SCHEDULE and Attendees

from NATIONAL RIGHT TO LIFE NEWS date July 7, 80

Dr. Willke Elected as NRLC President

ANAHEIM, Ca. — Dr. Jack C. Willke, a founding board member of the National Right to Life Committee, was elected as NRLC president at the annual convention here.

Best known in the prolife movement for **The Handbook on Abortion**, which he co-authored with his wife Barbara, Dr. Willke has held many positions of leadership in the NRLC. He attended the meeting in June of 1973 which founded the NRLC and has served on the committee's executive board in every subsequent year but one. Dr. Willke was executive vice-president for two years and filled the posts of committee vice-president and fund-raising chairman for one year each.

Jack Willke, the new NRLC president, and former president Carolyn Gerster.

Dr. Willke succeeds Dr. Carolyn Gerster, who retired from the presidency after two consecutive one-year terms. Dr. Gerster remains on the executive committee.

Citing the urgency of the prolife issue, Dr. Willke announced that he will leave his medical practice to devote full-time to his office. "This job is too big at this point for a part-time president," Dr. Willke told **NRL News**. "As soon as I can put my affairs in order, I will take a leave of absence from my practice," he said..

Dr. Willke disclosed plans for expanding NRLC's present lobbying effort. He said he hopes to meet with right to life leaders from a different state each week and accompany those leaders on visits with Congressmen and Senators on Capitol Hill. Dr. Willke will also confer with prolife leaders about their groups' relationship with the NRLC. "I hope, through this mechanism, to develop a

(See DR. WILLKE, p.12)

DR. WILLKE

(From p.1)

much closer relationship between the states and the national office," Dr. Willke explained.

Dr. Willke also expressed a desire for closer relations between the various national prolife organizations. "The time has come for exploration of a hoped-for closer cooperation and eventual reunion with some of the prolife groups," Dr. Willke said.

A graduate of the University of Cincinnatti College of Medicine, Dr. Willke took his residencies in that city. After a short term in the Air Force, Dr. Willke began private practice in 1954. By the early 1960s, Dr. Willke and his wife Barbara, a former professor of nursing education, had become well-known in the field of sex education. A lecturing and writing team, the Willkes have authored five books and spoken internationally on the subjects of sex education and abortion.

The Willkes' heavy lecture schedule forced Dr. Willke in the mid '60s to discontinue deliveries, which had been a part of his obstetrics practice. Dr. Willke moved from clinical medicine to counseling, family practice and sexual counseling.

Through the **Handbook on Abortion**, often referred to as the "bible of the prolife movement," and other publications, the Willkes have played a major role in developing the educational techniques used to fight abortion.

Concerning his plans for NRLC, Dr. Willke said, "I hope to utilize the present base — the excellent NRLC project directors and staff — and build upon that base to make substantial growth in the year to come."

Pro-Life PAC Moves to D.C.

The National Pro-Life Political Action Committee has opened offices in suburban Washington, D.C. The group has consolidated its Northport, N.Y. and Chicago, Ill. offices and has moved to Falls Church, Virginia.

National Pro-Life PAC was founded in 1977 by Father Charles Fiore, O.P. of Chicago, Illinois.

LEADERS OF THE PRO-LIFE MOVEMENT:

Representatives of 10 prolife groups hold press conference on Hyde ruling. From left to right are: Harold O.J. Brown, Christian Action Council; Ann Higgins, Ad Hoc Committee in Defense for Life; Joe Barrett, LIFE Political Action Committee; Steven Zielinski, Americans United for Life Legal Defense Fund; Burke Balch, National Youth Prolife Coalition; Nellie Gray, March for Life; Dr. Mildred F. Jefferson, M.D., Right to Life Crusade; Sandra Faucher, National Right to Life Political Action Committee; Dr. Jack Willke, M.D., National Right to Life Committee; Ernest Ohlhoff, National Committee for a Human Life Amendment; and Doug Badger, Christian Action Council.

BACKGROUND;73 Decision
and Amendments

SUPREME COURT DECISION

January 22, 1973

Two decisions handed down invalidated abortion laws in all 50 states. In Roe v. Wade and Doe v. Bolton the Court held:

1) Government may not legislate about abortion during the first trimester of pregnancy.

2) Government may regulate the circumstances under which abortions are performed during the second trimester of pregnancy. (eg. require their performance at licensed facilities, etc.) But government may never ban abortions during the second trimester of pregnancy.

3) Government may forbid abortion during the third trimester of pregnancy. But abortion may not be forbidden, even thru the 9th month of pregnancy, in cases where the life or health --- including mental or emotional health --- of the mother might be impaired.

In effect, the Supreme Court (pro-lifers believe) legalized abortion on demand, without qualifications.

Previous to the 73 decision, all states had some restrictions upon abortion.

CONSTITUTIONAL AMENDMENTS

Since the 1973 Supreme Court decision, several constitutional amendments have been proposed: -

HUMAN LIFE AMENDMENT

Sponsor: Senator Garn. Co-sponsors: Danforth, DeConcini, Hatch, Hatfield, Helms, Humphrey, Jepsen, Lugar, McClure, Pressler, Proxmire, Randolph, Young, Zorinsky, Ford, Huddleston. S J. Res. 22 (following page)

Provides: Amendment prohibits abortion except to save the life of the mother. N.B. The amendment permits, but does not mandate the maternal life exception.

Support: National Right to Life Committee and most pro-life groups support the Human Life Amendment (referred to as HLA).

HELMS AMENDMENT

Sponsor: Sen. Jesse Helms S. J. Res. 12 (following)

Provides: Some years ago, the Helms amendment provided an outright ban on all abortions. Current version cites the right to life for each human being, from the moment of Fertilization.

Support: A few hard-core folks support a total ban on abortion, but most pro-life groups believe it would never pass, considered too harsh. Nellie Gray of March for Life supports total ban.

STATES RIGHTS AMENDMENT

Sponsor: Rep. Whitehurst. Co-sponsors included Jerry Ford and others. Not introduced in this Congress.

Provided: for states to determine own abortion laws.

Support: This was popular some years ago, as a comfortable fence-sitting position but no longer under any consideration. Pro-lifers have tasted possible victory and will not settle for this position (they regard as cop-out). Privately, some believe that if not at all possible to get HLA, would settle for states rights.

CONSTITUTIONAL CONVENTION CALL

Referred to as "Con Con" idea to go the constitutional convention route -- now have 19 of the 34 states required. Most of these folks support the Human Life Amendment.

OTHER CONGRESSIONAL ACTION (LEGISLATION)

Pro-life support in the Congress is estimated as follows: about 38 Senators and 210 House Members.

Discharge Petition: Some supporters of the HLA in the Congress want to force the amendment to the floor thru a discharge petition. Leaders in the movement discourage this action, however, because they do not have the 2/3 vote necessary to carry. Committee action (led by Rep. Don Edwards of Calif) has stalled floor consideration.

Financial Bans on Abortion: Hyde Amendment (see separate section); riders to appropriations eg. Dept of Defense and the District of Columbia. Amendments prohibiting federal employees health benefits plans from paying for abortions for employees and their dependents, etc.

C.H.A.P. In 1979, the House approved a bill dealing with the Child Health Assistance Program (pro-lifers are generally opposed to the bill). Two amendments to the bill as follows:

1) amended the basic Medicaid law to prohibit payment for abortions in non-life-threatening situations.

2) asserted the right of states to refuse to spend their own funds for Medicaid abortion funds.

The June 30th (Hyde) Supreme Court decision would appear to uphold both amendments. The Senate has not yet acted on the bill. Although sponsors of the bill are not happy with these House amendments, they may push the bill ahead, in the interest of saving the program.

96TH CONGRESS
1ST SESSION

S. J. RES. 22

Proposing an amendment to the Constitution of the United States for the protection of unborn children and other persons.

IN THE SENATE OF THE UNITED STATES

JANUARY 23 (legislative day, JANUARY 15), 1979

Mr. GARN (for himself, Mr. DANFORTH, Mr. DECONCINI, Mr. HATCH, Mr. HATFIELD, Mr. HELMS, Mr. HUMPHREY, Mr. JEPSEN, Mr. LUGAR, Mr. MCCLURE, Mr. PRESSLER, Mr. PROXMIRE, Mr. RANDOLPH, Mr. YOUNG, Mr. ZORINSKY, Mr. FORD, and Mr. HUDDLESTON) introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States for the protection of unborn children and other persons.

