(GRIBBIN/GAVIN) "ROUNDTABLE" SPEECH IN DALLAS

-1-

"RELIGIOUS VALUES AND PUBLIC POLICY IN THE 1980's"

Since the start of my presidential campaign, I -- and many others -- have felt a new vitality in American politics. A fresh sense of purpose, a deeper feeling of commitment is giving new energy and new direction to our public life.

You are the reason. Religious America is awakening, perhaps just in time for our country's sake. I have seen the impact of your dedication. I know the sincerity of your intent. And I am deeply honored to be with you today.

About a week ago, you may have heard some pretty preposterous things said, in prime-time television speeches, about what I want to do to this country. You know, the phrase "publicans and sinners" appears ten times in the Gospel. From some of the speeches we've heard from Administration officials lately, you would think the words had been changed to "RE-publicans and sinners."

Scripture gives us encouragement "when men speak all manner of evil about us." Let me tell you, I know what that means.

But more important, I know what it will mean to all of us, and to our children, if we do not soon bring the policies of government into line with the moral compass of the American people. And that is what I would like to talk about today.

For most of the last two hundred years, while the separation of church and state was respected, the separation of religion from government was unthinkable. No denomination could be favored. The Founding Fathers had wisely decided that. But the Judeo-Christian tradition -- the lifeblood of the Declaration of Independence that later gave life to the principles of the Constitution -- that tradition was inseparable from our public life.

(First Draft: Gribbin/Gavin)

Roundtable Speech in Dallas

"Traditional Values and Public Policy in the 1980's"

We meet at a time when traditional values based on the moral teachings of religion are undergoing what is perhaps their most serious challenge in our nation's history.

The social, intellectual and philosophical forces and movements who see tradional values as a threat are stronger than they have ever been. These forces and movements have almost unlimited access to the media. Their message is heard--to the exclusion of the tradtional message--in intellectual circles that play a major role in shaping the minds of our children. There are well-financed and articulate special interest groups whose sole purpose is to see to it that traditional values are kept out of the formulation of public policy.

Indeed, nowhere is the challenge to traditional values more pronounced--or more dangerous--than in the area of public policy debate. So it is fitting that the topic of our meeting should be national affairs, for it is precisely in the affairs of our nation where the challegne to those values is the greatest.

Meeting--and the challegne is the greatest.

In recent years we have seen a new and sinister tactic on the part of those who would seek to remove from our public policy debate the voice of traditional morality.

This tactic seeks not only to discredit traditional moral tecahings but to actually exclude them from public debate by a process of intimidation, bullying and name-calling.

I think you know what I'm rferring to.

We all have heard it said that whenver those with trdational religous vlaues seek to contribute to public policy, they are attempting to "impose" their views on others.

We all have heard the charge that any public policy incorporating the views of traditional values is a sign of "extremism".

In effect what we are being told is that those holding such values may offer opinions on public policy but must never seek to shape it. They can compete--but they must never win.

2 This attempt to drive from the public those who wish to see our laws and policies reflect traditonal values. is nothing less than an ~~is the perhaps the most sinister and most dangerous attack those vlaues have endured~~

~~The intimidation and bullying implicit in the view that~~

This is a matter that transcends partisan politics. This is a matter that demands the attention of every American, regardless of party. ~~It is sinister in its intent and dangerous in its implications for~~ ~~media and political figures~~

~~When we are told that those who~~

If we have come to a time in the United States when the very attempt to see ~~the expression of values based on relgien~~ traditional values reflected in public policy leaves one open to (irresponsible charges) ~~the charge~~ of extermism or worse, the very structure of our free society is under attack. If, ~~through intimidation and badgering, by name-calling and harrassment,~~ bullying the voice of traditionla moraty is stilled, the foundation of our freedom is eroded.

We have come to a point where any law, any public policy or any public documnet which is sought by those who share common traditional vlaues is fair game for ~~media and political attacks, of being extremism.~~ accusations of unconsitutional action.

¶ Recently ~~Recently~~ I was redaing such a public documnet. Those who drafted it made no attent to disguse their view that ~~traditionally~~ traditionally-based values should be the source of public policy. Let me read to you a passge from that ~~document~~. Docoment:

"WE hold these truths to be self-evidnet, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are Life, Liberty and the Pursuit of Happiness".

IF THOSE WORDS ~~Those words, if they~~ appeared in a party platform today, they would recieve scathing attacks from self-appointed guardians of the rules of ~~open~~ debate.

Self-evident truths? But we are told by many leaders in PROMINENT intellcula and media cricles that everyhting is relative and that there are no self-evidnt truths. I'm afraid this phrase would be the subkect of editorials ~~thinking about~~ SHARPLY CRITICAL ATTACKS- about "moral ~~fascism~~ FASCISM".

"Created equal"? ~~But~~ We would be told today that there are no public opinion polls on the subject, and that the claim is based on a SECTERIAN relgoius view and is thereore UNACCEPTABLE ~~unaccaetbale~~.

"Endowed by their Creator"? ~~The words from the specific text~~ But surely this RELIGIOUS phrase would be found terribley EXTREME by those who VEHEMENTLY disagree with its premsise.

And, needless to say, the idea that everyone has a right to life would really ~~drive them~~ BRING ABOUT into a frenzy of name-calling!

Under todays rules, the Declation of Indepence would have to go back to the courts to see that the offending RELIGIOUS passges were removed and that currently fashinbale views on ~~morality~~ MORALITY--and ~~immorality~~ IMMORALITY--were included.

~~But~~ When I hear the ~~criticisms~~ support of First Amenndt used by critics as an a reason to keep tradtional moral values away from ~~religious~~ policy making, I AM SHOCKED ~~can't understand it~~. The First Amednnat was not written to protect the people and their laws FROM RELIGIOUS ~~from traditional~~ values but to protect religious values from governmnet tyranny. That wall of seperation wanst built to keep God ~~ok~~ out but to keep governmnet in.

And so it remained for generations. Somehow, in recent years, all that changed. Government became, first, neutral toward the idea of religion itself, and then downright hostile toward anything that might foster it or grant it a special place in our national life.

That wasn't what Madison meant when he drafted the Constitution and its precious First Amendment. It wasn't what the state legislatures meant when they ratified it. And it wasn't what a long line of Supreme Court decisions meant -- until about a quarter century ago. Over the last two or three decades, the federal government has seemed to forget about both "that old time religion" and that old time Constitution.

The results of this profound change in official attitudes are all about us. As our schools tried to educate without ethics, we saw the mounting evidence in crime rates, drug abuse, child abuse, and so much other human suffering.

As government became morally neutral, its resources were denied to individuals professing religious beliefs and given to others who professed to operate in a value-free environment. Many of you, I'm sure, remember the controversy over the federally-funded textbooks known as MACOS (Man, A Course of Study), which indirectly taught grade school children relativism, as they decided which members of their family should be left to die for the survival of the remaining ones. Can you imagine the government granting $7 million to scholars for writing textbooks reflecting a religious view of man and his destiny?

Not a chance. It is a wonder we still have "In God We Trust" on our coins.

No one knows better than you, ladies and gentlemen, how the power of government, right here in America, has been turned against our religious institutions. The Federal Communications Commission, for example, has shown greater interest in limiting the independence of religious broadcasting than it ever did in the drug propaganda scarcely concealed in the lyrics of some records.

The Department of Labor and the National Labor Relations Board have tried to exert regulatory control over church employees, to have federal agencies decide which church workers are engaged in secular activity, and which have religious jobs.

A plan to give tuition tax relief to parents who send their children to church-related schools was narrowly defeated in the Senate in 1978, partly because of veto threats from the White House.

At the same time, fully backed by the White House, the Internal Revenue Service was preparing to unilaterally proclaim, without approval of the Congress, that tax-exemption constitutes federal funding. And that, therefore, all tax exempt schools -- including church schools -- must abide by affirmative action orders drawn up by -- who else? -- I.R.S. bureaucrats.

On that particular point, I would like to read you something you may find interesting. It is a line from a certain political platform, written in Detroit about a month ago. It goes like this:

> "We will halt the unconstitutional regulatory vendetta launched by Mr. Carter's IRS Commissioner against independent schools."

To that I want to add: You have my word on it. The next Administration will base its policies -- and again I quote the Republican platform -- "on the primacy of parental rights and responsibility."

It is true that the president of the United States cannot do everything. But I reject the current notion that, because of Congress and the courts and Opec, he cannot do anything.

On the contrary, the presidency can be -- should be -- the forum for expressing our country's strongest beliefs and highest values.

Teddy Roosevelt understood that. He called the presidency a "bully pulpit."

I believe the prestige of that "bully pulpit" should support the efforts of those who today are rebuilding the spiritual strength of this nation.

I believe the moral authority of the presidency should lead in efforts to restore the sanctity of life for those unborn children who are the least of our brethren.

The office of the presidency must ensure that the awesome power of government respects the rights of parents and the integrity of the family. If a president can propose taxes, regulations, controls, and embargoes, he can propose as well new ways to keep big government out of the home, the school, and the neighborhood.

I do not ask you to "trust me" to do all that. I ask you to ~~trust~~ go back to an older American vision of ~~trust~~ where trust should be your own prayerful ~~judgment, as citizens who believe that, even in~~ politics, faith does ~~move mountains~~.

~~"Yes," a skeptic would say, "But can it move the Congress?"~~

~~My answer is:~~ By using our own powers, while trusting in a power greater than all, we can do everything that really needs doing.

We can exert America's moral leadership in the world again, so that the Stars and Stripes will stand for something besides a free lunch from Uncle Sam.

We can appoint diplomats and negotiators who understand the danger we face from governments and ideologies that are at war with the very idea of religion.

And most important we can get back to the idea that ina stuglle aginst totalitarina tyranny, tadtiobal values based on religious moarlity are our greatest strength.

If this cruel and bloody cneury has taught us naything, it is that religion and its values are the best defnse aginst tyranny.

4 The definitive work on the resistance aginat Hitler in Germnay(The History of the German Resistance,by Peter Hoffman, p.13,14) states that the churches "were the only organization to produce some form of a popular movement against the Nazi regeime...the (Nazis) were confrontd here with barriers which they cold not understand--the fortitue and integrity of religious conviction, conscience and a sense of responsibility for ones fellow men which were not to be extinguisged by regulations and prohibitions....)

The pages of Alexande Solzhenitysns Gulag Arhipelago are filled with stories baout the strength of believers in the face of Soviet Communist inhumanity. Solzhenitsyn writesx about the religious belivers...

"...they went off to camp to face tortures and death--only so as not renounce the faith.They knew very well for waht they were serving time and they were unwavering in their convictions...there was a multitude of Christians: prison transports and graveyards. Who will count those millions? They died unknown, casting only in their immediate vicinity a light like a candle. (p.310 GulagII)

In a world where forces which put their faith in a state and not in God are constantly testing and probing us, there are

many areas of potential danger. We have never needed friends more than today.

¶ But ¶ I am troubled by the state of our alliances today. Mere friendship, which we certainly feel toward our allies, will not in itself provide for our mutual security in the 1980s. Today, because we have an Administration in Washington which appears incapable of formulating and executing a clear, principled, consistemt long-range policy designed to protect our interests, our friends are increasingly doubtful of our strength of purpose.

What is more important, this crisis of confidence leads them to doubt that we have either the will or the means to fulfill our commitments to guarantee their security and to defend even our own vital interests.

¶ Confronted with policies that change from day to day, our allies are frequently not even consulted when decisions are taken in Washington

When trust and confidence -- the vital ingredients of friendship -- erode, the very basis of friendship is undermined.

