospital facilities and equipment for performing abortions, and propaganda programs to make abortions culturally acceptable in foreign countries. Third, AID funds research both in the United States and abroad aimed at developing cheap methods of abortion, principally through so-called abortifacient drugs, that is, chemicals which induce abortion. The research in this third category is envisioned by AID as developing a pill or simple self-

administered drug which will become the primary method of population control throughout the world. Unlike the pill which is merely contraceptive, this will be the pill that kills.

My amendment would therefore stop the use of U.S. Government funds to promote and develop ways of killing unborn children. It would not affect other AID population programs. It would not reduce the amount of funds available for AID population programs, or any other programs of the Foreign Assistance Act. There are many of us in this Chamber, myself included, who favor reducing foreign aid. But that is another issue, one to be discussed in a broader context. In this amendment I am simply trying to restrict the use of whatever amount of funds is authorized and appropriated from being used for the purposes of the abortionists.

This amendment will not interfere with our relationship with other countries receiving assistance or with the international population organizations. It requires only that U.S. Government funds made available for legitimate purposes not be commingled with funds from other sources that might be used for abortion. I am under no illusion that governments and agencies that have been promoting abortion for years will suddenly stop when they are not allowed to use U.S. Government funds for that purpose.

Foreign countries already understand that assistance is received only if they adhere to reasonable conditions. Title X of the act, the very title of the act which relates to population growth, specifically authorizes the President to set up "such terms and conditions as he shall determine." Section 291(c) requires the President to "establish reasonable procedures to insure, whenever family planning assistance from the United States is involved, that no individual will be coerced to practice methods of family planning inconsistent with his or her moral, philosophical, or religious beliefs."

Moreover, the very bill before us, as approved by the committee, contains a section 115 prohibiting funds from being used to conduct police training.

Finally, it is in the very nature of AID assistance that conditions for fiscal responsibility, social reform, and financial participation of the host country be attached. Every loan and grant has them. We could, in fact, go far beyond the present amendment and require all abortion activities, from whatever funds, to be stopped before our assistance could be received. But the present amendment does not do that. It only requires that the United States does not participate in the spread of abortive practices. If it is permissible, as I think everyone agrees, to put the condition of voluntarism upon any participation, it is certainly permissible to require each recipient to agree not to use our money for killing the unborn.

No new public policy is being introduced through this amendment. I doubt that any Senator who first voted for the Foreign Assistance Act in 1961 ever dreamed that AID's population programs in foreign countries would allow abortion, much less become potentially structured around abortion in 1973. I believe that is the reason that the 1961 act failed to contain a specific prohibition or even to mention abortion.

Our domestic policy is quite clear. The Family Planning Services and Population Research Act of 1970 contains the following two clauses:

> Sec. 1004(a). In order to promote research in the biomedical, contraceptive development, behavioral, and program implementation fields related to family planning and population, the Secretary is authorized to make grants to public or nonprofit private entities and to enter into contracts with public or private entities and individuals for projects for research and research training in such fields.
>
> Sec. 1008. None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.

Unfortunately, the proponents of abortion have found other ways of getting Federal funding, particularly for research in the field. One of these ways is through AID funds, apparently on the grounds that abortion is contrary to public policy for domestic purposes, but that it is all right to promote abortion among foreign nations with U.S. money. Dr. Carl Djerassi, an ardent proponent of abortion, writing in the Bulletin of Atomic Scientists—January 1972—put it this way:

> I believe that research on chemical abortifacients should be at, or near, the top of the priority scale for future fertility control agents. Fortunately, at least two important federal funding agencies (Agency for International Development and the Center for Population Research of the National Institutes of Health) seem to have found ways of circumventing Sec. 1008 of the 1970 Family Planning Act and have continued to inject significant, though insufficient, financial support into this highly important area of research.

The result, as Dr. Djerassi, avidly points out, is that abortion research is being carried out with AID funds under the guise that it is done for the alleged benefit of foreign nations. Of course, once the technology is available, it is available for domestic use as well. I find it reprehensible that public funds would be used for such purposes, no matter what the intended use.

After reviewing current AID materials, I find it clear that abortion is an approved method of family planning in AID programs at the present time, and that AID regards abortion as potentially the largest sphere of its activity in the near future. Although AID currently supplies funds, training, technology, and equipment to programs which include surgical and suction abortions, AID makes it plain that its future lies in promoting chemical abortions on a massive scale, using U.S. Government funds. To this end, AID has been funding research into chemical methods—research, I might add, that is associated with clinical tests upon U.S. citizens. According to the latest available statistics, some $30 million was spent between fiscal year 1965 and fiscal year 1972 for such research alone. This is entirely the policy of bureaucrats, not the policy of Congress.

One has to look carefully in AID literature to discover these facts, because the official publications prefer to use euphemisms to hide the truth.

The true medical definition of abortion is not difficult for the layman to understand. In 1963, HEW's Public Health Service Publication No. 1066 used the following technical definition:

> All the measures which impair the viability of the zygote at any time between the instant of fertilization and the completion of labor constitute, in the strict sense, procedures for inducing abortion.

The layman needs only to learn that the zygote is the fertilized egg cell—the cell with the complete pattern of determinants that make up an individual human being—to understand that abortion is the process of bringing death to that individual. Abortion ends the life of a human being who has done no wrong and has made no choice.

AID prefers to avoid such terms in its public literature. The current issue of "Population Program Assistance," the official summary of AID's population programs, speaks deceptively of "post-conceptive fertility control" and "relief of unwanted pregnancy" as the most effective area of future activity. AID says:

> Such pregnancy-centered programs can be much more efficient than ordinary family planning programs because women who believe they may have an unwanted pregnancy will actively seek out any facility offering relief, and hence educational and promotional costs of the family planning program can be greatly reduced, and the time from inception of the program to reduction of fertility can be minimized.

What this bureaucratic gobbledegook means is that by killing the child in the womb, you are already one up on reducing the population.

This is both a crime against humanity and a crime against language. Fertility relates to the ability to conceive, not to the capacity of giving birth. This so-called "post-conceptive fertility control" is nothing less than the induction of abortion and the death of a child already conceived.

The head of AID's Office of Population, Dr. R. T. Ravenholt, was quoted as saying in the July 1973 issue of HEW's Family Planning Digest that "AID will also support provision of such clinical methods as pregnancy termination." Dr. Ravenholt made a similar statement at the meeting of the International Planned Parenthood Association is August 1972, as quoted in the IPPF Medical Bulletin:

> Dr. Ravenholt summed up his findings by saying that there was a considerable basis for optimism, but that it was becoming increasingly important to reach young women to curb early reproduction. Access to oral contraceptives should be as free as possible. No coercion should be made available in family planning programmes, including abortion.

Thus we can see that there is no doubt whatsoever that the policy of AID and the policy of AID's Director of the Office of Population, Dr. Ravenholt, is to extend U.S. support to programs that make abortion available.

I want to make it clear that my amendment touches only abortion; it does not affect AID programs of family planning

which prevent conception. For example, AID is the world's largest purchaser and distributor of present oral contraceptives. This program would not be affected by my amendment. Nor would AID programs in demographic research, or manpower training in contraceptive programs.

The main thrust of my amendment is toward the future—toward the research being done now to realize the abortion potential of the future. It would stop U.S. Government funds from being used to do abortions now, but it is more important that AID's abortion policy be reversed. Unless Congress does so now, we will soon see the day when abortifacient drugs and techniques dominate AID's program, and the United States becomes the world's largest exporter of death.

This is clear from the 1971 edition of Population Program Assistance. The main emphasis is placed upon the development of the drugs known as prostaglandins, which it is hoped will become as cheap and as available as aspirin. The prostaglandins are drugs which induce muscle contractions and expel the developing child. They are not contraceptives or true fertility control. AID reports as follows:

> With unusual speed, and at least partly due to AID support, the prostaglandins have emerged as a new method of fertility control with high future potential . . . AID has moved rapidly to explore the potential of prostaglandins. It now has contracts totalling $4.4 million with outstanding investigators and institutions.
>
> Problems of synthesis and production appear to have been largely solved; intensive studies of administration and safety are in progress; and collaborative clinical trials of prostaglandins—already in progress in North Carolina, Michigan, Massachusetts, Connecticut, Missouri, and Hawaii in the United States.
>
> Rarely, if ever has the testing and introduction of such a new technology proceeded so rapidly on a worldwide basis.
>
> Research interest is focusing increasingly on the use of prostaglandins that can be self-administered. It is already known that prostaglandins by the intra-amniotic and extra-amniotic injection offer substantial improvement over previous methods for termination of mid-term pregnancies.

Dr. Ravenholt is also ecstatic over the possibilities of chemical abortions. In testimony before the Senate Appropriations Committee in July, 1971, he said that prostaglandins show promise of—

> . . . a breakthrough in contraceptive technology, particularly suited to less developed countries . . . the potential of prostaglandins to contribute to the solution of demographic crisis is so great that the most rapid exploration of their worth is warranted.

It was with a deep sense of regret that I discovered that my own State of North Carolina is a leader in developing the new death technology with AID funds. I have two articles which give authoritative accounts of the North Carolina research, one from the January 1972 issue of HEW's HSMHA Health Reports, and the other from the September 1971 issue of AID's journal, "War on Hunger." I call upon the Senate to end such activity wherever it is sustained by Federal money.

Mr. President. I ask unanimous consent that the two articles I have just mentioned be inserted in the RECORD at the conclusion of my remarks.

Mr. President, I also ask unanimous consent that the following documents also be inserted in the RECORD at the conclusion of my remarks:

First, "A 5-year Plan for Family Planning Services and Population Research—Second Progress Report to the Congress of the United States," May 1973—excerpts reference AID.

Second, "Report of the Secretary of HEW Submitting 5-Year Plan for Family Planning Services and Population Research Programs," October 1971—excerpts reference AID.

Third, excerpts from "Inventory of Federal Population Research, Fiscal Year 1972," DHEW publication No. (NIH) 73-133, "Development of New Fertility Regulation Techniques."

Fourth, "Summary of AID Dollar Obligations for Populations and Family Planning Projects, Fiscal Years 1965–72" from Population Program Assistance, AID Bureau for Population and Humanitarian Assistance, December 1972.

Fifth, "AID Population Funds Obligated for Research in Fiscal 1966–72," from Population Program Assistance.

Sixth, "A Fact Sheet on Prostaglandins, Today—Tomorrow?"

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UGANDAN PRESSES PROSTAGLANDIN RESEARCH

(By Jan Palmer, Assistant Editor of Front Lines)

Sultanali Magan Karim is a third generation Ugandan who may hold one of the keys to the well-being of future generations, not only in his own developing country but throughout the world.

He is presently professor and head of the Department of Pharmacology and Therapeutics at Makerere University in Kampala, Uganda. Dr. Karim is also a foremost researcher in the use of prostaglandins as an important new method of family planning. (Prostaglandins are fatty acid compounds which occur naturally in the body. Scientists have recently found that these compounds are effective for inducing the menstrual period and can be used as a once-a-month means of fertility control.)

The significance of prostaglandins was noted recently in testimony submitted to the Foreign Operations Subcommittee of the Senate Appropriations Committee in July by Dr. R. T. Ravenholt, Director of the Office of Population, Agency for International Development. He said prostaglandins show promise of "a breakthrough in contraceptive technology, particularly suited to . . . less developed countries.

". . . the potential of prostaglandins to contribute to the solution of the demographic crisis is so great that the most rapid exploration of their worth is warranted."

AID has implemented this belief, according to Dr. Joseph Speidel, Chief of the Population Office Research Division. The agency has obligated $4.4 million for prostaglandin research over the past four fiscal years. In June AID provided an $800,000 grant to assist Dr. Karim in his research for the next three years.

Clinical trials of prostaglandins in a number of countries is one of the projects being initiated under another $3 million grant to the International Fertility Program organized at the University of North Carolina under the direction of Dr. Elton Kessell. Dr. Karim is a key member of the program and the clinical trials are one of the purposes of his wide travels in Europe, the United States and Asia.

Dr. Karim is of Indian origin with the distinguishing black wavy hair and fine features of his heritage. He looks younger than his 36 years and has the quiet, reserved manner of a lecturer or professor deep in thought.

He is an example of the fitness brought about by hard work. He is trim, appears relaxed and speaks enthusiastically of his studies. When he is not traveling or in his lab, he is at home in Kampala with his wife, Pitu, and his three children, Nina, Natasha, and Sharaz.

"The potential for the use of prostaglandins in the control of fertility is now obvious," he said recently in an interview while visiting the United States. The advantages of a once-a-month contraceptive are many the possibility of self-administration, presence of fewer side effects, and the contraceptive may only be necessary at the time of a delayed menstrual period (possibly three to four times a year)."

Dr. Karim first became actively interested in prostaglandins in 1965 when he was working as a physiologist in obstetrics in London. He had already spent 12 years in London, and was to spend two more studying the mechanisms of natural childbirth and natural abortion. Actual clinical studies with prostaglandins began in 1967.

He was the first scientist to use prostaglandins in humans for the induction of labor in 1968 and a pioneer in the later use of the compounds for abortion. Dr. Karim also reported the first oral use of prostagladins to induce labor at or near full term.

Most of Dr. Karim's work has been carried out at Makerere University in Kampala. The major part of his study is devoted to the use of prostaglandins in inducing the menses when delayed up to seven days and in terminating a pregnancy when the gestation period has been 13 weeks or more.

"We have tried various methods of administering prostagladins," Dr. Karim explained, "intravenously, through muscular injections—but thus far the intravaginal method has proved the best." This method was first suggested by Doctors Speidel and Ravenholt in a letter to the British Medical Journal, *Lancet*, in March 1970.

Dosages of prostaglandins are based in part on a woman's weight and size. Dr. Karim said. Higher dosages are required for oral contraception.

Witnessed side effects include nausea, vomiting and diarrhea in some cases. "But," Dr. Karim said, "we are trying to eliminate these conditions."

Asked about the implications of prostaglandins in family planning in the developing countries, Dr. Karim expressed two approaches in his answer.

Prostaglandins are now readily synthesized and as such will become available at a low cost—a few pennies per use."

"The motivation factor is less important with prostaglandins. Instead of having to remember to take a pill every day, it is an after-the fact-approach."

But Dr. Karim added, "The availability to any woman is dependent on the length of the gestation period. While prostaglandins are presently used routinely in inducing childbirth and the tests are positive for its use in inducing menstruation in cases where the delay is up to seven days, the use of prostaglandins for terminating pregnancy after 13 weeks is under continued study."

"Even 50 years from now," Dr. Karim said, "the use of prostaglandins in terminating a pregnancy where the gestation period has been 13 weeks or more will most probably be an in-hospital procedure."

"Therefore, while prostaglandins will cost only pennies in themselves, the most important cost will arise from the supply system."

Dr. Karim also mentioned other considerations affecting the use of prostaglandins.

"Abortion as a means of population control in underdeveloped countries such as

Uganda is a thing of the future because of present religious and medical restrictions."

"But restrictions and laws are gradually changing," he added.

Presently, the use of prostaglandins for terminating pregnancies of 6 to 12 weeks "offers no real advantages over other methods, such as the vacuum," Dr. Karim explained. "Thus we have restricted our primary tests to 13 or more weeks.

"In some countries," Dr. Karim said, "Prostaglandins for this procedure may be available as soon as two years from now. In the United States my guess is about three years."

"But this is limited availability," he added.

Dr. Karim was enthusiastic about the free exchange of information among various prostaglandin researchers and felt that progress was being made more quickly because of the pooling results.

He was also encouraged by the support he had received from AID and other organizations. But he cautioned against undue optimism.

"It will be five years until prostaglandins are readily available and commonly used," Dr. Karim said. "I have been told that is an optimistic guess—perhaps. But we have made rapid and encouraging progress which allows us to be optimistic."

An "after-the-fact" new method of birth control is being tested at Chapel Hill, N.C. If it is successful, a sigh of relief will go up from millions who find the estrogen pill too dangerous and contraceptive devices such as the intrauterine device (IUD), the diaphragm, and the condom too inconvenient, uncomfortable, or ineffective.

The first clinical research in the United States using chemicals called "prostaglandis" as menstrual regulators is beginning at the University of North Carolina at Chapel Hill. Physicians there hope that there research will lead to a safe birth control pill which is used only once a month.

Ten women have volunteered to use prostaglandins for birth control in the first clinical trials. Surgical abortion will be available to any in whom the drugs are ineffective.

Clinical trials will then be expanded to about 100 and then to 1,000 women. The health of these women will be watched closely and their bodies monitored for physiological changes during administration of the drugs and for a prolonged period afterward.

Prostaglandins act by causing the uterus to contract. This brings on menstruation which expels the ovum, whether it has been fertilized or not.

Prostaglandins occur naturally in semen and in certain female tissues. Their role, if any, in human reproduction is unknown. The process through which prostaglandins initiate menstruation is also unknown. These mechanisms will be studied in the research.

Research into prostaglandins has a long but uneven history. In 1930 it was discovered that semen causes the uterus to contract. The active ingredients in semen which cause this contraction were isolated and identified as prostaglandins. No use was known for the new-found chemicals for 40 years. Then in 1969, an event was reported which led to the present University of North Carolina research. Dr. S. Bergstrom and his co-workers at the Karolinska Hospital in Stockholm, Sweden, had used prostaglandins to induce abortion. In August 1970, a research team at the university, headed by Dr. Charles Hendricks, chairman, department of obstetrics and gynecology at the university's Memorial Hospital began using prostaglandins as abortifacients.

Administered into the vagina, the uterus, or directly into the bloodstream, prostaglandins have brought on abortion in 46 women who were 6 to 20 weeks pregnant during 1971.

According to Dr. William Brenner, a member of the research team, none of these women sustained injury: "Serious complications observed in surgical abortions have not been observed with prostaglandins."

Besides being effective abortifacients, prostaglandins were found to bring on menstruation prior to implantation of the egg. Implantation of the fertilized egg in the uterine wall normally occurs about 6 weeks after intercourse.

Research into the use of prostaglandins as menstrual regulators was begun while they were being used for abortions. Researchers reasoned that if menstruation could be brought on regularly at the end of each monthly cycle, unwanted pregnancies would be averted.

Prostaglandins have been used successfully as menstrual regulators in research on three species of animals, including monkeys. In the clinical research with women, two varieties of naturally occuring prostaglandins will be administered into the vagina.

Synthetic varieties of prostaglendin, however, may prove more valuable than natural ones. It is hoped that synthetic prostaglandins will be developed which can be given orally, in pill form, and which will have fewer side effects than those being used now.

When prostaglandins have been used to induce abortion, patients have had nausea and pelvic pain. Physicians at the university hope to lessen these side effects by experimenting with different "routes and rates of administration" and to demonstrate that prostaglandins are superior to the daily estrogen pill and other birth control methods.

Dr. Frederick Kroncke, another researcher in the project, pointed out that there are areas of the world where people are interested in birth control but do not have the money nor the medical counsel necessary for the presently used contraceptives. In these areas prostaglandins may prove to be the cheapest and most effective means of birth control.

Until recently, most of the funds for the prostagandiin research have come directly from the University of North Carolina Department of Obstetrics and Gynecology with some assistance from the Upjohn Company, which supplies prostaglandins to the investigators. Since mid-July 1971, money has also been received from a grant from the Agency for International Development to the North Carolina Population Center.

[Committee Print]

Report of the Secretary of Health, Education, and Welfare Submitting 5-Year Plan for Family Planning Services and Population Research Programs

October 12, 1971.

BACKGROUND AND OBJECTIVES

In recent years the Agency for International Development and the less developed countries to which it extends assistance have become increasingly aware of the importance of population problems. There is growing recognition that rapid population growth and concentration of population are often detrimental to attempts to accelerate social and economic development in these countries.[1, 2, 3, 4]

The Agency for International Development has therefore increasingly supported programs in the developing countries that aim to reduce population growth rates and to improve the conditions of human reproduction. AID population assistance is designed to achieve these specific objectives by strengthening the action programs of national governments, international agencies and private voluntary organizations. Such programs usually aim first and foremost at making family planning information and services freely available to those who want and would benefit from better means of fertility control.

Within the AID population program, research activity has developed gradually, not as an independent effort, but as an integral part of the backstopping, evaluating and strengthening of voluntary family planning programs. AID's research, therefore, is an applied or "goal directed" effort, seeking specific new knowledge that can be translated directly into action programs in the less developed countries.

SCOPE OF THE PROGRAM

The research component of AID population assistance is, from a legal standpoint, the oldest part of the program. In the first population legislation ever enacted by Congress, the Foreign Assistance Act was amended in 1963 to provide that AID funds "may be used to conduct research into the problems of population growth."[*] Subsequently, these research activities were endorsed by Congress in Title X of the Foreign Assistance Act (1967)[*] and by President Nixon in the Presidential Message on Population (July 18, 1969). * * *

The first objective of AID population research in the mid-1960's was to define and describe the still little-understood relationship between population growth and economic development. Studies by the National Planning Association, the University of Pittsburgh, General Electric TEMPO Center for Advanced Studies and others helped to document the fact that in many developing countries high birth rates were reducing the hoped-for gains in per capita income and in funds for capital investment, while at the same time creating a higher ratio of dependents for the working population to support and a higher demand for food, shelter, schooling and other immediate consumer needs. Reducing birth rates, these studies indicated, would hasten the achievement of other economic and social goals.

As these relationships were recognized and as the AID worldwide population program increased from $2.1 million in fiscal year 1965 to approximately $100 million in fiscal year 1971,[*] population research programs also increased in a comparable manner. The goal of the research program has consistently been to develop and relate new family planning methods, new social science insights, and new distribution systems to incipient and ongoing family planning programs of developing nations. Allocations for population research increased from about $1 million annually in fiscal years 1965–68 to $11.6 million in fiscal year 1970–71. In the five years, fiscal 1965 to 1970, a total of $26 million has been obligated for population research projects and pilot or demonstration projects which are principally research-oriented. In addition, throughout this period, technical assistance projects totalling approximately $10 million have been funded which are partially research or have research implications. Also in these years, about $10 million has been provided to institutions to strengthen their capabilities and support the conduct of population programs including research.

In fiscal 1971, obligations for population projects which are solely or primarily research are expected to total $12 million. Funding levels for the population research program are shown in Figure 1.[*, 10]

STRATEGY

AID's population program assistance is being directed selectively at high priority action needs in the two categories of population policy and population programs. This overall assistance strategy is outlined in Table 1.[11]

The research program is considered an adjunct to this strategy and therefore encompasses a broad range of activities, including biomedical research to improve means of fertility control, research on demography, population dynamics, and operational

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research to improve family planning delivery systems.

Two decades of experience within AID and the assistance agencies preceding AID have led to the realization that adaptive research is needed for transference of knowledge and technology between nations. There are now 148 professional AID personnel working in population worldwide. The input on needed research from this network of AID personnel and action programs helps provide AID with perspective and the ability to focus on gaps in knowledge which are hindering the success of these programs.

AID's experience with other developmental programs has shown that it is important to provide coherent leadership and direction to research efforts. AID encourages the development of cooperative arrangements for carrying out research between institutions in the United States and the less developed countries. But whenever outside experts are involved, the research design and execution should involve host country nationals as collaborating professionals. In addition to making it more likely that highly relevant topics of research will be chosen, this practice is designed to enhance assurance that research results will find their way into practical application within the less developed countries. With the partial exception of biomedical research, it is essential that as much of the research as possible be carried out within the developing countries.

Most research should include training functions. By involving host country nationals in a training function, AID-sponsored research can hope to build up a valuable resource for the host country, namely, indigenous qualified research investigators. Ultimately, a core of skilled investigators in the developing countries should grow to a point where outside technical assistance in performing research is rendered unnecessary.

Research should demonstrably result in the development and strengthening of institutions within the host country, such as universities, hospitals, clinics, etc. This institutional development is often best fostered by organization affiliations between a U.S. research team and a specific institution within the host country.

Where adequate personnel and facilities exist, AID will enter into research contracts directly with host country institutions and nationals.

Although solution of important problems in a single country context has high priority, AID prefers, because resources are limited, to fund research projects of sufficient importance and generality that they can be applied in more than one less developed country. Typically, AID will support research in an initial country with the understanding that, should the project demonstrate success, efforts will be made to repeat the project in other countries.

RESEARCH NEEDS AND PROGRAM

AID has selected four functional areas in the field of population research for particular emphasis. The following sections present a brief description of research topics important to AID's assistance program, the program developed to date to meet these needs, and future plans.

DESCRIPTIVE DEMOGRAPHY

In the less developed countries of the world there is a paucity of accurate and complete information concerning the demographic status of the country. As one example, a consultative group of the Economic Commission for Africa, meeting in Addis Ababa in January 1971, concluded that current demographic information on the self-governing territories of Africa is, at best, spotty. Twenty-three of these territories have taken at least one census since 1950 yet 16 of the countries have not. Where censuses have been taken, the range of topics is quite narrow: only eight countries have collected data permitting analysis of national fertility levels; only 15 have data on internal migration. The situation is no better with regard to registration of vital events. While 33 of the African self-governing territories make provision for such registration, in only 10 of these countries does vital registration ostensibly apply to the entire population; elsewhere coverage extends only to urban areas or—in the case of four countries—to the non-African population.[12]

The obstacles facing achievement of accurate and complete demographic information for less developed countries are in large part the problems of development itself. The information cannot be obtained because of the relatively high cost and administrative difficulty of taking decennial censuses; the rapid outdating of census statistics due to delays in tabulation and analysis; the lack or nonexistence of efficient administrative machinery for vital registration and vital statistics collection; and the relatively high recording or response error.

In these situations, traditional approaches to census and vital registration systems will not yield the critically needed information. New methods for data collection relative to fertility, mortality and migration are required, as well as innovative techniques for collecting and analyzing information concerning family planning practices, pregnancy out of wedlock, incidence of induced abortion, early infant deaths, family formation and dissolution, and the age of onset and patterns of childbearing and marriage.

To improve the reliability and predictive value of data for population and family planning assistance programs, the University of North Carolina, with AID support, is helping to establish POPLABS, or Population Laboratories, at universities and research institutions in various countries. These POPLABs, initially established in Columbia, Morocco and the Philippines, concentrate on development of new methodologies (such as dual recording systems) for meeting census and vital registration requirements, and apply newer analytic techniques to the interpretation of existing demographic data.[13]

AID missions in many countries have also supported research to collect demographic data, develop new methods of analysis and improve the accuracy of descriptive and predictive demographic information. Considerable support has been provided to the building of demographic institutions, particularly in Latin America.[14]

To meet the need for improved demographic data and methods, AID has provided $7.5 million for technical assistance and research projects between FY-65 and FY-70. In the coming years, AID expects to continue support of a strong research effort in this area.

Determinants and consequences of population characteristics and change

In many countries success of family planning programs is hindered by lack of official policy or low priority support of such programs on the part of government and other leaders. The result is unavailability of adequate resources for population programs, failure to use all available contraceptive technology, and poor quality administrative systems. Studies of the dynamics of policy formation and decision-making as they relate to population and family planning programs are important in order to suggest strategies for bringing about change. To assist policy formulation and decision-making in less developed countries, investigation is needed of the impact and interrelationships of a broad range of government policies and activities on population such as tax laws, subsidies for childbearing, policies concerning housing, agriculture, education and welfare, laws concerning legal age of marriage, abortion laws, provision of governmental maternity care, and pro- or anti-notalist family planning policy.[15]

Beyond the policy sphere, social science research on population dynamics is needed to elucidate factors operating at both the individual and societal level.[16] At the individual level, studies are needed of factors directly affecting fertility, such as exposure to and frequency of intercourse, use of contraception and abortion to prevent or interrupt pregnancy, factors relating to pregnancy such has infertility, fetal wastage and length of lactation and the social psychological factors relating to acceptance of methods of fertility limitation including sterilization and abortion.

At the group level, more knowledge is needed concerning the dynamics of development of societal norms relating to fertility and how these norms interact with other factors such as education, socioeconomic status or religion to affect fertility behavior. Still awaiting more thorough exploration are the relationships between fertility and such factors as migration, urbanization, sex education, employment status and educational opportunities for women, and the commonly perceived relations between children (especially sons) and economic and social security. Work on population trends in society as studied by historians[17] and of the dynamics of smaller elements of society as studied by anthropologists has not received adequate emphasis within the population community.

In AID's program, behavioral and social science technical assistance and research projects have received $6.5 million between FY-65 and FY-70. Support is being provided, for example, to the Rand Corporation for an inquiry into the determinants of fertility.[18] The primary purpose of this project is to develop both a general theoretical statement of the determinants of fertility, and to explore elements of this theory from various conceptual, empirical and policy points of view. The goal is to help provide a basis for better defining alternative population/family planning program strategies, indicate their potential comparative advantage and test cost-effectiveness of actual operations.

Information on abortions is being developed through an AID supported project at Johns Hopkins University, which is conducting epidemiological studies in Taiwan. The project aims at determining the incidence of induced abortions and how this relates to health, fertility levels and other socioeconomic factors.

For the future, more attention is needed concerning social psychological factors in family decision-making as related to fertility.[19] A desirable product, from AID's point of view, would seem to be research which articulates an understanding of family decision-making with the organiaztion of family planning services. Articulation would consist of structuring family planning services so as to take explicit account of empirically tested social psychological findings.

Efforts are going forward at several universities in the U.S. and elsewhere for the development of population education, a newly created discipline which seeks, in part, to broaden the traditional definition of sex education by incorporating an awareness of population problems. Research is needed for the development, first, of instructional theory in this field; next, for curricular materials and programs of teacher training.[20]

The present "economic case" for reducing rapid population growth rates because of their adverse effect on development is based on highly discounted streams of future costs and benefits. While the ratios are impressive, they have little meaning to administrators hard pressed with present problems and whose planning horizons are counted in weeks and months rather than decades. Much more work is required to learn how population growth is immediately affecting

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[illegible] efforts to improve living conditions, reduce unemployment, and speed development in specific developing countries. Conversely, the contribution of modernization and economic development to secular declines in levels of fertility are generally recognized, but specific information on important variables which might be open to a policy of planned intervention in developing countries is quite limited.

Operational research

The most successful national family planning programs have benefited from an integration of research and evaluation activities with ongoing programs.[21] These programs have provided important information about user characteristics, what birth control methods they employed, and their rate of acceptance and continuance as measures of program impact and success. These operational research programs serve to identify and study problems and provide essential information to program administration, allowing changes and modifications in programs to insure their success.

Research is needed to determine the best methods of educating, communicating with and motivating people to use available family planning services. Study of factors ensuring continuance as well as initial acceptance of family planning services are important, as are studies of fertility of acceptors, nonacceptors and terminators. Personal relationships with clinic personnel or field workers and side effects of contraceptives seem particularly important to acceptance and continuing use of contraception. More studies of these relationships are needed. Innovative studies with respect to determinants of fertility control behavior involving house-to-house visits by field workers, popular mass media, peer group leaders and other approaches require trial and evaluation.

Less developed countries typically have relatively little trained manpower and weak administrative, transportation and communications systems. These conditions call for action research on optimal organization and administration of family planning programs, focusing particularly on target population locations, proper location and make-up of services, linkage of family planning and other services such as commercial systems or health services, how to provide family planning for rural populations, and other organizational problems relating to provision of services. Staffing needs of service programs dictate research into manpower problems and the development of new training methods for family planning workers.

Investigation of program impact, including relative cost effectiveness of various delivery patterns, developing simplified and accurate means of keeping service statistics, new approaches to measuring impact of service programs on fertility, better measures of the demographic effectiveness of specific contraceptives and reasons for departure from theoretical effectiveness are some of the areas where research is needed.

In the years FY-65 to FY-70, AID has provided $[illegible] million for technical assistance and operational research projects to meet these needs. The Population Council has received AID assistance to conduct research on the impact of a demonstration postpartum family planning program in selected maternity hospitals in more than 15 countries. Areas of investigation have included the extent of participation, age-parity patterns, characteristics of acceptors, and measurements of costs and of cost-effectiveness.

Pilot studies on the use of various fertility control methods, development of improved service statistics systems and testing of mobile clinics and other delivery systems have been carried out in India, Pakistan, Turkey, the Philippines and in other Asian, Carribbean and Latin American Countries.[22]

Wake Forest University is conducting research, in collaboration with the University of Costa Rica, to determine what attitudes and values husbands and wives hold that affect utilization of available family planning services in Costa Rica. The investigators are evaluating the impact on utilization of a variety of experimental action inputs, including, for example, the use of home meetings as a group dynamic for increasing utilization of family planning services.[23]

In Africa, investigators from UCLA are working with the University of Accra and the Ghanian government to study various patterns of delivery of family planning services. Working in the Danfa rural district, researchers are testing pilot systems to deliver services independent of, and linked to, other services such as health care.

Between FY-65 and FY-70, over 40 operational research activities have been initiated under AID sponsorship in 12 countries in Asia, Africa, and Latin America. This area of research is one of growing importance, for the delivery system frequently is a crucial element in the success of family planning programs. Efficiency of the delivery system is often more improtant than methods provided or motivation of recipients as a limiting factor in the success of these programs. Therefore, operational research will continue to be essential and important part of AID's total population research program. Its importance can be expected to increase until nations are fully mobilized to provide family planning service to their citizens.

One project currently under development is a broad-ranging program of research and evaluation at the American University in Cairo. Sponsored jointly by the Ford Foundation and AID, the program involves intensive and repeated studies of sample communities within the U.A.R. on topics ranging from basic demographic data to changes in the roles of women, from communication and educational investigations to improvement of client record-keeping systems.

Much interest has been generated in recent years concerning the use of monetary and nonmonetary incentives for increasing the rate of family planning acceptance in less developed countries. Six countries—India, Pakistan, South Korea, U.A.R., Taiwan and Ghana—now have incorporated some form of incentives scheme—whether to the client, doctor, family planning worker or canvasser—within their family planning programs. In the FY-70 family planning budget for India, approximately 22 percent of funding went for incentives.[24] Despite such large-scale investment in incentives, little research has yet been carried out to systematically evaluate the sociological or psychological impact of such programs: their cost-effectiveness, political ramifications or demographic effectiveness, not to mention their effects on continuation rates and the ethical problems which arise from faulty administrative systems. As pressure for incentives programs increases, there is corresponding need for rigorously designed research to untangle the pros and cons of incentives.

IMPROVED MEANS OF FERTILITY CONTROL

Evolutionary changes in fertility control technology during the last century, and implications for the nature and cost of fertility control programs are presented in Table 2.[25] The highly determinative influence of fertility control technology on the effectiveness and efficiency of family planning programs is readily apparent from studies of family planning practices and programs in many cultures.

Levels of education, availability of supply, transport and health care systems and other factors all mean that development of contraceptive techniques suitable for specific local conditions is essential. Increasing experience in family planning programs suggests that use of a variety of methods of fertility regulation is important to ensure success. Oral contraceptives may be preferred by younger women than those who wish to use IUDs. A different age group prefers sterilization.

Cultural differences may seriously limit acceptability of certain methods, e.g., those requiring intra-vaginal examinations or those causing the side effect of vaginal bleeding. Other problems may arise with methods successful in the U.S. because of health and nutritional considerations: increased bleeding is a serious problem for IUD users already anemic from parasitic infestations[26] and decreased lactation among users of oral contraception may possibly compromise infant nutrition in certain settings.[27] Therefore, new methods which have greater acceptability in less developed countries are needed.

NEW MEANS

Priority has been given to research aimed at development of new and improved means of fertility control. The major focus of AID's research program is applied research and product development on methods now in view which appear to be most suitable and acceptable in the less developed countries.

When launching this program in 1968, AID defined the most essential missing element in fertility control technology to be a "non-toxic and completely effective substance which when self-administered on a single occasion would ensure the non-pregnant state at completion of a monthly cycle."[28] Since then, AID has obligated more than $11 million for support of research aimed at development of such "once-a-month" methods. The logic underlying this choice of principal research goal is indicated in Table 3.[29]

Studies of world fertility patterns and family planning programs had made it apparent that two foremost determinants of the efficacy of a means of fertility control for implementation of family planning programs in developing countries were the time of use (relative to sexual activity) and the requirements for administration (relative to clinical or self-application).

Effective use of precoital or preconceptive (contraceptive) means of fertility control requires the exercise of foresight. For many individuals, particularly in developed countries, these methods have been quite successful. But for many others in all societies and particularly in the developing countries, use of foresight means of fertility control is difficult and reliance solely on these means is less efficient and more expensive. For these groups, access to postcoital or postconceptive (hindsight) means of fertility control is imperative for adequate control of fertility.[30] [31] [32]

Ideally, the development of a substance or method which could be self-administered to control fertility after exposure to or recognition of pregnancy would fill the void in quadrant D (Table 3), establish Fifth Tier Technology (Table 2), and produce a marked increase in the speed and effectiveness with which family planning could be extended around the globe.

The initial project funded with the goal of developing a once-a-month means of fertility control was for $107,000, provided in fiscal 1968, to the Worcester Foundation to study uterine luteolytic factors. This study used the auto-transplanted sheep ovary wherein the blood supply of these organs is made accessible by their transplantation into the neck. Using this technique, the still elusive uterine luteolytic factors have been tentatively identified as prostaglandins.

In fiscal 1969, $3 million was provided to the Population Council for a four-year program of research toward a once-a-month method especially for anti-progestational agents. This approach relies on the fact that progesterone is essential to establish and maintain pregnancy. Techniques being explored for interference with progesterone activity include interference with progesterone

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systhesis, and, competitive and noncompetitive inhibition of progesterone action at the endometrial level. The use of certain classes of infertility compounds which do not primarily interfere with progestins action are also being tested.

Also in fiscal 1969, $1.5 million was provided to the NICHD-Center for Population Research to support 28 studies focused on the corpus luteum. These studies have focused on obtaining the necessary knowledge concerning the role and function of the corpus luteum in reproduction needed to seek ways of altering corpus luteum function so as to regulate fertility. One of these studies has established the essentiality of the corpus luteum in the establishment and maintenance of pregnancy. Another study carried out by the Upjohn Company has further elucidated the role of prostaglandins in reproductive physiology.

In fiscal 1970, $2.3 million was provided to the Salk Institute to study the development of gonadotrophin releasing factor inhibitors as contraceptive agents. These releasing factors, such as the luteinizing hormone releasing factor (LRF) which is the focal point of the Salk project, are chemical "messengers" that link an area of the brain, the hypothalamus, with the anterior pituitary, which, as one of its functions, produces hormones involved in conception. By determining the chemical structure of the releasing factors, it may be possible to synthesize antigonists which can stop release of hormones and prevent conception.

Initial experimentation suggests that these chemicals will be active when taken orally. It is hoped that they will be effective either once-a-month or with a relatively short duration of use. There are also indications that they will have few of the systematic side effects of present steroidal contraceptives.[33]

Evidence is growing that prostaglandins can be developed as a pharmacologic "once-a-month" means of fertility control which is effective postcoitally and has the potential for self-administration. Reports of recent clinical experience confirm the efficacy of intravenous, intrauterine and intravaginal prostaglandins to induce the menses. These trials have also raised concern about bothersome side effects, including nausea, vomiting, and diarrhea, and a number of women have experienced incomplete uterine evacuation or therapeutic failures.

Although evidence is still inconclusive, factors relating to successful use of prostaglandins appear to be enhanced by early use on a once-a-month basis or immediately after the missed menses. When used early, completeness and proportion of women successfully using postaglandins appears maximal and side effects appear to be minimized.

Although no serious side effects have come to light in over 500 trials of these compounds as means of fertility control, their extreme potency and their ubiquitous occurrence and effects require thorough testing for side effects.

Several pharmaceutical companies are actively developing analogs which may have more favorable characteristics in terms of side effects, potency and duration of action. New delivery systems, e.g., intrauterine and and the "second generation" of analogs can be expected to increase efficacy, simplify use and minimize side effects by ensuring a dosage form of greater duration, gradual onset and controlled intensity.

Although considerable careful work remains to be completed, prostaglandins show promise of a breakthrough in contraceptive technology, particularly suited to the needs of AID assisted programs in less adeveloped countries. For these reasons, over the past four fiscal years, (including FY-71), AID has obligated $4.4 million for prostaglandin research.[34,35]

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The largest of these grants, $3 million, was made in fiscal 1970 to the Worcester Foundation for Experimental Biology. Of the total, $2.7 million is for a broad research program in Worcester, including study of the effects of prostagladin on reproductive processes, work to develop new assay techniques, and information gathering and dissemination. Through this program, collaborative studies are underway with Yale University and the Royal Veterinary College in Sweden to develop new assay techniques. Through subcontracts work on new means of synethesis is being carried out at Harvard and clinical trials are being conducted at Yale.

Additional grants will be made in the current fiscal year (1971) to Dr. S. Karim at Makerere University in Uganda to carry out clinical trials, to the University of Wisconsin to seek improved synthesis using micro-organisms to carry out key interconversions and to Washington University in St. Louis to study mechanism at action of prostaglandins.

Although success is not yet certain, and as yet unrecognized risks of prostaglandins may come to light, their potential to contribute to the solution of the demographic crisis is so great that the most rapid exploration of their worth is warranted.

OTHER BIOMEDICAL RESEARCH PROGRAM OBJECTIVES

A continuing focus of AID's research program is to further perfect and evaluate the role of currently available means of fertility control which are being used in the less developed countries. (See Table 4.)

Many countries (e.g., India, Korea, Pakistan) have emphasized sterilization as a means of fertility control because of the very high effectiveness of the method, the relatively low initial programmatic and clinical inputs needed and the lack of need for continuing motivation, supplies or other program inputs.[36] A sterilization by either partner may also be the safest means for a couple to achieve fertility control.[37] New methods are needed which would allow female sterilization without the risks and requirements for skilled personnel now needed for general anesthesia, intra-abdominal operation and hospitalization.

Simplification and greater reversibility of male sterilization could serve to retain the programmatic and demographic advantages of this method and decrease the importance of its single most important drawback which is low acceptance because of irreversibility. A continuing effort will seek methods which are simpler, safer, more reversible and less dependent upon skilled medical care practitioners.

Current projects include a study at the University of North Carolina seeking improved male and female sterilization techniques. This work is exploring the use of tantalum clips and other means of tubal occlusion. Simplified operative techniques for the use of current and new sterilization methods are also being investigated. A study to be initiated in the current fiscal year will be carried out by the Battelle Memorial Institute to seek improved and more reversible male sterilization procedures.

Other methods currently in use which will receive a continuing research effort to increase safety, contraceptive effectiveness and to decrease untoward side effects are presented in Table 4 and include steroidal contraceptives, IUDs, condoms, rhythm, vaginal foams, etc.

Work now in progress on currently available fertility control methods includes a three-year $913,000 program at the Southwest Foundation for Research and Education to study metabolic and vascular effects of the steroids used in current hormonal contraceptives and a three-year $581,000 program at the University of Pittsburgh School of Public Health to develop a combined intravaginal disease prophylaxis and contraceptive

Rapid worldwide increase in venereal diseases have been documented by the World Health Organization, and both WHO and the Pan-American Health Organization have received a steady increase in requests to combat the problem.

Availability of an agent effective against venereal and other genital tract disease as well as against unwanted pregnancy would advance both health programs and family planning programs and could be distributed at both facilities. Such an agent would be especially useful for women in primitive conditions where clinical methods of contraception and treatment facilities are not available.

Another project, being carried out at the Pacific Northwest Laboratory of the Battelle Memorial Institute, is a three-year $645,000 research program to improve IUDs. IUDs, along with oral contraceptives, are among the most important contraceptive means now used in family planning programs in most countries. High rates of removal caused by side effects, spontaneous explusions and accidental pregnancies limit the effectiveness of IUDs in current use. The Korean IUD program provides a good example. Since it began in 1964, up to 1969, a total of 1.5 million IUDs were inserted, reaching 36 percent of all married women aged 20–44. However, fewer than 600,000 of these remained in place. The majority were removed because of undesirable side effects.[38] The program at Battelle is correlating IUD performance patterns with physical and chemical characteristics of the IUDs to allow establishment of design criteria and development of improved devices. Such characteristics as size, shape compliance, and chemical composition are being studied. The improved performance characteristics of copper containing IUDs, have been shown to be possibly related to direct toxicity of copper to spermatazoa.

To evaluate fertility control methods which may have differing efficacy and risks associated with them when used in the less developed countries, a strong component of the AID research program is collaborative and comparative clinical trials of new methods in the field. The focus of this effort is the epidemiologic evaluation of the effects of these methods under use conditions in the field. By this technique, it has been possible to carry out double blind trials of new methods in the same clinic setting and to accurately evaluate the characteristics of the new technique.

Beginning in fiscal 1967, AID supported the development of the International IUD Program of the Pathfinder Fund. This $1.5 million field study of IUD performance characteristics is in its fifth year of operation and has provided high quality comparative data from 40 countries. Uniform records and centralized data processing has allowed the determination of which performance patterns are related to IUD's user and clinic characteristics. For example, the highly important category of removals because of bleeding or pain has been shown to be highly related to individual clinics providing contraceptive services.

To extend the availability of a clinical network for field trials, an International Fertility Research Program will be funded in fiscal 1971. This $3 million program will be under the direction of Dr. Elton Kessel and based at the University of North Carolina. The program will conduct collaborative field trials of new IUDs, sterilization techniques, steroidal contraception and other promising new means of fertility control in many countries.

In conjunction with these field trials, AID will sponsor "anticipatory" social research concerning the effects on the population of introducing new contraceptive technologies. It is hoped that these studies can speed the acceptance and diffusion of new innovations in fertility control technology. Under a new project to be funded in fiscal 1971, the American Institutes of Research will carry out some of these studies.

In the fiscal years 1967–1970, AID has obligated $14.6 million for research to improve birth control technology. In the future, AID's biomedical research program will focus on applied and developmental work needed to further perfect and evaluate the safety and role of methods demonstrated to be effective in family planning programs in the developing countries. And, it will concentrate on applied research and product development concerning methods now in view which appear to be more suitable and acceptable in the less developed countries. For example, the development of methods which do not rely on clinical delivery systems, which require infrequent use or administration, which minimize supply problems, and are effective on a once-a-month basis. AID will particularly emphasize the support and development of collaborative networks in the LDC's to facilitate early and appropriate utilization of these technologies. Support for more fundamental research will be limited to that needed to buttress applied research and family planning program activities. Strengthening institutional capabilities within LDCs will continue to be an important goal of AID support of all LDC research activities including those in reproductive biology and contraceptive development.

SUMMARY

Since fiscal 1965, AID has rapidly expanded its research program in population. AID seeks to use research to augment and strengthen the action program providing technical assistance to countries seeking to solve their population problem. For this reason, the bulk of AID funds will go to the action program, but perhaps 10 percent of these monies will continue to be devoted to population research.

Depending on other priorities and availability of funds, AID foresees annual expenditures of over $10 million for population research activities with annual increases commensurate with total budget growth. It seems likely that any successor agency to AID will continue to place high priority on population research.

FOOTNOTES

[1] *Population Program Assistance*, 1970. The Agency for International Development, Washington, D.C.

[2] Declaration of Population: The World Leaders Statement *Studies in Family Planning*, No. 26, p. 1–3, January 1968

[3] Lyons, T. C., Population Policies: A World Overview presented at the Population Policy Conference, University of Ife Nigeria, March 1971.

[4] Piotrow, Phyllis T., *Congressional—Executive Relations in the Formation of Explicit Population Policy*, Unpublished Ph. D. dissertation, Johns Hopkins University, Baltimore, 1971.

[5] Section 241(b) of the Foreign Assistance Act, as amended.

[6] The Foreign Assistance Act authorizes AID to provide assistance for programs relating to population growth and "the term programs relating to population growth, includes, but is not limited to, demographic studies, medical, psychological and sociological research and voluntary family planning programs, including personnel training, the construction and staffing of clinics and health centers important to effective population programs, specialized training of doctors and paramedical personnel, the manufacture of medical supplies, the dissemination of family planning information and provision of medical assistance and supplies."

[7] Nixon, R. M., July 18, 1969. Message to the Congress of the U.S. on the establishment of a "U.S. Commission on Population Growth and the American Future." President Nixon "asked the Secretary of State and the Administrator of the Agency for International Development to give population and family planning high priority for attention, personnel, research and funding among our several aid programs."

[8] *Population Program Assistance*, 1970. The Agency for International Development, Washington, D.C.

[9] *Population Program Assistance*, 1970. The Agency for International Development, Washington, D.C.

[10] *The Federal Program in Population Research*, U.S. Department of Health, Education and Welfare, National Institutes of Health, December 31, 1970. 68 pp.

[11] Report on AID's Population Program Assistance in Relation to Envisioned Worldwide Needs, AID, Washington, D.C., November 27, 1970.

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[17] An exception to this generalization is: E. A. Wrigley, *Population and History*, New York: McGraw-Hill, 1969.

[18] For an early publication concerning this work cf. T. Paul Schultz, "An Economic Model of Family Planning and Fertility," Journal of *Political Economy* 77(2): 163–180, April 1969.

[19] For a recent critical review of literature in this area, cf. James T. Fawcett, *Psychology and Population*, The Population Council, New York, 1970.

[20] For a recent summary of development in this field, cf. "Population Education: A Challenge of the Seventies," *Population Bulletin*, XXVI, No. 3, the entire issue. Cf. also, Noel-David Burleson, "The Time Is Now: Population Education," Society for International Development, 11th World Conference, New Delhi, India, November 1969. It should also be noted that Mr. Stephen Viederman of the Population Council is conducting a worldwide survey of the state of population education, results of which should be available in the summer of 1971.

[21] Freedman, Ronald, *op. cit.*

[22] *The Federal Program in Population Research*, U.S. Department of Health, Education, and Welfare, National Institutes of Health, December 31, 1970, 68 pp.

[23] For reports on previous work by the same investigtaors using the same techniques with lower-class black populations in the U.S., cf. Clark E. Vincent, *et al.*, "Familial and Generational Patterns of Illegitimacy." *Journal of Marriage and Family*, Nov. 1969, 659–667; Fleetus L. Gobble, et al., "A Nonmedical Approach to Fertility Reduction," *Obstetrics and Gynecology*, Vol. 34, Dec. 1969, 888–891; Clark E. Vincent, et al., "Abortion Attitudes of Poverty-Level Blacks," Seminars in *Psychiatry*, Vol. 2, August 1970, 309–317.

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[28] *Population Program Assistance*, 1968, Agency for International Development, Washington, D.C.

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[31] Ravenholt, R. T., "A.I.D.'s Family Planning Strategy," *Science*, 163–124.

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BIRTH CONTROL TECHNOLOGY AND IMPLICATIONS FOR FAMILY PLANNING PROGRAMS[1]

Technology tiers	Advent of method	Methods generally available	Family planning program needs
5	1970's?	Methods listed below plus: "a nontoxic and completely effective sub-[illegible]ce or method [illegible]th when [illegible]-administered [illegible] a single occasion would insure the nonpregnant state at completion of a monthly cycle."	Minimal regulation of sexual activity reduced need for education main emphasis on insuring availability of contraceptives and post conceptives through medical and nonmedical facilities.
4	1970's	Methods listed below plus legal surgical abortion.	Slight regulation of sexual activity, less emphasis on education, main emphasis on provision of contraceptive services through medical and nonmedical facilities and abortion services through medical facilities.
3	1960's	Methods listed below plus oral contraceptives and intrauterine devices.	Some regulation of sexual activity; continued emphasis on education and provision of contraceptives and family planning services through medical and nonmedical facilities.

Footnotes at end of table.

BIRTH CONTROL TECHNOLOGY AND IMPLICATIONS FOR FAMILY PLANNING PROGRAMS[1]—Continued

Technology tiers	Advent of method	Methods generally available	Family planning program needs
2	[2]1960	Methods listed below plus condoms, diaphragms, vaginal chemicals, rhythm, and surgical sterilization.	Considerable regulation of sexual activity; emphasis on education and provision of materials and services through medical and nonmedical facilities.
1	[2]1870	Abstinence, coitus interruptus, delayed marriage and nonmarriage, crude vaginal barriers (E.G., sponges) douching, and illegal abortion.	Strict regulation of sexual activity, emphasis on education.

[1] Ravenholt, R. T., Piotrow, P. T., Speidel, J. J. Use of Oral Contraceptives A Decade of Controversy. Int'l J. Gyn. Obst. 8.941, November 1970.

[2] Before.

Source: From HEW 5-year plan, October 1971.

PRINCIPAL MEANS OF FERTILITY CONTROL[1] (BY TIME AND ROUTE OF ADMINISTRATION)

	Preconceptive	Postconceptive
1968		
Clinical administration required.	A. IUDS: surgical sterilization, vaginal diaphragm, oral contraceptives (in some countries).	B. Surgical abortion intra amniotic injection.
Self-administration feasible.	C. Abstinence, noncoitus, rhythm, coitus interruptus, condoms, vaginal sponge, foam, douche, etc., oral contraceptives (in some countries)	D.
1970		
Clinical administration required.	A. IUDS, surgical sterilization, vaginal diaphragm, oral contraceptives, (in some countries).	B. Surgical abortion, intra amniotic injection, prostaglandins (intravenous and intrauterine since January, 1970).
Self-administration feasible.	C. Abstinence, noncoitus, rhythm, coitus interruptus, condoms, vaginal sponge, foam, douche, etc., oral contraceptives (in some countries).	D. Prostaglandins (vaginal since September, 1970).

[1] Ravenholt, R. T., Speidel, J. J., "Prostaglandins in Family Planning Strategy" "Prostaglandins Annals New York Academy of Sciences 180 537, Apr. 30, 1971.

A 5-YEAR PLAN FOR FAMILY PLANNING SERVICES AND POPULATION RESEARCH

(Second Progress Report to the Congress of the United States, Pursuant to Section 5, Public Law 91-572, May 1973)

AGENCY FOR INTERNATIONAL DEVELOPMENT

Population research programs of the Agency for International Development (AID) within the Department of State are conducted under the 1968 Title X Amendment of the Foreign Assistance Act of 1961. AID funds are being used for support of family planning programs in 35 developing countries, for contraceptive and other supplies distributed to more than 70 countries, for development of new means of fertility control, and for support of population activities by the United Nations, the International Planned Parenthood Federation, and many other international organizations.

The goal of the AID research program is to develop and relate new family planning methods, new social science insights, and new distribution systems to incipient and on-going family planning programs of developing nations. AID funding for population research was $10.2 million in fiscal 1970, $13.1 million in fiscal 1971, $13.5 million in fiscal 1972, and an estimated $13.5 million in fiscal 1973.

AID emphasizes the following four functional areas in the field of population research:

1. *Descriptive Demography*. In the less developed countries of the world, census and vital registration data are frequently lacking or inadequate, and traditional methods of information gathering and analysis are not appropriate. AID is supporting the development of new methods for data collection relative to fertility, mortality, and migration, as well as innovative techniques for collecting and analyzing information concerning family planning practices, out-of-wedlock pregnancy, incidence of induced abortion, early infant deaths, family formation and dissolution, and patterns of childbearing and marriage. In fiscal 1972, AID awarded a $1 million grant in partial support of the first two-year costs of a World Fertility Survey (WFS). The WFS is a five-year program to assist some 30 to 50 countries to carry out fertility surveys. To meet the need for improved demographic data and methods, AID has provided $15.5 million for technical assistance and research projects between fiscal 1965 and fiscal 1972.

2. *Determinants and Consequences of Population Characteristics and Change*. To assist policy formulation and decision-making in less developed countries, AID supports investigations of the impact of government policies on population, e.g., tax laws, subsidies for child-rearing, policies concerning housing, agriculture, education and welfare, laws concerning legal age of marriage, and abortion laws. AID also supports social science research on population dynamics to elucidate factors operating at both the individual and societal level. AID funds for behavioral and social science technical assistance and research projects totaled $13 million between fiscal 1965 and fiscal 1972.

3. *Operational Research*. AID supports research to assess the impact of family planning programs in less developed countries, including cost effectiveness of various delivery patterns, developing simplified and accurate means of keeping service statistics, new approaches to measuring the impact of service programs on fertility, better measures of the demographic effectiveness of specific contraceptives, and reasons for departure from theoretical effectiveness. From fiscal 1965 to fiscal 1972, AID provided $15 million for over 60 technical assistance and operational research projects in 18 countries.

4. *Improved Means of Fertility Control*. In the less developed countries where health care systems are weak and the acceptor population is frequently poorly educated, it is important to develop fertility control techniques especially suited to the local conditions of these countries and less dependent upon sophisticated delivery systems. During fiscal 1965 to fiscal 1972, $30 million has been obligated for fertility research in three areas: (a) Research to develop a once-a-month, self-administered method; (b) Research to improve currently available means of fertility control; and (c) Comparative clinical field trials of means of fertility control under use conditions in less developed countries.

EXCERPTS FROM "INVENTORY OF FEDERAL POPULATION RESEARCH, FISCAL YEAR 1972"

(DHEW Publication No. (NIH) 73-133, "Development of New Fertility Regulation Techniques")

373 Effect of PGE-1 and PGF-2 on Uterine Contractility and Endometrial Morphology: Behrman, Samuel J., Michigan, University of, Ann Arbor, Mich.; AID-PHA Grant 93111570923F; Project Period, July 1971–June 1973; Hotal Project, $67,290.

379 Research on Side Effects and Mechanism of Action of Prostaglandins (Humans, Rabbits: Csapo, Arpad Istvan, Washington University, St. Louis, Mo.; AID-PHA Contract 93117570541.

389 Development of Inhibitors of LH Releasing Factors as Contraceptive Agents (Sheep and Pigs): Guilleman, Roger, Salk Institute for Biological Studies, San Diego, Calif.; AID-PHA Contract 93117570518.

394 An Investigation of the Clinical Efficacy of Prostaglandin F2 as a Luteolytic Agent: Jones, Georgeanna Seegar, Johns Hopkins University, Baltimore, Md.; AID-PHA Grant 93115709I6D; Project Period, June 1971–June 1973; Total Project, $49,995.

395 Luteolytic Action of Prostaglandin F2 in Human Pseudopragnancy: Jones, Georgeanna Seegar: Johns Hopkins University, Baltimore, Md.; AID-PHA Grant 9311570916E; Fiscal Year 1973 Funds, $50,000; Project Period, July 1972–June 1973; Total Project, $50,000.

396 Research on Prostaglandins in Relation to Human Reproduction (Uterus): Karim, Sultan M. M., Makerere University Medical School, Kampala, Uganda; AID-PHA Contract 93117570540.

397 Simplified Techniques of Fertility Control (Multiple Anatomical Sites in Humans): King, Theodore M., Johns Hopkins University, Baltimore, Md.; AID-PHA Contract 93117580548; Fiscal Year 1972 Funds, $2,673,650.

399 Prostaglandins and Other Research for Development on Contraceptives (Multiple Anatomical Sites): Klaiber, Edward, Worcester Foundation for Experimental Biology, Shrewsbury, Mass., AID-PHA Contract 93117580520.

411 Contraceptive Development (Anti-Progestational Activity in Multiple Anatomical Sites): Segal, Sheldon J., Population Council, New York, N.Y., AID-PHA Contract 93117580512.

412 Research for the Development of a Once-A-Month Contraceptive Pill (Corpus Luteum): Shaikh, A. A., Worcester Foundation for Experimental Biology, Shrewsbury, Mass., AID-PHA Contract 93117580493.

413 Studies on the Synthesis of Prostaglandins (Microorganisms): Sih, Charles, Wisconsin, University of, Madison, Wis., AID-PHA Contract 93111570532.

418 Investigation of the Clinical Effects of Prostaglandin F2 in the Second Trimester: Wentz, Anne C., Johns Hopkins University, Baltimore, Md., AID – PHA Grant 93111570916B; Project Period, June 1971–March 1973; Total Project, $49,996.

419 Investigation of the Clinical Effects of Prostaglandin F2 in the First Trimester: Wentz, Anne C., Johns Hopkins University, Baltimore, Md., AID – PHA Grant 93111570916C; Project Period June 1971–March 1973; Total Project, $49,998.

SUMMARY OF AID DOLLAR OBLIGATIONS FOR POPULATION AND FAMILY PLANNING PROJECTS, FISCAL YEARS 1965-72

[In thousands of dollars]

Project	1965-67	1968	1969	1970	1971	1972
Nonregional:						
Office of Population	2,079	10,623	17,398	22,055	35,270	49,355
Office of Health					978	1,355
Office of International Training	132	38	40	304	546	503
AID W other	524	435	1,431	1,932	2,536	3,265
U.N. Fund for Population Activities		500	2,500	4,000	14,000	29,040
Nonregional total	2,735	11,596	21,369	28,291	53,330	83,518
Africa:						
Country projects	23	404	983	2,484	2,084	6,508
Regional projects	30	259	457	179	5,699	4,759
Africa total	53	663	1,440	2,663	7,783	11,267
East Asia:						
Country projects	446	3,475	6,388	8,673	10,739	11,512
Regional projects	350	1,325	1,608	623	1,942	1,826
East Asia total	796	4,800	7,996	9,296	12,681	13,338
Near East-South Asia:						
Country projects	2,437	[1] 9,061	3,349	[2] 22,908	5,181	1,379
Regional projects		655	963	277	1,409	1,521
Near East-South Asia total	2,437	[1] 9,716	4,312	[2] 23,185	6,590	2,900
Latin America:						
Country projects	1,539	5,457	3,071	5,437	7,085	7,223
Regional projects	2,861	2,468	7,256	5,520	8,161	3,911
Latin America total	4,400	7,925	10,327	10,957	15,246	11,134
South Vietnam	50	50		180	238	1,108
Country and regional total	7,736	23,154	24,075	46,281	42,538	39,747
Grand total	10,471	34,750	45,444	74,572	95,868	123,265

[1] Includes $2,700,000 loan to India for program vehicle parts.

[2] Includes special $20,000,000 grant to India.

AID POPULATION FUNDS OBLIGATED FOR RESEARCH IN FISCAL YEARS 1966-72 (EXCLUDES TECHNICAL ASSISTANCE PROJECTS WITH A RESEARCH COMPONENT)

Subject	1966	1967	1968	1969	1970	1971	1972
Population dynamics and descriptive demography:							
Family size and growth (CELAP)		$160,000	$200,000	$230,000	$350,000	$100,000	
Pregnancy outcome				194,000			
Study of family structure		239,000	96,000				
Population growth in Latin American (Population Council)		200,000	300,000	300,000	300,000	500,000	$450,000
Determinants of fertility (Rand)			143,000		326,000		
Cross cultural fertility behavior research						842,000	
Study of Latin America migrants						223,000	
Fertility survey in Afghanistan				35,000	45,000	1,431,000	
Demographic study in Pakistan						118,000	
World fertility survey (ISI)							1,043,000
Other studies	204,000	126,000	717,000	808,400	1,035,000	808,000	1,636,000
Subtotal	204,000	725,000	1,456,000	1,567,400	2,056,000	4,022,000	3,129,500
Operational research:							
Integrated FP and health services				575,000		630,000	908,000
Postpartum family planning studies		300,000		300,000			
Evaluation studies in Philippines			41,000	55,000	336,000	200,000	
Utilization of family planning services				262,000		101,000	
Population decisions study					276,000	480,000	
Family planning in East Asia			84,400	108,700	117,600	328,000	19,700
Family planning in the Middle East						270,000	
Other studies	2,000	260,000	185,000	353,000	178,000	342,000	217,000
Subtotal	2,000	560,000	310,400	1,653,700	907,600	2,351,000	1,144,700
Improved methods of fertility regulation:							
Corpus luteum studies:							
Worcester Foundation			109,000			99,000	
NICHD-CPR				1,510,000	53,000		
[illegible], Population Council				3,000,000			
Prostaglandins:							
Worcester Foundation					2,980,000		
University of Wisconsin						227,000	
Washington University						293,000	
Makerere University						821,000	
Other						217,000	150,000
Gonadotropin releasing factor inhibitors, Salk Institute					2,255,000		
Intrauterine devices:							
Battelle Memorial Institute					150,000	495,000	
Other						12,000	
Contraceptive safety, southwest foundation					913,000		
Contraceptive and disease propylaxis agent, University of Pittsburg					581,000		
Devices, sterilization, and training:							
Battelle Memorial Institute						830,000	199,000
University of North Carolina				79,000		135,000	
Johns Hopkins University							2,797,000
Field trials:							
International IUD Program—Pathfinder Fund		194,000		1,289,000			
International fertility research program—University of North Carolina						3,106,000	1,800,000
Conventional contraceptives			346,000	440,000	340,000		
Small grants program: Applied research on fertility regulation—University of Minnesota							3,350,000
Other studies		97,000	107,700	103,000	99,000	182,000	66,000
Subtotal		291,000	562,700	6,421,000	7,371,000	6,417,000	8,362,000
Total	206,000	1,576,000	2,329,100	9,642,100	10,334,600	12,790,000	12,636,200

A FACT SHEET ON PROSTAGLANLINS

TODAY—TOMORROW?

What are they?

They are a newly discovered group of human hormonal chemical substances. They have many functions known and unknown and are still being investigated. One function is to cause the onset of labor and of emptying the uterus. This will occur at any stage of pregnancy that they are used.

Who manufactures them?

The Upjohn Company of Kalamazoo, Michigan holds most of the rights and has been involved in most of the research to date. It is possible that other companies will ultimately also market prostaglandins resulting from their own research or will obtain licensure from Upjohn and also manufacture and sell these products.

How are they used?

Many methods of administration are being investigated. These include oral, intravenous, intra-amniotic, extra-amniotic, and vaginal suppositories.

Do they cause abortion?

Exact details vary in different studies, with different methods and with different forms of the drug. They do, however, apparently produce abortion and an emptying of the uterus, at any stage of pregnancy in a high percentage of the cases.

Are there complications?

Yes! Some modes of administration, such as intravenous, have severe side effects and may not be approved for use. Some, such as the vaginal and the amniotic routes may well be approved in spite of some problems. One problem is that this method doesn't always "work" and another method must then be used to complete the abortion.

An abortion?

The one constant about using this drug is that it results in abortion. It produces contractions of the uterus (labor) and the baby, of whatever age, if not killed by the drug effects and the contractions, is born alive.

Who gives approval for a new drug?

Any new drug must ordinarily go through years of exhaustive investigation. Many, many scientific studies must be done. Its safety and function must be thoroughly established. When ready, the drug company will submit a formal application to the U.S. Food and Drug Administration. Ordinarily, there is a further delay of up to several years before official approval is given.

Where do the prostaglandins stand?

If this were any other drug, it would probably still be years away from application for, much less approval of, its use. This one is obviously different. Huge sums of money are involved. It also promises the pro-abortionists a relatively easy and "clean" method of abortion without all the mess of direct surgery, cutting up babies, maternal injury, etc. There are tremendous pressures to get it on the market. The July 1972 issue of Fortune Magazine first broke the news to the financial community and since that time Upjohn stock has sharply increased in value. Time Magazine recently included the Upjohn family among those who had made financial bonanzas in 1972.

Will it be approved for use?

Many reports and some rumors all seem to tell the same story. Apparently tremendous pressures are being exerted from many directions to: a) get the application in, and b) get it approved quickly. Political observers are guessing that this could be as early as the fall of 1973. Quick approval, if it comes, would be a political and social decision, not for medical need.

Are there other actions of the drug?

This is the sad part of this story to date. This new family of drugs will apparently have far-reaching effects on other disease states. Most of the research and development has been concentrated on the abortive action and it is for this use that it will be probably fast approved and marketed.

What of the Upjohn Company?

They are making few public statements. Except for published scientific papers, little information as to production, projected policies, advertising, etc., is being released. This is top secret information. Some hints do come through as to their philosophy. The following is from an in-house newspaper, for employees only, circulated in December 1972. These are "taken from executive comments" and summarize their "position." We note some of them with our comments. (See actual paper, last page)

UPJOHN STATEMENT

The role of the pharmaceutical industry, including the Upjohn Co. in society is to provide medical research guided by a single overriding objective: to improving the quality of human life.

COMMENT

We always thought that medical science had as a single overriding objective the saving of, and preservation of human life, not improving the quality of some lives by killing others.

UPJOHN STATMENT

Population control is one of the gravest problems confronting the human species in our time. If we are to reduce the social and political pressures which threaten human beings with extinction—and if we are to offer the mass of mankind a reasonable expectation of self-fulfillment in life—this problem must be solved.

COMMENT

Read the chapter on population in the new 1973 edition of Handbook on Abortion. Read Handbook on Population. The Upjohn statement is flatly false, and is a continuation of scare tactics.

Population density does not relate to "self-fulfillment." We are not threatened with extinction. The U.S. birthrate is now well below replacement level, and the world birthrate is steadily dropping.

UPJOHN STATEMENT

The purpose of population control is to improve the quality of human life. When we succeed in holding population levels to the point that each new human being on earth is wanted by parents and society alike, the importance of each individual's fulfillment of lifetime potential will become far greater than it is now.

COMMENT

This is totally visionary and bears no relation to reality.

It is well known that the most mature people, most capable of a giving love, often come from large families, and that the selfish, egocentric often comes from a one or two child family.

Granting some basic economic security, the person's maturity, and the ability to love, the true contributor to society comes from an intact family and stable parents, not at all necessarily from a small family.