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 leg-

islatures 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, irrespective of age, health, function, or condition of dependency, including their unborn offspring at every stage of their biological development.

"SEC. 2. No unborn person shall be deprived of life by any person: *Provided, however,* That nothing in this article shall prohibit a law permitting only those medical procedures required to prevent the death of the mother.

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

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96TH CONGRESS
1ST SESSION

S. J. RES. 12

Proposing an amendment to the Constitution of the United States guaranteeing the right of life to the unborn.

IN THE SENATE OF THE UNITED STATES

JANUARY 15, 1979

Mr. HELMS introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States guaranteeing the right of life to the unborn.

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 XXVII

"The paramount right to life is vested in each human being from the moment of fertilization without regard to age, health, or condition of dependency.".

○

Previous to 1973	All states had some restrictions upon abortion. In several states -- Hawaii, California, New York -- laws had been liberalized. A counter-movement had begun in many states to either reverse liberal abortion laws or to prevent their enactment on the state level.
Jan. 22, 1973	Supreme Court decides Roe v. Wade and Doe v. Bolton. The Court's decision invalidated abortion laws in all fifty states. It held: 1. Government may not legislate about abortion during the ~~this~~ trimester of pregnancy. 2. Government may regulate the circumstances under which abortions are performed during the second trimester of pregnancy. (E.G., require their performance at licensed facilities, etc.) But government may never ban abortions during the second trimester of pregnancy. 3. Government may forbid abortion during the third trimester of pregnancy. But abortion may not be forbidden, even through the 9th month of pregnancy, in cases where the life or health -- including mental or emotional health -- of the mother might be impaired. In short, the Court legalized abortion on demand, without qualifications.
Spring, 1973	Senator James Buckley and 6 other Senators introduce a Human Life Amendment to the Constitution. A "state's rights" amendment, returning jurisdiction over abortion to the individual states, was also introduced by others
Summer, 1973	Congress puts a temporary ban on government funding of medical experiments on aborted children.
1974	Senate accepts Bartlett amendment against federal funding of abortion. Lost in conference with House.
1975	Senate rejects attempt to cut off Medicaid funds for abortion. (After the Supreme Court's 1973 ruling, HEW initiated such funding. It had not been authorized specifically by the Congress
January, 1976	N.Y. Times estimates 65,000 persons at Right-to-Life March at Capitol
Spring, 1976	Senate has first full-fledged debate on Human Life Amendment, prior to tabling Helms' motion to consider it. (47/40)
Spring, 1976	Ellen McCormack, a housewife from Long Island, runs for the Democratic presidential nomination. She wins almost 300,000 votes in several states. Her nominating speeches at Democratic convention excoriate Carter as liar, etc.

July 1976	Supreme Court rules that (1) the father of an unborn child may not be given by law any say in decisions regarding abortion and (2) parents of a minor who wishes an abortion may not prohibit her from securing it.
Summer, 1976	Democrats oppose Constitutional amendment on abortion. Republica platform supports efforts of those who propose such an amendment
Summer, 1976	Congressman Henry Hyde (R-Ill) wins House approval of prohibition against Medicaid funding of abortion, except when mother's life is endangered. ("Hyde Amendment" to Labor-HEW Appropriations bill) After initial disagreement, Senate accepts amendment -- with some members expecting it to be struck down by Supreme Court.
Fall, 1976	Single federal judge -- Dooling (N.Y.)-- rules Hyde Amendment unconstitutional on grounds that congressional refusal to pay for abortions is denial of right to abortion. HEW follows Dooling order pending appeal to Supreme Court. (Judge Sirica had earlier upheld constitutionality of Hyde Amendment in a Washington court.)
January, 1977	Newspapers report 40,000-60,000 persons at Capitol demonstration on anniversary of Roe v. Wade.
January, 1977	Senator Garn (R-Utah) reintroduced Human Life Amendment. Twelve Senators sponsor. Helms, a cosponsor, reintroduces his variant Human Life Amendment.
1977-1978	Following Supreme Court ruling on Hyde amendment, most states move to restrict state funding of abortions under Medicaid.
June, 1977	House of Representatives reenacts Hyde Amendment 201-155.
June, 1977	Supreme Court upholds constitutionality of Hyde Amendment.
Fall, 1977	Senate stands firm against Hyde Amendment.
December, 1977	Hyde deadlock forces Labor-HEW to run on continuing resolutions. House conferees eventually accept watered-down Hyde language with several exceptions for abortion funding.
1977	Drive begun to have states call a constitutional convention to propose an amendment to the Constitution regarding abortion.
January, 1978	70,000 people protest abortion at Capitol.
February, 1978	HEW regulations implementing compromise Hyde Amendment anger anti-abortion congressmen with loopholes.
--1978--	Approximately 1,000,000 abortions performed in United States.

March, 1978 — Akron, Ohio, city council passes strict anti-abortion ordinances. Later adopted statewide in Tennessee, Louisiana, and elsewhere.

Spring, 1978 — In California, trial of Dr. Waddill, accused of strangling baby born alive in abortion. National news sensation.

May-June, 1978 — Planned Parenthood under fire in Congress and media for anti-Catholic pro-abortion campaign. P.P. apologizes and withdraws material. Legislation authorizing federal funds for family planning programs -- mail source of P.P. money ($50 million annually) -- rushed through Senate without vote despite Senatorial request to offer amendments.

June, 1978 — Washington gossip column reports that Peace Corps spends $45,000 for abortions. House and Senate soon prohibit this funding.

summer-fall, 1978 — Another Senate-House logjam on abortion funding under the Labor-HEW Appropriations bill.

August, 1978 — House bars use of Defense money for abortions. Senate agrees.

Sept., 1978 — Donald Fraser defeated by Robert Short in Minnesota Democratic primary. Abortion a major issue, with implications for November voting.

Sept., 1978 — President appoints as special advisor on women's issues Sarah Weddington, left-wing Democrat who had been involved in original Roe v Wade case.

Oct., 1978 — House narrowly accepts compromise version of Hyde Amendment.

Oct., 1978 — In closing days of 95th Congress, House and Senate conferees break deadlock on pregnancy disability bill. For most of year, this had been stymied by disagreement over whether employers, whom the bill would compel to provide pregnancy disability benefits, would also have to provide coverage for abortions. House position prevails: employers not compelled to provide health benefits for abortion, but cannot deny disability leave for employee who has abortion.

Oct., 1978 — Congress enacts legislation to fund programs to assist pregnant teenagers Attempt in Senate to require grantees to provide abortion counselling defeated 66/19.

Nov., 1978 — After publicity in Human Events, the National Republican Campaign Committee alters its campaign handbook for GOP candidates. First version had said GOP platform of 1976 was neutral on abortion. Corrected version cites true platform wording.

Nov., 1978 — Media — and several losing candidates like Senator Clark -- attribute surprising Republican gains to anti-abortion voters.

Jan., 1979 — Department of Defense publication asserts that congressional ban on DOD abortion funding inhibits recruitment of women. Congressional inquiries lead to DOD retraction.

1978-1979 — Chicago Sun-Times (not anti-abortion) series exposes abortion clinics of Chicago, prompts investigations, outrage from all sides of abortion issue.

January, 1979 60,000 people demonstrate against abortion at Capitol.

Jan., 1979 Senator Garn reintroduced Human Life Amendment, this time with twenty other Senators.

April, 1979 In Q.&A. in Oklahoma, President Carter discusses loss of Democratic members of Congress in 1978 elections because of abortion issue.

May, 1979 Senate passes Nurse Training Act, containing new legislation to prohibit medical and nursing schools from discriminating against applicants because of their views on abortion. This followed HEW study, mandated by Congress, exposing instances of discrimination against anti-abortion applicants.