¶ We need a

important ~~national interests~~.

The new foreign policy ~~will be~~, one which the American people can understand and support. It MUST ~~will~~ stress our great economic strength, and will seek to rebuild our competitiveness in world markets, which has been shackled by government intervention, government regulations and government hostility to the private sector of our economy. And it will require the careful, measured renewal of our military strength, so badly disspiated by four years of the present Administration, so that we can restore that vital margin of safety which kept the peace for so many years.

Our friends depend on that margin to maintain peace and to preserve their liberty. The price of leadership is that we must, together with those good friends, assure that the margin of safety is both effective and credible.

So we return to the point we began, the need for friends in the world if we are to have peace. And, as I said earlier, friendship begins with mutual respect and a willingness to understand one another. We cannot have peace without friendship -- and love -- and we cannot have friendship and love without the hand of God, our creator, guiding us.

Thank you.

In our own country, we can get our house back in order. The drugs that ravage the young, the street crimes that terrorize the elderly -- these are not necessary parts of life. Despite some intolerable court decisions, we do not have to forever tolerate the pornography that defaces our neighborhoods or the permissiveness that assails our schools.

We can make welfare a "Welcome Table" for the truly needy. And we can make a place -- a family place -- for every child, so that the infants of the poor will not be cast away in abortion clinics as they once were cast aside on the auction blocks of slavery.

We can break the yoke of poverty, by unleashing America's economic power for growth and expansion, not by making anyone the perpetual ward of the State.

We can advance the wonders of modern medicine, as our nation's healing ministry, out of respect for each precious life that is made in the image of our healing Creator.

We can cherish our aged, helping families to care for one another, rather than driving their members into impersonal dependence upon government programs and government institutions.

Scripture makes the promise that our young shall dream dreams, and our old shall see visions. But these are neither visions nor dreams. They are the realities of a future that awaits only the touch of our faith and the force of our hard work to make it happen.

Several years ago, when I wrestled with my conscience and decided I had no choice but to seek the presidency, I was encouraged by the example of those early colonists who, fleeing religious persecution in England, came to this land to establish a new society that would be, to all the world, a shining city on a hill.

Four years ago, at a national convention where I was not nominated, I tried to share that inspiration with everyone who saw or heard my address. Wishing I had more eloquence than I could muster, I said that, in our own time, America still had to be that city on a hill. It is still our destiny to be the example for all people who seek freedom and cherish human dignity.

Much has happened since that day in 1976. And now, looking around at our weakness abroad and our problems here at home, some say we have forever lost our place at the vanguard of history. It seems as if the lights are going out in the city on a hill.

Well, our candles may be flickering in the wind, but they aren't out yet. And I, for one, believe they are about to ignite a blaze that will dispel the fog of uncertainty and confusion from our government. Informed about public issues, and ready to make a difference, Americans like you, vocal and voting, can give a brand new meaning to the old lyric, "This little light of mine, I'm gonna let it shine."

I am no preacher. Maybe that's all to the good. One of our problems has been that some public officials are better at lecturing than at leading. But before I close today, I want to run the risk of sermonizing a bit about the role of religious Americans in our political process.

I know politics can be a grubby business. Sometimes ideals and principles fade in the glare of publicity and power. But that is precisely why your personal involvement is the only thing that keeps government on the right track.

Scripture tells us that righteousness exalts a nation. In a democracy like ours, righteousness can't come from the top down. It must flow from the people up, up into every office in government.

Sure, we can pray for good government. These days, most of us would settle for merely half-good government. But while we rely upon Divine Providence, we must recognize our own duty too.

I've always believed that every blessing brings with it a responsibility: The responsibility to use it wisely, to share it generously, and to preserve it for those who come after us.

The blessings of our land, for example. Our crops and natural resources.

The blessings of our nation's wealth, its commerce, its prosperity.

Well, freedom is one of our most precious blessings. As a nation and as individuals, we should give thanks for it. But being thankful isn't enough.

When it comes to freedom, we can't be like the servant (in Jesus' story) who hid the money his master gave him, while his fellow servants were out investing theirs. They expanded their blessings, and that's what we're supposed to do, too.

If we believe God has blessed America with liberty, then we have, not just a right to vote, but a duty to vote. We have not just the freedom to work in campaigns and run for office and comment on public affairs. We have a responsibility to do so.

That is the only way to preserve our blessings, extend them to others, and hand them down to our children.

If <u>you</u> do not speak your mind and cast your ballots, then who will speak and work for the ideals we most cherish? Who will vote to protect the American family and respect its interests in the formulation of public policy?

Who will vote for the defense of human life? Who will provide the leadership we need to stop the tragedy of abortion?

Who, if not you? And millions more like you.

That is both your right and your duty. But not everyone sees it that way. You will find in some circles -- especially some political circles -- the curious notion that religious liberty means only the right to believe freely, not to <u>do</u> anything about our beliefs.

I've read editorials and heard speeches, and I'm sure you have too, suggesting it's all right to have a moral point of view on public issues, as long as it isn't imposed on anyone else.

In other words, you're allowed to believe, but you're not permitted to act upon that belief. Only non-religious views and values can be translated into public policy. You can vote, but you can't win.

I know that seems outlandish. But it has been the basis for important court decisions, and it lurks behind the unfounded criticism directed against you by those who have no reluctance whatsoever to impose their own brand of morality upon us all.

¶ When you stand up for your values, when you assert your civil rights to vote and to participate fully in government, you are defending our true heritage of religious liberty. You are standing in the tradition of Roger Williams, Isaac Backus, and all the other dissenters who established for us the rights of religious conscience.

Much has changed since the Constitution guaranteed all Americans their religious liberty, but some things must never change. The perils our country faces today, and will face in the 1980s, seem unprecedented in their scope and consequences. But our response to them can be the response of men and women, in any era, who seek Divine guidance in their government and laws.

When the Israelites were about to enter the Promised Land, they were told that their government and laws must be a model to other nations, showing to the world the wisdom and mercy of their God.

We are not about to enter a Promised Land, and I am no Moses. But this much I will tell you. To us, as to the ancient People of the Promise, there is given an opportunity: a chance to make our laws and government a model to mankind.

Let us take that chance, and make that effort, so it can be said of us, in the words of Moses, "Surely this great nation is a wise and understanding people." (Deuteronomy, iv, 6)

Gavin

FRIENDS Dallas insert

For those in the world of business, commerce and politics it is often much easier to see the details of the trees than to step back and see the forest. For you in the ministry, it is different. You must always hold a larger view, for it is you who, from one generation to the next, must remind us of the larger truths.

As Christian ministers, you have nearly twenty centuries of Christian faith to guide you, and along with those of others faiths, you carry the knowledge that all mankind must ultimately put its faith in God, whatever one's particular religious denomination might be.

In looking ahead to our meeting today, I have thought a good deal about the Holy Bible which has played such a central role in the lives of Christians and Jews, alike. Heinrich Heine, the German philosopher, once wrote of it, "The Bible, what a book! Large and wide as the world based on the abyss of creation, and towering aloft into the blue secrets of Heaven. Sunrise and sunset, promise and fulfillment, birth and death -- the whole drama of humanity -- are contained in this one book. It is the Book of Books."

From that book, millions of people over these many centuries have built a code of ethics in moral principals upon which our modern society rests. Those in quest of a guide will find it there, and in a personal faith in God.

Even that most urgent national quest, the search for lasting world peace, finds its starting point in the Bible.

In Leviticus, the Lord commands, "..Thou shalt love thy neighbor as thyself."

I have always taken that to mean that if we have self-respect we will grant respect to others. And, I have taken it to mean that one should strive to live in peace and friendship with one's neighbors. The dictionary says a friend is "one attached to another by esteem, respect and affection." People who live in a neighborhood make that neighborhood succeed because individuals and families in it are friends. They have respect for one another, even though they may have differences. Nations need friends just as much as individuals and families do, especially when they are faced with hostility.

I am sure you would agree that one who lives by the tenets of his faith -- who bears witness to it -- puts forth an example that would earn the friendship of his neighbors. I think it is also true of nations. It may be especially true of our great nation, for we have set for ourselves very high standards of representative government, personal freedom and economic prosperity. We want all the world to enjoy these. We cannot successfully or properly do this by coercion; only by example. We must understand that those who are our neighbors and friends may wish earnestly to follow our example but because of their different backgrounds and threats they face, may have great difficulty in doing so. That is all the more reason to help them by encouragement, persuasion and example. On a nation-to-nation basis, this is the equivalent of loving thy neighbor as thyself.

In a world where forces which put their faith in a state and not in God are constantly testing and probing us, there are

many areas of potential danger. We have never needed friends more than today. We need them because the great challenges we face in the world require us to work together with others to defend our heritage and our liberty. And they need us because the United States is a nation which, in the defense of its own spiritual values, has unselfishly sacrificed to help others in times of danger and need. Our friends expect no less from us.

Earlier this week I had the occasion to speak to two important themese directly linked to our friendship with others nations: those themes were "Peace" and "Strength."

Clearly, the pursuit of peace must remain the fundamental objective of our foreign policy. The peace we week must be one based on principles which we hold in common with our friends abroad. And the underlying guarantee for the pursuit of peace must be a reservoir of Ameriean strength which will serve as a deterrent to war and a shield for our friends.

The friendship of which I apeak ofetn finds concrete expression in formal alliances with other ~~XXXX~~ nations. We have chosen to ally ourselves with individual nations and with groups of nations for the purpose of defending our shared interests. This system of alliances, put in place in the years following World War II and carefully nurtured by American presidents for three decades, has served us well. It is not an overstatement to say that, under our leadership, these alliances have prevented the outbreak of general war.

Alliances need leaders, and the mantle of leadership fell to us because we were the strongest and the most capable of resisting the power of nations whichdo not believe in the principles of liberty and free choice. This leadership role is one which we accepted, and we faithfully discharged our obligations by protectine the interests of others as we protected our own.

Of course, we do not always see eye to eye with our friends

on every matter of detail, npr do we always pursue our respective national interests in the same way. But the strength of our alliances has been in the diversity which characterizes them, and what binds us is mutual trust and confidence. These are the absolute requirements for a successful alliance.

I am troubled by the state of our alliances today. Mere friendship, which we certainly feel toward our allies, will not in itself provide for our mutual security in the 1980s. Today, because we have an Administration in Washington which appears incapable of formulating and executing a clear, principled, consistemt long-range policy designed to protect our interests, our friends are increasingly doubtful of our strength of purpose.

What is more important, this crisis of confidence leads them to doubt that we have either the will or the means to fulfill our commitments to guarantee their security and to defend even our own vital interests.

Confronted with policies that change from day to day, our allies are frequently not even consulted when decisions are taken in Washington which affect them. And as they witness the spectacle of an Administration unable to develop a clear policy toward the nation which poses the greatest danger to world peace -- the Soviet Union -- is it any wonder that they should doubt both our sincerity and our readiness to come to their aid in a time of crisis?

When trust and confidence -- the vital ingredients of friendship-- erode, the very basis of friendship is undermined.

We must move swiftly to repair the damage that has been done to our crdibility. The first step must be a new foreign policy, one based on a far-reaching appraisal of America's priorities abroad. It must be a prudent foreign policy that avoids the extremes of bluster or showmanship, one designed to advance our interests and protect the interests of our true friends. The strength of America must be harnessed in the service of our

important national interests.