If we hold up as a desired goal only the achievement of more education and getting more things (quality life) rather than the ideal of unselfish service to those less fortunate, we'll soon have such an exploitative society that our civilization will not survive.

UPJOHN STATEMENT

With these things in mind, the Upjohn Co. believes that new techniques for contraception, for interception of the fertilized ova, and even for induced therapeutic abortion, should be made freely available.

COMMENT

This is a classic example of dishonest twisting of the meaning of words to make an evil thing more palatable.

"Interception of the fertilized ova" is killing a new human being. It is direct abortion.

"Therapeutic" abortion is an abortion to save the life of the mother. That's not what prostaglandins will be marketed for.

UPJOHN STATEMENT

Of all forms of birth control, abortion is the least desirable. To the extent possible, the Upjohn Co. hopes that timely use of prostaglandins—before a technically-defined pregnancy has occured—will virtually eliminate any need to consider an abortion.

COMMENT

This dishonest attempt to reeducate us that a pregnant woman is not pregnant is incredible. "Technically defined pregnancy" is semantic gymnastics at its ugliest.

Pregnancy begins at conception, no matter what the Upjohn public relations people say. Abortion is abortion no matter what the Upjohn public relations people say.

UPJOHN STATEMENT

Nevertheless, where contraception or interception of the fertilized ova have failed—where legal, moral, and religious commitments permit—the person who chooses abortion deserves access to the most safe and effective methods.

COMMENT

Let's restate in scientifically accurate words:

"Where contraception or the direct killing of this human being in its first week of life has failed—where legal, moral, and religious commitments permit—the mother who wants to kill the developing baby in her womb deserves access to the most safe and effective method of such killing.

Mr. HELMS. Mr. President, I reserve the remainder of my time.

(By unanimous consent granted to Senator TAFT ordered to be printed at this point:)

EXHIBIT 1

POPULATION CRISIS COMMITTEE,
Washington, D.C., June 14, 1973.

Hon. CLEMENT J. ZABLOCKI,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN ZABLOCKI: Just before the hearings of the House Foreign Affairs Committee on the foreign aid bill came to a close yesterday, you asked how I would view a possible amendment which would prohibit any of the funds earmarked for population activities being spent for abortion. I answered that while I do not advocate abortion and believe contraception is a far preferable alternative for any couple wishing to limit the size of its family. I believe it would be a mistake to legislate any such prohibition. There was not time to amplify my reply. I am therefore writing you and sending a copy of my reply to the Committee Chairman, Dr. Thomas E. Morgan, to amplify my statement and to explain my position in greater detail.

A large number of the governments of developing countries are now carrying on official governmental family planning programs, and each government exercises its own sovereign right to determine first, whether or not it wishes to have any population or family planning policy at all, and second, if it decides to have a family planning program it then must make its own decision as to what the program should include. Earlier in the hearings yesterday I was asked by another Congressman whether I knew of any conditions that the Agency for International Development had ever put on its willingness to assist the family planning programs of other governments. I replied that I knew of no such conditions and that I believed there should be no conditions for such assistance since the attitude of the Congress and of the American government as a whole has been to regard all such programs as voluntary on the part of each country and voluntary on the part of each couple. In other words, family planning help is made available to those who request it, and even when a family planning program is in operation in a particular country, it is the decision of each couple whether or not to accept such help.

In accordance with this recognized principle it would appear improper to me for our government to decide unilaterally what type or method of fertility control any other government should use or not use. Attitudes, customs, and ethics vary from country to country, and as a consequence the laws in one country permit what is prohibited in another. I believe it is for each country to decide for itself what it considers appropriate in its own population and family planning program, and that our government should neither encourage nor prohibit one or an-

other method of fertility control but should offer our assistance, leaving it to the recipient government to fashion and carry out its own program.

It would seem particularly inappropriate for our government to attempt to influence the actions of another government in offering or refusing abortion to its own citizens in the face of the decision by our own Supreme Court making it unconstitutional for any of our own states to interfere with the right of any woman, in consultation with her own physician, to terminate an unwanted pregnancy during its first three months.

Certainly my own efforts and the efforts of the Population Crisis Committee have been devoted to stimulating the interest of governments and of multilateral international organizations such as the International Planned Parenthood Federation and the United Nations Fund for Population Activities to expand their family planning assistance and activities through increasing the use of contraceptives which, if effectively employed, would eliminate any need to resort to abortion. This I believe is without doubt the correct and best procedure. However, as I have explained above, I believe that it would be wrong to try to prevent other governments from including abortion as a fertility control measure by amendment to the foreign aid legislation.

Sincerely yours,

WILLIAM H. DRAPER, Jr.

On the following day, the Helms Amendment, as introduced, was accepted by the Senate. The following colloquy occurred immediately proceding Senate adoption (See 146 Cong. Rec. S18368 (daily ed., Oct. 2, 1973)):

* * *

AMENDMENT NO. 566

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to the consideration of the Amendment (No. 566) of the Senator from North Carolina (Mr. HELMS), which the clerk will state.

The legislative clerk proceeded to read the amendment.

Mr. HELM's amendment (No. 566) is as follows:

On page 9, line 11, strike out the quotation marks.

On page 9, between lines 11 and 12, insert the following new section:

"SEC. 116. PROHIBITING USE OF FUNDS FOR ABORTIONS.—None of the funds made available to carry out this part shall be used in any manner, directly or indirectly, to pay for abortions, abortifacient drugs, or devices, the promotion of the practice of abortion, or the support of research designed to develop methods of abortion. The provisions of this section shall not apply to any funds obligated prior to the date of its enactment."

Mr. HUMPHREY. Mr. President, I suggest the absence of a quorum, the time to be charged equally to both sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on all further amendments except the Fulbright amendment, there be a time limitation of 30 minutes, the time to be equally divided, and in the regular form.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MANSFIELD. I also ask unanimous consent that there be, from this moment on, 2 hours on the bill.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

Mr. HELMS. Mr. President, I call up my amendment No. 566.

The ACTING PRESIDENT pro tempore. The Senator's amendment is the pending business before the Senate.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. HELMS. I yield.

Mr. HUMPHREY. In the light of our discussion, would the Senator like to ask unanimous consent relating to the vacating of the rollcall?

Mr. HELMS. Mr. President, I do ask unanimous consent that my request for the yeas and nays be vacated.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered. The previous order for the yeas and nays is vacated.

Mr. HELMS. Mr. President, in the light of a conference with the distinguished Senator from Minnesota and others, I am happy to say that I believe I am correct in stating that the Senator from Minnesota has agreed to accept my amendment, which is cosponsored by the distinguished junior Senator from Oklahoma (Mr. BARTLETT).

Mr. HUMPHREY. Yes, I have indeed. I feel the Senator's amendment has considerable merit to it, and as I said to him, we will accept it and work to have it accepted in conference.

Mr. HELMS. I appreciate that. I do not desire to consume the Senate's time unnecessarily, Mr. President, and if we may have the understanding that my amendment will be supported vigorously in conference, that is satisfactory to me, and I thank the distinguished Senator from Minnesota.

Mr. HUMPHREY. I assure the Senator it will be supported vigorously. I am not sure the Senator from Minnesota is always effective, but he is vigorous, and we will do our level best. With the wisdom of the distinguished Senator from Vermont (Mr. AIKEN), perhaps we can do better.

Mr. HELMS. With such a combination, we are bound to win.

Mr. AIKEN. I can assure the Senator from North Carolina that when the Senator from Minnesota gets into conference, he is always vigorous.

Mr. HELMS. Mr. President, I thank the Senator for yielding. I yield back the remainder of my time.

Mr. HUMPHREY. I yield back the remainder of the time on this side

The ACTING PRESIDENT pro tempore. All time having been yielded back, the question is on agreeing to the amendment of the Senator from North Carolina (Mr. HELMS).

The amendment was agreed to.

* * *

The Senate then passed S. 2335, 54-42. See 146 Cong. Rec. S18438-S18439 (daily ed., Oct. 2, 1973)

S. 2335 then went to conference with the House. The Conference, on November 27, 1973, reported out a bill with a different number, S. 1443, which contained a somewhat modified abortion provision, to wit:

> Sec. 114. Limiting Use of Funds for Abortions- None of the funds made available to carry out this part shall be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions. (See H.R. Rep. No. 93-664, 4 1973); See also 182 Cong. Rec. H 10156 (daily ed., Nov. 27, (1973)).

The Report of the conference commented in the following way on the above provision:

> Limiting Use of Funds for Abortions
>
> The Senate Bill prohibited the use of funds in any manner, directly or indirectly , to pay for abortions, abortifacient drugs or devices, the promotion of the practice of abortion, or support of research to develop methods of abortion.
>
> The House amendment did not contain a comparable provision.
>
> The House receded with an amendment prohibiting the use of funds to pay for performance of abortions or to motivate or coerce any person to practice abortion.
>
> This provision is not intended to interfere with or curtail support for preventive maternal and child health and family planning services and related research which are provided on a voluntary basis and in accordance with the prevailing local customs and medical practice and it is not intended to apply to funds obligated prior to the date of enactment of this bill. (See H. Rep. No. 93-664, 30-31 (1973); See also 182 Cong. Rec. H10164 (daily ed. Nov. 27, 1973))

The House was first, on December 4, 1973, to consider and agree to the Conference Report. Prior to agreement, however, Reps. Roncallo, Hogan and Abzug addressed the abortion provision. Their comments follow (See 189 Cong. Rec. H10551-H10553 (daily ed., Dec. 4, 19733)):

* * *

Mr. RONCALLO of New York. Mr. Speaker, Congress in enacting the modified Helms amendment to the Foreign Assistance Act of 1973 is continuing a long-established policy of Congress to respect human life, whether it be the life of the unborn or born. For over a hundred years, Congress has demonstrated its concern for the sanctity of human life. Examples of this concern and respect are demonstrated in the following acts of Congress:

TITLE 18, UNITED STATES CODE, SECTION 1461

Mailing obscene or crime-inciting matter—

. . . Every article or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; and

Every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion, or for any indecent or immoral purpose;

* * * * *

Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

Whoever knowingly uses the mails for the mailing, carriage in the mails, or delivery of anything declared by this section or section 3001(e) of title 39 to be nonmailable, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, or knowingly takes any such thing from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined not more than $5,000 or imprisoned not more than five years, or both, for the first such offense, and shall be fined not more than $10,000 or imprisoned not more than ten years, or both, for each such offense thereafter.

TITLE 19, UNITED STATES CODE, SECTION 1305

Immoral articles; prohibition of importation—

(a) All persons are prohibited from importing into the United States from any foreign country any . . . drug or medicine or any article whatever for causing unlawful abortion. No such articles whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry; and all such articles and, unless it appears to the satisfaction of the appropriate customs officer that the obscene or other prohibited articles contained in the package were inclosed therein without the knowledge or consent of the importer, owner, agent, or consignee, the entire contents of the package in which such articles are contained, shall be subject to seizure and forfeiture as hereinafter provided:

* * * * *

TITLE 42, UNITED STATES CODE, SECTION 300

SEC. 300. Project grants and contracts for family planning services—Authority of Secretary—

(a) The Secretary is authorized to make grants to and enter into contracts with public or nonprofit private entities to assist in the establishment and operation of voluntary family planning projects.

SEC. 300a(6). Prohibition against funding programs using abortion as family planning method—

None of the funds appropriated under this subchapter shall be used in programs where abortion is a method of family planning. July 1, 1944, c. 373, Title X, § 1008, as added Dec. 24, 1970, Pub. L. 91-572, § 6(c), 84 Stat. 1508.

I trust that the Helms amendment will be interpreted in the light of the clear policy of Congress to respect the rights of the unborn. The Supreme Court has ruled that the States cannot in effect protect the unborn, but the Court in no way indicated that Congress or the States have to appropriate funds for killing the unborn. I also trust that the President will take whatever steps are necessary to see that the Helms amendment, as enacted, is correctly interpreted so as to prohibit the use of Government foreign aid funds for abortions.

Mr. HOGAN. Mr. Speaker, the conference report under consideration today, for the Foreign Assistance Act of 1973, has added a new section which would prohibit the use of tax funds to promote abortion.

The other body unanimously adopted an amendment to this bill that was offered by Senator JESSE HELMS of North Carolina. This amendment would prohibit the use of U.S. Government funds under the act from being used to pay for abortions, abortificient drugs or devices, the promotion of the practice of abortion, or support of research to develop methods of abortion.

The conferees have subsequently reported out a modification of this amendment. The amendment reads as follows:

None of the funds made available to carry out this part shall be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.

While this amendment is considerably less specific than that introduced by Senator HELMS, it is clearly another step in demonstrating Congress' opposition to the policy of abortion, which is so repugnant to the American people.

As horrible as the Supreme Court decision permitting abortion was, it did not sanction the use of tax funds for the purpose of promoting abortion. It was one thing to permit a practice which millions of Americans regard as intrinsically evil, but quite another to finance it with their dollars. To extend abortion to foreign countries through American tax money is altogether indefensible.

Federally financed courses at Washington University in St. Louis, and three other institutions, have been scheduled to instruct doctors from other countries on how to perform abortions in their native lands. If the Federal Government is going to finance schools to teach abortion, it might as well go all the way and start classes in how to commit murder. This would be very effective in reducing population.

U.S. FINANCING COURSES IN ABORTION

(By Edward W. O'Brien)

WASHINGTON.—The federal government's foreign-aid program is financing courses for doctors from underdeveloped nations at Washington University and three other institutions on how to perform abortions.

The men and women physicians taking the one-month courses are returning home with "modern information about methods of dealing with the reproduction process, including instruction about this whole area of abortion," Dr. Gerald Winfield, a foreign-aid official, says.

About half of the trainees are medical school professors or staff physicians at major teaching hospitals and are expected to pass on to other doctors the information gained in the United States, Winfield said.

"This is not an abortion program, but a program that includes abortion," he said.

The Washington U. program is scheduled to start Jan. 1, 1974, according to Dr. James C. Warren, chairman of the obstetrics and gynecology department at the university's School of Medicine.

"We are getting ready to put the program together and get it finalized," Dr. Warren said. He said six doctors at a time will be enrolled. The program will be operated 10 months out of the year, he said.

Dr. Warren emphasized that training on how to perform abortions was only one part of the multi-faceted program on family planning. It is included, he said, "because it is part of family planning and population control." He added that "abortion is not the preferred method of birth control."

Winfield, a division chief in the Population Office in the State Department's Agency for International Development, estimated that an average of 25 per cent of the total training is in abortion techniques.

The other institutions giving the courses, he said, are Johns Hopkins University, Baltimore; Western Pennsylvania Hospital, Pittsburgh, and American University in Beirut, Lebanon.

Each center, he said, has a federal budget of $350,000 to $1,000,000 a year. Other government sources said Washington University's grant is for $543,000 for July, 1973, to July, 1975.

Winfield stressed repeatedly that abortion is "only one element" in a broad program of reproduction education that also covers malignancies, voluntary sterilization, "the pill and all other methods of contraception," infertility, and treatment of incomplete and infected self-induced abortions.

Winfield said "all responsible people" at AID "are aware of the program and have approved it."

He said there is no federal law that bars or controls the use of foreign-aid money for abortion training. He said the doctors come from about 30 nations in Asia, Africa and South America.

"Abortion is a legal procedure in the United States according to the findings of the Supreme Court," he said.

"Something over half the women in underdeveloped countries live on places where abortion on demand is legal.

"We are simply meeting a world-wide need to improve their medical standards. We want to elevate the reproductive well-being of the human race."

Trainee doctors are being accepted from countries where abortion is not legal, he said, to treat many women who have attempted self-induced abortions.

The AID activity, in its first year of partial operation, has trained 60 to 70 foreign doctors.

Winfield said the program is trying to reach "the top obstetricians and gynecologists of the medical schools" in the underdeveloped nations.

There currently is no legal bar to the program but an amendment introduced by Sen. Jesse A. Helms (Rep.), North Carolina, to the current bill renewing foreign aid bars use of foreign-aid money on abortion-related projects.

If accepted by House conferees, as appears likely, no money not already obligated could be spent.

An amendment sponsored two years ago by Sen. Thomas F. Eagleton (Dem.), Missouri, prohibits use of federal money for abortion in family-planning programs for Americans within this country but does not affect foreign aid.

A government source said Washington University also has a $301,000 foreign-aid project for testing prostaglandins, described as an abortion-inducing drug, from 1971 to 1974.

Winfield said he assumed The Globe-Democrat's inquiry to him about the abortion-training courses resulted from "an increasing effort by those calling themselves Right to Life."

Unfortunately, the inclusion of this antiabortion amendment in the Federal assistance bill before us will not terminate these existing programs since the funds have already been authorized. What it will insure is that the United States will discontinue the future spending of tax money to promote abortion in foreign countries.

In 1967 when Congress amended the Foreign Assistance Act of 1961 to provide funds for family planning it mandated the President to insure that persons were not coerced in any manner to practice "methods of family planning inconsistent with his or her moral, philosophical or religious beliefs." This specific provision appears in Section 291, subsection (c) of title X of Public Law 90-137 (22 U.S.C.A. 2219 (c)).

I am certain that with the approval of this bill the same restriction against coercion and violations of a person's moral and religious beliefs in regard to sterilization and birth control apply to section 104 as well as section 292 of the Foreign Assistance Act of 1973. I am supporting the Foreign Assistance Act of 1973 with this understanding, and the understanding that neither the Foreign Assistance Act of 1973 or any other foreign assistance act authorize the expenditure of public funds for abortions.

Nowhere in past legislation, nor in the present bill, does Congress allow or favor, approve or authorize paying for abortifacients so as to perform or cause abortions by chemical means, or pay for training foreign abortionists in this country or anywhere. The prohibition against the practice of abortion means an absolute restriction against the U.S. Government paying for the destruction of a single human person or encouraging such destruction.

I trust the President will see, upon passage of the act, that the foreign assistance program will be so administered as to protect the rights of the unborn.

I have spoken out repeatedly in this Chamber on the evils of abortion and how, since the Supreme Court decision, we have disregarded the rights of those who are defenseless, the unborn. I am pleased today to see Congress once again, having the opportunity to express its disapproval of the slaughtering of unborn babies, as we have done on previous occasions.

On four separate occasions the House has had the opportunity to vote on amendments to bills that relate to the question of abortion. On May 31, the House approved by a vote of 354 to 8 the Roncallo amendment to the biomedical research bill prohibiting the experimentation of live human fetuses, or more accurately on live "babies" because the child is no longer a fetus after it is alive outside the mother's body. On June 22, a similar amendment to the National Science Foundation bill was adopted by a vote of 288 to 73. On June 21, I offered an amendment to the Legal Services Corporation Act which was adopted by a vote of 301 to 68 as amendment by the Froehlich amendment, which was accepted by a vote of 316 to 53. These provisions prohibited legal assistance from the Legal Services Corporation in connection with abortions.

It is unconscionable that the House Judiciary Committee continues to refuse to hold hearings or take any action whatsoever on my constitutional amendment, House Joint Resolution 261, and those introduced by other Members.

* * *

* * *

Ms. ABZUG. Mr. Speaker, I am distressed by the inclusion in this bill of section 114 which provides that—

None of the funds made available to carry out this part shall be used to pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions.

This provision is unnecessary because title X, section 291 of the present law says:

(a) It is the sense of the Congress that, while every nation is and should be free to determine its own policies and procedures with respect to problems of population growth and family planning within its own boundaries, nevertheless, voluntary family planning programs to provide individual couples with the knowledge and medical facilities to plan their family size in accordance with their own moral convictions and the latest medical information, can make a substantial contribution to improve health, family stability, greater individual opportunity, economic development, a sufficiency of food, and a higher standard of living.

This, it seems to me, states very well the intent of our aid, and does not trespass upon the right of nations to decide their own policies.

Abortion is one legitimate form of family planning and in some countries, the only available form. It is in fact legal for 58 percent of the world's population. It has always been our policy in providing aid to other countries to avoid dictating the precise form of its use; why do we now seek to place our own imprimature upon this bill—and carrying, at that, the views of only a vocal minority?

The emotional prohibition of abortion is a misuse of the legislative process and of the aid program. It is providing a channel for the frustrations of those who object to the Supreme Court's decision, but it is not the purpose of legislation to provide such a channel. I fear that this constant outcry is really a manifestation of patriarchal chauvinism.

Inherent also in this provision is a blatant form of discrimination against women. It appears that we are attempting to deny the women abroad the freedom of choice in family planning that our own Supreme Court has recently recently granted to women in this country. No other class or group, so far as I can recall, has been so singled out; we do not attempt to deny freedom of choice to construction workers, children under 12, people over 60—only to women.

I regret that the section does seem to place us in the questionable position of imposing on women abroad a restriction recently overturned by our Supreme Court and constitutes serious interference with the internal affairs of other countries.

Title X, section 291, subsection (c), states:

In carrying out programs authorized in this title, the President shall establish reasonable procedures to insure, whenever family-planning assistance from the United States is involved, that no individual will be coerced to practice methods of family planning inconsistent with his or her moral, philosophical, or religious beliefs.

It seems to me that this is quite sufficient.

* * *

The House voted to accept the Conference Report, 210-193. See 189 Cong. Rec. H10554 (daily ed., Dec. 4, 1973)

On December 5, 1973, the Senate, following the lead of the House, agreed to the Conference Report. Prior to agreement, however, Senators Helms and Case addressed themselves to the abortion provision (See 190 Cong. Rec. S21911-S21913 (daily ed., Dec. 5, 1973)):

* * *

Mr. HELMS. The new language of the antiabortion amendment has been previously released to the public by the House Foreign Affairs Committee because of the widespread interest in the topic. Some of my constituents expressed concern because the language of the amendment as it passed the Senate was modified by the conference. I presume that the distinguished Senator from Minnesota has also had constituent inquiries on the matter. Can the Senator give assurances to the Senate that, in his opinion, the language adopted by the conferees is a tough amendment and one that will effectively stop the performance of abortions as a method of family planning with funding authorized in this bill?

Mr. HUMPHREY. That is correct. It does not, however, interfere with what we call family planning services and the research that goes into family planning.

Mr. HELMS. I understand, and I thank the Senator.

Mr. CASE. Mr. President, as a member of the House-Senate conference committee on S. 1773, the Foreign Assistance Act of 1973, I would like to comment briefly on section 114 Limiting Use of Funds for Abortions.

The conferees intended in this section to prohibit the use of AID funds to pay special fees or incentives for the performance of abortion. Such payments have been considered in some countries to encourage family planning but the conference committee wished to make clear that it did not want U.S. bilateral assistance funds to be used by other governments to provide financial incentives for abortion as a method of family planning. We wanted also to be sure that AID would not support programs to motivate or coerce women to practice abortion either as a substitute for preventive measures of family planning or against individual wishes or conscience.

The Congress, which has strongly supported family planning and other programs related to population growth, has consistently stressed that:

> No individual will be coerced to practice methods of family planning inconsistent with his or her moral philosophical or religious beliefs.

Section 114 should not be construed as an attempt to dictate medical procedures to individual women in developing countries or to medical practitioners following the prevailing local customs and medical practice or to foreign governments. That is a matter of medical and personal judgment wholly beyond congressional authority and rightly so. Similarly, section 114 does not affect the policies and programs of international agencies that respond to local requests and circumstances.

Section 114 is designed to support additional research on all aspects of fertility control and to help medical practitioners to deal with the existing problems of self-induced abortion, hazardous late abortions, and various illegal procedures to which millions of women resort.

As the world faces new shortages of food and energy and therefore also of fertilizer and other vital commodities, it becomes ever more important to make available safe, acceptable and voluntary methods of family planning.

Mr. HELMS. Mr. President, I commend the Senate conferees for keeping the antiabortion language in the foreign aid bill. It was the will of the Senate that no U.S. Government funds be used for abortions, and the conference has returned language which will assure that this is the case. I know how hard it is to retain an amendment in conference which has been passed by only one body, but evidently the House conferees were confident that the House would support such language.

I am not surprised that such was the case, even though this will be the first time that Congress has gone on record as a statement of policy against the use of foreign aid funds for abortion. In years past, no one would ever have thought that it was necessary for Congress to take this step, but since AID has taken it upon itself in recent years to form its own policy, congressional action was necessary. This is an important step forward, therefore, and one that will have international implications for a better world.

I would also like to comment upon the outpouring of popular support for the amendment which came from all parts of the country. It was a stirring demonstration of the national sentiment on this issue, and it came from the grassroots itself. The major media saw fit to give little or no publicity to the fine action of the Senate in approving the amendment unanimously, yet the little people, the home-town folks, managed to get the message and to make their support felt strongly in the Congress. I know that the Members of Congress were impressed and gratified by the widespread expressions of reassurance and support, and that the response will not be forgotten when the proposals for constitutional amendments reaffirming the right to life come up for discussion.

Although the language approved by the Senate was modified in conference, I think that we can all be pleased with the results. It is now direct and simple, and in some respects stronger than the original version. It adds direct prohibitions against motivating or coercing any person to practice abortion, prohibitions

which were not in the original, and which emphasize more emphatically the opposition of the Congress to abortion. These additional provisions highlight the moral nature of the problem of abortion, and the repugnance with which Congress views any attempt to enlarge or expand the practice of abortion. I once again commend the conferees for their action in adopting language that is bolder and more effective than before.

I am also pleased that the conferees phrased the denial of funds for the "performance" of abortions. Performance is a word which has a very wide latitude of interpretation, and includes everything associated with "performance," including not only physicians' and hospital fees, salaries, or expenses, but also associated equipment and necessities, such as drugs, medical instruments, and other devices specifically designed to effect or to assist in effecting abortions.

It is also to be noted that the language specifically talks not just about abortions, but abortions as a method of family planning. I would think that this would include counseling abortions as a method of family planning, as well. After all, the first step in receiving an abortion would undoubtedly be a counseling session or attending clinics where abortion is presented as an acceptable option in family planning. This amendment clearly forbids U.S. Government funds from being used in programs which offer abortion counselling. This prohibition is reinforced by the language I have already referred to above; namely, the further prohibition against motivating people to practice abortion.

The language on motivation is also broadly drawn to include both women who might practice abortion upon themselves, and medical practitioners who might practice abortion upon others. This rules out training programs which have as a principal object the training of medical personnel to practice abortion. Such a program for example, is scheduled to start in January at Washington University in St. Louis, with others at Johns Hopkins University in Baltimore, Western Pennsylvania Hospital in Pittsburgh, and American University in Beirut. Each of these programs is getting $250,000 to $300,000 a year. While other techniques are also taught, I think it is plainly the intention of the Congress to halt the abortion component of such programs immediately.

Finally, it is quite clear that this language rules out any clinical testing or experimentation on human beings which has the effect of aborting or expelling the fetus. Whether such abortions are accomplished by pill or injection or surgery, they fall within the ambit of the prohibition against the performance of abortions. As I pointed out on October 1, there is a wide range of testing underway paid for with AID funds, with experiments being tried both upon U.S. citizens in this country and upon foreign citizens abroad. This abortion activity should cease.

I think it is incumbent upon AID to take steps as soon as this bill becomes law to prevent the use of U.S. Government funds from being used for any of the forbidden practices, including the spread of informational, propagandistic, or other motivational materials in support of abortion. At the very least this will require negotiation of tight agreements with international associations and funding agencies which act as a conduit for AID funds. There should be no commingling of funds used for abortions or propaganda programs with funds received directly or indirectly from AID.

Such precautions would scarcely have to be mentioned, except that AID's past concern over the efficient use of the funds it distributes has been minimal. I cite, for example, the GAO report on "U.S. Grant Support of International Planned Parenthood Federation Needs Better Oversight," study No. B-173240, dated September 14, 1973. The report sharply criticizes AID's sloppy and casual handling of audit requirements on IPPF grants. As examples, GAO cited:

Balance sheets and income and expenditure statements were not always presented.

Not all reports accounted for IPPF-granted commodities, and, when commodities were reported, there was no uniform treatment.

Some audits were not made by independent auditors.

Some reports were expressed in local currency.

Depreciation was not uniformly treated.

Many audit reports were not timely received.

These problems can be attributed to IPPF's failure to issue audit guidelines.

In addition, GAO reported that IPPF lacked sufficient qualified central office personnel or any system for periodic reassessment of programs. These criticisms are serious when it is realized that IPPF's overall budget increased from a mere $30,000 in 1961 to $32.5 million in 1973. About $11.5 million is contributed directly from AID funds. In addition, IPPF spends another $7.1 million which includes a large chunk of money supplied by local AID missions direct support.

GAO therefore recommended that the Administrator of AID provide for a specific phased plan for:

Timely submission of accurate and reliable reports and data from national associations;

More field reviews, inspection, and reports by IPPF central and regional offices;

Improvements in the extent and quality of independent audits of associations' programs and management; and

More effective evaluation and reporting by IPPF's central office to AID.

In view of the fact that AID has been a major proponent of abortion and abortion-related activities, I think that it is indispensable that this list of recommendations be further broadened to include effective and practical controls to make sure that none of AID's funds find their way into IPPF's abortion activities. In the same way, agreements should be negotiated with the U.N. Population Fund for similar audits to prevent the commingling of U.S. funds with abortion activities.

I call upon the Administrator of AID to take such steps immediately.

Finally, Mr. President, I would like to make a comment upon the language in the conference report, namely,

> This provision is not intended to interfere with or curtail support for preventive maternal and child health and family planning services and related research which are provided on a voluntary basis and in accordance with the prevailing local customs and medical practice.

This language preserves the careful distinction which I made in my statement of October 1. My amendment in its prohibitions reached only to abortion and not to contraception. It was never intended to reach programs of a contraceptive nature. The distinction is not difficult. Contraception is prevention. It prevents life from beginning. Abortion is in no sense preventive; it kills life after it has begun. That is why the language adopted by the conferees completely eliminates abortion as a method of family planning. But local customs and medical practice differ on preventive methods and the conference report makes it clear that preventive methods of family planning, that is to say contraceptive methods, are not forbidden from support with U.S. Government funds. Research, distribution of materials, and clinical support may continue on preventive methods, but not for abortifacient methods.

I congratulate my colleagues for working so hard on this amendment, to so good a result.

Mr. President, I recently wrote to the new Administrator of AID, Mr. Daniel Parker, and asked him whether or not it was the policy of AID to support and encourage the killing of innocent unborn children through abortion. Mr. Parker has kindly written back under the date of November 21 and answers succinctly and to the point:

> Surely you must realize that it is not A.I.D.'s policy to support or encourage the killing of innocent unborn children through abortion. It is A.I.D.'s policy to conduct a vigorous program supporting, without any coercion whatsoever, the development of effective family planning programs in less developed countries. The purpose of our policy is to attempt as best we can, to help to avoid the disastrous worldwide consequences of continued unchecked population growth.

I want to thank Mr. Parker for his clear and unequivocal statement. It sets a new course for AID, as is entirely proper with the arrival of a new Administrator in the job. In conjunction with the language adopted in the conference, it sets forth new guidelines against which to measure AID's activity in this field.

Mr. Parker, in the rest of his letter, emphasizes the great need for the lack of coercion and the emphasis on voluntariness in such programs. It is a statement with which I could not agree more. The slightest suspicion that the United States was imposing its own views or the views of international groups on population growth on the recipients of foreign aid would definitely be counterproductive. That is one reason why I offered my amendment in the first place. If we fund programs which offend governments or

which offend large population groups even if the governments approve, we will be working against our best interests abroad. Such funding implies tacit approval, and we should not take sides one way or the other.

That is the reason why my original language, and the language of the conferees' version also, would only restrict the use of U.S. Government funds under the act for abortion. It would not put any restrictions whatsoever upon the programs of foreign governments and international organizations which fund abortion programs from other sources. Neither version would dictate what practices in other countries should be. But just as other countries should not be coerced to follow our values, so, too, U.S. taxpayers should not be coerced, under the law, to pay taxes to finance abortions. Since there is no effective way to make taxes voluntary, the only solution is to prevent the use of taxpayers' funds from being used for abortions.

Thus, the new language is in accord with the original policy set for AID in title X. As I have said before, I doubt that anyone who voted for title X originally would have considered that the concept of "family planning" would be perverted to include the killing of innocent unborn children through abortion.

Mr. President, I ask unanimous consent that the letter from Mr. Daniel Parker be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF STATE, AGENCY FOR INTERNATIONAL DEVELOPMENT,
Washington, D.C., November 21, 1973.

Hon JESSE HELMS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HELMS: We have your letter postmarked November 9 which unfortunately was not received by us until November 15. We do apologize but this accounts for our delay in responding.

Your letter raises an extremely serious and complicated subject. I would like first to answer your short and direct question in a short and direct way.

Surely you must realize that it is not A.I.D.'s policy to support or encourage the killing of innocent unborn children through abortion. It is A.I.D.'s policy to conduct a vigorous program supporting, without any coercion whatsoever, the development of effective family planning programs in less developed countries. The purpose of our policy is to attempt, as best we can, to help to avoid the disastrous worldwide consequences of continued unchecked population growth.

Title X of the Foreign Assistance Act of 1961, as amended, expresses the sense of Congress that . . . ". . . every nation is and should be free to determine its own policies and procedures with respect to problems of population growth and family planning within its own boundaries, . . ." That principle has formed a basic policy directive which has guided our family planning efforts. We have attempted to provide, within the words of Title X, ". . . voluntary family planning programs to provide individual couples with the knowledge and medical facilities to plan their family size in accordance with their own moral convictions and the latest medical information, . . ."

The question of abortion has arisen before on a number of occasions during Congressional considerations of the Title X program. Heretofore, Congress has chosen to continue the authorization after careful review without any restrictive provision attempting to dictate what practices in other countries should be.

A.I.D. believes the policy direction originally set for it in Title X is a wise and proper one. We are acutely aware of the widely divergent viewpoints in this country on the difficult and sensitive family planning issue. Practices in other countries reflect a similar diversity. That is to be expected on matters which are so closely related to the customs and morals of different peoples and of so uniquely personal a nature. We believe that such subjects should be left to each country in which family planning programs are undertaken.

Sincerely,

DANIEL PARKER.

* * *

The Senate then agreed to the Conference version by a vote of 44-41. See 190 Cong. Rec. S21924 (daily ed., Dec. 5, 1973).

On December 17, 1973, President Nixon signed into law S. 1443, the Foreign Assistance Act of 1973. See P.L. 93-189; 87 Stat 714. The Act included, at Sec. 2(2) "Sec. 114" the abortion provision as reported out of Conference.

The Fetal Research Ban Included in the National Science Foundation Authorization Act, 1974

On June 22, 1973, during consideration of H.R. 8510, a bill authorizing appropriations for activities of the National Science Foundation, Rep. Roncallo submitted the following amendment:

> No funds-
>
> (1) authorized to be appropriated under the Act to the National Science Foundation for the fiscal year ending June 30, 1974, or
> (2) heretofore appropriated to the National Science Foundation and remaining available to it for obligation and expenditure, may be used to conduct or support research in the United States or abroad on a human fetus which is outside the womb of its mother and which has a beating heart. (See 98 Cong. Rec. H5181-H5182(daily ed., June 22, 1973)).

Earlier, during debate on H.R. 8510, Reps. Murphy and Hogan rose to support the anticipated Roncallo amendment. Their comments follow. See 98 Cong. Rec. H5172-H5174 (daily ed., June 22, 1973).

Mr. MURPHY of Illinois. Mr. Chairman, I rise in support of the Roncallo amendment forbidding the National Science Foundation to use appropriated funds to conduct or support live fetus research.

This is not a complicated amendment. Its intent is clear. I merely wish legislation was not necessary to prevent experimentation on fetuses with beating hearts. We have received numerous assurances from Government agencies that such experimentation is not "policy"; however, I believe some guarantee is in order.

I realize the advantages for medical research if fetal experimentation is encouraged or merely sanctioned. Authorities assure us that tests run on fetuses will provide valuable data on cell development and the likelihood of birth defects.

Each of us have seen and some of us have personally known the heartbreak of birth defects. We are, therefore, tempted to opt for answers to these problems which threaten normal infant growth. It would be so easy to close our collective eyes to experimentation behind closed doors of operating rooms and research centers.

I would only remind my fellow colleagues of the high price we would pay for our ignorance. What guidelines for performing the tests would be followed? Would the guidelines be realistic and, above all, humane?

If we provide Federal dollars to experiment on human fetuses, are we then willing to accept responsibility for prolonging the life of the human fetus several days until conclusive results can be gained from the testing. And if scientific studies on human fetuses are condoned, how soon before we approve such studies in other helpless members of our society?

The Roncallo amendment gives us an opportunity to confront the issue of fetal experimentation and accept our responsibilities to those unable to speak for themselves. I, therefore, urge its acceptance by this body.

Mr. HOGAN. Mr. Chairman, I rise in support of the amendment being offered by my esteemed colleague from New York (Mr. RONCALLO,) which would prohibit authorization of funds for testing on a living infant outside of the mother's womb.

All of us have been making, I think, a serious mistake when we refer to "experimentation on live fetuses." We are trapping ourselves in the same "semantic gymnastics" that the antilife movement has used so successfully in the past.

Dorland's medical dictionary defines "fetus" as, "The unborn offspring—the developing young in the uterus—which becomes an infant when it is completely outside the body of the mother, even before the cord is cut." The Latin word, "fetus" simply does not connote to the general public the same humanity as does the word "infant." It is medically correct, I am told, to refer to this kind of experimentation, therefore, as "experimentation on live infants," rather than on live fetuses.

I commend the gentleman from New York for his efforts to stop this kind of experimentation. I was extremely pleased 3 weeks ago when the House approved a similar amendment offered by the gentleman from New York to the Biomedical Research Fellowship, Traineeship, and Training Act by a vote of 354 to 9.

I firmly believe that it is imperative that Congress take every opportunity to express its conviction that human life, before and after birth, has value and must be protected. I am hopeful that Congress will eventually approve my constitutional amendment to overturn the Supreme Court's decision that legalized abortion everywhere in the country up to the day of birth. Meanwhile, we must take every opportunity to stop the attack on the value and dignity of each human being.

The House has overwhelmingly denied the National Institutes of Health any funds for research of this type. It seems only reasonable that we approve this amendment today to make sure that no Federal funds are used by or through the National Science Foundation for that purpose.

Now that the Supreme Court has singled out one group of human beings as having no value, it is not hard to imagine what the future might hold in store if we do not stand up and reassert the right of every human being to life.

I support this amendment and I urge my colleagues to adopt it.

Below is the remaining House colloquy concerning the Roncallo amendment. The colloquy began immediately following the reading of the Roncallo amendment. See 98 Cong. Rec. H5182-H5185 (daily ed., June 22, 1973).

* * *

POINT OF ORDER

Ms. ABZUG. Mr. Chairman, I reserve a point of order.

The CHAIRMAN. The gentlewoman from New York reserves a point of order.

Ms. ABZUG. Mr. Chairman, I make the point of order that the amendment of the gentleman is not in order, since the language involved is language which essentially deals with reappropriating. Making available, or diverting an appropriation, or a portion of an appropriation already made for one purpose to another is not in order under rule VII, 2146, March 29, 1933, page 988.

This is an authorization bill and not an appropriation bill, and I believe that this amendment is, therefore, not in order.

The CHAIRMAN. Does the gentleman from New York wish to be heard on the point of order?

Mr. RONCALLO of New York. Yes, Mr. Chairman.

Mr. Chairman, the amendment addresses itself to the funds which have not been already expended, which are appropriated in the funds for the future which will be appropriated. I believe, therefore, it is in order and it is a correct amendment.

The CHAIRMAN (Mr. HANLEY). The point of order is purely one of germaneness, in the opinion of the Chair, and cannot be sustained. The amendment is a restriction on the use of funds available to the Science Foundation. The amendment does not appropriate any such funds. The Chair overrules the point of order.

The Chair recognizes the gentleman from New York.

(Mr. RONCALLO of New York asked and was given permission to revise and extend his remarks.)

Mr. RONCALLO of New York. Mr. Chairman, once again I rise to ask my colleagues to insure that appropriated funds will not be used to perform vivisection on live human fetuses. Just 3 weeks ago, the House declared unequivocally its opposition to this sort of activity by passing a similar amendment to the Biomedical Research Bill by a 354–9 vote. That amendment applied only to HEW. The National Science Foundation is another of the Government agencies which is intimately concerned with research on human beings.

One of their publications shows estimated fiscal year 1973 obligations for basic and applied research in the life sciences totaling over $90 million. Any of these funds could be used for live fetus research in the absence of statutory restrictions.

The breakdown in the report on the bill before the House today is not sufficiently detailed to indicate just how much will be used in the next year for research on human beings, but let us take a look at what we do find; $61 million are authorized for biological sciences. Among other objectives of this program we find the following:

> Advancing our understanding of biological structures, functions . . ., etc.
>
> Fostering research in selected areas of biology which seems especially ripe for development. . . ."
>
> Maintenance and care of certain biological research resources—primarily organizations caring for stocks of certain living or preserved organisms—and also research facilities, that serve a nationwide clientele.

One of the objectives of the $9.5 million International Biological program is "Advancing our knowledge of genetic, physiological and behavioral adaptation of human beings." The Cooperative Science program provides $3.8 million for bilateral research and exchange programs with 16 foreign countries. The authorization for fiscal year 1974 plus prior year funds still available allows for a $5 million special foreign currency program with eight more countries.

Let me dwell for a minute on why I am so concerned with our overseas programs. A few week ago I told you the story of a British doctor coming here to do live fetus research in Washington, D.C. It was claimed on the floor that NIH was not funding this type of research. I can state here categorically that this claim is not true. Just last summer Dr. Peter A. J. Adam of Case Western Reserve University in Cleveland went to Helsinki. Supported by NIH funds, he and three Finnish researchers performed some of the most abominable experiments on live human fetuses that I have ever heard of.

Let me quote to you the description printed in the June 8 Medical World News:

> To produce those data, the investigators severed the heads of 12 previable fetuses obtained by abdominal hysterotomy at 12 to 20 weeks' gestation. The heads were then perfused through the internal carotid arteries.

Can you believe this, Mr. Chairman? It is the making of a new Frankenstein. These people cut the heads off living human fetuses while they still had a heartbeat and stuck them up on tubes. All this to find out if some sugar substitute called BOHB could serve as a human energy source.

Dr. Adam says that legal considerations and the principles of informed consent are irrelevant. He asks, and I quote:

> Whose right are we going to protect when we've already decided the fetus won't live?

He has already answered his own question. If the fetus won't live, then it is living now. I am not talking about abortion, I am not here concerned with how they got this fetus. What I am concerned with is that we have a human life, existing independently with a beating heart, worthy of our protection. Whose right are we going to protect? The short life of this independent human being and also the right of society to be free from vivisection of its own living kind.

I would like to emphasize to my colleagues, as I did the last time, that this amendment will in no way restrict experimental theraputic procedures designed with the hope of preserving and protecting the individual human life involved. I commend this type of experimentation and note that much of the same sort of data can be obtained by this means, rather than by vivisection on those unfortunate lives which cannot be saved without a shadow of a doubt, because if we allow the latter, it can only follow that we will soon see vivisection of our terminally ill, vivisection of our mental defectives, and vivisection of our severely handicapped.

I look forward to the day when the Commerce and Judiciary Committees will hold hearings and report out legislation I have introduced banning all Government agencies from conducting live fetus research and providing for criminal penalties for researchers who refuse to follow congressional policy. These bills now have about 35 cosponsors apiece and will soon be introduced in the Senate. When they are enacted, agency-by-agency amendments such as this, will no longer be necessary. Until then, the legislative business of this body must go on, and I intend to see that we have a chance to stop this sort of appalling research every time funds which could be subverted for that purpose are authorized or appropriated.

NIH was funding live fetus research, despite their claims to the contrary. That is why I am not interested in what National Science Foundation's policy is, either past, present, or future. I am concerned about what congressional policy is. I am concerned about the stocks of living or preserved organisms maintained with NSF funds. I am concerned about overseas programs conducted where human life is held less dearly than here in the United States, and I am concerned about the ethical future of the human race. I hope that the House will pass this amendment and once again go overwhelmingly on record against live fetus research.

Mr. TEAGUE of Texas. Mr. Chairman, will the gentleman yield?

Mr. RONCALLO of New York. I yield to the gentleman from Texas.

Mr. TEAGUE of Texas. Mr. Chairman, so far as this side of the aisle is concerned we accept the amendment offered by the gentleman.

Mr. RONCALLO of New York. Mr. Chairman, I thank the gentleman from Texas.

Mr. GUYER. Mr. Chairman, will the gentleman yield?

Mr. RONCALLO of New York. I yield to the gentleman from Ohio.

(Mr. GUYER asked and was given permission to revise and extend his remarks.)

Mr. GUYER. Mr. Chairman, I respectfully join my colleague, Mr. RONCALLO of New York in his splendid second-effort to further reverence, esteem and protect the sanctity and dignity of human life.

There are few things more degrading than the crass cheapening and callous mistreatment of that divine endowment which only God can give, and only God should take away—precious, human life.

In these days of unparalleled change, unbelievable exploration of land, seas, and space in days of war and peace, plenty and want, rise and fall of powers, ascension of new science and technology, and copious innovations into

every avenue and path of human endeavor—there is one thing we must ever guard—life itself.

It is serious enough to devalue the dollar—but we must never devalue human life.

My only lament today is that the gentleman's amendment cannot go all the way to protect the unborn.

Perhaps after these little steps are consummated and secured, we will have the moral courage to take together that giant step to also safeguard the right of life.

Almighty God has created us with intimate, wonderful, and personal treasures and established us "a little lower than the angels." Each life has been endowed with the promise of the articulate speech, the creative mind, the enduring personality, and the imperishable soul.

Our Creator will indeed be glorified and mankind magnified by what we do here in the measure by which we edify and reverence His gifts of human's life.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. GUYER. Mr. Chairman, I ask unanimous consent that the gentleman be allowed to proceed for 1 additional minute.

Ms. ABZUG and Mr. ECKHARDT objected.

Ms. ABZUG. Mr. Chairman, I move to strike the last word.

We as Members of Congress obviously have differences of opinion but I find it very difficult as a woman to stand in this House and find that every time we seek to put through important legislation, amendments which are not really germane, though they may have been ruled to be so, are brought into bills which most Members of the House support. If we really want to discuss this particular issue, I will address myself to one aspect which is entirely different from that which has been projected.

There are in this country millions of women who have had and continue to have miscarriages. Perhaps, if we are able to look at another side of the issue, we can investigate how we can really preserve life so there would not be miscarriages and there would not be fetuses outside the womb of the mother. Then perhaps we could really be able to deal with the question of the "right to life" in proper terms.

All that this amendment does is to shackle scientific progress.

The mention of the word "fetus" is somehow or other a signal or a code word for everybody to stand up, every man and some women in this House, to say that we must vote in the way an emotional appeal indicates rather than on the basis of a rational analysis and a legislative approach. To me, this is very disheartening.

I have no objection to people expressing their own personal views, be they social, political, religious, or moral; and I respect them. But, I make an appeal to this House now, having witnessed the emotionalism last night which will deprive poor people of their fundamental constitutional right to legal services without discrimination—I make an appeal that if we want to discuss this particular issue in itself, a way should be found to have a rational discussion at a rational time. We should not abuse the legislative process by seeking to attach to this piece of legislation an issue which is really irrelevant and nongermane. We should not seek merely to inflame and impassion people instead of seeking to enact legislation of benefit to all humanity and mankind.

Mr. TEAGUE of Texas. Mr. Chairman, will the gentlewoman yield?

Ms. ABZUG. I yield to the chairman of the committee, the gentleman from Texas.

Mr. TEAGUE of Texas. Mr. Chairman, as far as we know, this amendment has no application to the National Science Foundation. Perhaps it does to the National Institutes of Health, but as far as we know in the committee, it has no application to the National Science Foundation.

That was the reason we agreed to accept the amendment.

Mr. ECKHARDT. Mr. Chairman, will the gentlewoman yield?

Ms. ABZUG. I yield to the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. Mr. Chairman, the gentlewoman's remarks are very well taken. It seems to me that we are getting an attitude that all our scientists are devoted to some mad experiments such as are described here on the floor and attributed to some foreign scientists. American scientists are depicted as so many Frankensteins busily engaged in vivisection and monstermaking.

Mr. Chairman, it seems to me that when we deny any experimentation, even on a nonviable fetus, we are not respecting human life; we are depriving ourselves of medical research which does not endanger any human being and may well save the lives of many mothers and their babies in the future.

Mr. Chairman, it strikes me that this type of amendment at this point and without further committee consideration is, as the gentlewoman from New York says, completely inadequate treatment of a serious question. It is to demagogue upon an issue which is extremely important and should be considered fully and separately and apart from a bill of the type now before this House.

Mr. Chairman, I compliment the gentlewoman from New York on her statement.

Mr. O'BRIEN. Mr. Chairman, I move to strike the requisite number of words.

Mr. RONCALLO of New York. Mr. Chairman, will the gentleman yield?

Mr. O'BRIEN. I yield to the gentleman from New York (Mr. RONCALLO).

Mr. RONCALLO of New York. Mr. Chairman, I want to thank the chairman of this committee for accepting the amendment.

The reason why I put the amendment in was because the National Institutes of Health used the precise language that the chairman did, saying that "insofar as we know" no funds were being used for experimentation on live fetuses. As I said a few minutes ago, they didn't know quite enough about their own operations, because an American researcher using NIH funds in Finland was cutting the heads off of live fetuses in Finland as late as last summer.

In addition to any active research which might be supported by National Science Foundation funds without our knowledge, I question the source of the stockpiles of living and preserved organisms, organs, and tissues funded by NSF. If any of these stocks came from live human fetuses, I believe my amendment would apply, as such stockpiles would certainly be in "support" of the research we would prohibit.

I am sure that the chairman has good intentions and probably knows of no occasion where NSF funds are used for experimentation on live fetuses. I would like to preclude the possibility of such use by the passage of this amendment.

(Mr. O'BRIEN asked and was given permission to revise and extend his remarks.)

Mr. O'BRIEN. Mr. Chairman, I wish to add my voice to those of my colleagues who support this amendment to H.R. 8510 to forbid the use of National Science Foundation funds to conduct or support live fetus research either in the United States or overseas.

A recent front-page article in the Washington Post pointed out that as things now stand American scientists can and do utilize Federal funds to conduct research on live fetuses both at home and abroad.

This is an activity that is repugnant to millions of Americans and one which I feel should not be supported with taxpayers' dollars.

The House recently acted to prohibit the use of Federal funds appropriated to HEW to support research on human fetuses existing outside their mother with a beating heart.

The amendment now offered would extend that ban to research supported by the National Science Foundation.

In light of the Supreme Court decision earlier this year striking down State limitations on abortions and greatly increasing this practice in the United States, I believe it is of the utmost importance that we act quickly to assure that live human fetuses not be used as "guinea pigs" for scientific experimentation.

Mr. FLOWERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I have two points. First of all, unusual as it may sound, I would like to associate myself with the remarks of the gentlewoman from New York (Ms. ABZUG).

I take it as an insult to me, in a way as a member of this subcommittee and as a member of this committee, that an amendment such as this would be offered to this legislation. We had extensive hearings.

Our subcommittee chairman, the gentleman from Georgia (Mr. DAVIS); the full committee chairman, the gentleman from Texas, (Mr. TEAGUE); and every member of our subcommittee and committee that I have any knowledge of, as to their philosophy of government and of life itself, would feel sympathetic on the issue of life or death and human rights, to the general thrust of the amendment.

But, Mr. Chairman, we had extensive hearings on this legislation. Nowhere in any of our hearings, at any time, was any thought given or any suggestion of a thought made that anything like this was going on with National Science Foundation grants. The gentleman who offered the amendment to my knowledge was never present in our committee room. There was never anyone who ever suggested, by innuendo or direct testimony, that there was any kind of experimentation of the sort mentioned in his statement under the auspices of the NSF.

We might as well pass an amendment, Mr. Chairman, that would preclude experimental activity on human life itself, not just on the human fetus, as something of the nature of this amendment.

I know it is purely argumentative for me to make these statements. This amendment will probably carry overwhelmingly, and that is all right, for I do not object to it but there is absolutely no point in it. I believe we should be more careful as we legislate here in the House.

Mr. PICKLE. Mr. Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to my friend from Texas.

Mr. PICKLE. I thank the gentleman for yielding.

I believe the gentlewoman from New York has made a timely and appropriate observation. There will come a time when we will debate this issue. It ought not be on legislation of this kind.

During the past 2 weeks, there seems to be some sort of fetus fad developing. Everybody wants to trot out one of these amendments on whatever legislation is up. This is not the time for it. Whatever the merits might be on either side of the issue, here is one voice which says we ought to be more careful as we approach this matter, and we ought to put a stop to this kind of advocacy. All of us have already voted on this issue several times. There is no need for this amendment here.

Mr. FLOWERS. I thank the gentleman.

Mr. MILFORD. Mr. Chairman, will the gentleman yield.

Mr. FLOWERS. I yield to the gentleman from Texas.

Mr. MILFORD. I thank the gentleman for yielding.

I should like to say, along with the gentleman, that I wish to associate myself with the gentlewoman from New York.

Last night a statement was made on this floor by an attorney who said that those who are not attorneys should not deal with attorney matters. I do not exactly agree with the gentleman, but I certainly would respect his expertise. I am a scientist. I spent my adult life as a scientist. Until 2 years ago, when I announced for this office, I was actively working as a scientist.

Let me assure every Member here that our ethics in the field of science and scientific research are every bit as good as those in law or in any other profession. Furthermore, the sole purpose of the scientist is to seek truth. It is done under careful supervision, under careful Federal and State laws. Research must go on in this field. This demagogic amendment is an insult to the scientist and could be extremely damaging to scientific research. Any destructive research on a live fetus, capable of surviving until birth, is clearly illegal in any State. Every Member of this House knows that is a fact. Therefore, every Member knows full well that this amendment is purely and simply a demagogic move. On behalf of the scientists of this Nation, I ask this body to reject this amendment.

Mr. FLOWERS. I thank the gentleman.

Mr. SYMINGTON. Mr. Chairman, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from Missouri.

Mr. SYMINGTON. I thank the gentleman for yielding.

I do not suppose the gentleman is a doctor?

Mr. FLOWERS. Not this one.

Mr. SYMINGTON. This gentleman is not. I suspect there are a good many ladies and gentlemen here who are not.

As a lawyer, I do not feel qualified remotely to know what kinds of tests might be made on a living fetus with respect to heart beat, weight, size, the flow of blood, the presence of a malignancy, or any other examinations, however cursory, that might portend some new breakthrough in the fight against infant death, illness, or disease.

I am wondering if the proponents of this amendment are suggesting that in no way should the medical profession concern itself, for purposes of learning more about living things and the manner in which life itself can be protected, by dealing in a sensitive, tender and decent fashion with an emergent fetus. It seems to me this amendment on its face betrays a disregard for life. And if its author has such reverence for life why would be write into any law that the only thing one can do with a fetus is to ignore or dispose of it, absolutely prohibiting treatment which might be interpreted as "research." Can the proponents of this amendment reassure me that this is not so?

Mr. FLOWERS. I thank the gentleman and concur in his statement.

The CHAIRMAN. The time of the gentleman from Alabama has expired.

(By unanimous consent, Mr. FLOWERS was allowed to proceed for 1 additional minute.)

Mr. FLOWERS. Mr. Chairman, I have one other point that I wish to make, and this is really the reason I was standing here when this other question arose.

I support this legislation very strongly, Mr. Chairman. However, as one Member from the provinces, some might say, I want to serve notice on the National Science Foundation that when future requests come before this committee on which I serve. I am going to expect more national application in the grants that they make to oversee.

I am concerned, Mr. Chairman, that we are becoming a nation of specialists in only certain areas of this country, and that the National Science Foundation, in directing these grants to colleges and universities and experts in whatever field it might be around the Nation, have not used a sufficient amount of geographical dispersion, we might say, so that we will have in the United States a widespreal opportunity in these important research and development programs.

To be specific, Mr. Chairman, I want to see more grants and contracts made to colleges and universities and individuals located in the South and Southwest of our great Nation.

(Mr. FLOWERS asked and was given permission to revise and extend his remarks.)

AMENDMENT OFFERED BY MR. MALLARY TO THE AMENDMENT OFFERED BY MR. RONCALLO OF NEW YORK

Mr. MALLARY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MALLARY to the amendment offered by Mr. RONCALLO of New York: At the end of the amendment strike out the following language "on a human fetus which is outside the womb of its mother and which has a beating heart."

And insert in lieu thereof the following: "on a living human being which research is in any way prejudical to its health or survival".

(Mr. MALLARY asked and was given permission to revise and extend his remarks.)

Mr. MALLARY. Mr. Chairman, in looking at this amendment, I find that it is in approximately the same terms as the amendment offered last week when we voted upon it. I think the Members will find that the definition of a "fetus" is unborn mammalian young. Therefore, we have a contradiction in terms which exists in the wording of the amendment which has been offered. We are talking about a fetus which is outside the uterus and, therefore, the amendment is not in concord with the definition of "fetus."

Therefore, we get into a question where, I believe, the courts would have a great deal of difficulty in construing the legislative intent, whether we are dealing with viable fetuses or whether we are dealing with human beings of any particular age.

Furthermore, Mr. Chairman, the amendment does not deal with the subject of whether, in fact, the research we are prohibiting is in any way harmful or prejudicial to the life or health of that particular human being.

I have no desire to support or encourage any kind of prejudicial, damaging experimentation on any human being, and I think the purposes which the gentleman from New York (Mr. RONCALLO) is attempting to serve in this amendment are desirable. All I am attempting to do in this amendment is to clean it up and make sure that no prejudicial experiments or research will occur. I also wish to make sure that there is nothing in it that would in any way restrain appropriate experimentation that would be desirable and perhaps assist in the development of life saving or life extending drugs or procedures.

Mr. FROEHLICH. Mr. Chairman, will the gentleman from Vermont (Mr. MALLARY) yield?

Mr. MALLARY. I yield to the gentleman from Wisconsin (Mr. FROEHLICH).

Mr. FROEHLICH. Mr. Chairman, most

[illegible] are available today for ex- [illegible] outside the womb be- [illegible] abortion. The fetus may live [illegible] of days and will not live [illegible] a number of days. Under the amendment of the gentleman from Vermont could they be experimented on?

Mr. MALLARY. No, they could not. They are living human beings, and therefore under that amendment, experimentation could not occur on them.

Mr. MOSS. Mr. Chairman, I move to strike the last word.

(Mr. MOSS asked and was given permission to revise and extend his remarks.)

Mr. MOSS. Mr. Chairman, I believe the position we find ourselves in at this moment illustrates a lack of wisdom in attempting to legislate in this fashion on an issue which is certainly emotional, because I believe that the amendment to the amendment erects a very effective bar to almost any kind of new application of medical knowledge.

I believe it could stop some of the most promising methods of treating illnesses: malignancies, strokes, and heart disease. I believe it is the absolute ultimate of the ridiculous. I think it is shocking and offensive that thoughtful Members of a body as great as this should so idly and unknowingly propose language which could create such great and grave mischief. I think it is time that we start looking at what we are doing and stop worrying about every last vote in every last precinct at home, because that is the motivation. This is not the place to conduct your campaign; this is not the place for pure, unmitigated demagoguery, and that is precisely what we are seeing committed here this afternoon. Stop and think.

Well, the gentleman says there is a demagogue here, but let me say to the gentleman that in my district there will be many who take violent exception to what I say. At least my conscience does not revolt against what I do, and I would rather have mine than his.

Mr. YATES. Will the gentleman yield?

Mr. MOSS. I yield to the gentleman.

Mr. YATES. I read in a magazine recently about a series of experiments being done on certain prisoners with their consent. They were being injected with germs for the purpose of ascertaining new truths about a certain disease which would be helpful to future generations of human beings. Would not that kind of experiment be barred under the terms of the amendment of the gentleman from Vermont?

Mr. MOSS. Let me make it more personal. In 1967 I suffered an arterial occlusion and had medicine been barred from any but that which was proven, I might well not be here. And I am not the only Member of this body who can call forth such experiences.

I tell you this is an offense against human life and against intelligence. It is a shocking thing that is being proposed, and I hope the House will have the courage to turn it down.

Mr. TEAGUE of Texas. Mr. Chairman, I ask unanimous consent that all debate on this amendment and all amendments thereto conclude in 5 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. FROEHLICH. Mr. Chairman, I move to strike the last word.

Mr. Chairman, we can avoid amendments on this subject, on abortion, on aid to North Vietnam on each authorization bill that goes through here in a related area if the committees in charge of these bills would have hearings and would report the bills on these subjects that are not getting attention by the respective committee. The Judiciary Committee, Subcommittee No. 4, is not doing anything on the issue of abortion. Abortion bills are sitting there locked up and probably will be for the rest of this session. The gentleman from New York has offered bills making it a criminal act to deal with experimentation on fetuses. I do not know what committee that bill is in, but it is not getting a hearing.

Mr. EDWARDS of California. Will the gentleman yield?

Mr. FROEHLICH. I yield to the gentleman.

Mr. EDWARDS of California. I believe the gentleman serves on the Committee on the Judiciary.

Mr. FROEHLICH. But not Subcommittee No. 4.

Mr. EDWARDS of California. Right. I understand he has been to a number of Judiciary Committee meetings in which I am sitting across the room and I am chairman of the subcommittee to which these various amendments have been assigned. Is that correct?

Mr. FROEHLICH. That is correct.

Mr. EDWARDS of California. This is the first time the gentleman ever looked me in the eye or ever spoke to me on the subject. Is that correct?

Mr. FROEHLICH. I have not spoken to you.

Mr. EDWARDS of California. How can the gentleman come to the floor of the House with a complaint that a measure is not receiving attention when he has never even brought it to the attention of the chairman of the subcommittee?

Mr. FROEHLICH. Has the chairman of Subcommittee No. 4 any intention of having hearings in this session on the issue of abortion?

Mr. EDWARDS of California. I think it is very interesting the gentleman complains bitterly about no attention and then on the floor of the House, without any notice whatsoever, weeks and weeks into the session he asks questions in front of the whole world are we going to have sessions or are we to have hearings.

Mr. FROEHLICH. Does the gentleman have any intention of having any hearings on the issue of abortion, the issue that the gentleman has not addressed himself to?

Mr. EDWARDS of California. I think the gentleman from Wisconsin should make an appointment with the members of the committee, and talk about it.

Mr. KEATING. Mr. Chairman, will the gentleman yield?

Mr. FROEHLICH. I yield to the gentleman from Ohio.

(Mr. KEATING asked and was given permission to revise and extend his remarks.)

Mr. KEATING. Mr. Chairman, I rise in support of the amendment offered by the gentleman from New York (Mr. RONCALLO) and I wish to associate myself with the remarks of the gentleman from New York, and the remarks of the gentleman from Wisconsin (Mr. FROEHLICH).

Mr. FROEHLICH. Mr. Chairman, one more comment: It is amazing that when we deal with the subject of abortion or experimentation on live fetuses that we are dealing with an emotional issue, but when we deal with the bombing in Cambodia we are not dealing with an emotional issue. My, how the standards change.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Vermont (Mr. MALLARY) to the amendment offered by the gentleman from New York (Mr. RONCALLO).

PARLIAMENTARY INQUIRY

Mr. SEIBERLING. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. SEIBERLING. Mr. Chairman, would the Clerk read the text of the amendment to the amendment, so that we know what we are voting on?

The CHAIRMAN. Without objection, the Clerk will reread the amendment to the amendment.

There was no objection.

The Clerk read as follows:

Amendment offered by Mr. MALLARY to the amendment offered by Mr. RONCALLO of New York: At the end of the amendment, strike out the following language, "on a human fetus which is outside the womb of its mother and which has a beating heart.", and insert in lieu thereof the following: "on a living human being which research is in any way prejudicial to its health or survival."

The CHAIRMAN. The question is on the amendment offered by the gentleman from Vermont (Mr. MALLARY) to the amendment offered by the gentleman from New York (Mr. RONCALLO).

The amendment to the amendment was rejected.

* * *

Following the defeat of the Mallory amendment which would have modified Rep. Roncallo's amendment, Rep. Roncallo moved for a vote on the issue of accepting his amendment. The amendment was adopted by a vote of 288-73. 98 Cong. Rec. H5185-H5186 (daily ed., June 22, 1973).

The House then proceeded to pass H.R. 8510, with the Roncallo amendment added thereto, by a vote of 364-6. See 98 Cong. Rec. H5186-H5187 (daily ed., June 22, 1973).

The Senate, on June 29, 1973, took up consideration of H.R. 8510 and completely rewrote the bill. The rewritten Senate version did not include the Roncallo amendment nor anything similar thereto. See 103 Cong. Rec. S12458-S12460 (daily ed., June 29, 1973). Following Senate passage of H.R. 8510, the House asked for a conference, see 107 Cong. Rec. H5934 (daily ed., July 11, 1973), to which the Senate agreed. See 109 Cong. Rec. S13426 (daily ed., July 13, 1973).

The Conference reported out H.R. 8510 with the Roncallo Amendment intact as section 10. See H.R. Rep. 93-408, 4 (1973); See also 119 Cong. Rec. H6763 (daily ed., July 26, 1973). The Conference Report alluded to this provision thusly:

> <u>Section 10</u>
> Section 10 is identical to Section 9 of the House bill. It provides that no funds authorized under this Act or by previous acts may be used to conduct or support research in this country or abroad on a living human fetus outside the mother's womb. (See H.R. Rep. 93-408 at 8; 119 Cong. Rec. at H6764 (daily ed., July 26, 1973)).

Without commenting substantially on the fetal research ban, the Senate accepted the Conference Report on July 27, 1973. See 120 Cong. Rec. S14868-S14870 (daily ed., July 27, 1973). In a similar fashion, the House accepted the Conference Report on August 3, 1973. See 126 Cong. Rec., pt. II, H7440-H7443 (daily ed., Aug. 3, 1973). The President signed H.R. 8510, captioned

... National Science Foundation Authorization Act, 1974, and including the Roncallo amendment as Sec. 10, on August 16, 1973. See P.L. 93-96.

Legislation Considered But Not Yet Passed

Not all affirmative abortion-related action by the 93d Congress, 1st Session resulted in signed law. Remaining for consideration during the second session in 1974 are bills which have received some form of action and which would (1) prohibit research on living fetuses, (2) prohibit the use of federal medicaid funds to pay for abortions, (3) prohibit Legal Services Corporation attorneys from engaging in certain abortion litigation and (4) prohibit medical personnel, and institutions who are recipients of federal medicare and medicaid funds, from being required, on the basis of this aid, to perform abortions or sterilizations. Each of the above pieces of pending legislation is reviewed below.

Fetal Research Ban Included in National Biomedical Research, Fellowship, Traineeship, and Training Act of 1973

On May 31, 1973, during consideration of H.R. 7724, a bill entitled as noted in the heading to this part, Rep. Roncallo submitted the following amendment:

> (b) The Secretary may not conduct or support research in the United States or abroad on a human fetus which is outside the uterus of its mother and which has a beating heart (82 Cong. Rec. H4167 (daily ed., May 31, 1973))

The following debate on the amendment then occurred. See 82 Cong Rec. H4167-H4174 (daily ed., May 31, 1973):

Amendment offered by Mr. RONCALLO of New York: Page [illegible], line 18, insert "(a)" after "Sec. 45[illegible]"; strike out the close quotation marks in line 22, and after line 22 insert the following:

"(b) The Secretary may not conduct or support research in the United States or abroad on a human fetus which is outside the uterus of its mother and which has a beating heart."

(Mr. RONCALLO of New York asked and was given permission to revise and extend his remarks.

Mr. RONCALLO of New York. Mr. Speaker, this amendment would do nothing more than spell out in precise terms the sense of the committee report, which states on page 12:

The Committee feels that present standards of ethical conduct make research on living fetuses unethical.

I commend the committee for making this determination and for including in its bill a section regarding limitations on research. Indeed this is the subject of H.R. 7850 which I presently have pending before the committee and which would ban the use of any appropriated funds by any agency for live fetus research. H.R. 6849, which I later reintroduced with 24 cosponsors would make such activities a Federal crime if the research itself or the institution in which it takes place is federally funded. This bill is before the Judiciary Committee.

The committee restriction in the reported bill would ban research in violation of ethical standards adopted by NIH and NIMH. I applaud this as far as it goes, for who would want to see HEW use funds for research declared unethical by those institutes? My amendment would in no way change or replace the committee's language. Rather it adds an additional paragraph specifically restricting the use of funds for live fetus research. The committee says it understands that it is the current position of NIH not to fund these activities. However, when the NIH Deputy Director for Science, Dr. Robert Berliner, made such a statement to the press, the Scientific Director of NIH's National Institute for Child Health and Human Development was not so sure. Dr. Charles U. Lowe was quoted by the Washington Post as saying, "You know we are dealing with 14,000 grants," and "we are not insofar as we know" financing any such research.

"Insofar as we know," Mr. Speaker, "Insofar as we know"! If the top officials dealing with fetal research at NIH disagree or are not sure what their policy is, maybe it is about time Congress told them what it should be. Congress is accused, and I am sorry to say, justly so, of forever abdicating its responsibility for setting policy to the executive branch. Time and again we vote to let the President or his Cabinet officers decide things. Today we would let NIH decide if funds are to be spent on live fetus research. It is our responsibility to legislate and their duty to execute our policies.