PROSPECT FOR 1979

1. Hyde Amendment on Labor-HEW Appropriations bill. Without Senator Brooke's unrivaled leadership on the Senate floor, the anti-Hyde forces will be hurt by the results of last November's elections. Vote in Senate will still be anti-Hyde, but by a smaller margin: 40-43 pro-Hyde; 57-60 anti-Hyde.

   House of Representatives will be overwhelmingly against abortion funding.

   Passage of Labor-HEW Appropriations for fiscal 1980 again imperiled.

2. Restrictions on Defense Department funding of abortion will be maintained.

3. Mini-Hydes -- funding cut-offs concerning smaller programs -- may be appended in the House to other appropriations bills.

4. House will pass Nurse Training Act with Senator Schweiker's language concerning non-discrimination by medical and nursing schools.

CURRENT FEDERAL FUNDING OF ABORTIONS

Language of 1978 Labor-HEW Appropriations Act for fiscal 1979 prohibits funding of abortions except when mother's life would be endangered by continued pregnancy, in cases of reported rape or incest, or in cases in which two doctors certify that the mother would suffer severe and long-lasting physical health damage by continued pregnancy.

LINE-UP IN HOUSE OF REPRESENTATIVES ON FEDERAL FUNDING OF ABORTION

No vote has been taken to date on this subject in the House since the 1978 elections. However, it is generally assumed that the anti-funding forces, in both parties, have been strengthened there. If so, the margin is apt to be in the range of 240-250 anti-funding to 180-190 pro-funding.

LINE-UP IN SENATE -- see attachment.

HYDE AMENDMENT: federal
funding of Abortions

THE HYDE AMENDMENT

Every year since 1976, the Congress has passed some form of the "Hyde Amendment" (named after chief sponsor, Rep. Hyde of Ill) to prohibit the use of federal funds for abortion. Always attached to an appropriation bill (HEW medicaid funding).

Current Wording: The version applicable for FY 80 prohibits the use of federal Medicaid funds for abortions EXCEPT where the life of the mother would be endangered by continuation of the pregnancy or cases of rape or incest (promptly reported to authorities).

Supreme Court Decision: On June 30, 1980, the Supreme Court held that the Hyde Amendment did not violate either the due process clause of the 5th Amendment or the establishment of religion clause of the 1st Amendment. (Harris v McRae). In a separate ruling, the Court held that the states are not obligated to continue to pay for abortions as a condition of continued federal financing for other services. (Williams v Zbaraz).

Result: The Hyde Amendment is expected to cut the number of abortions paid for with federal Medicaid funds from more than 300,000 to an estimated 2,000 per year. Following the Supreme Court decision, states may halt payments for abortion if they so choose. States paid for about 190,000 abortions in 1978.

The following pages include a Congressional Quarterly summary of the decisions and their impact and the actual text of the Harris decision.

Supreme Court Upholds Hyde Amendment

Poor women do not have a constitutional right to publicly funded abortions, the Supreme Court held June 30.

In perhaps its most controversial action of the current term, the court voted 5-4 to uphold a six-year-old ban by Congress, known as the "Hyde amendment," that prohibits federal funding of most abortions. *(Harris v. McRae)*

Congress, the court found, did not violate the Constitution when it refused to pay for abortions but continued to provide funding for childbirth services in an effort to encourage women to carry their pregnancies to term. *(Text of decision, p. 1864)*

By the same 5-4 margin, the court in a separate ruling also upheld from constitutional attack an even more stringent state restriction on abortion funding. Before the court in that case was an Illinois statute that prohibited state medical assistance payments for all abortions except those "necessary for the preservation of the life of the woman seeking such treatment." *(Williams v. Zbaraz)*

Lower federal courts had held both the Hyde amendment and the Illinois statute unconstitutional.

More than 200 members of Congress, including House Majority Leader Jim Wright, D-Texas, and House Minority Leader John J. Rhodes, R-Ariz., had urged the justices in a "friend of the court" brief to stay out of the question of how Congress appropriates money. They argued that that was a matter of separation of powers within the federal government.

In upholding the abortion funding restrictions, however, the court did not specifically address that issue.

Earlier Ruling

The *Harris* and *Williams* decisions were the most important statements by the high court on the festering abortion controversy since 1973.

In that year the court struck down, 7-2, state laws making all abortions criminal except those necessary to save the mother's life. Such laws, it said, impermissibly infringed upon a woman's constitutional right to privacy in deciding whether to have a child. *(Roe v. Wade) (Background, Weekly Report p. 1037; CQ Guide to the U.S. Supreme Court, p. 645)*

The court did not tamper with its 1973 ruling that prohibited undue state interference with a woman's decision whether to seek an abortion during the first six months of pregnancy. But the justices refused to broaden that ban against interference into a constitutional right that abortions be paid for with public funds.

"A woman's freedom of choice [does not carry] with it a constitutional entitlement to the financial resources to avail herself of the full range of . . . choices."

—Justice Potter Stewart, majority opinion

Hyde Amendment

At issue in *Harris v. McRae* was the Hyde amendment, which has been approved by Congress in some form every year since 1976. The provision is named for one of its original sponsors, Rep. Henry J. Hyde, R-Ill. *(History of Hyde amendment, Weekly Report p. 1038)*

The current version, applicable for fiscal year 1980, prohibits the spending of federal Medicaid funds to perform abortions except where the life of the mother would be endangered if the fetus were carried to term, or in cases of rape or incest promptly reported to authorities.

Nearly a third of the one million legal abortions performed each year since 1973 have been for women on welfare. The Hyde amendment is expected to cut the number of abortions paid for with federal Medicaid funds from more than 300,000 to an estimated 2,000 a year. *(Effects of Supreme Court ruling, p. 1862)*

Nine states and the District of Columbia have continued voluntarily to pay for abortions with their own money; 12 others did so under court orders. The Supreme Court court rulings mean states may halt payments for abortion if they choose. States paid for about 190,000 abortions in 1978.

Court Lineup

Justice Potter Stewart spoke for the court's majority in the *McRae* case; he was joined by Chief Justice Warren E. Burger and Justices Byron R. White, Lewis F. Powell Jr. and William H. Rehnquist. Justice White also filed a separate concurring opinion.

Dissenting were Justices William J. Brennan Jr., Thurgood Marshall, Harry A. Blackmun and John Paul Stevens. Each wrote a separate dissenting opinion, although Marshall and Blackmun also joined Brennan in his views.

Majority Opinion

The court held that the Hyde amendment did not violate either the due process clause of the Fifth Amendment or the establishment of religion

—By Kenneth A. Weiss

clause of the First Amendment.

It first decided that in restricting federal Medicaid funding for abortion, Congress did not intend to require states participating in the program to pay for those medically necessary abortions for which federal reimbursement was unavailable.

"[I]f Congress chooses to withdraw federal funding for a particular service, a state is not obliged to continue to pay for that service as a condition of continued federal financial support of other services," the court held.

Had the court decided that states were required to pay for the abortions shunned by Congress, it could have avoided a constitutional ruling on the Hyde amendment because abortions would have continued to be available, with the states paying the total cost.

The court then decided that the Hyde funding restrictions did not impermissibly impinge on the "liberty" protected by the due process clause of the Fifth Amendment as defined in *Roe v. Wade*, the 1973 abortion decision.

"The constitutional underpinning of *Wade* was a recognition that the 'liberty' protected by the Due Process Clause . . . included not only the freedoms explicitly mentioned in the Bill of Rights, but also a freedom of personal choice in certain matters of marriage and family life," Stewart wrote.

"This implicit constitutional liberty . . . includes the freedom of a woman to decide whether to terminate a pregnancy," he noted.

But the court found that the Hyde amendment placed no government obstacle in the path of a woman who chose to terminate her pregnancy, even though by subsidizing the medical expenses of childbirth Congress provided an incentive for women to continue their pregnancies to term.

"[I]t simply does not follow that a woman's freedom of choice carries with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices. . . . [A]lthough government may not place obstacles in the path of a woman's exercise of her freedom of choice, it need not remove those not of its own creation. Indigency falls in that latter category," the court held.

"To translate the limitation on governmental power implicit in the Due Process Clause into an affirmative funding obligation would require Congress to subsidize the medically necessary abortion of an indigent woman even if Congress had not enacted a Medicaid program to subsidize other medically necessary services. Nothing in the Due Process Clause supports such an extraordinary result," it added.