The new foreign policy will be one which the American people can understand and support. It will stress our great economic strength, and will seek to rebuild our competitiveness in world markets, which has been shackled by government intervention, government regulations and government hostility to the private sector of our economy. And it will require the careful, measured renewal of our military strength, so badly disspiated by four years of the present Administration, so that we can restore that vital margin of safety which kept the peace for so many years.

Our friends depend on that margin to maintain peace and to preserve their liberty. The price of leadership is that we must, together with those good friends, assure that the margin of safety is both effective and credible.

So we return to the point we began, the need for friends in the world if we are to have peace. And, as I said earlier, friendship begins with mutual respect and a willingness to understand one another. We cannot have peace without friendship -- and love -- and we cannot have friendship and love without the hand of God, our creator, guiding us.

Thank you.

Options

published by: Religious Coalition for Abortion Rights

July/August 1980

Court Rules Hyde Amendment Constitutional

In a five to four decision on June 30, the Supreme Court upheld the constitutionality of the "Hyde Amendment" which severely restricts the use of Medicaid funds for medically necessary abortions. The controversial ruling, which reversed the judgement of District Court Judge John Dooling, was based largely on legal technicalities and failed to address the substantive issues involved.

The Court held that the amendment did not violate the Due Process Clause of the Fifth Amendment because it placed no direct restrictions on a woman's decision to end a pregnancy, but instead reflected the legitimate interest of the state in protecting the potential life of the fetus. In refusing to acknowledge the need for medically necessary abortions, the Court seems to have reversed its ruling in the 1973 decisions (Roe v. Wade) that protection of fetal life is subordinate to the health interests of the woman.

The majority opinion also held that the Hyde Amendment does not violate the constitutional guarantee of equal protection because the condition of poverty has not been considered a "constitutionally suspect classification" by the Court. Suspect classifications, such as race, require "strict scrutiny" to assure that members of that class are not the subject of purposeful discrimination. The Court, however, declared that there was no requirement to assess the Hyde Amendment in terms of whether it was discriminatory, since the indigent do not constitute such a class.

A significant part of the case of the plaintiffs in Harris v. McRae rested on the argument that the Hyde Amendment prohibited poor women from exercising their constitutionally guaranteed free exercise of religion, since some faiths teach that there are instances in which abortion may be a more moral alternative than the prolongation of a problem pregnancy.

The Court avoided dealing with this argument by declaring that none of the appellees had standing to raise the Free Exercise challenge. They ruled that the indigent pregnant women involved had not alleged or proved that they were making an abortion decision on religious grounds; that the officers of the United Methodist Women's Division had not claimed to be pregnant or eligible for Medicaid; and that the Women's Division itself did not meet the "requirements for an organization to assert the rights of its membership."

The majority also ruled that the amendment did not violate the Establishement Clause of the First Amendment because "the fact that the funding restrictions...may coincide with the religious tenets of the Roman Catholic Church does not, without more, contravene that clause."

Continued on page 2

Court Rules cont'd.

The four dissenting Justices (Brennan, Blackmun, Marshall and Stevens) each wrote separate opinions which reflected their intense disagreement with the majority and which questioned the premises, logic and rationale of the ruling. Judge Stevens, whose dissent was read in court, concluded: "The Hyde Amendments not only exclude financially and medically needy persons from the pool of benefits for a constitutionally insufficient reason; they also require the expenditure of millions and millions of dollars in order to thwart the exercise of a constitutional right, thereby effectively inflicting serious and long lasting harm on impoverished women who want and need abortions for valid medical reasons. In my judgement, these amendments constitute an unjustifiable, and indeed blatant violation of the sovereign's duty to govern impartially."

Justice Brennan declared: "...it is obvious that the Hyde Amendment is 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."

Justice Marshall pointed up the brutal consequences the ruling would have for poor women, and decried the "relentlessly formalistic catechism" utilized by the Court in resolving the issues in the case. Justice Blackmun reiterated his statements in earlier cases that: "there is condescension in the Court's holding that (an indigent woman) may go elsewhere for her abortion... there truly is another world out there, the existence of which the Court... either chooses to ignore or fears to recognize."

Rumors

RUMORS - Although unsubstantiated, word is circulating on Capitol Hill that Rep. Robert Dornan (R-CA) is backing off his commitment to offer an amendment affecting the ability of Federal employees to obtain insurance coverage for abortions. Purportedly, he is concerned that introducing such an amendment would hurt his chances for reelection in November.

WHCF - Double Pro-Choice Victory

On June 5th, more than 670 delegates met in Baltimore for the first White House Conference on Families.

The Baltimore meeting was the first of three regional conferences initiated by President Carter to find ways of making public and private policies more responsive to family needs. The White House Conference on Families is very timely. The American family is under tremendous strain and currently two out of every five marriages ends in divorce.

Given such emotionally-charged issues as abortion, ERA, and homosexual rights, the Conference has been a source of controversy between liberals and conservatives since it was first proposed in 1976.

About half-way through the Conference sessions, a coalition of about 30 anti-abortion, anti-ERA, and anti-homosexual delegates staged a walk-out in protest claiming that the Conference and delegate selection process had been "stacked" against them and traditional family values. The conservatives scheduled alternative conferences this summer in Baltimore and Los Angeles.

The delegates who remained approved an overwhelmingly progressive agenda, calling for ratification of the Equal Rights Amendment, abortion rights, support for gay families, comprehensive national health care and federally funded child-care programs.

The second White House Conference on Families, disturbed by a brief conservative walkout, came to a close with delegates narrowly defeating a resolution favoring a human life amendment.

The 600 delegates from 13 midwest and southern states also endorsed the Equal Rights Amendment, approved a definition of families that excluded homosexual relationships and denounced "secular humanism."

The human life amendment was rejected by a 269 - 281 vote. About 150 anti-abortion delegates, claiming that the Conference was stacked against them, staged a brief walkout as voting began but returned after several hours of caucusing.

AFTER THE DECISION: NEW DETERMINATION

The June 30 decision of the Supreme Court to uphold the constitutionality of the Hyde Amendment was a disappointment, but it was not a disaster.

There is certainly cause to regret that five judges chose to base their ruling on rigid narrow technicalities rather than the substance of the arguments advanced. This case will surely never be cited as a piece of model jurisprudence.

More importantly, we deplore the effect the decision is bound to have on the health and welfare of the defenseless poor who face problem pregnancies. A double standard of health care and reproductive freedom has now been established in this country, which has proclaimed itself to be a land of equal rights and opportunity.

But this unfortunate ruling is not the "great victory" that the other side is claiming. The option for Congress and the individual states to fund medically necessary abortions under Medicaid is still open. The Court did not rule that Congress and the states could not fund abortions, only that they are not required to. Had the decision gone the other way, we would have been given a significant advantage, for we could have then directed our energies and attention to the other threats to abortion rights. That will not now be the case, but we should all recognize that we are in a better position than ever to continue the battle on all fronts.

It was in the abortion decisions of June, 1977 that the Court first declared that social policy on sensitive issues should be determined by the elected representatives of the people, not the judiciary. It was that statement, implying that we could not count on the courts to resolve our problems for us, that set RCAR on an altered course of action.

In the three years since, we have broadened our grassroots support at an exhilarating rate. We have added 15 new state coalitions and established regional units and contacts throughout each state. We have developed effective techniques for generating pro-choice activity from within the religious community. Our education programs are reaching the people in the pews. We are getting substantial media attention, and we are winning some significant state legislative victories.

We must now continue to build on that base. The sense of outrage at the decisions and the increasing threat to our freedom of choice can only serve to further energize and activiate out constituencies. Recent actions taken at local, state and national meetings of our member denominations give clear evidence that support for abortion rights is growing ever stronger. The media propelled emergence of the right wing fundamentalists on the political scene has signaled the mainline churches that they, too, must become more active or the social justice programs they have long supported will be in jeopardy.

In one sense, the Court was right; it <u>is</u> up to the citizens of this country to determine what is "wise social policy." As a democracy, we would not want it otherwise. But, as a democracy, we also need to have an educated citizenry who understand all the aspects and implications of the policies they are establishing.

That is the role of RCAR - to educate our people and to reach out to the general public with our message. That basic message has not been changed, for the court chose not to address the question of free exercise of religion in the abortion decision. It remains the single most important and compelling argument in support of freedom of choice. For that reason, it has become even more important for RCAR to maintain a high visibility in the abortion rights movement.

It will not be easy in the years ahead. We must continue to push for funding in those states which provide abortions under Medicaid. There will certainly be an increased effort to call for a Constitutional Convention and to pass a constitutional amendment. Omnibus anti-abortion bills, like the Akron ordinance, will certainly continue to proliferate across the country.

Continued on page 4

New Determination cont'd.

It will not be easy, but it will be possible. We will need the help of all of you, and we will need the help of those tens of thousands of caring, compassionate individuals who have not yet joined our cause because the dangers did not seem imminent. Call your state RCAR to volunteer your services. Send them a small contribution (or a large one). Lend this OPTIONS to a friend. It is time to join together our voices and our efforts so that no legislator in this country can ignore the strength of the pro-choice majority.

Patricia Gavett
National Director

Churches Strengthen Pro-Choice Stand

Three religious denominations, all founding members of RCAR, reaffirmed and strengthened their support for the legal right of women to choose abortion at their national conventions this year.

Anti-abortionists were unable to generate any support for a move to weaken the statement on abortion in the Social Principles of the United Methodist Church. General Conference dismissed the anti-choice resolutions and reaffirmed without opposition the 1976 pro-choice statement.

Four overtures calling for a restudy of the abortion rights position of the United Presbyterian Church were rejected by the Commissioners of the 1980 General Assembly. Instead, the elected delegates reaffirmed their strong 1979 resolution which included endorsement of the "Call to Commitment" plan of action. Added to the statement were calls for increased educational efforts and for sensitivity to and support for women facing problem pregnancies.

Representatives to the Unitarian Universalist General Assembly overwhelmingly endorsed the "Call to Commitment." The resolution proposing this action had previously received the largest number of votes in a nationwide parish poll which determines the social issues to be dealt with at the annual assembly.

Less encouraging news came from the Southern Baptist Convention, which broke its long-standing commitment to separation of church and state by endorsing a "human life" amendment. This move reflects the domination of the convention in the past two years by the conservative fundamentalist wing of the denomination.

Democrats, Republicans Differ On Abortion Stand

Pro-choice sentiment dominated the platform committee of the Democratic Party in its deliberations on abortion rights. In an 88 to 22½ vote the committee substituted a strong pro-choice plank for a weaker one which had been proposed by the drafting subcommittee.

The statement said in part: "We also recognize the belief of many Americans that a woman has a right to choose whether and when to have a child. The Democratic Party supports the Supreme Court decision on abortion rights as the law of the land and opposes any constitutional amendment to restrict or overturn those decisions."

The language is very similar in concept to that proposed by RCAR in its testimony before the platform committee in Washington. However, by a vote of 76½ to 66 the committee rejected a plank opposing restrictions on governmental funding of abortions for the indigent, a position also advocated by RCAR.

Quite the opposite sentiment prevailed in the Republican platform subcommittee charged with addressing the abortion rights question. That group proposed a plank endorsing the passage of a "human life" amendment, an action later endorsed by the whole committee.

Although a Washington Post poll revealed that such a move was opposed by 65% of the delegates to the Republican convention, while only 28% approved of it, there was not enough pro-choice support on the committee to bring the question to the floor.

The Republican platform also included a plank promising that the President would appoint to the Supreme Court only those individuals who opposed abortion.