If it is our policy not to allow HEW to conduct or support this type of research, let us say just that. Let us take back the reins right here where they belong, in Congress. My amendment takes back those reins.

This is not an antiabortion bill. We are not concerned here with how this live human fetus gets to the operating table. All we say is, if I cannot live, let me die in peace. Do not cut tissue samples while I still have a heartbeat; do not stick tubes in me; do not artificially prolong my life when the decision has already been made that I cannot survive just to watch what happens, only to shut off the machine when we are done and watch me die. No matter how we feel about the abortion issue, no matter when we believe life starts, we can all agree that this fetus, no longer connected to its mother's life support system, existing independently with a beating heart, is a human life, a human baby if you will, however fleeting its time on earth. It is a human life entitled to the same dignity as any other human life. If we can get upset about vivisection on dogs, can we not be just as concerned about vivisection on humans? What would be the next step, vivisection of our terminally ill or our handicapped?

Second, the amendment would not in any way restrict the use of experimental therapeutic procedures in an attempt to save the life of the fetus, to allow it to develop into a mature viable infant. A good case in point is an attempt by the Children's Hospital of Philadelphia to save the life of moribund newborn infants with respiratory distress syndrome using an experimental lung substitute machine. Improvement in early trials was only temporary, but encouraging results and valuable data were obtained. Is it not much better to gain knowledge this way, in an attempt to save the infant?

Lest you think "it can't happen here," it has happened here, right here in our Nation's Capital at George Washington Hospital where a British doctor continued his overseas research in this country. Although I am told this research was not federally funded, the next case might be. If the British, the Scandinavians or other Europeans want to do this on their own soil, I still think it is wrong, but we can make it as difficult as possible for anyone to do it here in the United States.

Mr. Speaker, HEW's fiscal year 1973 estimated obligations for basic and applied research in the life sciences total over 1¼ billion dollars. Now we want to give them more than 200 million dollars additional.

As a human being, I am revolted at the thought that we might have reached the era of "1984" where we lower ourselves to performing vivisection on our own kind. If my colleagues share my revulsion, I hope they will see fit to pass this amendment.

Mr. J. WILLIAM STANTON. Mr. Speaker, will the gentleman yield?

Mr. RONCALLO of New York. I yield to the gentleman from Ohio.

(Mr. J. WILLIAM STANTON asked and was given permission to revise and extend his remarks.)

Mr. J. WILLIAM STANTON. Mr. Speaker, I would like to compliment the gentleman from New York (Mr. RONCALLO), who is now in the well, on his amendment. I think it expresses the intent of the committee, but I think the language proposed by the gentleman from New York which reads, "The Secretary may not conduct or support research in the United States or abroad on a human fetus which is outside the womb of its mother and which is alive with a beating heart," is good language, and again I certainly wish to compliment the gentleman from New York for offering this amendment. We were made aware of this situation when we read in the Washington Post of a test being conducted and there were denials and statements that it would not be done in the future.

But certainly it is the prerogative of the gentleman to offer such language, and I certainly back the gentleman 100 percent in support of the right of the gentleman to offer this amendment.

Again, I compliment the gentleman from New York.

Mr. DENHOLM. Mr. Speaker, will the gentleman yield?

Mr. RONCALLO of New York. I yield to the gentleman from South Dakota.

Mr. DENHOLM. Mr. Speaker, I thank the gentleman from New York for yielding to me. I commend you for the initiative in proposing the amendment to restrict medical research on aborted fetus specimens to that same ethical standard acceptable to all medical research. I understand that the intent and purpose of your amendment seeks to do no more. Certainly, that cannot be wrong.

Medical research has resulted in great benefits to all of us in the control of diseases and human affliction.

The issue of abortion, as we now know it, cannot be a license for the over enthusiastic experimentation of research by any person. If that exists as a fact—it must be stopped. If it is contemplated by the nationale of science—it cannot be permitted. I cannot condone the barbaric behavior of the 18th and 19th century and I will not passively concede to wrong in the alleged practices of "right."

The argument and reasoning that to limit experimental research on the life of a delivered, living fetus to that biomedical research equal to other human beings is to acknowledge wrong in all other substandard conduct of professional medical ethics is without merit. That line of argument is no more convincing than an antibank robbery statute should make legal all other crimes.

Mr. Speaker, I urge the committee to accept the amendment and abreast of that—the amendment should be adopted as an expression of this representative and legislative body of the people in a cause that is human, just, and right.

I thank the gentleman from New York (Mr. RONCALLO) for yielding. I urge the adoption of the amendment and I ask unanimous consent to revise and extend my remarks at this point in the RECORD.

Mr. RONCALLO of New York. That is correct.

Mr. DENHOLM. Mr. Speaker, I commend the gentleman.

(Mr. DENHOLM asked and was given permission to revise and extend his remarks at this point in the RECORD.)

Mr. ERLENBORN. Mr. Speaker, will the gentleman yield?

Mr. RONCALLO of New York. I yield to the gentleman from Illinois.

Mr. ERLENBORN. I thank the gentleman for yielding. I want to compliment the gentleman for offering this amendment. I rise in support of the amendment.

Mr. Speaker, H.R. 7724 contains a proposal for amending the Public Health Service Act under a heading, "Limitations on Research." As reported by the Committee on Interstate and Foreign Commerce, section 456 would forbid the Secretary of Health, Education, and Welfare to conduct or support research which violates any ethical standard respecting research adopted by the National Institutes of Health, the National Institute of Mental Health, or their respective research institutes.

As much as I approve the intent of this language, I find it lacking in precision. It would permit the directors of these institutes to define "any ethical standard respecting research."

The committee, in its report, states that it intends by this phrase to prevent experimentation on live fetuses. I intend to say that, also. Hence, I support the amendment proposed by my colleague, the gentleman from New York (Mr. RONCALLO).

This amendment would add a paragraph which would clarify the intent.

Honest and sincere persons can have differences about when life begins, either at conception or at some later time. We should, however, be able to agree that a fetus which has been removed from a mother's womb and which has a heart beat is entitled to the equal protection of our laws.

I urge that this House make its language precise and its intent clear by means of the amendment by the gentleman from New York.

(Mr. ERLENBORN asked and was given permission to revise and extend his remarks.)

Mr. WYDLER. Mr. Speaker, will the gentleman yield?

Mr. RONCALLO of New York. I yield to the gentleman from New York.

Mr. WYDLER. Mr. Speaker, I also want to compliment the gentleman for bringing this amendment to the floor. I think it is an important amendment and certainly in keeping with the philosophy that we are hearing lately that the Congress should take some responsibility and stand up and draw some guidelines. I believe the argument that we should leave this to the whim of the people who draw the regulations—whoever they are—in NIH, would be a very weak argument in an area this sensitive.

I am fully in support of the gentleman's amendment.

Mr. RONCALLO of New York. Mr. Speaker, I thank the gentleman.

Mr. WALSH. Mr. Speaker, will the gentleman yield?

Mr. RONCALLO of New York. I yield to the gentleman from New York.

Mr. WALSH. Mr. Speaker, I, too, thank the gentleman. I want to associate myself with the remarks of Mr. RONCALLO, in bringing this amendment to our attention. I think it is one of the most important we will have to consider in a long, long while.

Mr. Speaker, several minutes ago, Mr. RONCALLO spoke about research on living fetuses going on right here in Washington, D.C. The research in question is work being carried on by Dr. Geoffrey Chamberlain of Kings College Hospital in London. The research began in England but is being concluded here at the George Washington University Medical School.

This experimentation, through which none of the living fetuses connected to the artificial placenta survived more than 5 hours and 3 minutes, raises some important ethical and legal questions that merit serious deliberation now.

The human fetuses used in these experiments are alive, what are their rights? Since they are incapable of giving their consent to their use as experimental subjects, who can morally and legally give consent for them—their mothers, their fathers, both parents, the State, perhaps no one. What if the parents are minors?

One of the living human fetuses used by Dr. Chamberlain was taken from a 14-year-old girl. Is this type of human experimentation morally licit and legal? I do not think it is.

I strongly urge support of this amendment.

Mr. RONCALLO of New York. I thank the gentleman.

Mr. HEINZ. Mr. Speaker, will the gentleman yield?

Mr. RONCALLO of New York. I yield to the gentleman from Pennsylvania.

Mr. HEINZ. Mr. Speaker, I want to commend the gentleman for bringing this amendment to this body. I should like to say that in my opinion it is a very important step toward rejecting the utilitarian view of mankind that disregards the intrinsic values of human existence. Instead, the amendment acknowledges and protects the conviction that human life is unique and precious, and that it is to be celebrated, not derogated.

I urge the acceptance of the amendment.

Mr. CAREY of New York. Mr. Speaker, will the gentleman yield?

Mr. RONCALLO of New York. I yield to the gentleman from New York.

Mr. CAREY of New York. Mr. Speaker, I, too, want to commend the gentleman for making explicit what congressional policy will be in this area. I do want to say that one greatly admires the doctors working in the Child Health Institute, and the other institutions at NIH. We want to make clear that the policy of doctors working there, as well as the technicians and policy people at NIH, is exactly in accordance with the gentleman's language.

I believe that of any place in the entire world, the NIH is the greatest source of hope and compassion, especially for children's diseases—leukemia, and many blood and immunology-related diseases. NIH frequently is the sole hope of many parents that their son's or daughter's crippling childhood disease will be cured. I know the gentleman will agree that NIH policy, as evidenced by the type and philosophy of medicine practiced out there, is not such that we should have to convince them this should be policy; there is agreement with such policy as it presently operates.

As a matter of fact, the whole policy position was clear in that area, and certainly we are not in favor of using the fetus as an experiment.

Mr. STAGGERS. Mr. Speaker, I move to strike the requisite number of words.

Mr. Speaker, I think the introduction of the amendment is appropriate. I am against it, but I think it conveys the wish of this Congress, of every individual here, I am sure, and across the Nation, who has any compassion in any way that we should not experiment with fetuses.

I would like to tell the House this: If we start putting in amendments, for example, like this, we would have to put many more in. We have said the NIH has already said they do not think this is ethical, and we have said our thinking is that it is not ethical. In reading the bill, it says:

> The Secretary may not conduct or support research in the United States or abroad which violates any ethical standard respecting research adopted by the National Institutes of Health, the National Institute of Mental Health, or their respective research institutes.

NIH is definitely against this research, and the sense of it, but if we start amending this, theer are many other areas of research that they support and which we have not mentioned in the bill.

There has been unethical research time and again in these other areas: Human beings in whom the brain has been destroyed and the body kept alive, for example. The institutes have said this is not ethical. There were times when drugs have been given to people without permission. The National Institutes of Health have said this is not ethical. There are many more examples. I am against them and many persons in the Chamber are against it. The National Institutes of Health have said all these are unethical, so let us not start naming just one. If we do we will have to name them all before we are through. So let us not pick out one. I am against it and I know many Members of the House are against it. So let us not single out just one. Many of these other examples are not making headlines but the national institutes have said they are unethical and should not be done. We have said so in our legislation, and not just for one but for all of them.

Miss JORDAN. Mr. Speaker, will the gentleman yield?

Mr. STAGGERS. I yield to the gentlewoman from Texas.

Miss JORDAN. Mr. Speaker, I am interested in the proviso that human experiments have the protection of the force and effect of the law. As I read the paragraph of the bill the gentleman referred to, and then heard his reference to the National Institutes of Health, all we have is a determination of policy and policy is something that can change as the board of directors change. How can we be sure we will not have a repeat of the Tuskegee experiment on humans?

Mr. STAGGERS. We had that experiment and hundreds of others, and, as the gentlewoman knows, some have not been ethical, they should not be and shall not be continued. We have put that in this

bill. We have said this to cover any and all of them. I do not think we ought to pick out just one type of research and say that it should not be done. We are trying to cover the whole field.

I agree with the gentlewoman that that was one of the most despicable experiments I know of. It is good that it was brought to light and stopped. We want it to be stopped on fetuses, and on those whose minds have been destroyed as well.

Miss JORDAN. So it is fully the gentleman's intent that this proviso would be applicable to the Tuskegee and any similar experiments, to prevent that happening, even though the language the gentleman cites has not the full force and effect of law.

Mr. STAGGERS. The Secretary is directed—it says "may not"—and this is the law, not to continue or support research of any kind which is unethical. It would be a violation of the statute.

Mr. MAZZOLI. Mr. Speaker, I move to strike the last word.

Mr. Speaker, I hesitate to take the well today on an issue involving a committee on which I do not have the privilege of sitting, but I think this is a matter of great moment to every Member of the House and to all people who have a respect for human life.

I listened with great care to the distinguished chairman of the committee, the gentleman from West Virginia, who says that the report contains a clear statement of the congressional intent. He also says there is no intent on the part of the National Institutes of Health, the NIH, to change present policy which is to respect human life and not derogate it.

But if the chairman will bear with me a moment, I had great concern when I read two articles in April written by Mr. Victor Cohn in the Washington Post. I put these in the RECORD and wrote letters to NIH authorities asking for a clear and unequivocal statement from them as to whether it is NIH policy and position not to perform experiments on nor to finance performance of experiments on live human aborted fetuses.

Mr. Speaker, I have tried in two or three series of letters with NIH, which includes one from Dr. Sherman, the Acting Director of NIH., to get straight, honest answers from them. But I do not think they are willing to let us know specifically what their position is.

The letter I just received yesterday from Dr. Sherman contains a list of individuals whose names I will insert in the RECORD by permission of the Chair, who comprise a committee which is studying the whole proposition of human biomedical experimentation and research which would include that done on prisoners, institutionalized persons, children, the developing fetus, and the aborted fetus.

I am satisfied that, at this time, NIH does not have an absolutely clear statement of policy on this issue. It could well be that this type of experimentation, which I conceive to be very disrespectful of life and absolutely appalling, might, in fact, be conducted with Federal funds.

It seems to me, Mr. Speaker, that if the amendment as proposed by the gentleman from New York (Mr. RONCALLO) does in fact bring to a halt now, today, immediately, this kind of possible experimentation, it seems to me his is a very good amendment.

The material referred to follows:

APRIL 27, 1973.

Dr. ROBERT W. BERLINER,
Deputy Director for Science,
National Institutes of Health,
Bethesda, Md.

DEAR DR. BERLINER: I am writing to express, in the strongest terms possible, my alarm over the recent publicity suggesting that Federal funds may have been used in support of research involving live human fetuses.

Aside from my personal feelings that such a practice is disrespectful of human life and morally repugnant, my political perceptions tell me that such a use of public monies is wholly unacceptable to a vast majority of American taxpayers.

The statement published in the Washington Post on April 15, 1973, to the effect that no present or foreseeable circumstances would justify N.I.H. support for such research, does not completely satisfy me.

I would like to see an outright policy statement from N.I.H., totally banning any form of support for research—present or future—involving live fetuses.

Your careful consideration of this request will be greatly appreciated.

With best wishes and regards.

Sincerely,

ROMANO L. MAZZOLI,
Member of Congress.

APRIL 27, 1973.

DR. GERALD D. LAVECK,
Director, National Institute of Child Health and Human Development, National Institutes of Health, Bethesda, Md.

DEAR DR. LAVECK: I am writing to express, in the strongest terms possible, my alarm over the recent publicity suggesting that Federal funds may have been used in support of research involving live human fetuses.

Aside from my personal feelings that such a practice is disrespectful of human life and morally repugnant, my political perceptions tell me that such a use of public monies is wholly unacceptable to a vast majority of American taxpayers.

The statement published in the Washington Post on April 15, 1973, to the effect that no present or foreseeable circumstances would justify N.I.H. support for such research, does not completely satisfy me.

I would like to see an outright policy statement from N.I.H., totally banning any form of support for research—present or future—involving live fetuses.

Your careful consideration of this request will be greatly appreciated.

With best wishes and regards.

Sincerely,

ROMANO L. MAZZOLI,
Member of Congress.

NATIONAL INSTITUTES OF HEALTH,
Bethesda, Md., May 9, 1973.

Hon. ROMANO L. MAZZOLI,
House of Representatives
Washington, D.C.

DEAR MR. MAZZOLI: Dr. Robert Berliner, NIH Deputy Director for Science, and Dr. Gerald LaVeck, Director, National Institute of Child Health and Human Development have asked that I respond on their behalf to the letters addressed to them on April 27, 1973. Your communication expressed your deep concern over the possibility that NIH might be engaged in research involving live aborted human fetuses.

First, let me assure you that the NIH does not finance or conduct research on live aborted human fetuses.

In carrying out our basic mission to improve the health of the nation, the NIH conducts and supports a major portion of the biomedical research in this country. All research conducted or supported by NIH involving human subjects is performed under guidelines which require the protection of the rights and welfare of the subjects, the weighing of the risks of such activity against its benefits and assurance of informed consent from the subject. We agree to finance such procedures only when we are assured by a panel of experts that the particular study is necessary, and that it holds promise of substantial benefit to mankind. We require that the local expert panel know the circumstances under which the research is to be done. We also require that the judgment as to the appropriateness of the research be made by persons other than the scientist who plans it. Our final decision to support such research involves our judgment of its scientific merit and full consideration for the ethical issues it presents.

Since our present guidelines for research with human subjects were adopted in 1966, necessary and life-saving research activities have grown increasingly complex giving rise to new and unexpected ethical issues. For example, it was during this period that reports began to be received of research upon live human fetuses performed in certain European countries.

In December 1972, the NIH set up a committee to make a comprehensive review of existing guidelines and policies on the protection of human subjects taking into account any problems which might be foreseen from new areas of biomedical investigation which offer hope for improving health. As a part of this review, we are focusing special attention on the meaning of "informed consent" in subjects such as prisoners, institutionalized patients, children, the developing fetus and the aborted fetus.

The committee has made no recommendation as yet. You may be assured that before any revised or new policies are finally recommended or adopted on any of the many issues related to research with human subjects opportunity will be given for public comment. We are convinced that this approach to the problems of fetal research, as well as the many other sensitive current questions about the use of human subjects will lead to responsible, humane and defensible policy conclusions.

We deeply appreciate your interest and would be most happy to provide further information.

Sincerely yours,

JOHN F. SHERMAN, Ph. D.,
Acting Director.

MAY 23, 1973.

JOHN F. SHERMAN, Ph. D.
Acting Director, Department of Health, Education, and Welfare, Public Health Service, National Institutes of Health, Bethesda, Md.

DEAR DR. SHERMAN: This is in further referenceto your letter of May 9, 1973.

I desire the names and addresses of the members of the committee which was set up by the N.I.H. last December to study guidelines and policies on research on human subjects to include research on human fetuses.

It is my intention to contact these individuals to express my views on this subject.

In further reference to this matter, I am enclosing copies of articles which appeared in the Washington Post of April 10 and April 13, 1973. In these articles, Dr. Kurt Hirschhorn states that American scientists are going abroad to conduct research on aborted human fetuses at N.I.H. expense.

Is this a true statement? If not, can you verify that it is false?

I await your early advice.

Sincerely,

ROMANO L. MAZZOLI,
Member of Congress.

NATIONAL INSTITUTES OF HEALTH,
Bethesda, Md., May 25, 1973.

Hon. ROMANO L. MAZZOLI,
House of Representatives,
Washington, D.C.

DEAR MR. MAZZOLI: In response to your request of May 23, 1973, I am providing herewith the roster of members of the inter-agency Study Group for Review of Policies on Protection of Human Subjects in Biomedical Research. This is the group which was mentioned in my May 9 letter to you as being engaged in a comprehensive review of existing guidelines and policies on the protection of human subjects in research. The group is focusing particular attention on the questions surrounding the use of subjects such as prisoners, institutionalized patients, children, the developing fetus and the aborted fetus.

To assist the Study Group a staff paper on the subject of fetal research is being developed by Dr. Charles U. Lowe, Scientific Director, National Institute of Child Health and Human Development, National Institutes of Health, Bethesda, Maryland 20014. Dr. Lowe's staff paper and recommendations will be presented to the Study Group about July first. After review in draft by the Study Group and before approval by the NIH Director all recommendations for new or amended guidelines will be made available for public comment, and of course your comments will be welcomed and given careful attention.

In your letter, inquiry was made as to the truth of certain published statements to the effect that American scientists are going abroad to conduct research on human fetuses at NIH expense.

During the week of April 10 we conducted a search of files on all current NIH grants and contracts and verified that there is no evidence that research involving the use of live aborted human fetuses is being conducted with NIH support. It is possible that individuals who are or have been grantees of NIH might have carried out such research though we are not aware of it. In any case NIH is not supporting and has not knowingly supported research with live aborted human fetuses.

If we can provide additional information, please let us know.

Sincerely yours,

JOHN F. SHERMAN, Ph. D.,
Acting Director.

STUDY GROUP FOR REVIEW OF POLICIES ON PROTECTION OF HUMAN SUBJECTS IN BIOMEDICAL RESEARCH

ROSTER

Dr. Ronald W. Lamont-Havers, Chairman, Deputy Director, National Institute of Arthritis, Metabolism, and Digestive Diseases, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014.

Mr. Seymour Bress, Executive Secretary, Division of Research Grants, National Institutes of Health, Westwood Bldg., 5333 Westbard Avenue, Washington, D.C. 20016.

Dr. Thomas Chalmers, Director, Clinical Center, National Institutes of Health.

or

Dr. Roger Black, Associate Director, Clinical Center, National Institutes of Health 9000 Rockville Pike, Bethesda, Maryland 20014.

Dr. Carl Douglass, Deputy Director, Division Research Grants, National Institutes of Health, Westwood Bldg., 5333 Westbard Avenue, Washington, D.C. 20016.

Miss Mary McEniry, Assistant to the Director for Regulatory Affairs, Food and Drug Administration (BD-30), Parklawn Bldg., 5600 Fishers Lane, Rockville, Maryland 20852.

Mr. Joel Mangel, Office of the General Counsel, Office of the Secretary, Parklawn Bldg., 5600 Fishers Lane, Rockville, Maryland 20852.

Dr. Murray Goldstein, Associate Director for Extramural Programs, National Institute of Neurological Diseases and Stroke, National Institute of Health, 9000 Rockville Pike, Bethesda, Maryland 20014.

Dr. Leon Jacobs, Associate Director for Collaborative Research, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014.

Dr. Carl Leventhal, Assistant to the Deputy Director for Science, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014.

Dr. Charles McCarthy, Office of Legislative Analysis, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014.

Dr. Richard B. Stephenson, Training Officer, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014.

Mr. David Kefauver, Assistant Director for Extramural Programs, National Institute of Mental Health, Parklawn Bldg., 5600 Fishers Lane, Rockville, Maryland 20852.

Dr. Frances O. Kelsey, Scientific Investigations Staff, Food and Drug Administration, Parklawn Bldg., 5600 Fishers Lane, Rockville, Maryland 20852.

Dr. Franklin Neva, Chief, Laboratory of Parasitic Diseases, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014.

NEED FOR A TOTAL PROHIBITION AGAINST RESEARCH INVOLVING LIVE HUMAN FETUSES

Mr. MAZZOLI. Mr. Speaker, apparently in response to the glare of publicity, the National Institutes of Health has recently promulgated a policy statement indicating that it knows of no circumstances which would justify NIH support for research involving a live human fetus.

I would like to contend that this statement is wholly inadequate since it clearly leaves the door wide open for the future discovery of circumstances, which in NIH's opinion might justify such morally repugnant research.

It is my personal opinion—and also my reading of public sentiment—that there can be no circumstances which would justify the use of public moneys in support of practices so disrespectful of human life. Nor, do I feel that such research should even receive verbal support from a public agency.

Accordingly, Mr. Speaker, I want to call upon my colleagues in the Congress to join me in requesting that the National Institutes of Health adopt a policy of absolute prohibition against any form of support for research involving live human fetuses.

Additionally, I insert in the RECORD the following two articles by Mr. Victor Cohn, which appeared in the Washington Post on April 10, 1973 and April 13, 1973, respectively:

NIH CONSIDERING ETHICS—LIVE-FETUS RESEARCH DEBATED

(By Victor Cohn)

The possibility of using newly-delivered human fetuses—products of abortions—for medical research before they die is being strenuously debated by federal health officials.

So is the question of whether or not federal funds ought to be used to support such research in a country where abortion is considered immoral by millions.

A proposal to permit such studies was recommended to the National Institutes of Health 13 months ago, it was disclosed yesterday by a doctors' newspaper, Ob-Gyn (Obstetrician-Gynecologist) News.

Officials at NIH, prime source of funds for American research laboratories, differed yesterday on whether the recommendation had at least temporarily become "NIH policy."

But they agreed that NIH is considering the ethics of the matter afresh in the light of last year's revelation of an Alabama syphilis study in which the human subjects were neither informed about their disease nor treated for it.

They also agreed that most scientists feel that it is both moral and important to health progress to use some intact, living fetuses—fetuses too young and too small to live for any amount of time—for medical study.

Most such scientists would apparently agree with the recommendations of still another NIH advisory body—made in September, 1971, but again not disclosed until yesterday—that a fetus used in research must meet at least two out of three criteria: (1) it be no older than 20 weeks; (2) no more than 500 grams (1.1 pounds) in weight; and (3) no longer than 25 centimeters (9.8 inches) from crown to heel.

Such tiny infants if delivered intact may often live for an hour or so with beating heart after abortion.

They cannot live longer without aid, primarily because their lungs are still unexpanded. But artificial aid—fresh blood and fresh oxygen—might keep them alive for three or four hours.

Scientists in Great Britain and several other countries are regularly doing studies in this way, medical sources said yesterday.

British scientists generally work under a set of strict though unofficial guidelines set last year by a government commission named to end what virtually everyone agreed was an abuse—obtaining months-old fetuses for research and keeping them alive for up to three or four days.

Before permitting research on fetuses said the British commission, a hospital ethics committee must satisfy itself "that the required information cannot be obtained in any other way."

This is often the case, one well-known genetics researcher, Dr. Kurt Kirschhorn of New York's Mount Sinai Hospital and Medical School, said in an interview yesterday. Indeed, he added, some U.S. scientists are going to Sweden or Japan or other countries to do such research and doing so with the help of their NIH funds.

Using the fetus, Hirschhorn said, it may be possible "to learn how differentiation occurs"—the way cells develop into different parts of the body. "We could learn more about inborn anomalies," or birth defects.

"I don't think it's unethical," he said. "It's not possible to make this fetus into a child, therefore we can consider it as nothing more than a piece of tissue. It is the same principle as taking a beating heart from someone and making use of it in another person."

Dr. Andrew Hellegers, professor of obstetrics at Georgetown University and director of the Kennedy Institute for the Study of Human Reproduction and Bioethics, argued with this view at one NIH advisory meeting. "It appears," he said, "that we want to make the chance for survival the reason for the experiment."

"Isn't that the British approach?" another member asked him.

"It was the German approach. 'If it is going to die, you might as well use it,' " Hellegers replied, referring to Nazi experiments on doomed concentration camp inmates during World War II.

Despite some views like his, an NIH Human Embryology and Development Study Section decided in September, 1971, that: "Planned

scientific studies of the human fetus must be encouraged if the outlook for maternal and fetal patients is to be improved. Acceptable formats for the conduct of . . . carefully safeguarded, well controlled investigations must be found."

For example, this group warned, "under no circumstances" should attempts be made to keep a fetus alive indefinitely for research.

The study section's recommendations were greatly modified by the National Advisory Child Health and Human Development Council—the advisory group to NIH's National Institute of Child Health and Human Development—in March, 1972.

"It was my understanding that the advisory councils recommendations were accepted last year," Dr. Philip Corfman, acting director of the Child Health Institute, said yesterday. "But everyone knew they would require more work on specific guidelines."

However, Dr. Charles U. Lowe, the institute's scientific director—who was asked last year to head a group to help develop such guidelines—said: "The council statement was sent to the director of NIH, but it is not at the present time policy. It has no standing except as a council expression."

The Child Health Institute is supporting no research using live, intact fetuses, he said. Other sources said they know of no such projects supported by any NIH institute, though one added, "we'd have to survey some 12,000 projects to be sure."

Lowe said he personally agrees with the British commission's feeling that such research is proper and ethical if properly controlled.

"But I haven't decided in my own mind yet," he added, "whether we can go along with Great Britain, using federal dollars. First, we have an articulate Catholic minority which disagrees. Second, we have a substantial and articulate black minority" sensitive on issues of human life.

Hirschhorn for his part argued: "How do we know what drugs do to the fetus unless we find out?" A position is needed, he maintained, between those "who say we're not doing any harm to a fetus that's going to die anyway" and those who would require "highly complex forms" before a medical scientist can do anything.

STATEMENT ON RESEARCH

NOTE.—This statement backing the regulated use of human fetuses in medical research was approved in March, 1972, by the National Advisory Child Health and Human Development Council but not made public. The council is an advisory body to the National Institute of Child Health and Human Development, part of the National Institutes of Health.

Scientific studies of the human fetus are an integral and necessary part of research concerned with the health of women and children. Because of the unique problems involved and a growing competence and interest in this field ethically and scientifically acceptable guidelines for the conduct of such investigation must be developed.

In all cases, applicable state and/or national laws shall be binding.

Guidelines for human investigation used to protect the rights of minors and other helpless subjects are applicable.

The study protocol must be reviewed and approved by the appropriate institutional review committee to insure that the rights of the mother and fetus will be fully considered.

It is the duty of these committees to insure that the investigator shall not be involved in the decision to terminate a pregnancy, the product of which is intended for study within his own research grant or authority.

Continuing review by the institutional committee must be undertaken in approved projects.

Informed consent must be obtained from the appropriate party(ies).

NIH VOWS NOT TO FUND FETUS WORK

(By Victor Cohn)

The National Institutes of Health will not fund research on live aborted human fetuses anyplace in the world it promised yesterday in a policy statement that is likely to become government-wide practice soon and probably a guide for most American scientists.

NIH, from its headquarters in Bethesda, finances nearly half of all U.S. medical research, and the federal government finances nearly two-thirds of the country's $3.5 billion a year total.

NIH "does not now support" any such research, said Dr. Robert Berliner, deputy director for science, and "we know of no circumstances at present or in the foreseeable future which would justify NIH support."

Some scientists have said that at least a few research programs involving study of live aborted refuses in the short time before they die have been supported with NIH funds, some of them performed by U.S. scientists abroad.

Dr. Charles U. Lowe, scientific director of NIH's National Institute for Child Health and Human Development, qualified Berliner's statement slightly by commenting, "You know we're dealing with 14,000 grants," and "we are not insofar as we know" financing any such work.

Berliner's statement was read to nearly 200 Roman Catholic high school students gathered in an NIH auditorium for questions and protest. The students were organized by a group from the Stone Ridge Country Day School of the Sacred Heart led by Renee Meter, Theo Tuomey and Maria Shriver, 17, daughter of Sargeant Shriver.

The students got together after a Washington Post story Tuesday reported that federal health officials were debating the advisability of such studies and were considering issuing federal guidelines for anyone doing them.

"Why are they drawing up guidelines if they don't intend to use live fetuses?" one skeptical questioner asked Dr. Lowe, referring to federal advisory groups who have in fact supported the idea of some such research.

"Any organisation develops policy through review," Lowe replied. The advisory groups were made up on non-federal, university scientists, and "they can say anything they want," Lowe said, but "policy is made by NIH."

Research involving the fetus has been going on in many countries with liberal abortion policies. Many medical scientists are eager to study fetal developments as a guide to prevention and treatment of many diseases and abnormalities.

Such research has focused on two main kinds of procedures: some studies during the minutes or hours while some fetuses still live or can be kept alive, and operations on fetuses to get cells or organs that can be kept alive in the laboratory.

It is only the first kind that NIH said yesterday that it would not support. Merely taking tissues for study "is about the same thing as taking kidneys or a heart for a heart transplant," said Dr. Berliner in an interview.

Lowe told the students that "I see no need at this point" for studies of the live fetus, though he admitted that many scientists in the Scandinavian nations, Britain and the United States feel differently.

As to reports that some U.S. scientists have done such research in trips abroad, some of them with NIH funds, Lowe said, "I can't agree" that this has happened. Also, he said, "I object strongly to professional scientists doing in other countries what ethics here would not permit."

In a series of statements preceding this week's meeting, officials of the United States Catholic Conference called for a constitutional amendment "protecting the life of the unborn," for a national commission of theologians, scientists, lawyers and citizens to monitor scientific advances and recommend ethical guidelines, and for congressional study and regulation of experiments on human beings.

John Cardinal Krol of Philadelphia, speaking for the conference's executive committee, expressed "shock" at the possibility of federal support of studies on live, aborted babies. "If there is a more unspeakable crime than abortion itself," he said "it is using victims of abortions as living human guinea pigs."

In other statements:

The Catholic Bishops' Ad Hoc Committee on Population and Pro-Life Affairs termed the matter "cause for moral outrage."

The Washington area's St. Luke's Guild of Catholic Physicians stated unequivocal opposition to experimental use of living fetuses "at any time and under any circumstances."

Maryland Right to Life, and anti-abortion group, pointed out that the Maryland General Assembly this year passed a joint resolution calling on Congress to propose a constitutional amendment to protect unborn human beings—intended to upset the recent Supreme Court decision on abortion.

[From the New York Times, May 6, 1973]

FETUSES—WHAT PRICE RESEARCH?

WASHINGTON.—A few years ago, medical scientists in Helsinki injected rubella vaccine into 35 pregnant women who were scheduled to have abortions. The doctors wanted to find out what effect the live virus in the vaccine would have on the fetuses.

The experimental question was important and could not really be answered by animal research. Rubella, also known as German measles, is a major cause of stillbirths and birth defects, and the vaccine was developed to prevent them, yet it was not clear whether the vaccine would be safe to use in a pregnant woman. The study strengthened the evidence that it would not be safe for the fetus.

So there was reason for the experiments, but was it ethical to do them? There was nothing in the research that was going to help the fetuses, nor could their "informed consent" be obtatined.

A final report on the project was published last summer in the New England Journal of Medicine. The authors included not only the doctors in Finland but also American scientists of Case Western Reserve University and the National Institutes of Health.

Although the report caused no ethical stir at the time, it is doubtful that the American participation in the project would be possible now. The climate of opinion seems to have changed.

While this has happened totally independently of the rubella story, that project does exemplify the growing problem concerning research involving the fetus. The issues are complicated and are often laden with emotion. If a fetus is to be aborted and therefore cannot survive, is it not wasteful to throw it away without attempts at learning things that might help other babies survive or avoid crippling defects?

On the other hand, if it is human, does anyone have the right to do research on it without consent—and whose consent? The mother would ordinarily be the person to ask, but she has already asked for abortion. Can she be said to have the best interest of the fetus at heart?

One question often raised by laymen is whether or not experiments on the fetus could inflict pain. But the term "pain" is

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subjective. It has no meaning unless the subject is conscious and the fetus, presumably, is not. One of the ironies of the already tangled problems of fetal research is that anyone dissatisfied with that answer could only dispute it by doing research on the fetus.

The issues concerning fetal research have arisen in this country because of several factors, only one of which is the recent liberalization of abortion laws. In recent years scientists have gained increasing ability to maintain life artificially in the laboratory. There is continued scientific impetus and need to learn more concerning the details of human development and its problems. . . . The question was: it is justifiable to use aborted human fetuses in research aimed directly at developing artificial means of keeping an early premature baby alive until it is sufficiently developed to live on its own? Dr. Robert S. Morison, professor of science and society at Cornell, argued that, with proper safeguards, it is permissible. He said that the research could be of great help to future babies, and that the experiments on the aborted fetus did not alter its prospects for life because the decision to abort had already decided that. He noted that a special problem would arise if the research progressed far enough to offer the prospects of survival to the aborted fetus under study—a fetus by definition no longer wanted by the mother.

Sumner B. Twiss Jr. of the Department of Religious Studies at Brown University said the research in question should not be done. He argued that it raised insoluble problems concerning "informed consent," serious moral problems involving disposal of the fetus at the end of the experiments and a real dilemma when the research neared the stage of being successful.

The example the two men discussed was not hypothetical, but was the subject of an actual research grant application in Britain, where a review committee decided in favor of the project.

Dr. André Hellegers, professor of obstetrics and gynecology at Georgetown University, believes that the United States Supreme Court, which has already ruled that women have rights to abortion, may ultimately have to rule on the question of whether a fetus, viable or not, has individual rights once it has been removed from the womb.

HAROLD M. SCHMECK, Jr.

Mr. FRENZEL. Mr. Speaker, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Minnesota (Mr. FRENZEL).

Mr. FRENZEL. Mr. Speaker, I congratulate the gentleman from Kentucky on his statement, and wish to be associated with his remarks.

Mr. MAZZOLI. I thank the gentleman from Minnesota for his association.

Mr. Speaker, I would only conclude by saying that it seems to me that the least Congress can do today—a Congress which has been earlier pointed out would not be shunted off onto the sidetrack on the great, major, profound life and death issues of this country and of this world, and which should reassert itself on these issues—is to say that we today feel, notwithstanding what may be clear though unwritten policy; notwithstanding what might be the unwritten rules and regulations of NIH regarding human experimentation; we say today that life is too precious to be experimented with. We say today that life in the form of a tiny human infant should not be played around with, we should not play God with people, and we should bring these reprehensible practices to a halt today.

Mr. Speaker, I am honored to join my distinguished colleague from New York today in opposing experimentation on living fetuses, and compliment him on focusing attention on this despicable practice.

This is a practice which seems to have grow in acceptability in medical research circles, due to lack of knowledge on the part of the public and lack of adequate restrictions by the Government.

I think it is time the Federal Government goes on record as opposing this practice, signally Congress intent to respect the dignity of life. Regardless of the circumstances surrounding the past or future status of the fetuses upon which experiments are being performed, I think we have to morally put a stop to this practice and any similar encroachments upon the misuse of living humans. To allow such practices to continue and possibly expand into other areas strikes me as nothing short of a 20th century form of barbarism.

As we expand our knowledge about the human organism and expand our capabilities for living longer, transplanting materials for one organism to another, and performing mental and physical operations which can substantially alter the character of an individual, we are going to have to be on special guard to make sure that the dignity of human life is not violated. Experimentation is fine, and advances in science and medicine are to be welcomed, but not at the cost of undermining the very thing which we are seeking to improve through science—the value of a human life.

Mr. HILLIS. Mr. Speaker, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Indiana (Mr. HILLIS).

(Mr. HILLIS asked and was given permission to revise and extend his remarks.)

Mr. HILLIS. Mr. Speaker, I wish to compliment the gentleman from Kentucky on his statement, and associate myself with his remarks.

Mr. SNYDER. Mr. Speaker, will the gentleman yield?

Mr. MAZZOLI. I yield to my colleague from Kentucky (Mr. SNYDER).

Mr. SNYDER. Mr. Speaker, I wish to state that my distinguished colleague from the Third District of Kentucky has done his homework. I appreciate very much his bringing this subject to the attention of the House.

Mr. KEMP. Mr. Speaker, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from New York (Mr. KEMP).

(Mr. KEMP asked and was given permission to revise and extend his remarks.)

Mr. KEMP. Mr. Speaker, I wish to compliment the gentleman from Kentucky on his remarks and associate myself with those remarks. I wish to commend him for taking the well and bringing the attention of this House to this issue.

Mr. Speaker, I also would like to rise in support of the amendment proposed by my friend and colleague the gentleman from New York (Mr. RONCALLO).

[Mr. KEMP further addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. GUYER. Mr. Speaker, will the gentleman yield?

Mr. MAZZOLI. I yield to the gentleman from Ohio (Mr. GUYER).

(Mr. GUYER asked and was given permission to revise and extend his remarks.)

Mr. GUYER. Mr. Speaker, I too wish to go on record as being 100 percent in favor of this amendment.

I think it is time to stand up and be counted, and I want to be identified.

Mr. Speaker, I rise to support the Roncallo amendment and am proud to say that this measure may well be the first breakthrough in this Congress for the most important "Right to Life" principle.

I heartily concur with my colleague from New York, that a human life, however tiny, and however brief its candle of light may be permitted to glow, is entitled to its God-given place on Earth, and the dignity of an entity in life as in death.

The horrendous reports of doctors performing experiments on human, live fetuses both abroad and in this country, such as the incident of a British doctor taking a human fetus from a 14-year-old girl, and subjecting it to callous tests and experiments, is both morally and humanly illicit.

The highest court in our land, which in one verdict announces that a proven murderer cannot be given capital punishment for his crime, and then in another verdict announces that the taking of a human life by abortion, is legal—poses a problem as to the rights of all of us human beings. What are the rights of these tiny lives? They are incapable of giving consent to their being used as experimental subjects. Who can morally and legally give consent for them—their parents, the state, or who?

I congratulate my colleagues today for standing up and being counted in support of an amendment which will make crystal clear that no funds appropriated under this measure, nor any similar act or authority by the Secretary of Health, Education, and Welfare may be used at the expense of live human fetuses. They may in many cases have not had protectors, but today the U.S. Congress is saying they will have.

As this amendment and the bill it embraces, which surely will assist our researchers to explore the hidden mysteries of cancer, heart disease, dental and mental health, and related areas of unconquered life-takers, is passed into statute, all of us can have the good warm feeling of accomplishment today.

This little floor drama, which burst into near acclamation, may just be the voice and the rising curtain to herald the opening of the door on the related legislative measures, some of which are locked up in committee and subcommittee. By such breakthrough, may be the

vehicle that proclaims from the Nation's Capital that life in America is still precious, that all human beings, young and old, have divine legacies and God-given dignity which shall be esteemed both by precept and example by all of us.

Mr. ROGERS. Mr. Speaker, I move to strike the requisite number of words.

Mr. Speaker, I think it would be well for the House to know the background of this issue. Of course it would be extremely difficult to vote against this amendment and run the risk of the vote being misinterpreted.

It is the current policy; it is the established policy; it is the acting policy of any research supported now by the NIH that there shall be no research on a live fetus. Now, the committee heard, however, that in Sweden such an experiment was conducted and that it was mistakenly supported by a grant from NIH. When NIH found out, they stopped it.

But to make it absolutely clear that it is the policy of the Congress that this type of research shall not be done, we put into the language of the bill that no research supported by any funds from NIH shall be carried on as an unethical manner. The bill, therefore, handles the situation.

Mr. Speaker, right now a committee in the other body has already started hearings on this whole problem of ethics in biomedical research. The Senate hearings are not just on research on the fetus, but on all of these ethical problems such as research on prisoners, improper drug use, and on research being conducted on patients without their full knowledge of their risk.

A whole range of problems is involved. That is the way the problem should be handled, rather than picking out a situation here or there and not covering those other situations.

By simply picking out one we run the risk of an interpretation that would say, "We approve of other situations which as just as unethical." The committee language clearly says, "No, we do not approve any of them."

I believe that is the position the House wants to take.

Our subcommittee will go into this entire range of problems later in hearings. We anticipate action by the other body. I do not believe the House at this time wants to say, "We are going to single this one problem out."

The language says there shall be no support for any unethical research. That is the position I believe each individual Member would want to take, a total prohibition, including a prohibition against the use of fetuses.

I would urge that the committee be supported on the language. The committee will go into the specific problem in a proper forum.

Mr. MAZZOLI. Mr. Speaker, will the gentleman yield?

Mr. ROGERS. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the distinguished gentleman from Florida for yielding.

Does the gentleman have any way in which he can assure the House—perhaps by inserting a statement in the RECORD which says so—that the clear and unequivocal position of NIH is not to consider as ethical research on fetuses?

Mr. ROGERS. Yes, we do have that, and we will put it in the RECORD. We have a letter from HEW. We will get that statement.

I will do that for the gentleman.

Mr. MAZZOLI. I would only say further along that line that if, for instance, the House were to vote today to disapprove experiments on live fetuses——

Mr. ROGERS. We have done that in the bill.

Mr. MAZZOLI. If the House were to vote in favor of the amendment offered by the gentleman from New York (Mr. RONCALLO) I do believe the House would be on record as saying that everything else, the Tuskegee experiment or anything else, is approved.

Mr. ROGERS. If we do it by law we will.

Mr. MAZZOLI. How?

Mr. ROGERS. Because we run the risk of singling out one problem and be subject to an interpretation of denying what the committee has done in broad policy.

Mr. MAZZOLI. I would think the House would be saying only that this experimentation on the human fetus is so reprehensible as to be illegal, and that any other experiment may later be said to be the same.

Mr. ROGERS. It is already illegal under the provisions of this bill. That is what I am trying to get across to the gentleman. This bill covers that problem, as well as the Tuskegee problem, as well as the improper research on prisoners, as well as the improper research on persons who have not been advised of their rights.

I believe we should not simply single this out at this time, because it might negate the broad general approach of the committee.

Mr. MAZZOLI. I thank the gentleman for yielding.

Mr. HOGAN. Mr. Speaker, I rise in support of the amendment.

(Mr. HOGAN asked and was given mission to revise and extend his remarks.)

Mr. HOGAN. Mr. Speaker, with all due respect for the chairman of the subcommittee and the chairman of the full committee, I do not believe these are times for half measures. I believe it is important for the House of Representatives to go on record today indicating that we do have respect for human life.

There are some significant differences between the case alluded to by the chairman of the subcommittee in relation to the medical experiments on prisoners. One big difference is that when a prisoner dies, a death certificate must be filled out indicating the cause of his death. No one can deny that taking the life of a live fetus, as the result of an abortion, is the taking of the life of a human being, but there is no requirement that a death certificate be issued regarding the death of that child.

It is important that we go on record today in support of human life. We have reached a point—because of the Supreme Court's decision on January 22 which says that life no longer has any value, that we have created a new constitutional right of privacy which permits abortion. It means, in effect, that the day before an actual birth that the child can be destroyed.

Mr. Speaker, I ask my colleagues: What is the difference between a child of minus 1 day age and a child of plus 1 day age? Is there really any biological differences in a human being at that point in time?

I submit that there is not. And yet the Supreme Court recognizes the right to life of the latter, but not the former.

I commend the gentleman from New York (Mr. RONCALLO) for his amendment, and I urge all of my colleagues to go on record today indicating that we in this body do, in fact, respect human life, we must state clearly that we oppose research on live fetuses.

Mr. Speaker, the chairman of the subcommittee says that he has assurances that this research is not going to take place. The facts are that in countries where wholesale abortion has been acceptable, experimentation on live fetuses has gone forward in an unregulated and accepted way.

The very fact that NIH would conduct studies to determine whether or not they should fund experimentation on live fetuses leads us to the conclusion that they very definitely are considering it. No other conclusion is possible.

So, Mr. Speaker, we should make our position eminently clear today. We ought, at this point to clarify the record on our position that we cherish human life.

We have all had experiences with bureaucrats in the executive branch. If there is ever a loophole for them to proceed with the implementation of their own ideas, they use that loophole. If Congress leaves them a loophole, NIH will go through it to do whatever they want to do. This is not the time to leave loopholes. We must specifically prohibit research on live fetuses regardless of assurances which have been given to the committee.

Mr. ROGERS. Mr. Speaker, will the gentleman yield?

Mr. HOGAN. I yield to the gentleman from Florida (Mr. ROGERS).

Mr. ROGERS. Mr. Speaker, I am sure the gentleman does not want to leave the impression that by any action we take here today we will stop this type of operation all over the world.

Now, what we have said in the bill and what those who are against this type of research have said is that no Federal funds can support any such research. I have already said that they have assured us that it is not their policy, that this is not done in the United States; they thought that it might be done outside the United States, but the bill says it shall not be done here.

Mr. HOGAN. Mr. Speaker, I would like to respond to the gentleman's remarks.

I did not say that this bill is going to affect what is going on in other countries. What I am saying is that when a country adopts a position to allow wholesale abortion, when it is decided that unborn life has no value and is expendable, re-

search on live fetuses is the inevitable result.

What we need to do today is to go on record as the House of Representatives saying that we abhor the very concept of research on live fetuses.

Mr ROGERS. Mr Speaker, that is what the committee bill does.

Mr MAZZOLI. Mr. Speaker, will the gentleman yield?

Mr HOGAN. I yield to the gentleman from Kentucky (Mr. MAZZOLI).

Mr. MAZZOLI. Mr. Speaker, I would like to read for the benefit of the gentleman from Maryland (Mr. HOGAN) one sentence from a letter which I received yesterday from Dr. John F. Sherman of the NIH. I had posed the specific question to him: "Does the NIH finance this kind of experimentation?"

His sentence, in reply to my question, on page 2 of his letter, is as follows:

It is possible that individuals who are or have been grantees of NIH might have carried out such research though we are not aware of it.

They are grantees, though they are not aware of it. They would not specifically say that this has not occurred and, accordingly, it seems to me that the gentleman from New York (Mr. RONCALLO) has a worthy amendment, and I commend the gentleman from Maryland for supporting it.

Mr. HOGAN. Mr. Speaker, I thank the gentleman.

When it was reported last month that the National Institutes of Health was considering financing experimentation on human fetuses alive after abortions, I was shocked but not surprised.

The supreme Court crossed the Rubicon in its January 22 decision when they declared that an unborn baby is of no value, that it is a "nonperson." Since we have now established in law that the fetus has no rights and no value, it seems academic whether we experiment on it or not.

But we cannot let this happen. Ultimately we must restore the right to life to the unborn child. Today we have the opportunity to take a step in that direction.

At this point, we have no definitive statement by the National Institutes of Health on the subject of experimentation on live fetuses. It has been reported that NIH has a policy against live fetus research, but there is nothing to prevent them from changing their minds whenever they please.

It is the responsibility of Congress to demonstrate clearly that it will not fund research of this sort. If we fail to expressly prohibit this research, we will be contributing to the disregard for life expressed by the Supreme Court. Let us prove that Ameirca is not morally bankrupt. Let us prove, that we still cherish and value human life.

The Interstate and Foreign Commerce Committee has recognized the need for a policy to be set, but they have not gone far enough. In their report on this bill they state that "present ethical standards conduct make research in human fetuses unethical," however, they fail to squarely face the issue and adopt a clear policy of experimentation prohibition. The bill restricts research "which violates any ethical standard respecting research adopted by the National Institutes of Health, the National Institute of Mental Health, or their respective institutes." Who decides what is ethical and what is not. Many in the medical profession feel it is ethical to destroy unborn children. I do not and most Americans do not.

If Congress does not overwhelmingly support this amendment we will fail the American people. We have the opportunity to establish a national policy, to set a moral example by approving this amendment. I urge my colleagues to support this amendment and take the first step toward restoring the value of a human life.

Mr. MALLARY. Mr. Speaker, I regret that I must oppose the amendment offered by the Member from New York (Mr. RONCALLO) which he obviously introduced in good faith and which seeks to perform a very commendable purpose.

I am certainly not in favor of prejudicial experimentation on any human being whether it be a human fetus inside its mother's womb, an aborted fetus, or any human being at any stage in its career or at any age. It is my understanding that section 456 of the bill clearly prohibits any research in the United States or abroad which violates any ethical standard respecting research adopted by the National Institutes of Health or the National Institute of Mental Health and their respective Institutes. Clearly, as has been pointed out by the gentleman from West Virginia (Mr. STAGGERS) and the gentleman from Florida (Mr. ROGERS) it would not be possible under this bill to conduct the kind of objectionable research on human fetuses that is contemplated in this amendment.

I am very much concerned, however, that in its commendable intent the amendment goes much farther than the author intends and is sufficiently imprecise in its language so that it might constitute a serious problem for the Secretary of Health, Education, and Welfare or for the courts.

In the first place, the amendment prohibits research on a fetus which is outside the mother's uterus and has a beating heart. It is my understanding that a fetus is, by definition, an unborn person and therefore, a fetus, by definition, could not be outside the mother's uterus. I believe that this contradiction implicit in the amendment might create serious questions in the minds of anyone who later attempted to construe the meaning of this amendment.

My second objection to the amendment stems from its total prohibition on research on any such fetus if, in fact, it can be at some time determined exactly what it is under the terms of the amendment. I am sure that the amendment is directed at prohibiting any kind of research which might be damaging or in any way prejudicial to the survival, health, or comfort of such a fetus. I would contend that research could be conducted quite properly on life saving drugs or devices that might be aimed at preserving or enhancing the lives of such fetuses rather than being damaging to them. It would seem to me that this amendment, if it passes, could prevent the very kind of research that would be, in the long run, most beneficial in saving the lives of those same unprotected young humans that we are professing to benefit by this amendment.

Mr. Speaker, it is with regret that I feel that I must oppose this well-intentioned amendment with the full conviction that the bill, as presented by the committee, provides very satisfactory protections in this area.

* * *

Reps. Holtzman and Cronin subsequently commented on the Roncallo amendment in the following fashion. (see 82 Cong. Rec. H4174 (daily ed. May 31, 1973)):

> Ms. HOLTZMAN. Mr. Speaker, I am concerned about the so-called Roncallo amendment offered today.
>
> This is a badly drafted, badly thought out amendment. Its major effect would be simply to discourage and prevent research to save the lives of infants born prematurely. It would have no effect on the policy presently pursued by the National Institutes of Health.
>
> Because this amendment as drafted could prevent life-saving research for premature infants I intend to oppose it.
>
> Mr. CRONIN. Mr. Speaker, I rise in strong support of the amendment offered by the gentleman from New York (Mr. RONCALLO) to prohibit the use of HEW funds for research on a live fetus. The experimentation on human fetuses has been subject to widespread abuses, and I urge that this amendment be overwhelmingly adopted.

At this time, a vote on the Roncallo amendment was called for. The Roncallo amendment was adopted, 354-9. See 82 Cong. Rec. H4174-H4175 (daily ed., May 31, 1973).

However, discussion of the now adopted Roncallo Amendment was not over. Reps. Staggers and Eckhardt noted the following (see 82 Cong. Rec. H4175 (daily ed., May 31, 1973):

> Mr. STAGGERS. Mr. Speaker, I move to strike the requisite number of words.
>
> Mr. Speaker, I am sorry that this amendment passed.
>
> I voted for it because I did not want some demagogue to say I voted for experimentation on fetuses. But I do not want the people of this land saying I am for experimentation not covered by the amendment, on people such as those at Tuskegee, that should have been included here. I said that was in the bill was entirely adequate, but the House would not accept that. They brought up an emotional issue and of course I voted for it because how could anybody vote otherwise? Further, I wish to complement those with the courage to vote no. "No" was the right vote on this amendment, albeit a dangerous one, and those members are to be complemented.
>
> Mr. ECKHARDT. Mr. Speaker, will the gentleman yield?
>
> Mr. STAGGERS. I yield to the gentleman from Texas.
>
> Mr. ECKHARDT. Mr. Speaker, I want to join heartily in the reasoning of the chairman. I voted "No" and I voted "No" for the same reason he has stated that he voted "Yes."

Following debate on the whole bill, H.R. 7724 was passed by the House 361-5. See 82 Cong. Rec. H4178 (daily ed., May 31, 1973).

H.R. 7724, as reported out of the Senate Labor and Public Welfare Committee on August 3, 1973, substantially differed from the House-passed version. See S. Rep. No. 93-381, 93d Cong., 1st Sess. (1973). The bill received a different name, "The National Research Service Awards and Protection of Human Subjects Act" and the Roncallo amendment was deleted. See 131 Cong. Rec. S16333-S16337 (daily ed., Sept. 11, 1973). During Senate debate, Senator Buckley offered the following amendment, similar to the Roncallo amendment offered in the House, to H.R. 7724 (see 131 Cong. Rec. S1634-S1635 (daily ed., Sept. 11, 1973)):

Prohibition of Research

> Sec. 1205. The Secretary may not conduct or support research or experimentation in the United States or abroad on a living human fetus or infant whether before or after induced abortion, unless such research or experimentation is done for the purpose of insuring the survival of that fetus or infant.

The following debate on the amendment then occurred (see 131 Cong. Rec. S16345-S16349 (daily ed., Sept. 11, 1973)):

Mr. BUCKLEY. Mr. President, the amendment is offered on my own behalf and on behalf of the Senator from Oregon (Mr. HATFIELD), the Senator from Oklahoma (Mr. BARTLETT), the Senator from Iowa (Mr. HUGHES), the Senator from Nebraska (Mr. CURTIS), the Senator from North Carolina (Mr. HELMS), the Senator from Delaware (Mr. ROTH), and the Senator from Kansas (Mr. DOLE).

The version of this bill as passed by the House has a provision comparable to the amendment I now offer. It was introduced by Representative RONCALLO of New York and was carried by the overwhelming vote of 354 to 9. My amendment is animated by the same spirit that prompted Representative RONCALLO to offer his, although the wording in some respects different and, I believe more precise. Representative RONCALLO's office assures me that it is fully in keeping with the intention of his amendment.

My amendment provides:

The Secretary may not conduct or support research or experimentation in the United States or abroad on a living human fetus or infant, whether before or after induced abortion, unless such research or experimentation is done for the purpose of insuring the survival of that fetus or infant.

The purpose of the amendment is very simple and straightforward, and, indeed, for the most part self-explanatory. It would prohibit the Department of Health, Education, and Welfare from funding in whole or in part, in the United States or abroad, any research or experimentation to be performed on a living human fetus or infant prior to, during, or after an induced abortion. The amendment is limited in its application to the induced abortion situation, for in that situation there is simply no way to obtain the kind of informed consent that ethical medical practice would normally require. The fetus or infant is, of course, incapable of providing the requisite consent; and where the mother has already consented to the killing of her unborn offspring; it seems to me that she has already abrogated any right she might otherwise have to consent to any medical procedure to be performed on her child.

I would like to make clear, Mr. President, that this amendment has nothing to do with the merits of the abortion controversy itself.

As Representative RONCALLO remarked on the floor of the House, for the purpose of this amendment, it matters not how the unborn child comes into the hands of the would-be experimenter. What matters is the limitation on the nature and purpose of the medical practitioner's procedure. If the research or experimentation be for the purpose of insuring the survival of the fetus or infant, then it would not be prohibited. Such a purpose, of course, is scarcely imaginable in a situation where the mother has consented to the killing of the unborn child, but I do not want to preclude in any way the possibility of some attending physician taking steps to save the life of such a child, however improbable it might be under the contemplated circumstances.

By limiting the application of this amendment to the induced abortion situation, we shall reach the overwhelming majority of those noxious experiments which have so outraged millions of Americans in recent weeks and months. It is the children who are aborted in the elective abortion situation who constitute the largest class of human guinea pigs now given over to the practitioners of the black arts of a perverted science. Condemned to death by their mothers, removed by physicians from their life-support systems, such children are now being subjected to the inhuman indignity of becoming grist for the experimenter's mill.

Some of this grisly research, I am sorry to say, is being funded by the American taxpayers. No one knows for sure the extent to which such research now goes on. Some months ago, officials of the Department of Health, Education, and Welfare were stoutly insisting that "to the best of their knowledge" no such research was being funded. Subsequent investigation has turned up a number of instances in which these officials were proved wrong. According to the Washington Post of April 15, 1973, the NIH has financially supported one Dr. Robert Schwartz, chief of pediatrics at Cleveland Metropolitan Hospital, in research on living aborted human fetuses. Dr. Schwartz's technique is to remove tissues and organs from the fetus while its heart is still beating. Shock at this exposé pales, however, when we note the work of Dr. Peter A. J. Adam, associate professor of pediatrics at Case Western Reserve University, who reported recently that in collaboration with Finnish doctors he had performed an experiment involving the severed heads of 12 fetuses obtained by abdominal hysterotomy.

It is worthy of note, Mr. President, that fetuses aborted by hysterotomy are always alive at the time they are removed from their mother's body, unless the child has died as a result of the abortion procedure itself or as a result of extraneous causes. Dr. Adam's work, shocking though it may be, and even though it is morally repugnant to millions of our citizens, is nonetheless being funded, at least in part, by Federal funds. Mr. President, I ask unanimous consent to have printed in the RECORD at the end of my remarks the Washington Post article and a description of Dr. Adam's work recently published in the Medical World News for June 8, 1973.

The PRESIDING OFFICER. Without objection, it is so ordered.

[See exhibit 1.]

Mr. BUCKLEY. Mr. President, it is time to bring a halt to this sort of experimental medicine, at the very least that part of it which the American taxpayer is now being required to fund. The Supreme Court has said that the unborn child is not a person within the meaning of the Constitution. I disagree most strenuously with that decision, and as Senators know, I am now seeking by constitutional amendment to reverse the incalculable damage being done to the moral and legal fiber of the Nation by the Court's action. But whatever the Court may have said about the legality of the abortion decision, nothing in that opinion or in any other provision of law requires us to say that these poor children, so callously condemned to die by their mothers, must also become human guinea pigs. Let them, I say, die in peace, unmolested by the prying hands, electrodes, and chemicals of those who would play God in the laboratory.

It is a measure of our humanity, Mr. President, how we shall choose to treat those who are about to die. It is in a very real sense we who are on trial, we who shall be judged by the verdict of history. Whatever one's findings about the matter of abortion itself, surely we can all agree that the unfortunate and helpless victims of abortion should be treated with the same respect that ought to be accorded to any other members of the human species at the hour of their death. The House revealed just such an agreement when it voted so overwhelmingly to Representative RONCALLO's amendment. The size of that vote suggests how deeply felt and how widespread is the revulsion against this sort of experimentation, and how deeply felt and how widespread the sentiment to prohibit Federal funding of this mortally repugnant research. I would hope that the Senate would do no less.

May I say in closing, Mr. President, that I have followed closely the work of the subcommittee as it has probed into the abuses now so widely evident in the area of human experimentation. The time for reform is long overdue. I congratulate the Senator from Massachusetts (Mr. KENNEDY), the Senator from Minnesota (Mr. MONDALE), my senior colleague from New York (Mr. JAVITS), the Senator from New Jersey (Mr. WILLIAMS), and other Senators who have helped to bring this bill before the Senate.

Their obvious and sincere concern with the problem of human research and experimentation so much recently in the news has enlightened all of us, and I congratulate them for their fine efforts. The Commission proposed by this bill is, I believe, a badly needed first step in the right direction; and I pray that the Commission will give its most serious attention to the possible adverse effects of the medical research that is now taking place. We have already, I fear, gone too far down the road toward what some have described as "the new medical ethic," one in which the alleged "social utility" of certain medical procedures takes precedence over the moral and legal rights of the patient on whom the procedure is to be performed.

It is my profound hope that the Commission proposed under this bill will take a long, hard look at how far we have already come and, without diminishing some of the marvelous life-enhancing discoveries of medical science, recommend appropriate ways in which this Nation in the future may benefit morally as well as scientifically. The duties being imposed on the Commission are great,

just as the problems to which it must address itself are complex. I have every hope that the Commission will judiciously discharge its mandate.

Mr. President, my amendment is predicated on the fact that whether or not it is endowed with constitutional rights, a human foetus is in fact a human being. This essential humanity is strikingly described in two articles entitled, respectively, "The Foetus as a Personality" and "World of the Unborn Child." I ask unanimous consent that they be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

EXHIBIT 1

[From the Washington Post, Apr. 15, 1973]

SCIENTISTS AND FETUS RESEARCH

(By Victor Cohn)

An intense scientist named Dr. Jerald Gaull in period trips to Finland injects a radioactive chemical into the fragile umbilical cords of fetuses freshly removed from their mothers' wombs in abortions.

The fetus in each case is too young to survive, but in the brief period that its heart is still beating, Gaull—chief of pediatrics research for Basic Research in Mental Retardation on Staten Island—then operates to remove its brain, lung, liver and kidneys for study. First, he emphasizes, he severs the nervous connections that link the brain to the body "to make sure the fetus will feel no pain."

Dr. Robert Schwartz, chief of pediatrics at Cleveland Metropolitan General Hospital, goes to Finland for a similar purpose. After a fetus is delivered, while it is still linked to its mother by the umbilical cord, he takes a blood sample. Then, after the cord is severed, he "as quickly as possible," he states, operates on this aborted being to remove other tissues and organs.

The fetuses in these cases are so small and undeveloped that their lungs are not fully formed. They cannot breathe, and their brains undoubtedly die within a matter of minutes, though their hearts beat much longer.

But if Schwartz continues to perform his procedures in advance of brain death, while the fetus by all definitions is still alive, he will be violating a new rule just pronounced by the scientifically powerful National Institutes of Health.

Last Thursday the NIH stated: "We know of no circumstances at present or in the foreseeable future which would justify NIH sup-

Yet, he and many other Americans who, port of research on live aborted human fetuses." Schwartz is an NIH grantee who will have to abide by this rule if he is to get future support.

according to good medical sources, go to other countries to get access to fetuses, all believe passionately that what they are doing is of crucial importance in learning to understand infant development.

"What needs to be said," said Gaull, "is that we need to get information that will help the unborn who are going to be born, not aborted. Rather than it being immoral to do what we are trying to do it is immoral—it is a terrible perversion of ethics—to throw these fetuses in the incinerator as is usually done, rather than to get some useful information."

This position was quickly rejected last week as Roman Catholics and top NIH leadership reacted to the first public report that NIH for more than two years has been considering the matter of guidelines for scientists who study live, aborted fetuses.

No vast number of American scentists do these operations. However, a large number are interested in the possibility, and others like Gaull and Schwartz have been going abroad for various studies, or at least removal of fetal samples.

There is "a relatively minimal amount" in the United States, according to Dr. Kurt Hirschhorn of New York's Mount Sinai Medical School. Scientists say they can get access here to only "a very small number of fetuses" for two reasons:

There is emotional objection to even removing fetal samples by many American doctors as well as much of the public. And the main U.S. methods today of abortion—suction removal early in pregnancy and, later, injection of saline solution ("salting out")—produce only fragmented or dead fetuses.

Only in nations that abort many babies in mid-pregnancy by caesarean section, because doctors there consider "salting out" too risky to mothers, can researchers get easy access to the whole, at least recently thriving fetus.

"I have gone to Helsinki for three or four weeks," said Gaull in one of a series of interviews last week, "and I have been able to do five or six procedures a day there. I'm interested in the fetus' biochemical development. We must know much more about normal development for intelligent genetic counseling.

"My co-workers and I have even studied the whole, intact fetus, injecting radioisotopes and following certain chemical reactions. We have in Europe studied the transfer of amino acids"—body building blocks—"from mother to fetus while the umbilical cord was still intact.

"We also maintain our own bank of fetal tissues. Banks like these ought to be established everyplace so these tissues can be distributed to investigators instead of being thrown away."

There are other Americans doing this sort of thing in Denmark, Sweden, Japan and Britain, scentists report. And some at least are either doing so with federal funds or bringing tissues back in federally funded programs.

This seems obvious despite a NIH memorandum furnished to The Washington Post after a NIH computer search in midweek. "We . . . find no documentation in current NIH research grants or contracts reflecting the use of live fetuses as a research tool," the memo said.

Schwartz, however, works with NIH funds. Gaull works abroad with his own money, he reports, but in the United States funded mainly by New York state with help from a NIH grant held by Mount Sinai Medical School, of which he is a faculty member.

Dr. David Gitlin of the University of Pittsburgh Children's Hospital is another NIH grantee. "We used to do research on the intact fetus," he said. "Now we take tissues—the brain has stopped functioning but the tissues are still alive. I very frequently go to friends in Scandinavia. Without them I couldn't work."

Other scientists do not believe some tissues are really "alive" enough if the brain has stopped working. "We have to take some tissues within the first few minutes," said Schwartz. "It depends on what one is studying. After separation from the mother, certain processes deteriorate very rapidly."

This is one reason some scientists have preferred to work while the fetus is still attached to the mother.

"I did work in Finland. I last went there four years ago," said Dr. Abraham Rudolph of the University of California in San Francisco. While the mother-to-fetus link was still intact—after many studies in animals to make sure the mother would not be harmed—he injected radioactively labeled plastic microspheres into the fetus to study blood circulation. In this way, he said, he gained important knowledge of fetal circulation.

"However," he added, "we are not doing any work in human fetuses now. We feel that there are enough serious concerns on the part of people, including research people, that until there is a better clarification of the matter we will avoid any more attempts."

Just how much of this kind of research is really going on?

"Dozens of people have done it as part of their projects," one scientist asserted, "though they might not use their NIH funding for this part."

"It is difficult to tell just how much there is," said Dr. Andre Hellegers of Georgetown University, who sat—a minority member—on an NIH study section that suggested in late 1971 that "techniques used for temporary maintenance of functional integrity of isolated organs" should be "applicable without further restriction for terminal studies of the abortus."

In plain English, this would have meant keeping a fetus alive for at least three or four hours by artificial means.

"I oppose this," Hellegers said. He is both a professor of obstetrics at Georgetown and director of its Kennedy Institute for Study of Human Reproduction and Bioethics.

"We can all agree on the use of the fetus in research," Hellegers continued. "I am not opposed to the removal of tissues under proper safeguards from a dead fetus. But I am against the use of the live fetus, whether it is inside or outside the uterus.

"I do know that NIH has funded such work in Sweden, at the famous Karolinska Institute, by a well known Swedish scientist. But if there has been such work funded recently, one can't simply blame the federal government. NIH has no way of knowing everything that is being done under training grants or institutional grants."