The majority also ruled that the Hyde amendment did not violate the establishment of religion clause of the First Amendment, which prohibits the establishment of an official state religion.

"[T]he fact that the funding restrictions in the Hyde Amendment may coincide with the religious tenets of the Roman Catholic Church does not, without more, contravene the Establishment Clause," the court held.

The court ruled that none of the original plaintiffs had standing to challenge the Hyde restrictions under the free exercise of religion clause, because none alleged that she sought an abortion under compulsion of religious belief.

Finally, the court knocked down arguments that the Hyde amendment violated the constitutional right of equal protection under law. Although the impact of the amendment fell on poor women, that fact did not itself render the funding restrictions constitutionally invalid because poverty, standing alone, is not a "suspect classification," ruled the court.

"Where, as here, the Congress has neither invaded a substantive constitutional right or freedom, nor enacted legislation that purposefully operates to the detriment of a suspect class, the only requirement of equal protection is that congressional action be rationally related to a legitimate governmental interest," the court said.

The Hyde amendment satisfies that standard because by encouraging childbirth except in the most urgent circumstances, it is rationally related to the legitimate government objective of protecting potential life, the court found.

Concurring Opinion

In his concurring opinion, Justice White noted that *Roe v. Wade* dealt with the circumstances in which the governmental interest in potential life would justify official interference with the abortion choices of pregnant women.

"There is no such calculus involved here. The government does not seek to interfere with or to impose any coercive restraint on the choice of any woman to have an abortion," White wrote.

"The government is not attempting to use its interest in life to justify a coercive restraint, and in disbursing its Medicaid funds it is free to implement rationally what *Roe v. Wade* recognized to be its legitimate interest in a potential life by covering the medical costs of childbirth but denying funds for abortions," the justice concluded.

The Hyde amendment "imposes the political majority's judgment . . . upon that segment of our society which . . . is least able to defend its privacy rights from the encroachments of state-mandated morality."

—Justice William J. Brennan Jr., dissenting views

Dissenting Views

Justices Marshall and Blackmun joined Justice Brennan in denouncing the Hyde amendment as "nothing less than an attempt by Congress to circumvent the dictates of the Constitution and achieve indirectly what *Roe v. Wade* said it could not do directly."

"[T]he Hyde Amendment is a transparent attempt by the Legislative Branch to impose the political majority's judgment of the morally acceptable and socially desirable pref-

erence on a sensitive and intimate decision that the Constitution entrusts to the individual," Brennan wrote.

"Worse yet, the Hyde Amendment does not foist that majoritarian viewpoint with equal measure upon everyone in our Nation, rich and poor alike; rather, it imposes that viewpoint only upon that segment of our society which, because of its position of political powerlessness, is least able to defend its privacy rights from the encroachments of state-mandated morality," he said.

"By thus injecting coercive financial incentives favoring childbirth into a decision that is constitutionally guaranteed to be free from governmental intrusion, the Hyde Amendment deprives the indigent woman of her freedom to choose abortion over maternity, thereby impinging on the due process liberty right recognized in *Roe v. Wade*," Brennan wrote. "By funding all of the expenses associated with childbirth and none of the expenses incurred in terminating pregnancy, the government literally makes an offer that the indigent woman cannot afford to refuse."

Other Dissenting Views

Justice Marshall, in a separate dissenting opinion, warned that "the predictable result of the Hyde Amendment will be a significant increase in the number of poor women who will die or suffer significant health damage because of an inability to procure medically necessary medical services." For poor women, he said, denial of a Medicaid-funded abortion is equivalent to denial of legal abortion altogether.

"They must resort to back-alley butchers, attempt to induce an abortion themselves by crude and dangerous methods, or suffer the serious medical consequences of attempting to carry the fetus to term," he said.

Justice Stevens said the case "involves a special exclusion of women who, by definition, are confronted with a choice between two serious harms: serious health damage to themselves on the one hand and abortion on the other. Because a denial of benefits of medically necessary abortions inevitably causes serious harm to the excluded women, it is tantamount to severe punishment. In my judgment, that denial cannot be justified unless the Government may, in effect, punish women who want abortions. But as the court unequivocally held in *Roe v. Wade*, this the government may not do," Stevens wrote.

Justice Blackmun said there was "condescension" in the majority's holding that a woman "may go elsewhere for her abortion."

He said the government "punitively impresses upon a needy minority its own concepts of the socially desirable, the publicly acceptable and the morally sound," and warned that the "cancer of poverty will continue to grow."

Ruling Slashes Medicaid Abortions

The Supreme Court's approval of the Hyde amendment will cut federally funded abortions for poor women by more than 99 percent.

The Department of Health and Human Services (HHS) announced after the June 30 ruling that it would begin to implement the restrictive abortion provisions in existing law on July 26. Existing law, covering HHS's fiscal 1980 spending, prohibits Medicaid-paid abortions unless the life of the mother would be endangered by continued pregnancy, or in cases where the pregnancy resulted from rape or incest.

HHS had been allowing unrestricted Medicaid abortions since Feb. 19, when the Supreme Court ordered it to resume payments pending a decision on the Hyde case. HHS Secretary Patricia Roberts Harris estimated that the unrestricted policy would result in payments for 470,000 abortions a year, at a cost of $88 million. Under the latest version of the Hyde amendment, however, the number of abortions paid for by federal taxpayers will be less than 2,000 a year.

Under an earlier, slightly less restrictive version of the amendment in effect from 1977 through 1979, there were about 200 Medicaid abortions a month. But the current amendment, unlike the earlier version, does not allow for abortions in cases when two doctors determined that continued pregnancy would result in severe and long-lasting damage to the physical health of the mother.

Court's Opinion in Hyde Amendment Case

Following is a partial text of the Supreme Court's majority opinion in Harris v. McRae, *which upheld, 5-4, congressional restrictions on federal funding of abortions. Footnotes have been omitted.*

MR. JUSTICE STEWART delivered the opinion of the Court.

This case presents statutory and constitutional questions concerning the public funding of abortions under Title XIX of the Social Security Act, commonly known as the "Medicaid" Act, and recent annual appropriations acts containing the so-called "Hyde Amendment." The statutory question is whether Title XIX requires a State that participates in the Medicaid program to fund the cost of medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment. The constitutional question, which arises only if Title XIX imposes no such requirement, is whether the Hyde Amendment, by denying public funding for certain medically necessary abortions, contravenes the liberty or equal protection guarantees of the Due Process Clause of the Fifth Amendment, or either of the Religion Clauses of the First Amendment. . . .

[The court concluded that states participating in Medicare were not required to pay for abortions for which federal funding was not available.]

Substantive Rights

Having determined that Title XIX does not obligate a participating state to pay for those medically necessary abortions for which Congress has withheld federal funding, we must consider the constitutional validity of the Hyde Amendment. The appellees assert that the funding restrictions of the Hyde Amendment violate several rights secured by the Constitution — (1) the right of a woman, implicit in the Due Process Clause of the Fifth Amendment, to decide whether to terminate a pregnancy, (2) the prohibition under the Establishment Clause of the First Amendment against any "law respecting an establishment of religion," and (3) the right to freedom of religion protected by the Free Exercise Clause of the First Amendment. The appellees also contend that, quite apart from substantive constitutional rights, the Hyde Amendment violates the equal protection component of the Fifth Amendment.

It is well settled that, quite apart from the guarantee of equal protection, if a law "impinges upon a fundamental right explicitly or implicitly secured by the Constitution [it] is presumptively unconstitutional." *Mobile* v. Bolden, 446 U.S. —, — (plurality opinion). Accordingly, before turning to the equal protection issue in this case, we examine whether the Hyde Amendment violates any substantive rights secured by the Constitution.

A

We address first the appellees' argument that the Hyde Amendment, by restricting the availability of certain medically necessary abortions under Medicaid, impinges on the "liberty" protected by the Due Process Clause as recognized in *Roe* v. *Wade*, 410 U.S. 113, and its progeny.