RCAR state affiliates had appeared before both Democratic and Republican regional hearings to voice support for a strong abortion rights plank.

Continued on page 5

WHCF cont'd

The walkout was led by James Bopp, legal counsel for the National Right-to-Life Committee. Bopp called for the walkout after conference officials refused a motion to separate votes by elected and appointed delegates.

Many who walked out were members of the National Pro-Family Coalition, which opposes abortion, the ERA and gay rights.

Conference officials denied charges that the appointment of delegates was arranged to represent a liberal view. The irony of the charge is that James Bopp, the leader of the walkout group, was an appointed delegate.

The three White House Conferences are expected to produce recommendations to President Carter and Congress. The third conference will convene in Los Angeles in mid-July.

RCAR State News

---On May 31, 1980 RCAR representatives were part of a Reproductive Rights Network picket line in front of Representative Henry Hyde's district office in Illinois. More than 50 people participated in the one hour demonstration and coverage of the event was carried in the local newspapers.

---"As it looks right now, it is probable that a fetus will become a (full) citizen before women will (via the ERA)." So says Dr. Beverly Harrison, professor of Christian Ethics, Union Theological Seminary, New York City. Dr. Harrison spoke at a N.Y. Metro RCAR sponsored forum on May 29th at the Central Presbyterian Church in New York City. She sees the issue of abortion as the Achilles heel in the struggle for full humanity for women. She urged her audience to become activists for pro-creative choice so that female persons may be assured of their fundamental humanity and come to share in the "sphere of human power and control."

---In New Mexico, photos were taken of Episcopal Bishop Richard Trelease, the first New Mexico sponsor, witnessing the signing of the sponsor form by the 100th New Mexico RCAR sponsor, the Reverend Dale Knudsen, pastor of St. Luke's Lutheran Church in Albuquerque. A gala Champagne Reception was held on June 24 to celebrate the event.

---In Maryland this spring a new twist appeared to the so-called informed consent bills. According to a bill dropped into the legislative hopper, women seeking abortions were to be given a pamphlet entitled "Is Abortion the Answer" and shown a film of the same name. It's bad enough when the state has to print distorted, harassing "consent" forms for pregnant women before abortion services are provided. But now the state was going to become a movie producer for the "Right-to-Life" movement.

For this year at least there is a happy ending to this new twist - The pro-choice side defeated this bill. RCAR testimony given by Coordinator Fran Shea was a major contribution to the bill's defeat.

Anti-Choice Defeated in Toledo, Ohio

June 3, 1980 was primary day in many states. Although the national attention was focused on the presidential primaries, there was a very important local referendum that day in Toledo, Ohio which concerned abortion rights. In that city, the "Right-To-Lifers" succeeded in placing on the ballot an anti-abortion law billed as a "Maternal Health Ordinance." This local law was an only slightly changed version of the partially unconstitutional Akron Ordinance, and the recent Illinois and Louisiana laws which deny women direct access to the abortion decision and procedure.

Why did RCAR regard this local referendum such a significant test for abortion rights? This was the first time since 1973 that an anti-abortion law appeared on a local ballot anywhere in the nation. If the anti-choice side had been successful, a brush fire of similar referendums could have spread quickly across the country. In addition, a great deal of money was poured into this campaign. The pro-choice side alone spent upward of $70,000 on public relations and $3,000 on a "Get out the vote" campaign.

Continued on page 6

Toledo cont'd.

One of the significant aspects of this contest was the significant role undertaken by the religious community. Reverend Irving Murray, Chair of the Toledo unit of RCAR, was responsible for galvanizing religious support and led a clergy press conference against the ordinance. An extensive drive to contact members of local pro-choice congregations was implemented and yielded overwhelming support for abortion rights.

And now the final results - approximately 20,000 for the anti-choice ordinance and 40,000 against. A 2 to 1 margin of victory! We can take comfort that this election illustrated one more time that grassroots America wants to keep abortion safe and legal.

Senate Considers Legal Services Corp. Bill

On June 13, the Senate took up the Legal Services Corporation Reauthorization bill. Since 1977, this program has been prohibited from providing legal assistance with respect to any proceeding or litigation which seeks to procure a non-therapeutic abortion. While this provision has severely limited the number and type of abortion cases in which Legal Services attorneys have participated as counsel, it has allowed Legal Services programs to continue to represent indigent women in those cases in which a doctor has determined that an abortion is medically necessary for the woman's health.

When the reauthorization bill reached the Senate for debate, Senator Gordon Humphrey (R-NH), with Senators Jake Garn (R-UT), Jesse Helms (R-NC), and Richard Schweiker (R-PA), cosponsored an anti-abortion amendment prohibiting the Legal Services Corporation from using any funds to provide legal assistance with respect to any proceeding or litigation which relates to abortion, making no exceptions at all.

In defense of this amendment, Sen. Humphrey said "There are divided opinions on this issue but I think most Americans will agree that dollars extracted from the taxpayers should not be used to fund abortions. Going beyond that, I think most Americans will agree that tax dollars should not be used to lobby, or through litigation, to try to change American values or to bring about things that Congress itself is not willing to enact or change."

However, a fundamental distinction exists between funding abortion services and funding access to the courts. As has been consistently pointed out by the Legal Services Corporation, such restrictions deny equal access to our system of justice for those indigent pregnant women who have reached a decision with their doctor that their pregnancy should not be carried to term. This group of women is being singled out for disparate treatment by effectively being denied access to the courts, thus creating a dual system of justice whereby wealthy women may pursue their legal rights to an abortion through our court system, but poor women may not.

Because of high absenteeism among pro-choice senators, it was clear that the Humphrey restriction could not be defeated outright. Therefore, Senator Jacob Javits (R-NY) offered a substitute amendment which prevents the Legal Services Corporation or any subsidiary legal services grantee from giving any legal service which seeks to invalidate any law enacted by Congress on the subject of abortion, including any prohibition by Congress of the use of Federal for the performance of an abortion. Furthermore, it protects any individual or institution from performing an abortion or assisting in the performance of an abortion or providing facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution. In addition to substituting for the flat prohibition, a clause which ties litigation to consistency with federal law on abortion, the Javits substitute would also allow the Legal Services Corporation to continue litigation in cases based on state restrictions which go beyon the scope of Federal restrictions.

Continued on page 7

Legal Services cont'd.

Addressing this point, Sen. Javits said, "Certainly we should allow a woman to have representation to test out whether the State is going beyond the Federal law. ...I deeply feel it is elementary justice to afford this amount of opportunity to a person who is too poor to have her own lawyer."

When the vote came, Sen Javits' amendment was adopted 38 - 34 (see vote) and survived a motion to reconsider the amendment by the same margin. There were several surprise votes, including these Senators who usually vote pro-choice: John Tower (R-TX), Jim Sasser (D-TN), Sam Nunn (D-GA), Robert Morgan (D-NC), Howell Heflin (D-AL), and Lawton Chiles (D-FL).

These Senators usually vote anti-choice but supported Javits' amendment: Mark Hatfield (R-OR), Thad Cochran (D-MS), James Exon (D-NE), Walter Huddleston (D-KY), John Warner (D-VA), and Strom Thurmond (D-SC).

Meanwhile, House floor action on LSC authorization is being held up, pending action by the Rules Committee. Rep. Kastenmeier, who will be managing the bill on the floor, will be requesting a rule requiring that all amendments be printed in the Congressional Record prior to consideration on the floor. Romano Mazzoli is almost certain to offer his anti-abortion amendment, which was defeated in full committee. (See Options, Spring, 1980)

Nine members of the Committee (Reps. Sam Hill (D-TX), Harold Volkmer (D-MO), Billy Lee Evans (D-GA), Hamilton Fish (R-NY), Harold Sawyer (R-MI), Thomas Kindness (R-OH), Dan Lungren (R-CA), James Sensenbrenner (R-WI), and Henry Hyde (R-IL)) joined with Mazzoli in filing a minority report in support of the amendment. They believe that the amendment is necessary to clarify the intent of the original restriction.

Mazzoli's amendment would change the current restriction to read: "No funds may be used to provide legal assistance with respect to any proceeding or litigation relating to abortion, unless such abortion is necessary to save the life of the mother." (Emphasis added).

Supplemental Funds: 1st of New Targets

On June 18, the House took up the Supplemental Appropriations bill, legislation appropriating emergency operating funds to government Departments and agencies which have used up all of their fiscal year 1980 monies. Immediately before the House began debating this bill, it voted on the "rule." (For every piece of legislation considered by the House, the Rules Committee must recommend to the full House the length of time that debate may last and the types of amendments that would be appropriate to consider. This recommendation, called a rule, must be voted on and accepted by the House prior to debate on the legislation.)

Since the House is prohibited from considering all but a total restriction on abortion funding on any appropriations bills, the Rules Committee must make a specific recommendation to waive this prohibition and the House must vote affirmatively to accept this recommendation in order to consider any other abortion amendment.

To no one's surprise, Rep. Robert Bauman (R-MD), who serves on the House Rules Committee, succeeded in getting this Committee to include a waiver on an anti-abortion amendment which would have prohibited the funding of all abortion unless necessary to save the woman's life. He planned to offer this amendment to the general provisions section of the Supplemental which would have meant that all programs in the Supplemental, including programs currently funding abortions for the additional reasons of rape or incest, as well as programs never before restricted by anti-abortion amendments, would have been affected by this prohibition until the Supplemental expired (at the end of this fiscal year, September 30, 1980).

The rule passed the House by a voice vote. No protest was made over the Bauman amendment.

But Rep. Bauman never exercised his option during the debate on the Supplemental. HE NEVER OFFERED HIS FAR SWEEPING RESTRICTION.

Continued on page 8

Appropriations cont'd

Instead, Rep. William Natcher (D-KY), Chairman of the Labor/HEW Appropriations Subcommittee offered a "technical amendment" which merely continued the current restrictions (i.e. allowing funding only for abortions necessary to save the woman's life, and for victims of rape or incest), on those programs currently affected by abortion limitations, (i.e. HEW, Department of Defense, District of Columbia, and the Peace Corps). This technical amendment passed on a voice vote and the Supplemental appropriations bill was adopted.

The Senate followed the lead of the House and passed the Supplemental Appropriations bill with no additional restrictions.

And More Growth ...

National RCAR is delighted to announce the formation of three new state affiliates with the following memberships:

NORTH CAROLINA

1. Division of Church and Society North Carolina Conference, United Methodist Church
2. Board of Church & Society, Western North Carolina Conference United Methodist Church
3. Mid-Atlantic Council, Union of American Hebrew Congregations
4. District #8, National Federation of Temple Sisterhoods
5. Humanists of North Carolina
6. Synod of the Piedmont, UPCUSA

OKLAHOMA

1. Disciples of Christ, Northeast Oklahoma District Board
2. Southwest Council, Union of American Hebrew Congregations
3. Southwestern District, Unitarian Universalist Association
4. Presbytery of Eastern Oklahoma, Synod of the Sun, UPCUSA

VIRGINIA

1. Joseph Priestly District, Unitarian Universalist Association
2. Thomas Jefferson District, Unitarian Universalist Association
3. Mid-Atlantic Council Union of American Hebrew Congregations
4. District #8, National Federation of Temple Sisterhoods
5. Synod of the Piedmont, UPCUSA

(Gribbin/Gavin)

"ROUNDTABLE" SPEECH IN DALLAS

"Religious Values and Public Policy in the 1980's"

Since the start of my presidential campaign, I -- and many others -- have felt a new vitality in American politics. A fresh sense of purpose, a deeper feeling of commitment is giving new energy and new direction to our public life.