In fact, Hirschhorn complained, there has recently been a lull in human fetal research by U.S. scientists both in the United States and abroad, just as "the work was getting off the ground" and "investigators were at the beginning" of some important developments. He blamed both the lull and other recent "roadblocks" on the lack of any dialogue between citizens and scientists on this issue, and on what might be permitted.

The only U.S. dialogue until last week was a non-public one, inside NIH confines.

The first recent NIH document was the September, 1971 study section report developed by a non-federal advisory group—mainly university doctors and scientists. It recommended "planned scientific studies" of the fetus under acceptable and "carefully safeguarded" formats.

Any fetuses studied, it added, should be positively "non-viable," fetuses that could not live to develop into full-term babies under any circumstances. This was defined as those no older than 20 weeks, no more than 1.1 pounds in weight and no longer than 9.8 inches, or meeting at least two of these rules.

This recommendation was then considered by the National Advisory Council on Child Health and Human Development, also a non-NIH group, though chaired by Dr. Gerald D. LaVeck, director of NIH's National Institute of Child Health and Human Development.

This group merely decided in March, 1972, that acceptable guidelines "must be developed." But it clearly included studies on aborted fetuses by specifying that hospital review committees should "insure that the investigator shall not be involved in the decision to terminate a pregnancy the product of which is intended for study within his own research grant or authority."

"Please make it clear," said one scientist last week, "we never would consider having a pregnancy ended just so we could obtain the fetus."

In Britain in 1972 there was a wave of anger over the disclosure that some researchers were both buying aborted fetuses from some unscrupulous doctors and keeping them alive by artifical means for up to 15 hours or more.

In May, 1972, a government-appointed commission called for strict controls on such research, while agreeing that it was so important to future generations that it should continue.

It has continued in Britain; without much more fuss. This will apparently not be the case here.

Last Thursday, Dr. Robert Berliner, deputy director for science, said NIH "does not contemplate approving the support of such research." A committee is still working on its recommendations for NIH policy, he noted, but it is expected that this committee will agree.

What is more, said Berliner, a respected scientist, "there is no scientific justification" for work on living human fetuses because "you can do the same studies with animals."

Here, developmental specialists like Hirschhorn, Gitlin and Gaull take violent issue. As much as possible can and should be studied in animals, they concede, but, as Gaull put it, "Our understanding of human development must be based on understanding of human tissues rather than monkey or rat or rabbit."

Ethics, Hirschhorn argued, are not violated because a nonviable fetus, one that cannot live, "is one that cannot in any way be made into a child."

That is wrong, maintained Hellegers in a view similar to one stated last week by many Roman Catholic groups. "I include the live fetus inside the human race whether it is inside or outside the uterus."

Besides, he said, guidelines so far proposed call for "informed consent" of appropriate parties to such research. "Who are you to ask?" he said, the fetus that cannot give consent, or a mother who has already consented to the fetus' destruction?

"What I fear," said Dr. Robert Jaffe of the University fo Michigan—a member of the group that suggested the September, 1971, guidelines—"is that the new NIH action may make the situation so rigid that all research in this area may now be foreclosed."

That, said NIH's Dr. Charles Lowe to nearly 200 concerned Roman Catholic students Thursday, is exactly what NIH intends as far as live fetal research is concerned, even though there is nothing to legally prevent any such research with non-federal funds. "In practice," he assured the students, "what we have set becomes common currency."

This could well make scientists like Hirschhorn ask, "When was there any public-scientist dialogue?"

EXHIBIT 2

[From the Daily News, July 2, 1973]

ONLY HUMAN—WORLD OF THE UNBORN CHILD

(By Sidney Fields)

Until ten years ago the unborn child was a mystery to its mother and even to the doctor. The mystery always heightened fears for herself and her child. If she was told anything it was that the fetus is surrounded by a protective sac of amniotic fluid, something like a space capsule, which keeps the baby warm, insulates it against shock and feeds it.

But the relatively new science of fetology, the study and treatment of the unborn child, has unshrouded much of the mystery.

"By tapping the amniotic fluid we can now tell the sex of the fetus and get a lot of clues about its growth, health and deficiencies," said Dr. Sheldon Cherry, one of the pioneers in fetology. "We know that it feels, reacts to pain, hears, swallows and even hiccups. By humanizing the unborn baby the mother becomes a participant rather than a victim of reproduction."

Dr. Cherry, 39, from Brooklyn, where his parents ran a clothing shop, has written some 15 papers on the subject. He teaches obstetrics and gynecology at the Mt. Sinai School of Medicine and is an attending obstetrician at the Mt. Sinai Hospital. He got involved in fetology back in 1962 when he read of the work of a Dr. A. W. Liley in New Zealand. After analyzing the amniotic fluid of a woman and finding that her baby was anemic because of RH disease, a substance in the mother's blood that was destroying the baby's blood, Dr. Liley inserted a needle through the mother's abdomen and into the body of the child and performed the first intrauterine blood transfusion. In 1964 Dr. Liley came here and Dr. Cherry learned the technique from him.

Two years ago he had a patient with RH disease and established a first of his own. Working with Dr. Karlis Adamsons of Mt. Sinai, he carefully lifted out the head of the unborn child from the mother and performed a blood transfusion through the carotid artery in the neck.

"It showed that fetal surgery was possible for many other things," Dr. Cherry said. "Small consolation to the mother. She lost the baby. But we're working on uterine rejection now."

A lab analysis of amniotic fluid can now diagnose any of 45 different genetic and enzymatic defects and help take care of at least ten obstetrical problems like RH disease, toxemia, maternal diabetes. Fetology has contributed to a 20% reduction in the mortality of unborn babies.

"But unless it's medically indicated we do not do an amniotic tap," Dr. Cherry said.

One of his patients, Mrs. Barbara Kelley, an editor at Bobbs-Merrill, asked a lot of questions about fetology when she was pregnant, then persuaded him to write "Understanding Pregnancy and Childbirth." Published last week, it's the first book covering a specific medical area which made a Book-of-the-Month Club selection.

His friend and mentor, Dr. S. B. Gusberg, obstetrician and gynecologist-in-chief at Mt. Sinai calls it, "A superb presentation of modern obstetrical knowledge in a style that is a model of comprehension and clarity." It's complete, humorous and includes everything a woman should know before and after childbirth. Dr. Cherry removes all the fears and doubts about pregnancy and makes it a thing of joy and wonder.

When a patient asks him what she should do to have a boy instead of a girl he lists all the suggested methods, explains that none are scientifically valid, then adds, "You might as well try them. It's a lot of fun trying but you shouldn't ask me. I have four daughters."

They range in age from 4 to 14. His wife, Gloria, is a lawyer, whom he met when he was at Columbia. She was at Barnard and is a graduate of Columbia Law. He took his M.D. at the Columbia College of Physicians and Surgeons. When his wife was pregnant with their first child his mother-in-law warned her, "Don't lift your hands above your head. You'll choke the baby." At the time he was a resident in obstetrics and was hearing all the other persistent myths: Don't swim, ride a bike, play tennis. Eat. You're eating for two.

"Many people still think that pregnancy is an illness and the pregnant woman an invalid," Dr. Cherry said. "That's nonsense. She's healthier when pregnant than unpregnant. The more activity the better. If she ran a mile before she can run a mile after she becomes pregnant. I would not recommend that she take up skydiving after becoming pregnant. She might break a leg."

Among his patients are water and snow skiers and ballet dancers. One ballerina danced up to the ninth month of her pregnancy. She's 42 years old.

But there are things a pregnant woman should avoid: Excessive doses of aspirin, X-rays for diagnoses, certain tranquilizers, the ubiquitous antibiotic, tetracycline, and smoking, which is associated with premature birth and hence potentially dangerous. How about booze?

"In moderation it's relaxing, especially for the pregnant woman's husband."

When one pregnant woman asked him recently, "Can I fly?" Dr. Cherry assumed his most professional face and replied, "Yes. But be sure you use an airplane."

Mr. BUCKLEY. Mr. President, I reserve the remainder of my time.

Mr. KENNEDY. Mr. President, I yield myself such time as I may use.

I share the very deep and sensitive concern of my friend and colleague, the distinguished Senator from New York (Mr. BUCKLEY), on this particular matter, which is of great importance and consequence and which is the subject of his amendment. One of the central issues raised by the amendment is the matter of determining whether there can be informed consent in a situation where the parent has decided to abort the fetus, who can uphold and speak for the rights of that fetus? This is a very complicated and involved question. It is just the kind of question on which we are hopeful that the Commission itself will be able to guide us, to inform us, and to lead us during the years ahead.

Part of the problem that is suggested by the amendment of the Senator from New York is its restrictive nature. Scientists are on the verge of some important breakthroughs in the area of genetics. These breakthroughs will have the potential to correct genetic defects affecting thousands of our citizens. Cures for diseases such as sickle cell anemia, diabetes, Tay-Sachs, several forms of mental retardation, and PKU may depend on this kind of genetics research.

So I would like to ask my friend from New York if he is not concerned by the limitation on the possibilities for research in these particular areas which offer very great opportunities to try to provide relief for children yet unborn in these areas and in other genetic areas.

If the amendment is accepted, then what we will be doing will be effectively to prohibit the research community from pursuing these vital questions.

I was, therefore, wondering, in the Senator's research, how he thought we could best cope with that?

Mr. BUCKLEY. Mr. President, I am as desirous as the Senator from Massachusetts for progress in learning how to cure some of the diseases he has mentioned.

Let me say that my amendment is not all-inclusive. It is of a restrictive nature and limits itself to those children removed from their mothers by virtue of an elective abortion where, by ordaining the killing of the unborn child, the mother has forfeited her natural right to speak for it.

The acceptance of my amendment does not preclude or rule out any research in this field, as long as it is performed within the confines of ethical medical prac-

tice, which means: First, that there must be consent given by the appropriate party; and second, that the procedure be performed for the benefit of the patient on whom it is performed.

It would, yes, limit the available class of human guinea pigs, but the problem of consent is all-important. Human experimentation ought properly to be limited by informed consent, either the consent of the person on whom the experiment is to be performed, or where that consent is not possible, then the consent of the natural guardian. In the situation of a fetus lifted out of the mother in an induced elective abortion procedure, the fetus is not in a condition to give consent. And as I say, the mother has clearly abrogated hers.

But the principle of protecting human dignity and human rights is far more important than might be a slowing down in some areas of potentially beneficial, research, if such research involves one human being for the benefit of another. Of course, the whole thrust of this legislation is based on an understanding that there are high ethical considerations that override social convenience, that override the right of the Government to conduct, for example, experiments on syphilitics because it might help somebody else.

One of the primary rules of medicine is that the doctor is entitled to work on a given human body only in the interests of that human being.

Mr. KENNEDY. The problem we are facing is illustrated by one of the arguments the Senator from New York is making; his concern about the question of consent for the fetus. The mother says, "I do not want the child"; therefore, we do not want to give her the right to okay research on that child. But who can speak for that child? Can anyone give consent? Is the only alternative death with dignity? These are the very questions that the Commission, and not the Senate, should decide on the other hand the Senator would allow research in cases of a spontaneous abortion.

I hope the Senator is interested in the rights of the child. I thought that was the ethical question—the right of the child. It seems to me that the Senator has lost himself in the circle. If we say at first that we are not going to permit research on the child because the mother does not have the right to give away the consent of the child to be a research subject, then how do we go ahead and say that in a natural abortion the mother does have a right to give it away?

I do not think we ought to be drawing up those different provisions on the floor of the Senate. That is why we are establishing the Commission, so that they can make the recommendations and they can spend the time to get the people dealing with theology, religion, medicine, and research to sit down and spend hours and days thinking about those various problems. That is what we are attempting to do. It is difficult to see how we can be expected to write this kind of prohibition here.

This is analogous to the amendment of the Senator from Maryland, which says that psychosurgery is pretty bad too, so we are going to ban that but only until the Commission can establish policy. That is what we should do here.

The point is that we are trying to let the Commission develop the guidelines. They can promulgate these guidelines, after a good deal of time and consideration. If those guidelines are not satisfactory or adequate and a sense of outrage about this issue develops, Congress can always act. But for us to try to decide those profound theological and religious questions here, really defeats the principal thrust and purpose of the legislation.

Let me remind the Senators that one cannot draw a distinction and say that you are going to be able to do the research if you have a natural abortion, but not if there is a voluntary one. The one issue is far more complex. It involves the rights of the fetus. I don't know the best way to handle that. Neither do others—it is a matter for commission study.

I think we ought to be able to foresee the circumstance that perhaps in ten years it may be possible to abort a child and then raise the child 4 months, perhaps, outside the womb. Some researchers think that is quite conceivable, quite possible, to be able to preserve the life in those instances. We find fetuses being aborted at the present time, just being lost, which I know offends the deep sensibilities of many people in this country, and the research by which it would be possible to preserve that life might very well be frustrated by this amendment. This factor must be weighed. If we could save this unwanted fetus it would become analagous to current adoption problems.

These are at least some of the questions and issues that are raised. I am hopeful that we will be able to treat this amendment the way we treated the psychosurgery amendment: to ban the research until the commission has a chance to develop the guidelines on this matter, and to implement those guidelines. Then, if necessary, the Senate can act. We can act very quickly. This afternoon, the amendment of the Senator from Minnesota with respect to the increase in the cost of living and social security was disposed of with 2 minutes of debate.

This matter affects the sensibilities and the ethics of the people of this country. It seems to me that, rather than our defining this, it would be much wiser to give the chance to the Commission to examine it and to give it full consideration.

I am extremely sympathetic with what the Senator from New York is attempting to accomplish. It concerns me that in the attempt to achieve perhaps one goal, about which I know he feels strongly—and I respect those views and in many instances share them—we are not going to take a step forward but may very well be taking two or three steps backward in terms of the preservation of life and in protecting the fetus. That is why I have some concern about this amendment.

Mr. BUCKLEY. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. BUCKLEY. I should like to make one thing very clear, and that is that I am not personally passing judgment on whether or not a mother should be able to consent. I am merely saying that the amendment I have offered does not preclude the availability of such consent where hospitals, normal medical procedures, or municipal regulation find the circumstances or the situation acceptable in the case of a naturally aborted child. I am merely saying that in the case of induced elective abortion, there shall not be human experimentation, because, however problematic may be the case of maternal consent in the case of natural abortion, the one case that is clear is that the mother who is willing to kill her child in abortion is not the proper party to consent to any experimentation.

With respect to the comments of the Senator from Massachusetts as to the Commission and awaiting its findings, as I indicated in my remarks earlier, I find the appointment of this Commission to be most constructive; and I, for one, will be eagerly awaiting its recommendations in any number of areas.

But this body has a responsibility to act now, in the light of what has been discovered as to the misuse of Federal funds in helping to finance some research. I believe we have a responsibility and must make our own judgments, as imperfect in form as they may be, in order to call a halt to this experimentation.

Two years hence, or whenever the commission has completed its work, when it reports back to the Senate, the Senate can always change its mind. As my senior colleague from New York pointed out a few minutes ago, that which the Senate enacts today, it can abolish tomorrow. And as the distinguished Senator from Massachusetts pointed out, the Senate can act very rapidly.

So I suggest that we ought to do the right thing as we see it now; and if the commission should have a contrary recommendation 2 years hence, then we can judge the arguments, determine whether or not we agree with its contrary recommendation, and then if necessary modify the law we enact today.

Mr. KENNEDY. Mr. President, will the Senator yield?

Mr. BUCKLEY. I yield.

Mr. KENNEDY. We are acting now. I am hopeful that the Senator would agree with the amendment which would ban the research now—immediately—until we get the commission's recommendations. We will act today. I am quite prepared to follow the same kind of procedure we followed with respect to the Senator from Maryland's amendment, which would permit reasonable time for the commission to respond on this matter: that we wait until they have had a full opportunity to consider it. We act today, we act now, as the Senator from New York would like to do. Then we get the recommendations of the commission. But on the one hand the Senator from New York is saying he is interested in the commission going forward, but he proposes to ban one area of its potential jurisdiction.

It seems to me that we can do what the Senator is concerned about by acting now; banning it now until we have the best minds of this commission give it full consideration. Then, on the basis of their judgment they will act. If the Senate wishes to act at that time, I would give assurances to the Senator from New York that he will have every opportu-

nity to come before our committee and be given full consideration. I do not think it does any good to talk about these issues that really require more careful, longtime considerations, and are subject to a variety of interpretations.

Mr. BUCKLEY. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. BUCKLEY. The Senator said we are dealing with something that is subject to a wide variety of interpretation. Would the Senator consider that the fact of the unborn child's humanity is subject to a wide variety of interpretation?

Mr. KENNEDY. No. I was listening to the argument on informed consent that the Senator from New York was making. I do not follow the Senator's logic when he says he is not concerned with the fetus naturally aborted. I fail to find logic in the reasoning of the Senator.

Mr. BUCKLEY. I believe I stated clearly that I am not passing personal judgment but I believe there are a number of procedures affecting a mother's right to speak on behalf of a child, which is relied upon not only in the medical profession but also in our hospitals.

Mr. KENNEDY. Can the Senator tell us what those normal procedures are? You cannot? That is the point I was making. The Senator does not know what they are, and I do not know what they are, nor does anyone in the Senate know what they are. The medical profession does not know. It feels more time and thought are needed. That is why we have this bill before us.

Mr. BUCKLEY. That is why I have so restricted the effect of the amendment to limit it to that situation where the decision has already been made to end the life of the child by abortion. Only in that situation would the amendment be effective. In the case of a spontaneous abortion, I am content for the present, however dissatisfied I may be with present procedures, to leave that matter to the Commission. If the Senator from Massachusetts is not prepared to accept my amendment I ask for the yeas and nays.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. I am prepared to yield back my time.

Mr. BUCKLEY. Then, the chairman is not going to accept the amendment?

Mr. KENNEDY. No, I am going to offer a perfecting amendment.

At this time, Senator Kennedy sought to amend the proposed Buckley amendment. Kennedy's amendment would allow the prohibition of the types of research to which Senator Buckley was opposed, but only until such time as policies and procedures to govern the conduct of such research could be established. We now rejoin the debate as the discussion shifts to whether the Kennedy amendment to the Buckley amendment should be accepted (see 131 Cong. Rec. S16349-16350 (daily ed., Sept. 11, 1973)):

Mr. BUCKLEY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. There is not a sufficient second.

Mr. CURTIS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. KENNEDY. Does the Senator from New York yield from his time for a quorum?

Mr. BUCKLEY. Yes. I withdraw my request for the yeas and nays until I hear the perfecting amendment.

Mr. KENNEDY. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. KENNEDY. Is it appropriate at this time to offer an amendment

The PRESIDING OFFICER. It is not appropriate until the time is yielded back on the pending amendment.

Mr. BUCKLEY. Under the circumstances, I reassert my call for the yeas and nays.

The PRESIDING OFFICER. There is not a sufficient second.

Mr. KENNEDY. I would be glad to ask unanimous consent that it be in order to consider my amendment at the present time without the Senator from New York losing his rights.

Mr. BUCKLEY. That is satisfactory.

Mr. KENNEDY. Mr. President, I send to the desk a perfecting amendment.

The PRESIDING OFFICER. Is there objection to the Senator from Massachusetts offering his amendment at this time? Without objection, it is so ordered.

The amendment will be stated.

The amendment was read as follows:

After Sec. 1205 insert the following: Until such time after certification of Institutional Review Boards has been established and the Commission develops policies with regard to the conduct of research on the living fetus or infants.

The PRESIDING OFFICER. On this amendment there will be 15 minutes to a side.

Mr. KENNEDY. Mr. President, this is an amendment to the amendment of the Senator from New York. The amendment would ban any of these research funds that come through HEW for research in this area as defined by the Senator from New York, but it does so only until the Commission has established the various review boards and establishes policies and procedures to govern the conduct of this research. This is the same procedure we have just followed in the matter of psychosurgery. I think the points raised by the Senator from New York are extremely important. They are of great significance and extraordinary consequence.

There are many difficult questions for the Commission to consider. These include: When can a child give consent? Who should be permitted to give consent for him and under what conditions? Who can give consent for the comatose patient? We have heard these issues, which involve an enormous degree of complexity, discussed before our committee by theologians, philosophers, and researchers in the area.

The Senate would be acting much more responsibly if we banned the use of any kind of funds only until we were able to get some kind of guidelines from the Commission.

This is the kind of issue which this Commission should consider and on which they should guide us.

I would be hopeful that the Senator from New York would be willing to accept the perfecting amendment. I value very highly his sense of concern on this whole issue and all of us know of that concern. He has given the matter a great deal of thought.

I believe this offers the fairest opportunity to protect the kinds of rights the Senator is concerned about and will provide the most responsible action we can take.

Mr. BUCKLEY. Mr. President, I deeply appreciate the effort of the Senator from Massachusetts to come to an accommodation which at least for 2 years would accomplish what I propose in this amendment. I wish I could accept it but I cannot. I say that reluctantly.

One of the things that concerns me with respect to our thinking about medical ethics in recent years has been the effect on our moral sensibilities and on society if we start downgrading the value of human life and upgrading all kinds of subsidiary considerations that are offered in the interest of social utility.

For us to accept the amendment offered by the distinguished chairman of the subcommittee would be, however subtly, to give some sort of tacit senatorial approval to the idea that it might be someday appropriate to permit these experiments on the child the mother is trying to destroy. I believe these subtleties are terribly important in the present environment.

I believe that what this body does sets a moral tone and has an influence on society at large. If we complete this legislation, and then a medical debate starts on the propriety of certain questionable procedures, as in the case of the doctor who worked with the Finfish physician to take off the heads of 12 living fetuses—if we, in effect, condone this kind of debate, if we approve it by adopting the perfecting amendment, then we may be conceding a fatal premise and we may do a disservice to the moral climate of this country.

It could well be that the commission will come forward with a very forceful argument that may cause some of us to change our position, although I will submit I find myself rather set in my own feelings in the matter. But I believe that the Senate should speak its mind as the House did and put the burden on the commission to recommend to the contrary if that is its finding.

I therefore urge, Mr. President, that the perfecting amendment not be accepted.

Mr. KENNEDY. Mr. President, I do not accept the suggestion of the Senator from New York that we are giving any kind of stamp of approval in this area. What we are doing is setting up a procedure and establishing a commission to try to devise guidelines and directives in an extremely difficult and complex area.

The Senator from New York is carving out a small area and saying the commission shall not deal with that. What we are prepared to do is let them make further research into this area until the commission has time to develop its recommendations and policies. This is a very complex matter. If we are taking off one portion of commission jurisdiction, then why not ban the commission from determining how to treat elderly persons who are in a coma or in a terminal illness? Are we going to start imposing particular viewpoints and say, therefore, we are not going to let the commission deal with that, either, because we want to be sure that they are either going to be

kept alive or die? What we tried to do was not involve ourselves in particular segments of difficult ethical and moral questions. We are trying to set up a procedure by which we can be guided, always reserving our right in the Senate or the Congress to act if some time in the future it should be so desired.

I think the amendment offered protects the principal concern of the Senator from New York. I was hopeful he would accept it.

Mr. President, I am prepared to yield back the remainder of my time and to vote on the amendment.

A recorded vote was then taken on the Kennedy amendment to the Buckley amendment. The vote was 53-35 in favor. 131 Cong. Rec. S16350 (daily ed., Sept 11, 1973).

A vote was then taken on whether to accept the Buckley amendment, as amended, to H.R. 7724. The vote again was in favor, 88-0. 131 Cong. Rec. S16350 (daily ed., Sept. 11, 1973). H.R. 7724 was subsequently passed by the Senate, 81-6. 131 Cong. Rec. S16352 (daily ed., Sept. 11, 1973.

The Senate then asked for a conference with the House on H.R. 7724. 131 Cong. Rec. S16352 (daily ed., Sept. 11, 1973). This is the status of the bill at this writing.

Buckley Amendment to H.R. 3153, the Social Security Act Amendments of 1973, to Prohibit Use of Federal Medicaid Funds to Pay for Abortions

On November 30, 1973, Senator Buckley offered the following amendment to H.R. 3153, a bill to amend the Social Security Act (See 185 Cong. Rec. S21561 (daily ed., Nov. 30, 1973)):

> Sec. 193. None of the funds under title 19 may be used for the performance of abortions.

Senator Buckley included the following remarks in the Congressional Record on the occasion of offering his amendment (See 185 Cong. Rec. S21561 (daily ed., Nov. 30, 1973)):

> Mr. BUCKLEY. Mr. President, the language of this section is brief. It is section 193, and it reads:
>
> None of the funds under title 19 may be used for the performance of abortions.
>
> This language is substantially identical to the language that was approved recently by the conferees on the foreign aid bill.
>
> This does not reach into the constitutional question. Rather, it simply says that the Federal Government will not pay for abortions. If States want to pay for them or help others pay, that is up to them, and they may do so with their own funds.
>
> I suggest that if Congress felt that Federal funds ought not be allowed to be used abroad for the performance of abortions on foreign women, then at least we could accord the same protection to our own.
>
> I believe that this amendment merely supports a continuing expression of congressional intent that has already been incorporated in several bills on this question. I am prepared to have a vote on it directly.
>
> I offer this amendment, incidentally, on behalf of the Senator from Nebraska (Mr. CURTIS) as well as myself.
>
> Mr. LONG. Mr. Presidnt, I am willing to take the amendment to conference.
>
> The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to Id.

Abortion Related "Conscience Clause" in H.R. 3153

Earlier, on November 29, 1973, Senator Church had submitted the following amendment to H.R. 3153 (see 184 Cong. Rec. S21464 (daily ed., Nov. 29, 1973):

Mr. CHURCH's amendment (No. 664) is as follows:

On page 9 add the following at the end thereof:

SEC. . (a) Title XVIII of the Social Security Act is amended by adding at the end thereof the following new section:

"SEC. 1880. (a) Nothing in this title shall be construed to require—

"(1) any individual to perform or assist in the performance of any sterilization procedure or abortion if his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions; or

"(2) any provider of services to—

"(A) make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions, or

"(B) provide any personnel for the performance of assistance in the performance of any sterilization procedure or abortion if the performance or assistance in the performance of such procedure or abortion by such personnel would be contrary to the religious beliefs or moral convictions of such personnel.

"(b) No provider of services which receives any payment under this title may—

"(1) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or

"(2) discriminate in the extension of staff or other privileges to any physician or other health care personnel, because he performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions.

"(c) The amendments made by this section shall be effective on the first day of the month following the month in which this Act is enacted.".

(b) Title XIX of the Social Security Act is amended by adding at the end thereof the following new section:

"Sec. 1911. (a) Nothing in this title shall be construed to require—

"(1) any individual to perform or assist in the performance of any sterilization procedure or abortion in his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions; or

"(2) any agency, institution, or facility to—

"(A) make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions, or

"(B) provide any personnel for the performance or assistance in the performance of any sterilization procedure or abortion if the performance or assistance in the performance of such procedure or abortion by such personnel would be contrary to the religious beliefs or moral convictions of such personnel.

"(b) No agency, institution, or facility which receives any payment under this title may—

"(1) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or

"(2) discriminate in the extension of staff or other privileges to any physician or other health care personnel, because he performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions.

"(c) The amendments made by this section shall be effective on the first day of the month following the month in which this Act is enacted.".

On the occasion of submitting this amendment, which was agreed to by the Senate, see 184 Cong. Rec. S21465 (daily ed., Nov. 29, 1973), Senator Church offered the following comments and materials during discussion (See 184 Cong. Rec. S21464-S21467 (daily ed., Nov. 29, 1973)):

Mr. CHURCH. Mr. President, earlier this month I announced my intention to offer this amendment to the pending bill. It would provide that medical personnel, who by participation in the medicare and medicaid programs are recipients of Federal funds, shall not be required, on the basis of this aid, to participate in the performance of sterilization or abortion procedures if such procedures are in violation of that individual's religious beliefs or moral convictions.

With only technical modifications, this is the same provision adopted overwhelmingly by Congress as title IV of S. 1136, the omnibus health bill, subsequently signed into law—Public Law 93-45. When I originally authored the "conscience clause," the language was such that it applied to recipients of aid under all Federal health programs. It was in this form that it originally passed the Senate last March. However, the germaneness rules in the House of Representatives dictated that this provision could only apply to those programs specifically authorized by S. 1136—the Public Health Service Act, and the Community Mental Health Centers Act—and today these are the only programs which fall within the reach of the law.

I indicated at the time of final passage of the omnibus health bill my intentions to find an appropriate vehicle for the extension of similar protection to doctors and other medical personnel who receive Federal assistance through their participation in medicare and medicaid programs. Because of its technical nature, H.R. 3153 is the most appropriate vehicle to accomplish this purpose. I think it is the general consensus of the Members of Congress that this recent enactment of law was not intended to be discriminatroy, and that this protection should be extended to providers of medicare and medicaid services.

When I initially authored the "conscience clause" last spring, I cited a case, Taylor against St. Vincent's Hospital, whereby a Federal district court in Montana had issued a temporary injuction compelling a Catholic hospital, contrary to Catholic beliefs, to allow its facilities to be used for a sterilization operation. The district court based its jurisdiction upon the fact that the hospital had received Hill-Burton funds. On October 26, 1973, the Federal district court reversed their previous decision and ordered that the preliminary injunctive relief issued by the court be dissolved. In this decision, the court based ther decision on the provisions of Public Law 93-45, 87 statute 91, section 401(b)—the conscience clause provision of the Public Health Service Act.

Mr. President, I ask unanimous consent that the court opinion and order be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. CHURCH. I also call to the attention of my colleagues the case of Watkins against Mercy Medical Center, and ask unanimous consent that the court's memorandum in that case be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. CHURCH. In this case, a U.S. district judge for the State of Idaho, ruled, partially on the provisions of Public Law 93-45, 87 statute 91, section 401(b), that a hospital did not have to reinstate the staff privileges of a doctor who refused to comply with the medical code of a Catholic hospital which had in previous years received Federal aid. It was the consensus of the court that this statute prohibits any court from finding State action on the part of a hospital which receives Hill-Burton funds and using that finding as a basis for requiring the hospital to make its facilities available for the performance of sterilization procedures or abortions.

I am pleased that Senators DOMENICI, EASTLAND, BUCKLEY, EAGLETON, and PROXMIRE have asked to join as cosponsors of my amendment, No. 664, to the social security amendments, and I ask that the record so indicate. This amendment is necessary if we are to protect the religious beliefs of all health care personnel who receive Federal assistance, and I urge my colleagues to act favorably to extend this protection to those personnel who receive Federal assistance through their participation in medicare and medicaid programs.

Mr. President, I hope the distinguished

manager of the bill will see fit to accept the amendment. In view of the fact that it is with a few technical changes identical to the earlier amendment that was overwhelmingly passed by the Senate and is now the law, and consistent with that earlier judgment reached by the Senate, I would hope the distinguished Senator from Wisconsin would find it possible to accept the amendment.

Mr. NELSON. Mr. President, we are prepared to accept the amendment.

Mr. CHURCH. Mr. President, the distinguished senior Senator from Delaware (Mr. ROTH) has asked that his name also be added as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment (No. 664) of the Senator from Idaho.

The amendment was agreed to.

EXHIBIT 1

[In the U.S. District Court for the District of Montana, Civil No. 1090]

OPINION AND ORDER

(James Michael Taylor and Glorida Jeane Taylor, husband and wife, on Behalf of themselves, individually, and on behalf of others who may be members of a class of persons similarly situated, Plaintiffs, versus St. Vincents Hospital, a Montana Corporation, Defendant)

The parties have agreed that the court may render a decision in this cause without a trial, based upon the stipulated facts which appear in the court's final pre-trial order. Those pertinent facts may be summarized as follows:

St. Vincent's Hospital is a private corporation which operates a hospital facility in Billings, Montana, known as St. Vincent's Hospital. It has done so since May 1, 1972, when it took over the operation of the hospital from the Sisters of Charity of Leavenworth, also a private corporation, whose members are all members of a religious order of that name. The physical facilities of St. Vincent's Hospital are now and at all times material in this case have been owned by the Sisters of Charity of Leavenworth, a corporation.

As a private, charitable, non-profit corporation, St. Vincent's Hospital received certain tax benefits from the State of Montana. The Sisters of Charity of Leavenworth, a corporation, when it operated St. Vincent's Hospital, also applied for and received funds under the Hill-Burton Act (42 U.S.C. §§ 291–291(c)) during the years 1956 through 1963.

Tubal ligation as a sterilization procedure had not, prior to the preliminary injunction issued by this court in this cause, been performed at St. Vincent's Hospital because of the interpretation placed upon the publication entitled "Ethical and Religious Directives for Catholic Hospitals" which is incorporated by reference in the By-laws of the medical staff of St. Vincent's Hospital. The Bishop of Eastern Montana of the Roman Catholic Church has the responsibility to interpret the directives for members of the Church of Eastern Montana, including members of the congregation of the Sisters of Charity of Leavenworth who are on the Board of Directors or are employed at St. Vincent's Hospital. The preamble in the "Ethical and Religious Directives" makes it clear that they are based upon moral convictions.

St. Vincent's Hospital and Billings Deaconess Hospital are the only hospitals in Billings, Montana. In June, 1972, the maternity departments of the two hospitals were combined in St. Vincent's Hospital, and an intensive care nursery was constructed in St. Vincent's Hospital in order to reduce infant mortality in the community and to reduce the cost to the community of duplicated maternity services. Prior to approving consolidation of maternity services at St. Vincent's Hospital, the Trustees of Sisters of Charity of Leavenworth advised local obstetricians and trustees of the Billings Deaconess Hospital that surgical sterilizations would not be allowed at St. Vincent's Hospital. The consolidations was completed and the combined maternity department with intensive care facilities opened in June, 1972.

The plaintiffs, James and Gloria Taylor, are a married couple who were expecting a second child to be delivered by Caesarian section on October 31, 1972. The couple decided that they wished Mrs. Taylor to be sterilized by tubal ligation at the time of the Caesarian section and requested permission of St. Vincent's Hospital for the procedure. Permission was denied.

Plaintiffs allege in their complaint that the defendant in refusing to permit Mrs. Taylor to undergo a tubal ligation at the time of her Caesarian delivery infringed certain rights guaranteed to the plaintiff by the United States Constitution. The plaintiffs further allege that the infringement was committed under color of state law. The prayer asked for injunctive relief, not only for the Taylors, but also for "other persons similiarly situated in the State of Montana."

The plaintiffs seek to invoke the jurisdiction of this court under the provisions of 42 U.S.C. § 1983 and 28 U.S.C. § 1343. 42 U.S.C. § 1983 reads:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

28 U.S.C. § 1343 reads in pertinent part:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: * * *

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; * * *."

Essential to the plaintiffs' invocation of jurisdiction in this cause is that the defendant, in its alleged violation of the plaintiffs' constitutional rights, acted under color of state law. The plaintiffs' assertion that the defendant is acting under the color of state law is grounded primarily on the fact that Hill-Burton grants have been used to defray a portion of the cost of hospital remodeling and construction over the years. In fact, this court, in its order dated October 27, 1972, found jurisdiction in this cause because of the receipt of such funds by the defendant.

However, on June 18, 1973, the President signed into law the Health Programs Extension Act of 1973. Title IV, Section 401, of that Act, provides in part:

"(b) The receipt of any grant, contract, loan or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Services and Facilities Construction Act, by any individual or entity does not authorize any court or any public official or other public authority to require— * * *

"(2) such entity to—

"(A) make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facility is prohibited by the entity on the basis of religious beliefs or moral conviction, . . ."

Public Law 93-45, 87 Stat. 91, Section 401(b). By its plain language, this Act prohibits any court from finding that a hospital which receives Hill-Burton funds, is acting under color of state law. The above sections were specifically aimed at such a result as evidenced by the legislative history.[1]

In a recent memorandum filed in this action, the plaintiffs attack the Constitutionality of Section 401(b). Specifically, the plaintiffs launch a direct attack upon this section as being contrary to the establishment clause of the First Amendment. However, the question of the Constitutionality of that section is not before this court. Furthermore, the case law relied upon by plaintiffs relates to parochial schools and is distinguishable from the instant case.

Nor does Section 401(b) present any question of retroactive application. It simply limits the remedies the court may grant. It can only affect pending and future court proceedings and does not purport to affect cases in which judgments have become final. Moreover, there is nothing in Section 401(b) to suggest that it applies only in situations where receipt of the public fund occurred after the effective date of the Act. To apply Section 401(b) in such a way would produce the bizarre result that hospitals which have received Hill-Burton funds prior to June 18, 1973, could be forced to permit sterilizations, while those which received such funds after June 18, 1973, could not. This was not the Congressional intent.

Furthermore, there can be no doubt that

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[1] See H.R. No. 93-227; 1973 U.S.C.C. & A.N. 1553. The latter includes the following language:

"The background for subsection (b) of section 401 of the bill is an injunction issued in November 1972 by the United States District Court for the District of Montana in *Taylor v. St. Vincents Hospital*. The court enjoined St. Vincents Hospital, located in Billings, Montana, from prohibiting Mrs. Taylor's physician from performing in that hospital a sterilization procedure on her during the delivery of her baby by Caesarian section.

"The suit to enjoin the hospital was brought under 42 U.S.C. 1983 (which authorizes civil actions for redress of deprivation of civil rights by a person acting under color of law) and 28 U.S.C. 1343 (which grants United States district courts jurisdiction of actions (authorized by another law) to redress deprivation, under color of any State law, of a Constitutional right). In ruling on a motion to dismiss for lack of jurisdiction, the court stated that 'the fact that the defendant [St. Vincents Hospital] is the beneficiary of the receipt of Hill-Burton Act [title VI of the Public Health Service Act] funds is alone sufficient to support an assumption of jurisdiction. . . .' The court also found two other factors (state licensing and tax immunity) that established a connection between the hospital and the State sufficient to support jurisdiction.

"Subsection (b) of 401 would prohibit a court or a public official, such as the Secretary of Health, Education, and Welfare, from using receipt of assistance under the three laws amended by the bill (the Public Health Service Act, the Community Mental Health Centers Act, and the Developmental Disabilities Services and Facilities Construction Act) as a basis for requiring an individual or institution to perform or assist in the performance of sterilization procedures or abortions, if such action would be contrary to religious beliefs or moral conviction.

"In recommending the enactment of this provision, the Committee expresses no opinion as to the validity of the *Taylor* decision."

section 401(b) which restricts the course and the way of inferior federal courts is a valid exercise of Congressional power. Under Article III of the Constitution, Congress can establish such inferior courts as it chooses. Its power to create those courts includes the power to invest them with such jurisdiction as it deems appropriate for the public. *Lockerty v. Phillips*, 319 U.S. 182, 187 (1943). Further, Congress is free to legislate with respect to remedies the inferior Federal courts may grant. *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227, 240 (1937).

For the foregoing reasons, it is hereby ordered that the plaintiffs be denied all relief.

It is further ordered that the preliminary injunctive relief issued by this court on October 27, 1972, is dissolved.

The Clerk of this court is directed to enter judgment accordingly.

Done and dated this 26th day of October, 1973.

EXHIBIT 2

[In the U.S. District Court for the District of Idaho, Civil No. 1–73–17]

MEMORANDUM DECISION AND ORDER

(Wilfred F. Watkins, M.D., plaintiff, versus Mercy Medical Center, et al., defendants)

The plaintiff brought this action for injunctive and compensatory relief against the defendant hospital and its Board of Directors, contending that he had been denied medical staff privileges for failure to agree to, or abide by, the ethical or religious directives under the Code of Ethics for Catholic Hospitals as required by the application of any physician for staff privileges within the hospital, and that such a denial was a violation of his right to freedom of religion and due process of law. Recent congressional action concerning the subject matter of this suit and review of the evidence herein viewed in the light thereof convinces the Court that the plaintiff's claim is without merit.

Briefly, the facts as stipulated are that Dr. Watkins was denied reappointment to the medical staff at Mercy Hospital Center for failure to submit a proper application, reappointment to the staff coming on an annual basis. In his application of December 1, 1973, Dr. Watkins wrote an exclusion to his agreement to abide by the By-Laws of the Medical Staff of Mercy Medical Center so as to exclude the Ethical and Religious Directives for Catholic Health Care Facilities. Upon review by the Credentials Committee and the Executive Committee of the Medical Staff and the hospital Board of Directors, his application was rejected.

Dr. Watkins resubmitted an identical application which was also rejected for his refusal to comply with the Ethical and Religious Directives. His staff privileges thereafter expired on February 1, 1973. Dr. Watkins refused to comply with or agree to the Ethical and Religious Directives because they prohibit staff physicians from performing voluntary or involuntary vasectomies or other sterilization or abortion operations in a hospital setting. These procedures are prohibited solely for religious reasons as the hospital is financed and operated almost entirely by the Catholic Church.

On the record it is admitted that Dr. Watkins is in all other respects, training, experience and ethically, qualified for staff privileges. It should be noted that there are approximately 5 hospitals within 50 miles of the Mercy Hospital which do permit all of the procedures under discussion here. Dr. Watkins, therefore, submits that his dismissal for failure to agree to or comply with the directives denies him of his own religious beliefs and his right to practice medicine without due process of law and he requests injunctive relief reinstating his staff privileges, as well as praying for general damages of $100,000.00.

The meagre evidence adduced by Dr. Watkins would not support any monetary relief against defendants.

Dr. Watkins has alleged jurisdiction in this Court to hear this matter on the basis of 28 U.S.C. § 1343(3),[1] contending defendants have deprived him of his constitutional rights in violation of 42 U.S.C. § 1983,[2] and also alleged jurisdiction under 28 U.S.C. § 1331[3] and 42 U.S.C. § 2000d.[4] For reasons more fully developed in this opinion, this Court feels Dr. Watkins is not entitled to the relief which he requests.

In order to state a claim for relief under 42 U.S.C. § 1983, it must be shown that Mercy Medical Center and its Board of Directors were acting under color of State law when they denied Dr. Watkins staff privileges. In other words, it must be determined that the enforcement of the hospital's rule requiring conformity by the medical staff to the directives which prohibit contraceptive procedures was an act done under color of State law. Since the hospital itself is otherwise a private hospital and not owned or operated by any arm of the state, the only means by which it could be said to act under color of law is if the hospital is sufficiently affected by state law and regulation and administration of federal funds by the state as to be considered acting under color of law.

Mercy Medical Center was constructed with the help of Federal Hill-Burton Act funds.[5] It has been held that hospitals which receive Hill-Burton funds are affected with state action. *Sams v. Ohio Valley General Hospital Association*, 413 F. 2d 826 (4th Cir. 1969); *Citta v. Delaware Valley Hospital*, 313 F. Supp. 301 (D.C. Penn. 1970); *Taylor v. St. Vincent's Hospital*, Civ. No. 1090, D.C. Mont., Oct. 31, 1972. However, recent congressional action has effectively revoked the ability of a court to find state action on the part of a hospital which receives Hill-Burton Act funds.

On June 18, 1973, the President signed into law the Health Programs Extension Act of 1973. Title IV, Sec. 401 of that Act, provides in part:

"(b) The receipt of any grant, contract, loan or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Services and Facilities Construction Act by any individual or entity does not authorize any court or any public official or other public authority to require—

"(2) such entity to—

"(A) make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions. . . ." P.L. 93–45; 87 Stat. 91, § 401(b).

By its plain language this Act prohibits any court from finding state action on the part of a hospital which receives Hill-Burton funds and using that finding as a basis for requiring the hospital to make its facilities available for the performance of sterilization procedures or abortions. The above sections were specifically aimed at such a result as evidenced by the legislative history. See H.R. No. 93-227; 1973 U.S. Code Congressional and Administrative News, 1553 and 1557.[6]

In essence, what Dr. Watkins has asked this Court to do is require Mercy Medical Center to make its facilities available for the performance of sterilization procedures by way of requiring his reinstatement to the medical staff. The above language of the Health Programs Extension Act of 1973 clearly prohibits such a course of action.

Neither does the fact that Mercy Medical Center receives tax exempt status from the state, is licensed by the state and applies for and receives state and federal monies under the Medicare and Medicaid programs, support a finding that the hospital is sufficiently clothed with state control so as to be acting under color of state law. The state has exacted no conditions upon the hospital concerning sterilization or abortion in order to receive tax benefits or state or federal money.

The state regulations which the hospital must conform to in no way relate to its policy concerning sterilization or abortions. Since hospital policy is not and has not been affected by the benefits bestowed upon it by the state, defendants were not acting under color of state law when the policy was formulated or enforced. *Doe v. Bellin*, F. 2d (9th Cir. 1973); *Ham v. Holy Rosary Hospital*,

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[1] "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;"

[2] "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

[3] (a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

[4] No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

[5] Title IV of the Public Health Services Act; 42 U.S.C. § 291 et seq.

[6] The "Purpose of Proposed Legislation," p. 1553, dealing with the "conscience amendment" to the Health Programs Extension Act of 1973, speaks directly to the point:

"The background for subsection (b) of section 401 of the bill is an injunction issued in November 1972 by the United States District Court for the District of Montana in *Taylor v. St. Vincents Hospital*. The court enjoined St. Vincents Hospital, located in Billings, Montana, from prohibiting Mrs. Taylor's physician from performing in that hospital a sterilization procedure on her during the delivery of her baby by Caesarian section.

"The suit to enjoin the hospital was brought under 42 U.S.C. 1983 (which authorizes civil actions for redress of deprivation of civil rights by a person acting under color of law) and 28 U.S.C. 1343 (which grants United States district courts jurisdiction of actions (authorized by another law) to redress deprivation, under color of any State law, of a Constitutional right). In ruling on a motion to dismiss for lack of jurisdiction, the court stated that 'the fact that the defendant [St. Vincents Hospital] is the beneficiary of the receipt of Hill-Burton Act [title VI of the Public Health Service Act] funds is alone sufficient to support an assumption of jurisdiction. . . .' The court also found two other factors (state licensing and tax immunity) that established a connection

U.S.D.C., Mont. Dec. 20, 1972, No. 1103. Therefore, Dr. Watkins has not stated a claim for relief under 42 U.S.C. § 1983. *Chism v. Price*, 457 F. 2d 1037 (9th Cir. 1972).

However, despite supporting a finding that defendants were not acting under color of state law, the Health Programs Extension Act is not without the characteristics of a double-edged sword. Title IV of the Act further provides that:

"(c) No entity which receives a grant, contract, loan or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Services and Facilities Construction Act after the date of enactment of this Act may— . . .

"(2) discriminate in the extension of staff or other privileges to any physician or other health care personnel, because he performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions respecting sterilization procedures or abortions." P.L. 93-45; 87 Stat. 91, § 401 (c).

Congress has taken the position that the fact a hospital receives Hill-Burton funds does not authorize a finding that the hospital acts under color of state law as a basis for requiring it to make its facilities available for the performance of sterilization procedures or abortions if the hospital declines for religious or moral reasons. But, at the same time, the hospital cannot discharge a staff member who religiously or morally believes that such services should be performed. The legislation is aimed at protecting the religious rights of both the hospital and the individual. The hospital can prohibit its staff from performing sterilization procedures or abortions in the hospital, but it cannot require its staff to adhere to the religious or moral beliefs which support the hospital's policy as a condition of employment or extension of privileges.

In this case Mercy Medical Center, by way of its application for staff privileges, was requiring Dr. Watkins to agree not to perform sterilization services in the hospital. The hospital was not trying to require Dr. Watkins to adopt their religious beliefs, for he is free to believe that sterilization services should be offered and performed, but the hospital also has the right to believe that such services should not be performed and the right to prohibit the use of its facilities for those purposes.

By similar analysis, Dr. Watkins' general constitutional claim that defendants have violated his First and Fourteenth Amendment rights is without merit. It is unquestioned that the prohibition against the establishment of, or prevention of, the free exercise of religion is wholly applicable to the states through the Fourteenth Amendment *Cantwell v. Connecticut*, 310 U.S. 296, 84 L. Ed. 1213, 60 S. Ct. 900 (1940); *Cruz v. Beto*, 405 U.S. 319, 31 L. Ed. 2d 263, 92 S. Ct. 1079 (1972).

But in order to support a claim that Dr. Watkins has been denied the right to freely exercise his religious beliefs or that he had been denied due process of law, he must show some significant state involvement in the activity that allegedly has violated his rights. *U.S. v. Price*, 383 U.S. 787, 16 L. Ed 2d 267, 86 S. Ct. 1152 (1966); *Martin v. Pacific Northwest Bell Tel. Co.*, 441 F. 2d 1116 (9th Cir. 1971). For the reasons previously stated in this opinion the Court is of the belief that there was not state action in this matter.

Plaintiff's claim under 42 U.S.C. § 2000d is without merit also. Assuming that Dr. Watkins was discriminated against on the basis of his religious beliefs, that section speaks only in terms of racial discrimination.

In conclusion, even assuming the requisite state action in this matter to support a claim for relief under 42 U.S.C. § 1983 or the Fourteenth Amendment, the Court feels it must emphasize that Mercy Medical Center has the right to adhere to its own religious beliefs and not be forced to make its facilities available for services which it finds repugnant to those beliefs. The hospital cannot discriminate against those who believe otherwise, but it can set up reasonable safeguards to insure that others do not use their facilities for services which the hospital does not religiously believe should be offered. Dr. Watkins is free to believe that sterilization services should be provided for the public and to perform them anywhere he is able. However, he cannot force Mercy Medical Center to allow him to perform them in its hospital. To hold otherwise would violate the religious rights of the hospital.

It is, therefore, ordered that the plaintiff's request for both preliminary and permanent injunction against defendants be, and the same is hereby, DENIED, and that the plaintiff take nothing by his complaint against the defendants. No costs are allowed.

If counsel so stipulate in writing filed with the Clerk, this Memorandum shall constitute the Findings of Fact and Conclusions of Law and defendants' counsel will submit an appropriate proposed judgment. If not so agreed, defendants' counsel will make the submissions required by Local Rule 18.

Dated this 30th day of July, 1973.

J. BLAINE ANDERSON,
U.S. District Judge.

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between the hospital and the State sufficient to support jurisdiction.

"Subsection (b) of 401 would prohibit a court or a public official, such as the Secretary of Health, Education, and Welfare, from using receipt of assistance under the three laws amended by the bill (the Public Health Service Act, the Community Mental Health Centers Act, and the Developmental Disabilities Services and Facilities Construction Act) as a basis for requiring an individual or institution to perform or assist in the performance of sterilization procedures or abortions, if such action would be contrary to religious beliefs or moral conviction.

"In recommending the enactment of this provision, the Committee expresses no opinion as to the validity of the *Taylor* decision."

The "Section-by-Section Analysis" under the item "Miscellaneous, p. 1557-58, succinctly states congressional purpose as follows:

"In addition, section 401 of the bill provides that receipt of financial assistance under any of the aforementioned Acts does not constitute legal basis for a judicial or administrative order requiring an individual to aid in performing a sterilization or abortion, if such activity is contrary to the individuals religious or moral beliefs. Nor does receipt of financial assistance provide legal authority for a judicial or administrative order requiring the provision of personnel or facilities by any entity for the performance of sterilization or abortion, if such activity is contrary to the religious or moral beliefs of the personnel or prohibited by the entity for religious or moral reasons."

Having adopted both the Church and Buckley amendments, the Senate proceeded to pass H.R. 3153, 66-8. 185 Cong. Rec. S21575 (daily ed., Nov. 30, 1973). Both the Church and Buckley amendments will be the subject of a House-Senate conference on H.R. 3153 in early 1974.

Amendment to Legal Services Corporation Act to Prohibit Legal Services Attorneys From Assisting in Abortion Litigation

On June 21, 1973, Rep. Hogan submitted an amendment to H.R. 7824, a bill establishing a Legal Services Corporation. Rep. Hogan's amendment was intended to "prohibit the Legal Services Corporation from becoming involved in litigation on abortion." 97 Cong. Rec. H5129 (daily ed., June 21, 1973). In substance the amendment prohibited Legal Services Corporation funds from being used "to provide legal assistance with respect to any proceeding or litigation relating to abortion." 97 Cong. Rec. H5129 (daily ed., June 21, 1973). Rep. Hogan then submitted the following remarks after offering his amendment (See 97 Cong. Rec. H5129-H5130 (daily ed., June 21, 1973)):

Mr. HOGAN. Mr. Chairman, this amendment is very simple. It would prohibit the Legal Services Corporation from becoming involved in litigation on abortion. Legal services lawyers have been very much involved in abortion litigation so this amendment is absolutely essential.

Congress expressly prohibited the use of family planning grants for abortion. In spite of this, in 1970, Dr. George Contis of OEO Headquarters' Health Office, writing in his 5-year plan for OEO's family planning activities, made reference to the congressionally imposed special prohibition, but indicated nevertheless, the legal services attorneys in community action agencies should help clients obtain such services.

In addition, Alan F. Charles, staff attorney for OEO's national legal program on health programs for the poor, writing in an OEO publication, Clearinghouse Review, in February 1970, solicited legal services lawyers around the country for the purpose of opposing statutes that forbade abortions. After presenting a list of States in which cases attacking antiabortion statutes were pending, Mr. Charles stated that OEO legal services offices were participating directly in abortion legal actions in the California and New York actions. This statement buttresses Dr. Contis' judgment about legal services lawyers participating in abortion actions. Mr. Charles also added that "although the legal services attorneys cannot directly represent the defendants in criminal abortion actions, some legal programs may wish, in an appropriate case, participate amicus," that is, the "friend-of-the-court" briefs.

In Marin County, Calif., legal services lawyers were also active in abortion cases entitled, Jane Doe and Janet Roe against State Department of Social Welfare. In December 1970, California Social Welfare Department policy required that parents of an unmarried pregnant minor and the father of the unborn child be contacted prior to the issuance of a medicaid card or other authorization of aid for getting an abortion. A legal services lawyer contested the case.

An article in the November 1972, Clearinghouse Review argued that, since medicaid was designed to alleviate the health problems of the poor, elective abortion should be allowed under medicaid. The specific case referred to was handled by legal services lawyers who sued the New York Welfare Commission for refusing to allow elective abortions under medicaid. They appealed the case—Klein against Nassau County Medical Center—and the court held that a distinction between nonhealth and a health abortion was invalid; that is, a denial of equal protection to the medicaid recipient.

Newark Legal Services challenged the New Jersey prohibition against abortion in 1970. They argued that normal childbirth involved more of a risk of death than abortion.

Two legal services agencies, Community Action for Legal Services in New York and South Brooklyn Legal Services, attacked an antiabortion law in that State.

So clearly there is a need for this amendment.

If this amendment does not prevail, I can foresee suits being brought to force doctors, nurses, and hospitals to engage in abortion. I can also foresee suits similar to the one we had in Maryland where a mother took her teenaged daughter to court to force her to have an abortion.

Legal services lawyers, whose actions were ostensibly supposed to bring economic justice to the poor, instead fragmented the families of the poor by attacking the rights of the parents to prevent their children from having abortions. In the July 1971 issue of OEO's Clearinghouse Review it was argued that "the requirement of parental consent is harmful to the child in need of birth control and to those in need of abortion." The article also added that there was the "interest in reducing the growing need for welfare and in reducing the frightening population growth." The conclusion of the article made recommendations for the District of Columbia, urging that the age of informed consent for abortion be lowered to 16. The legal services lawyers made no recommendations for lowering the age of consent to be operated on for tonsilectomy and appendectomy. Why are they so interested in pushing for a lowering of the age of consent for abortion to 16?

Instead of taking just those cases which would have helped the poor receive social justice, legal services lawyers have been crusading to minimize the number of poor people by exterminating the unborn children of poor parents.

Since the Supreme Court handed down its decision on January 22 of this year legalizing abortion across the country up to the day of natural birth, there has been much debate over what should be done to respond to this shocking and far-reaching decision.

Mr. Chairman, I have sponsored a constitutional amendment which would guarantee the right to life to every human being, from the moment of conception. Ultimately, this is the only answer if we are to preserve any respect for the value and dignity of human life.

Three weeks ago the House saw fit to deny funds to the National Institute of Health for any experimentation on live infants, the products of abortion. That was a step in the right direction. Today the House again has the opportunity to reaffirm this body's conviction that every human being is of value and has the right to live. If this amendment is approved, it will be another indication of the strong sentiment of this body to protect life. It will also protect doctors and nurses who oppose abortion from suits, paid for by the taxpayers, forcing them to violate their conscience and perform abortions.

I have received thousands of letters from all over the country from people shocked and dismayed at the Supreme Court's decision. I am sure that every Member in this Chamber has received similar letters. Today we have the opportunity to stand up and be counted. The vote on this amendment will indicate to our constituents whether or not we are willing to be included among those who cherish the value and dignity of every human life.

I support the adoption of this amendment, not only because I think it serves a worthwhile purpose in this bill, but also because it is another small step toward the protection of those least able to defend themselves, the unborn.

Rep. Abzug opposed the Hogan amendment and argued against it in the following way (97 Cong. Rec. H5130 (daily ed., June 21, 1973)):

Ms. ABZUG. Mr. Chairman, I do not believe that Members of the Congress should act on this amendment based upon their views on abortion. The gentleman in the well just said that he could not see how this could possibly affect any poor person. The fact is that we do have a Supreme Court decision in this country which says that there is a constitutional right, the right of privacy to abortion. One of the main effects of that will be to help poor women who have had difficulty in obtaining an abortion, to obtain them.

Should the constitutional right, which is now a matter of Supreme Court decision, be violated and a poor woman unable to receive that abortion, in violation of what is now the law by the Supreme Court be abandoned and discriminated against? It seems to me that she has a right to seek legal counsel for assistance under this act. Whether or not the Members agree that a woman should have a right to abortion, it is, nevertheless, the law. The Member from Maryland who proposes this amendment has often asserted the remedy he seeks to change that law by efforts to change the Constitution. He has no right to use his personal views to deprive poor women of their fundamental rights. I believe to vote against the right of a poor woman to be able to seek redress from the courts is inappropriate.

I urge the Members to vote down the amendment.

In response to an inquiry from Rep. DuPont, to wit:

Does the gentleman's [Hogan's] amendment mean that if a woman received an abortion in a hospital and was injured as the result of medical malpractice, that the attorneys in the [Legal Services] corporation would not handle her suit? (See 97 Cong Rec. H5130 (daily ed., June 21, 1973)

Rep. Hogan responded

> No; I do not intend that at all. What I do intend is that no suit can be brought against a doctor or a nurse or a hospital that will not perform an abortion to force them to do so (97 Cong. Rec. H 5130 (daily ed., June 21, 1973))

At this time Rep. Froehlich offered a substitute amendment for Hogan's amendment. Forehlich's substitute amendment would forbid the use of Legal Services Corporation funds in the following way (See 97 Cong. Rec. H5130 (daily ed., June 21, 1973)):

> "(8) To provide legal assistance with respect to any proceeding or litigation which seeks to procure a non-therapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution."

Rep. Froehlich offered the following explanation in support of his substitute amendment (97 Cong.. Rec. H 5130 (daily ed., June 21, 1973)):

> Mr. FROEHLICH. Mr. Chairman, I think this wording will correct the defect pointed out in the Hogan amendment. My wording prohibits legal corporation lawyers from working to procure a non-theraputic abortion for an individual or to force a hospital, institution, or doctor to participate in an abortion it is against their policy or beliefs. I have presently in my district a hospital which is in court, and the court suit is being funded by one of the private organizations furnishing legal services to individuals. According to this bill some of these private institutions could get some of this money to continue this type of fight and keep harassing these hospitals who say as a matter of policy they are not going to permit abortions in their institutions. This is a perfecting amendment. I hope it is adopted.

In response to the demand of Rep. Roncallo, a recorded vote was then taken on accepting the Froehlich amendment to the Hogan amendment. The vote was 316-53 in favor. 97 Cong. Rec. H5130-H5131 (daily ed., June 21, 1973).

A vote was then taken on whether to accept the Hogan amendment, as amended by the Froehlich amendment, to H.R. 7824. By voice vote, the "noes" appeared to have it, the apparent effect of which would have been to defeat the Hogan Amendment. 97 Cong. Rec. H5131 (daily ed., June 21, 1973). However, Rep. Hogan demanded a recorded vote, which, when taken, resulted in a 301-68 vote in favor of accepting the Hogan Amendment 97 Cong. Rec. 5131 (daily ed., June 21, 1973)

A non-recorded affirmative vote was given once more to the Hogan amendment in response to a request for a separate vote from Rep. Abzug. See 97 Cong. Rec. H 5137 (daily ed., June 21, 1973). H.R. 7824, with the Hogan amendment (as amended by the Froehlich amendment) added, was then passed by the House, 276-95. 97 Cong. Rec. H5137 (daily ed., June 21, 1973).

The Senate, on January 31, 1974, passed H.R. 7824, but not before substantially rewriting the House version. Included in the rewrite was a January 30 amendment concerning the participation of Legal Services Attorneys in abortion litigation. Senator Bartlett submitted the amendment, which prohibited Legal Services Corporation funds from being used

> (7) To provide legal assistance with respect to any proceeding or litigation which seeks to procure an abortion unless the same be necessary to save the life of the mother, or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion contrary the the religious beliefs or moral convictions of such individuals or institutions.

(7 Cong. Rec. S824 (daily ed., Jan 30, 1974))

Senator Bartlett then submitted the following remarks on his amendment (7 Cong. Rec. S824-S825 (daily ed., Jan. 30, 1974)):

> Mr. BARTLETT. Mr. President, the continuation of the legal services program in its present form means the continued Federal funding of a program which is an anathema to a substantial portion of the American taxpayers.
>
> Since its inception the legal services program has been active in the pursuit of State and Federal laws prohibiting abortion. They have beaten the drums politically and legally for change in our abortion laws.
>
> Unfortunately they, and other parties, have been quite successful. As we all

know the U.S. Supreme Court has negated all State antiabortion laws.

However, there remains some private bastions protected from the dictates of the Supreme Court that abortions be performed. Many hospitals around the Nations and many doctors are saying no to the performance of abortions.

Some of the legal services attorneys now have their sights on these disenters who because of conscience have said no.

Mr. President, the record on the activities of the legal services lawyers on abortion issues is long.

In 1969 OEO funded a national legal program on health problems of the poor located at the University of California at Los Angeles. This was designed as a backup center to provide supportive services including collaboration in litigation involving health issues, development of materials for the use of legal services attorneys and the coordination of efforts in health law by legal service attorneys. In October 1969 the national legal program on health problems of the poor addressed all legal services lawyers on the subject, of a then recent California Supreme Court decision rendering an abortion statute unconstitutional. They said:

> Legal Services attorneys should begin scrutinizing the impact of state abortion laws on their clients and should assert the rights of their clients before hospital abortion committees (if counsel is even permitted to appear before such committees)—consideration should be given to the filing of affirmative actions. The National Legal Program on Health Problems of the Poor will be glad to offer assistance to you with regard to any of these matters.

Legal services lawyers were quick to take up the challenge and abortion suits were filed in numerous States.

In my own hometown in February 1971 the Tulsa Legal Aid Society filed a brief arguing that the Oklahoma abortion law was unconstitutional, again financed by Federal dollars.

Mr. President, twice in recent elections the people have spoken on how they feel about abortion. Last November, the citizens of Michigan rejected legalized abortion by a 3 to 2 margin, and North Dakota rejected a similar amendment by 3 to 1.

My amendment would prohibit legal services attorneys from involving themselves with abortion issues. I have no idea of the percentage but it is obvious from the North Dakota and Michigan vote that a substantial number of our citizens are opposed to abortion on demand. We should not be using their tax dollars to fund abortion advice and litigation programs.

I know the legal services lawyers can find many productive areas in which they can be helpful to the poor without including advice of dubious value concerning abortion procurement.

Mr. President, I hope that my amendment will be accepted. I urge my colleagues to support it. I believe that it is consistent with the ideas of many Senators as to the confines of legal services action and I hope that it will be acceptable to those on the other side.

Mr. JAVITS. Mr. President, will the Senator from Oklahoma yield?

The following colloquy then occurred among Senators Bartlett, Javits and Nelson (7 Cong. Rec. S825-S826 (daily ed., Jan. 30, 1974)):

Mr. BARTLETT. I yield.

Mr. JAVITS. May I ask the Senator to yield on his time as I am going to need every minute of my time.

Mr. BARTLETT. I am glad to yield to the Senator on my time.

Mr. JAVITS. May I ask the Senator this question——

The VICE PRESIDENT. The Chair would advise the Senator that time can only be yielded by one Senator to another, under the rule, by unanimous consent. Is there objection?

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator from New York will state it.

Mr. JAVITS. Where a Senator yields to another Senator for a question, which is entirely within the rules, is any such consent necessary?

The VICE PRESIDENT. A Senator may yield for a question, but may not yield his time.

Mr. JAVITS. I understand that. I asked the Senator from Oklahoma to yield to me for a question, and he has done so, as I understand it.

Senator BARTLETT, would you tell us this: Your amendment uses the word "or" at the beginning of line 4 of the amendment after the word "mother". Is that a disjunctive or a conjunctive?

The reason for asking that is this: Is it the purpose of the Senator's amendment to prevent legal services from compelling anyone to do anything, either the prospective patient or the hospital, or the doctor, and so forth, from acting in respect to, "an abortion contrary to the religious beliefs or moral convictions of such individuals or institutions," we have done that here a number of times. If the Senator's purpose, on the other hand, is to make that disjunctive to cover the first three lines, that raises the direct question of action for a poor person to enable that person to do what he may wish to do.

May we know what is the Senator's purpose, because that word "or" could be construed either way, either as conjunctive or disjunctive.

Mr. BARTLETT. The Senator is speaking of the first word on line 4, the "or" and not the second? The would be conjunctive. But I want to make certain that we are still—let me ask the Senator a question——

Mr. JAVITS. Yes.

Mr. BARTLETT. You would not interpret this provision, or this provision using the word "or" as conjunctive to permit the legal services to make a class action in favor of abortion and that kind of thing which has been done? The Senator is speaking more of the individual case, of a mother pursuing her desires.

Mr. JAVITS. That is correct. Well, a class action would have to proceed against an institution. What we are doing is saying that we may not have legal services start such a class action to make an institution do something contrary to the religious beliefs or moral convictions which prevail in that institution. Obviously, of course, an institution has no mind of its own——

Mr. BARTLETT. Right.

Mr. JAVITS. But if that is the thrust of it, I think, with the understanding that we may have to make that thrust clear in conference, personally I see no objection to it; but perhaps the manager of the bill would have a different view.

I might say to the Senator from Wisconsin that, as I construe it, what the Senator is seeking to do is to prevent legal services from being used to compel an individual or an institution from doing something with respect to abortion which is against the religious beliefs or the moral convictions of that individual or that institution.

Mr. NELSON. Is that part of the law now?

Mr. JAVITS. There is nothing specific in the law——

Mr. NELSON. As to legal services there is nothing in the existing law.

Mr. JAVITS. I have no doubt that they do no such thing under the current program.

Mr. NELSON. But we have adopted similar provisions in other legislation.

Mr. JAVITS. We have. The distinguished Senator from Idaho (Mr. CHURCH) has been the principal author of those provisions.

Mr. NELSON. Is the Senator making or suggesting a modification?

Mr. JAVITS. The only other modification I was going to suggest to the Senator is what has been pretty much the rubric in these matters, to save the life or to protect the health of the mother. But I have to leave that to the Senator, in view of the fact that we are under strict rules regarding other amendments than the one the Senator has proposed.

Mr. BARTLETT. If I understand it correctly, in line 3, it says "unless the same be necessary to save the life of the mother,".

Mr. JAVITS. And we would write in there—that is, if the Senator wishes to follow the suggestion I am making, "or to protect the health" of the mother.

Mr. BARTLETT. Well, I think we could discuss that. I think the problem there is the definition that has been used as to the meaning of "health." We might have to define the terms.

Mr. JAVITS. We could say "to protect a serious threat to the health of the mother."

Mr. BARTLETT. I feel that this expresses it the way most people would look on it. The Senator is getting into the argument of the Supreme Court about the health of the mother, which of course has been interpreted in such a way that her health can possibly be her desires and her general feeling and not her physical health.

Mr. JAVITS. May I say, Senator, if it were her desires, this amendment would not apply, because the amendment says it is "contrary to the religious beliefs or moral convictions of such individuals or institutions." If it were contrary to her religious beliefs of moral convictions she undoubtedly would not be consenting. I am thinking of a situation short of death where we might have a very serious intent.

Mr. BARTLETT. I should like to advise the Senator from New York that it really expresses what I wish to convey

there. I think it is a very proper provision. I have real concerns with the use of the word in this instance, because of the way it has been defined and interpreted, which is contrary to most people's beliefs.

Mr. JAVITS. The Senator from California (Mr. CRANSTON) has just suggested to me, and while I have the floor I will do it for him, that it would be clearer that the word "or" at the beginning of line 4 of the amendment be conjunctive and not disjunctive, if in line 6 of the amendment, a comma were to be inserted after the word "abortion". Would the Senator read it from that point of view and see whether he would agree?

Mr. BARTLETT. The Senator is suggesting a comma after the word "abortion"?

Mr. JAVITS. On line 6, so that it would read "or provide facilities for the performance of an abortion, comma, contrary to".

Mr. BARTLETT. Yes. I think that would be agreeable.

Mr. JAVITS. The Senator would need to ask unanimous consent to make that change.

Mr. BARTLETT. Mr. President, I ask unanimous consent to insert a comma after the word "abortion" on line 6 of my amendment.