In the *Wade* case, this Court held unconstitutional a Texas statute making it a crime to procure or attempt an abortion except on medical advice for the purpose of saving the mother's life. The constitutional underpinning of *Wade* was a recognition that the "liberty" protected by the Due Process Clause of the Fourteenth Amendment includes not only the freedoms explicitly mentioned in the Bill of Rights, but also a freedom of personal choice in certain matters of marriage and family life. This implicit constitutional liberty, the Court in *Wade* held, includes the freedom of a woman to decide whether to terminate a pregnancy.

But the court in *Wade* also recognized that a State has legitimate interests during a pregnancy in both ensuring the health of the mother and protecting potential human life. These state interests, which were found to be "separate and distinct" and to "grow[] in substantiality as the woman approaches term," *id.*, at 162-163, pose a conflict with a woman's untrammeled freedom of choice. In resolving this conflict, the Court held that before the end of the first trimester of pregnancy, neither state interest is sufficiently substantial to justify any intrusion on the woman's freedom of choice. In the second trimester, the state interest in maternal health was found to be sufficiently substantial to justify regulation reasonably related to that concern. And, at viability, usually in the third trimester, the state interest in protecting the potential life of the fetus was found to justify a criminal prohibition against abortions, except where necessary for the preservation of the life or health of the mother. Thus, inasmuch as the Texas criminal statute allowed abortions only where necessary to save the life of the mother and without regard to the stage of the pregnancy, the Court held in *Wade* that the statute violated the Due Process Clause of the Fourteenth Amendment.

In *Maher* v. *Roe*, 432 U.S. 464, the Court was presented with the question whether the scope of personal constitutional freedom recognized in *Roe* v. *Wade* included an entitlement to Medicaid payments for abortions that are not medically necessary. At issue in *Maher* was a Connecticut welfare regulation under which Medicaid recipients received payments for medical services incident to childbirth, but not for medical services incident to nontherapeutic abortions. The district Court held that the regulation violated the Equal Protection Clause of the Fourteenth Amendment because the unequal subsidization of childbirth and abortion impinged on the "fundamental right to abortion" recognized in *Wade* and its progeny.

It was the view of this Court that "the District Court misconceived the nature and scope of the fundamental right recognized in *Roe*." . . . The doctrine of *Roe* v. *Wade*, the Court held in *Maher*, "protects the woman from unduly burdensome interference with her freedom to decide whether to terminate her pregnancy," . . ., such as the severe criminal sanctions at issue in *Roe* v. *Wade*, *supra*, or the absolute requirement of spousal consent for an abortion challenged in *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52.

But the constitutional freedom recognized in *Wade* and its progeny, the *Maher* Court explained, did not prevent Connecticut from making "a value judgment favoring childbirth over abortion, and . . . implement[ing] that judgment by the allocation of public funds." *Id.*, at 474. As the court elaborated:

> "The Connecticut regulation before us is different in kind from the laws invalidated in our previous abortions decisions. The Connecticut regulation places no obstacles — absolute or otherwise — in the pregnant woman's path to an abortion. An indigent woman who desires an abortion suffers no disadvantage as a consequence of Connecticut's decision to fund childbirth; she continues as before to be dependent on private sources for the service she desires. The State may have made childbirth a more attractive alternative, thereby influencing the woman's decision, but it has imposed no restriction on access to abortions that was not already there. The indigency that may make it difficult and in some cases, perhaps, impossible — for some women to have abortions is neither created nor in any way affected by the Connecticut regulation." . . .

The Court in *Maher* noted that its description of the doctrine recognized in *Wade* and its progeny signaled "no retreat" from those decisions. In explaining why the constitutional principle recognized in *Wade* and later cases — protecting a woman's freedom of choice — did not translate into a constitutional obligation of Connecticut to subsidize abortions, the Court cited the "basic difference between direct state interference with a protected activity and state encouragement of an alternative activity consonant with legislative policy. Constitutional concerns are greatest when the State attempts to impose its will by force of law; the State's power to encourage

actions deemed to be in the public interest is necessarily far broader." *Id.*, at 475-476. Thus, even though the Connecticut regulation favored childbirth over abortion by means of subsidization of one and not the other, the Court in *Maher* concluded that the regulation did not impinge on the constitutional freedom recognized in *Wade* because it imposed no governmental restriction on access to abortions.

The Hyde Amendment, like the Connecticut welfare regulation at issue in *Maher*, places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy, but rather, by means of unequal subsidization of abortion and other medical services, encourages alternative activity deemed in the public interest. The present case does differ factually from *Maher* insofar as that case involved a failure to fund nontherapeutic abortions, whereas the Hyde Amendment withholds funding of certain medically necessary abortions. Accordingly, the appellees argue that because the Hyde Amendment affects a significant interest not present or asserted in *Maher* — the interest of a woman in protecting her health during pregnancy — and because that interest lies at the core of the personal constitutional freedom recognized in *Wade*, the present case is constitutionally different from *Maher*. It is the appellees' view that to the extent that the Hyde Amendment withholds funding for certain medically necessary abortions, it clearly impinges on the constitutional principle recognized in *Wade*.

It is evident that a woman's interest in protecting her health was an important theme in *Wade*. In concluding that the freedom of a woman to decide whether to terminate her pregnancy falls within the personal liberty protected by the Due Process Clause, the Court in *Wade* emphasized the fact that the woman's decision carries with it significant personal health implications — both physical and psychological. . . . In fact, although the Court in *Wade* recognized that the state interest in protecting potential life becomes sufficiently compelling in the period after fetal viability to justify an absolute criminal prohibition of nontherapeutic abortions, the Court held that even after fetal viability a State may not prohibit abortions "necessary to preserve the life or health of the mother." . . . Because even the compelling interest of the State in protecting potential life after fetal viability was held to be insufficient to outweigh a woman's decision to protect her life or health, it could be argued that the freedom of a woman to decide whether to terminate her pregnancy for health reasons does in fact lie at the core of the constitutional liberty identified in *Wade*.

But, regardless of whether the freedom of a woman to choose to terminate her pregnancy for health reasons lies at the core or the periphery of the due process liberty recognized in *Wade*, it simply does not follow that a woman's freedom of choice carries with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices. The reason why was explained in *Maher:* although government may not place obstacles in the path of a woman's exercise of her freedom of choice, it need not remove those not of its own creation. Indigency falls in the latter category. The financial constraints that restrict an indigent woman's ability to enjoy the full range of constitutionally protected freedom of choice are the product not of governmental restrictions on access to abortions, but rather of her indigency. Although Congress has opted to subsidize medically necessary services generally, but not certain medically necessary abortions, the fact remains that the Hyde Amendment leaves an indigent woman with at least the same range of choice in deciding whether to obtain a medically necessary abortion as she would have had if Congress had chosen to subsidize no health care costs at all. We are thus not persuaded that the Hyde Amendment impinges on the constitutionally protected freedom of choice recognized in *Wade*.

Although the liberty protected by the Due Process Clause affords protection against unwarranted government interference with freedom of choice in the context of certain personal decisions, it does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom. To hold otherwise would mark a drastic change in our understanding of the Constitution. It cannot be that because government may not prohibit the use of contraceptives, *Griswold* v. *Connecticut*, 381 U.S. 479, or prevent parents from sending their child to a private school, *Pierce* v. *Society of Sisters*, 268 U.S. 510, government, therefore, has an affirmative constitutional obligation to ensure that all persons have the financial resources to obtain contraceptives or send their children to private schools. To translate the limitation on governmental power implicit in the Due Process Clause into an affirmative funding obligation would require Congress to subsidize the medically necessary abortion of an indigent woman even if Congress had not enacted a Medicaid program to subsidize other medically necessary services. Nothing in the Due Process Clause supports such an extraordinary result. Whether freedom of choice that is constitutionally protected warrants federal subsidization is a question for Congress to answer, not a matter of constitutional entitlement. Accordingly, we conclude that the Hyde Amendment does not impinge on the due process liberty recognized in *Wade*.