You are the reason. Religious America is awakening, perhaps just in time for our country's sake. I have seen the impact of your dedication. I know the sincerity of your intent. And I am deeply honored to be with you today.

About a week ago, you may have heard some pretty preposterous things said, in prime-time television speeches. about what I want to do to this country. You know, the phrase "publicans and sinners" appears ten times in the Gospel. From some of the speeches we've heard from Administration officials lately, you would think the words had been changed to "RE-publicans and sinners."

Scripture gives us encouragement "when men speak all manner of evil about us." Let me tell you, I know what that means.

But more important, I know what it will mean to all of us, and to our children, if we do not soon bring the policies of government into line with the moral compass of the American people. And that is what I would like to talk about today.

JUDEO-CHRISTIAN

We meet at a time when traditional values based on the moral teachings of religion are undergoing what is perhaps their most serious challenge in our nation's history.

Nowhere is the challenge to traditional values more pronounced -- or more dangerous -- than in the area of public policy debate. So it is fitting that the topic of our meeting should be national affairs, for it is precisely in the affairs of our nation where the challenge to those values is the greatest.

In recent years we have seen a new and sinister tactic on the part of those who would seek to remove from our public policy debate the voice of traditional morality.

This tactic seeks not only to discredit traditional moral teachings but to actually exclude them from public debate by a process of intimidation, [redacted] and name-calling.

I think you know what I'm referring to.

We have all heard it said that whenever those with traditional religious values seek to contribute to public policy, they are attempting to "impose" their views on others.

We have all heard the charge that any public policy incorporating the views of traditional values is a sign of "extremism".

In effect what we are being told is that those holding such values may offer opinions on public policy but must never seek to shape it. They can compete -- but they must never win.

This is nothing less than an attempt to drive from the public arena those who wish to see our laws and policies explicitly reflect traditional values.

This is a matter that transcends partisan politics. This is a matter that demands the attention of every American, regardless of party.

If we have come to a time in the United States when the very attempt to see traditional values reflected in public policy leaves one open to irresponsible charges of extremism, or worse, the very structure of our free society is under attack. If the voice of traditional morality is stilled, the foundation of our freedom is eroded.

We have come to a point where any law, any public policy or any public document which is sought by those who share common traditional values is fair game for accusations of unconstitutional action.

Recently I was reading such a public document. Those who drafted it made no attempt to disguise their view that traditionally-based values should be the source of public policy. Let me read to you a passage from that document:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are Life, Liberty and the Pursuit of Happiness".

If those words appeared in a party platform today, they would receive scathing attacks from self-appointed guardians of the rules of debate.

Self-evident truths? But we are told by leaders in prominent intellectual and media circles that everything is relative and that there are no self-evident truths. I'm afraid this phrase would be the subject of editorial attacks.

"Created equal?" We would be told today that there are no public opinion polls on the subject, and that the claim is based on a secterian religious view and is, therefore, unacceptable.

"Endowed by their Creator"? But surely this religious phrase would be found terribly extreme by those who vehemently disagree with its premise.

And, needless to say, the idea that everyone has a right to life would really bring about a frenzy of name-calling!

Under today's rules, the Declaration of Independence would have to go back to the writers to see that the offending religious passages were removed and that currently fashionable views on morality and immorality were included.

When I hear the First Amendment used by critics as a reason to keep traditional moral values away from policymaking, I am shocked. The First Amendment was written NOT to protect the people and their laws from religious values but to protect those values from government tyranny. That wall of separation was built NOT to keep God out but to keep government in.

This is what Madison meant when he drafted the Constitution and its precious First Amendment. This is what the state legislatures meant when they ratified it. And this was what a long line of Supreme Court decisions meant -- until about a quarter century ago. Over the last two or three decades, the federal government has seemed to forget about both "that old time religion" and that old time Constitution.

The results of this profound change in official attitudes are all about us. As our schools tried to educate without ethics, we

saw the mounting evidence in crime rates, drug abuse, child abuse, and so much other human suffering.

As government became morally neutral, its resources were denied to individuals professing religious beliefs and given to others who professed to operate in a value-free environment. Many of you, I'm sure, remember the controversy over the federally-funded textbooks known as MACOS (Man, A Course of Study), which indirectly taught grade school children relativism, as they decided which members of their family should be left to die for the survival of the remaining ones. Can you imagine the government granting $7 million to scholars for writing textbooks reflecting a religious view of man and his destiny?

The Federal Communications Commission, ~~for example,~~ has shown greater interest in limiting the independence of religious broadcasting than it ever did in the drug propaganda scarcely concealed in the lyrics of some records.

The Department of Labor and the National Labor Relations Board have tried to exert regulatory control over church employees, to have federal agencies decide which church workers are engaged in secular activity, and which have religious jobs.

A plan to give tuition tax relief to parents who send their children to church-related schools was narrowly defeated in the Senate in 1978, partly because of veto threats from the White House.

At the same time, fully backed by the White House, the Internal Revenue Service was preparing to unilaterally proclaim, without

approval of the Congress, that tax-exemption constitutes federal funding. And that, therefore, all tax exempt schools -- including church schools -- must abide by affirmative action orders drawn up by -- who else? -- I.R.S. bureaucrats.

On that particular point, I would like to read you something you may find interesting. It is a line from a certain political platform, written in Detroit about a month ago. It goes like this:

> "We will halt the unconstitutional regulatory vendetta launched by Mr. Carter's IRS Commissioner against independent schools."

To that I want to add: You have my word on it. The next Administration will base its policies -- and again I quote the Republican platform -- "on the primacy of parental rights and responsibility."

The office of the presidency must ensure that the awesome power of government respects the rights of parents and the integrity of the family. If a President can propose taxes, regulations, controls, and embargoes, he can propose as well new ways to keep big government out of the home, the school, and the neighborhood.

I do not ask you to "trust me" to do all that. I ask you to go back to an older American vision of where trust should be placed. You see it written on a dollar bill. In fact, it's about the only thing about a dollar that's worth more today than it was FOUR years ago: the words "In God We Trust."

By using our own powers, while trusting in a power greater than all, we can do <u>everything</u> that really needs doing.

We can exert America's moral leadership in the world again, so that the Stars and Stripes will stand for something besides a free lunch from Uncle Sam.

We can have a foreign policy which understands the danger we face from governments and ideologies that are at war with the very idea of religion.

And most important we can get back to the idea that in a struggle against totalitarian tyranny, traditional values based on religious morality are our greatest strengths.

If this cruel and bloody century has taught us anything, it is that religion and its values are the best defense against tyranny.

The definitive work of the resistance against Hitler in Germany (The History of the German Resistance, by Peter Hoffman, p. 13, 14) states that the churches "were the only organization to produce some form of a popular movement against the Nazi regime... the (Nazis) were confronted here with barriers which they could not understand -- the fortitude and integrity of religious conviction, conscience and a sense of responsibility for ones fellow men which were not to be extinguished by regulations and prohibitions."

The pages of Alexander Solzhenitsyns' Gulag Archipelago are filled with stories about the strength of believers in the face of Soviet Communist inhumanity. Solzhenitsyn writes about the religious believers...

"...they went off to camp to face tortures and death -- only so as not to renounce the faith. They knew very well for what

they were serving time and they were unwavering in their convictions... there was a multitude of Christians: prison transports and graveyards. Who will count those millions? They died unknown, casting only in their immediate vicinity a light like a candle." (p. 310 Gulag II).

In a world where forces seek to extinguish forever this holy flame there are many areas of potential danger. We have never needed friends more than today.

We need them because the great challenges we face in the world require us to work together with others to defend our heritage and our liberty. And they need us because the United States is a nation which, in the defense of its own spiritual values, has unselfishly sacrificed to help others in times of danger and need. Our friends expect no less from us.

Earlier this week I had the occasion to speak to two important themes directly linked to our friendship with other nations: those themes were "Peace" and "Strength".

Clearly, the pursuit of peace must remain the fundamental objective of our foreign policy. The peace we seek must be one based on principles which we hold in common with our friends abroad. And the underlying guarantee for the pursuit of peace must be a reservoir of American strength which will serve as a deterrent to war and a shield for our friends.

The friendship of which I speak often finds concrete expression in formal alliances with other nations.

But I am troubled by the state of our alliances today. The Administration in Washington appears incapable of formulating and executing a clear, principled, consistent long-range policy designed to protect our interests.

Confronted with policies that change from day to day, our allies are frequenty not even consulted when decisions are taken in Washington.

When trust and confidence -- the vital ingredients of friendship -- erode, the very basis of friendship is undermined.

We need a new foreign policy, one which the American people can understand and support. It must stress our great economic strength, and will seek to rebuild our competitiveness in world markets, which has been shackled by government intervention, government regulations and government hostility to the private sector of our economy. And it will require the careful, measured renewal of our military strength, so badly dissipated by four years of the present Administration, so that we can restore that vital margin of safety which kept the peace for so many years.

Our friends depend on that margin to maintain peace and to preserve their liberty. The price of leadership is that we must, together with those good friends, assure that the margin of safety is both effective and credible.

But as we do these necessary things in foreign policy, we must not forget that our first and most urgent task begins at home. Against the despair and pessimism that tells us we must accept a condition of national "malaise", we must offer a positive and optimistic vision.

In our own country, we <u>can</u> get our house back in order.

The drugs that ravage the young, the street crimes that terrorize the elderly -- these are not necessary parts of life. Despite some intolerable court decisions, we do not have to forever tolerate the pornography that defaces our neighborhoods or the permissiveness that assails our schools.

We can make welfare a "Welcome Table" for the truly needy. And we can make a place -- a family place -- for every child, so that the infants of the poor will not be victimized by fashionable and deadly ideas about who is to live and who is to die.

We can break the yoke of poverty, by unleashing America's economic power for growth and expansion, not by making anyone the perpetual ward of the State.

We can advance the wonders of modern medicine, as our nation's healing ministry, out of respect for each precious life that is made in the image of our healing Creator.

We can cherish our aged, helping families to care for one another, rather than driving their members into impersonal dependence upon government programs and government institutions.

Several years ago, when I wrestled with my conscience and decided I had no choice but to seek the presidency, I was encouraged

by the example of those early colonists who, fleeing religious persecution in England, came to this land to establish a new society that would be, to all the world, a shining city on a hill.

Four years ago, at a national convention where I was not nominated, I tried to share that inspiration with everyone who saw or heard my address. Wishing I had more eloquence than I could muster, I said that, in our own time, America still had to be that city on a hill. It is still our destiny to be the example for all people who seek freedom and cherish human dignity.

I've always believed that every blessing brings with it a responsibility: The responsibility to use it wisely, to share it generously, and to preserve it for those who come after us.

The blessings of our land, for example. Our crops and natural resources.

The blessings of our nation's wealth, its commerce, its prosperity. Well, freedom is one of our most precious blessings. As a nation and as individuals, we should give thanks for it. But being thankful isn't enough.

If we believe God has blessed America with liberty, then we have, not just a right to vote, but a duty to vote. We have not just the freedom to work in campaigns and run for office and comment on public affairs. We have a responsibility to do so.

That is the only way to preserve our blessings, extend them to others, and hand them down to our children.

If you do not speak your mind and cast your ballots, then who will speak and work for the ideals we most cherish? Who will vote to

protect the American family and respect its interests in the formulation of public policy?

Who will vote for to defend the defenseless and the weak, the very young and the very poor and the very old.

Who, if not you? And millions more like you.