The VICE PRESIDENT. Without objection, the modification is so made.

Mr. JAVITS. Mr. President, I have no further comments. I have made my comments.

Mr. NELSON. Mr. President, a similar amendment was adopted on the floor of the House by a large vote so that the issue is in conference. There is some difference in language. We are going to have to deal with the issue in conference whether this is adopted or not. I have no objection to taking the amendment to conference.

The Bartlett amendment, as modified by Javits, was then agreed to. 7 Cong. Rec. S826 (daily ed. Jan 30, 1974). On January 31, 1974, the Senate then passed H.R. 7824, 69-17 (8 Cong. Rec. S1012 (daily ed. Jan. 31, 1974)). The bill now awaits House action.

Hogan Discharge Amendment

On July 10, 1973, Rep. Larry Hogan presented a motion to discharge subcommittee no. 4 of the House Judiciary Committee from the consideration of H.J. Res. 261, which Rep. Hogan introduced on January 10, 1973. H.J. Res. 261 is a proposed constitutional amendment intended to nullify the U.S. Supreme Court's abortion decision of Roe v. Wade, 410 U.S. 113 (1973).

Under clause 4 of House Rule XXVII, if a bill has been referred to a legislative committee for thirty days without its having been reported, it is in order for any member to file a discharge petition. The petition lies at the desk for signatures of members. A discharge petition requires the signatures of a majority of the House membership (218) before further action may take place. Thereafter,

> [i]f 218 members sign a discharge petition it then goes on the Discharge Calendar which is privileged business the second and fourth Mondays of each month. When the bill has been on the Calendar of Motions to discharge Committees for seven days, it is in order on the correct Monday for any member who has signed the petition to move that the committee be discharged of its consideration of the bill in question. Debate is for 20 minutes, divided equally between proponents and opponents, after which a vote is in order. If the motion to discharge the committee is adopted, it is then in order for any member who has signed the petition to move the immediate consideration of the bill which has been discharged. If the motion carries, it shall be in order to consider the bill under the general rules of the House. If consideration of the bill is left unfinished at adjournment, it shall become the unfinished business of the House until disposed of. If the House votes against immediate consideration, or the motion for immediate consideration is not made, the bill goes to the appropriate calendar to which it would have been referred had the committee reported the bill and it has the same privilege as if it had been reported. If the motion to discharge the committee is defeated, no further motion to discharge any committee of a substantially similar bill may be acted upon during that session of Congress. (See Froman, The Congressional Process: Strategies, Rules and Procedures 91 (1967); See also Riddick, Congressional Procedure 293 (1941).

As of this writing, the Hogan discharge petition has not received the required signatures of a majority of the members of the House.

Select Legal Analysis of Congressional Abortion Action

Proposed Constitutional Amendments

As noted earlier in this report, there have evolved three different types of proposed constitutional amendments, each of which is intended to nullify the Wade and Bolton decisions. H.J. Res. 261, S.J. Res. 119 and H.J. Res. 427, also discussed earlier, are representative of these three types of a amendments. Below we contrast and compare H.J. Res. 261 and S.J. Res. 119. H.J. Res. 427 is totally dissimillar and will be discussed subsequently.

H.J. Res. 261 and S.J. Res. 119 Contrasted and Compared

	H.J. Res. 261	S.J. Res. 119
This amendment applies to ...	"any human being, from the moment of conception"	"all human beings, including their unborn offspring at every stage of their biological development, irrespective of age, health, function or or condition of dependency."
and is intended to prohibit abortions by providing that...	[n]either the United States nor any State shall deprive any human being, from the moment of conception, of life without due process of law, nor deny to any human being, from the moment of conception, within its jurisdiction, the equal protection of the laws."	the word "person", as that word is used in the Fifth and Fourteenth Amendments to the Constitution shall be read to include the above.
Some abortions may be permitted, however, inasmuch as this amendment...	may possibly be read to permit abortions which are consistent with "due process", i.e. where the mother's life is endangered by continuing the pregnancy.	specifically provides in Sec. 2 that "This article shall not apply in an emergency when a reasonable medical certainty exists that continuation of the pregnancy will cause the death of the mother."
This amendment purports to reach the problem of euthansia by...	specifically providing in Sec. 2 that "[n]either the United States, nor any state, shall deprive any human being of life on account of illness, age or incapacity."	extending protection, as noted above, to every human being irrespective of "age, health, function, or condition of dependency."

	H.J. Res. 261	S.J. Res. 119
It is possible that this amendment prohibits only abortions performed by the State or those working closely with the State inasmuch as this amendment...	applies only to the "United States" or "any state."	employs the Fifth and Fourteenth Amendments to protect the unborn, which Amendments have generally been held to protect only against the invasion of rights by government action; not the action of private individuals.
It may be therefore, that aboritons performed by wholly private means are not affected by either amendment.		
It may be that the use of intrauterine devices (IUD's) or other drugs or devices, which cause the expulsion of the fertilized egg from a woman's body, may be suspect under this amendment because...	this amendment invests the unborn with the constitutional right to life "from the moment of conception;"	this amendment invests the unborn with constitutional rights "at every stage of their biological development", the first stage of which is, arguably, conception. However, it is not clear whether this interpretation of "biological development" will be adopted in every instance.
With respect to the rights of the unborn unrelated to the "right to life", or abortion, this amendment appears...	to insure that the unborn are not denied the equal protection of the laws-a guarantee which may in validate many laws which distinguish between the unborn and those born and alive. The effect of this interpretation may be to force states to grant statutory rights and privileges to the unborn in all areas of the law such as family law, probate, torts etc.	not to guarantee anything more than "the right to life" to the unborn. Sec. 1 of the amendment states that it applies only "with respect to the right to life."

	H.J. Res. 261	S.J. Res. 119
The enabling clause of this amendment; Sec. 3,...	permits both Congressional and state enforcement. There may be a question as to the propriety of giving the States enforcement power equal to that of the Congress; however, the Supremacy Clause of the constitution may very well insure that Congress achieves the statutory implementation of the amendment as it deems correct-in spite of contradictory State implementing legislation.	permits both Congressional and State enforcement. There may be a question as to the propriety of giving the States enforcement power equal to that of the Congress; however the Supremacy Clause of the constitution may very well insure that Congress achieves the statutory implementation of the amendment as it deems correct-in spite of contradictory State implementing legislation. It should be noted, however, that the phrase "within their respective jurisdictions" augers the possibility that States may be the final judge of implementing this amendment in their "respective jurisdictions" and that Congress may be restricted in its enforcement of this amendment to relying only on the express powers in the Constitution, and may not rely on this amendment as granting plenary power for enforcement.

H.J. Res. 427 purports to reinvest the States with plenary power to statutorily regulate abortion. The effect of the amendment would presumably be to read out of the Constitution those restrictions on such state regulation which the Supreme Court in Wade and Bolton justified through interpretation of the Fourteenth Amendment. In effect, the Wade and Bolton decisions would be reduced to nullities and regulation of abortion in this country would most probably return to the status quo ante Wade and Bolton.

Efforts to Prohibit Federal Funds From Being Used to Pay For or Assist the Receipt of Abortions

Amendments have been attached to both the Social Security Amendments of 1973, see this report at ___, supra, and The Legal Services Corporation Act, see this report at _____, supra, to insure that the benefits made generally available by both those measures are not made particularly available to pay for or assist the receiving of an abortion. These and any similar such efforts raise serious constitutional questions in light of Wade and Bolton.

Generally, "the test of equal protection is whether the legislative line that is drawn bears some rational relationship to a legitimate governmental purpose." U.S. Dept. of Agriculture v. Moreno, 413 U.S. 528, 540 (1973); Weber v. Aetna Casualty and Surety Co., 406 U.S. 164, 172 (1972). The Social Security Amendments of 1973 and The Legal Services Corporation Act carry amendments which would exclude indigent pregnant females, who seek abortions, from receiving, respectively, payments through medicaid and the services of poverty attorneys. It is questionable whether either of these exclusionary classifications satisfy any governmental purpose inasmuch as (1) medicaid is basically intended to provide broad medical care to the poor and (2) the Legal Services Corporation is intended to, generally, provide financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal

assistance. The saving of welfare costs is questionable as a justification. Shapiro v. Thompson, 394 U.S. 618, 633 (1969). Similarly, the state has no justifiable interest in the unborn, prior to viability. Roe v. Wade, 410 U.S. 113, 163 (1973). Any supposed interest in fostering morality is dubious, U.S. Dept. of Agriculture v. Moreno, 413 U.S. 528, 535 n.7 (1973) and is probably devoid of justification inasmuch as abortion is basically legal through approximately the first six months of pregnancy. Roe v. Wade, supra. Thus, as the federal government may not exclude "hippie communes" from the food stamp program, U.S. Dept of Agriculture, supra, it is highly questionable whether the Congress can particularly exclude abortion-related services from federal programs where that exclusion serves no justifiable governmental purpose. "If a law has 'no other purpose... than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional.'" Shapiro v. Thompson, 394 U.S. 618, 631 (1969); United States v. Jackson, 390 U.S. 570, 581 (1968).

While the above analysis indicates that abortion-related classifications in the Social Security Amendments of 1973 and the Legal Services Corporation Act may be devoid of any "rational" relationship to a permissible governmental interest, it should be remembered that the right to an abortion, as defined in Wade, appears to be a "fundamental" constitutional right. Roe v. Wade, 410 U.S. at 152. Such a characterization requires that legislation interfering with such a right show *more* than merely a "rational" relationship to a permissable governmental interest. "Where certain 'fundamental rights' are involved, the court has held that regulation limiting these rights may be justified only by a 'compelling state interest.'" Roe v. Wade, 410 U.S. at 155 (citing authorities). It remains questionable whether such Congressional action is justified under either the "rational basis" or "compelling state interest" tests.

JUDICIAL ACTION

Subsequent to the Supreme Court decisions in Wade and Bolton, portions or all of numerous state abortion laws were declared invalid, either per se or as applied to certain facts. Several issues, not directly decided in Wade or Bolton, were considered in many of these decisions: Abortions by non-physicians; the dissemination of birth control or abortion information; welfare payments for abortions; spousal and parental consents to an abortion; the refusal of private and public hospitals to perform abortions, --these and other issues were discussed by many decisions.

We commence below a summary discussion of the above mentioned issues as those issues have been addressed by federal and state court abortion-related decisions since Wade and Bolton. Prior decisions are, however, occasionally referred to. While this summary should prove informative, individual judicial decisions must be consulted to discern the precise impact in any given jurisdiction. Similarly, this summary should not be used to predict the outcome or result of prospective problems or litigation.

State Restrictive Abortion Statutes Held Unconstitutional

The impact of the Wade and Bolton decisions was not long in coming. Literally within days actions were brought challenging state abortion laws similar to those struck down in TEXAS and GEORGIA by, respectively, Wade and Bolton. In alphabetical order, State statutes were struck down in ARIZONA, Nelson v. Planned Parenthood Center of Tucson, Inc., 19 Ariz. App. 142, 505 P. 2d 580 (Ariz. Ct. App. 1973); See also State v. Wahlrab, 19 Ariz. App. 552, 509 P. 2d 245 (Ariz. Ct. App. 1973); ARKANSAS, May v. Arkansas, 492 S.W. 2d 888 (Ark. Sup. Ct. 1973) cert. den. 42 U.S.L.W. 3290 (U.S. Nov. 13, 1973)(No. 73-355); COLORADO, People v. Norton, 507 P. 2d 862 (Col. Sup. Ct. 1973); CONNECTICUT, Abele v. Markle, Civ. Nos. 14,291 and B-521 (D. Conn. April 26, 1973); KENTUCKY, Sasaki v. Commonwealth, 407 S.W. 2d 713 (Ky. Ct. App. 1973); ILLINOIS, Doe v. Scott, No. 70-C-395 (N.D. Ill. March 1, 1973); See also People v. Frey, 54 Ill. 2d 28, 294 N.E. 2d 257 (1973) and People v. Bell, 10 Ill. App. 3d 533, 294 N.E. 2d 711 (Ill. Ct. App. 1973); IOWA, Doe v. Turner, 361 F. Supp. 1288 (S.D. Iowa 1973); MAINE, Merola v. Erwin, Civ. No. 13-180 (D. Me. Feb. 20, 1973); MARYLAND, Vuitch v. Hardy, 473 F. 2d 1370 (4th Cir. 1973) cert. den. 42 U.S.L.W. 3194 (U.S. Oct. 9, 1973) (No. 72-1542); MASSACHUSETTS, Women of the Commonwealth v. Quinn, No. 71-2420-W (D. Mass. Feb. 21, 1973); MICHIGAN, Doe v. Kelly, Civ. No. 37444 (E.D. Mich. Feb. 22, 1973); See also People v. Bricker, 389 Mich. 524, 208 N.W. 2d 172 (1973) and Larkin v. Cahalan, 389 Mich. 533, 208 N.W. 2d 176 (1973) and People v. Nixon, 212 N.W. 2d 797 (Mich. Ct. App. 1973); MINNESOTA, State v. Hultgren, 204 N.W. 2d 197 (Minn. Sup. Ct. 1973) and State v. Hodgson, 204 N.W. 2d 199 (Minn. Sup. Ct. 1973); MISSISSIPPI, Spears v. State, 278 So. 2d 443 (Miss. Sup. Ct. 1973); MISSOURI, Rodgers v. Danforth, Civ. No.

18360-2(W.D. Mo. May 18, 1973); Aff'd 42 U.S.L.W. 3305 (U.S. Nov. 20, 1973)(No. 73-426); MONTANA, Doe v. Woodahl, 360 F. Supp. 20 (D. Mont. 1973); NEBRASKA, Doe v. Exon, Cir. No. 71-L-199 (D. Neb. Feb. 21, 1973); NEW MEXICO, State v. Strance, 84 N.M. 670, 506 P. 2d 1217 (N.M. Ct. App. 1973); OHIO, Doe v. Brown, Civ. 73-46 (S.D. Ohio Feb. 14, 1973); See also State v. Kruze, 34 Ohio St. 2d 69, 295 N.E. 2d 916 (1973); OKLAHOMA, Henrie v. Derryberry, 358 F. Supp. 719 (N.D. Okla. 1973); See also Jobe v. State, 509 P. 2d 481 (Okla. Ct. Crim. App. 1973); OREGON, Benson v. Johnson, Civ. No. 70-226 (D. Ore. Feb. 28, 1973); PENNSYLVANIA, Commonwealth, v. Page, 303 A. 2d 215, (Pa. Sup. Ct. 1973); See also Commonwealth v. Jackson, 312 A. 2d 13 (Pa. Sup. Ct. 1973) and Ryan v. Specter, 360 F. Supp. 1037 (E.D. Pa. 1973); RHODE ISLAND, Doe v. Israel, 358 F. Supp. 1193 (D.R.I. 1973); see also Doe v. Israel, 482 F. 2d 156 (1st Cir. 1973); SOUTH CAROLINA, State v. Lawrence, 198 S.E. 2d 253 (S.C. Sup. Ct. 1973); SOUTH DAKOTA, State v. Munson 206 N.W. 2d 434 (Sup. Ct. S.D. 1973); TENNESSEE, Tennessee Woman v. Pack, Civ. No. 6538 (M.D. Tenn. Feb. 1, 1973); TEXAS, in addition to Roe v. Wade, 410 U.S. 113 (1973) see also Thompson v. State, No. 44071 (Tex. Ct. Crim. App. 1973); UTAH, Doe v. Rampton, No. C-217-73 (D. Utah Sept. 7, 1973). While each decision noted above had the effect of invalidating an abortion statute, the decision in each instance must be consulted to discern the precise impact of the decision in the jurisdiction noted.

Decisions Concerning Abortions by Non-Physicians

Several state court abortion decisions since Wade and Bolton have addressed the issue of whether non-physicians are punishable under state restrictive abortion statutes. The PENNSYLVANIA Supreme Court has held that that state's abortion statute is unconstitutional on its face and is thus not available to punish a non-physician for performing an aboortion. Commonwealth v. Page,

303 A. 2d 215 (Pa. Sup. Ct. 1973); Commonwealth v. Jackson 312 A. 2d. 13 (Pa. Sup. Ct. 1973). Similar results were achieved in People v. Frey, 294 N.E. 2d 257 (Ill. Sup. Ct. 1973) (ILLINOIS) and State v. Hultgren, 204 N.W. 2d 197 (Minn. Sup. Ct. 1973) (MINNESOTA). A contrary conclusion, however has been reached in other decisions. In May v. Arkansas, 492 S.W. 2d 888 (Ark. Sup. Ct. 1973) Cert. den. 42 U.S.L.W. 3290 (U.S. Nov. 13, 1973) (No. 73-355) the ARKANSAS Supreme Court upheld the conviction of a non-physician under that State's restrictive abortion statute on the ground that the Supreme Court decisions in Wade and Bolton "contemplate the performance of abortions only by licensed physicians." 492 S.W. 2d at 889. A similar holding was issued in MICHIGAN. People v. Bricker, 389 Mich. 524, 208 N.W. 2d 179 (1973).

In Spears v. State, 278 So. 2d 443 (Miss. Sup. Ct. 1973) the MISSISSIPPI Supreme Court upheld the conviction of a non-physician for performing an abortion. Unlike the statutes in either Page, Frey, Hultgren, or May, supra, the abortion statute at issue in Spears permitted abortions only where performed by a "duly licensed, practicing physician." In State v. Haren, 124 N.J. Super. 475, 307 A. 2d 644 (N.J. Super. Ct. 1973), it was held that a laymen may be criminally liable under NEW JERSEY'S restrictive abortion statute in as much as

> the [U.S.] Supreme Court never intended that Roe be applied so as to compel the voiding of a criminal abortion statute or the termination of criminal proceedings thereunder where the moving party is not a licensed physician.

See also State v. Strance, 84 N.M. 670, 506 P. 2d1217, 1220 (1973) (NEW MEXICO); People v. Norton, 507 P. 2d 862, 863-864 (Colo. Sup. Ct. 1973).

Possibly persuasive on the question is the denial of certiorari by the U.S. Supreme Court in Cheaney v. Indiana, 410 U.S. 991 (1973). There, the Court refused to rehear an INDIANA Supreme Court decision upholding the

conviction of a non-physician for performing an abortion. While denials of certiorari usually import "no expression of opinion upon the merits of the case" United States v. Carver, 260 U.S. 482, 490 (1923) compare Brown v. Allen, 344 U.S. 443, 542-543 (1953) (Jackson, J., concurring) the Cheaney decision may portend more than is at first evident. Justice Douglas believed that denial of certiorari in Cheaney was justified inasmuch as "the decisions... in Wade... and... Bolton ...were confined to the condition, inter alia, that the abortion, if performed, be based on an appropriately safeguarded medical judgment." 410 U.S. 991. The Cheaney decision may, indeed, be "cryptic." See State v. Haren, 124 N.J. Super. 475, 307 A. 2d 644, 646 (N.J. Super. Ct. 1973).

Decisions Concerning Dissemination of Birth Control/Abortion Information

The Wade and Bolton decisions effectively legitimized abortions in the early months of pregnancy. Subsequent decisions have focused on the question of whether statutes which prohibit the dissemination of birth control and abortion information continue to be valid. In Associated Students v. Attorney General, No. 72-1327 (C.D. Cal. Nov. 28, 1973), students of the University of California at Riverside sought to send unsolicited information regarding contraceptive devices and abortion through the U.S. mail. The local Postmaster declared the material "nonmailable" matter and refused to mail the material. The students then brought an action challenging the constitutionality of (a) those portions of 18 U.S.C. §1461 which provide that information concerning abortion is "nonmailable matter" and make the knowing use of the mails for such matter a crime, and (b) the provisions of §1461 which, together with 39 U.S.C. §3001(e), make the mailing of unsolicited advertisements of birth control devices a crime.

The three-judge federal court in Associated Students recognized that "any system of prior restraints of expression bears a heavy presumption against its constitutional validity" and that the government "thus carries a heavy burden of showing justification for the impositon of such a restraint." Indeed the Court stated that

> [i]ndividuals have a fundamental right to privacy and personal choice in matters of sex and family planning, and this right encompasses not only the abortion decision, but also the decision regarding whether and what types of methods of contraception and family planning may be used to prevent conception.

The government did not challenge such interests and, indeed, chose not to defend the constitutionality of the statutes at issue or to advance an interest of the government which may have justified application of the statutes in the case before the court. The court was left to speculate that "preventing the

commercialization of a medical service might be a legitimate governmental interest." Noting, however, the distinction between "commercial solicitation on one hand and informative editorializing on the other", the Court found that the work of the students fell into the latter category, thus vitiating any interest the government may have had in regulating a commercial endeavor. The materials at issue, the court stated, "express a position on social policy and criticize many of the prevailing family planning ideas. They are classic examples of non-commercial speech. "It is thus apparent" the Court concluded, "that the Post Office has attempted to expand the term 'advertisement' (and those words used in conjunction with that term in the statutes) beyond their commercial sense. Such expansion offends the First Amendment." See also the pre Wade and Bolton decisions in Atlanta Cooperative News Project v. United States Postal Service, 350 F. Supp 234 (N.D. Ga. 1972) and Mitchell Family Planning Inc. v. City of Royal Oak, 335 F. Supp. 738 (E.D. Mich. 1972).

It was similarly held in Comprehensive Family and Therapeutic Abortion Association v. Mitchell, No. Civ-71-725 (W.D. Okla. Mar. 12, 1973) that "the provisions of title 18 U.S. Code 1461 and 1462 insofar as they relate to abortions are unconstitutional."

It was held in Doe v. Brown, Civ. No. 73-46 (S.D. Ohio Feb. 14, 1973) that Ohio's statute prohibiting the possession or distribution of drugs for procuring an abortion was unconstitutional in that

> it criminally proscribes the possession or distribution of the means for the performance of a legal act; that is an abortion legally performable in conformity with the criteria established in [Wade and Bolton].

However, a similar Michigan statute was upheld in Larkin v. Cahalan, 389 Mich. 533, 208 N.W. 2d 176 (1973) where the statute limited distribution pursuant to a prescription of a physician.

A Utah statute prohibiting the solicitation and advertising of abortions was struck down inasmuch as it would prevent "at all stages of pregnancy, women from seeking, and doctors from offering to perform, abortions." Doe v. Rampton, 366 F. Supp. 189, 193 (D. Utah 1973).

Bound by "the United States Supreme Court's interpretation of the United States Constitution" in Roe v. Wade and Doe v. Bolton, an Arizona Court of Appeals decision declared the following Arizona statute unconstitutional:

> A person who willfully writes, composes or publishes a notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or for prevention of conception, or who offers his services by a notice, advertisement or otherwise to assist in the accomplishment of any such purposes, is guilty of a misdemeanor.
> Nelson v. Planned Parenthood Center of Tucson, Inc., 19 Ariz. App. 142, 505 P. 2d 580 (1973). See also State v. New Times, 20 Ariz. App. 183, 511 P. 2d 196 (1973)

A California Appeals Court in People v. Orser, 107 Cal. Rptr. 458 (Cal. Ct. App. 1973), struck down the following California state statute:

> Every person who willfully writes, composes or publishes any notice or advertisement of any medicine or means for producing or facilitating a miscarriage or abortion, or for the prevention of conception, or who offers his services by any notice, advertisement of otherwise, to assist in the accomplishment of any such purpose is guilty of a felony and shall be punished as provided in the Penal Code. It shall not, however, be unlawful for information about the prevention of conception to be disseminated for purposes of public health education by any person who is not commercially interested, directly or indirectly in the sale of any medicine or means which may be used for the prevention of conception.

The defendant in Orser had been arrested for disseminating oral and written information on how to obtain an abortion. Citing the Wade and Bolton decisions as well as recent California Supreme Court decisions invalidating much of that State's abortion statutes, the court in Orser struck the statute down for its failure to distinguish between illegal and legal abortions:

> [The statute's] broad language encompasses activity which is legal and activity which is illegal. By its terms it proscribes the advertising or publication of information concerning the obtaining of information permitted by law. It makes no distinction between the dissemination of advertising which is truthful and which calls attention to the means by which a legal abortion may be obtained and the advertising which calls attention to the means of obtaining an illegal abortion.

The Orser Court concluded:

> The effect of section 601 is not narrow and limited in its application so as to be directed to written matter dealing solely with illegal abortions but is equally applicable to written information concerning legal abortions. When a statute casts its net so broadly it is inappropriate to accept an invitation to balance the respective interests of the government and the citizen....Accordingly, because of its overbreadth, section 601 is unconstitutional.

A lengthy Rhode Island statute prohibiting abortion counseling was declared unconstitutional in Women of Rhode Island v. Israel, Civ. No. 4605 (D.R.I. Feb. 7, 1973). "[I]t must follow," said the Court, "that if the state cannot prohibit abortions during the first trimester of pregnancy...then it cannot under the First Amendment prohibit all abortion counseling." "Because [the Statute] prohibits activity which is lawful and constitutionally protected and because it is far from being a narrow, carefully drawn means serving the state's legitimate ends in this area, the statute must fall."

On September 1, 1972, the Virginia Supreme Court affirmed the conviction of one Bigelow for encouraging or prompting the procuring of abortions by an advertisement in a weekly newspaper. Bigelow v. Commonwealth, 213 Va. 191, 191 S.E. 2d 173 (1972). The decision was appealed to the U.S. Supreme Court. On June 25, 1973, the U.S. Supreme Court vacated the judgment of the Virginia Supreme Court and remanded the case for further consideration in light of the Wade and Bolton decisions. See 413 U.S. 909. On November 26, 1973, the Virginia Supreme Court again affirmed Bigelow's

conviction, even in light of Wade and Bolton. Bigelow v. Commonwealth, 200 S.E. 2d 680 (Va. Sup. Ct. 1973). The Virginia Supreme Court commented that neither Wade nor Bolton "mentioned the subject of abortion advertising." 200 S.E. 2d at 680. The Court concluded:

> Bigelow's is a First Amendment case. He was convicted not of abortion but for running in his newspaper a commercial advertisement for a commercial abortion agency. We held that government regulation of commercial advertising in the medical-health field was not prohibited by the First Amendment. We find nothing in the new decisions of Roe v. Wade and Doe v. Bolton which in any way affects our earlier view. So we again affirm Bigelow's conviction. (200 S.E. 2d at 680)

In relation to decisions involving similar issues, the Bigelow decision of the Virginia Supreme Court appears to be the lone recent decision which upholds state statutes restricting the dissemination of abortion information.

Decisions Concerning Medicaid and the Funding of Abortions

It appears that many State Medicaid agencies limit payments for abortions. See 2 Family Planning Population Reporter 82-83 (Aug. 1973). See also Note, Abortion on Demand in a Post-Wade Context: Must the State Pay The Bills? 41 Fordham L. Rev. 921, 933 n. 80 (1973). However, beginning with the pre-Wade decision in Klein v. Nassau County Medical Center, 347 F. Supp. 496 (E.D.N.Y. 1972), it has become increasingly doubtful whether such limitations are constitutional. At issue in Klein was the legality of an April 8, 1971 administrative letter of New York State Commissioner of Social Services, the effect of which was to remove "elective abortions not medically indicated" from the category of medicaid funded services defined under New York law as "necessary and medically indicated." The plaintiffs in Klein were three indigent women, all receiving public assistance and all unable to afford abortions. In as much as "[n]one of the plaintiffs indicate[d] the existence of facts which could support a showing that abortion was 'medically indicated' in her case," 347 F. Supp. at 498, none of the women, as a result of the April 8 letter, qualified to have their abortions paid for by Medicaid.

The Klein court, in holding that the letter was unconstitutional as a denial to indigent women of the equal protection of the laws to which they are constitutionally entitled, was cognizant of and disregarded an earlier New York State Court of Appeals decision upholding the April 8 letter. Matter of City of New York v. Wyman, 30 N.Y. 2d 537, 330 N.Y.S. 2d 385, 281 N.E. 2d 180 (1972). The Klein court believed that the New York criminal abortion law which permitted abortions, generally, within twenty-four weeks of the commencement of pregnancy, removed any justification which the state may have had in distinguishing "elective" abortions from all others. Reproduced below is that passage from the Klein decision which discusses the April 8 letter and its

violation of equal protection principles:

The directive, and the State statute, if interpreted as mandating the Commissioner's directive, would deny indigent women the equal protection of the laws to which they are constitutionally entitled. They alone are subjected to State coercion to bear children which they do not wish to bear, and no other women similarly situated are so coerced. Other women, able to afford the medical cost of either a justifiable abortional act or full term child birth, have complete freedom to make the choice in the light of the manifold of considerations directly relevant to the problem uninhibited by any State action. The indigent is advised by the State that the State will deny her medical assistance unless she resigns her freedom of choice and bears the child. She is denied the medical assistance that is in general her statutory entitlement, and that is otherwise extended to her even with respect to her pregnancy. She is thus discriminated against both by reason of her poverty and by reason of her behavioral choice. No interest of the State is served by the arbitrary discrimination; it reflects no genuine exclusion from benefit by operation of a classification founded on an identifiable state interest served by the denial of medical assistance. Certainly the denial of medical assistance does not serve the State's fiscal interest, since the consequence is that the indigent may then apply for prenatal, obstetrical and post-partum care and for prenatal support for the unborn child. Nor does the denial of medical assistance serve any supposed interest of the State in discouraging even justifiable acts of abortion; even if there were assurance that there is such a State interest—and the contrary appears to be the case—it could not be advanced by singling out the indigent for the species of discouragement here attempted. Boddie v. Connecticut, 1971, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113; King v. Smith, 1968, 392 U.S. 309, 333–334, 88 S.Ct. 2128, 20 L.Ed.2d 1118; *cf.* Eisenstadt v. Baird, *supra*, 405 U.S. at 452–453, 92 S.Ct. 1029, 31 L.Ed.2d 349.

(347 F. Supp. 500-501)

Klein was appealed to the U.S. Supreme Court where it was affirmed in part sub nom. Ryan v. Klein, 412 U.S. 924 and vacated and remanded in part sub nom. Commissioner of Social Services of New York v. Klein and Nassau County Medical Center v. Klein, for further consideration in light of Roe v. Wade and Doe v. Bolton, 412 U.S. 925.

In Doe v. Rose, No. C-169-73 (D. Utah May 30, 1973) the Utah State Department of Social Services was enjoined from (1) requiring as a pre-condition for payment that all applications for abortions by medicaid participants be submitted to the Department and (2) requiring as a precondition for payment that abortions being performed on medicaid recipients be "therapeutic." The court found, inter alia, that "[e]ach of the [three pregnant female] plaintiffs has a constitutionally protected right to receive an abortion," the necessity of which has been determined by consulting physicians, and that each of the plaintiffs would be irreparably injured if the challenged conduct was not enjoined.

In Poe v. Norton, Civ. No. 15,712 (D. Conn. April 4, 1973) Connecticut officials were restrained from refusing to reimburse hospitals for abortions with medicaid funds. The order was subsequently "clarified" and apparently limited to "medically indicated" abortions although the court stated that standards for determining what is medically indicated was not at issue. (The decision is reported here as it was noted in Abortion on Demand, supra, at 936 n. 100.)

Subsequent to the decisions in Roe v. Wade and Doe v. Bolton, Utah enacted a statute which provided that

> No public assistance grant, medical or otherwise, may be used for an abortion. No state funds may be used, expended or paid for abortions except where an abortion is necessary to save the life of the pregnant woman or to prevent serious and permanent damage to her physical health.

This provision and others were struck down in Doe v. Rampton, 366 F. Supp. 189 (D. Utah 1973). Speaking about the statute set out above, the court stated:

> [This section] is invalid because it would limit exercise of the right to an abortion by the poor in all trimesters, for reasons having no apparent connection to health of mother or child. The State may not so use its Medicaid program to limit abortions. Klein v. Nassau County Medical Center, 347 F. Supp. 496 (E.D. N.Y. 1972), aff'd subnom. Ryan v. Klein, 412 U.S. 924, 93 S. Ct. 2747, 37 L. ed. 2d 151 (1973); New Jersey Welfare Rights Organization v. Cahill, 411 U.S. 619, 93 S. Ct. 1700, 36 L. ed 2d 543 (1973)

Decisions Concerning the Legal Propriety of Requiring the Consent of Either the Father of the Fetus or the Parents of the Pregnant Woman Before an Abortion Will Be Performed

It appears from recent precedents that a state may not require that a woman obtain the consent of either the father of a fetus or her parents, as a precondition to her receiving an abortion. Coe v. Gerstein, Civ. No. 72-1842 (S.D. Fla. Aug. 14, 1973); Jones v. Smith, 278 So. 2d 339 (Fla. Dist. Ct. App. May 16, 1973); Doe v. Bellin Memorial Hospital, 479 F. 2d 756 (7th Cir. 1973); Doe v. Rampton, 366 F. Supp. 189, 193 (D. Utah, 1973); Matter of P.J. (Sup. Ct. for District of Columbia, Fam. Div., Feb. 6, 1973). In the Coe decision above, Florida required that, prior to performing an abortion, the physician obtain "the written consent of [the pregnant woman's] husband, unless the husband is voluntarily living apart from the wife" and "[i]f the pregnant woman is under eighteen years of age and unmarried,...the written consent of a parent, custodian or legal guardian..." While indicating that fathers and parents may, pursuant to a more narrowly drawn statute, exercise an effective consent perogative where their interest is compatible with the state's "concern for maternal health [from an after approximately the end of the first trimester of pregnancy] or the potential life of the fetus [from and after fetal viability]," the Court in Coe struck down the Florida statute, as worded, for its failure to be more specific:

> The failure of the Florida "spousal or parental consent" requirement is that it gives to husbands and parents the authority to withhold consent for abortions for any reason or no reason at all.

Summing up, the Court stated:

> As we learn from Roe v. Wade, supra, the State has no authority to interfere with a woman's right of privacy in the first trimester to protect maternal health nor can it interfere with that right before the fetus becomes viable in order to protect potential life. It follows inescapably that the State may not statutorily delegate to husbands and parents an authority the State does not possess.

In Jones v. Smith, supra, it was similarly held that a putative father was possessed of no interest which would justify a court in enjoining his pregnant girl friend from receiving an abortion. A similar conclusion was reached in Doe v. Bellin Memorial Hospital, 479 F. 2d 756, 759 (7th Cir. 1973) where the court, in declaring that a putative father was not an "indispensable party" to the case at bar, noted that

> [w]e find nothing... to support the suggestion that a woman's right to make the abortion decision is conditioned on the consent of the putative father.

In striking down a Utah abortion statute requiring the consent, where applicable, of (1) the husband, if the woman is married; (2) the husband at the time of conception; (3) the parents or guardian of an unmarried pregnant woman under eighteen and (4) the father of the fetus, the court in Doe v. Rampton, 366 F. Supp. 189, 193 (D. Utah Sept. 7, 1973), stated that the consent requirement is invalid because

> it subjects exercise of the individual right of privacy of the mother, in all abortions at all stages of pregnancy, to the consent of others.

The issue in Matter of P.J., supra, was whether a 17 year old pregnant female was required to obtain the consent of her mother before she could undergo an abortion. The mother, a minister in the Unity Holiness Church, would not give her consent, believing that abortion is contrary to the Commandment "Thou shalt not kill." The Court noted that the young pregnant female was "for

her years, a mature, knowledgable, quasi-emancipated person"; that if an abortion was not ordered by the court "she would act herself and either obtain such through illegal means or by personal attempt"; and that "[i]f she were to deliver the child or continue her pregnancy, her mental health would be severely impaired." Recognizing, therefore, that "[i]t is well settled that the preservation of a woman's life or health raises grounds for permitting an abortion and that the young girl was entitled to an abortion because rights guaranteed by the Constitution and the Bill of Rights apply to juveniles as well as adults", the Court granted relief and ordered an abortion be made available.

The Right to Refuse to Perform or Participate In Abortions and Sterilization

All abortion-related decisions discussing this issue to date have been concerned with the availability of institutional facilities. The question raised has been whether or not a hospital or some similar institution may refuse its facilities to those who seek abortions. Commentators generally agree that the possibility of an individual being compelled to perform or participate in an abortion is remote. "No civil libertarian could conceivably support a court order directing an unwilling physician to perform an abortion or sterilization which is religiously or morally impermissable to that individual." Gutman, Can Hospitals Constitutionally Refuse to Permit Abortions and Sterilizations?, 2 Family Planning-Population Reporter 146 (Dec. 1973). See also Action Kit for Hospital Law, Abortion: The Supreme Court's Attempt at a Solution, at 16-17 (Feb 1973); Nyberg v. City of Virginia, 361 F. Supp. 932, 939 (D. Minn. 1973).

The question of the availability of institutional facilities, however, has been the subject of several decisions. The evolving rule appears to be that a public hospital may not refuse facilities while a private hospital may.

In Hathaway v. Worcester City Hospital, 475 F. 2d 701 (1st Cir. 1973) and Nyberg v. City of Virginia, 361 F. Supp. 932 (D. Minn. 1973), the facilities at issue were public, municipal hospitals. The Hathaway hospital barred the use of its facilities for the performance of sterilizations while the Nyberg hospital refused to perform abortions except where necessary to save the life of the mother. The prohibitions in both hospitals were struck down.

The Hathaway court was impressed by the fact that "tubal ligations [sterilizations] involve no greater risk than appendectomies which the hospital regularly performs, and by inference, than the other listed procedures of like complexity which are also performed." 475 F. 2d at 705.

Noting that Wade and Bolton make clear that the issue of sterilization involves a "fundamental interest", the Hathaway court searched for a "compelling rationale to justify permitting some hospital surgical procedures and banning another involving no greater risk or demand on staff and facilities." Id. The court found none.

> [Bolton] therefore requires that we hold the hospital's unique ban on sterilization operations violative of the Equal Protection Clause of the Fourteenth Amendment.
>
> We are merely saying...that once the state has undertaken to provide general short-term hospital care, as here, it may not constitutionally draw the line at medically indistinguishable medical procedures that impinge on fundamental rights. (475 F. 2d at 706)

The Nyberg court was similarly persuaded to strike down an abortion ban inasmuch as other medical services were offered "which require no greater expenditure of available facilities and/or skills." 361 F. Supp. at 938. The hospital abortion ban in Nyberg was effected through Resolution No. 2606, adopted by the hospital administration, and which prohibited abortions in the hospital unless necessary to save the life of the mother. The court:

> Resolution No. 2606 takes no consideration of the separate trimesters of pregnancy period and is devoid of any apparent awareness of the varying degrees to which public interests may be imposed upon a pregnant woman in opposition to her private interests. There can be no other conclusion but that Resolution No. 2606 flies directly in the face of the holdings in Roe v. Wade and Doe v. Bolton, supra, and it therefore must be declared null and void. (361 F. Supp. at 939)

As opposed to public hospitals above, the decisions discussed below hold that private hospitals do not have to offer their facilities for an abortion or sterilization.

Before discussing those decisions, however, it should be pointed out that it is critical in most law suits seeking redress for a deprivation of any constitutional right to show that the defendant acted "under color of law", see 42 U.S.C. §1983 (1970 ed.); Adickes v. S.H. Kress & Co., 398 U.S. 144, 150 (1970), or was sufficiently impressed with "state action." See U.S. Const. Amend XIV; Civil Rights Cases, 109 U.S. 3, 11 (1883). Generally, under color of law has been treated as the same thing as state action. United States v. Price, 383 U.S. 787, 794 n. 7 (1966). Thus , a lawsuit demanding that a non-public hospital provide its facilities for an abortion or sterilization must overcome the threshold question of whether the action of the non-public hospital, in prohibiting abortion or sterilizations is done under color of law or is sufficiently impressed with state action. Prior to the Supreme Court's abortion decisions, several courts held that the receipt by a non-public hospital of federal aid, usually in the form of grants through the Hill Burton program, see 42 U.S.C. §§ 291-291z (1970 ed.), was sufficient, as one court stated, "to cloak a private hospital and its medical staff with a mantle of state law." Bricker v. Sceva Speare Memorial Hospital, 339 F. Supp. 234, 237 (D.N.H. 1972). See also Watkins v. Mercy Medical Center, 364 F. Supp. 799, 801 (D. Idaho 1973). However, recent decisions indicate that the receipt of Hill Burton funds, per se, is insufficient to impress a private facility with state action. Jackson v. Norton-Children's Hospitals, Inc. 487 F. 2d 502 (6th Cir. 1973). Relying on the this evolving doctrine, the courts in Doe v. Bellin Memorial Hospital, 479 F. 2d 756 (7th Cir. 1973) and Allen v. Sisters of St. Joseph, 361 F. Supp. 1212 (N.D. Tex. 1973) have held that private hospitals need not provide their facilities respectively, for abortions or sterilizations.

The Bellin court, while dissuaded from finding state action by the fact that the non-public hospital at issue received Hill-Burton funds, was more impressed with the language of the U.S. Supreme Court in the Bolton opinion.

There, the Bellin court maintained the Supreme Court condoned the refusal of individuals and denominational hospitals to perform abortions. The Supreme Court had before it, in Bolton, a Georgia statute which gave a hospital the right not to admit an aborton patient and giving any physician and any hospital employee or staff member the right, on moral or religious gouunds not to participate in the procedure. 410 U.S. at 184. The Bellin court noted the Supreme Court's alleged approval of this provision ("These provisions are obviously in the statute to afford appropriate protection to the individual and denominational hospital" 410 U.S. at 197) and then drew the following conclusion:

> Thus, we assume that there is no constitutional objection to a state statute or policy which leaves a private hospital free to decide for itself whether or not it will admit abortion patients or to determine the conditions on which such patients will be accepted. (479 F. 2d at 760)

The Court in Allen v. Sisters of St. Joseph relied substantially on that position of the Bellin decision which found no compulsion on the part of a private hospital to perform abortions merely because it received Hill-Burton funds. The Allen court stated:

> Admittedly this case involves a sterilization procedure, but the impact and holding of the [Bellin decision] was that acceptance of Hill-Burton funds does not automatically make the recipient an entity operating under the color of state law. This Court sees no distinction between abortion and sterilization insofar as the color of law question is concerned. It is the opinion of this Court that the Hill-Burton funds, welfare receipts, licensing procedures, and similar matters alleged by plaintiff to be the factors giving rise to the color of law action required by 42 U.S.C. §1983 are not sufficient and that the defendant in this case is not operating under color of law so as to give rise to a cause of action under 42 U.S.C.A. §1983. (361 F. Supp. at 1213)

STATE LEGISLATION

This portion of the report is intended to show the various ways in which many states have drawn abortion legislation in response to Wade and Bolton. To assist those who may be searching for model abortion statutes on which to rely in writing such legislation, reproduced below are two model acts. The first is a suggested act which appeared in an article in 26 Vanderbilt Law Review 823 (1973). The entire article, including the act, is reproduced. Following this article, is reproduced the Revised Uniform Abortion Act (1973), proposed by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association's House of Delegates at the 1974 mid-year meeting in Houston, Texas.

Proposed Model Abortion Statute

(Article and proposed statute excerpted in entirety from 26 Vanderbilt Law Review 823 (1973))

Abortion after *Roe* and *Doe*: A Proposed Statute

INTRODUCTION

On January 22, 1973, the United States Supreme Court ruled in *Roe v. Wade*[1] that the Texas criminal abortion statute, which proscribed all abortions except "for the purpose of saving the life of the mother,"[2] violated the constitutional right of privacy. Justice Blackmun, delivering the opinion of the Court, declared that the concepts of personal liberty and restrictions on state action provided by the fourteenth amendment supported a right of privacy "broad enough to encompass a woman's decision whether or not to terminate her pregnancy."[3] In a companion case, *Doe v. Bolton*,[4] the Court noted several impermissible procedural as well as substantive requirements and held unconstitutional substantial portions of the Georgia abortion statute.[5]

Since prior to *Roe* and *Doe* all but four states[6] had abortion statutes similar to either the Texas or Georgia provisions,[7] the Supreme Court's decisions effectively invalidated existing abortion statutes throughout the nation. In Tennessee this result was emphasized when a federal district court held that the state's provisions,[8] similar to the Texas statute, were unconstitutional in light of the *Roe* decision.[9] In response to the void created by *Roe* and *Doe*, students in the Legislation seminar of the Vanderbilt University School of Law have prepared the accompanying proposed legislation. Although the provisions of the Act are tailored to Tennessee, they are generally adaptable to the statutory scheme of any state.

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1. 93 S. Ct. 705 (1973).
2. TEX. PEN. CODE ANN. art. 1196 (1961). The Court's decision invalidated TEX. PEN. CODE ANN. arts. 1191-94, 1196 (1961).
3. Roe v. Wade, 93 S. Ct. 705, 727 (1973).
4. 93 S. Ct. 739 (1973).
5. GA. CODE ANN. §§ 26-1201 to -1203 (1972). Among the provisions declared unconstitutional were a requirement that abortions be performed in facilities accredited by the Joint Commission on Accreditation of Hospitals, when other hospitals were satisfactorily equipped and no distinction was made as to the other operations; mandatory approval of each abortion by a hospital committee established expressly for that purpose; the required concurrence by two doctors that the abortion should be performed; and a state residency requirement of ninety days. The substantive provisions of the statute, which were patterned after the ALI MODEL PENAL CODE § 230.3 (1962), were also declared invalid to the extent that they conflicted with the holding in *Roe*.
6. Prior to *Roe*, Alaska, Hawaii, New York, and Washington had enacted statutes which permitted abortion on demand. *See* ALASKA STAT. § 11.15.060 (1970); HAWAII REV. LAWS § 453-16 (Supp. 1972); N.Y. PENAL LAW § 125.05 (McKinney Supp. 1972); WASH. REV. CODE ANN. §§ 9.02.060 to 9.02.080 (Supp. 1972).
7. Roe v. Wade, 93 S. Ct. 705, 709 n.2, 720 n.37 (1973).
8. TENN. CODE ANN. §§ 39-301, -302 (1956).
9. Tennessee Woman v. Pack, No. 65-38 (M.D. Tenn., Feb. 1, 1973) (unreported).

During the preparation of this Act, no available model acts or legislative provisions responding to *Roe v. Wade* or *Doe v. Bolton* had yet been drafted. In addition to *Roe* and *Doe*, the drafters considered general case law dealing with abortion and medical procedures,[10] liberal abortion laws enacted prior to *Roe*,[11] interviews with physicians and attorneys familiar with the problems associated with abortion,[12] and general opinion concerning the procedure.[13]

Because the legislation is intended primarily to bring state regulation of abortion within the newly established constitutional limits, the sections restricting the performance of abortions closely follow the *Roe* guidelines.[14] Thus, there are no restrictions during the first trimester, other than those which apply to all medical procedures.[15] During the second trimester, abortions are controlled only to the extent that is desirable to promote the health of the mother. In the final trimester, the state's compelling interests in protecting both the mother and the fetus are recognized. To achieve greater clarity and precision, the Act rejects the "three month" or "viability" determinations of trimester in favor of successive twelve-week terms.

Specific provisions are included to protect the civil rights of those individuals involved in the abortion procedure. No physician may be required against his will to perform the operation. The consent of the woman on whom the operation is to be performed is required in every case, unless the woman is adjudged incompetent. Parental permission is required before an abortion may be performed on an unmarried minor.[16] The consent of the husband or father, however, is not made mandatory under any situation. Additionally, a section granting protec-

10. Recent developments, trends, and rules evident in the case law were analyzed. Reference to significant cases is made in the Comments to the Act.

11. *See* note 6 *supra.*

12. These interviews were helpful primarily in determining local practice.

13. Statistical surveys, historical studies, and informal observations were considered. *See, e.g.*, Yale Legislative Services, Attitudes on Abortion: A Survey of Connecticut Obstetricians and Gynecologists, March 1971 (unpublished); Means, *The Phoenix of Abortional Freedom: Is a Penumbral or Ninth-Amendment Right About to Arise from the Nineteenth-Century Legislative Ashes of a Fourteenth-Century Common-Law Liberty?*, 17 N.Y.L.F. 335 (1971).

14. Roe v. Wade, 93 S. Ct. 705, 732 (1973).

15. *E.g.*, TENN. CODE ANN. §§ 63-607, -608 (1956) (unlicensed practice of medicine proscribed).

16. The requirement of parental consent is one example of the effort to make the act attractive to a broad spectrum of legislators. In cases involving a minor, the parents of the minor generally seem to favor an abortion even when the minor herself does not. In light of this, it is not anticipated that any significant chilling effect on the rights of the minor female will result from this provision. Any arbitrary withholding of permission could be overcome by judicial intervention. Parental consent in the case of minors seems to be popularly desirable. *See, e.g.*, Yale Legislative Services, *supra* note 13, at 11.

tion from unauthorized disclosure of abortion records is provided. The Comments following each section indicate the intended policy, purpose, and scope of the provisions of the Act.

After the preparation of this Act, but before the drafters could present it to the Tennessee legislature, the state adopted an alternative statute that satisfies the requirements of *Roe*.[17] The drafters of this proposed legislation believe, nevertheless, that the scope and clarity of this Act recommend its consideration in other jurisdictions.

SECTION 1. SHORT TITLE. This Act shall be known and may be cited as the Tennessee Abortion Act.

SECTION 2. RULES OF CONSTRUCTION; PURPOSES.

(1) This Act shall be construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this Act are:

(a) to clarify the law regarding criminal abortions in the State of Tennessee;

(b) to bring regulations of abortions within limitations consistent with a woman's right to privacy under the Constitution of the United States;

(c) to protect the life and health of the mother and the life of the fetus within the limits of the Constitution of the United States.

Comment:

1. In Roe v. Wade, 93 S. Ct. 705 (1973), the United States Supreme Court ruled that a criminal abortion statute similar to the Tennessee statute violated the right to privacy guaranteed by the due process clause of the fourteenth amendment. Following *Roe*, in Tennessee Woman v. Pack, No. 65-38 (M.D. Tenn., Feb. 1, 1973), the Tennessee abortion statute was declared null and void. The Act was drafted in response to these judicial actions to provide the state with a reasonable and constitutional criminal abortion statute.
2. The Act, so far as is consistent with its language, should be interpreted in accordance with later developments in constitutional law.
3. A purpose of the Act is to protect the mother and the fetus under certain situations. Reasonable regulations contained in the Act are intended to provide the desired protection without violating individual rights.

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17. Pub. Ch. No. 235 (May 14, 1973), *replacing* TENN. CODE ANN. § 39-301.

SECTION 3. DEFINITIONS. **Unless the context otherwise requires, in this Act**

(1) "Abortion" means the intentional termination of a human pregnancy unless the intention is to produce a live birth or to remove a dead fetus.

(2) "Hospital" means each institution, place, building, agency or clinic represented and held out to the general public as ready, willing, and able to furnish care, accommodation, facilities, and equipment, for the use of one or more persons who may be suffering from deformity, injury, or disease, or from any other condition for which nursing, medical, or surgical services would be appropriate for care, diagnosis, or treatment. The department of public health shall have the authority to determine whether or not any institution or agency comes within the scope of this Act and its decisions in that regard shall be subject only to such rights of review as the courts exercise with respect to administrative actions.

(3) "Licensed physician" means a graduate of an accredited medical school authorized to confer upon graduates the degree of Doctor of Medicine, who is duly authorized by the Tennessee State Board of Medical Examiners to practice in this state.

(4) "Person" means any human being including both physicians and nonphysicians.

(5) "Trimester" means a period of time used to designate progressive stages of a pregnancy:

(a) "First trimester" means a period of twelve weeks beginning on the day of conception, to be determined by reasonable medical judgment based on information available before the performance of an abortion;

(b) "Second trimester" means a period of twelve weeks beginning on the first day of the thirteenth week after conception, to be determined by reasonable medical judgment based on information available before the performance of an abortion;

(c) "Third trimester" means a period of time beginning on the first day of the twenty-fourth week after conception, to be determined by reasonable medical judgment based on information available before the performance of an abortion, and ending with the termination of the pregnancy.

Comment:

Similar Provisions:

ALASKA STAT. § 11.15.060(a) (1970)

ABA UNIFORM ABORTION ACT (1972)
HAWAII REV. LAWS § 453-16(b) (Supp. 1972)
N.Y. PENAL LAW § 125.05(2) (McKinney 1967)

1. "Abortion." The definition is intended to encompass the traditional concept of abortion and to avoid any implication that accidental miscarriages come within the scope of the Act. Any method of performing the act will suffice to establish the crime if the necessary intent to terminate the pregnancy is present.

2. "Hospital." This conforms substantially with the definition of "hospital" in TENN. CODE ANN. § 53-1301 (1966), although it has been expanded to include clinics. In Doe v. Bolton, 93 S. Ct. 739, 749 (1973), the court took judicial notice of the fact that certain clinics and places other than hospitals are adequately equipped to perform abortions. The state department of public health may prescribe minimum standards to insure that any authorized clinic has the staffing and services necessary to perform an abortion safely. Facilities adequate to handle serious complications or emergencies may be required.

3. "Licensed physician." This conforms with the definition of "physician" in TENN. CODE ANN. § 53-1301 (1966) and is intended to include persons granted reciprocity by the state and persons permitted to practice medicine in federal institutions.

4. "Person." This term is defined to emphasize that both physicians and nonphysicians are subject to the provisions in which the term "person" is used. For example, although special penalties are specified for "physicians," they are not exempt from penalties applying to "persons."

5. "Trimester." This definition complies with traditional medical opinion and the view accepted by the Court in Roe v. Wade, 93 S. Ct. 705 (1973). The twelve-week delineation is more definite than the more common three-month characterization. In determining the length of pregnancy, the physician is required to make a reasonable judgment based on the data available to him prior to the operation. If this determination is found to be inaccurate after the fact, the burden will be on the state to show that the physician's opinion was not medically sound in light of the information available to him before the operation.

Cross references: Point 2: TENN. CODE ANN. § 53-1301 (1966). Point 3: TENN. CODE ANN. § 53-1301 (1966). Point 4: Act § 5.

SECTION 4. ABORTIONS PERMITTED AND PROHIBITED AT CERTAIN TIMES. (1) The abortion decision and the performance of the abortion during the first trimester of pregnancy must be left to the judgment of the mother.

(2) An abortion during the second trimester of pregnancy must be performed by a licensed physician in a hospital licensed by the Tennessee Department of Public Health or a hospital operated by the federal government or an agency thereof.

(3) No abortion may be performed during the third trimester of pregnancy unless:

(a) the abortion is performed by a licensed physician; and
(b) the abortion is performed in a hospital licensed by the Tennessee Department of Public Health or operated by the federal government or an agency thereof; and
(c) the physician reasonably believes that continuance of the pregnancy would endanger the life of the mother or would impair the physical or mental health of the mother. The physician in making this determination may take into consideration the physical and mental condition of the fetus.

Comment:

Similar Provisions:

ALASKA STAT. § 11.15.060(a) (1970)
HAWAII REV. LAWS § 453-16(b) (Supp. 1972)
N.Y. PENAL LAW § 125.05(3) (McKinney Supp. 1972)

1. Subsection (1) corresponds to the decision reached in Roe v. Wade, 93 S. Ct. 705, 732 (1973), that the state may exercise no control over the mother's decision to have an abortion in the first trimester. During the first trimester the only illegal abortion would be one performed by a person who is not a "licensed physician." *See* Section 5(1) and TENN. CODE ANN. § 63-608 (1956).
2. Subsection (2) allows the state to protect the health of the mother during the second trimester of pregnancy. During this time the state has a compelling interest only in the area of maternal health. Roe v. Wade, 93 S. Ct. 705, 732 (1973). An abortion performed in the second trimester is sufficiently hazardous to the mother's health that only a qualified licensed physician, operating in an adequately equipped facility, may execute the surgical procedure.
3. Subsection (3) reflects the state's two-fold interest in the abortion decision during the third trimester of pregnancy. Since the operation's risks are accentuated, the state continues its interest in the health and safety of the mother. In addition, the state has a legitimate interest in the potential life of the viable child. Although the Court refused to recognize a viable child as a "person" under the fourteenth amendment,

it said that "[w]ith respect to the State's important and legitimate interest in potential life, the 'compelling' point is at viability." Roe v. Wade, 93 S. Ct. 705, 732 (1973). Since viability may occur any time between the twenty-fourth and twenty-eighth week, the Act takes a conservative position by equating viability with the beginning of the third trimester. The Court expressly allowed states to protect viable fetal life by proscribing abortion, except when it is necessary to preserve the life or health of the mother. Roe v. Wade, 93 S. Ct. 705, 732 (1973). In *Roe* and in United States v. Vuitch, 402 U.S. 62 (1971), the Supreme Court has held that the term "health" includes both the physical and mental condition of the mother. This concept is expressly included in the Act.

4. Since there will usually be sufficient opportunity to obtain an abortion during the first six months of pregnancy, requests for abortions during the last trimester should be few. When the offspring will be physically or mentally deficient, however, an abortion may be justified during the third trimester, even if neither the mother's life nor her physical health is endangered. In some situations neither the mother nor her attending physician is aware of defects until the seventh or eighth month. When, for example, the woman contracts german measles or syphillis during pregnancy, serious fetal abnormalities can result and remain undetected until the later stages of pregnancy. Additionally, in many pregnancies, tests for abnormalities simply will not be made during the early stages or will be inconclusive at that time.

The prospective birth of a defective child would usually constitute a threat to the mental health of the mother. The Act, by specifically allowing the physician to consider the mental and physical condition of the fetus in determining whether the mother's mental health is endangered, removes any doubt as to the validity of this factor in the physician's ultimate decision. Straightforward treatment of this issue should preclude unnecessary litigation.

5. *Roe* and *Vuitch* held that the question whether the mother's life or health is endangered and the question whether the mother has entered the third trimester are professional judgments. A doctor is routinely called upon to decide whether an operation is necessary in a particular case, and his judgment should be upheld when reasonable.

6. Self-abortion is not expressly dealt with in the Act. Subjecting the mother to criminal penalties for this act during the first trimester would be inappropriate. Because the act is performed upon one's self, it does not come within the provisions for the practice of medicine in TENN. CODE ANN. § 63-608 (1956). The mother could violate subsections (2) or (3) of section 4, however, by performing a self-abortion during the

second or third trimester. The Act intends to reach self-abortion in those cases, although the former Tennessee statute may not have. Tennessee and the vast majority of states do not treat the consenting woman as an accomplice to criminal abortion, Annot., 34 A.L.R.3d 858 (1970), and possibly would choose not to prosecute her as a principal. *See* Smartt v. State, 112 Tenn. 539, 553, 80 S.W. 586, 589 (1904). Self-abortion may properly be prohibited under the *Roe* decision since the Court expressly approved a requirement that all abortions be performed by physicians. Roe v. Wade, 93 S. Ct. 705, 732-33 (1973). Restriction on self-abortion is justified by legitimate state interests in the health of the mother as well as interest in the life of the fetus during the later stages of pregnancy.
Cross Refences: Act § 5. Point 1: TENN. CODE ANN. §§ 63-607, 63-608 (1956). Point 2: Act § 3(2).

SECTION 5. PENALTIES FOR ILLEGAL PERFORMANCE OF AN ABORTION, ATTEMPT. (1) There is no penalty for performance of an abortion during the first trimester except as provided in state laws prohibiting the practice of medicine without a license.

(2) Any person who performs an abortion in violation of Section 4(2) is guilty of a misdemeanor punishable by a fine of one hundred dollars ($100) to one thousand dollars ($1000).

(3) Any person who performs an abortion in violation of Section 4(3) is guilty of a felony punishable by a fine of one hundred dollars ($100) to five thousand dollars ($5000), or by imprisonment of one (1) to five (5) years, or in the case of a physician by an order directing the suspension or revocation of his license, or any combination of these penalties.

(4) Any person who attempts to commit any offense prohibited by Section 4(2) is punishable by a fine of one hundred dollars ($100) to one thousand dollars ($1000); and any person who attempts to commit any offense prohibited by Section 4(3) is punishable by a fine of one hundred dollars ($100) to five thousand dollars ($5000), or imprisonment of one (1) to three (3) years, or in the case of a physician by an order directing the suspension or revocation of his license, or any combination of these penalties.

(5) These penalties are in addition to any penalties provided for violation of other sections of the state law.

Comment:

Similar Provisions:

ALASKA STAT. § 11.15.060(b) (1970)

ABA UNIFORM ABORTION ACT (1972)

HAWAII REV. LAWS § 453-16(c) (Supp. 1972)

1. During the first trimester of pregnancy the Act imposes no penalty for the performance of an abortion. If, however, the person performing the abortion is not a licensed physician, he will be subject to penalties for practicing medicine without a license. TENN. CODE ANN. § 63-607 (1956).

2. Subsection (2) makes a violation of the Act during the second trimester a misdemeanor. A violation of the primarily administrative regulations on abortions during this stage of pregnancy is not sufficiently serious to warrant felony status. The potentially high fine is a realistic deterrent and provides judicial latitude. Although only a fine is provided for violation of this subsection, nonphysicians would still be subject to a jail sentence under TENN. CODE ANN. § 63-607 (1956).

3. An abortion performed during the third trimester in violation of Section 4(3) is a felony. The five-year maximum sentence is the standard under most current and model abortion statutes. In Tennessee, a one-year minimum allows for lesser sentences. Miller v. State, 189 Tenn. 281, 286, 225 S.W.2d 62, 64 (1949); TENN. CODE ANN. § 40-2703 (1956).

The maximum fine is intended to be sufficiently large to make criminal abortions unprofitable. The addition of a court ordered suspension or revocation of a physician's license, bypassing existing license revocation procedures, TENN. CODE ANN. §§ 63-618 to -620 (1956), should provide a significant penalty for doctors convicted of violating the Act.

4. Subsection (4) deals with attempts to commit a criminal abortion. The trimester distinction is retained with fines at the same level as for the actual commission of the offense. Little difference in moral turpitude is perceivable between the attempt and the actual abortion. The one- to three-year sentence is retained from the former Tennessee attempt provision; a difference in sentences may be useful in the practical application of prosecutorial discretion.

5. Subsection (5) emphasizes that these penalties are in addition to sanctions for other offenses. Practice without a license and felony-murder are two of the offenses outside this Act that might be committed in conjunction with a criminal abortion. Subsection (4) does, however, operate to preempt the general felony-attempt provisions of TENN. CODE ANN. § 39-603 (1956).

Cross references: Point 1: Act § 4; TENN. CODE ANN. § 63-607 (1956). Point 2: TENN. CODE ANN. § 63-607 (1956). Point 3: TENN. CODE

ANN. §§ 40-2703, 63-618 to -620 (1956). Point 5: TENN. CODE ANN. § 39-603 (1956).

SECTION 6. REFUSAL TO PERFORM ABORTION; DISCRIMINATION. (1) Nothing in this Act requires any person to perform or assist in performing an abortion so long as the refusal to act is not inconsistent with good medical practice in an emergency situation.

(2) (a) No hospital, person, firm, corporation, or governmental entity may discriminate as to employment or privileges accompanying employment against a person on the grounds of his refusing to act within the protection of subsection (1).

(b) No hospital, person, firm, corporation, or governmental entity may discriminate as to employment or privileges accompanying employment against a person on the grounds of his performing or assisting in performing a legal abortion.

(c) A violation of the provisions of this subsection is a misdemeanor punishable by a fine of one hundred dollars ($100) to one thousand dollars ($1000). In addition, a person may bring a civil action to recover actual damages resulting from a violation of this subsection and may recover exemplary damages.

(3) No civil action for negligence or malpractice may be maintained against a person on the grounds of a refusal to perform an act within the protection of subsection (1).

Comment:

Similar provisions:

ALASKA STAT. § 11.15.060(a) (1970)

American Medical Ass'n, Proceedings of AMA House of Delegates 221 (June 1970)

HAWAII REV. LAWS § 453-16(d) (Supp. 1972)

N.Y. CIV. RIGHTS LAW § 79-i (McKinney Supp. 1972)

WASH. REV. CODE ANN. § 9.02.080 (Supp. 1972)

1. Subsection (1) guarantees an affirmative right to refuse to participate in the performance of abortions. Refusal on moral or religious grounds is probably within the scope of the first amendment. The provision for emergency situations is not likely to interfere with any reasonable moral beliefs.
2. Physicians, nurses, and others refusing to participate in abortion operations are protected by subsection (2). The provision removes any fear that the *Roe* decision will force individuals to participate in abor-

tions. To increase the availability of the operations, the subsection also provides protection for those who do perform abortions.

3. The types of discrimination guarded against in subsection (2) are specified to avoid vagueness or overinclusiveness. "Discrimination as to employment or privileges accompanying employment" is broad enough to protect the critical areas of potential harm. When rationally based, differentiated treatment of abortions, such as requiring them to be performed in one area of a hospital, is not proscribed by this provision.

4. Granting medical personnel a civil right of action for damages and shielding them from liability, in subsections (2) and (3), guarantees their freedom of choice. The protection extends to private hospitals and individuals not subject to provisions of the first and fourteenth amendments to the Constitution of the United States. Although a physician is generally under no duty to perform services to all who request them, Hammonds v. Aetna Cas. & Sur. Co., 237 F. Supp. 96, 98 (N.D. Ohio 1965), subsection (3) assures protection from suits for negligence or malpractice in such cases.

5. This section grants no right to hospitals to establish an official policy of refusing to perform abortions. In several instances, actions of ostensibly private hospitals that receive some public funds and serve important public functions have been held to constitute "state action" for fourteenth amendment due process purposes. Meredith v. Allen County War Memorial Hosp. Comm'n, 397 F.2d 33, 35 (6th Cir. 1968). It is unlikely that a hospital so described could constitutionally prohibit the performance of abortions in its facilities. The scope of state action must be left to judicial determination. In Doe v. Bolton, 93 S. Ct. 739, 750 (1973), the Court considered a statute providing that a hospital is not required to admit a patient for an abortion. GA. CODE ANN. § 26-1202(e) (1972). The Court, however, expressed no view on the issue of a hospital policy prohibiting abortions.

SECTION 7. COMPELLED ABORTION AND FEMALE'S CONSENT. **(1) State and local governmental entities have no power to compel any female to submit to an abortion for any reason.**

(2) An abortion may be performed upon a woman only after she has given her consent. If the female is an unmarried minor, or incompetent as adjudicated by any court of competent jurisdiction, then permission must additionally be given by the parents, or guardian, or person standing *in loco parentis* to the unmarried minor, or incompetent. However, a court of competent jurisdiction may grant such permission upon application on behalf of the minor or incompetent and upon a finding that permission has been arbitrarily or capriciously withheld.

Comment:

Similar provisions:

ALASKA STAT. § 11.15.060(a) (1970)
N.C. GEN. STAT. § 14-45.1 (Supp. 1971)

1. Subsection (1) sets forth in absolute terms the right of procreation within the right of privacy. This right has been guaranteed by the decision in Skinner v. Oklahoma, 316 U.S. 535 (1942), as interpreted by the Court in Roe v. Wade, 93 S. Ct. 705, 726 (1973).
2. The Court in *Roe* specifically refused to rule on the constitutionality of the requirement of parental consent for minors. Roe v. Wade, 93 S. Ct. 705, 733 n.67 (1973). The interests of the parents of the unmarried minor or incompetent, including responsibilities for care, and the practice followed for other operations sufficiently justify the Act's grant of power to parents in the decision-making process. In Tennessee, a minor is any person under the age of eighteen. TENN. CODE ANN. § 1-305(30) (Supp. 1972).
3. The consent provision for incompetents allows for abortions, where there is reason, when the female herself is incapable of giving consent or refusal.
4. For purposes of subsection (2) permission is arbitrarily or capriciously withheld when, for example, the mother's life or health is in danger and parental consent is refused on the basis of religious beliefs not shared by the mother.
5. Although there is very little authority on the subject, the idea that the father/husband has a right to stop an abortion from being performed seems to have been rejected. *Cf.* Herko v. Uviller, 203 Misc. 108, 109, 114 N.Y.S.2d 618, 619 (1952). That case held that the father/husband's right of procreation is not violated when the mother has an exclusive right to make the abortion decision. The mother's decision is not state or governmental action, and the father/husband is free to find another partner if he desires. The Supreme Court has specifically declined to address the issue of the father's or husband's consent. Roe v. Wade, 93 S. Ct. 705, 733 n.67 (1973). Cross Reference: Point 2: TENN. CODE ANN. § 1-305(30) (Supp. 1972).

SECTION 8. DISCLOSURE OF ABORTION INFORMATION. (1) **It is unlawful for any hospital, person, firm, corporation, or governmental entity to disclose a report of a referral or request for abortional services, or to disclose a report of the performance of an abortion, unless the disclosure is authorized in writing by the subject of**

such report, or unless the disclosure is ordered by a court of competent jurisdiction; provided, that this section shall not bar the report of statistical information as required under Tennessee Code Annotated, Section 53-430 (1966).

(2) A violation of the provisions of this section is a misdemeanor punishable by a fine of one hundred dollars ($100) to one thousand dollars ($1000). In addition, a person may bring a civil action to recover actual damages resulting from a violation of this section, and may recover exemplary damages if the violation was wilful.