B

The appellees also argue that the Hyde Amendment contravenes rights secured by the Religion Clauses of the First Amendment. It is the appellees' view that the Hyde Amendment violates the Establishment Clause because it incorporates into law the doctrines of the Roman Catholic Church concerning the sinfulness of abortion and the time at which life commences. Moreover, insofar as a woman's decision to seek a medically necessary abortion may be a product of her religious beliefs under certain Protestant and Jewish tenets, the appellees assert that the funding limitations of the Hyde Amendment impinge on the freedom of religion guaranteed by the Free Exercise Clause.

1

It is well settled that "a legislative enactment does not contravene the Establishment Clause if it has a secular legislative purpose, if its principal or primary effect neither advances nor inhibits religion, and if it does not foster an excessive governmental entanglement with religion." *Committee for Pub. Ed. & Rel. Lib.* v. *Regan*, 444 U.S. —, —. Applying this standard, the District Court properly concluded that the Hyde Amendment does not run afoul of the Establishment Clause. Although neither a State nor the Federal Government can constitutionally "pass laws which aid one religion, aid all religions, or prefer one religion over another," *Everson* v. *Board of Education*, 330 U.S. 1, 15, it does not follow that a statute violates the Establishment Clause because it "happens to coincide or harmonize with the tenets of some or all religions." *McGowan* v. *Maryland*, 366 U.S. 420, 442. . . . In sum, we are convinced that the fact that the funding restrictions in the Hyde Amendment may coincide with the religious tenets of the Roman Catholic Church does not, without more, contravene the Establishment Clause.

2

We need not address the merits of the appellees' arguments concerning the Free Exercise Clause, because the appellees lack standing to raise a free exercise challenge to the Hyde Amendment. The named appellees fall into three categories: (1) the indigent pregnant women who sued on behalf of other women similarly situated, (2) the two officers of the Women's Division of the Board of Global Ministries of the United Methodist Church (Women's Division), and (3) the Women's Division itself. The named appellees in the first category lack standing to challenge the Hyde Amendment on free exercise grounds because none alleged, much less proved, that she sought an abortion under compulsion of religious belief. See *McGowan* v. *Maryland, supra*, 366 U.S., at 429. Although the named appellees in the second category did provide a detailed description of their religious beliefs, they failed to allege either that they are or expect to be pregnant or that they are eligible to receive Medicaid. These named appellees, therefore, lack the personal stake in the controversy needed to confer standing to raise such a challenge to the Hyde Amendment. See *Warth* v. *Seldin*, 422 U.S. 490, 498-499.

Finally, although the Women's Division alleged that its membership includes

"pregnant Medicaid eligible women who, as a matter of religious practice and in accordance with their conscientious beliefs, would choose but are precluded or discouraged from obtaining abortions reimbursed by Medicaid because of the Hyde Amendment," the Women's Division does not satisfy the standing requirements for an organization to assert the rights of its membership. . . . Accordingly, we conclude that the Women's Division, along with the other named appellees, lack standing to challenge the Hyde Amendment under the Free Exercise Clause.

C

It remains to be determined whether the Hyde Amendment violates the equal protection component of the Fifth Amendment. This challenge is premised on the fact that, although federal reimbursement is available under Medicaid for medically necessary services generally, the Hyde Amendment does not permit federal reimbursement of all medically necessary abortions. The District Court held, and the appellees argue here, that this selective subsidization violates the constitutional guarantee of equal protection.

The guarantee of equal protection under the Fifth Amendment is not a source of substantive rights or liberties, but rather a right to be free from invidious discrimination in statutory classifications and other governmental activity. It is well-settled that where a statutory classification does not itself impinge on a right or liberty protected by the Constitution, the validity of classification must be sustained unless "the classification rests on grounds wholly irrelevant to the achievement of [any legitimate governmental] objective." *McGowan* v. *Maryland, supra,* 366 U.S., at 425. This presumption of constitutional validity, however, disappears if a statutory classification is predicated on criteria that are, in a constitutional sense, "suspect," the principal example of which is a classification based on race, *e.g., Brown* v. *Board of Education,* 347 U.S. 483.

1

For the reasons stated above, we have already concluded that the Hyde Amendment violates no constitutionally protected substantive rights. We now conclude as well that it is not predicated on a constitutionally suspect classification. In reaching this conclusion, we again draw guidance from the Court's decision in *Maher* v. *Roe.* As to whether the Connecticut welfare regulation providing funds for childbirth but not for nontherapeutic abortions discriminated against a suspect class, the Court in *Maher* observed:

> "An indigent woman desiring an abortion does not come within the limited category of disadvantaged classes so recognized by our cases. Nor does the fact that the impact of the regulation falls upon those who cannot pay lead to a different conclusion. In a sense, every denial of welfare to an indigent creates a wealth classification as compared to nonindigents who are able to pay for the desired goods or services. But this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis." 432 U.S., at 471, citing *San Antonio School Dist.* v. *Rodriguez,* 411 U.S. 1, 29; *Dandridge* v. *Williams,* 397 U.S. 471.

Thus, the Court in *Maher* found no basis for concluding that the Connecticut regulation was predicated on a suspect classification.

It is our view that the present case is indistinguishable from *Maher* in this respect. Here, as in *Maher,* the principal impact of the Hyde Amendment falls on the indigent. But that fact does not itself render the funding restriction constitutionally invalid, for this Court has held repeatedly that poverty, standing alone, is not a suspect classification. See, *e.g., James* v. *Valtierra,* 402 U.S. 137. That *Maher* involved the refusal to fund nontherapeutic abortions, whereas the present case involves the refusal to fund medically necessary abortions, has no bearing on the factors that render a classification "suspect" within the meaning of the constitutional guarantee of equal protection.

2

The remaining question then is whether the Hyde Amendment is rationally related to a legitimate governmental objective. It is the Government's position that the Hyde Amendment bears a rational relationship to its legitimate interest in protecting the potential life of the fetus. We agree.

In *Wade,* the court recognized that the state has "an important and legitimate interest in protecting the potentiality of human life." 410 U.S., at 162. That interest was found to exist throughout a pregnancy, "grow[ing] in substantiality as the woman approaches term." *Id.,* at 162-163. See also *Beal* v. *Doe,* 432 U.S. 438, 445-446. Moreover, in *Maher,* the Court held that Connecticut's decision to fund the costs associated with childbirth but not those associated with nontherapeutic abortions was a rational means of advancing the legitimate state interest in protecting potential life by encouraging childbirth. 432 U.S., at 478-479. See also *Poelker* v. *Doe,* 432 U.S. 519, 520-521.

It follows that the Hyde Amendment, by encouraging childbirth except in the most urgent circumstances, is rationally related to the legitimate governmental objective of protecting potential life. By subsidizing the medical expenses of indigent women who carry their pregnancies to term while not subsidizing the comparable expenses of women who undergo abortions (except those whose lives are threatened), Congress has established incentives that make childbirth a more attractive alternative than abortion for persons eligible for Medicaid. These incentives bear a direct relationship to the legitimate congressional interest in protecting potential life. Nor is it irrational that Congress has authorized federal reimbursement for medically necessary services generally, but not for certain medically necessary abortions. Abortion is inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life.

After conducting an extensive evidentiary hearing into issues surrounding the public funding of abortions, the District Court concluded that "[t]he interests of . . . the federal government . . . in the fetus and in preserving it are not sufficient, weighed in the balance with the woman's threatened health, to justify withdrawing medical assistance unless the woman consents . . . to carry the fetus to term." In making an independent appraisal of the competing interests involved here, the District Court went beyond the judicial function. Such decisions are entrusted under the Constitution to Congress, not the courts. It is the role of the courts only to ensure that congressional decisions comport with the Constitution.

Where, as here, the Congress has neither invaded a substantive constitutional right or freedom, nor enacted legislation that purposefully operates to the detriment of a suspect class, the only requirement of equal protection is that congressional action be rationally related to a legitimate governmental interest. The Hyde Amendment satisfies that standard. It is not the mission of this Court or any other to decide whether the balance of competing interests reflected in the Hyde Amendment is wise social policy. If that were our mission, not every Justice who has subscribed to the judgment of the Court today could have done so. But we cannot, in the name of the Constitution, overturn duly enacted statues simply "because they may be unwise, improvident, or out of harmony with a particular school of thought." *Williamson* v. *Lee Optical Co.,* 348 U.S. 483, 488, quoted in *Dandridge* v. *Williams,* 397 U.S. 471, 484. Rather, "when an issue involves policy choices as sensitive as those implicated [here] . . . , the appropriate forum of their resolution in a democracy is the legislature." *Maher* v. *Roe, supra,* at 479.