When you stand up for your values when you assert your civil rights to vote and to participate fully in government, you are defending our true heritage of religious liberty. You are standing in the tradition of Roger Williams, Isaac Backus, and all the other dissenters who established for us the rights of religious conscience.

Much has changed since the Constitution guaranteed all Americans their religious liberty, but some things must never change. The perils our country faces today, and will face in the 1980's, seem unprecedented in their scope and consequences. But our response to them can be the response of men and women, in any era, who seek Divine guidance in their government and laws.

When the Israelites were about to enter the Promised Land, they were told that their government and laws must be a model to other nations, showing to the world the wisdom and mercy of their God.

To us, as to the ancient People of the Promise, there is given an opportunity: a chance to make <u>our</u> laws and government a model to mankind.

Let us take that chance, and make that effort, so it can be said of us, in the words of Moses, "Surely this great nation is a wise and understanding people." (Deuteronomy, iv, 6)

TO: Ed Meese, Bill Gavin — MIKE DEAVER

FROM: Bill Gribbin

For whatever use you can make of it, here's the speech I promised for the Religious Roundtable on Friday. By and large, it follows the format of the memo I sent to Ed last week.

Please note: there are an awful lot of code words, religious allusions, and whatnot built into this, which might be missed if one is not close to evangelical religion. It is not important, however, for the speaker to understand each and every one of them. His audience will. Boy, will they ever!

For examples: Page 1 - the use of the word "awakening" in the second paragraph. A crucial word, theologically. Page 5 - "Welcome Table," from an old hymn. On page 8, by the way, Isaac Backus was one of the foremost Baptist patriots of the Revolutionary period.

Even so, I think this speech is denominationally "clean." It refers only to the "Judeo-Christian tradition." And it makes it hard for anyone to portray the speaker as insensitive or culturally biased in, say, New York City.

Speaking of which, are you folks in touch with Rabbi Hecht, spokesman for all of Orthodox Jewry in this country, who has publicly praised Reagan, not for his Middle East policy, but for his social policies? Looks like another speech opportunity.

SUPREME COURT OF THE UNITED STATES

Syllabus

WILLIAMS ET AL. *v.* ZBARAZ ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ILLINOIS

No. 79–4. Argued April 21, 1980—Decided June 30, 1980*

Appellees brought a class action in Federal District Court under 42 U. S. C. § 1983 to enjoin, on both federal statutory and constitutional grounds, enforcement of an Illinois statute prohibiting state medical assistance payments for all abortions except those necessary to save the life of the woman seeking the abortion. The District Court, granting injunctive relief, held that Title XIX of the Social Security Act, which established the Medicaid program, and the regulations promulgated thereunder require a participating State under such program to provide funding for all medically necessary abortions, and that the so-called Hyde Amendment prohibiting the use of federal funds to reimburse the costs of certain medically necessary abortions does not relieve a State of its independent obligation under Title XIX to provide Medicaid funding for all medically necessary abortions. The Court of Appeals reversed, holding that the Hyde Amendment altered Title XIX in such a way as to allow States to limit funding to the categories of abortions specified in that Amendment, but that a participating State may not, consistent with Title XIX, withhold funding of those medically necessary abortions for which federal reimbursement is available under the Hyde Amendment, and the case was remanded to the District Court for modification of its injunction and with directions to consider the constitutionality of the Hyde Amendment. The District Court then held that both the Illinois statute and the Hyde Amendment violate the equal protection guarantee of the Constitution insofar as they deny funding for "medically necessary abortions prior to the point of fetal viability."

---

*Together with No. 79–5, *Quern, Director, Department of Public Aid of Illinois, et al.* v. *Zbaraz et al*, and No. 79–491, *United States* v. *Zbaraz et al.*, also on appeal from the same court.

Syllabus

Held:

1. The District Court lacked jurisdiction to consider the constitutionality of the Hyde Amendment, for the court acted in the absence of a case or controversy sufficient to permit an exercise of judicial power under Art. III of the Constitution. None of the parties ever challenged the validity of the Hyde Amendment, and appellees could have been awarded all the relief sought entirely on the basis of the District Court's ruling as to the Illinois statute. The constitutionality of the Hyde Amendment was interjected as an issue only by the Court of Appeals' erroneous mandate, which could not create a case or controversy where none otherwise existed. P. 8.

2. Notwithstanding that the District Court had no jurisdiction to declare the Hyde Amendment unconstitutional, this Court has jurisdiction under 28 U. S. C. § 1252 over the "whole case," and thus may review the other issues preserved by these appeals. *McLucas* v. *DeChamplain*, 421 U. S. 21. Pp. 8–9.

3. A participating State is not obligated under Title XIX to pay for those medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment. *Harris* v. *McRae, ante,* at 7–11. P. 10.

4. The funding restrictions in the Illinois statute, comparable to those in the Hyde Amendment, do not violate the Equal Protection Clause of the Fourteenth Amendment. *Harris* v. *McRae, ante,* at 24–27. P. 10.

469 F. Supp. 1212, vacated and remanded.

STEWART, J., delivered the opinion of the Court, in which BURGER, C. J., and WHITE, POWELL, and REHNQUIST, JJ., joined. BRENNAN, J., filed a dissenting opinion, in which MARSHALL and BLACKMUN, JJ., joined (see No. 79–1268). MARSHALL, BLACKMUN, and STEVENS, JJ., filed dissenting opinions (see No. 79–1268).

SUPREME COURT OF THE UNITED STATES

Nos. 79–4, 79–5, AND 79–491

Jasper F. Williams and Eugene F. Diamond, Appellants, 79–4 *v.* David Zbaraz et al.	
Jeffrey C. Miller, Acting Director, Illinois Department of Public Aid, et al., Appellants, 79–5 *v.* David Zbaraz et al.	On Appeals from the United States District Court for the Northern District of Illinois.
United States, Appellant, 79–491 *v.* David Zbaraz et al.	

[June —, 1980]

MR. JUSTICE STEWART delivered the opinion of the Court.

This suit was brought as a class action under 42 U. S. C. § 1983 in the District Court for the Northern District of Illinois to enjoin the enforcement of an Illinois statute that prohibits state medical assistance payments for all abortions except those "necessary for the preservation of the life of the woman seeking such treatment."[1] The plaintiffs were

[1] The statute is codified as chapter 23 of the Illinois Annotated Statutes (Smith-Hurd 1979 Supp.). It provides in relevant part:

"Sec. 5–5. Medical services. The Illinois Department, by rule, shall determine the quantity and quality of the medical assistance for which payment will be authorized, and the medical services to be provided, which may include all or part of the following: [listing 16 categories of medical services], but not including abortions, or induced miscarriages or premature births, unless, in the opinion of a physician, such procedures

two physicians who perform medically necessary abortions for indigent women, a welfare rights organization, and Jane Doe, an indigent pregnant woman who alleged that she desired an abortion that was medically necessary, but not necessary to save her life. The defendant was the Director of the Illinois Department of Public Aid, the agency charged with administering the State's medical assistance programs.[2] Two other physicians intervened as defendants.

The plaintiffs challenged the Illinois statute on both federal statutory and constitutional grounds. They asserted, first, that Title XIX of the Social Security Act, commonly known as the "Medicaid" Act, 42 U. S. C. § 1396 *et seq.* (1976 ed. and Supp. II), requires Illinois to provide coverage in its Medicaid plan for all medically necessary abortions, whether or not the life of the pregnant woman is endangered. Second, the plaintiffs argued that the public funding by the State of medically necessary services generally, but not of certain medically necessary abortions, violates the Equal Protection Clause of the Fourteenth Amendment.

---

are necessary for the preservation of the life of the woman seeking such treatment. . . ."

"Sec. 6–1. Eligibility requirements. . . . Nothing in this Article shall be construed to permit the granting of financial aid where the purpose of such aid is to obtain an abortion, induced miscarriage or induced premature birth unless, in the opinion of a physician, such procedures are necessary for the preservation of the life of the woman seeking such treatment. . . ."

"Sec. 7–1. Eligibility requirements. Aid in meeting the costs of necessary medical, dental, hospital, boarding or nursing care, or burial shall be given under this Article [to eligible persons], except where such aid is for the purpose of obtaining an abortion, induced miscarriage or induced premature birth unless, in the opinion of a physician, such procedures are necessary for the preservation of the life of the woman seeking such treatment. . . ."

[2] The medical assistance programs at issue here are the Illinois Medicaid plan, which is jointly funded by the Federal Government and the State of Illinois, and two fully state-funded programs, the Illinois General Assistance and Local Aid to Medically Indigent Programs.

The District Court initially held that it would abstain from considering the complaint until the state courts had construed the challenged statute.[3] The plaintiffs appealed, and the Court of Appeals for the Seventh Circuit reversed. *Zbaraz* v. *Quern,* 572 F. 2d 582. The appellate court held that abstention was inappropriate under the circumstances, and remanded the case for further proceedings, including consideration of the plaintiffs' motion for a preliminary injunction. On remand, the District Court certified two plaintiff classes: (1) a class of all pregnant women eligible for the Illinois medical assistance programs who desire medically necessary, but not life-preserving, abortions, and (2) a class of all Illinois physicians who perform medically necessary abortions for indigent women and who are certified to obtain reimbursement under the Illinois medical assistance programs.

Addressing the merits of the complaint, the District Court concluded that Title XIX and the regulations promulgated thereunder require a participating State under the Medicaid program to provide funding for all medically necessary abortions. According to the District Court, the so-called "Hyde Amendment"—under which Congress has prohibited the use of federal funds to reimburse the costs of certain medically necessary abortions[4]—does not relieve a State of its independ-

---

[3] All opinions of the District Court other than that now under review are unreported.

[4] Since September 1976, Congress has prohibited—by means of the "Hyde Amendment" to the annual appropriations for the Department of Health, Education, and Welfare (now the Department of Health and Human Services)—the use of any federal funds to reimburse the cost of abortions under the Medicaid program except under certain specified circumstances. The current version of the Hyde Amendment, applicable for fiscal year 1980, provides:

"[N]one of the funds provided by this joint resolution shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest when such rape or

ent obligation under Title XIX to provide Medicaid funding for all medically necessary abortions. Thus, the District Court permanently enjoined the enforcement of the Illinois statute insofar as it denied payments for abortions that are "medically necessary or medically indicated according to the professional medical judgment of a licensed physician in Illinois, exercised in light of all factors affecting a woman's health."

The Court of Appeals again reversed. *Zbaraz* v. *Quern,* 596 F. 2d 196. Reaching the same conclusion as had the Court of Appeals for the First Circuit in *Preterm, Inc.,* v. *Dukakis,* 591 F. 2d 121, the court held that the Hyde Amendment "alters Title XIX in such a way as to allow states to limit funding to the categories of abortions specified in that amendment." 596 F. 2d, at 199. It further held, however, that a participating State may not, consistent with Title XIX, withhold funding for those medically necessary abortions for which federal reimbursement is available under the Hyde Amendment.[5] Accordingly, the case was remanded to the District

---

incest has been reported promptly to a law enforcement agency or public health service." Pub. L. No. 96–123, § 109, 93 Stat. 926. See also Pub. L. No. 96–86, §118, 93 Stat. 662.

This version of the Hyde Amendment is broader than that applicable for fiscal year 1977, which did not include the "rape or incest" exception, Pub. L. 94–439, § 209, 90 Stat. 1434, but narrower than that applicable for most of fiscal year 1978 and all of fiscal year 1979, which had an additional exception for "instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term when so determined by two physicians," Pub. L. No. 95–205, § 101, 91 Stat. 1460; Pub. L. No. 95–480, § 210, 92 Stat. 1586. In this opinion, the term, "Hyde Amendment," is used generically to refer to all three versions, except where indicated otherwise.