Comment:

Similar provisions:
N.Y. GEN. BUS. LAW § 394-e (McKinney Supp. 1972)
TENN. CODE ANN. § 53-425 (1966)

1. This section protects subjects of abortions from unwanted public disclosure of abortion records because of the sensitivity of the abortion issue. It avoids the result in Quarles v. Sutherland, 215 Tenn. 651, 389 S.W.2d 249 (1965), that no statutory or common law cause of action exists for the disclosure of medical records by a physician. The abortion subject will now have a private right of action for damages if her records are disclosed without authorization.
2. Statistical reporting under TENN. CODE ANN. § 53-430 (1966) should not require the disclosure of subjects' names.
3. By prohibiting disclosure from any source and giving a damages remedy, this section goes beyond the provisions now in effect. Tenn. Code Ann. § 53-425 (1966) only makes unlawful disclosure of medical records by state officials.

Cross references: Point 2: TENN. CODE ANN. § 53-430 (1966). Point 3: TENN. CODE ANN. § 53-425 (1966).

SECTION 9. SEVERABILITY. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Comment:

Similar provisions:
ABA UNIFORM ABORTION ACT (1972)

SECTION 10. REPEAL OF FORMER ABORTION SECTIONS. Tennessee Code Annotated, Sections 39-301 and 39-302, being all of Chapter 3 of Title 39, are repealed.

Comment:

This section repeals all current Tennessee criminal abortion provisions so that a totally new statutory scheme, consistent with the right to privacy recognized in Roe v. Wade, 93 S. Ct. 705 (1973), and the procedural limitations of Doe v. Bolton, 93 S. Ct. 739 (1973), may be instituted.

Mark B. Anderson
H. Michael Bennett
Andrew D. Coleman
Peter Weiss
Richard K. Wray (chairman)

Revised Uniform Abortion Act (1973) Proposed by The National Conference of Commissioners on Uniform State Laws and Approved by The American Bar Association House of Delegates at The 1974 Mid-Year Meeting in Houston, Texas

REVISED UNIFORM ABORTION ACT (1973)

SECTION 1. [Definitions.] As used in this Act:

(1) "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead embryo or fetus.

(2) "Hospital" means a hospital approved by the [state department of health] or operated by the United States, this State, or any department, agency, or political subdivision thereof.

(3) "Medical facility" means a facility other than a hospital, such as a medical clinic, that has adequate staff and services necessary to perform an abortion safely, to provide after-care, and to cope with any complication or emergency that might reasonably be expected to arise therefrom, or that has arrangements with a nearby hospital to provide those services.

(4) "Licensed physician" means a physician licensed to practice medicine [or osteopathy] in this state, or a physician practicing medicine [or osteopathy] in the employ of the government of the United States or of this State, or any department, agency, or political subdivision thereof.

SECTION 2. [Limitations on Abortions.] An abortion may be performed in this State only under the following circumstances:

(1) During the first [12] [13] [14] weeks of pregnancy by a woman upon herself upon the advice of a licensed physician or by a licensed physician.

6 (2) After the first [12] [13] [14] weeks of pregnancy and
7 before the fetus is viable, by a licensed physician and in a
8 hospital or medical facility.

9 (3) After the fetus is viable, by a licensed physician,
10 in a hospital, and in the medical judgment of the physician
11 the abortion is necessary to preserve the life or health of
12 the woman.

1 SECTION 3. [Consent Required.] Consent to an abortion must
2 first be given by the woman or, if she is mentally incapable
3 of giving consent, by a parent or guardian or by order of the
4 [appropriate] court. A woman is not incapable by reason of
5 her minority of giving consent to an abortion under this Act.

1 SECTION 4. [Exceptions to Requirements.] If, in the med-
2 ical judgment of the physician, an abortion is immediately neces-
3 sary to preserve the life of the woman, it may be performed any-
4 where and, if the woman is unable to consent for any reason,
5 without her consent.

1 SECTION 5. [Express Objection.] In no event may any abortion
2 be performed under this Act upon a woman over her express objection,
3 except that if she is under [12] [13] [14] years of age and the
4 [appropriate] court finds the abortion is necessary to preserve
5 her life or health, it may order the abortion to be performed.

1 SECTION 6. [Participation in Abortion Not Required.] No
2 physician, nurse, hospital or medical facility employee, or
3 any other individual is under any duty or required to participate
4 in an abortion. An individual who participates or refuses

5 to participate in an abortion permitted under this Act may
6 not for that reason be discriminated against in employment
7 or professional privileges.]

1 SECTION 7. [Penalty.] Any person who knowingly performs
2 or procures an abortion other than as permitted by this Act
3 is guilty of a [felony] and, upon conviction thereof, may be
4 sentenced to pay a fine not exceeding [$1,000] dollars or to
5 imprisonment in the [state penitentiary] not exceeding [5]
6 years, or both.

1 SECTION 8. [Application and Construction.] This Act shall
2 be applied and construed to effectuate its general purpose to
3 make uniform the law with respect to the subject of this Act
4 among states enacting it.

1 SECTION 9. [Short Title.] This Act may be cited as the
2 Revised Uniform Abortion Act.

1 SECTION 10. [Severability.] If any provision of this Act
2 or the application thereof to any person or circumstance is held
3 invalid, the invalidity does not affect other provisions or
4 applications of this Act which can be given effect without the
5 invalid provision or application, and to this end the provisions
6 of this Act are severable.

1 SECTION 11. [Repeal.] The following acts and parts of acts
2 are repealed:
3 (a)
4 (b)
5 (c)

1 SECTION 12. [Time of Taking Effect.] This Act shall
2 take effect ____________.

Subsequent to Wade and Bolton, and to date, approximately 23 states have enacted abortion legislation in response to those decisions. This discussion will concern those statutes. It may generally be presumed that the pre-Wade and Bolton abortion statutes, which survive to date in some jurisdictions, are unenforceable to the extent that they prohibit physician-performed abortions during (1) approximately the first six months of pregnancy and (2) approximately the last three months of pregnancy where necessary to preserve the life or health of the mother.

The following chart should be used as a guide to identifying the types of abortion legislation enacted in the various jurisdictions since Wade and Bolton. Those statutes, on which the chart is based, are reproduced following the chart. Reference may be made to the Summary of State Legislation at pp. 6-8 of this report where a brief explanation is made of the topical headings used in the chart.

STATE ABORTION STATUTES ENACTED SUBSEQUENT TO JANUARY 22, 1973

KEY TO CHART: All numbers refer to footnotes following chart. "M.P.A.S." refers to statutes which have incorporated a Multiple Physician Approval System requiring the opinion of more than one physician that an abortion is necessary. Chart has reference to those statutes which have been reported enacted since January 22, 1973.

	Abortion law enacted since January 22, 1973																			
	NO	YES	YES LIMITED	Hospitals need not perform abortions	Individuals need not perform abortions	Discrimination for abstaining beliefs outlawed	Immunity from liability available	First trimester abortion permitted	Second trimester abortion permitted	Third trimester abortion permitted	M.P.A.S.	Physician must counsel re: abortion	Locus of abortion prescribed	Waiting period required	Spousal consent required	Parental consent for minor required	Reporting of abortions required	Effort must be made to keep fetus alive	Birth cert. for live-born fetus required	Research on fetus prohibited
1. Alabama	X																			
2. Alaska	X																			
3. Arizona			X	X	X															
4. Arkansas	X																			
5. California			X	X1	X	X2	X													
6. Colorado	X																X			X3
7. Connecticut	X																			
8. Delaware	X																			
9. District of Columbia	X																			
10. Florida	X																			
11. Georgia		X		X	X	X	X	X	X	X5	X5		X4				X	X6		
12. Hawaii			X7																	
13. Idaho		X		X	X	X	X	X	X	X9	X9	X	X8		X10			X6		
14. Illinois 13		X		X	X	X	X	X	X	X11	X11		X43				X	X12		
15. Indiana		X		X14	X	X		X	X	X17			X16	X16		X15	X	X19	X44	X
16. Iowa	X																			
17. Kansas	X																			
18. Kentucky	X																			
19. Louisiana		X		X	X	X	X	20	20	20										
20. Maine			X	X	X	X	X								X21	X	X		X44	X
21. Maryland			X	X	X	X	X											X		X45
22. Massachusetts			X	X14	X	X	X													
23. Michigan			X	X	X	X	X													
24. Minnesota			X51																	
25. Mississippi	X																			
26. Missouri			X	X	X	X	X													X46
27. Montana	X																			
28. Nebraska		X		X	X	X	X	X	X	X22										
29. Nevada		X		X14	X	X	X	X	X	X24		X			X23	X	X	X		X47
30. New Hampshire	X												X25		X27	X26	X	X		
31. New Jersey	X																			
32. New Mexico	X																			
33. New York	X																			
34. North Carolina		X		X	X	X	X	X	X29	X29			X28				X			
35. North Dakota		X		X	X	X		30	30	30										
36. Ohio	X																			
37. Oklahoma	X																			
38. Oregon	X																			
39. Pennsylvania	X																			
40. Rhode Island			X					30	30	30										
41. South Carolina	X																			
42. South Dakota		X		X35	X	X	X	X	X	X31		X48	X32		X34	X33	X		X44	X49
43. Tennessee		X		X	X			X	X	X31			X36	X37			X			
44. Texas	X																			
45. Utah		X		X	X	X	X	X38	X39	X40	X40				X42	X41	X	X		X50
46. Vermont	X																			
47. Virginia			X52																	
48. Washington	X																			
49. West Virginia	X																			
50. Wisconsin	X																			
51. Wyoming																				

1/ Applies only to private hospitals but not with respect to "medical emergency situations and spontaneous abortions."

2/ Medical Schools may not refuse admission to applicant on account of abortion beliefs.

3/ Research is not prohibited on "lifeless product of conception."

4/ Abortions after First Trimester must be performed in licensed hospital or other licensed health facility.

5/ In abortions after second trimester, attending physician must receive concurrence of two other physicians that abortion is necessary to preserve the life or health of the woman.

6/ With regard to the product of abortions in the third trimester.

7/ Makes temporary disability insurance benefits available to abortion patients.

8/ Abortions in first trimester must be performed in hospital, physicians office or clinic. Such office or clinic must be in close proximity to acute care hospitals. Abortions after first trimester must be performed in hospital.

9/ In third trimester abortions, attending physician must receive concurring opinion of one additional physician that abortion is necessary for life of woman or that fetus will be born unable to survive.

10/ Physician must receive consent of father, where father has not abandoned woman, in order to be immune from civil liability.

11/ During third trimester an abortion shall only be performed to preserve the life or to preserve the physical or mental health of the mother by a physician after consultation with at least two other physicians not related to or engaged in practice with the attending physician.

12/ During and after second trimester life support must be available and utilized if there is any clearly visible evidence of viability.

13/ This jurisdiction has statutorily prescribed standards to be observed in operation of medical facilities wherein abortions are performed. See statutes.

14/ Applies to private facilities only.

15/ Except where abortion is necessary to preserve life of woman.

16/ All abortions to be performed in hospital or other licensed facility which has immediate hospital backup.

17/ Attending physician must certify in writing that abortion is necessary to prevent a substantial permanent impairment of the life or physical health of the pregnant woman.

18/ 24 hours, except in emergencies involving life of pregnant woman.

19/ All viable fetuses shall be given full medical treatment for the protection and maintenance of their life.

20/ Abortions permitted only where necessary to save life of child or mother.

21/ Only of husband of a minor.

22/ Where necessary to preserve the woman from an imminent peril that substantially endangers her life or health.

23/ Consent only required where father known; Consent not required where abortion is necessary to preserve the woman from an imminent peril that substantially endangers her life or health.

24/ Only if physician has reasonable cause to believe that an abortion currently is necessary to preserve the life or health of the pregnant woman.

25/ All abortions to be performed in hospital or other licensed facility.

26/ Where woman is under 18 but not married or otherwise emancipated.

27/ If woman is under 18 unless husband is living separate and apart from woman.

28/ Abortions in first 20 weeks to be performed in hospital or certified clinic; thereafter in a hospital.

29/ Abortions after 20 weeks permissible where there is a substantial risk that continuance of the pregnancy would threeaten life or gravely impair health of the woman.

30/ Abortion permitted only where necessary to preserve life of mother.

31/ Where necessary to preserve life or health of mother.

32/ Second trimester pregnancies to be performed in hospital, clinic or office; third trimester pregnancies to be performed in hospital. Locus of abortion performed in above periods must have immediate access to blood supplies.

33/ Unless woman is married.

34/ If woman is married minor.

35/ No county or municipal hospital is authorized to refuse abortions.

36/ From and after end of first trimester, abortions to be performed in hospitals.

37/ Woman seeking abortion must be bona fide resident of Tennessee.

38/ Abortion must be necessary to preserve the life, physical or mental health of the woman. Evidentiary hearing must be held before abortion permitted.

39/ Abortion must be necessary to preserve the life or physical health of the woman. Evidentiary hearing must be held before abortion permitted.

40/ Abortions in last trimester may be performed only to save life of woman or prevent serious and permanent damage to her physical health. Attending physicians judgment must be concurred in by two other physicians. Evidentiary hearing must be held before abortion permitted

41/ Where pregnant woman is unmarried and under 18.

42/ Consent required of hisband and father of fetus, where two are different.

43/ After first trimester aboritons must be performed in hospitals.

44/ If fetus thereafter dies, death certificate must be filed.

45/ Sale and use of fetuses prohibited.

46/ Harmless research permitted on human living conceptus.

47/ Sale, transfer, distribution or giving away of live viable aborted child for experimentation is prohibited.

48/ On request of woman.

49/ Permitted with written consent of woman.

50/ Medical research on live fetuses prohibited.

51/ Prohibits group accident and health insurance from including elective induced abortions within maternity benefits; defines practice of medicine as including performance of abortion.

52/ Includes out patient surgical hospitals in definition of hospitals to be licenses by state.

ARIZONA

Ariz. Rev. Stat. Ann. §36-2151 (Supp. 1973)

CHAPTER 20.—RIGHT OF REFUSAL TO AID ABORTION

ARTICLE 1. GENERAL PROVISIONS

Sec.
36-2151. Right to refuse to participate in abortion.

Chapter 20, consisting of Article 1, section 36-2151, was added by Laws 1973, Ch. 155, § 1, effective May 14, 1973.

ARTICLE 1. GENERAL PROVISIONS

§ 36-2151. Right to refuse to participate in abortion

No hospital is required to admit any patient for the purpose of performing an abortion. A physician, or any other person who is a member of or associated with the staff of a hospital, or any employee of a hospital, doctor, clinic, or other medical or surgical facility in which an abortion has been authorized, who shall state in writing an objection to such abortion on moral or religious grounds shall not be required to participate in the medical or surgical procedures which will result in the abortion. Added Laws 1973, Ch. 155, § 1.

Effective May 14, 1973.

CALIFORNIA

Cal. Health and Safety Code §25955 (1973 Leg. Serv. Pamp. No. 7)

ABORTIONS—PRIVATE FACILITIES—PERFORMANCE

CHAPTER 820

ASSEMBLY BILL NO. 1597

An act to amend Section 25955 of the Health and Safety Code, relating to abortion.

LEGISLATIVE COUNSEL'S DIGEST

Declares that nothing in the Therapeutic Abortion Act shall require a nonprofit facility or clinic organized or operated by a religious corporation or other religious organization, and certain personnel and members of the governing board thereof, to permit the performance of an abortion in such facility or clinic or to provide abortion services. Exempts such facilities, clinics, and persons from liability for failure or refusal to participate in such an act and provides that such failure shall not be the basis for any disciplinary or other recriminatory action.

Makes such provisions and other provisions (1) prohibiting employers from requiring specified employees to participate in the induction or performance of an abortion, where the employee has filed specified written objection with the employer, and (2) prohibiting the employer from penalizing the employee therefor, inapplicable in medical emergency situations and spontaneous abortions, rather than only making provisions re prohibited activities of employers inapplicable in medical emergency situations.

Makes additional changes in Sec. 25955, H. & S.C., to be operative only if SB 575 and this bill are both chaptered, and this bill is chaptered after SB 575.

The people of the State of California do enact as follows:

SECTION 1. Section 25955 of the Health and Safety Code is amended to read:

25955.

(a) No employer shall require a registered nurse, a licensed vocational nurse, or any other person employed to furnish direct personal health service to a patient to directly participate in the induction or performance of an abortion, if such employee has filed a written statement with the employer indicating a moral, ethical, or religious basis for refusal to participate in the abortion, and the employer shall not penalize or discipline such employee for declining to so directly participate.

(b) Nothing in this chapter shall require a nonprofit facility or clinic which is organized or operated by a religious corporation or other religious organization and licensed pursuant to Chapter 1 (commencing with Section 1200) or Chapter 2 (commencing with Section 1250) of Division 2, or any administrative officer, employee, agent, or member of the governing board thereof, to perform or to permit the performance of an abortion in such facility or clinic or to provide abortion services. No such nonprofit facility or clinic organized or operated by a religious corporation or other religious organization, nor its administrative officers, employees, agents, or members of its governing board shall be liable, individually or collectively, for failure or refusal to participate in any such act. The failure or refusal of any such corporation, unincorporated association or individual person to perform or to permit the performance of such medical procedures shall not be the

basis for any disciplinary or other recriminatory action against such corporations, unincorporated associations, or individuals.

(c) This section shall not apply to medical emergency situations and spontaneous abortions.

Any violation of this section is a misdemeanor.

SEC. 2. Section 25955 of the Health and Safety Code is amended to read:
25955.

(a) No employer or other person shall require a physician, a registered nurse, a licensed vocational nurse, or any other person employed * * * or with staff privileges at a hospital, facility, or clinic to directly participate in the induction or performance of an abortion, if such employee or other person has filed a written statement with the employer or the hospital, facility, or clinic indicating a moral, ethical, or religious basis for refusal to participate in the abortion * * *.

No such employee or person with staff privileges in a hospital, facility, or clinic shall be subject to any penalty or discipline by reason of his refusal to participate in an abortion. No such employee of a hospital, facility, or clinic which does not permit the performance of abortions, or person with staff privileges therein, shall be subject to any penalty or discipline on account of such person's participation in the performance of an abortion in other than such hospital, facility, or clinic.

No employer shall refuse to employ any person because of such person's refusal for moral, ethical, or religious reasons to participate in an abortion, unless such person would be assigned in the normal course of business of any hospital, facility, or clinic to work in those parts of the hospital, facility, or clinic where abortion patients are cared for. No provision of this chapter prohibits any hospital, facility, or clinic which permits the performance of abortions from inquiring whether an employee or prospective employee would advance a moral, ethical, or religious basis for refusal to participate in an abortion before hiring or assigning such a person to that part of a hospital, facility, or clinic where abortion patients are cared for.

The refusal of a physician, nurse, or any other person to participate or aid in the induction or performance of an abortion pursuant to this subdivision shall not form the basis of any claim for damages.

(b) No medical school or other facility for the education or training of physicians, nurses, or other medical personnel shall refuse admission to a person or penalize such person in any way because of such person's unwillingness to participate in the performance of an abortion for moral, ethical, or religious reasons. No hospital, facility, or clinic shall refuse staff privileges to a physician because of such physician's refusal to participate in the performance of abortion for moral, ethical, or religious reasons.

(c) Nothing in this chapter shall require a nonprofit hospital or other facility or clinic which is organized or operated by a religious corporation or other religious organization and licensed pursuant to Chapter 1 (commencing with Section 1200) or Chapter 2 (commencing with Section 1250) of Division 2, or any administrative officer, employee, agent, or member of the governing board thereof, to perform or to permit the performance of an abortion in such facility or clinic or to provide abortion services. No such nonprofit facility or clinic organized or operated by a religious corporation or other religious organization, nor its adminis-

trative officers, employees, agents, or members of its governing board shall be liable, individually or collectively, for failure or refusal to participate in any such act. The failure or refusal of any such corporation, unincorporated association or individual person to perform or to permit the performance of such medical procedures shall not be the basis for any disciplinary or other recriminatory action against such corporations, unincorporated associations, or individuals. Any such facility or clinic which does not permit the performance of abortions on its premises shall post notice of such proscription in an area of such facility or clinic which is open to patients and prospective admittees.

(d) This section shall not apply to medical emergency situations and spontaneous abortions.

Any violation of this section is a misdemeanor.

SEC. 3. It is the intent of the Legislature, if this bill and Senate Bill No. 575 are both chaptered and become effective January 1, 1974, both bills amend Section 25955 of the Health and Safety Code, and this bill is chaptered after Senate Bill No. 575, that Section 25955 be amended in the form set forth in Section 2 of this act. Therefore, Section 2 of this act shall become operative only if this bill and Senate Bill No. 575 are both chaptered and become effective January 1, 1974, both amend Section 25955, and this bill is chaptered after Senate Bill No. 575, in which case Section 1 of this act shall not become operative.

Approved and filed Sept. 25, 1973.

Cal. Health and Safety Code §25955 (1973 Leg. Serv. Pamp. No. 8)

ABORTIONS—REFUSAL TO PARTICIPATE

CHAPTER 935

SENATE BILL NO. 575

An act to amend Section 25955 of the Health and Safety Code, relating to abortions.

LEGISLATIVE COUNSEL'S DIGEST

Declares that a hospital, facility, or clinic organized or operated by a church, religious organization, or religious order, if the governing board so determines, shall not be required to admit or not to admit a patient for the purposes of performing an abortion, but requires such hospitals, facilities, or clinics refusing to permit abortions to post a notice to that effect.

Prohibits any employer or other person from requiring any physician, a registered nurse, a licensed vocational nurse, or any other person employed or with staff privileges at a hospital, facility, or clinic, rather than prohibiting any employer from requiring a registered nurse, a licensed vocational nurse, or any other person employed to furnish direct personal health services to a patient, to directly participate in the induction or performance of an abortion if such employee or other person has filed, as prescribed, a written statement indicating a moral, ethical, or religious basis for refusal to participate in the abortion. Prohibits any such employee or person with staff privileges in a hospital, facility, or clinic from being subject to any penalty or discipline by reason of his refusal to participate in an abortion, rather than prohibiting the employer from penalizing or disciplining such employee for declining to so directly participate. Prohibits penalizing or disciplining such employees of hospitals, facilities, or clinics not permitting abortions, or persons with staff privileges therein, on account of such person's participation in the performance of an abortion in other than such hospital, facility, or clinic.

Prohibits any employer from refusing to employ any person because of such person's refusal for moral, ethical, or religious reason to participate in an abortion, unless such person would normally be assigned to work in those parts of a hospital, facility, or clinic where abortion patients are cared for. Specifies that no provision of the Therapeutic Abortion Act prohibits any hospital, facility,

or clinic which permits the performance of abortions from inquiring whether an employee or prospective employee would advance a moral, ethical, or religious basis for refusal to participate in an abortion before hiring or assigning such person to that part of a hospital, facility, or clinic where abortion patients are cared for.

Prohibits medical schools or other medical educational or training institutions from refusing admission to a person or penalizing him in any way because such person is unwilling to participate in an abortion for moral, ethical, or religious reasons. Prohibits hospitals, facilities, or clinics from refusing staff privileges to a physician because the physician refuses to participate in an abortion for moral, ethical, or religious reasons.

Specifies that the refusal of a physician, nurse, or any other person to participate in an abortion, or of a hospital, facility, or clinic organized or operated by a church, religious organization, or religious order to admit a patient for the purpose of performing an abortion, will not form the basis of any claim for damages.

Specifies that the provisions revised or added by the act shall not apply to medical emergencies and spontaneous abortions, rather than only making provisions re prohibited activities of employers inapplicable in medical emergency situations.

Provides that, notwithstanding Section 2231 of the Revenue and Taxation Code, no reimbursement is made under Section 2231 nor any appropriation is made by this act because of a specified reason.

Makes additional changes in Section 25955, Health and Safety Code, to be operative only if AB 1597 and this bill are both chaptered, and this bill is chaptered after AB 1597.

The people of the State of California do enact as follows:

SECTION 1. Section 25955 of the Health and Safety Code is amended to read:

25955.

(a) No hospital, facility, or clinic that is organized or operated by a church, religious organization, or religious order, if the governing board so determines, shall be required to admit or not to admit a patient for the purpose of performing an abortion. The refusal of such hospital, facility, or clinic to admit a person for the purpose of an abortion or permit an abortion to be performed on its premises shall not form the basis of any claim for damages nor shall such hospital, facility, or clinic be subject to any penalty whatsoever by reason of such refusal. Any such hospital, facility, or clinic which does not permit the performance of abortions on its premises shall post notice of such proscription in an area of such hospital, facility, or clinic which is open to patients and prospective admittees.

(b) No employer or other person shall require a physician, a registered nurse, a licensed vocational nurse, or any other person employed * * * or with staff privileges at a hospital, facility, or clinic to directly participate in the induction or performance of an abortion, if such employee or other person has filed a written statement with the employer or the hospital, facility, or clinic indicating a moral, ethical, or religious basis for refusal to participate in the abortion * * *.

No such employee or person with staff privileges in a hospital, facility, or clinic shall be subject to any penalty or discipline by reason of his refusal to participate in an abortion. No such employee of a hospital, facility, or clinic which does not permit the performance of abortions, or person with staff privileges

therein, shall be subject to any penalty or discipline on account of such person's participation in the performance of an abortion in other than such hospital, facility, or clinic.

No employer shall refuse to employ any person because of such person's refusal for moral, ethical, or religious reasons to participate in an abortion, unless such person would be assigned in the normal course of business of any hospital, facility, or clinic to work in those parts of the hospital, facility, or clinic where abortion patients are cared for. No provision of this chapter prohibits any hospital, facility, or clinic which permits the performance of abortions from inquiring whether an employee or prospective employee would advance a moral, ethical, or religious basis for refusal to participate in an abortion before hiring or assigning such a person to that part of a hospital, facility, or clinic where abortion patients are cared for.

The refusal of a physician, nurse, or any other person to participate or aid in the induction or performance of an abortion pursuant to this subdivision shall not form the basis of any claim for damages.

Any violation of this subdivision by an employer is a misdemeanor.

(c) No medical school or other facility for the education or training of physicians, nurses, or other medical personnel shall refuse admission to a person or penalize such person in any way because of such person's unwillingness to participate in the performance of an abortion for moral, ethical, or religious reasons. No hospital, facility, or clinic shall refuse staff privileges to a physician because of such physician's refusal to participate in the performance of abortion for moral, ethical, or religious reasons.

(d) This section shall not apply to medical * * * emergencies and spontaneous abortions.

SEC. 2. Section 25955 of the Health and Safety Code is amended to read:
25955.

(a) No employer or other person shall require a physician, a registered nurse, a licensed vocational nurse, or any other person employed * * * or with staff privileges at a hospital, facility, or clinic to directly participate in the induction or performance of an abortion, if such employee or other person has filed a written statement with the employer or the hospital, facility, or clinic indicating a moral, ethical, or religious basis for refusal to participate in the abortion * * *.

No such employee or person with staff privileges in a hospital, facility, or clinic shall be subject to any penalty or discipline by reason of his refusal to participate in an abortion. No such employee of a hospital, facility, or clinic which does not permit the performance of abortions, or person with staff privileges therein, shall be subject to any penalty or discipline on account of such person's participation in the performance of an abortion in other than such hospital, facility, or clinic.

No employer shall refuse to employ any person because of such person's refusal for moral, ethical, or religious reasons to participate in an abortion, unless such person would be assigned in the normal course of business of any hospital, facility, or clinic to work in those parts of the hospital, facility, or clinic where abortion patients are cared for. No provision of this chapter prohibits any hospital, facility, or clinic which permits the performance of abortions from inquiring whether an employee or prospective employee would advance a moral, ethical, or religious basis for

refusal to participate in an abortion before hiring or assigning such a person to that part of a hospital, facility, or clinic where abortion patients are cared for.

The refusal of a physician, nurse, or any other person to participate or aid in the induction or performance of an abortion pursuant to this subdivision shall not form the basis of any claim for damages.

(b) No medical school or other facility for the education or training of physicians, nurses, or other medical personnel shall refuse admission to a person or penalize such person in any way because of such person's unwillingness to participate in the performance of an abortion for moral, ethical, or religious reasons. No hospital, facility, or clinic shall refuse staff privileges to a physician because of such physician's refusal to participate in the performance of abortion for moral, ethical, or religious reasons.

(c) Nothing in this chapter shall require a nonprofit hospital or other facility or clinic which is organized or operated by a religious corporation or other religious organization and licensed pursuant to Chapter 1 (commencing with Section 1200) or Chapter 2 (commencing with Section 1250) of Division 2, or any administrative officer, employee, agent, or member of the governing board thereof, to perform or to permit the performance of an abortion in such facility or clinic or to provide abortion services. No such nonprofit facility or clinic organized or operated by a religious corporation or other religious organization, nor its administrative officers, employees, agents, or members of its governing board shall be liable, individually or collectively, for failure or refusal to participate in any such act. The failure or refusal of any such corporation, unincorporated association or individual person to perform or to permit the performance of such medical procedures shall not be the basis for any disciplinary or other recriminatory action against such corporations, unincorporated associations, or individuals. Any such facility or clinic which does not permit the performance of abortions on its premises shall post notice of such proscription in an area of such facility or clinic which is open to patients and prospective admittees.

(d) This section shall not apply to medical emergency situations and spontaneous abortions.

Any violation of this section is a misdemeanor.

SEC. 3. It is the intent of the Legislature, if this bill and Assembly Bill No. 1597 are both chaptered and become effective January 1, 1974, both bills amend Section 25955 of the Health and Safety Code, and this bill is chaptered after Assembly Bill No. 1597, that Section 25955 be amended in the form set forth in Section 2 of this act. Therefore, Section 2 of this act shall become operative only if this bill and Assembly Bill No. 1597 are both chaptered and become effective January 1, 1974, both amend Section 25955, and this bill is chaptered after Assembly Bill No. 1597, in which case Section 1 of this act shall not become operative.

SEC. 4. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be any appropriation made by this act because the Legislature recognizes that during any legislative session a variety of changes to laws relating to crimes and infractions may cause both increased and decreased costs to local government entities and school districts which, in the aggregate, do not result in significant identifiable cost changes.

Approved and filed Sept. 30, 1973.

Cal. Health and Safety Code §25955.5 (1973 Leg. Serv. Pamp. No. 3)

SEC. 45. Section 25955.5 of the Health and Safety Code is amended to read:
25955.5.

The State Department of * * * Health shall by regulation establish and maintain a system for the reporting of therapeutic abortions so as to determine the demographic effects of abortion and assess the experience in relation to legal and medical standards pertaining to abortion practices. The reporting system shall not require, permit, or include the identification by name or other means of any person undergoing an abortion. The State Department of * * * Health shall make a report to the Legislature not later than the 30th calendar day each even-numbered year on its findings related to therapeutic abortions and their effects.

The state department shall seek, in addition to any other funds made available to it, federal funds in order to carry out the purposes of this act.

Cal. Health and Safety Code §25956 (1973 Leg. Serv. Pamp. No. 8)

HEALTH—ABORTED FETUSES—RESEARCH

CHAPTER 980

ASSEMBLY BILL NO. 1724

An act to add Section 25956 to the Health and Safety Code, relating to fetuses.

LEGISLATIVE COUNSEL'S DIGEST

Makes it unlawful for any person to knowingly use any aborted product of human conception other than fetal remains, as defined, for scientific or laboratory research, or for any other kind of experimentation or study, except to protect or preserve the life and health of the fetus.

Provides that any violation of the act constitutes unprofessional conduct within the meaning of the State Medical Practice Act.

Provides that neither appropriation is made nor obligation created for the reimbursement of any local agency for any costs incurred by it pursuant to the act.

The people of the State of California do enact as follows:

SECTION 1. Section 25956 is added to the Health and Safety Code, to read:

25956.

(a) It is unlawful for any person to use any aborted product of human conception, other than fetal remains, for any type of scientific or laboratory research or for any other kind of experimentation or study, except to protect or preserve the life and health of the fetus "Fetal remains," as used in this section, means a lifeless product of conception regardless of the duration of pregnancy. A fetus shall not be deemed to be lifeless for the purposes of this section, unless there is an absence of a discernible heartbeat.

(b) In addition to any other criminal or civil liability which may be imposed by law, any violation of this section constitutes unprofessional conduct within the meaning of the State Medical Practice Act, Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

SEC. 2. No appropriation is made by this act, nor is any obligation created thereby under Section 2164.3 of the Revenue and Taxation Code, for the reimbursement of any local agency for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on or performed by it by this act.

Approved and filed Sept. 30, 1973.

Cal. Health and Safety Code §25956 (1973 Leg. Serv. Pamp. No. 7)

ABORTION—FETUSES—MEDICAL EXPERIMENTATION

CHAPTER 720

SENATE BILL NO. 1046

An act to add Section 25956 to the Health and Safety Code, relating to fetuses, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

Makes it unlawful for any person to use any aborted product of conception other than fetal remains, as defined, for scientific or laboratory research, or for any other kind of experimentation or study, except to protect or preserve the life and health of the fetus.

Provides that any violation of the act constitutes unprofessional conduct within the meaning of the State Medical Practice Act.

The people of the State of California do enact as follows:

SECTION 1. Section 25956 is added to the Health and Safety Code, to read:

25956.

(a) It is unlawful for any person to use any aborted product of conception, other than fetal remains for any type of scientific or laboratory research or for any other kind of experimentation or study, except to protect or preserve the life and health of the fetus. "Fetal remains," as used in this section, means a lifeless product of conception regardless of the duration of pregnancy.

(b) In addition to any other criminal or civil liability which may be imposed by law, any violation of this section constitutes unprofessional conduct within the meaning of the State Medical Practice Act, Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

SEC. 2. [Urgency statute]

Approved and filed Sept. 24, 1973.

GEORGIA

Act 328 [1973] Ga. Acts 635

CRIMES—ABORTIONS—NEW CHAPTER PROVIDED.

Code Chapter 26-12 Amended.

Code Title 88 Amended.

No. 328 (House Bill No. 915).

An Act to amend Code Chapter 26-12, relating to abortion, by repealing it in its entirety and inserting in lieu thereof a definition of criminal abortion; to provide for exceptions thereto; to provide who may perform abortions; to provide that abortions after the first trimester must be performed in a hospital or other licensed health facility; to provide that abortion after the second trimester may be performed to save the life and health of the woman where same is necessary in a physician's and two consultants' judgment; to provide for medical aid to product of abortion if capable of meaningful or sustained life; to provide for reporting of statistical data to the Department of Human Resources and access to hospital and other licensed health facility records by the District Attorney; to provide that any hospital or other medical facility or physician may refuse to admit any patient for the purpose of performing an abortion; to provide that any person who states in writing an objection to any abortion shall not be required to participate in the procedures which will result in such abortion; to provide that such refusal shall not be the basis for any claim for damages; to provide for penalties; to amend Code Title 88, known as the "Georgia Health Code", as amended, so as to authorize the Department of Human Resources to promulgate and enforce rules and regulations for licensing of medical facilities wherein abortion procedures under 26-1202 (b) and (c) are to be performed; to provide for the dissemination of certain education information and medical supplies and treatment in order to prevent unwanted pregnancy; to provide for severability; to provide an effective date; to repeal a specific Act; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. Code Chapter 26-12, relating to abortion, is hereby amended by striking said Code Chapter in its entirety and inserting in lieu thereof a new Code Chapter 26-12, to read as follows:

"**CHAPTER 26-12. Abortion.**

Colde § 26-1201 enacted.

26-1201. Criminal Abortion. Except as otherwise provided in Section 26-1202, a person commits criminal abortion when he or she administers any medicine, drugs, or other substance whatever to any woman or when he or she uses any instrument or other means whatever upon any woman with intent to produce a miscarriage or abortion.

Code § 26-1202 enacted.

26-1202. Exceptions. (a) Nothing in this Chapter shall be construed to prohibit an abortion performed by a physician duly licensed to practice medicine and surgery pursuant to Chapter 84-9 of the Code of Georgia of 1933, as amended, based upon his best clinical judgment that an abortion is necessary.

(b) No abortion is authorized or shall be performed after the first trimester unless the abortion is performed in a licensed hospital or in a health facility licensed as an abortion facility by the Georgia Department of Human Resources.

(c) No abortion is authorized or shall be performed after the second trimester unless the physician and two consulting physicians certify that said abortion is necessary in their best clinical judgment to preserve the life or health of the woman. If the product of such abortion is capable of meaningful or sustained life, medical aid then available must be rendered.

(d) The performing physician shall file with the Commissioner of Human Resources, within ten days after an abortion procedure is performed, a certificate of abortion containing such statistical data as is determined by the Department of Human Resources consistent with preserving the privacy of the woman. Hospital or other licensed health

facility records shall be available to the District Attorney of the judicial circuit in which the hospital or health facility is located.

(e) Nothing in this Chapter shall require a hospital or other medical facility or physician to admit any patient under the provisions hereof for the purpose of performing an abortion. In addition, any person who shall state in writing an objection to any abortion or all abortions on moral or religious grounds shall not be required to participate in procedures which will result in such abortion, and the refusal of such person to participate therein, shall not form the basis of any claim for damages on account of such refusal or for any disciplinary or recriminatory action against such person. The written objection shall remain in effect until such person shall revoke it or terminate his association with the facility with which it is filed.

26-1203. Failure to File. A person who fails to file or maintain, in complete form, any of the written reports required in this Chapter within the time set forth shall commit a misdemeanor.

Code § 26-1203 enacted.

26-1204. Punishment. A person convicted of criminal abortion shall be punished by imprisonment for not less than one nor more than ten years, except that a person convicted of failure to file the forms and records required by this Chapter shall be punished under 26-1203."

Code § 26-1204, enacted.

Section 2. Code Title 88, known as the "Georgia Health Code", as amended, is hereby amended by adding a new subsection at the end of Code section 88-108, to be designated subsection (k), to read as follows:

"(k) Promulgate and enforce rules and regulations for the licensing of medical facilities wherein abortion procedures under 26-1202 (b) and (c) are to be performed, and further to disseminate and distribute educational information and medical supplies and treatment in order to prevent unwanted pregnancy."

Code § 88-108 amended.

Section 3. Said Code Title 88 is further amended by add-

ing a new paragraph at the end of subsection (a) of Code section 88-1901, to be designated paragraph (3), to read as follows:

Code § 88-1901 amended.

"(3) Any health facility wherein abortion procedures under 26-1202 (b) and (c) are performed or are to be performed."

Code § 26-11 repealed.

Section 4. An Act entitled "An Act to amend Code Chapter 26-11, relating to the crimes of abortion, foeticide, and infanticide, so as to provide for the additional exceptions where such acts are undertaken or accomplished by physicians; to repeal conflicting laws; and for other purposes.", which became law without the approval of the Governor (Ga. L. 1968, p. 1342), is hereby repealed in its entirety.

Severability.

Section 5. In the event any section, subsection, sentence, clause or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

Effective date.

Section 6. This Act shall become effective upon its approval by the Governor or upon its becoming law without his approval.

Section 7. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved April 13, 1973.

HAWAII

Summary of Act 61 of the 1973 Regular Session of the Hawaii Legislature. See Hawaii Legislative Reference Bureau, 1973 Digest and Index of Laws Enacted, 28 (1973)

(SB 97, SD 1, HD 1, CD 1) *TEMPORARY DISABILITY INSURANCE; PREGNANCY QUALIFICATION*. Amends the definition of disability to include total inability of an employee caused by pregnancy or termination of pregnancy and makes temporary disability benefits payable for all pregnancy-related disabilities, including an employee who performed her duties immediately or not longer than 2 weeks prior to becoming totally disabled because of pregnancy or termination of pregnancy, and who would have continued in or resumed her employment except for such disability. Effective *May 8, 1973*. (SSCR 138, 259; HSCR 661; SC 10; HC 9)

IDAHO

Ch. 197 [1073] Idaho Laws 442

CHAPTER 197

(S. B. No. 1184, As Amended,
As Amended in the House)

AN ACT

STATING THE PURPOSE OF THE ACT; REPEALING SECTIONS 18-601 AND 18-602, IDAHO CODE; DEFINING TERMS; PROHIBITING AND PROVIDING CRIMINAL PENALTIES FOR UNLAWFUL ABORTIONS; PROHIBITING AND PROVIDING CRIMINAL PENALTIES FOR AIDING IN UNLAWFUL ABORTIONS, FOR SUBMITTING TO UNLAWFUL ABORTION AND FOR UNLAWFUL SELF-ABORTION; PROHIBITING AND PROVIDING CRIMINAL PENALTIES FOR SALE OR ADVERTISEMENT OF ABORTIFACIENTS EXCEPT TO PHYSICIANS OR DRUGGISTS; PERMITTING CERTAIN ABORTIONS PERFORMED BY OR UNDER THE DIRECTION OF PHYSICIANS AND STATING GUIDELINES THEREFOR; PROVIDING THAT PHYSICIANS MAY PERFORM AND HOSPITALS MAY PROVIDE FACILITIES FOR ABORTIONS WITHOUT CIVIL LIABILITY IF PROPER CONSENT IS GIVEN AND PROVIDING GUIDELINES FOR SUCH CONSENT; PROVIDING THAT REFUSAL OF THE PREGNANT WOMAN TO CONSENT TO ABORTION SHALL BE GROUNDS TO DECLINE PERFORMANCE OF AN ABORTION; PROVIDING THAT PHYSICIANS AND HOSPITALS MAY ACCEPT THE PATIENT'S REPRESENTATIONS; PROVIDING PROTECTION FOR HOSPITALS, PHYSICIANS AND OTHERS REFUSING TO ADMIT, PERFORM, ASSIST OR PARTICIPATE IN ABORTIONS FOR PERSONAL, RELIGIOUS OR MORAL REASONS; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY; PROVIDING A PROCEDURE FOR CERTAIN SECTIONS OF THIS ACT TO BE DECLARED EFFECTIVE; PROVIDING THAT PROVIDING, SUPPLYING, OR ADMINISTERING ANY MEDICINE, DRUG, OR SUBSTANCE TO PROCURE AN ABORTION SHALL BE A FELONY AND PRESCRIBING A PENALTY; AND PROVIDING THAT EVERY WOMAN WHO SOLICITS SO AS TO PROCURE A MISCARRIAGE IS GUILTY OF A FELONY, AND PRESCRIBING A PENALTY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. The supreme court of the United States having ruled that the several states lack the power to prohibit the practice of abortion or the commission thereof in the fashion previously prescribed by the criminal code of this state, and having specifically stricken down as violative of the constitutional right of privacy of the pregnant mother, criminal and related abortion statutes of the states of Georgia and Texas but reserving to the state the power to provide some standards and restrictions if they deem it appropriate to do so, and it appearing that, in the event of the failure of this state to enact legislation regulating and proscribing abortion under such circumstances as it is within the power of the state so to regulate and proscribe, there is an immediate danger of widespread and undesirable abortion practices within the state, the legislature deems it necessary and in the public interest to provide standards and regulations and to define crimes with respect to the general subject of abortion in the interest of filling the voids and resolving the ambiguities generated by the said recent decisions in the Texas and Georgia cases, and in the furtherance and preservation of the public policy of this state in such matters. Without condoning or approving abortion or the liberalization of abortion laws generally, nonetheless by this act the legislature of the state of Idaho does express the policy of the state to regulate and to prescribe the standards with respect to the type of judgment, practice and conduct that is implicit in the performance of the abortions or the submission thereto.

SECTION 2. That Sections 18-601 and 18-602, Idaho Code, be, and the same are hereby repealed.

SECTION 3. As used in this act:

1. "Abortion" means the intentional termination of human pregnancy for purposes other than delivery of a viable birth.

2. "Physician" means a person licensed to practice medicine and surgery or osteopathic medicine and surgery in this state as provided in chapter 18, title 54, Idaho Code.

3. "Hospital" means an acute care, general hospital in this state, licensed as provided in chapter 13, title 39, Idaho Code.

4. "First trimester of pregnancy" means the first thirteen (13) weeks of a pregnancy.

5. "Second trimester of pregnancy" means that portion of a pregnancy following the thirteenth week and preceding the point in time when the fetus becomes viable, and there is hereby created a legal presumption that the second trimester does not end before the commencement of the

twenty-fifth week of pregnancy, upon which presumption any licensed physician may proceed in lawfully aborting a patient pursuant to section 7 of this act, in which case the same shall be conclusive and unrebuttable in all civil or criminal proceedings.

6. "Third trimester of pregnancy" means that portion of a pregnancy from and after the point in time when the fetus becomes viable.

7. Any reference to a viable fetus shall be construed to mean a fetus potentially able to live outside the mother's womb, albeit with artificial aid.

SECTION 4. Every person who, except as permitted by this act, provides, supplies or administers any medicine, drug or substance to any woman or uses or employs any instrument or other means whatever upon any then pregnant woman with intent thereby to produce an abortion shall be guilty of a felony and shall be fined not to exceed five thousand dollars ($5,000) and/or imprisoned in the state prison for not less than two (2) and not more than five (5) years.

SECTION 5. Except as permitted by this act:

(1) Every person who, as an accomplice or accessory to any violation of section 4 of this act, induces or knowingly aids in the production or performance of an abortion; and

(2) Every woman who knowingly submits to an abortion or solicits of another, for herself, the production of an abortion, or who purposely terminates her own pregnancy otherwise than by a live birth,

shall be deemed guilty of a felony and shall be fined not to exceed five thousand dollars ($5,000) and/or imprisoned in the state prison for not less than one (1) and not more than five (5) years; provided, however, that no hospital, nurse, or other health care personnel shall be deemed in violation of this section if in good faith providing services in reliance upon the directions of a physician or upon the hospital admission of a patient for such purpose on the authority of a physician.

SECTION 6. A person who sells, offers to sell, possesses with intent to sell, advertises, or displays for sale anything specially designed to terminate a pregnancy, or held out by the actor as useful for that purpose, commits a misdemeanor, unless:

(1) The sale, offer or display is to a physician or druggist or to an intermediary in a chain of distribution to physicians or druggists; or

(2) The same is made upon prescription or order of a physician; or

(3) The possession is with intent to sell as authorized in paragraphs (1) and (2) of this section; or

(4) The advertising is addressed to persons named in paragraph (1) of this section and confined to trade or professional channels not likely to reach the general public.

SECTION 7. The provisions of sections 4 and 5 of this act shall not apply to and neither this act, nor other controlling rule of Idaho law, shall be deemed to make unlawful an abortion performed by a physician if:

(1) When performed upon a woman who is in the first trimester of pregnancy, the same is performed following the attending physician's consultation with the pregnant patient and a determination by the physician that such abortion is appropriate in consideration of such factors as in his medical judgment he deems pertinent, including, but not limited to physical, emotional, psychological and/or familial factors, that the child would be born with some physical or mental defect, that the pregnancy resulted from rape, incest or other felonious intercourse, and a legal presumption is hereby created that all illicit intercourse with a girl below the age of sixteen (16) shall be deemed felonious for purposes of this section, the patient's age and any other consideration relevant to her well-being or directly or otherwise bearing on her health and, in addition to medically diagnosable matters, including but not limited to such factors as the potential stigma of unwed motherhood, the imminence of psychological harm or stress upon the mental and physical health of the patient, the potential stress upon all concerned of an unwanted child or a child brought into a family already unable, psychologically or otherwise, to care for it, and/or the opinion of the patient that maternity or additional offspring probably will force upon her a distressful life and future; the emotional or psychological consequences of not allowing the pregnancy to continue, and the aid and assistance available to the pregnant patient if the pregnancy is allowed to continue; provided, in consideration of all such factors, the physician may rely upon the statements of and the positions taken by the pregnant patient, and the physician shall not be deemed to have held himself out as possessing special expertise in such matters nor shall he be held liable, civilly or otherwise, on account of his good faith exercise of his medical judgment, whether or not influenced by any such nonmedical factors. Abortions permitted by this subsection shall only be lawful if and when performed in a hospital or in a physician's regular office or a clinic which office or clinic is properly staffed and equipped for the performance of such procedures and respecting which the responsible physician or physicians have made satisfactory arrangements with one (1) or more acute care hospitals within reasonable proximity

thereof providing for the prompt availability of hospital care as may be required due to complications or emergencies that might arise.

(2) When performed upon a woman who is in the second trimester of pregnancy, the same is performed in a hospital and is, in the judgment of the attending physician, in the best medical interest of such pregnant woman, considering those factors enumerated in subsection (1) of this section and such other factors as the physician deems pertinent.

(3) When performed upon a woman who is in the third trimester of pregnancy the same is performed in a hospital and, in the judgment of the attending physician, corroborated by a like opinion of a consulting physician concurring therewith, either is necessary for the preservation of the life of such woman or, if not performed, such pregnancy would terminate in birth or delivery of a fetus unable to survive. Third trimester abortions undertaken for preservation of the life of a pregnant patient, as permitted by this subsection, shall, consistent with accepted medical practice and with the well-being and safety of such patient, be performed in a manner consistent with preservation of any reasonable potential for survival of a viable fetus.

SECTION 8. Any physician may perform an abortion not prohibited by this act and any hospital may provide facilities for such procedures without, in the absence of actual negligence, incurring civil liability therefor to any person, including but not limited to the pregnant woman and the prospective father of the fetus to have been born in the absence of abortion, if consent for such abortion has been duly given by the pregnant woman and, if she be a married person at the time of conception or at any time during the pregnancy, and that fact is actually known by the physician, and if the said husband has not abandoned her, then by the said husband as well; provided that, in obtaining a valid consent for the performance of such an abortion, the physician shall not be required to possess or claim special expertise but shall, nonetheless, and in his best judgment, advise and counsel such pregnant woman or her husband regarding such matters as possible emotional or psychological consequences of the abortion, the probable health or characteristics of the child otherwise to be born of such pregnancy, the likelihood of such woman becoming pregnant again or of the husband or prospective father again fathering a child, and provided further, if the abortion be within the provisions of section 7(3) of this act and either the pregnant woman or the said husband be for any reason unavailable or unable to give a valid consent therefor, the requirement for that person's consent shall be met as provided by law for other medical or surgical procedures and

shall be determined in consideration of the interests, wishes and welfare of the pregnant patient.

SECTION 9. Notwithstanding any provision of law permitting valid consent for medical or surgical procedures to be given by a person or persons other than the patient, the refusal of any pregnant woman, irrespective of age or competence, to submit to an abortion shall be grounds for a physician or hospital otherwise authorized to proceed, to decline performance of an abortion and/or to submit the matter of consent to adjudication by a court of competent jurisdiction.

SECTION 10. No physician in the course of counselling with a pregnant patient regarding an abortion shall be required to confer with any other person as a condition precedent to forming a medical judgment in the matter. Neither shall it be the responsibility of the physician, having made such a judgment and in the course of securing consent for such an abortion, to inquire or investigate beyond the representation of the pregnant patient as to the age or marital status of such patient or as to the approximate time of conception. Licensed hospitals proceeding upon the admission or other customary direction or order of a physician in connection with providing facilities for an abortion may rely upon the same presumption of competence and truthfulness of the patient and shall not intervene between the physician and patient in connection with the consent process; provided, however, this provision shall not bar the hospital, in its discretion, from securing a customary written documentation of the fact of consent having been secured.

SECTION 11. Nothing in this act shall be deemed to require any hospital to furnish facilities or admit any patient for any abortion if, upon determination by its governing board, it elects not to do so. Neither shall any physician be required to perform or assist in any abortion, nor shall any nurse, technician or other employee of any physician or hospital be required by law or otherwise to assist or participate in the performance or provision of any abortion if he or she, for personal, moral or religious reasons, objects thereto. Any such person in the employ or under the control of a hospital shall be deemed to have sufficiently objected to participation in such procedures only if he or she has advised such hospital in writing that he or she generally or specifically objects to assisting or otherwise participating in such procedures. Such notice will suffice without specification of the reason therefor. No refusal to accept a patient for abortion or to perform, assist or participate in any such abortion as herein provided shall form the basis of

any claim for damages or recriminatory action against the declining person, agency or institution.

SECTION 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity thereof shall not affect any other provision or application of this act which can be given effect.

SECTION 13. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

SECTION 14. In the event that the states are again permitted to safeguard the lives of unborn infants before the twenty-fifth week of pregnancy as a result of the Supreme Court of the United States overruling the decisions announced on January 22, 1973, in the cases of Doe et al v. Bolton et al No. 70-40, and Roe et al v. Wade No. 70-18, or an amendment to the United States Constitution overruling these decisions, the governor shall, upon his determination that such event has occurred, make a proclamation declaring said event to have happened and the date of such event, and sections 1 through 10 of this act shall be and are then repealed and sections 11, 12, 13, 14, 15 and 16 of this act shall be in full force and effect on and after said date.

SECTION 15. Every person who provides, supplies or administers to, any pregnant woman, or procures any such woman to take any medicine or drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than two (2) nor more than five (5) years.

SECTION 16. Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, is punishable by imprisonment in the state prison not less than one (1) nor more than five (5) years.

Approved March 17, 1973.

ILLINOIS

Ill. Rev. Stat. ch. 38, §§81-11 to 81-19 (1973 Leg. Serv. Pamp. No. 2)

CRIMINAL LAW—ABORTION LAW

PUBLIC ACT 78-225

SENATE BILL 1049

An Act relating to abortions, to require the reporting thereof, to establish penalties for violations thereof, and to repeal Sections of the Criminal Code of 1961.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. [S.H.A. ch. 38, § 81-11]

This Act shall be known and may be cited as the "Illinois Abortion Law".

Sec. 2. [S.H.A. ch. 38, § 81-12]

It is declared to be the public policy of this State that abortions be performed only by physicians licensed to practice medicine in all of its branches in facilities which adequately protect the life and health of the woman with informed consent following counseling and laboratory procedures; and that care and counseling be provided to the woman following an abortion procedure.

Sec. 3. [S.H.A. ch. 38, § 81-13]

As used in this Act, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed to them:

(a) "First trimester" means the first twelve weeks of gestation commencing with ovulation rather than computed on the basis of the menstrual cycle.

(b) "Second trimester" means the period beginning with the thirteenth week through the twenty-fourth week of gestation commencing with ovulation rather than computed on the basis of the menstrual cycle.

(c) "Third trimester" means the period beginning with the twenty-fifth week of gestation commencing with ovulation.

(d) "Physician" means a person licensed to practice medicine in all its branches under the Illinois "Medical Practice Act".[1]

(e) "Hospital" means a hospital licensed pursuant to the "Hospital Licensing Act" [2] or specifically exempted from licensure under Subsections (2) (3) or (4) of Section 3 of that Act.[3]

(f) "Department" means the Department of Public Health, State of Illinois.

(g) "Criminal Abortion" means the use of any instrument, medicine, drug or other substance, whatever, with the intent to procure a miscarriage of any woman except when done by a physician in conformity with this Act. It shall not be necessary in order to commit a criminal abortion that the woman be pregnant, or if pregnant, that a miscarriage be accomplished.

[1] Chapter 91, § 1 et seq.
[2] Chapter 111½, § 142 et seq.
[3] Chapter 111½, § 144.

Sec. 4. [S.H.A. ch. 38, § 81–14]

An abortion may be performed under the following conditions:

(a) During the first trimester an abortion shall be performed by a physician;

(b) During the second trimester or thereafter, an abortion shall be performed by a physician, in a hospital, on an inpatient basis, with measures for life support which must be available and utilized if there is any clearly visible evidence of viability;

(c) During the third trimester, an abortion shall only be performed to preserve the life or to preserve the physical or mental health of the mother by a physician after consultation with at least two other physicians not related to or engaged in practice with the attending physician.

Sec. 5. [S.H.A. ch. 38, § 81–15]

A report of each abortion performed prior to a gestation period of twenty completed weeks shall be made to the Department on forms prescribed by it. Such report forms shall not identify the patient by name, but shall include, but not be limited to, information concerning:

(a) Identification of facility where abortion was performed and date performed;

(b) The political subdivision in which the patient resides;

(c) Patient's date of birth, race and marital status;

(d) Number of prior pregnancies;

(e) Date of last menstrual period;

(f) Type of abortion procedure performed; and

(g) Complications.

Such form shall be completed by the hospital or other licensed facility, signed by the attending physician, and transmitted to the Department not later than ten days following the end of the month in which the abortion was performed.

Abortions performed after a gestation period of twenty completed weeks shall be registered as provided in Sections 20 through 24 of the Vital Records Act.[1]

The Department may prescribe rules and regulations regarding the administration of this Act including regulations relating to the information to be provided under Section 20 of the Vital Records Act.

All information obtained by a physician, hospital or ambulatory health facility from a patient for the purpose of preparing reports to the Department under this Section or reports received by the Department shall be confidential and shall be used only for statistical purposes.

[1] Chapter 111½, §§ 73–20 to 73–24.

Sec. 6. [S.H.A. ch. 38, § 81–16]

No physician, hospital, ambulatory surgical center, nor employee thereof, shall be required against his or its conscience declared in writing to perform, permit or participate in any abortion, and the failure or refusal to do so shall not be the basis for any civil, criminal, administrative or disciplinary action, proceeding, penalty or punishment. If any request for an abortion is denied, the patient shall be promptly notified.

Sec. 7. [S.H.A. ch. 38, § 81-17]

(a) A person who commits a criminal abortion is guilty of a Class 2 felony.

(b) Any person who advertises, prints, publishes, distributes or circulates any communication through print, radio or television media advocating, advising or suggesting any act which would be a violation of this Act is guilty of a Class B misdemeanor.

(c) Any hospital, licensed facility or physician who fails to submit a report to the Department under the provisions of Section 5 of this Act [1] and any person who fails to maintain the confidentiality of any records or reports required under this Act is guilty of a Class B misdemeanor.

(d) Any person who sells any drug, medicine, instrument or other substance which he knows to be an abortifacient and which is in fact an abortifacient, unless upon prescription of a physician, is guilty of a Class B misdemeanor.

[1] Chapter 38, § 81-15.

Sec. 8. [S.H.A. ch. 38, § 81-18]

All tissue removed at the time of abortion shall be submitted for analysis and tissue report to a board eligible or certified pathologist as a matter of record in all cases. There shall be no exploitation of or experimentation with the aborted tissue.

Sec. 9. [S.H.A. ch. 38, § 81-19]

If any provision of this Act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Section 10. Sections 23-1, 23-2 and 23-3 of the "Criminal Code of 1961" as amended, [S.H.A. ch. 38, §§ 23-1 to 23-3] are repealed.

Section 11. [S.H.A. ch. 38, § 81-11 note] This Act shall take effect upon its becoming a law.

Approved and effective July 19, 1973.

Ill. Rev. Stat. ch. 91, §201 (1973 Leg. Serv. Pamp. No. 2)

ABORTION—REFUSAL TO RECOMMEND, PERFORM OR ASSIST IN—LIABILITY

PUBLIC ACT 78-228

HOUSE BILL 650

An Act concerning the right of medical personnel or hospitals to refuse to perform abortions.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. [S.H.A. ch. 91, § 201]

(a) No physician, nurse or other person who refuses to recommend, perform or assist in the performance of an abortion, whether such abortion be a crime or not, shall be liable to any person for damages allegedly arising from such refusal.

(b) No hospital that refuses to permit the performance of an abortion upon its premises, whether such abortion be a crime or not, shall be liable to any person for damages allegedly arising from such refusal.

(c) Any person, association, partnership or corporation that discriminates against another person in any way, including, but not limited to, hiring, promotion, advancement, transfer, licensing, granting of hospital privileges, or staff appointments, because of that person's refusal to recommend, perform or assist in the performance of an abortion, whether such abortion be a crime or not, shall be answerable in civil damages equal to 3 times the amount of proved damages, but in no case less than $2,000.

(d) The license of any hospital, doctor, nurse or any other medical personnel shall not be revoked or suspended because of a refusal to permit, recommend, perform or assist in the performance of an abortion.

Approved July 19, 1973.

Effective Oct. 1, 1973.

Ill. Rev. Stat. ch. 91, §16a (1973 Leg. Serv. Pamp. No. 2)

MEDICAL PRACTICE ACT—REVOCATION OR SUSPENSION OF LICENSE

PUBLIC ACT 78-226

SENATE BILL 1050

An Act to amend Section 16 of the "Medical Practice Act", approved June 30, 1923, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 16a of the "Medical Practice Act", approved June 30, 1923, as amended, is amended to read as follows:

Sec. 16. [S.H.A. ch. 91, § 16a]

The Department may revoke, suspend, place on probationary status, or take any other disciplinary action as the Department may deem proper with regard to the license, certificate or state hospital permit of any person issued under this Act or under any other Act in this State to practice medicine, to

practice the treatment of human ailments in any manner or to practice midwifery, or may refuse to grant a license, certificate or state hospital permit under this Act or may grant a license, certificate or State hospital permit on a probationary status subject to the limitations of the probation, and may cause any license or certificate which has been the subject of formal disciplinary procedure to be marked accordingly on the records of any county clerk upon any of the following grounds:

1. Performance of an elective abortion in any place, locale, facility, or institution other than:

(a) a facility licensed pursuant to the "Ambulatory Surgical Treatment Center Act" as heretofore or hereafter amended; [1]

(b) an institution licensed pursuant to "An Act relating to the inspection, supervision, licensing, and regulation of hospitals" approved July 1, 1953, as heretofore or hereafter amended; [2] or

(c) an ambulatory surgical treatment center or hospitalization or care facility maintained by the State or any agency thereof, where such department or agency has authority under law to establish and enforce standards for the ambulatory surgical treatment centers, hospitalization, or care facilities under its management and control; or

(d) Ambulatory surgical treatment centers, hospitalization or care facilities maintained by the Federal Government; or

(e) Ambulatory surgical treatment centers, hospitalization or care facilities maintained by any university or college established under the laws of this State and supported principally by public funds raised by taxation;

2. Conviction in this or another State of any crime which is a felony under the laws of this State or conviction of a felony in a federal court, if the Department determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust;

3. Gross malpractice resulting in permanent injury or death of a patient;

4. Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public;

5. Obtaining a fee, either directly or indirectly, either in money or in the form of anything else of value or in the form of a financial profit as personal compensation, or as compensation, charge, profit or gain for an employer or for any other person or persons, on the fraudulent representation that a manifestly incurable condition of sickness, disease or injury of any person can be permanently cured;

6. Habitual intemperance in the use of ardent spirits, narcotics or stimulants to such an extent as to incapacitate for performance of professional duties;

7. Holding one's self out to treat human ailments under any name other than his own, or the personation of any other physician;

8. Employment of fraud, deception or any unlawful means in applying for or securing a license, certificate, or state hospital permit to practice the treatment of human ailments in any manner, to practice midwifery or in passing an examination therefor, or wilful and fraudulent violation of the rules and regulations of the department governing examination;

9. Holding one's self out to treat human ailments by making false statements, or by specifically designating any disease, or group of diseases and making false claims of one's skill, or of the efficacy or value of one's medicine, treatment or remedy therefor;

10. Professional connection or association with, or lending one's name to, another for the illegal practice by another of the treatment of human ailments as a business, or professional connection or association with any person, firm, or corporation holding himself, themselves, or itself out in any manner contrary to this Act;

11. Revocation or suspension of a medical license in a sister state;

12. A violation of any provision of this Act or of the rules and regulations formulated for the administration of this Act;

13. Except as otherwise provided in Section 16.01,[3] advertising or soliciting, by himself or through another, by means of handbills, posters, circulars, stereopticon slides, motion pictures, radio, newspapers or in any other manner for professional business;

14. Directly or indirectly giving to or receiving from any physician, person, firm or corporation any fee, commission, rebate or other form of compensation for any professional services not actually and personally rendered. Nothing contained in this Subsection prohibits persons holding valid and current licenses under this Act from practicing medicine in partnership under a partnership agreement or in a corporation authorized by "The Medical Corporation Act", as now or hereafter amended,[4] or as an association authorized by "The Professional Association Act" as now or hereafter amended,[5] or under "The Professional Corporation Act" as now or hereafter amended,[6] from pooling, sharing, dividing or apportioning the fees and monies received by them or by the partnership, corporation or association in accordance with the partnership agreement or the policies of the Board of Directors of the corporation or association. Nothing contained in this subsection shall abrogate the right of 2 or more persons holding valid and current licenses under this Act to receive adequate compensation for concurrently rendering professional services to a patient and divide a fee; provided, the patient has full knowledge of the division, and, provided, that the division is made in proportion to the services performed and responsibility assumed by each.

15. A finding by the Committee that the registrant after having his license placed on probationary status violated the terms of the probation.

All proceedings to suspend, revoke, place on probationary status, or take any other disciplinary action as the Department may deem proper with regard to a license, certificate or state hospital permit on any of the foregoing grounds, except the ground numbered 8 (fraudulent grounds excepted) must be commenced within 3 years next after the conviction or commission of any of the acts described therein, except as otherwise provided by law; but the time during which the holder of the license, certificate or state hospital permit was without the State of Illinois shall not be included within the 3 years.

The entry of a decree by any circuit court establishing that any person holding a license, certificate or state hospital permit under this Act is a person in need of mental treatment operates as a suspension of that license, certificate or state hospital permit. That person may resume his practice only upon a finding by the Committee of Physicians that he has been determined to be recovered from mental illness by the court and upon the Committee's recommendation that he be permitted to resume his practice.

[1] Chapter 111¼, § 157-8.1 et seq.
[2] Chapter 111½, § 142 et seq.
[3] Chapter 91, § 16a-1.
[4] Chapter 32, § 631 et seq.
[5] Chapter 106¼, § 101 et seq.
[6] Chapter 32, § 415-1 et seq.

Section 2. [S.H.A. ch. 91, § 16a note] This Act shall take effect upon its becoming a law.

Approved and effective July 19, 1973.

Ill. Rev. Stat. ch. 111 1/2, §§157-8.1 to 157-8.16 (1973 Leg. Serv. Pamp. No. 2)

AMBULATORY SURGICAL TREATMENT CENTER ACT

PUBLIC ACT 78-227

SENATE BILL 1051

An Act relating to the inspection, licensing and regulation of ambulatory surgical treatment centers.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. [S.H.A. ch. 111½, § 157-8.1]

This Act may be cited as the Ambulatory Surgical Treatment Center Act.

Sec. 2. [S.H.A. ch. 111½, § 157-8.2]

It is declared to be the public policy that the State has a legitimate interest in assuring that all medical procedures, including abortions, are performed under circumstances that insure maximum safety. Therefore, the purpose of this Act is to provide for the better protection of the public health through the development, establishment, and enforcement of standards (1) for the care of individuals in ambulatory surgical treatment centers, and (2) for the construction, maintenance and operation of ambulatory surgical treatment centers, which, in light of advancing knowledge, will promote safe and adequate treatment of such individuals in ambulatory surgical treatment centers.

Sec. 3. [S.H.A. ch. 111½, § 157-8.3]

As used in this Act, unless the context otherwise requires, the following words and phrases shall have the meanings ascribed to them:

(A) "Ambulatory surgical treatment center" means any institution, place or building devoted primarily to the maintenance and operation of facilities for the performance of surgical procedures or any facility in which a medical or surgical procedure is utilized to terminate a pregnancy, irrespective of whether the facility is devoted primarily to this purpose. Such facility shall not provide beds or other accommodations for the overnight stay of patients. Individual patients shall be discharged in an ambulatory condition without danger to the continued well being of the patients or shall be transferred to a hospital.

The term "ambulatory surgical treatment center" does not include (1) any institution, place, building or agency required to be licensed pursuant to the "Hospital Licensing Act", approved July 1, 1953, as heretofore or hereafter amended.[1]

(2) any person or institution required to be licensed pursuant to "An Act in relation to the licensing and regulation of homes for the maintenance, care, and nursing of persons who are ill or physically infirm", approved July 17, 1945, as heretofore or hereafter amended;[2]

(3) hospitals or ambulatory surgical treatment centers maintained by the State or any department or agency thereof, where such department or agency has authority under law to establish and enforce standards for the hospitals or ambulatory surgical treatment centers under its management and control;

(4) hospitals or ambulatory surgical treatment centers maintained by the Federal Government or agencies thereof; or

(5) any place, agency, clinic, or practice, public or private, whether organized for profit or not, devoted exclusively to the performance of dental or oral surgical procedures.

(B) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, or the legal successor thereof.

(C) "Department" means the Department of Public Health of the State of Illinois.

(D) "Director" means the Director of the Department of Public Health of the State of Illinois.

(E) "Physician" means a person licensed to practice medicine in all of its branches in the State of Illinois.

(F) "Dentist" means a person licensed to practice dentistry under the "Illinois Dental Practice Act".[3]

[1] Chapter 111½, § 142 et seq.
[2] Chapter 111½, § 35.16 et seq.
[3] Chapter 91, § 56a et seq.

Sec. 4. [S.H.A. ch. 111½, § 157-8.4]

No person shall open, conduct or maintain an ambulatory surgical treatment center without first obtaining a license from the Department.

Nothing in this Act shall be construed to impair or abridge the power of municipalities to license and regulate ambulatory surgical treatment centers, provided that the municipal ordinance requires compliance with at least the minimum requirements developed by the Department pursuant to this Act.

The "Administrative Review Act", approved May 8, 1945, as heretofore or hereafter amended,[1] shall be applicable to the judicial review of final administrative decisions of the regulatory agency of the municipality. Any municipality having an ordinance licensing and regulating ambulatory surgical treatment centers which provides for minimum standards and regulations which meet at least the minimum requirements established pursuant to this Act shall make such periodic reports to the Department as the Department may deem necessary. This report shall include a list of ambulatory surgical treatment centers meeting standards substantially equivalent to those promulgated by the Department under this Act. The Department may issue a license to such ambulatory surgical treatment centers based upon such reports or the Department may conduct investigations or inspections to determine whether a license should be issued to these ambulatory surgical treatment centers.