Conclusion

For the reasons stated in this opinion, we hold that a State that participates in the Medicaid program is not obligated under Title XIX to continue to fund those medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment. We further hold that the funding restrictions of the Hyde Amendment violate neither the Fifth Amendment nor the Establishment Clause of the First Amendment. It is also our view that the appellees lack standing to raise a challenge to the Hyde Amendment under the Free Exercise Clause of the First Amendment. Accordingly, the judgment of the District Court is reversed, and the case is remanded to that court for further proceedings consistent with this opinion.

It is so ordered.

POLITICAL INFO

1980

GOP PLATFORM

Abortion

There can be no doubt that the question of abortion, despite the complex nature of its various issues, is ultimately concerned with equality of rights under the law. While we recognize differing views on this question among Americans in general — and in our own Party — we affirm our support of a constitutional amendment to restore protection of the right to life for unborn children. We also support the Congressional efforts to restrict the use of taxpayers' dollars for abortion.

We protest the Supreme Court's intrusion into the family structure through its denial of the parent's obligation and right to guide their minor children.

The Judiciary

Under Mr. Carter, many appointments to federal judgeships have been particularly disappointing. By his partisan nominations, he has violated his explicit campaign promise of 1976 and has blatantly disregarded the public interest. We pledge to reverse that deplorable trend, through the appointment of women and men who respect and reflect the values of the American people, and whose judicial philosophy is characterized by the highest regard for protecting the rights of law-abiding citizens, and is consistent with the belief in the decentralization of the federal government and efforts to return decisionmaking power to state and local elected officials.

We will work for the appointment of judges at all levels of the judiciary who respect traditional family values and the sanctity of innocent human life.

Prolife Leaders React Differently to Bush

Most prolife leaders reacted cautiously to Ronald Reagan's choice of George Bush as his running mate. Before his announcement that he "enthusiastically supports the (Republican) platform across the board" Bush was considered to be pro-abortion.

NRL PAC

The official statement of National Right to Life Political Action Committee emphasized that the Republican platform which Bush says he supports includes a plank which specifically endorses a Human Life Amendment to the Constitution. The release states, "We take the statement of Ambassador Bush *literally*."

The NRL-PAC statement concludes with a look to future developments: "We welcome any candidate's change of view, tested and reinforced by time, which will help to bring this result [the HLA] to pass." (*See full statement p. 1*).

NYPLC

Burke Balch, president of National Youth Pro-Life Coalition, told **NRL News**, "I am greatly disappointed in Governor Reagan's choice of George Bush as vice presidential nominee. He is a man not only with a background of support of abortion but also of clear involvement at a leadership level in organizations which promote population control as a primary solution to the problems of poverty in the Third and Fourth Worlds. It would be highly unfortunate if the administration to be elected this November were to continue or even expand the programs currently being employed by the Agency for International Development and others of the use of abortion and coercive methods of population control as a substitute for real attempts to attack the problems."

March for Life

Nellie Gray, president of March for Life, told **NRL News** "Mr. Bush is not our number one choice for that slot, and we would have preferred somebody else. The important thing is that we are delighted with the whole platform on the prolife issues. We'll just wait and see how this works out."

NCHLA

The executive director of the National Committee for a Human Life Amendment, Ernest Ohlhoff, told **NRL News**, "We are encouraged by the fact that Mr. Bush said that he will enthusiastically support the Republican Party platform, and hope it continues."

CAC

Curt Young, the executive director of Christian Action Council, told **NRL News**, "We are extremely disappointed in the choice of Mr. Bush. It violates the promise of Mr. Reagan that he would choose a prolife vice presidential candidate. It violates the spirit of all his communications with evangelicals about choice of a running mate. We are extremely wary of Mr. Bush.

"We have been betrayed by Carter, embarrassed by Anderson. We will not be duped by Reagan.

"Evangelicals do have some place else to go. We can work on the key Senate and Congressional races. The Human Life Amendment will come from the Congress, not from the White House.

"Mr. Reagan has shot himself in the foot — if not fatally."

The morning before the choice of Bush as VP candidate was announced, Rowland Evans and Robert Novak commented in the July 16 **Washington Post** on Reagan's hesitancy to pick Bush. "The immediate cause for Reagan's stated opposition [to Bush] is one that seldom gets into the public debate," according to Evans and Novak. "He [Reagan] feels that Bush's opposition to an anti-abortion constitutional amendment may well violate Reagan's pledge to the 'pro-life' movement to select an anti-abortion running mate. That commitment is regretted by many Reagan insiders and perhaps by Reagan himself, but he intends to honor it."

NP-L PAC

Peter Gemma, executive director of National Pro-Life Political Action Committee, told **NRL News**, "We are disappointed, because we had written reassurances from Ronald Reagan way back in February that he would name a prolife running mate. The media has picked that up from that day onward; everyone knows it. But when push came to shove, he buckled under pressure from the Ford people and took George Bush as his running mate.

"I am particularly disappointed because I cannot go back to our people and sell George Bush as a recent convert to our cause. One instance was the day after he was nominated in a press conference when he was asked what he meant by 'enthusiastically supporting the pltform', specifically ERA and abortion. He said, 'Don't nickel and dime me to death.' That is certainly not a conciliatory statement."

Gemma said that prolifers might vote for the Reagan-Bush ticket — "It's a matter of holding your nose and pulling the lever" — but that they will not work for the campaign as they had done in the primaries.

"If we have to take George Bush as his running mate," Gemma asked, "then what is he going to do for us? He had his chance during his acceptance speech. He placated the ERA people, but not a word about the unborn."

"I don't think he [Reagan] realizes how important the prolife vote, and more specifically the prolife workers, are to the campaign. Our people are, in the main, Democrats, and we don't care about party unity, because our people don't belong to his party."

Ad Hoc

The Ad Hoc Committee in Defense of Life stated, in the July 21 **Lifeletter**, "*What is at stake here is not the so-called "single-issue"* anti-abortion vote, but the *fervor* that the "pro-life" *apparat* can inject not only into its followers but also into a *campaign* . . .

Their "leaders" (mostly fine people, but often self-appointed, and by no means all-powerful) *cannot* deliver their votes on an old-fashioned "this is the best we can get" policy. *Rather*, they will vote and (more importantly, *work*) for whatever is the most anti-abortion *result*. Thus, balanced against all-out Reagan support is the "option" of shifting to (in, say, Indiana) all-out anti-Birch Bayh efforts."

LAPAC

One group did react favorably to Reagan's decision. The Life Amendment Political Action Committee called on "all prolifers to unite behind a totally acceptable prolife team . . . "

Paul A. Brown, director of LAPAC, and Sean Morton Downey, LAPAC's President, declared their "total support" of Ronald Reagan's selection of George Bush as the GOP running-mate.

"We are completely satisfied with the personal assurances I received from Mr. Bush himself that, whether he was ultimately selected as VP or not, he (Bush) would wholeheartedly support every plank of the GOP Platform," stated Downey in a press release.

NY RTL Party

The chairman of the New York State Right to Life Party, Mary Jane Tobin, told **NRL News** that her reaction to the Bush nomination was "the same as all right to life people: he is pro-abortion, and is totally unacceptable."

She explained that the New York RTL Party will decide which candidate it will nominate at the end of August. The by-laws of the Party state that it cannot nominate a pro-abortion candidate, Tobin said, and it does not matter what spot on the ticket the candidate has. The Party cannot support a presidential candidate while ignoring his VP choice. The Party cannot support Bush, nor any ticket that he is on, she explained.

Tobin pointed out that Reagan promised that he would pick a prolife VP. "He hasn't come through," she said, "and right-to-life people should take a second look."