[5] Neither the Director of the Illinois Department of Public Aid nor the intervening-physicians sought review of the judgment of the Court of Appeals. The District Court in the proceedings now on appeal proceeded on the premise that Title XIX obligates Illinois to fund all abortions reimbursable under the Hyde Amendment. That issue, therefore, is not before us on these appeals.

Court with instructions that the permanent injunction be modified so as to require continued state funding only "for those abortions fundable under the Hyde Amendment." [6] *Id.*, at 202. The Court of Appeals also directed the District Court to proceed expeditiously to resolve the constitutional questions it had not reached. The District Court was specifically directed to consider "whether the Hyde Amendment, by limiting funding for abortions to certain circumstances even if such abortions are medically necessary, violates the Fifth Amendment." *Ibid.* (footnote omitted).

On the second remand, the District Court notified the Attorney General of the United States that the constitutionality of an Act of Congress had been drawn into question, and the United States intervened, pursuant to 28 U. S. C. § 2403 (a), to defend the constitutionality of the Hyde Amendment.[7]

---

[6] Although the medical assistance programs funded exclusively by the State are not governed directly by either Title XIX or the Hyde Amendment, the Court of Appeals concluded that the modified injunction requiring state payments for abortions fundable under the Hyde Amendment should apply to all three Illinois medical assistance programs, see n. 2, *supra*. 596 F. 2d, at 202–203. Relying on a statement in the State's brief, the Court of Appeals held that the challenged Illinois statute was intended to represent the State's understanding of the congressional purpose reflected in the original Hyde Amendment. *Id.*, at 203. The Court of Appeals thus declined to sever the various funding restrictions in the Illinois statute.

[7] Section 2403 (a) provides:

"In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality."

Zbaraz v. *Quern*, 469 F. Supp. 1212, 1215, n. 3. In view of the fact that the plaintiffs had not challenged the Hyde Amendment, but rather only the Illinois statute, the District Court expressed misgivings about the propriety of passing on the constitutionality of the federal law. But noting that the same reasoning would apply in determining the constitutional validity of both the Illinois statute and the Hyde Amendment, the District Court observed: "Although we are not persuaded that the federal and state enactments are inseparable and would hesitate to inject into the proceeding the issue of the constitutionality of a law not directly attacked by plaintiffs, we are obviously constrained to obey the Seventh Circuit's mandate. Therefore, while our discussion of the constitutional questions will address only the Illinois statute, the same analysis applies to the Hyde Amendment and the relief granted will encompass both laws." *Ibid.*

The District Court then concluded that both the Illinois statute and the Hyde Amendment are unconstitutional insofar as they deny funding for "medically necessary abortions prior to the point of fetal viability." *Id.*, at 1221. If the public funding of abortions were restricted to those covered by the Hyde Amendment, the District Court thought that the effect would "be to increase substantially maternal morbidity and mortality among indigent pregnant women." *Id.*, at 1220. The District Court held that the state and federal funding restrictions violate the constitutional standard of equal protection because

> "a pregnant woman's interest in her health so outweighs any possible state interest in the life of a non-viable fetus that, for a woman medically in need of an abortion, the state's interest is not legitimate. At the point of viability, however, 'the relative weights of the respective interests involved' shift, thereby legitimizing the state's interests. After that point, therefore, . . . a state may withhold funding for medically necessary abortions that

> are not life-preserving, even though it funds all other medically necessary operations." *Id.*, at 1221.

Accordingly, the District Court enjoined the Director of the Illinois Department of Public Aid from enforcing the Illinois statute to deny payment under the state medical assistance programs for medically necessary abortions prior to fetal viability.[8] The District Court did not, however, enjoin any action by the United States.

The intervening-defendant physicians, the Director of the Illinois Department of Public Aid, and the United States each appealed directly to this Court, averring jurisdiction under 28 U. S. C. § 1252. This Court consolidated the appeals and postponed further consideration of the question of jurisdiction until the hearing on the merits. 444 U. S. 962.

I

The asserted basis for this Court's jurisdiction over these appeals is 28 U. S. C. § 1252, which provides in relevant part:

> "Any party may appeal to the Supreme Court from an interlocutory or final judgment, decree or order of any court of the United States . . . holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party."

It is quite obvious that the literal requirements of § 1252 are satisfied in the present case, for these appeals were taken from the final judgment of a federal court declaring unconstitutional an Act of Congress—the Hyde Amendment—in a

---

[8] The District Court refused to stay its order, and the Director of the Illinois Department of Public Aid and the intervening-defendant physicians moved in this Court for a stay pending appeal. That motion was denied. 442 U. S. 1309 (STEVENS, J., in chambers). A reapplication by the intervening-defendant physicians also was denied. 442 U. S. 915.

civil action to which the United States was a party by reason of its intervention pursuant to 28 U. S. C. § 2403 (a).

It is equally clear, however, that the appellees and the United States are correct in asserting that the District Court in fact lacked jurisdiction to consider the constitutionality of the Hyde Amendment, for the court acted in the absence of a case or controversy sufficient to permit an exercise of judicial power under Art. III of the Constitution. None of the parties to this case ever challenged the validity of the Hyde Amendment, and the appellees could have been awarded all the relief they sought entirely on the basis of the District Court's ruling with regard to the Illinois statute.[9] The constitutional validity of the Hyde Amendment was interjected as an issue in this case only by the erroneous mandate of the Court of Appeals. But, even though the District Court was simply following that mandate, the directive of the Court of Appeals could not create a case or controversy where none otherwise existed. It is clear, therefore, that the District Court exceeded its jurisdiction under Art. III in declaring the Hyde Amendment unconstitutional.

The question thus arises whether the District Court's lack of jurisdiction in declaring the Hyde Amendment unconstitutional divests this Court of jurisdiction over these appeals. We think not. As the Court in *McLucas* v. *DeChamplain*, 421 U. S. 21, 31–32, observed:

> "Our previous cases have recognized that this Court's jurisdiction under § 1252 in no way depends on whether the district court had jurisdiction. On the contrary, an appeal under § 1252 brings before us, not only the constitutional question, but the whole case, including threshold issues of subject-matter jurisdiction, and whether a three-judge court was required." (Citations omitted.)

---

[9] Title XIX does not prohibit "[a] participating State . . . [from] includ[ing] in its Medicaid plan those medically necessary abortions for which federal reimbursement is unavailable [under the Hyde Amendment]." *Harris* v. *McRae*, *ante*, at 11, n. 16.

Thus, in the *McLucas* case, which involved an appeal under § 1252 from a single-judge District Court, this Court pretermitted the question whether the single-judge District Court had had jurisdiction to enter the challenged preliminary injunction, and instead resolved the appeal on the merits. It follows from *McLucas* that, notwithstanding the fact that the District Court was without jurisdiction to declare the Hyde Amendment unconstitutional, this Court has jurisdiction over these appeals and thus may review the "whole case." [10]

II

Disposition of the merits of these appeals does not require extended discussion. Insofar as we have already concluded that the District Court lacked jurisdiction to declare the Hyde Amendment unconstitutional, that portion of its judgment must be vacated. See, *e. g., United States* v. *Johnson,* 319 U. S. 302; *Muskrat* v. *United States,* 219 U. S. 346. The remaining questions concern the Illinois statute. The appellees argue that (1) Title XIX requires Illinois to provide coverage in its state Medicaid plan for all medically necessary abortions, whether or not the life of the pregnant woman is endangered, and (2) the funding by Illinois of medically necessary services generally, but not of certain medically necessary abortions, violates the Equal Protection Clause of the

[10] Although this Court need not pass on the remainder of the judgment in a case in which an appeal under § 1252 is taken from a court that lacked jurisdiction to declare a federal statute unconstitutional, see *FHA* v. *The Darlington, Inc.,* 352 U. S. 977, we are empowered to do so because "an appeal under § 1252 brings before us, not only the constitutional question, but the whole case." *McLucas* v. *DeChamplain, supra,* 421 U. S., at 31. Here, there is no reason not to resolve the "whole case" on the merits. The remainder of the case that is properly before this Court, and which clearly involves a justiciable controversy, includes both the appellees' federal statutory and constitutional challenges to the Illinois statute.

Fourteenth Amendment.[11] Both arguments are foreclosed by our decision today in *Harris* v. *McRae, ante.* As to the appellees' statutory argument, we have concluded in *McRae* that a participating State is not obligated under Title XIX to pay for those medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment. As to their constitutional argument, we have concluded in *McRae* that the Hyde Amendment does not violate the equal protection component of the Fifth Amendment by withholding public funding for certain medically necessary abortions, while providing funding for other medically necessary health services. It follows, for the same reasons, that the comparable funding restrictions in the Illinois statute do not violate the Equal Protection Clause of the Fourteenth Amendment.

Accordingly, the judgment of the District Court is vacated, and the case is remanded to that court for further proceedings consistent with this opinion.

It is so ordered.

---

[11] This case was decided by the District Court under the version of the Hyde Amendment applicable during fiscal year 1979, and Congress has since narrowed the ambit of the Hyde Amendment for fiscal year 1980, see n. 4, *supra.* The recent statutory revision does not, however, affect the outcome of either issue now before the Court. The statutory issue is not affected, because we today conclude in *Harris* v. *McRae, ante,* at 8–11, that Title XIX does not require a participating State to fund those medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment, including the version of the Hyde Amendment applicable for fiscal year 1980. The constitutional issue is not affected, because, regardless of whether the State of Illinois is obligated to fund all abortions for which federal reimbursement is available under the Hyde Amendment, we conclude in *Harris* v. *McRae* that even the most restrictive version of the Hyde Amendment—which is similar to the Illinois statute at issue here—does not violate the equal protection standard of the Constitution. Since the outcome of these issues is not affected by the recent changes in the Hyde Amendment, we need not defer review in order to provide the District Court with an opportunity to evaluate the effects of these changes in the federal law.

SUPREME COURT OF THE UNITED STATES

Nos. 79–1268, 79–4, 79–5, AND 79–491

Patricia R. Harris, Secretary of Health and Human Services, Appellant, 79–1268 *v.* Cora McRae et al.	On Appeal from the United States District Court for the Eastern District of New York.
Jasper F. Williams and Eugene F. Diamond, Appellants, 79–4 *v.* David Zbaraz et al.	On Appeals from the United States District Court for the Northern District of Illinois.
Jeffrey C. Miller, Acting Director, Illinois Department of Public Aid, et al., Appellants, 79–5 *v.* David Zbaraz et al.	
United States, Appellant, 79–491 *v.* David Zbaraz et al.	

[June 30, 1980]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL and MR. JUSTICE BLACKMUN join, dissenting.

I agree entirely with my Brother STEVENS that the State's interest in protecting the potential life of the fetus cannot justify the exclusion of financially and medically needy women from the benefits to which they would otherwise be entitled solely because the treatment that a doctor has concluded is medically necessary involves an abortion. See *post*, at —. I write separately to express my continuing disagree-

ment [1] with the Court's mischaracterization of the nature of the fundamental right recognized in *Roe* v. *Wade*, 410 U. S. 113 (1973), and its misconception of the manner in which that right is infringed by federal and state legislation withdrawing all funding for medically necessary abortions.