[1] Chapter 110, § 264 et seq.

Sec. 5. [S.H.A. ch. 111½, § 157-8.5]

An application for a license to operate an ambulatory surgical treatment center shall be made to the Department upon forms provided by it and shall contain such information as the Department reasonably requires, which may include affirmative evidence of ability to comply with the provisions of this Act and the standards, rules and regulations, promulgated by virtue thereof.

All applications required under this Section shall be signed by the applicant and shall be verified.

Sec. 6. [S.H.A. ch. 111½, § 157-8.6]

Upon receipt of an application for a license, the Director shall only issue a license if he finds that the applicant facility complies with this Act and the rules, regulations and standards promulgated pursuant thereto and:

(a) is under the medical supervision of one or more physicians;

(b) permits a surgical procedure to be performed only by a physician or dentist who at the time is privileged to have his patients admitted by himself or an associated physician and is himself privileged to perform surgical procedures in at least one Illinois hospital;

(c) maintains adequate medical records for each patient.

A license, unless sooner suspended or revoked, shall be renewable annually upon approval by the Department. Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises. The Department may, either before or after the issuance of a license, request the cooperation of the Division of Fire Prevention of the Illinois Department of Law Enforcement. The report and recommendations

of this agency shall be in writing and shall state with particularity its findings with respect to compliance or noncompliance with such minimum standards, rules and regulations.

The Director may issue a provisional license to any ambulatory surgical treatment center which does not substantially comply with the provisions of this Act and the standards, rules and regulations promulgated by virtue thereof provided that he finds that such ambulatory surgical treatment center will undertake changes and corrections which upon completion will render the ambulatory surgical treatment center in substantial compliance with the provisions of this Act, and the standards, rules and regulations adopted hereunder, and provided that the health and safety of the patients of the ambulatory surgical treatment center will be protected during the period for which such provisional license is issued. The Director shall advise the licensee of the conditions under which such provisional license is issued, including the manner in which the facilities fail to comply with the provisions of the Act, standards, rules and regulations, and the time within which the changes and corrections necessary for such ambulatory surgical treatment center to substantially comply with this Act, and the standards, rules and regulations of the Department relating thereto shall be completed.

Sec. 7. **[S.H.A. ch. 111½, § 157–8.7]**

The Director after notice and opportunity for hearing to the applicant or licensee may deny, suspend, or revoke a license to open, conduct and maintain an ambulatory surgical treatment center in any case in which he finds that there has been a substantial failure to comply with the provisions of this Act or the standards, rules and regulations established by virtue thereof.

Such notice shall be effected by registered mail or by personal service setting forth the particular reasons for the proposed action and fixing a date, not less than fifteen days from the date of such mailing or service, at which time the applicant or licensee shall be given an opportunity for a hearing. Such hearing shall be conducted by the Director or by an individual designated in writing by the Director as Hearing Officer to conduct the hearing. On the basis of any such hearing, or upon default of the applicant or licensee, the Director shall make a determination specifying his findings and conclusions. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee.

The procedure governing hearings authorized by this Section shall be in accordance with rules promulgated by the Department. A full and complete record shall be kept of all proceedings, including the notice of hearing, complaint, and all other documents in the nature of pleadings, written motions filed in the proceedings, and the report and orders of the Director and Hearing Officer. All testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to the "Administrative Review Act". A copy or copies of the transcript may be obtained by any interested party on payment of the cost of preparing such copy or copies.

The Director or Hearing Officer, shall upon his own motion, or on the written request of any party to the proceeding, issue subpoenas requiring the attendance and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of books, papers, records or memoranda. All subpoenas and subpoenas duces tecum issued under the terms of this Act may be served by any person of full age. The fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the Circuit Court of this State, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Director or Hearing Officer, such fees shall be paid in the same manner as other expenses of the Department, and when the witness is subpoenaed at the instance of any other party to any such proceeding the Department may require that the cost of service of the subpoena or subpoena duces tecum and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the Department in its discretion, may require a

deposit to cover the cost of such service and witness fees. A subpoena or subpoena duces tecum issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record.

Any circuit court of this State, or any judge thereof, either in term time or vacation, upon the application of the Director, or upon the application of any other party to the proceeding, may, in its or his discretion, compel the attendance of witnesses, the production of books, papers, records or memoranda and the giving of testimony before the Director or Hearing Officer conducting an investigation or holding a hearing authorized by this Act, by an attachment for contempt or otherwise, in the same manner as production of evidence may be compelled before said court.

The Director or Hearing Officer, or any party in an investigation or hearing before the Department, may cause the depositions of witnesses within the State to be taken in the manner prescribed by law for like depositions in civil actions in courts of this State, and to that end compel the attendance of witnesses and the production of books, papers, records, or memoranda.

Sec. 8. [S.H.A. ch. 111½, § 157-8.8]

Before commencing construction of new facilities or specified types of alteration or additions to an existing ambulatory surgical treatment center, architectural drawings and specifications therefor shall be submitted to the Department for review and approval. Final approval of the drawings and specifications for compliance with design and construction standards shall be obtained from the Department before the alteration, addition, or new construction is begun.

Sec. 9. [S.H.A. ch. 111½, § 157-8.9]

The Department shall make or cause to be made such inspections and investigations as it deems necessary. Information received by the Department through filed reports, inspection, or as otherwise authorized under this Act shall not be disclosed publicly in such manner as to identify individuals or ambulatory surgical treatment centers, except in a proceeding involving the denial, suspension, or revocation of a license to open, conduct and maintain an ambulatory surgical treatment center.

Sec. 10. [S.H.A. ch. 111½, § 157-8.10]

The Department shall prescribe and publish minimum standards, rules and regulations necessary to implement the provisions of this Act which shall include, but not be limited to:

(a) construction of the facility including, but not limited to, plumbing, heating, lighting, and ventilation which shall ensure the health, safety, comfort and privacy of patients and protection from fire hazard;

(b) number and qualifications of all personnel, including administrative and nursing personnel, having responsibility for any part of the care provided to the patients;

(c) equipment essential to the health, welfare and safety of the patients; and

(d) facilities, programs and services to be provided in connection with the care of patients in ambulatory surgical treatment centers.

Sec. 11. [S.H.A. ch. 111½, § 157-8.11]

Whenever the Department refuses to grant, or revokes or suspends a license to open, conduct or maintain an ambulatory surgical treatment center, the applicant or licensee may have such decision judicially reviewed. The provisions of the "Administrative Review Act" and the rules adopted pursuant thereto [1] shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Department hereunder. The term "administrative decisions" is defined as in Section 1 of the "Administrative Review Act".[2]

[1] Chapter 110, § 264 et seq.
[2] Chapter 110, § 264.

Sec. 12. [S.H.A. ch. 111½, § 157-8.12]

Any person opening, conducting or maintaining an ambulatory surgical treatment center without a license issued pursuant to this Act shall be guilty of a Class A misdemeanor.

Sec. 13. [S.H.A. ch. 111½, § 157-8.13]

The operation or maintenance of an ambulatory surgical treatment center in violation of this Act or of the Rules and Regulations promulgated by the Department is declared a public nuisance inimical to the public welfare. The Director of the Department, in the name of the People of the State, through the Attorney General or the State's Attorney of the county in which the violation occurs, may, in addition to other remedies herein provided, bring action for an injunction to restrain such violation or to enjoin the future operation or maintenance of any such ambulatory surgical treatment center.

Sec. 14. [S.H.A. ch. 111½, § 157-8.14]

The Governor shall appoint an Ambulatory Surgical Treatment Center Licensing Board composed of nine persons. Four members shall be practicing physicians; one member shall be a dentist who has been licensed to perform oral surgery; one member shall be an Illinois registered professional nurse who is employed in an ambulatory surgical treatment center; one member shall be a person actively engaged in the supervision or administration of a health facility; and two members shall represent the general public and shall have no personal economic interest in any institution, place or building licensed pursuant to this Act. In making Board appointments, the Governor shall give consideration to recommendations made through the Director by appropriate professional organizations.

Each member shall hold office for a term of 3 years and the terms of office of the members first taking office shall expire, as designated at the time of appointment, 3 at the end of the first year, 3 at the end of the second year, and 3 at the end of the third year, after the date of appointment. The term of office of each original appointee shall commence October 1, 1973; and the term of office of each successor shall commence on October 1 of the year in which his predecessor's term expires. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Board members, while serving on business of the Board shall receive actual and necessary travel and subsistence expenses while so serving away from their places of residence. The Board shall meet as frequently as the Director deems necessary, but not less than once a year. Upon request of 3 or more members, the Director shall call a meeting of the Board.

The Board shall advise and consult with the Department in the administration of this Act, provided that no rule, regulation or standard shall be adopted by the Department concerning the operation of ambulatory surgical treatment centers licensed under this Act which has not had prior approval of the Ambulatory Surgical Treatment Center Licensing Board.

Sec. 15. [S.H.A. ch. 111½, § 157-8.15]

If any provision of this Act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of the Act are declared to be severable.

Sec. 16. [S.H.A. ch. 111½, § 157-8.16] This Act shall take effect upon its becoming a law.

Approved and effective July 19, 1973.

INDIANA

P. L. 148 [1973] Ind. Laws 763

PUBLIC LAW No. 148

[S. 20. Approved April 24, 1973.]

AN ACT to amend IC 1971, 16-10, concerning hospitals, by adding a new chapter relating to abortion.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 1971, 16-10 is amended by adding a new chapter to be numbered 3, and to read as follows:

Chapter 3 Abortion: Rights of Conscience.

Sec. 1. No private or denominational hospital shall be required to permit its facilities to be utilized for the performance of abortions.

Sec. 2. No physician, and no employee or member of the staff of a hospital or other facility in which an abortion may be performed, shall be required to perform any abortion or to assist or participate in the medical procedures resulting in or intended to result in an abortion, if such person objects to such procedures on ethical, moral or religious grounds, nor shall any person as a condition of training, employment, pay, promotion, or privileges, be required to agree to perform or participate in the performing of abortions, nor shall any hospital, person, firm, corporation or association discriminate against or discipline any person on account of his or her moral beliefs concerning abortion. A civil action for damages or reinstatement of employment, or both, may be prosecuted for any violation of this section.

SECTION 2. Whereas an emergency exists for the more immediate taking effect of this act, the same shall be in full force and effect from and after its passage.

P. L. 322 [1973] Ind. Laws 1740 et seq.

PUBLIC LAW No. 322

[S. 334. Filed April 24, 1973; became law without signature of the governor.]

AN ACT to amend IC 1971, 35-1 by adding a new chapter regulating abortion, and providing penalties.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. It is not the intent of the Indiana General Assembly, in enacting this legislation, to acknowledge that there is a constitutional right to abortion on demand or to indicate that it approves of abortion, except to save the life of the mother. The General Assembly, is, however,

controlled to a certain extent by recent Supreme Court decisions and this legislation is an attempt to abide by those decisions to the extent necessary.

No individual may be compelled to perform an abortion against his will. No hospital may be required to permit its facilities to be utilized for the performance of abortions. No individual may be permitted an abortion when the interest of that individual is outweighed by the express interests of the state in protecting the potentiality of human life.

The general assembly does find, however, in accordance with recent U.S. Supreme Court decisions that until the end of the first trimester of a pregnancy, the physician attending a pregnant woman, 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, and, if such decision is reached, to effectuate such judgment by an abortion free of interference by the state.

The state further finds that after the end of the first trimester of pregnancy, the state itself has an important and legitimate interest in preserving and protecting the life and health of the pregnant woman, and accordingly, it is the intent of this legislation to require that no abortion shall be performed after the end of the first trimester except in a licensed hospital facility, as defined herein.

Further, the state finds that it has an important and legitimate interest in protecting the potentiality of human life which, at the time of the viability of the fetus, outweighs all other interests except those affecting the health of the mother herself, and accordingly it is the intent of this legislation to completely prohibit abortion after viability except when necessary to preserve the life of the mother, or to prevent grave permanent injury to her health.

SECTION 2. IC 1971, 35-1 is amended by adding a new chapter to be numbered 58.5 and to read as follows:

Chapter 58.5 Regulation of Abortion.

Sec. 1. As used in this chapter:

(a) The term "trimester" means any one of three (3) equal periods of time of normal gestation period of the pregnant woman in question derived by dividing such period of gestation into three (3) equal part of three (3) months each and to be designated as the first trimester, second trimester, and the third trimester, respectively.

(b) The term "abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

(c) The term "hospital" means:

(1) a hospital as defined in IC 1971, 16-10-1-6 as amended, which is required to be licensed by the state board of health as provided in IC 1971, 16-10-1, or which is operated by an agency of the United States; or

(2) an ambulatory out-patient surgical center as defined in IC 1971, 16-10-1-6(b).

(d) The term "physician" means a person holding an unlimited license to practice medicine, surgery, or obstetrics in this state in accordance with IC 1971, 25-22-1.

(e) The term "viability" means the ability of a fetus to live outside the mother's womb.

(f) The term "consent" means a written agreement to submit to an abortion after the consenting party has had a full explanation of the abortion procedure to be performed as evidenced by the signature of the consenting party on a form of explanation and written consent to be promulgated by the state Board of Health. The state Board of Health shall promulgate such forms on or before May 1, 1973.

Sec. 2. Abortion shall in all instances be a criminal act except when performed under the following circumstances:

(a) During the first trimester of pregnancy for reasons based upon the professional, medical judgment of the pregnant woman's physician provided:

(1) It is performed by such physician in a hospital, or a licensed health facility as defined in IC 1971, 16-10-2 which offers the basic safeguards as provided by a hospital admission, and has immediate hospital back-up; and,

(2) The woman submitting to the abortion has filed her consent with said physician. If said woman is unmarried and is less than eighteen (18) years of age, said consent shall be joined by a parent or other person in loco parentis: Provided, however, That if, in the judgment of the physician, the abortion is necessary to preserve the life of the woman, such consents shall not be required.

(b) After the first trimester of pregnancy and before viability, for reasons based upon the professional, medical judgment of the pregnant woman's physician provided:

(1) All the circumstances and provisions required for legal abortion during the first trimester are present and adhered to; and,

(2) It is performed in a hospital.

(c) After viability of the fetus for reasons based upon the professional, medical judgment of the pregnant woman's physician provided:

(1) All the circumstances and provisions required for legal abortion prior to viability are present and adhered to; and,

(2) Prior to the abortion the attending physician shall certify in writing to the hospital in which the abortion is to be performed, that in his professional, medical judgment, after proper examination and review of the woman's history, the abortion is necessary to prevent a substantial permanent impairment of the life or physical health of the pregnant woman. All facts and reasons supporting said certification shall be set forth by the physician in writing and attached to said certificate.

(3) The saline method of abortion shall not be used.

(d) In no event, except in case of medical emergency involving the life of the pregnant woman, shall any abortion be performed unless at least a twenty-four (24) hour period has first elapsed between the signing of the written consent by the required consenting parties, and the actual performance of the abortion.

Sec. 3. It shall be the responsibility of the attending physician to determine in accordance with accepted medical standards which trimester the pregnant woman receiving the abortion is in, to determine whether the fetus is viable and to certify that determination as part of any written reports required of him by the state board of health or the hospital in which the abortion is performed.

Sec. 4. It shall be a felony for any person or persons knowingly to perform or otherwise aid or abet the performance of an abortion not expressly provided for herein, and such person or persons shall upon conviction thereof be imprisoned in the state prison for not less than five (5) nor more than ten (10) years.

Sec. 5. (a) Every medical facility where abortions may be performed shall be supplied with forms drafted by the state board of health, the purpose and function of which shall be the improvement of maternal health and life through the compilation of relevant maternal life and health factors and data, and a further purpose and function shall be to monitor all abortions performed in the state of Indiana to assure they are done only under the authorized provisions of the law. Such forms shall include, among other things, the following:

(1) The age of the woman who is aborted;

(2) The place where the abortion is performed;

(3) The full name and address of the physicians performing the abortion;

(4) The name of the father if known;

(5) If after viability, the medical reason for the abortion;

(6) The medical procedure employed to administer the abortion;

(7) The mother's obstetrical history including dates of other abortions if any;

(8) The results of pathological examinations if performed;

(9) Information as to whether the fetus was delivered alive;

(10) Records of all maternal deaths occurring within the health facility where the abortion was preformed.

(b) The form provided for in subsection (a) above shall be completed by the physician performing the abortion and shall be transmitted to the state board of health no later than July 30 for each abortion performed in the first six (6) months of that year and no later than January 30 for each abortion performed for the last six (6) months of the preceding year. Each failure to file such report on time as required herein shall be a misdemeanor punishable on conviction thereof by fine of not more than three hundred dollars ($300.00) or imprisonment in the Indiana State Farm for not more than ninety (90) days or both.

Sec. 6. No experiments except pathological examinations shall be conducted on any fetus aborted under this chapter, nor shall any fetus so aborted be transported out of this state for experimental purposes. Whoever conducts such an experiment or so transports such a fetus shall be guilty of a misdemeanor and, on conviction thereof, be fined not more than one thousand dollars ($1,000.00) or imprisoned in the county jail for not more than one (1) year or both.

Sec. 7. (a). All abortions performed after a fetus is viable shall be governed by the provisions of 2(c) and performed in a hospital having premature birth intensive care units available during the abortion, and all viable fetuses shall be given full medical treatment for the protection and maintenance of their life.

(b) Any fetus born alive shall be treated thereafter as a person under the law and a birth certificate shall be

issued certifying the birth of said person even though said person may thereafter die, in which event a death certificate shall issue pursuant to law; failure to take all reasonable steps, in keeping with good medical practice, to preserve the life and health of said live born person shall subject the responsible persons to Indiana laws governing homicide, manslaughter and civil liability for wrongful death and medical malpractice.

(c) If, prior to the abortion, the mother, and if married, her husband, has or have stated in writing that she does or they do not wish to keep the child in the event that the abortion results in a live birth, and this writing is not retracted prior to the abortion, the child, if born alive, shall immediately upon birth become a ward of the County Department of Public Welfare.

Sec. 8. (a). No physician, and no employee or member of the staff of a hospital or other facility in which an abortion may be performed, shall be required to perform any abortion or to assist or participate in the medical procedures resulting in or intended to result in an abortion, if such person objects to such procedures on ethical, moral or religious grounds, nor shall any person as a condition of training, employment, pay, promotion, or privileges be required to agree to perform or participate in the performing of abortions, nor shall any hospital, person, firm, corporation or association discriminate against or discipline any person on account of his or her moral beliefs concerning abortion. A civil action for damages or reinstatement of employment, or both, may be prosecuted for any violation of this subsection.

(b) No private or denominational hospital shall be required to permit its facilities to be utilized for the performance of abortions authorized under the provisions of this chapter.

SECTION 3. IC 1971, 35-30-10-1 is amended to read as follows: Sec. 1. Whoever knowingly sells or lends, or offers to sell or lend, or gives away, or offers to give away, or in any manner exhibits or has in his possession, with or without intent to sell, lend or give away, any obscene,

lewd, indecent or lascivious book, pamphlet, paper, drawing, lithograph, engraving, picture, dagurreotype, motion picture, photograph, stereoscopic picture, model, cast, instruments, or article of indecent or immoral use, or instrument or article for procuring **an illegal** abortion, **as defined in IC 1971, 35-1-58.5,** or for self-pollution, or medicine for procuring **an illegal** abortion, **as defined in IC 1971, 35-1-58.5,** or advertise the same, or any of them, for sale, or writes or prints any letter, circular, handbill, card, book, pamphlet, advertisement or notice of any kind, or gives information orally, stating when, how, where, or by what means, or of whom any of the obscene, lewd, indecent or lascivious articles or things, hereinbefore mentioned can be purchased, borrowed, presented or otherwise obtained, or are manufactured; or whoever knowingly manufactures, or draws and exposes, or draws with intent to sell or have sold, or prints any such articles or things, shall be fined not less than twenty dollars ($20.00) nor more than one thousand dollars ($1,000.00), to which may be added imprisonment for not less than twenty (20) days nor more than one (1) year; but nothing in this **chapter** shall be construed to affect teaching in regularly chartered medical colleges, or the publication of standard medical books, or the practice of regular practitioners of medicine or druggists in their legitimate business.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision of application, and to this end the provisions of this chapter are severable.

SECTION 5. Whereas an emergency exists for the more immediate taking effect of this act, the same shall be in full force and effect from and after May 1, 1973.

LOUISIANA

La. Rev. Stat. §§87.1, 87.2, 87.4 (1973 Leg. Serv. Pamp.)

PART V. OFFENSES AFFECTING THE PUBLIC MORALS

SUB-PART A. OFFENSES AFFECTING SEXUAL IMMORALITY*

3. Abortion

§ 87.1 Killing a child during delivery

Killing a child during delivery is the intentional destruction, during parturition of the mother, of the vitality or life of a child in a state of being born and before actual birth, which child would otherwise have been born alive; provided, however, that the crime of killing a child during delivery shall not be construed to include any case in which the death of a child results from the use by a physician of a procedure during delivery which is necessary to save the life of the child or of the mother and is used for the express purpose of and with the specific intent of saving the life of the child or of the mother.

Whoever commits the crime of killing a child during delivery shall be imprisoned at hard labor in the penitentiary for life.

Added by Acts 1973, No. 74, § 1.

§ 87.2 Human experimentation

Human experimentation is the use of any live born human being, without consent of that live born human being, as hereinafter defined, for any scientific or laboratory research or any other kind of experimentation or study except to protect or preserve the life and health of said live born human being, or the conduct, on a human embryo or fetus in utero, of any experimentation or study except to preserve the life or to improve the health of said human embryo or fetus.

A human being is live born, or there is a live birth, whenever there is the complete expulsion or extraction from its mother of a human embryo or fetus, irrespective of the duration of pregnancy, which after such separation, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

Whoever commits the crime of human experimentation shall be imprisoned at hard labor for not less than five nor more than twenty years, or fined not more than ten thousand dollars, or both.

Added by Acts 1973, No. 77, § 1.

§ 87.4 Abortion advertising

Abortion advertising is the placing or carrying of any advertisement of abortion services by the publicizing of the availability of abortion services.

Whoever commits the crime of abortion advertising shall be imprisoned, with or without hard labor, for not more than one year or fined not more than five thousand dollars, or both.

Added by Acts 1973, No. 76, § 1.

La. Rev. Stat. §§254.1, 309.1, 351-356 (1973 La. Leg. Serv. Pamp.)

TITLE 40

PUBLIC HEALTH AND SAFETY

CHAPTER 2. VITAL STATISTICS

PART II. ADOPTION

Sec.
254.1 Abortions; birth and death certificates [New].

PART IV. PARISHES OTHER THAN PARISH OF ORLEANS

Sec.
309.1 Abortions; birth and death certificates [New].

PART VI. ABORTION [NEW]

Sec.
351. Purpose.
352. Forms for collection of data.
353. Printing and supplying of forms.
354. Completion of form; filing with state board of health.
355. Failure to complete form; penalty.
356. Report of state registrar.

PART II. ADOPTION

§ 254.1 Abortions; birth and death certificates

Whenever an abortion procedure results in a live birth, a birth certificate shall be issued certifying the birth of said live born human being even though said human being may thereafter die after a short time. For the purposes of this section a human being is live born, or there is a live birth, whenever there is the complete expulsion or extraction from its mother of a human embryo or fetus, irrespective of the duration of pregnancy, which, after such separation, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or movement of the voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. In the event death does ensue after a short time, a death certificate shall be issued. Both the birth and the death certificates shall be issued in accordance with the provisions of this part and of the rules and regulations of the city bureau of vital statistics.
Added by Acts 1973, No. 75, § 1.

PART IV. PARISHES OTHER THAN PARISH OF ORLEANS

§ 309.1 Abortions; birth and death certificates

Whenever an abortion procedure results in a live birth, a birth certificate shall be issued certifying the birth of said live born human being even though said human being may thereafter die after a short time. For the purposes of this section a human being is live born, or there is a live birth, whenever there is the complete expulsion or extraction from its mother of a human embryo or fetus, irrespective of the duration of pregnancy, which, after such separation, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or movement of the voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. In the event death does ensue after a short time, a death certificate shall be issued. Both the birth and the death certificates shall be issued in accordance with the provisions of this part and of rules and regulations of the division of public health statistics of the state board of health.
Added by Acts 1973, No. 75, § 1.

PART VI. ABORTION [NEW]

§ 351. Purpose

The purpose of this part shall be the compilation of relevant maternal life and health factors and data concerning abortions which may be used in the improvement of maternal health and life. The further purpose and function of this part shall be to serve as a monitor on all abortions performed in the state of Louisiana to assure that they are performed only in accordance with the provisions of law.
Added by Acts 1973, No. 75, § 1.

§ 352. Forms for collection of data

The division of public health statistics of the state board of he[illegible] hall prescribe forms for the collection of information and statistics wi[illegible] pe[illegible] to abortions. Such forms shall require, but not be limited to the [illegible]ving information:

(1) The age, marital status, and state and parish (county) of re[illegible]e[illegible] the woman who is aborted;

(2) The place where the abortion is [illegible]rformed;

(3) The full name and address o[illegible] physician or physicians p[illegible]n[illegible] the abortion;

(4) The age, marital status [illegible] parish (county) of r[illegible]sic[illegible] the father if known;

(5) Medica[illegible] for the abortion;

(6) Medic[illegible] to procure the [illegible]

(7) The le[illegible]s;

(8) The w[illegible]s;

(9) Othe[illegible]icant [illegible] the fetus and mot[illegible]

(10) The results of p[illegible] examinations of [illegible]

Added by Acts 1973, No. [illegible]

§ 353. Printing and s[illegible] forms

The state registra[illegible] and supply to all [illegible]nd the local registrar f[illegible] of Orleans, the form[illegible] made in R.S. 40:352. [illegible] registrar, including [illegible]r parish of Orleans, sh[illegible] such forms to every [illegible] lying-in, or other ins[illegible] public or private [illegible] located in his regist[illegible]trict to which [illegible] disease or injury or [illegible]irth or are [illegible]nd to all physicians in his r[illegible]n district.

Added by Acts 1973, [illegible]

§ 354. Completion [illegible] filing with state [illegible]

The informatio[illegible] by the form for which pr[illegible] R. 40:352 shall b[illegible] the physician or physicians [illegible] tion in each [illegible] an abortion is performed [illegible] shall be t[illegible] physician or physicians t[illegible] health s[illegible]te board of health within f[illegible] forming [illegible]

Added [illegible], § 1.

§ 355. Fai[illegible]; penalty

Failure t[illegible]m as required in R.S. 40:3[illegible] demeanor punish[illegible]onment for ninety days in [illegible] hundred dollar f[illegible] Such failure to complete s[illegible] timely transmit [illegible] admissible as evidence that [illegible] abortion was illeg[illegible]

Added by Acts 19[illegible]

§ 356. Report [illegible]

The state re[illegible]nit to the board, to the legislat[illegible]he governor an [illegible]h shall take the form of a c[illegible]nd recapitulati[illegible] supplied on the forms comple[illegible] mitted to the [illegible] health statistics in accordance [illegible] visions of R.S. 4[illegible]

Added by Acts 1[illegible]

La. Rev. Stat. §§1299.31-1299.34 (1973 Leg. Serv. Pamp.)

CHAPTER 5. MISCELLANEOUS HEALTH PROVISIONS

PART XVIII. ABORTION [NEW]

Sec.
1299.31 Discrimination against certain persons; prohibition.
1299.32 Discrimination against hospitals, clinics, etc.; prohibition.
1299.33 Governmental assistance; discrimination for refusal to participate in an abortion; prohibition.
1299.34 Employees of state and political subdivisions; counseling abortion prohibited.

PART XIX. INDUSTRIAL WASTE DISPOSAL [NEW]

1299.36 Transportation of industrial wastes, burial or other disposal.

PART XVIII. ABORTION [NEW]

§ 1299.31 Discrimination against certain persons; prohibition

A. No physician, nurse, student or other person or corporation shall be held civilly or criminally liable, discriminated against, dismissed, demoted,

or in any way prejudiced or damaged because of his refusal for any reason to recommend, counsel, perform, assist with or accommodate an abortion.

B. No worker or employee in any social service agency, whether public or private, shall be held civilly or criminally liable, discriminated against, dismissed, demoted, in any way prejudiced or damaged, or pressured in any way for refusal to take part in, recommend or counsel an abortion for any woman.

Added by Acts 1973, No. 72, § 1.

§ 1299.32 Discrimination against hospitals, clinics, etc.; prohibition

No hospital, clinic or other facility or institution of any kind shall be held civilly or criminally liable, discriminated against, or in any way prejudiced or damaged because of any refusal to permit or accommodate the performance of any abortion in said facility or under its auspices.

Added by Acts 1973, No. 72, § 1.

§ 1299.33 Governmental assistance; discrimination for refusal to participate in an abortion; prohibition

A. The term governmental assistance as used in this section shall include federal, state and local grants, loans and all other forms of financial and other aid from any level of government or from any governmental agency.

B. No woman shall be denied governmental assistance or be otherwise discriminated against or pressured in any way for refusing to accept or submit to an abortion, which she may do for any reason and without explanation.

C. No hospital, clinic, or other medical or health facility, whether public or private, shall ever be denied governmental assistance or be otherwise discriminated against or otherwise be pressured in any way for refusing to permit its facilities, staff or employees to be used in any way for the purpose of performing any abortion.

D. No abortion shall be performed on any woman unless prior to the abortion she shall have been advised, orally and in writing, that she is not required to submit to the abortion and that she may refuse any abortion for any reason and without explanation and that she shall not be deprived of any governmental assistance or any other kind of benefits for refusing to submit to an abortion. This provision shall be of full force and effect notwithstanding the fact that the woman in question is a minor, in which event said minor's parents, or if a minor emancipated by marriage, the minor's husband, shall also be fully advised of their right to refuse an abortion for the minor in the same manner as the minor is advised. Compliance with this provision shall be evidenced by the written consent of the woman that she submits to the abortion voluntarily and of her own free will, and by written consent of her parents, if she is an unmarried minor, and by consent of her husband if she is a minor emancipated by marriage, such written consent to set forth the written advice given and the written consent and acknowledgment that a full explanation of the abortion procedure to be performed has been given and is understood.

Added by Acts 1973, No. 72, § 1.

§ 1299.34 Employees of state and political subdivisions; counseling abortion prohibited

No person employed by the state of Louisiana, by contract or otherwise, or of any subdivision or agency thereof, and no person employed in any public or private social service agency, by contract or otherwise, including workers therein, which is a recipient of any form of governmental assistance, shall require or recommend that any woman have an abortion. Notwithstanding anything contained herein to the contrary, this section shall not apply to a doctor of medicine, currently licensed under the provisions of the Louisiana Medical Practices Act (R.S. 37:1261, et seq.)[1] who is acting to save or preserve the life of a pregnant woman.

Added by Acts 1973, No. 72, § 1.

[1] R.S. 37:1261 et seq. is entitled Louisiana State Board of Medical Examiners.

MAINE

Me. Rev. Stat. Ann. tit. 22, §§1572-1576 (1973 Leg. Serv. Pamp. No. 4)

ABORTION—PROTECTION OF FETAL LIFE AND RIGHTS OF OTHERS

CHAPTER 518

H.P. 1559—L.D. 1992

An Act to Provide Protection of Fetal Life and the Rights of Physicians, Nurses, Hospitals and Others Relating to Abortions.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R.S., T. 22, § 1572, additional. Title 22 of the Revised Statutes is amended by adding a new section 1572, to read as follows:

§ 1572. Immunity and employment protection

No physician, nurse or other person who refuses to perform or assist in the performance of an abortion, and no hospital or health care facility that refuses to permit the performance of an abortion upon its premises, shall be liable to any person, firm, association or corporation for damages allegedly arising from the refusal, nor shall such refusal constitute a basis for any civil liability to any physician, nurse or other person, hospital or health care facility nor a basis for any disciplinary or other recriminatory action against them or any of them by the State or any person.

No physician, nurse or other person, who refuses to perform or assist in the performance of an abortion, shall, because of that refusal, be dismissed, suspended, demoted or otherwise prejudiced or damaged by a hospital, health care facility, firm, association, professional association, corporation or educational institution with which he or she is affiliated or requests to be affiliated or by which he or she is employed, nor shall such refusal constitute grounds for loss of any privileges or immunities to which such physician, nurse or other person would otherwise be entitled nor shall submission to an abortion or the granting of consent therefor be a condition precedent to the receipt of any public benefits.

Sec. 2. R.S., T. 22, § 1573, additional. Title 22 of the Revised Statutes is amended by adding a new section 1573, to read as follows:

§ 1573. Discrimination for refusal

No person, hospital, health care facility, firm, association, corporation or educational institution, directly or indirectly, by himself or another, shall discriminate against any physician, nurse, or other person by refusing or with-

holding employment from or denying admittance, when such physician, nurse or other person refuses to perform, or assist in the performance of an abortion, nor shall such refusal constitute grounds for loss of any privileges or immunities to which such physician, nurse or other person would otherwise be entitled.

Sec. 3. R.S., T. 22, § 1574, additional. Title 22 of the Revised Statutes is amended by adding a new section 1574, to read as follows:

§ 1574. Sale and use of fetuses

Whoever shall use, transfer, distribute or give away any live human fetus, whether intrauterine or extrauterine, or any product of conception considered live born for scientific experimentation or for any form of experimentation shall be punished by a fine of not more than $5,000 and by imprisonment for not more than 5 years and any person consenting, aiding or assisting shall be liable to like punishment.

Sec. 4. R.S., T. 22, § 1575, additional. Title 22 of the Revised Statutes is amended by adding a new section 1575, to read as follows:

§ 1575. Failure to preserve life of live born person

Whenever an abortion procedure results in a live birth, failure to take all reasonable steps, in keeping with good medical practice, to preserve the life and health of the live born person shall subject the responsible party or parties to Maine law governing homicide, manslaughter and civil liability for wrongful death and medical malpractice.

Sec. 5. R.S., T. 22, § 1576, additional. Title 22 of the Revised Statutes is amended by adding a new section 1576, to read as follows:

§ 1576. Live born and live birth, defined

"Live born" and "live birth," as used in sections 1574 and 1575, shall mean a product of conception after complete expulsion or extraction from its mother, irrespective of the duration of pregnancy, which breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached. Each product of such a birth is considered live born and fully recognized as a human person under Maine law.

Approved June 14, 1973.

MARYLAND

Md. Ann. Code Art. 43, §556 E (Supp. 1973)

§ 556E. Refusal to perform, participate in or submit to abortion, sterilization or artificial insemination; refusal of hospital to permit.

(a) No person shall be required to perform or participate in, or refer to any source for, any medical procedure that results in termination of pregnancy, sterilization or artificial insemination; and the refusal of any person to perform or participate in or refer to a source for such medical procedure shall not be a basis for civil liability to any person nor a basis for any disciplinary or any other recriminatory action against him.

(b) No hospital, hospital director or governing board shall be required to permit the performance of any medical procedure that results in termination of pregnancy, sterilization or artificial insemination, within its institution; nor shall any hospital, hospital director or governing board be required to refer any person to a source for the performance of such medical procedures; and the refusal to permit such procedures or to refer to sources for such procedures, shall not be grounds for civil liability to any hospital, institution or person nor a basis for any disciplinary or other recriminatory action against him or it by the State or any person.

(c) The refusal of any person to submit to an abortion or sterilization or to give consent therefor shall not be grounds for loss of any privileges or immunities to which such person would otherwise be entitled nor shall submitting to an abortion or sterilization or the granting of consent therefor be a condition precedent to the receipt of any public benefits. (1973, ch. 726, § 2.)

MASSACHUSETTS

Mass. Gen. Laws Ann. ch. 112, §12I and ch. 272, §21B (1973 Leg. Serv. Pamp. No.

HOSPITALS AND MEDICAL FACILITIES—CERTAIN FAMILY PLANNING SERVICES AND PROCEDURES REGULATED

CHAPTER 521.

An Act providing that certain hospitals and health facilities shall not be required to admit patients for certain purposes nor to furnish family planning services and that certain medical personnel shall not be required to participate in certain medical procedures.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. **Chapter 112** of the General Laws is hereby amended by inserting **after section 12H**, inserted by section 1 of chapter 173 of the acts of 1973, the following section:

Section 12I.

A physician or any other person who is a member of or associated with the medical staff of a hospital or other health facility or any employee of a hospital or other health facility in which an abortion or any sterilization procedure is scheduled and who shall state in writing an objection to such abortion or sterilization procedure on moral or religious grounds, shall not be required to participate in the medical procedures which result in such abortion or sterilization, and the refusal of any such person to participate therein shall not form the basis for any claim of damages on account of such refusal or for any disciplinary or recriminatory action against such person.

SECTION 2. **Chapter 272** of the General Laws is hereby amended by inserting **after section 21A** the following section:

Section 21B.

No privately controlled hospital or other health facility shall be required to admit any patient for the purpose of performing an abortion, performing any sterilization procedure, or receiving contraceptive devices or information.

No privately controlled hospital or other privately controlled health facility shall be required to permit any patient to have an abortion, or any sterilization procedure performed in said hospital or other health facility, or to furnish contraceptive devices or information to such patient, nor shall such a hospital or other health facility be required to furnish any family planning services within or through said hospital or other health facility or to make referrals to any other hospital or health facility for such services when said services or referrals are contrary to the religious or moral principles of said hospital or said health facilities as expressed in its charter, by-laws or code of ethics, or vote of its governing body.

Any such hospital or other health facility exercising the rights granted in this section shall not on account of the exercise thereof, be disciplined or discriminated against in any manner or suffer any adverse determination by any person, firm, corporation, or other entity, including but in no way limited to any political subdivision, board, commission, department, authority, or agency of the commonwealth.

SECTION 3. The provisions of this act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Approved July 9, 1973.

MICHIGAN

Mich. Comp. Laws §§331.551-331.556 (1973 Leg. Serv. Pamp. No. 4)

ABORTION—REFUSAL

PUBLIC ACT NO. 176†

SENATE BILL No. 156

AN ACT to permit a hospital, clinic, institution, teaching institution, or facility or any person connected therewith to refuse to perform or participate in an abortion; to grant immunity from civil or criminal liability or from employment discrimination; and to provide penalties.

The People of the State of Michigan enact:

M.C.L.A. § 331.551

Sec. 1. A hospital, clinic, institution, teaching institution, or other medical facility shall not be required to admit a patient for the purpose of performing an abortion. A hospital, clinic, institution, teaching institution, or other facility or a physician, member or associate of the staff, or other person connected therewith, may refuse to perform, participate in, or allow to be performed on its premises an abortion, and the refusal shall be with immunity from any civil or criminal liability or penalty.

M.C.L.A. § 331.552

Sec. 2. A physician, or any other person who is a member of or associated with a hospital, clinic, institution, teaching institution, or other medical facility, or a nurse, medical student, student nurse, or other employee of a hospital, clinic, institution, teaching institution, or other medical facility in which an abortion is performed, who states an objection to abortion on professional, ethical, moral, or religious grounds may not be required to participate in the medical procedures which will result in an abortion, and the refusal by the person to participate therein shall not form the basis of a claim for damages on account of the refusal or for any disciplinary or discriminatory action by the patient, hospital, clinic, institution, teaching institution, or other medical facility against the person.

M.C.L.A. § 331.553

Sec. 3. A physician who informs a patient that he refuses to give advice concerning, or participate in an abortion shall not be liable to the hospital, clinic, institution, teaching institution, or medical facility, or the patient for the refusal.

M.C.L.A. § 331.554

Sec. 4. A civil action for negligence or malpractice, or any disciplinary or discriminatory action may not be maintained against a person refusing to give advice concerning or participating in an abortion based on the refusal.

M.C.L.A. § 331.555

Sec. 5. A hospital, clinic, institution, teaching institution, or other medical facility which elects to refuse to allow abortions to be performed on its premises shall not deny staff privileges or employment to a person for the sole reason that that person previously participated in, or expressed a willingness to participate in a termination of pregnancy. A hospital, clinic, institution, teaching institution, or other medical facility shall not discriminate against its staff members or other employees for the sole reason that the staff members or employees have participated in, or have expressed a willingness to participate in a termination of pregnancy.

† M.C.L.A. §§ 331.551 to 331.556.

M.C.L.A. § 331.556

Sec. 6. A violation of this act is a misdemeanor, punishable by a fine of not more than $2,000.00, or imprisonment for not more than 6 months, or both.

Approved December 21, 1973.

MINNESOTA

Minn. Stat. §62A.041 (1973 Leg. Serv. Pamp. No. 6)

INSURANCE—CONTRACTS—TERMS

CHAPTER 651

H.F.No.1306

[Coded in Part]

An Act relating to insurance; regulating the terms of certain insurance contracts; amending Minnesota Statutes 1971, Sections 62A.041; and 62C.14, by adding subdivisions; repealing Minnesota Statutes 1971, Section 309.176; and Laws 1971, Chapter 680, Section 2.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1971, Section 62A.041, is amended to read:

62A.041 Maternity benefits; unmarried women

Each group policy of accident and health insurance issued or renewed after June 4, 1971, shall provide the same coverage for maternity benefits to unmarried women and minor female dependents that it provides to married women including the wives of employees choosing dependent family coverage. Each group policy shall also provide the same coverage for the child of an unmarried mother as that provided for the child of an employee choosing dependent family coverage.

Each individual policy of accident and health insurance shall provide the same coverage for maternity benefits to unmarried women and minor female dependents as that provided for married women. Each individual policy shall also provide the same coverage for the child of an unmarried mother as that provided for the child of an employee choosing dependent family coverage.

For the purposes of this section, the term "maternity benefits" shall not include elective, induced abortion whether performed in a hospital, other abortion facility, or the office of a physician.

Sec. 2. Minnesota Statutes 1971, Section 62C.14, is amended by adding a subdivision to read:

Subd. 5a. Any group subscriber's contract delivered or issued for delivery or renewed in this state after August 1, 1973, shall provide the same coverage for maternity benefits to unmarried women and minor female dependents as that provided for married women. Each group subscriber's contract shall also provide the same coverage for the child of an unmarried mother as that provided for the child of an employee choosing dependent family coverage.

An individual subscriber's contract delivered or issued for delivery in this state shall provide the same coverage for maternity benefits to unmarried women and minor female dependents as that provided for married women. Each subscriber's individual contract shall also provide the same coverage for the child of an unmarried mother as that provided for the child of an employee choosing dependent family coverage.

Sec. 3. Minnesota Statutes 1971, Section 62C.14, is amended by adding a subdivision to read:

Subd. 5b. The provisions of subdivision 5a shall apply to all health maintenance organizations regulated under any health maintenance organization enabling act enacted in 1973.

Sec. 4. Minnesota Statutes 1971, Section 309.176, and Laws 1971, Chapter 690, Section 2, are repealed.

Approved May 25, 1972.

Minn. Stat. §§145.421, 145.422 (1973 Leg. Serv. Pamp. No. 5)

HUMAN CONCEPTUS—EXPERIMENTATION, RESEARCH AND SALE

CHAPTER 562

S.F.No.1004

[Coded]

An Act relating to crimes and criminals; prohibiting experimentation and research on a living human conceptus or the sale of such living human conceptus; providing penalties.

Be it enacted by the Legislature of the State of Minnesota:

Section 1.

145.421 Human conceptus, experimentation, research or sale; definitions

Subdivision 1. Terms. As used in this section and section 145.422, the terms defined in this section shall have the meanings given them.

Subd. 2. Human conceptus. "Human conceptus" means any human organism, conceived either in the human body or produced in an artificial environment other than the human body, from fertilization through the first 265 days thereafter.

Subd. 3. Living. "Living", as defined for the sole purpose of this section and section 145.422, means the presence of evidence of life, such as movement, heart or respiratory activity, the presence of electroencephalographic or electrocardiographic activity.

Sec. 2.

145.422 Experimentation or sale

Subdivision 1. Whoever uses or permits the use of a living human conceptus for any type of scientific, laboratory research or other experimentation except to protect the life or health of the conceptus, or except as herein provided, shall be guilty of a gross misdemeanor.

Subd. 2. The use of a living human conceptus for research or experimentation which verifiable scientific evidence has shown to be harmless to the conceptus shall be permitted.

Subd. 3. Whoever shall buy or sell a living human conceptus shall be guilty of a gross misdemeanor, provided that nothing herein shall prohibit the buying and selling of a cell culture line or lines taken from a non-living human conceptus.

Sec. 3. This act is in effect the day following its final enactment.

Approved May 23, 1973.

Minn. Stat. §147.101 (1973 Leg. Serv. Pamp. No. 5)

ABORTIONS—REQUIREMENT OF MEDICAL LICENSE—OFFENSES

CHAPTER 547

S.F.No.471

[Coded]

An Act relating to health; prohibiting the performance of abortions by persons who are not licensed medical doctors; providing a penalty.

Be it enacted by the Legislature of the State of Minnesota:

Section 1.

147.101 Performance of abortion; practice of medicine

Any person who performs an abortion upon another, whether or not for a fee, practices medicine within the terms of Minnesota Statutes, Section 147.10, and is subject to the criminal and other provisions thereof.

Sec. 2. This act shall be effective the day next following final enactment.

Approved May 23, 1973.

MISSOURI

Act 90 [1973] Leg. Serv. Pamp. No. 4 at 145

[ACT 90]

ABORTION—REFUSAL OF TREATMENT—PHYSICIAN ETC.—NON-LIABILITY

H.C.S. HOUSE BILLS NOS. 731 & 793

AN ACT relating to abortions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1.

No physician or surgeon, registered nurse, practical nurse, midwife or hospital, public or private, shall be required to treat or admit for treatment any woman for the purpose of abortion if such treatment or admission for treatment is contrary to the established policy of, or the moral, ethical or religious beliefs of, such physician, surgeon, registered nurse, midwife, practical nurse or hospital. No cause of action shall accrue against any such physician, surgeon, registered nurse, midwife, practical nurse or hospital on account of such refusal to treat or admit for treatment any woman for abortion purposes.

SECTION 2.

No person or institution shall be denied or discriminated against in the reception of any public benefit, assistance or privilege whatsoever or in any employment, public or private, on the grounds that they refuse to undergo an abortion, to advise, consent to, assist in or perform an abortion.

SECTION 3.

Any person who shall deny or discriminate against another for refusal to perform or participate in an abortion shall be liable to the party injured in an action at law, suit in equity or other redress.

Approved June 25, 1973.

Effective 90 days after adjournment.

NEBRASKA

Neb. Rev. Stat. §§28-4, 143 to 28-4, 164 (1973 Supp.)

(u) ABORTIONS

28-4,143. Declaration of purpose. The Legislature hereby finds and declares:

(1) That the following provisions were motivated by the legislative intrusion of the United States Supreme Court by virtue of its decision removing the protection afforded the unborn. Sections 28-4,143 to 28-4,164 are in no way to be construed as implementing, condoning, or approving abortions at any stage of unborn human development, but is rather an expression of the will of the people of the State of Nebraska and the members of the Legislature to provide protection for the life of the unborn child whenever possible until such protection can be afforded by an appropriate amendment to the United States Constitution;

(2) That the members of the Legislature expressly deplore the destruction of the unborn human lives which has and will occur in Nebraska as a consequence of the Supreme Court's decision on abortion;

(3) That it is in the interest of the people of the State of Nebraska that every precaution be taken to insure the protection of every viable unborn child being aborted, and every precaution be taken to provide life-supportive procedures to insure the unborn child its continued life after its abortion;

(4) That currently, in this state, there are grossly inadequate legal remedies to protect the life, health, and welfare of pregnant women and unborn human life; and

(5) That it is in the interest of the people of the State of Nebraska to maintain accurate statistical data to aid in providing proper maternal health regulations.

28-4,144. Terms, defined. As used in sections 28-4,143 to 28-4,164, unless the context otherwise requires:

(1) Abortion shall mean an act, procedure, device, or prescription administered to or prescribed for a pregnant woman by any person, including the pregnant woman herself, with either the intent or result of producing the premature expulsion, removal, or termination of the human life within the womb of the pregnant woman, except that in cases in which the unborn child's viability is threatened by continuation of the pregnancy, early delivery after viability by commonly accepted obstetrical practices shall not be construed as an abortion for the purposes of sections 28-4,143 to 28-4,164;

(2) Hospital shall mean those institutions licensed by the State Board of Health pursuant to sections 71-2017 to 71-2029;

(3) Consent shall mean a signed and witnessed voluntary agreement to the performance of an abortion;

(4) Physician shall mean any person licensed to practice medicine in this state as provided in sections 71-102 to 71-110;

(5) Pregnant shall mean that condition of a woman who has unborn human life within her as the result of conception;

(6) Conception shall mean the fecundation of the ovum by the spermatozoa;

(7) Viability shall mean that stage of human development when the life of the unborn child may be continued by natural or life-supportive systems outside the womb of the mother; and

(8) Accepted medical procedures shall mean procedures of the type and performed in a manner and in a facility which is equipped with surgical, anaesthetic, resuscitation, and laboratory equipment sufficient to meet the standards of medical care which physicians in the same neighborhood or in similar communities, engaged in the same or similar lines of work, would ordinarily exercise and devote to the benefit of their patients.

Source: Laws 1973, LB 286, § 2.
Effective date May 24, 1973.

28-4,145. Physician; inform mother of medical and mental consequences resulting from abortion. Every physician consulted about abortion by an expectant mother shall inform her of agencies and services available to assist her to carry the pregnancy to natural term, and shall further inform the expectant mother as to all reasonably possible medical and mental consequences resulting from the performance of an abortion.

Source: Laws 1973, LB 286, § 3.
Effective date May 24, 1973.

28-4,146. Failure of physician to inform mother; violations; penalty. Any physician who fails to comply with the provisions of section 28-4,145 shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in

the county jail for not more than six months, or by both such fine and imprisonment. Each violation shall constitute a separate offense.

Source: Laws 1973, LB 286, § 4.
Effective date May 24, 1973.

28-4,147. Abortion; when not to be performed. No abortion shall be performed or prescribed after the unborn child has reached viability, except when necessary to preserve the woman from an imminent peril that substantially endangers her life or health.

Source: Laws 1973, LB 286, § 5.
Effective date May 24, 1973.

28-4,148. Abortion procedure; no direct or indirect effect of terminating viability of unborn child. No abortion procedure employed pursuant to section 28-4,147 shall have the direct or indirect effect of terminating the viability of the unborn child prior to, during, or following the procedure.

Source: Laws 1973, LB 286, § 6.
Effective date May 24, 1973.

28-4,149. Care employed in treatment of child aborted. The commonly accepted means of care shall be employed in the treatment of any child aborted alive with any chance of survival.

Source: Laws 1973, LB 286, § 7.
Effective date May 24, 1973.

28-4,150. Physician; violations; penalty. Any physician or other person who violates any provision of section 28-4,147, 28-4,148, or 28-4,149 shall be guilty of a felony and shall, upon conviction thereof, be imprisoned in the Nebraska Penal and Correctional Complex not less than one year nor more than five years.

Source: Laws 1973, LB 286, § 8.
Effective date May 24, 1973.

28-4,151. Abortion; written consent of parent or guardian. No abortion shall be performed or prescribed on any minor child in the State of Nebraska without her written consent and the consent of the parent or guardian of such minor child.

Source: Laws 1973, LB 286, § 9.
Effective date May 24, 1973.

28-4,152. Abortion; conditions. No abortion shall be performed or prescribed on any woman, except when necessary to preserve the woman from an imminent peril that substantially endangers her life or health, who has not previously submitted to the physician in attendance a written statement by the father of the unborn human life, if the father is known, affirming his consent to the performance of the abortion. If the father is unknown, the woman requesting the abortion shall so affirm in writing to the physician in attendance.

Source: Laws 1973, LB 286, § 10.
Effective date May 24, 1973.

28-4,153. Abortion; without consent; violation; penalty. Any physician or other person who performs or prescribes an abortion with-

out the consents required in sections 28-4,151 and 28-4,152 shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by imprisonment in the county jail not less than six months nor more than one year.

Source: Laws 1973, LB 286, § 11.
Effective date May 24, 1973.

28-4,154. Abortion only by licensed physician; violation; penalty. Any person other than a licensed physician who performs or prescribes an abortion shall be guilty of a felony and shall, upon conviction thereof, be imprisoned in the Nebraska Penal and Correctional Complex not less than one year nor more than five years.

Source: Laws 1973, LB 286, § 12.
Effective date May 24, 1973.

28-4,155. Abortion by using other than accepted medical procedures; violation; penalty. Any person who performs or prescribes an abortion by using anything other than accepted medical procedures shall be guilty of a felony and shall, upon conviction thereof, be imprisoned in the Nebraska Penal and Correctional Complex not less than one year nor more than five years.

Source: Laws 1973, LB 286, § 13.
Effective date May 24, 1973.

28-4,156. Hospital, clinic, institution; not required to admit patient for abortion. No hospital, clinic, institution, or any other facility in this state shall be required to admit any patient for the purpose of performing an abortion nor required to allow the performance of an abortion therein; *Provided*, that the hospital, clinic, institution, or any other facility shall inform the patient of its policy not to participate in abortion procedures. No cause of action shall arise against any hospital, clinic, institution, or any other facility for refusing to perform or allow an abortion.

Source: Laws 1973, LB 286, § 14.
Effective date May 24, 1973.

28-4,157. No person required to perform an abortion; no liability for refusal. No person shall be required to perform or participate directly or indirectly in any abortion, and the refusal of any person to participate in an abortion shall not be a basis for civil liability to any person. No hospital, governing board, or any other person, firm, association, or group shall terminate the employment or alter the position of, prevent or impair the practice or occupation of, or impose any other sanction or otherwise discriminate against any person who refuses to participate in an abortion.

Source: Laws 1973, LB 286, § 15.
Effective date May 24, 1973.

28-4,158. Discrimination against person refusing to participate in an abortion; violation; penalty. Any firm, corporation, group, or association who violates section 28-4,157 shall, upon conviction thereof, be punished by a fine of not less than five hundred dollars nor more than one thousand dollars. Any person who shall violate section 28-4,157 shall, upon conviction thereof, be punished

by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months.

Source: Laws 1973, LB 286, § 16.
Effective date May 24, 1973.

28-4,159. Discrimination against person refusing to participate in an abortion; damages. Any person whose employment or position has been in any way altered, impaired, or terminated in violation of sections 28-4,143 to 28-4,164 may sue in the district court for all consequential damages, lost wages, reasonable attorney's fees incurred, and the cost of litigation.

Source: Laws 1973, LB 286, § 17.
Effective date May 24, 1973.

28-4,160. Discrimination against person refusing to participate; injunctive relief. Any person whose employment or position has in any way been altered, impaired, or terminated because of his refusal to participate in an abortion shall have the right to injunctive relief, including temporary relief, pending trial upon showing of an emergency, in the district court, in accordance with the statutes, rules, and practices applicable in other similar cases.

Source: Laws 1973, LB 286, § 18.
Effective date May 24, 1973.

28-4,161. Aborted child; sell, transfer, distribute, give away; violation; penalty. Whoever shall sell, transfer, distribute, or give away any live or viable aborted child for any form of experimentation shall, upon conviction thereof, be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail not more than one year, or by both such fine and imprisonment. Any person consenting, aiding, or abetting such sale, transfer, distribution, or other unlawful disposition of an aborted child shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail not more than one year, or by both such fine and imprisonment.

Source: Laws 1973, LB 286, § 19.
Effective date May 24, 1973.

28-4,162. Bureau of Vital Statistics; abortion reporting form; items included. The Bureau of Vital Statistics, Department of Health, shall establish an abortion reporting form, which shall be used for the reporting of every abortion performed or prescribed in this state. Such form shall include the following items in addition to such other information as may be necessary to complete the form:

(1) The age of the pregnant woman;

(2) The marital status of the pregnant woman;

(3) The location of the facility where the abortion was performed or prescribed;

(4) The type of procedure performed or prescribed;

(5) Complications, if any;

(6) The name of the attending physician;

(7) The name of the referring physician, agency, or service, if any;

(8) The pregnant woman's obstetrical history regarding previous pregnancies, abortions, and live births;

(9) The stated reason or reasons for which the abortion was requested;

(10) The state and county of the pregnant woman's legal residence; and

(11) The length and weight of the aborted child, when measurable.

The completed form shall be signed by the attending physician and sent to the Bureau of Vital Statistics within fifteen days after each reporting month. The completed form shall be an original, typed or written legibly in durable ink, and shall not be deemed complete unless the omission of any item of information required shall have been disclosed or satisfactorily accounted for. Carbon copies shall not be acceptable.

Source: Laws 1973, LB 286, § 20.
Effective date May 24, 1973.

28-4,163. Reporting form; physician; failure to comply; violation; penalty. Any physician who fails to comply with the procedures outlined in section 28-4,162 shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment.

Source: Laws 1973, LB 286, § 21.
Effective date May 24, 1973.

28-4,164. Department of Health; permanent file; rules and regulations. The Department of Health shall prepare and keep on permanent file compilations of the information submitted on the abortion reporting forms pursuant to such rules and regulations as established by the Department of Health, which compilations shall be a matter of public record. The Department of Health, in order to maintain and keep such compilations current, shall file with such reports any new or amended information.

Source: Laws 1973, LB 286, § 22.
Effective date May 24, 1973.

NEVADA

Ch. 558 [1973] Nev. Laws 897

Senate Bill No. 387—Senators Hecht, Gibson, Blakemore, Lamb, Herr, Young, Raggio, Close, Bryan and Wilson

CHAPTER 558

AN ACT relating to health care; authorizing health care facilities and personnel to decline to participate in abortions; providing a penalty; and providing other matters properly relating thereto.

[Approved April 25, 1973]

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 449 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. A hospital or other health care facility licensed under the provisions of this chapter which is not operated by the state or a local government or an agency of either is not required to permit the use of its facilities for the induction or performance of an abortion, except in a medical emergency.

2. Such refusal does not give rise to a cause of action in favor of any person.

SEC. 2. Chapter 632 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. An employer shall not require a registered nurse, a licensed vocational nurse or any other person employed to furnish direct personal health service to a patient to participate directly in the induction or performance of an abortion, if such employee has filed a written statement with the employer indicating a moral, ethical or religious basis for refusal to participate in the abortion.

2. If the statement provided for in subsection 1 of the section is filed with the employer, the employer shall not penalize or discipline such employee for declining to participate directly in the induction or performance of an abortion.

3. The provisions of subsections 1 and 2 of this section do not apply to medical emergency situations.

4. Any person violating the provisions of this section is guilty of a misdemeanor.

SEC. 3. This act shall become effective upon passage and approval.

Ch. 766 [1973] Nev. Laws 1637

Assembly Bill No. 319—Messrs. Barengo and Broadbent

CHAPTER 766

AN ACT relating to abortions; limiting abortions in certain situations and proscribing them in others; bringing Nevada law into conformity with United States constitutional requirements; providing penalties; and providing other matters properly relating thereto.

[Approved May 3, 1973]

In view of the decisions of the Supreme Court of the United States in Roe v. Wade 93 S.Ct. 705 and Doe v. Bolton 93 S.Ct. 739, both decided on January 22, 1973, it is the intent of the legislature of Nevada to enact a statute that recognizes the deep concern the people of Nevada have to protect the health, well-being and welfare of each pregnant female and of the child whereof she is pregnant, without interfering with the constitutional rights of any pregnant woman or any person licensed to practice medicine, surgery or obstetrics under chapter 630 of NRS. Therefore, the abortion procedures described in this act, and no others, are deemed not to violate NRS 201.120.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 442 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

SEC. 2. *As used in section 3 of this act, unless the context requires otherwise, "abortion" means the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.*

SEC. 3. *1. No abortion shall be performed in this state unless such abortion is performed:*

(a) By a physician licensed to practice medicine in this state or by a physician in the employ of the government of the United States who:

(1) Exercises his best clinical judgment in the light of all attendant circumstances including the accepted professional standards of medical practice in determining whether to perform an abortion; and

(2) Performs such abortion in a manner consistent with accepted medical practices and procedures in the community.

(b) Within 24 weeks after the commencement of the pregnancy.

(c) After the 24th week of pregnancy only if the physician has reasonable cause to believe that an abortion currently is necessary to preserve the life or health of the pregnant woman.

2. All abortions shall be performed in a hospital or other health care facility licensed under chapter 449 of NRS.

3. Abortions performed within 24 weeks after the commencement of the pregnancy shall be pursuant to the prior written consent of the pregnant woman if she is 18 years of age or older. If she is under 18 years of age such abortions shall be pursuant to the prior written consent of a parent or person in loco parentis, unless she is married or otherwise emancipated. If she is married, the prior written consent of her husband shall also be given, unless she is living separate and apart from her husband.

4. Before performing an abortion, the physician shall enter in the permanent records of the patient the facts on which he based his best clinical judgment that there is a substantial risk that continuance of the pregnancy would endanger the life of the mother or would gravely impair the physical or mental health of the mother.

SEC. 4. *1. The health division of the state department of health, welfare and rehabilitation shall adopt and enforce rules and regulations governing the conditions under and the methods by which abortions may be performed, as well as all other aspects pertaining to the performance of abortions pursuant to section 3 of this act.*

2. The health division shall adopt and enforce rules and regulations for an abortion reporting system. Such system shall be designed to preserve confidentiality of information on the identity of individual women upon whom abortions are performed. The abortion reporting system may require that the following items be reported for each abortion:

(a) Date of abortion;

(b) Place of abortion (city, county, and state);

(c) Type of facility;

(d) Place of usual residence of woman (city, county, and state);

(e) Age of woman;

(f) Ethnic group or race;

(g) Marital status;

(h) Number of previous live births;

(i) Number of previous induced abortions;

(j) Duration of pregnancy (as measured from first day of last normal menses to date of abortion, and as estimated by uterine size prior to performance of the abortion);

(k) Type of abortion procedure; and

(l) In the event a woman has had a previously induced abortion or abortions, the information in paragraphs (a) to (k), inclusive, or as much thereof as can be reasonably obtained, for each such previous abortion.

3. The health division may provide rules and regulations to permit studies of individual abortion cases, but such studies shall not be permitted unless:

(a) Absolute assurance is provided that confidentiality of information on individuals will be preserved;

(b) Informed consent of each individual involved in the study is obtained in writing;

(c) The study is conducted according to established standards and ethics; and

(d) The study is related to health problems and has scientific merit with regard to both design and the importance of the problems to be solved.

SEC. 5. *1. It is unlawful for any person, firm, partnership, association or corporation, including a hospital or other health care facility, to advertise in any manner, directly or indirectly, the availability of abortions or the cost thereof or the conditions under which abortions will be performed.*

2. Whenever an abortion procedure results in a live birth, failure to take all reasonable steps, in keeping with good medical practice, to preserve the life and health of the live born person shall subject the person performing the abortion to Nevada laws governing criminal liability and civil liability for wrongful death and medical malpractice.

SEC. 6. Chapter 632 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. An employer shall not require a registered nurse, a licensed vocational nurse or any other person employed to furnish direct personal health service to a patient to participate directly in the induction or performance of an abortion if such employee has filed a written statement with the employer indicating a moral, ethical or religious basis for refusal to participate in the abortion.

2. If the statement provided for in subsection 1 of this section is filed with the employer, the employer shall not penalize or discipline such employee for declining to participate directly in the induction or performance of an abortion.

3. The provisions of subsections 1 and 2 of this section do not apply to medical emergency situations.

4. Any person violating the provisions of this section is guilty of a misdemeanor.

SEC. 7. NRS 200.220 is hereby amended to read as follows:

200.220 Every woman [quick with child] who shall take or use, or submit to the use of, any drug, medicine or substance, or any instrument or other means, with intent to [procure her own miscarriage,] *terminate her pregnancy after the 24th week of pregnancy,* unless the same is [necessary to preserve her own life or that of the child whereof she is pregnant,] *performed upon herself upon the advice of a physician acting pursuant to the provisions of section 3 of this act,* and thereby causes the death of [such child,] *the child of such pregnancy,* commits manslaughter and shall be punished by imprisonment in the state prison for not less than 1 year nor more than 10 years.

SEC. 8. NRS 201.120 is hereby amended to read as follows:

201.120 Every person who [, with intent thereby to produce the miscarriage of a woman, unless the same is necessary to preserve her life or that of the child whereof she is pregnant,] shall:

1. Prescribe, supply or administer to a woman, whether pregnant or not, or advise or cause her to take any medicine, drug or substance; or
2. Use, or cause to be used, any instrument or other means [;] *to terminate a pregnancy, unless done pursuant to the provisions of section 3 of this act, or by a woman upon herself upon the advice of a physician acting pursuant to the provisions of section 3 of this act,*
shall be guilty of abortion, and punished by imprisonment in the state prison for not less than 1 year nor more than 10 years.

SEC. 9. If any provision of this act or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SEC. 10. This act shall become effective upon passage and approval.

NORTH CAROLINA

N. C. Gen. Stat. §14-45.1 (Supp. 1973)

§ **14-45.1. When abortion not unlawful.**—(a) Notwithstanding any of the provisions of G.S. 14-44 and G.S. 14-45, it shall not be unlawful, during the first 20 weeks of a woman's pregnancy, to advise, procure, or cause a miscarriage or abortion when the procedure is performed by a physician licensed to practice medicine in North Carolina in a hospital or clinic certified by the Department of Human Resources to be a suitable facility for the performance of abortions.

(b) Notwithstanding any of the provisions of G.S. 14-44 and G.S. 14-45, it shall not be unlawful, after the twentieth week of a woman's pregnancy, to advise, procure or cause a miscarriage or abortion when the procedure is performed by a physician licensed to practice medicine in North Carolina in a hospital licensed by the Department of Human Resources, if there is substantial risk that continuance of the pregnancy would threaten the life or gravely impair the health of the woman.

(c) The Department of Human Resources shall prescribe and collect on an annual basis, from hospitals or clinics where abortions are performed, such representative samplings of statistical summary reports concerning the medical and demographic characteristics of the abortions provided for in this section as it shall deem to be in the public interest. Hospitals or clinics where abortions are performed shall be responsible for providing these statistical summary reports to the Department of Human Resources. The reports shall be for statistical purposes only and the confidentiality of the patient relationship shall be protected.

(d) The requirements of G.S. 130-43 are not applicable to abortions performed pursuant to this section.

(e) Nothing in this section shall require a physician licensed to practice medicine in North Carolina or any nurse who shall state an objection to abortion on moral, ethical, or religious grounds, to perform or participate in medical procedures which result in an abortion. The refusal of such physician to perform or participate in these medical procedures shall not be a basis for damages for such refusal, or for any disciplinary or any other recriminatory action against such physician.

(f) Nothing in this section shall require a hospital or other health care institution to perform an abortion or to provide abortion services. (1967, c. 367, s. 2; 1971, c. 383, ss. 1, 1½; 1973, c. 139; c. 476, s. 128; c. 711.)

NORTH DAKOTA

Ch. 116, §19 [1973] N.D. Laws 260

SECTION 19.) Chapter 12.1-19 of the North Dakota Century Code is hereby created and enacted to read as follows:

12.1-19-01. PROCURING AN ABORTION - PUNISHMENT.) Every person who administers to any pregnant woman, or who prescribes for any such woman, or who advises or procures any such woman to take, any medicine, drug, or substance, or uses or employs, or procures or advises the use, of any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, shall be guilty of a class C felony.

12.1-19-02. ABORTION - IF MOTHER OR CHILD DIES - PUNISHMENT.) Every person who administers to any woman pregnant with a quick child, or who prescribes for such woman, or who advises or procures any such woman to take, any medicine, drug, or substance whatever, or who uses or employs, or procures or advises the use, of any instrument or other means with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, in case the death of the child or of the mother is produced thereby, is guilty of a class B felony.

12.1-19-03. KILLING UNBORN QUICK CHILD IN PERFORMING ABORTION -PUNISHMENT.) The willful killing of an unborn quick child by an injury committed upon the person of the mother of such child, and not prohibited in the preceding section, is a class B felony.

12.1-19-04. SOLICITING OR SUBMITTING TO ATTEMPT AT ABORTION - PUNISHMENT.) Every woman who solicits of any person

any medicine, drug, or substance whatever and takes the same, or who submits to any operation or to the use of any means whatever, with intent thereby to procure a miscarriage, unless the same is necessary to preserve her life, shall be guilty of a class A misdemeanor.

12.1-19-05. CONCEALING STILLBIRTH OR DEATH OF INFANT - PUNISHMENT.) Every woman who endeavors either by herself or by the aid of others to conceal the stillbirth of an issue of her body, or the death of any issue under the age of two years, shall be guilty of a class A misdemeanor.

12.1-19-06. CONCEALING STILLBIRTH OR DEATH OF CHILD - SECOND OFFENSE - PUNISHMENT.) Every woman who, having been convicted of endeavoring to conceal the birth of any issue of her body or the death of any such issue under the age of two years, subsequently to such conviction endeavors to conceal any such birth or death of issue of her body, shall be guilty of a class C felony. Every person convicted in any other state or country of this offense shall be punished for any subsequent conviction in this state to the same extent as if the first conviction had taken place in a court of this state.