NRL News photo

Dr. J. C. Willke, president of NRLC is shown with Ambassador George Bush the day after the Republican Convention. In their 15 minute conference he thanked Mr. Bush for publically repeating Gov. Ronald Reagan's earlier statement that he, Mr. Bush, would "enthusiastically support the Republican Platform" (which includes endorsement of a Human Life Amendment). Mr. Bush accepted Dr. Willke's proposal for a lengthy meeting between them in the near future, for a thorough exploration of the abortion issue.

NRL News photo

Dr. J. C. Willke, President of National Right to Life is shown congratulating Gov. Ronald Reagan after his nomination. Dr. Willke expressed his thanks and that of the entire Right to Life organization for Gov. Reagan's pro-life position.

JOIN US . . .

in appropriate observations of the anniversary of Franz Jagerstatter's death, August 9, 1943.

Jagerstatter, a prolifer, was beheaded in Berlin for his refusal to enlist in the Nazi armed forces.

Numerous groups and individuals across the country will mark the day with vigils, prayer, fasting, sidewalk counselling, picketing and nonviolent direct action at abortion clinics. For more information, contact

August 9 PNA Coalition
P.O. Box 2001
St. Louis, MO. 63158

NRL PAC Statement on Bush

(The following statement was issued by the National Right to Life Political Action Committee concerning Gov. Ronald Reagan's selection of George Bush as the GOP VP candidate.)

WASHINGTON, D.C. —"Announcing the selection of George Bush as his personal choice for the Republican vice-presidential nomination, Governor Ronald Reagan stated his assurance that Ambassador Bush "enthusiastically supports the platform across the board." The NRL PAC is enthusiastically supportive of the Republican platform plank which specifically endorses a Human Life Amendment to the Constitution. We take this statement of Ambassador Bush *literally*.

"Prolife people came to the Republican National Convention with two purposes in mind: to promote adoption of a strong plank endorsing the only possible solution to the crisis of abortion on demand — a federal Human Life Amendment — and to promote, if possible, a prolife running mate. By an 11-4 margin in the platform committee, by a 75-18 margin in the full committee and by overwhelming acclamation on the floor, we were totally successful in the plank. We are all overjoyed with the unity of purpose expressed by the Republican platform and the commitment of Governor Reagan on the issue of abortion. This unity is the source of our enthusiasm. At the very moment of Governor Reagan's announcement of his selection of Mr. Bush, he also reiterated that this unity of platform and policy will be maintained. We expect no less. We are committed to turn the words of the Republican platform into the law of the land.

"We welcome any candidate's change of view, tested and reinforced by time, which will help to bring this result to pass."

7/21/80
Nat'l Rt to Life
News

MEMORANDUM OF CALL

TO:

☐ YOU WERE CALLED BY— ☐ YOU WERE VISITED BY—

OF *(Organization)*

☐ PLEASE CALL → PHONE NO. CODE/EXT. _____ ☐ FTS

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

RECEIVED BY	DATE	TIME

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☆ U.S. G.P.O. 1980-311-156/26

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statement

POLITICAL UPDATE / / /POLITICAL UPDATE

Reagan Meets with NRLC Presidents

LOS ANGELES — Presidential candidate Gov. Ronald Reagan personally met with newly-elected National Right to Life Committee President Dr. Jack Willke and with former NRLC president Dr. Carolyn Gerster at his national campaign headquarters here.

At the close of the half-hour long meeting on June 26, Gov. Reagan gave Dr. Willke a letter with a personal message to the prolife movement. Dr. Willke read the letter later that evening to a cheering crowd of prolifers gathered in Anaheim for the first general session of the NRLC Convention. The crowd of about 2,500 prolifers responded to Reagan's letter with a standing ovation.

"Although I am not free at this point to disclose the exact things that we discussed with Gov. Reagan, as per his request, I can say that I left the meeting feeling very good about it," Dr. Willke told **NRL News**. "We were able to convey our very clear thinking about certain aspects of the issue we're so concerned about. Mr. Reagan certainly does know our position on these issues at this time, which of course he warmly supports," Dr. Willke added.

Dr. Willke was "very pleased" with the interview.

Dr. Willke said that both he and Dr. Gerster were "re-inforced" in their conviction that Gov. Reagan is strongly supportive of the right to life issue.

"We were very pleased with the interview, and with the opportunity to open a direct channel of communication," Dr. Willke said. Drs. Willke and Gerster had requested the meeting with Reagan.

REAGAN for PRESIDENT

[redacted]

June 26, 1980

Dr. J. C. Willke, President
& The National Right to Life Convention 1980
Anaheim, California

Dear Friends:

It's a pleasure for me to greet your organization at this annual convention.

Never before has the cause you espouse been more important to the future of our country. The critical values of the family and the sanctity of human life that you advocate are being increasingly accepted by our citizens as essential to reestablishing the moral strength of our nation.

You have my best wishes for continued success in your endeavors. Keep up your good work.

Sincerely,

Ronald Reagan

RONALD REAGAN

BUSH DRAFT STATEMENT

POINTS TO BE MADE IN OPENING REMARKS

1) GB basically a conservative, like they are.

2) Esp. conservative with the constitution (be prepared for ERA criticism)

3) Has always been inclined toward a states rights amendment. Realize some politicians, even in own party (careful -- Tower and others) use states rights as a cop-out. BUT hope they (attendees) realize some people , like GB, are sincere in their position.

4) Recognize flaws in a states rights amendment -- know of Prof. Noonan's criticism -- realize there is no guarantee about the state courts -- and whether they will follow the 73 Court decision.

5) GB torn between conflicting needs -- commitment to resolution of the issue of abortion and states rights view. (own strict construction)

6) Ultimately and most speedily, GB thinks the answer will come from where we least expect it --- from the Supreme Court.

" Let's be candid -- we've got about 40 pro-life Senators right now. We may pick up 6 or 8 -- mostly GOP I'm glad to say, eg. Quayle should beat Bayh, and Symms beat Church--- but we're still a long way from the 2/3 vote in House and Senate.to pass an amendment. There is a long battle ahead" SO

7) After 1 year of a RR Administration we may have 2 or 3 nominations to the Supreme Court. Thats all it will take. We've got Rehnquist, Whizzer White, probably Burger -- "as you know, he's backing off his initial support for Roe v Wade") So we need two appointments.

8) THIS NEEDS AN RR CLEARANCE -- RR asked GB to get from them -- in the strictist confidence (point to each and say -- and I MEAN confidence) a list of names as candidates. Its not too early -- as we are planning a transition--- . Now look "I want serious, qualified candidates -- no intention of appointing unqualified people just cause pro-life.

9) Then we get a case carefully planned by Pat Trueman and his folks at Americans United for Life (NB Pat is a guy -- general counsel for AUL legal arm for pro-life) take it up thru the system. Our people there. Could have Roe v Wade reversed, redefine meaning of person under the 5th and 14 th Amendments . Take a couple years, but can be done.

10) Let's not overlook the short term. We have to take a hard look at the second level Administration appointments -- the Asst Secretary slots, the Bureau Chiefs, etc. As you know these people, not the Congress decided the taxpayer should finance abortions, decided on fetal experimentation, and promoted abortions on Indian reservations.

"I've been close to the top in my service in the government and I know where the action is. I know its not enough to have good people at the top -- need them thruout the Administration.

I want names of qualified pro-life people for the : Institutes of Health, Mental Health, Bureau of Indian Affairs ("get me those pro-life Indian leaders --I know they're out there !) and the Civil Rights Commission. (note: pro-lifers believe -- and they are correct, in my estimation -- that the Civil Rights Commission is very pro-abortion -- in fact they lobbied intensively against the Hyde Amendment last year -- saying it was unconstitutional -- Congress specifically chastised CRC for doing this). Hypocrisy that a CIVIL RIGHTS Commission is pro-abortion.
And, as you know, the current Carter appointee for the Asst Sect of Defense for Health Affairs was the head of the Univ. of Calif Medical School -- at the time when medical students who would not perform abortions were discriminated against. This is not the type of person we want running the health program.

The GOP platform is pledged to respect for innocent human life -- that pledge goes beyond the White House -- to the govt, etc.

11) we need people like Dr. Dyke and Paul Ramsey (from Princeton) on the Ethics Advisory Board for HEW.

12) Use the moral force of GB office to call attention to help for unwed mothers -- eg. Birthright, .