Roe v. *Wade* held that the constitutional right to personal privacy encompasses a woman's decision whether or not to terminate her pregnancy. *Roe* and its progeny [2] established that the pregnant woman has a right to be free from state interference with her choice to have an abortion—a right which, at least prior to the end of the first trimester, absolutely prohibits any governmental regulation of that highly personal decision.[3] The proposition for which these cases stand thus is not that the State is under an affirmative obligation to ensure access to abortions for all who may desire them; it is that the State must refrain from wielding its enormous power and influence in a manner that might burden the pregnant woman's freedom to choose whether to have an abortion. The Hyde Amendment's denial of public funds for medically necessary abortions plainly intrudes upon this constitutionally protected decision, for both by design and in effect it serves to coerce indigent pregnant women to bear children that they would otherwise elect not to have.[4]

---

[1] See *Maher* v. *Roe*, 432 U. S. 464, 482–490 (1977) (BRENNAN, J., dissenting).

[2] *E. g.*, *Doe* v. *Bolton*, 410 U. S. 179 (1973); *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U. S. 52 (1976); *Singleton* v. *Wulff*, 428 U. S. 106 (1976); *Bellotti* v. *Baird*, 443 U. S. 622 (1979); cf. *Carey* v. *Population Services International*, 431 U. S. 678 (1977).

[3] After the first trimester, the State, in promoting its interest in the mother's health, may regulate the abortion *procedure* in ways that are reasonably related to that end. And even after the point of viability is reached, State regulation in furtherance of its interest in the potentiality of human life may not go so far as to proscribe abortions that are necessary to preserve the life or health of the mother. See *Roe* v. *Wade*, 410 U. S. 113, 164–165 (1973).

[4] My focus throughout this opinion is upon the coercive impact of the

When viewed in the context of the Medicaid program to which it is appended, it is obvious that the Hyde Amendment is nothing less than an attempt by Congress to circumvent the dictates of the Constitution and achieve indirectly what

---

congressional decision to fund one outcome of pregnancy—childbirth—while not funding the other—abortion. Because I believe this alone renders the Hyde Amendment unconstitutional, I do not dwell upon the other disparities that the Amendment produces in the treatment of rich and poor, pregnant and nonpregnant I concur completely, however, in my Brother STEVENS' discussion of those disparities. Specifically, I agree that the congressional decision to fund all medically necessary procedures except for those that require an abortion is entirely irrational either as a means of allocating health-care resources or otherwise serving legitimate social welfare goals. And that irrationality in turn exposes the Amendment for what it really is—a deliberate effort to discourage the exercise of a constitutionally protected right.

It is important to put this congressional decision in human terms. Nonpregnant women may be reimbursed for all medically necessary treatments. Pregnant women with analogous ailments, however, will be reimbursed only if the treatment involved does not happen to include an abortion. Since the refusal to fund will in some significant number of cases force the patient to forego medical assistance, the result is to refuse treatment for some genuine maladies not because they need not be treated, cannot be treated, or are too expensive to treat, and not because they relate to a deliberate choice to abort a pregnancy, but merely because treating them would as a practical matter require termination of that pregnancy. Even were one of the view that legislative hostility to abortions could justify a decision to fund obstetrics and child delivery services while refusing to fund nontherapeutic abortions, the present statutory scheme could not be saved. For here, that hostility has gone a good deal farther. Its consequence is to leave indigent sick women without treatment simply because of the medical fortuity that their illness cannot be treated unless their pregnancy is terminated. Antipathy to abortion, in short, has been permitted not only to ride roughshod over a woman's constitutional right to terminate her pregnancy in the fashion she chooses, but also to distort our Nation's health care programs. As a means of delivering health services, then, the Hyde Amendment is completely irrational. As a means of preventing abortions, it is concededly rational—brutally so. But this latter goal is constitutionally forbidden.

Roe v. *Wade* said it could not do directly.[5] Under Title XIX of the Social Security Act, the Federal Government reimburses participating States for virtually all medically necessary services it provides to the categorically needy. The sole limitation of any significance is the Hyde Amendment's prohibition against the use of any federal funds to pay for the costs of abortions (except where the life of the mother would be endangered if the fetus were carried to term). As my Brother STEVENS persuasively demonstrates, exclusion of medically necessary abortions from Medicaid coverage cannot be justified as a cost-saving device. Rather, the Hyde Amendment is a transparent attempt by the Legislative Branch to impose the political majority's judgment of the morally acceptable and socially desirable preference on a sensitive and intimate decision that the Constitution entrusts to the individual. 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. The instant legislation thus calls for more exacting judicial review than in most other cases. "When elected leaders cower before public pressure, this Court, more than ever, must not shirk its duty to enforce the Constitution for the benefit of the poor and powerless." *Beal* v. *Doe*, 432 U. S. 438, 462 (1977) (MARSHALL, J., dissenting). Though it may not be this Court's mission "to decide whether the balance of competing interests reflected in the Hyde Amendment is wise social policy," *ante*, at 26, it most assuredly is our responsibility to vindicate the pregnant

---

[5] Cf. *Singeton* v. *Wulff*, *supra*, at 118–119, n. 7:

"For a doctor who cannot afford to work for nothing, and a woman who cannot afford to pay him, the State's refusal to fund an abortion is as effective an 'interdiction' of it as would ever be necessary."

woman's constitutional right to decide whether to bear children free from governmental intrusion.

Moreover, it is clear that the Hyde Amendment not only was designed to inhibit, but does in fact inhibit the woman's freedom to choose abortion over childbirth. "Pregnancy is unquestionably a condition requiring medical services. . . . Treatment for the condition may involve medical procedures for its termination, or medical procedures to bring the pregnancy to term, resulting in a live birth. '[A]bortion and childbirth, when stripped of the sensitive moral arguments surrounding the abortion controversy, are simply two alternative medical methods of dealing with pregnancy. . . .'" *Beal* v. *Doe, supra,* at 449 (BRENNAN, J., dissenting) (quoting *Roe* v. *Norton,* 408 F. Supp. 660, 663, n. 3 (Conn. 1975)). In every pregnancy, one of these two courses of treatment is medically necessary, and the poverty-stricken woman depends on the Medicaid Act to pay for the expenses associated with that procedure. But under the Hyde Amendment, the Government will fund only those procedures incidental to childbirth. 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.*

The Court's contrary conclusion is premised on its belief that "[t]he 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." *Ante,* at 17. Accurate as this statement may be, it reveals only half the picture. For what the Court fails to appreciate is that it is not simply the woman's indigency that interferes with her freedom of choice, but the combination of her own poverty and the government's unequal subsidization of abortion and childbirth.

A poor woman in the early stages of pregnancy confronts two alternatives: she may elect either to carry the fetus to term or to have an abortion. In the abstract, of course, this choice is hers alone, and the Court rightly observes that the Hyde Amendment "places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy." *Id.*, at 15–16. But the reality of the situation is that the Hyde Amendment has effectively removed this choice from the indigent woman's hands. 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. It matters not that in this instance the government has used the carrot rather than the stick. What is critical is the realization that as a practical matter, many poverty-stricken women will choose to carry their pregnancy to term simply because the government provides funds for the associated medical services, even though these same women would have chosen to have an abortion if the government had also paid for that option, or indeed if the government had stayed out of the picture altogether and had defrayed the costs of neither procedure.

The fundamental flaw in the Court's due process analysis, then, is its failure to acknowledge that the discriminatory distribution of the benefits of governmental largesse can discourage the exercise of fundamental liberties just as effectively as can an outright denial of those rights through criminal and regulatory sanctions. Implicit in the Court's reasoning is the notion that as long as the government is not obligated to provide its citizens with certain benefits or privileges, it may condition the grant of such benefits on the recipient's relinquishment of his constitutional rights.

It would belabor the obvious to expound at any great length on the illegitimacy of a state policy that interferes with the exercise of fundamental rights through the selective bestowal of governmental favors. It suffices to note that we

have heretofore never hesitated to invalidate any scheme of granting or withholding financial benefits that incidentally or intentionally burdens one manner of exercising a constitutionally protected choice. To take but one example of many, *Sherbert* v. *Verner,* 374 U. S. 398 (1963), involved a South Carolina unemployment insurance statute that required recipients to accept suitable employment when offered, even if the grounds for refusal stemmed from religious convictions. Even though the recipients possessed no entitlement to compensation, the Court held that the State could not cancel the benefits of a Seventh Day Adventist who had refused a job requiring her to work on Saturdays. The Court's explanation is particularly instructive for the present case:

> "Here not only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable. The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship.
>
> "Nor may the South Carolina court's construction of the statute be saved from constitutional infirmity on the ground that unemployment compensation benefits are not appellant's 'right' but merely a 'privilege.' It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege. . . . '[T]o condition the availability of benefits upon this appellant's willingness to violate a cardinal principle of her religious faith effectively penalizes the free exercise of her constitutional liberties." *Id.,* at 404–406.

See also *Frost & Frost Trucking Co.* v. *Railroad Comm'n*, 271 U. S. 583 (1926); *Speiser* v. *Randall*, 357 U. S. 513 (1958); *Elfbrandt* v. *Russell*, 384 U. S. 11 (1966); *Goldberg* v. *Kelly*, 397 U. S. 254 (1970); *United States Dept. of Agric.* v. *Moreno*, 413 U. S. 528 (1973); *Southeastern Promotions, Ltd.* v. *Conrad*, 420 U. S. 546 (1975). Cf. *Shapiro* v. *Thompson*, 394 U. S. 618 (1969); *Memorial Hospital* v. *Maricopa County*, 415 U. S. 250 (1974).

The Medicaid program cannot be distinguished from these other statutory schemes that unconstitutionally burdened fundamental rights.[6] Here, as in *Sherbert*, the government withholds financial benefits in a manner that discourages the exercise of a due process liberty: The indigent woman who chooses to assert her constitutional right to have an abortion can do so only on pain of sacrificing health care benefits to

[6] The Court rather summarily rejects the argument that the Hyde Amendment unconstitutionally penalizes the woman's exercise of her right to choose an abortion with the comment that "[a] refusal to fund protected activity, without more, cannot be equated with the imposition of a 'penalty' on that activity." *Ante*, at 17–18, n. 19. To begin with, the Court overlooks the fact that there is "more" than a simple refusal to fund a protected activity in this case; instead, there is a program that selectively funds but one of two choices of a constitutionally protected decision, thereby penalizing the election of the disfavored option.

Moreover, it is no answer to assert that no "penalty" is being imposed because the State is only refusing to pay for the specific costs of the protected activity rather than withholding other Medicaid benefits to which the recipient would be entitled or taking some other action more readily characterized as "punitive." Surely the government could not provide free transportation to the polling booths only for those citizens who vote for Democratic candidates, even though the failure to provide the same benefit to Republicans "represents simply a refusal to subsidize certain protected conduct," *ibid.*, and does not involve the denial of any other governmental benefits. Whether the State withholds only the special costs of a disfavored option or penalizes the individual more broadly for the manner in which she exercises her choice, it cannot interfere with a constitutionally protected decision through the coercive use of governmental largesse.

which she would otherwise be entitled. Over 50 years ago, Mr. Justice Sutherland, writing for the Court in *Frost & Frost Trucking Co.* v. *Railroad Comm'n, supra,* at 593–594, made the following observation, which is as true now as it was then:

> "It would be a palpable incongruity to strike down an act of state legislation which, by words of express divestment, seeks to strip the citizen of rights guaranteed by the federal Constitution, but to uphold an act by which the same result is accomplished under the guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold. It is not necessary to challenge the proposition that, as a general rule, the state, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited; and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence."

I respectfully dissent.