12.1-19-07. ABORTION - TESTIMONY OF PERSON INJURED MUST BE CORROBORATED.) Upon a trial for procuring or attempting to procure an abortion, or aiding or assisting therein, the defendant cannot be convicted upon the testimony of the person upon whom the abortion was performed unless her testimony is corroborated by other evidence.

Ch. 215 [1973] N.D. Laws 536

CHAPTER 215

HOUSE BILL NO. 1533
(Committee on Delayed Bills)
(Atkinson)

PARTICIPATION IN ABORTIONS

AN ACT to provide that participation in the performance of an abortion is not mandatory, and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. PARTICIPATION IN ABORTION - NOT MANDATORY.) No hospital, physician, nurse, hospital employee, nor any other person, shall be under any duty, by law or contract, nor shall such hospital or person in any circumstances be required to participate in the performance of an abortion, if such hospital or person objects to such abortion. No such person or institution shall be discriminated against because he or they so object.

SECTION 2. EMERGENCY.) This Act is hereby declared to be an emergency and shall be in full force and effect from and after its passage and approval.

Approved March 21, 1973

RHODE ISLAND

R.I. Gen. Laws Ann. §§11-3-1 et seq. (See Doe v. Israel, 358 F. Supp. 1193, 1194 N. 1 (D.R.I. 1973))

"73-S 207 Substitute 'A'

Original Introduced by--
Senators Taylor, Chaves, Mc-
Kenna, Maida, Canulla, Da-
Ponte and Castro

Ordered Printed by--
House of Representatives

Referred to--
Senate Committee on Judiciary

Date Printed--
March 7, 1973

State of Rhode Island and Providence Plantations

JANUARY SESSION, A.D. 1973

AN ACT Relating to Abortions.

PREAMBLE

Whereas, The supreme court of the United States on January 22, 1973, recognized and acknowledged that state regulation is appropriate in any decisions to terminate pregnancy; and

Whereas, Said court found that a state may properly assert its interests in safeguarding life, in maintaining medical standards, and in protecting life in the proper exercise of its governmental functions; and

Whereas, Any right of privacy regarding decisions to terminate pregnancy is not an absolute right and must be considered in the light of important state interests in the regulation of such decisions; and

Whereas, The state of Rhode Island has a legitimate and important interest in preserving and protecting the life of pregnant women and in protecting all human life; and

Whereas, The state of Rhode Island, in its fulfillment of its legitimate function of protecting the well-being of all persons within its borders, hereby declares that in the furtherance of the public policy of said state, human life and, in fact, a person within the language and meaning of the fourteenth amendment to the constitution of the United States, commences to exist at the instant of conception; now, therefore,

It is enacted by the General Assembly as follows:

Section 1. Chapter 11-3 of the general laws entitled 'Abortion' is hereby repealed in its entirety.

Sec. 2. Title 11 of the general laws entitled 'Criminal offenses' is hereby amended by adding thereto the following chapter:

'CHAPTER 3

'Abortion

'11-3-1. PROCURING, COUNSELING OR ATTEMPTING MISCARRIAGE. -- Every person who, with the intent to procure the miscarriage of any pregnant woman or woman supposed by such person to be pregnant, unless the same be necessary to preserve her life, shall administer to her or cause to be taken by her any poison or other noxious thing, or shall use any instrument or other means whatsoever or shall aid, assist or counsel any person so intending to procure a miscarriage, shall if the woman die in consequence thereof, be imprisoned not exceeding twenty (20) years nor less than five (5) years, and if she does not die in consequence thereof, shall be imprisoned not exceeding seven (7) years nor less than one (1) year; provided that the woman whose miscarriage shall have been caused or attempted shall not be liable to the penalties prescribed by this section.

'11-3-2. MURDER CHARGED IN SAME INDICTMENT. -- Any person who shall be indicted for the murder of any infant child, or of any pregnant woman, or of any woman supposed by such person to be or to have been pregnant, may also be charged in the same indictment with any or all the offenses mentioned in section 11-3-1, and if the jury shall acquit such person on the charge of murder and find him guilty of the other offenses or either of them, judgment and sentence may be awarded against him accordingly.

'11-3-3. DYING DECLARATIONS ADMISSIBLE. -- In prosecutions for any of the offenses

described in section 11-3-1, in which the death of a woman is alleged to have resulted from the means therein described, dying declarations of the deceased woman shall be admissible as evidence, as in homicide cases.

'11-3-4. CONSTRUCTION AND APPLICATION OF SECTION 11-3-1. -- It shall be conclusively presumed in any action concerning the construction, application or validity of section 11-3-1, that human life commences at the instant of conception and that said human life at said instant of conception is a person within the language and meaning of the fourteenth amendment of the constitution of the United States, and that miscarriage at any time after the instant of conception caused by the administration of any poison or other noxious thing or the use of any instrument or other means shall be a violation of said section 11-3-1, unless the same be necessary to preserve the life of a woman who is pregnant.

'11-3-5. CONSTITUTIONALITY. -- If any part, clause or section of this act shall be declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the reamining provisions, parts or sections shall not be affected.'

Sec. 3. This act shall take effect upon passage."

SOUTH DAKOTA

Ch. 146 [1973] S. D. Laws 206

CHAPTER 146

(H.B. 820)

REVISING CRIMINAL ABORTION LAWS

AN ACT Entitled, An Act to regulate the procuring or performing of abortions, to repeal and reenact SDCL 22-16-18, 22-17-1, and 22-17-2, providing penalties for violation thereof, and declaring an emergency.

Be It Enacted by the Legislature of the State of South Dakota:

Section 1. Terms as used in this Act unless the context otherwise requires, mean:

(1) "Abortion," the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus;

(2) "Physician," a person licensed under the provisions of chapter 36-4 or a physician practicing medicine or osteopathy in the

employ of the government of the United States or of this state.

Section 2. An abortion may be performed in this state only if it is performed:

(1) By a physician during the first twelve weeks of pregnancy. The abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician during the first twelve weeks of pregnancy;

(2) Following the twelfth week of pregnancy and through the twenty-fourth week of pregnancy by a physician only in a hospital licensed under the provisions of chapter 34-12 or in a hospital operated by the United States, this state, or any department, agency or political subdivision of either or in the case of hospital facilities not being available, in the licensed physician's medical clinic or office of practice subject to the requirements of sections 3 of this Act;

(3) Following the twenty-fourth week of pregnancy by a physician only in a hospital authorized under subdivision (2) of this section and only if there is appropriate and reasonable medical judgment that performance of an abortion is necessary to preserve the life or health of the mother.

Section 3. Any abortion performed under the provisions of subdivisions (2) and (3) of section 2 of this Act shall be performed only in a facility which has a blood bank or a sufficient supply of blood immediately available and such facilities shall provide for Rhesus factor (Rh) testing and Rho-gam, Gammulin or any other product of equivalency innoculations shall be required for women undergoing abortion who have the Rh-negative factor.

Section 4. Any facility or physician performing abortions in this state shall report to the state department of health information as follows:

(1) Total number of abortions performed;

(2) Method of abortion used in each abortion performed;

(3) Complete pathology reports giving period of gestation of fetuses, presence of abnormality, and measurements of fetuses, if the facility where the abortion is performed is so equipped to complete such reports;

(4) Numbers of maternal deaths due directly or indirectly to abortions; and

(5) Reports of all follow-up, including short- and long- term complications in the woman due to abortion;

(6) No report made under this section shall include the name of any woman receiving an abortion.

Section 5. Experimentation with fetuses without written consent of the woman shall be prohibited.

Section 6. Prior to the performance of any abortion, the woman upon

whom the abortion is to be performed shall give her written consent to such abortion stating that she is having the abortion of her own free will, and the physician or facility where the abortion is to be performed shall retain such consent. If the pregnant woman is an unmarried minor said prior written consent shall also be obtained from her parent or person in loco parentis. If the pregnant woman is a married minor said prior written consent shall be obtained from her husband as well as herself.

Section 7. No physician, nurse or other person who refuses to perform or assist in the performance of an abortion shall be liable to any person for damages arising from that refusal.

Section 8. No physician, nurse or other person who performs or refuses to perform or assist in the performance of an abortion shall, because of that performance or refusal, be dismissed, suspended, demoted, or otherwise prejudiced or damaged by a hospital or other medical facility with which he is affiliated or by which he is employed.

No hospital licensed pursuant to the provisions of chapter 34-12 is required to admit any patient for the purpose of terminating a pregnancy pursuant to the provisions of this Act. No hospital is liable for its failure or refusal to participate in such termination if the hospital has adopted a policy not to admit patients for the purpose of terminating pregnancies as provided in this Act.

No county or municipal hospital is authorized to adopt a policy of excluding or denying admission to any person seeking termination of a pregnancy pursuant to the provisions of this Act.

Section 9. No counselor, social worker or anyone else who may be in such a position where the abortion question may appear as a part of their work day routine, shall be liable to any person for damages allegedly arising from advising or helping to arrange for or for refusal to arrange or encourage abortion, and there shall be no retaliation from any agency or institution with which such person may be affiliated or by which he may be employed.

Section 10. All physicians performing abortions and facilities wherein abortions are performed shall make available to all women seeking abortions from them, upon request, information concerning professional social service and counseling service agencies in the state which provide a full spectrum of alternative solutions for problem pregnancies.

Section 11. Whenever an abortion procedure results in a live birth, a birth certificate shall be issued certifying the birth of said live born person even though said live person may thereafter die in a short time. In the event death does ensue after a short time, a death certificate shall be issued; both the birth and death certificates shall be issued pursuant to law and rules and regulations of the state department of health. Whenever such live born person survives, the facts and circumstances involving such abortion procedure shall be considered as relevant and material evidence in any proceeding under chapter 26-8 to terminate parental rights or to adjudicate such live born person as a dependent or neglected child; and the state department of public welfare is hereby authorized to commence any such proceeding.

Section 12. Any person who performs, procures or advises an

abortion other than authorized by this Act is guilty of a violation of this Act and, upon conviction thereof, may be sentenced to pay a fine not exceeding $1,000 or to imprisonment in the state penitentiary not exceeding five years or in a county jail not exceeding one year, or by both fine and imprisonment.

Section 13. Every person who willfully kills any unborn human fetus by any injury committed upon the person of the mother of such unborn human fetus not hereinbefore specifically allowed by this Act, is guilty of a felony and upon conviction thereof shall be punishable by imprisonment in the state penitentiary for not less than four years.

Section 14. That § 22-16-18 be repealed and reenacted to read as follows:

22-16-18. Every person who administers to any woman pregnant with a quick child, or who prescribes for such woman, or advises or procures any such woman to take any medicine, drug, or substance whatever, or advises or procures any such woman to use or employ, or to have used or employed, any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, in case the death of the child or of the mother is thereby produced; or who willfully kills any unborn quick child by an injury committed upon the person of the mother of such child and not hereinbefore prohibited, is guilty of manslaughter in the first degree.

Section 15. That § 22-17-1 be repealed and reenacted to read as follows:

22-17-1. Every person who administers to any pregnant woman or who prescribes for any such woman or advises or procures any such woman to take any medicine, drug, or substance or uses or employs any instrument or other means with intent thereby to procure the miscarriage or abortion of such woman, unless the same is necessary to preserve her life, is punishable by imprisonment in the state penitentiary not exceeding three years or in a county jail not exceeding one year.

Section 16. That § 22-17-2 be repealed and reenacted to read as follows:

22-17-2. Every woman who solicits of any person any medicine, drug, or substance and takes the same or who submits to any operation or to the use of any means with intent thereby to procure a miscarriage or abortion, unless the same is necessary to preserve her life, is punishable by imprisonment in a county jail not exceeding one year or by a fine not exceeding one thousand dollars or both.

Section 17. The effective date of sections 14, 15 and 16 of this Act shall be that specific date upon which the states are given exclusive authority to regulate abortion. Upon that same date the provisions of section 1 to 12, inclusive, of this Act, are repealed.

Section 18. If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 19. Whereas, this Act is necessary for the immediate preservation of the public peace, health or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Approved March 28, 1973.

TENNESSEE

Ch. 235 [1973] Tenn. Law

PUBLIC CHAPTER NO. 235

SENATE BILL NO. 725

By Henry, Person, Davis, Roberson

Substituted for: House Bill No. 958

By Ellis, Weldon

AN ACT to amend Tennessee Code Annotated, Section 39-301, relative to the elements of the crimes of criminal abortion and attempt to procure criminal miscarriage; to provide for the legality of abortion and attempt to procure miscarriage in certain circumstances; and to repeal Tennessee Code Annotated, Section 39-302.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-301, is amended by deleting the present language of that section in its entirety and substituting in lieu thereof the following:

a. For the purpose of this section "abortion" is defined as the administration to any woman pregnant with child, whether such child be quick or not, of any medicine, drug, or substance whatever, or the use or employment of any instrument, or other means whatever, with the intent to destroy such child, thereby destroying such child before its birth.

b. For the purpose of this section "attempt to procure a miscarriage" means the administration of any substance with the intention to procure the miscarriage of a woman or the use or employment of any instrument or other means with such intent.

c. Every person who performs an abortion is guilty of the crime of criminal abortion and shall be punished by imprisonment in the penitentiary for not less than one (1) nor more than five (5) years unless such abortion is performed in compliance with the requirements of subsection e.

d. Every person who attempts to procure a miscarriage shall be guilty of the crime of attempt to procure criminal miscarriage and shall be punished by imprisonment in the penitentiary for not less than one (1) nor more than three (3) years unless such attempt to procure a miscarriage is performed in compliance with the requirements of subsection 2. Every person who compels, coerces, or exercises

duress in any form with regard to any other person in order to obtain or procure an abortion on any female shall be guilty of a misdemeanor and upon being found guilty of such offense shall be punished by a fine of not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00) or imprisoned for not less than ten (10) days nor more than eleven (11) months and twenty-nine (29) days or both in the discretion of the trial judge.

c. No person shall be guilty of a criminal abortion or an attempt to procure criminal miscarriage when an abortion or an attempt to procure a miscarriage is performed under the following circumstances:

1. During the first three (3) months of pregnancy, if the abortion or attempt to procure a miscarriage is performed with the pregnant woman's consent and pursuant to the medical judgment of the pregnant woman's attending physician who is licensed or certified under Title 63, Chapter 6 or Chapter 9 of this Code, or

2. After three (3) months, but before viability of the fetus, if the abortion or attempt to procure a miscarriage is performed with the pregnant woman's consent and in a hospital as defined in Section 53-1301 of this Code, licensed by the department of public health, or a hospital operated by the state of Tennessee or a branch of the federal government, by the pregnant woman's attending physician, who is licensed or certified under Title 63, Chapter 6 or Chapter 9 of this Code pursuant to his medical judgment, or

3. During viability of the fetus, if the abortion or attempt to procure a miscarriage, is performed with the pregnant woman's consent and by the pregnant woman's attending physician, who is licensed or certified under Title 63, Chapter 6, or Chapter 9 of this Code; and, if all the circumstances and provisions required for a lawful abortion or lawful attempt to procure a miscarriage during the period set out in part 2 of this subsection, next above, are adhered to; and if, prior to the abortion or attempt to procure a miscarriage the said physician shall have certified in writing to the hospital in which the abortion or attempt to procure a miscarriage is to be performed, that in his best medical judgment, after proper examination, review of history, and such consultation as may be required

by either the rules and regulations of the state hospital licensing board promulgated pursuant to Section 53-1310 of this Code, or the administration of the hospital involved, or both, the abortion or attempt to procure a miscarriage is necessary to preserve the life or health of the mother, and shall have filed a copy of the certificate with the District Attorney General of the judicial circuit wherein the abortion or attempt to procure a miscarriage is to be performed.

f. No abortion shall be performed on any pregnant woman unless such woman first produces evidence satisfactory to the physician performing the abortion that she is a bona fide resident of Tennessee. Evidence to support such claim of residence shall be noted in the records kept by the physician and, if the abortion is performed in a hospital, in the records kept by the hospital. Violation of this subsection shall be punished as provided by subsection c.

SECTION 2. A physician performing an abortion shall keep a record of each such operation and shall make a report to the commissioner of public health with respect thereto at such time and in such form as the commissioner may reasonably prescribe. Each such record and report shall be confidential in nature and shall be inaccessible to the public.

SECTION 3. Tennessee Code Annotated, Section 39-302, is repealed.

SECTION 4. No physician shall be required to perform an abortion and no person shall be required to participate in the performance of an abortion. No hospital shall be required to permit abortions to be performed therein.

SECTION 5. No section of this bill shall be construed to force a hospital to accept a patient for an abortion operation.

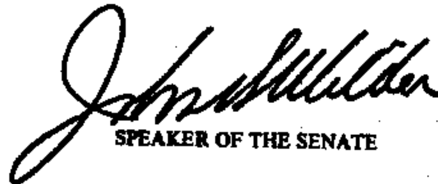
SECTION 6. It is not the legislative intent to authorize or condone the practice of abortion. This act is in acknowledgement of an action by the United States Supreme Court apparently creating a void in Tennessee law regarding abortions and is intended to prevent the performance of unauthorized, unsafe, indiscriminate abortions.

SECTION 7. If any provision of this act or the application thereof to any person or circumstance is

held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 8. This Act shall take effect on becoming a law, the public welfare requiring it.

PASSED: May 4, 1973



SPEAKER OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED:

May 14, 1973

GOVERNOR

UTAH

Utah Code Ann. §§76-7-301 to 76-7-320 (Supp. 1973)

Abortion

76-7-301. Definitions.—As used in this part:

(1) The word "abortion" means the termination of human pregnancy with an intent other than to produce a live birth or to remove a dead fetus, and includes all procedures undertaken to kill a live fetus and includes all procedures undertaken to produce a miscarriage.

(2) The word "physician" means a medical doctor licensed to practice medicine and surgery in all branches thereof in this state, or a physician in the employment of the government of the United States who is similarly qualified.

(3) The word "hospital" means a general hospital licensed by the state department of health according to Utah Code Annotated 1953, Title 26, chapter 15, and includes a clinic or other medical facility to the extent that such clinic or other medical facility provides equipment and personnel sufficient in quantity and quality to provide the same degree of safety to the pregnant woman and the fetus as would be provided for the particular medical procedures undertaken by a general hospital licensed by the state department of health. It shall be the responsibility of the state department of health to determine if such clinic or other medical facility so qualifies.

History: C. 1953, 76-7-301, enacted by L. 1973, ch. 196, § 76-7-301.

76-7-302. Circumstances under which abortion authorized.—An abortion may be performed in this state only under the following circumstances:

(1) If performed by a physician; and

(2) If performed ninety days or more after the commencement of the pregnancy, it is performed in a hospital; and

(3) If performed when the fetus is sufficiently developed to have any reasonable possibility of survival outside its mother's womb, the abortion is necessary to save the life of the pregnant woman or to prevent serious and permanent damage to her physical health.

History: C. 1953, 76-7-302, enacted by L. 1973, ch. 196, § 76-7-302.

76-7-303. Medical reasons required for abortion.—No abortion may be performed in this state unless, in the best clinical judgment of the pregnant woman's attending physician, there is sufficient medical reasons therefor. If the abortion is performed within the first ninety days of commencement of pregnancy, such medical reason shall be sufficient if in the attending physician's best clinical judgment the abortion is necessary to preserve the life, physical or mental health of the pregnant woman. If the abortion is performed 91 days or more after the commencement of pregnancy, such medical reason shall be sufficient if in the attending physician's best clinical judgment the abortion is necessary to preserve the life or physical health of the pregnant woman. If the abortion is performed 180 days or more after the commencement of pregnancy, such medical reason shall be sufficient if in the attending physician's best clinical judgment, as concurred in by two consulting physicians, the abortion is necessary to save the life of the pregnant woman or to prevent serious and permanent damage to her physical health.

History: C. 1953, 76-7-303, enacted by L. 1973, ch. 196, § 76-7-303.

76-7-304. Consent requirements for abortion.—Inasmuch as various persons have an interest in and through an unborn child, before an abortion

may be performed written consent to the performance of such abortion must be given by the following individuals:

(1) In all cases such consent must be given by the woman upon whom the abortion is to be performed.

(2) If the woman upon whom the abortion is to be performed is married at the time of the performance of the abortion, such consent must be given by her husband.

(3) If the woman upon whom the abortion is to be performed was married at the time of conception but was divorced between conception and the time that the abortion is to be performed, such consent must be given by her husband at the time of conception.

(4) If the pregnant woman is unmarried and under eighteen years of age, such consent must be given by the parents or guardian of such pregnant woman.

(5) In all cases, consent must be given by the father of the fetus. Where the father is unknown or cannot be located, the pregnant woman must file with the court at the time of the hearing specified in the next section an affadavit under oath so stating, and showing to the court that she has taken all reasonable efforts to identify him or locate him.

(6) In all other cases not covered by subsections (2), (3), (4), and (5) above, application must be made to the district court for consent to the performance of such abortion.

History: C. 1953, 76-7-304, enacted by L. 1973, ch. 196, § 76-7-304.

76-7-305. Hearing on abortion—Notice and procedure—Exception to requirement for hearing.—(1) Before an abortion may be performed a judicial hearing must be held after notice to the father and grandparents of the fetus, the parents or guardian of the mother of the fetus if the mother is unmarried and under eighteen years of age, and the county attorney. The hearing may be before a district court or juvenile court in the county in which the pregnant woman resides, and may be advanced on any judicial calendar. If the court finds that the father of the fetus is unknown or cannot be located, and that reasonable efforts have been made to locate him or identify him, notice to him may be waived. Notice to the father of a fetus conceived out of wedlock must include a statement advising the father of his right to acknowledge the child as his own and thereby acquire parental rights.

(2) At such a hearing, findings must be made to the following:

(a) Whether all required consents were given freely while the person whose consent is required was in a state of mind to act voluntarily;

(b) Whether the pregnant woman has been advised of the availability of adoptive parents for her child;

(c) Whether she has been advised that prospective adoptive parents are willing to pay all of the expenses of the pregnant woman's maternity and the birth of her child;

(d) Whether the pregnant woman is fully informed as to the details of fetal development and the details of abortion procedures, and the possible civil liabilities that she may incur.

(3) If the court finds in the negative as to (2) (a) above, no abortion may be performed; if the court finds in the negative as to (2) (b), (c), or (d) above, no abortion may be performed until such information has been provided the pregnant woman under the direction of the court.

(4) If the procedures provided by this section are not fully complied with prior to the performance of an abortion, either parent of the unborn fetus shall have a cause of action for wrongful death against the physician performing the abortion, the right to which cause of action cannot be waived.

(5) The provisions of this section shall not apply in the case of an abortion necessary to save the life of the pregnant woman or to prevent serious and permanent damage to her physical health.

History: C. 1953, 76-7-305, enacted by L. 1973, ch. 196, § 76-7-305.

76-7-306. Physician, hospital employee, or hospital not required to participate in abortion.—(1) A physician, or any other person who is a member of or associated with the staff of a hospital, or any employee of a hospital in which an abortion has been authorized, who shall state an objection to such abortion on moral or religious grounds shall not be required to participate in the medical procedures which will result in the abortion, and the refusal of any such person to participate therein shall not form the basis of any claim for damages on account of such refusal or for any disciplinary or recriminatory action against such person, nor shall any moral or religious scruples or objections to abortions be the grounds for any discrimination in hiring in this state.

(2) Nothing in this part shall require a hospital to admit any patient under the provisions hereof for the purpose of having an abortion.

(3) Nothing in this part shall require a private hospital to admit any patient under the provisions hereof for the purpose of having an abortion.

(4) Nothing in this part shall require a denominational hospital to admit any patient under the provisions hereof for the purpose of having an abortion.

History: C. 1953, 76-7-306, enacted by L. 1973, ch. 196, § 76-7-306.

76-7-307. Actions by persons having justiciable interest in child—Damages.—(1) Any person or the legal representative of any person who is entitled (or who would be entitled if the child had been born alive) to bring an action for prenatal injuries or wrongful death or who could have inherited from the child if it were born living and then died, or who otherwise would have a justiciable interest in or through the life of the child were it born living, may maintain an action for wrongful death, or the termination of rights to real or personal property, or an action for damages for the violation of any other justiciable interest, against any person who suffers or performs an abortion, which is not necessary to save the life of the pregnant woman or prevent serious and permanent damage to her physical health.

(2) A person awarded damages under section 76-7-307 (1), may recover in such action three times the damages found by the court or jury to accrue to such person by reason of such abortion.

(3) If an abortion is performed in violation of this part, punitive damages and costs, including a reasonable attorney's fee, may be added to any such damages award.

History: C. 1953, 76-7-307, **enacted by** L. 1973, ch. 196, § 76-7-307.

76-7-308. Actions by father, grandfather or grandmother.—In addition to all causes of action specified in the foregoing section, the father, grandfather or grandmother of any aborted fetus may maintain an action against the mother of the fetus and/or against the persons performing or assisting in the performance of an abortion not necessary to save the life of the pregnant woman or prevent serious and permanent damage to her physical health, for damages, including loss of care, comfort and society.

History: C. 1953, 76-7-308, **enacted by** L. 1973, ch. 196, § 76-7-308.

76-7-309. Medical procedure where fetus sufficiently developed.—If an abortion is performed when the fetus is sufficiently developed to have any reasonable possibility of survival outside its mother's womb, the medical procedure used must be that procedure which in the medical judgment of the physician will give such fetus the best chance of survival, and no medical procedure designed to kill or injure such fetus may be used.

History: C. 1953, 76-7-309, **enacted by** L. 1973, ch. 196, § 76-7-309.

76-7-310. Medical skills to preserve life of fetus.—The physician performing any abortion must use all of his medical skills to promote, preserve and maintain the life of any fetus sufficiently developed to have any reasonable possibility of survival outside its mother's womb.

History: C. 1953, 76-7-310, **enacted by** L. 1973, ch. 196, § 76-7-310.

76-7-311. Child surviving abortion deemed ward of state.—Any child surviving an abortion shall become a ward of the state and the mother of such child and a father who has consented to such abortion shall have no parental rights with regard to such child.

History: C. 1953, 76-7-311, **enacted by** L. 1973, ch. 196, § 76-7-311.

76-7-312. Experimentation with live fetuses prohibited.—Live fetuses may not be used for experimentation.

History: C. 1953, 76-7-312, **enacted by** L. 1973, ch. 196, § 76-7-312.

76-7-313. Soliciting abortions or selling and buying fetuses prohibited.—The soliciting of abortions, advertising for abortions, selling, buying, offering to sell and offering to buy fetuses are prohibited.

History: C. 1953, 76-7-313, **enacted by** L. 1973, ch. 196, § 76-7-313.

76-7-314. Public assistance grants or state funds not used for abortions—Abortion not a condition to receipt of assistance.—No public assistance grant, medical or otherwise, may be used for an abortion. No state funds may be used, expended or paid for abortions except where an abortion is necessary to save the life of the pregnant woman or to prevent serious and permanent damage to her physical health. The obtaining of an abortion may not be a condition to the receipt of public assistance in any form, nor shall any person intimidate or coerce any person to obtain an abortion in connection with any public assistance program.

History: C. 1953, 76-7-314, enacted by L. 1973, ch. 196, § 76-7-314.

76-7-315. Physician's report to state department of health.—In order for the state department of health to maintain necessary statistical information and in order to ensure enforcement of the provisions of this act, any physician performing an abortion must obtain and record in writing the following information: The age of the pregnant woman; her marital status and residence; the number of previous abortions performed on her; the medical reason necessitating the abortion; the hospital or other facility where performed; the weight in grams of the fetus aborted; the pathological description of the fetus; the given menstrual age of the fetus; the measurements; and the medical procedure used. Said information, together with all written consents required for the abortion and a certification by the physician that the fetus was or was not capable of survival outside of the mother's womb, must be filed by the physician with the state department of health within ten days after the abortion.

History: C. 1953, 76-7-315, enacted by L. 1973, ch. 196, § 76-7-315.

76-7-316. Injunctive relief in connection with abortion.—Any person may apply to the district court for injunctive relief to enforce any provisions of this act or to preserve any rights in connection with any abortion proposed, contemplated or threatened.

History: C. 1953, 76-7-316, enacted by L. 1973, ch. 196, § 76-7-316.

76-7-317. Violations of abortion laws—Classifications.—(1) Any person who performs or procures or supplies the means for an abortion other than authorized by this chapter is guilty of a felony of the second degree.

(a) A violation of sections 76-7-319 [76-7-309], 76-7-310, 76-7-311, 76-7-312, 76-7-313, or 76-7-314 of this part is a felony of the third degree.

History: C. 1953, 76-7-317, enacted by L. 1973, ch. 196, § 76-7-317.

Compiler's Notes.

The bracketed reference to "76-7-309" was inserted by the compiler to indicate an apparent error.

This section did not contain a subsec. (2) or a subd. (b).

76-7-318. Violation by physician as basis for disciplinary action.—In addition to any other penalties, a violation of any section of this part by a physician may be the basis for disciplinary action against the physician

for unprofessional conduct under the provisions of Utah Code Annotated 1953, section 58-12-35.

History: C. 1953, 76-7-318, enacted by L. 1973, ch. 196, § 76-7-318.

76-7-319. Laws applicable to abortion to save life or prevent damage to physical health of woman.—In the event of an abortion performed to save the life of the pregnant woman, or to prevent serious and permanent damage to her physical health, no provision of this act shall apply except sections 76-7-301, 76-7-302, 76-7-304 (1) through (5), 76-7-306, 76-7-310, 76-7-315 and 76-7-320.

History: C. 1953, 76-7-319, enacted by L. 1973, ch. 196, § 76-7-319.

76-7-320. Separability clause.—If any one or more provision, section, subsection, sentence, clause, phrase or word of this part or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this part shall remain effective notwithstanding such unconstitutionality. The legislature hereby declares that it would have passed this part, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase or word be declared unconstitutional.

History: C. 1953, 76-7-320, enacted by L. 1973, ch. 196, § 76-7-320.

VIRGINIA

Ch. 477 [1973] Va. Acts 1021

CHAPTER 477

An Act to amend and reenact § 32-298, as amended, of the Code of Virginia relating to definitions of terms on health services.

[H 1700]

Approved March 20, 1973

Be it enacted by the General Assembly of Virginia:

1. That § 32-298, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 32-298. Definitions.—As used in this chapter unless a different meaning or construction is clearly required by the context or otherwise:

(1) *"Person"* means and includes individual, partnership, association, trust, corporation, municipality, county, and local governmental agencies, and any other legal or commercial entity and every manager or operator of a hospital embraced in this chapter, as requisite, excepting the United States, its departments and employees, and agencies thereof solely owned or directly controlled by it;

(2) *"Hospital"* means any institution, place, building or agency by or in which facilities for any accommodation are maintained, furnished, conducted, operated or offered for the hospitalization of two or more nonrelated mentally or physically sick or injured persons, or for the care of two or more nonrelated persons requiring or receiving medical, *surgical* or nursing attention or service as *acute,* chronics, convalescents, aged, disabled or crippled *patients,* including, but not to the exclusion of other particular kinds with varying nomenclature or designation, ordinary hospitals, *out-patient surgical hospitals (which term shall not include the office or offices of one or more physicians or surgeons unless such office or offices are used principally for performing surgery),* sanatoriums, sanitariums, rest homes, infirmaries and other related institutions and undertakings, including institutions solely for care or treatment of persons addicted to the use of alcohol but exclusive of maternity hospitals to the extent same are included within the scope of the provisions of Chapter 10 (§ 32-147 et seq.) of this title, so long as the licensing, inspection and supervisory provisions thereof remain in full force and effect but no longer, and exclusive of dispensary or first aid facilities maintained by any commercial or industrial plant, educational institution or convent, and exclusive of those institutions now or hereafter subject to control of the State Hospital Board, or medical or educational institutions of the State, and exclusive also of any home for indigent aged persons owned or operated by a county, city or town, or by two or more political subdivisions jointly;

(3) *"Board"* means the State Board of Health;

(4) *"Commissioner"* means the State Health Commissioner;

(5) *"Nonrelated"* means not related by blood or marriage; ascending or descending or first degree full or half collateral.

WYOMING

Wyo. Stat. Ann. §§6-77.1 to 6-83.5 (Supp. 1973)

Miscellaneous Offenses.

§ **6-77.1. Definition.**—As used in this act [§§ 6-77.1 to 6-77.4], the word "person" includes one or more individuals, partnerships, associations and corporations. (Laws 1973, ch. 163, § 1.)

§ **6-77.2. Right to refuse to participate in action causing death of human fetus or embryo.**—All persons have the right to refuse to do any act or thing which, directly accomplishes or performs, or assists in accomplishing or performing a human abortion, miscarriage, euthanasia or any other death of a human fetus or human embryo. (Laws 1973, ch. 163, § 1.)

§ **6-77.3. Interference with right; injunctive relief; damages.**—Any person who withholds, denies or deprives, any other person of such right, or who intimidates, threatens or coerces, or attempts to intimidate, threaten or coerce another with the purpose of interfering with such right, or who punishes or attempts to punish any other person for exercising or attempting to exercise such right, whether in connection with employment or otherwise, is subject to injunctive relief and is liable to the person injured thereby for damages. (Laws 1973, ch. 163, § 1.)

§ **6-77.4. Interference with right; penalty.**—Whoever knowingly, and willfully withholds, denies or deprives, any other person of such right; or who intimidates, threatens or coerces, or attempts to intimidate, threaten or coerce another with the purpose of interfering with such right; or who punishes or attempts to punish any other person for exercising or attempting to exercise such right, whether in connection with employment or otherwise, shall upon conviction therefor be fined not to exceed $10,000 or imprisoned not to exceed five years or both. (Laws 1973, ch. 163, § 1.)

Severability.—Section 2, ch. 163, Laws 1973, provides: "If any provision or clause of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable."

Effective date.—Section 3, ch. 163, Laws 1973, makes this act effective upon passage. Approved March 3, 1973.

State Memorials to the Congress Re: Abortion

Since Wade and Bolton, several State legislatures, or one House thereof, have passed resolutions memorializing Congress to take some type of action on the abortion issue. Some of the resolutions ask Congress to initiate a constitutional amendment to protect the unborn; some ask simply for a Constitutional convention; others speak in different terms. Reproduced below are those abortion-related memorials which have been received by the Senate (in each instance the House received the same memorial) and, reported in the Congressional Record.

IDAHO

51 Cong. Rec. S6413 (daily ed. April 3, 1973

A joint memorial of the Legislature of the State of Idaho. Referred to the Committee on the Judiciary:

"SENATE JOINT MEMORIAL NO. 113 BY STATE AFFAIRS COMMITTEE

"A joint memorial to the Congress of the United States and the Senators and Representatives representing the State of Idaho in the Congress of the United States relating to action necessary to preserve the right to life of unborn children

"We, your Memorialists, the Senate and House of Representatives of the State of Idaho assembled in the First Regular Session of the Forty-second Idaho Legislature, do hereby respectfully represent that:

"Whereas, the United States Supreme Court has severely limited the rights of the states to regulate and prohibit abortions; and

"Whereas, the decision of the Supreme Court fails to recognize the right to life of unborn children; and

"Whereas, immediate action is necessary to preserve the right to life of unborn children and to forestall a wholesale wave of life-taking abortions.

"Now, therefore, be it resolved by the First Regular Session of the Forty-second Idaho Legislature, the Senate and House of Representatives concurring therein, that we urge the Congress of the United States to take, without delay, such action as necessary including proposing a constitutional amendment to preserve the right to life of unborn children and to forestall a wholesale wave of life-taking abortions which could result from the recent decision of the Supreme Court.

"Be it further resolved that the Secretary of the Senate be, and he is hereby, authorized and directed to forward copies of this Memorial to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and the Senators and Representatives representing the State of Idaho in the Congress of the United States."

INDIANA

1 Cong. Rec. S1z (daily ed., Jan. 21, 1974)

A joint resolution of the Legislature of the State of Indiana. Referred to the Committee on the Judiciary:

"SENATE ENROLLED JOINT RESOLUTION No. 8

"A joint resolution directing the United States Congress to call a constitutional convention for the purpose of proposing an amendment to the Constitution of the United States relative to the protection of the right to live

"Whereas, the Declaration of Independence of the United States of America affirms that the right to life is an inalienable right given to all people by their Creator; and

"Whereas, the Federal Constitution and those of the several states, as well as the laws and courts of both the Federal and State Governments have traditionally affirmed and reaffirmed this basic right up to the present time; and

"Whereas, this basic tradition has been broken and was called into question by the unprecedented decision of the United States Supreme Court on January 22, 1973, in Roe v. Wade and Doe v. Bolton which sanctioned the abortion of an unborn child during the first three (3) months of pregnancy upon the decision of the mother and her physician alone, and up to the moment of birth under certain circumstances; and

"Whereas, this erosion of the most basic principle, the right to life, on which this country was founded, portends untold conflicts in our society and endangers the very existence of our nation and the Judeo-Christian culture which supports it; and

"Whereas, the Legislature of this state believes it to be for the best interest of the people of the United States that an amendment to the Constitution of the United States be adopted to protect the right to live: Therefore,

"Be it resolved by the General Assembly of the State of Indiana:

"Section 1. That the Congress of the United States be, and hereby is requested to call a constitutional convention for the purpose of proposing the following amendment to the Constitution of the United States:

"Sec. 1. That each state shall have the right to determine whether to eliminate or regulate abortion.

"Sec. 2. Neither the United States nor any State shall deprive any human being of life on account of age, illness or incapacity.

"Sec. 3. Congress and the several States shall have power to enforce this article by appropriate legislation.

"Section 2. If Congress shall have proposed an amendment to the Constitution of the United States identical with that contained within this resolution prior to June 1, 1975, this application for a convention shall no longer be of any force or effect.

"Section 3. The Secretary of the Senate is directed to tranamit immediately copies of this resolution to the Secretary of the Senate of the United States and the Clerk of the House of Representatives of the United States and to each member of Congress from this state."

KENTUCKY

24 Cong. Rec. S2404 (daily ed., Feb. 28, 1974)

A resolution of the Commonwealth of Kentucky. Referred to the Committee on the Judiciary:

"SENATE RESOLUTION No. 9

"Senators Clyde Middleton, Nelson Robert Allen, William R. Gentry, Jr., Gene Huff, Denver C. Knuckles, Tom Mobley, Delbert S. Murphy, Georgia Davis Powers, Joseph Prather, Gus Sheehan, Eugene Stuart, Daisy Thaler, and Danny Yocum introduced the following resolution, which was ordered to be printed.

"A joint resolution directing the United States Congress to recognize the rights of the unborn

"Whereas, the sweeping judgment of the United States Supreme Court in the Texas and Georgia abortion cases expressly deprived the unborn of legal and constitutional protection during their gestation; and

"Whereas, such judicial holding condones the destrutcion of an entire class of live human beings; and

"Whereas, in states in which abortion laws have recently been relaxed or repealed, respect for unborn human life has proved to be wholly inadequate for the reasonable protection of the lives of the unborn; and

"Whereas, a legal threat to the right of life of any individual member of a society imperials the right to life of every other member of that society; and

"Whereas, human life in all states is entitled to the protection of the laws and may not be abridged by act of any court or legislature or by any judicial interpretation of the Constitution of the United States; and

"Whereas, the issue is of such great magnitude—the extent to which human life itself is protected under the Constitution; and

"Whereas, the General Assembly of the Comr onwealth of Kentucky believes it to be in the best interest of the people of the United States that an amendment to the Constitution of the United States be adopted to protect unborn human lives, and

"Whereas, today, January 22d, marks the 1st Anniversary of this sad era in U.S. history, ushered in by these modern Dred Scott decisions of the U.S. Supreme Court on January 22, 1973: Now, therefore, be it

"*Resolved* by the General Assembly of the Commonwealth of Kentucky:

"SECTION 1. That the Congress of the United States take appropriate action to adopt a Constitutional Amendment that will guarantee the explicit protection of all unborn human life by extending the same constitutional rights, including due process of law, which apply to the unborn in the same manner and to the same extent as all other citizens of the United States, and will guarantee that no human life will be denied protection of law or deprived of life on account of age, sickness, state of development or condition of dependency or wantedness.

"SEC. 2. That the Clerk of the Senate transmit a copy of this Resolution to the President of the United States, the President of the Senate of the United States, the Speaker of the House of Representatives of the United States, each member of the Kentucky Congressional delegation, each member of the United States Supreme Court and the Governor of the Commonwealth of Kentucky."

LOUISIANA

91 Cong. REc. S11005 (daily ed., June 13, 1973)

See also 86 Cong. REc. S10463 (daily ed., June 6, 1973)

A concurrent resolution of the **Legislature** of the State of **Louisiana. Referred** to the Committee on the **Judiciary:**

HOUSE CONCURRENT RESOLUTION No. 178

A concurrent resolution to memorialize the Congress of the United States to adopt, and submit to the states for ratification, an amendment to the United States Constitution which will guarantee the right of the unborn human to life throughout its development

Whereas, the United States Supreme Court on January 22, 1973, nullified the laws of the various states, including Louisiana, regarding abortion and interpreted the United States Constitution in a way which allows the destruction of unborn human life; and

Whereas, the sweeping judgment of the United States Supreme Court in the Texas and Georgia abortion cases is a flagrant rejection of the right of the unborn child to life through the full nine months of the gestation period; and

Whereas, unborn human life is entitled to the protection of laws which may not be abridged by act of any court or legislature or by any judicial interpretation of the Constitution of the United States.

Therefore, be it resolved by the House of Representatives of the Legislature of Louisiana, the Senate thereof concurring, that the Congress of the United States is memorialized, requested and urged to adopt, and to submit to the states for ratification, an amendment to the Constitution of the United States which will guarantee the explicit protection of all unborn human life throughout its development, except in such case as such protection would cause the death of the mother; will guarantee that no human being, born or unborn, shall be denied protection of law or shall be deprived of life on account of age, sickness or condition of dependency, and will provide that Congress and the several states shall have the power to enforce the provisions of such amendment by appropriate legislation.

Be it further resolved that copies of this resolution shall be transmitted to each member of the Louisiana congressional delegation, to the Secretary of the United States Senate, to the Clerk of the United States House of Representatives and to the President of the United States.

MAINE

43 Cong. Rec. S5159 (daily ed., Mar. 20, 1973)

A joint resolution of the Legislature of the State of Maine; to the Committee on the Judiciary:

"JOINT RESOLUTION MEMORIALIZING CONGRESS FOR THE PURPOSE OF AMENDING THE U.S. CONSTITUTION RELATIVE TO ABORTION

"We, your Memorialists, the Senate and House of Representatives of the State of Maine in the One Hundred and Sixth Legislative Session assembled, most respectfully present and petition your Honorable Body as follows:

"Whereas, medically and scientifically a human embryo or fetus exists as a living and growing human individual from the moment of conception; and

"Whereas, the moment of birth represents merely an identifiable point along the course of human development and not the beginning of human life; and

"Whereas, respect for human life has been a hallmark of civilized society for millennia; and

"Whereas, the Maine Legislature has supported and shown concern for the life of the unborn child by rejecting all attempts to liberalize, modify or change the State's abortion law; and

"Whereas, the United States Supreme Court by decision has ruled against the unborn; and

"Whereas, the Maine Legislature wishes to establish and define the rights of the unborn; now, therefore, be it

"Resolved: By your Memorialists, that the United States Congress propose an amendment to the Constitution of the United States to read:

"1. As used in the Fifth and Fourteenth Articles of Amendment to the Constitution of the United States, dealing with the deprivation of life, the word 'person' shall apply to every human being regardless of the stage of his biological development.

"2. Nothing herein shall prohibit any state from adopting such laws as are necessary to preserve the life of the expectant mother.

"3. Congress and the several states shall have the power to enforce this amendment by appropriate legislation; and be it further

"Resolved: That certified copies of this resolution be immediately transmitted by the Secretary of State to the President of the Senate and the Speaker of the House of Representatives of the United States Congress, to each Member of the Maine Congressional Delegation and to the Legislatures of each of the several states attesting the adoption of this resolution by the One Hundred and Sixth Legislature of the State of Maine."

MINNESOTA

73 Cong. Rec. 9026 (daily ed., May 156, 1973)

A joint resolution of the Legislature of the State of Minnesota. Referred to the Committee on the Judiciary:

"RESOLUTION

"A resolution memorializing the Congress of the United States to propose a constitutional amendment affirming and protecting the value of human life

"Whereas, the United States Supreme Court has recently put on the United States Constitution a construction that is contradictory to the convictions of the people of the United States about the value of human life; now, therefore,

"Be it resolved, by the Legislature of the State of Minnesota that the Congress of the United States should speedily propose to the states for their ratification an amendment to the United States Constitution substantially in the following form:

" 'ARTICLE

" 'Section 1. No person shall be deprived of life, liberty, or property, from conception until natural death without due process of law, nor denied the equal protection of the laws; provided that this article shall not prevent medical operations necessary to save the life of a mother.

" 'Sec. 2. The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.'

"Be it further resolved, that the Secretary of State of the State of Minnesota transmit copies of this resolution to the Speaker of the United States House of Representatives, the president of the United States Senate, the chairman of the Judiciary Committees of the United States House of Representatives and Senate and the Minnesota Representatives and Senators in Congress."

MONTANA

(Resolution passed only by Montana House of Representatives)

46 Cong. Rec. S5612 (daily ed., Mar 26, 1973)

A resolution of the House of Representatives of the State of Montana. Referred to the Committee on the Judiciary:

"RESOLUTION

"Requesting the Congress of the United States to adopt an amendment to the U.S. Constitution which will reinstate the right of the States to protect the right of an unborn human being to life and offer the constitutional amendment to the States for ratification

"Whereas, the tradition of Montana law from its earliest statutes has been to provide legal protection to the fundamental rights of all human beings, including the right to life, and

"Whereas, the recent decisions of the United States Supreme Court has interpreted this protection to be contrary to the United States Constitution insofar as these decisions affect the right to life of unborn humans, and

"Whereas, Montana's traditions on behalf of human life and the protection of our human environment can best be continued only through appropriate constitutional protection.

"Now, therefore, be it resolved by the House of Representatives of the State of Montana: That the Congress of the United States is hereby urged and requested to adopt a constitutional amendment which will guarantee the right of the States to enact or preserve laws which protect the right to life of unborn human beings, and

"Be it further resolved, that copies of this resolution be forwarded to the Montana congressional delegation, the Secretary of the United States Senate, the Clerk of the United States House of Representatives, and the President of the United States."

NEBRASKA

89 Cong. Rec. S10808 (daily ed., June 11, 1973)

A resolution of the Legislature of the State of Nebraska. Referred to the Committee on the Judiciary:

"LEGISLATIVE RESOLUTION 23

"Whereas, the sweeping judgment of the United States Supreme Court in the Texas and Georgia abortion cases expressly deprived the unborn of legal and constitutional protection during their gestation; and

"Whereas, such judicial holding condones the destruction of an entire class of live human beings; and

"Whereas, in states in which abortion laws have recently been relaxed or repealed, professional medical ethics and respect for unborn life have proved to be wholly inadequate for the reasonable protection of the lives of the unborn; and

"Whereas, a legal threat to the right to life of any individual member of a society imperils the right to life of every other member of that society; and

"Whereas, human life in all stages is entitled to the protection of the laws and may not be abridged by act of any court or legislature or by any judicial interpretation of the Constitution of the United States; and

"Whereas, the issue is of such great magnitude—the extent to which human life itself is protected under the Constitution; and

"Whereas, the Legislature of this state believes it to be in the best interest of the people of the United States that an amendment to the Constitution of the United States be adopted to protect unborn human lives.

"Now therefore be it resolved by the Members of the Eighty-third Legislature of Nebraska, First Session:

"1. That the Congress of the United States take appropriate action to adopt a Constitutional Amendment that will guarantee the explicit protection of all unborn human life by extending the appropriate constitutional rights, including due process of law, which apply to the unborn in an appropriate manner and to the same extent as all other citizens of the United States, and will guarantee that no human life will be denied protection of law or deprived of life on account of age, sickness, stage of development, or condition of dependency or wantedness.

"2. That the Clerk of the Legislature transmit a copy of this Resolution to the President of the Senate of the United States, the Speaker of the House of Representatives of the United States, each member of the Nebraska Congressional delegation, each member of the United States Supreme Court, and to the legislatures of each of the several states."

NEW JERSEY

82 Cong. Rec. S10003 (daily ed., Mqy 31, 1973)

A concurrent resolution of the Legislature of the State of New Jersey. Referred to the Committee on the Judiciary:

"SENATE CONCURRENT RESOLUTION No. 2022

"A concurrent resolution, memorializing the Congress of the United States to amend the Constitution of the United States to effectuate protection of unborn humans

"Be it resolved by *the Senate of the State of New Jersey (the General Assembly concurring)*:

"1. That the Congress of the United States be and is hereby memorialized to propose an amendment to the Constitution of the United States to effectuate protection of unborn humans.

"2. That duly authenticated copies of this resolution, signed by the President of the Senate and the Speaker of the General Assembly and attested to by the Secretary of the Senate and Clerk of the General Assembly, be transmitted to the Secretary of the Senate of the United States and the Clerk of the House of Representatives, the United States Senators from New Jersey and each member of the House of Representatives elected from New Jersey."

NORTH DAKOTA

60 Cong. Rec. S7438 (daily ed., April 16, 1973)

A concurrent resolution of the Legislature of the State of North Dakota. Referred to the Committee on the Judiciary:

"SENATE CONCURRENT RESOLUTION NO. 4069

"A concurrent resolution requesting the Congress of the United States to propose an amendment to the United States Constitution for ratification by the states which will guarantee the right of the unborn human to life throughout its intrauterine development subordinate, only to saving the life of the mother, and will guarantee that no human life shall be denied protection of law or deprived of life on account of age, sickness, or condition of dependency.

"Whereas, 77 percent of those voting in the November 7th, 1972, general election in North Dakota rejected abortion as an alternative to solving the problems of maternal and prenatal and natal health; and

"Whereas, the United States Supreme Court on January 22, 1973, nullified the overwhelming decision of the North Dakota electorate to protect unborn human life by interpreting the United States Constitution in a way which allows the destruction of unborn human life to preserve the well-being of the pregnant woman; and

"Whereas, the sweeping judgment of the United States Supreme Court in the Texas and Georgia abortion cases is a flagrant rejection of the unborn child's right to life through the full nine-month gestation period; and

"Whereas, human life in the womb is entitled to the protection of the laws which may not be abridged by act of any court or legislature or by an judicial interpretation of the Constitution of the United States;

"Now, therefore, be it resolved by the Senate of the State of North Dakota, the House of Representatives concurring therein: That the Congress of the United States is hereby urged and requested to propose a constitutional amendment for ratification by the states that will guarantee the explicit protection of all unborn human life throughout its intrauterine development subordinate only to saving the life of the mother, and will guarantee that no human life shall be denied protection of law or deprived of life on account of age, sickness, or condition of dependency, and that Congress and the several states shall have power to enforce this article by appropriate legislation; and

"Be it further resolved, that copies of this resolution be forwarded by the Secretary of State to the North Dakota Congressional Delegation, the Secretary of the United States Senate, the Clerk of the United States House of Representatives, and the President of the United States."

OKLAHOMA

73 Cong. Rec. S9027 (daily ed., May 15, 1973)

A concurrent resolution of the Legislature of the State of Oklahoma. Referred to the Committee on the Judiciary:

"SENATE CONCURRENT RESOLUTION No. 53

"A concurrent resolution memorializing Congress to propose an amendment to the Constitution of the United States defining the word 'person' in relation to any stage of biological development, providing for any State to adopt laws necessary to preserve the life of an expectant mother and providing for Congress and the States to enact legislation to enforce the amendment; and directing distribution

"Whereas, the Oklahoma Legislature has supported and shown concern for the life of the unborn child by rejecting all attempts to liberalize, modify or change the state's abortion law; and

"Whereas, the United States Supreme Court has by decision ruled against the unborn; and

"Whereas, the Oklahoma Legislature wishes to define the rights of the unborn.

"Now, therefore, be it resolved by the Senate of the 1st session of the 34th Oklahoma Legislature, the House fo Representatives concurring therein:

"Section 1. The Congress of the United States of America be and is hereby respectfully memorialized to propose an amendment to the Constitution of the United States, which shall provide as follows:

"1. As used in the Fifth and Fourteenth Articles of Amendment to the Constitution of the United States, dealing with the deprivation of life, the word 'person' shall apply to every human being regardless of the stage of his biological development.

"2. Nothing herein shall prohibit any state from adopting such laws as are necessary to preserve the life of the expectant mother.

"3. Congress and the several states shall have the power to enforce this amendment by appropriate legislation.

"Section 2. Authenticated copies of this resolution shall be forwarded to the President of the Senate of the United States, the Speaker of the House of Representatives of the United States and to each member of the Oklahoma congressional delegation."

SOUTH DAKOTA

51 Cong. Rec. S6417 (daily ed., April 3, 1973)

A concurrent resolution of the Legislature of the State of South Dakota. Referred to the Committee on the Judiciary:

"HOUSE CONCURRENT RESOLUTION No. 510

"A concurrent resolution, memorializing the Congress of the United States to propose an appropriate amendment to the Constitution of the United States recognizing the right to life for all unborn children and affording protection for that right or, in the alternative, specifically reserving to the states the power to make and enforce such laws as the states deem fit which would recognize and would afford protection for such right

"Be it resolved by the House of Representatives of the State of South Dakota, the Senate concurring therein:

"Whereas, since time immemorial mankind has recognized the inherent sanctity and right to life of unborn children; and

"Whereas, many of the several states, including South Dakota, have, since statehood, made and enforced laws recognizing and enforcing such right, including laws restricting or prohibiting abortion; and

"Whereas, a recent decision by a majority of the United States Supreme Court has failed to give full recognition to this inherent right to life and has rendered invalid the laws of many states, including those of South Dakota, which seek to enforce such right;

"Now, therefore, be it resolved by the House of Representatives of the State of South Dakota, the Senate concurring therein:

To hereby memorialize the Congress to propose, by a two-thirds vote of each house thereof, an amendment to the Constitution of the United States recognizing the right to life for all unborn children and affording protection for that right or, in the alternative, specifically reserving to the states the power to make and enforce such laws as the states deem fit which would recognize and would afford protection for such right, the said amendment which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several states.

"Be it further resolved, that duly certified copies of this Resolution be forthwith transmitted to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and to each member of Congress from this state.

"Adopted by the House, February 21, 1973.

"Concurred in by the Senate, March 14, 1973."

UTAH

68 Cong. Rec. 8316 (daily ed., May 7, 1973)

A joint resolution of the Legislature of the State of Utah. Referred to the Committee on the Judiciary:

"H.J. Res. No. 30

"A joint resolution of the 40th legislature of the State of Utah, requesting a memorial to the Congress of the United States

"*Be it resolved by the Legislature of the State of Utah*: That the Congress of the United States take without delay such action as necessary, including a Constitutional Amendment if needed, to preserve the right to life of unborn children and to forestall a wholesale wave of life-taking abortions which could result from the recent decision of the Supreme Court.

"Be it further resolved, that the Secretary of State send copies of this resolution to the President of the Senate and to the Speaker of the House of Representatives of the Congress of the United States and to each member of the Congress from the State of Utah."

WEST VIRGINIA

(Resolution passed only by West Va. Senate)

39 Cong. Rec. S10808 (daily ed., June 11, 1973).

See also 11 Cong. REc. S1213 (daily ed., Feb 5, 1974)

A resolution of the Senate of the State of West Virginia. Referred to the Committee on the Judiciary:

"SENATE RESOLUTION No. 10

"(By Mr. Darby and Mrs. Leonard)

"Memorializing the Congress of the United States to approve House Joint Resolution No. 261, introduced on January 30, 1973, proposing an amendment to the Constitution of the United States guaranteeing the right to life to the unborn, the ill, the aged or the incapacitated

"*Resolved by the Senate:*

"That the Congress of the United States be urged and requested to approve the amendment to the United States Constitution introduced in House Joint Resolution No. 261, which reads as follows:

"Proposing an amendment to the Constitution of the United States guaranteeing the right to life to the unborn, the ill, the aged or the incapacitated. To be ratified by the states within seven years of Congressional approval.

"Article —

"SECTION 1. Neither the United States nor any state shall deprive any human being, from the moment of conception, of life without due process of law; nor deny to any human being, from the moment of conception, within its jurisdiction, the equal protection of the laws.

"SEC. 2. Neither the United States nor any state shall deprive any human being of life on account of illness, age or incapacity.

"SEC. 3. Congress and the several states shall have the power to enforce this article by appropriate legislation," and, be it

"*Resolved further*, That the Clerk of the Senate notify the Congress of the United States of this action by forwarding to the appropriate officers of each House of Congress a certified copy of this Resolution."

Additionally, Rep. Hogan, on April 19, 1973, reprinted in the Congressional Record, a joint resolution of the MARYLAND legislature, regarding abortion, which is reproduced below. See 63 Cong. Rec. H3057 (daily ed., April 19, 1973)

SENATE JOINT RESOLUTION NO. 37

Senate Joint Resolution requesting the Congress of the United States to propose an amendment to the United States Constitution to effectuate protection of unborn humans

Whereas, The law of Maryland has always recognized that unborn humans are entitled to legal protection; and

Whereas, The Supreme Court of the United States has expressly deprived unborn humans of all legal and constitutional protection during the first six months of gestation; and

Whereas, The Supreme Court of the United States has effectively deprived unborn humans of all legal and constitutional protection during the last three months of gestation by ruling that the interest of the viable unborn child is subordinate to his or her mother's sense of physical, emotional, psychological and familial well-being; now, therefore, be it

Resolved by the General Assembly of Maryland, That the Congress of the United States propose an amendment to the United States Constitution to effectuate protection of unborn humans; and be it further

Resolved, That copies of this Resolution be sent to the United States Senate and the United States House of Representatives.

ADDENDUM

In the time since the preparation of the preceding report, several additional abortion-related developments have occurred. Below, these developments are briefly discussed, the discussion focusing on Supreme Court Action, Congressional Action, Judicial Developments and State Legislation.

Supreme Court Action

On remand, the Virginia Supreme Court upheld the conviction in the Bigelow case. See p. 131, supra. Bigelow has once again been appealed to the Supreme Court. See Bigelow v. Virginia, 42 U.S.L.W. 3502 (U.S. March 5, 1974) (No. 73-1309). The appeal is pending before the Court. Other recent appeals are Poe v. Gerstein, 42 U.S.L.W. 3501 (U.S. March 5, 1974) (No. 73-1283) and Israel v. Doe, 42 U.S.L.W. 3471 (U.S. February 19, 1974) (No. 73-1229). Poe raises issues similar but not identical to those raised by the appeal in Coe v. Gerstein. See p. 137, supra. The appeal in Israel contests the invalidation, by a federal court, of the Rhode Island restrictive statute on abortion. The appeals in both Poe and Israel are pending.

The Supreme Court has denied certiorari (thus letting stand the lower court decision) in Kugler v. Young Women's Christian Assn., 42 U.S.L.W. 3541 (U.S. March 26, 1974) (No. 73-838), see p. 12, supra, and Jones v. Smith, 42 U.S.L.W. 3501 (U.S. March 5, 1974) (No. 73-11373), see p. 137, supra.

Congressional Action

The only recent affirmative Congressional Action to note is that the House, on February 28, 1974, disagreed to the Senate Amendment to H.R. 7824, concerning the participation of Legal Services Corporation Attorneys in abortion litigation. 24 Cong. Rec. H1278 (daily ed. February 28, 1974). See pp. 107-114, supra.

Abortion hearings were held by the Senate Judiciary Committee, Subcommittee on Constitutional Amendments, on March 6 and 7, 1974. The hearings were on S.J. Res. 119 and S.J. Res. 130. The Subcommittee intends to hold more hearings.

Since the beginning of 1974, several abortion bills and resolutions have been introduced in the Congress. Below is a brief summary of pertinent information regarding these bills.

H.R. 12375

Mr. Waldie; 2/29/74; Interstate & Foreign Commerce

To provide that respect for an individual's right not to participate in abortions contrary to that individual's conscience be a requirement for hospital eligibility for Federal financial assistance

H. Res. 829

Mr. Froehlich; 2/6/74; Rules Cosp: Mr. Mitchell of N.Y., Mr. O'Hara, Mr. Conte

Creating a select committee to study the impact and ramifications of the Supreme Court decisions on abortion

H.R. Res. 872

Mr. Eilberg; 1/22/74; Judiciary

Proposing an amendment to the Constitution of the United States guaranteeing the right to life to the unborn, the ill, the aged, or the incapacitated

H.J. Res. 877

Mr. Scherle; 1/23/74; Judiciary

Proposing an amendment to the Constitution of the United States to restore regulatory authority over abortions to the states

H.J. Res. 889

Mr. Dominick v. Danioels; 1/31/74; Judiciary

ID with H.J. Res. 877, above

Judicial Developments

A recent decision on the precise scope of regulatory authority over abortions was handed down by a U.S. District Court in Illinois. Generally, the court upheld regulations which prescribed the methods and conditions under which abortions could be performed, regardless of the duration of the patient's pregnancy. Friendship Medical Center, Ltd. v. Chicago Board of Health, 367 F. Supp. 594 (N.D. Ill. 1973).

In Maryland, that state's Court of Special Appeals held that the state could require that abortions be performed only by licensed physicians, but that it could not require that all abortions be performed in certain hospitals. The court also held that the holdings of Wade and Bolton are fully retroactive. Maryland v. Ingel, No. 197 (Md. Ct. Sp. App., Aug. 6, 1973).

In Doe v. North Ottawa Community Hospital Authority, No. 2768 (Mich. Cir. Ct. May 15, 1973), the court ruled that the hospital in issue could request, but could not require, the consent of the spouse prior to a surgical sterilization.

The court in Pound v. Pound, No. 74-CH-4 (Ill. Cir. Ct. Feb. 2, 1974) ruled that a husband has no legal right to prevent his wife from having an abortion. See also N.Y. Times, Feb. 2, 1974, p.11.

State Legislation

Pennsylvania and Michigan have recently enacted abortion legislation. The legislation in both states relates to insuring that individuals and institutions may not be compelled to perform or assist in abortions. The legislation is reproduced below:

Pennsylvania

Pa. Act. No. 78 (1973 Leg. Serv. Pamp. No. 3)

ABORTION OR STERILIZATION—RIGHT NOT TO PERFORM

ACT NO. 78

S.B.NO.443

An Act amending the act of October 27, 1955 (P.L. 744, No. 222), entitled, as amended, "An act prohibiting certain practices of discrimination because of race, color, religious creed, ancestry, age or national origin by employers, employment agencies, labor organizations and others as herein defined; creating the Pennsylvania Human Relations Commission in the Department of Labor and Industry; defining its functions, powers and duties; providing for procedure and enforcement; providing for formulation of an educational program to prevent prejudice; providing for judicial review and enforcement and imposing penalties," protecting the right of hospitals and individuals not to engage in abortion or sterilization and providing against discriminatory practices in respect to abortion and sterilization.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1.

The act of October 27, 1955 (P.L. 744, No. 222), known as the "Pennsylvania Human Relations Act," is amended by adding a section to read:

Section 5.2. Abortion and Sterilization; Immunity from Requirement to Perform; Unlawful Discriminatory Practices [35]

(a) No hospital or other health care facility shall be required to, or held liable for refusal to, perform or permit the performance of abortion or sterilization contrary to its stated ethical policy. No physician, nurse, staff member or employe of a hospital or other health care facility, who shall state in writing to such hospital or health care facility his objection to performing, participating in, or cooperating in, abortion or sterilization on moral, religious or professional grounds, shall be required to, or held liable for refusal to, perform, participate in, or cooperate in such abortion or sterilization.

34. 75 P.S. §§ 2516(f), 2519(f) Rep.
35. 43 P.S. § 955.2.

(b) It shall be an unlawful discriminatory practice:

(1) For any person to impose penalties or take disciplinary action against, or to deny or limit public funds, licenses, certifications, degrees, or other approvals or documents of qualification to, any hospital or other health care facility, refusal of such hospital or health care facility to perform or permit to be performed, participate in, or cooperate in, abortion or sterilization by reason of objection thereto on moral, religious or professional grounds, or because of any statement or other manifestation of attitude by such hospital or health care facility with respect to abortion or sterilization.

(2) For any person to impose penalties or take disciplinary action against, or to deny or limit public funds, licenses, certifications, degrees, or other approvals or documents of qualification to any physician, nurse or staff member or employe of any hospital or health care facility, due to the willingness or refusal of such physician, nurse or staff member or employe to perform or participate in abortion or sterilization by reason of objection thereto on moral, religious or professional grounds, or because of any statement or other manifestation of attitude by such physician, nurse or staff member or employe with respect to abortion or sterilization.

(3) For any public or private agency, institution or person, including a medical, nursing or other school, to deny admission to, impose any burdens in terms of conditions of employment upon, or otherwise discriminate against any applicant for admission thereto or any physician, nurse, staff member, student or employe thereof, on account of the willingness or refusal of such applicant, physician, nurse, staff member, student or employe to perform or participate in, abortion or sterilization by reason of objection thereto on moral, religious or professional grounds, or because of any statement or other manifestation of attitude by such person with respect to abortion or sterilization: Provided, however, That this subsection shall not apply to any health care facility operated exclusively for the performance of abortion or sterilization or directly related procedures or to a separate clinic of a health care facility for the performance of abortion or sterilization or directly related procedures.

Section 2.

Section 11 of the act, reenacted July 9, 1969 (P.L. 133, No. 56), is reenacted to read:

Section 11. Penalties [34].

Any person who shall wilfully resist, prevent, impede or interfere with the Commission, its members, agents or agencies in the performance of duties pursuant to this act, or shall wilfully violate an order of the Commission, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), or to undergo imprisonment not exceeding thirty (30) days, or both, in the discretion of the court, but procedure for the review of an order shall not be deemed to be such wilful conduct.

Section 3.

The provisions of this act shall be severable. If any provision of this act is found by a court of record to be unconstitutional and void, the remaining provisions of the act shall nevertheless, remain valid unless the court finds the valid provisions of the law are so essentially inseparably connected with and depend upon the void provision that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one, or unless the court finds the remaining valid provisions standing alone are incompleted and are incapable of being executed in accordance with the legislative intent.

34. 43 P.S. § 961.

Section 4.

This act shall take effect immediately.

Approved the 10th day of October A.D. 1973.

Michigan

Mich. Comp. Laws §§331.551-331.556 (1973 Leg. Serv. Pamp. No. 4)

ABORTION—REFUSAL

PUBLIC ACT NO. 176†

SENATE BILL No. 156

AN ACT to permit a hospital, clinic, institution, teaching institution, or facility or any person connected therewith to refuse to perform or participate in an abortion; to grant immunity from civil or criminal liability or from employment discrimination; and to provide penalties.

The People of the State of Michigan enact:

M.C.L.A. § 331.551

Sec. 1. A hospital, clinic, institution, teaching institution, or other medical facility shall not be required to admit a patient for the purpose of performing an abortion. A hospital, clinic, institution, teaching institution, or other facility or a physician, member or associate of the staff, or other person connected therewith, may refuse to perform, participate in, or allow to be performed on its premises an abortion, and the refusal shall be with immunity from any civil or criminal liability or penalty.

M.C.L.A. § 331.552

Sec. 2. A physician, or any other person who is a member of or associated with a hospital, clinic, institution, teaching institution, or other medical facility, or a nurse, medical student, student nurse, or other employee of a hospital, clinic, institution, teaching institution, or other medical facility in which an abortion is performed, who states an objection to abortion on professional, ethical, moral, or religious grounds may not be required to participate in the medical procedures which will result in an abortion, and the refusal by the person to participate therein shall not form the basis of a claim for damages on account of the refusal or for any disciplinary or discriminatory action by the patient, hospital, clinic, institution, teaching institution, or other medical facility against the person.

M.C.L.A. § 331.553

Sec. 3. A physician who informs a patient that he refuses to give advice concerning, or participate in an abortion shall not be liable to the hospital, clinic, institution, teaching institution, or medical facility, or the patient for the refusal.

M.C.L.A. § 331.554

Sec. 4. A civil action for negligence or malpractice, or any disciplinary or discriminatory action may not be maintained against a person refusing to give advice concerning or participating in an abortion based on the refusal.

M.C.L.A. § 331.555

Sec. 5. A hospital, clinic, institution, teaching institution, or other medical facility which elects to refuse to allow abortions to be performed on its premises shall not deny staff privileges or employment to a person for the sole reason that that person previously participated in, or expressed a willingness to participate in a termination of pregnancy. A hospital, clinic, institution, teaching institution, or other medical facility shall not discriminate against its staff members or other employees for the sole reason that the staff members or employees have participated in, or have expressed a willingness to participate in a termination of pregnancy.

† M.C.L.A. §§ 331.551 to 331.556.

M.C.L.A. § 331.556

Sec. 6. A violation of this act is a misdemeanor, punishable by a fine of not more than $2,000.00, or imprisonment for not more than 6 months, or both.

Approved December 21, 1973.

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