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.	
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 30, 1980]

MR. JUSTICE MARSHALL, dissenting.

Three years ago, in *Maher* v. *Roe*, 432 U. S. 464 (1977), the Court upheld a state program that excluded nontherapeutic abortions from a welfare program that generally subsidized the medical expenses incidental to pregnancy and childbirth. At that time, I expressed my fear "that the Court's decisions will be an invitation to public officials, already under extraordinary pressure from well-financed and carefully orchestrated lobbying campaigns, to approve more such restrictions" on governmental funding for abortion. *Id.*,

at 462 (dissenting opinion in *Beal* v. *Doe,* 432 U. S. 438 (1977), *Maher* v. *Roe, supra,* and *Poelker* v. *Doe,* 432 U. S. 519 (1977)).

That fear has proved justified. Under the Hyde Amendment, federal funding is denied for abortions that are medically necessary and that are necessary to avert severe and permanent damage to the health of the mother. The Court's opinion studiously avoids recognizing the undeniable fact that for women eligible for Medicaid—poor women—denial of a Medicaid-funded abortion is equivalent to denial of legal abortion altogether. By definition, these women do not have the money to pay for an abortion themselves. If abortion is medically necessary and a funded abortion is unavailable, they must resort to back-alley butchers, attempt to induce an abortion themselves by crude and dangerous methods, or suffer the serious medical consequences of attempting to carry the fetus to term. Because legal abortion is not a realistic option for such women, the predictable result of the Hyde Amendment will be a significant increase in the number of poor women who will die or suffer significant health damage because of an inability to procure necessary medical services.

The legislation before us is the product of an effort to deny to the poor the constitutional right recognized in *Roe* v. *Wade,* 410 U. S. 113 (1973), even though the cost may be serious and long-lasting health damage. As my Brother STEVENS has demonstrated, see *post* (dissenting opinion), the premise underlying the Hyde Amendment was repudiated in *Roe* v. *Wade,* where the Court made clear that the state interest in protecting fetal life cannot justify jeopardizing the life or health of the mother. The denial of Medicaid benefits to individuals who meet all the statutory criteria for eligibility, solely because the treatment that is medically necessary involves the exercise of the fundamental right to choose abortion, is a form of discrimination repugnant to the equal protection of the laws guaranteed by the Constitution.

The Court's decision today marks a retreat from *Roe* v. *Wade* and represents a cruel blow to the most powerless members of our society. I dissent.

I

In its present form, the Hyde Amendment restricts federal funding for abortion to cases in which "the life of the mother would be endangered if the fetus were carried to term" and "for such medical procedures necessary for the victims of rape or incest when such rape or incest has been reported promptly to a law enforcement agency or public health service." See *ante,* at 3. Federal funding is thus unavailable even when severe and long-lasting health damage to the mother is a virtual certainty. Nor are federal funds available when severe health damage, or even death, will result to the fetus if it is carried to term.

The record developed below reveals that the standards set forth in the Hyde Amendment exclude the majority of cases in which the medical profession would recommend abortion as medically necessary. Indeed, in States that have adopted a standard more restrictive than the "medically necessary" test of the Medicaid Act, the number of funded abortions has decreased by over 98%. App. 289.

The impact of the Hyde Amendment on indigent women falls into four major categories. First, the Hyde Amendment prohibits federal funding for abortions that are necessary in order to protect the health and sometimes the life of the mother. Numerous conditions—such as cancer, rheumatic fever, diabetes, malnutrition, phlebitis, sickle cell anemia, and heart disease—substantially increase the risks associated with pregnancy or are themselves aggravated by pregnancy. Such conditions may make an abortion medically necessary in the judgment of a physician, but cannot be funded under the Hyde Amendment. Further, the health risks of undergoing an abortion increase dramatically as pregnancy becomes more advanced. By the time a pregnancy

has progressed to the point where a physician is able to certify that it endangers the life of the mother, it is in many cases too late to prevent her death because abortion is no longer safe. There are also instances in which a woman's life will not be immediately threatened by carrying the pregnancy to term, but aggravation of another medical condition will significantly shorten her life expectancy. These cases as well are not fundable under the Hyde Amendment.

Second, federal funding is denied in cases in which severe mental disturbances will be created by unwanted pregnancies. The result of such psychological disturbances may be suicide, attempts at self-abortion, or child abuse. The Hyde Amendment makes no provision for funding in such cases.

Third, the Hyde Amendment denies funding for the majority of women whose pregnancies have been caused by rape or incest. The prerequisite of a report within 60 days serves to exclude those who are afraid of recounting what has happened or are in fear of unsympathetic treatment by the authorities. Such a requirement is, of course, especially burdensome for the indigent, who may be least likely to be aware that a rapid report to the authorities is indispensable in order for them to be able to obtain an abortion.

Finally, federal funding is unavailable in cases in which it is known that the fetus itself will be unable to survive. In a number of situations it is possible to determine in advance that the fetus will suffer an early death if carried to term. The Hyde Amendment, purportedly designed to safeguard "the legitimate governmental interest of protecting potential life," *ante*, at 25, excludes federal funding in such cases.

An optimistic estimate indicates that as many as 100 excess deaths may occur each year as a result of the Hyde Amendment.[1] The record contains no estimate of the health

[1] See App. 294–296.

damage that may occur to poor women, but it shows that it will be considerable.[2]

II

The Court resolves the equal protection issue in this case through a relentlessly formalistic catechism. Adhering to its "two-tiered" approach to equal protection, the Court first decides that so-called strict scrutiny is not required because the Hyde Amendment does not violate the Due Process Clause and is not predicated on a constitutionally suspect classification. Therefore, "the validity of classification must be sustained unless 'the classification rests on grounds wholly irrelevant to the achievement of [any legitimate governmental] objective.'" *Ante*, at 22–23 (bracketed material in original), quoting *McGowan* v. *Maryland*, 366 U. S. 420, 425 (1961). Observing that previous cases have recognized "the legitimate governmental objective of protecting potential life," *ante*, at 25, the Court concludes that the Hyde Amendment "establishe[s] incentives that make childbirth a more attractive alternative than abortion for persons eligible for Medicaid," *ibid.*, and is therefore rationally related to that governmental interest.

I continue to believe that the rigid "two-tiered" approach is inappropriate and that the Constitution requires a more exacting standard of review than mere rationality in cases such as this one. Further, in my judgment the Hyde Amendment cannot pass constitutional muster even under the rational-basis standard of review.

A

This case is perhaps the most dramatic illustration to date of the deficiencies in the Court's obsolete "two-tiered" approach to the Equal Protection Clause. See *San Antonio School Dist.* v. *Rodriguez*, 411 U. S. 1, 98–110 (1973) (MAR-

[2] For example, the risk of serious complications deriving from abortions were estimated to be about 100 times the number of deaths from abortions. See App. 200.

SHALL, J., dissenting); *Massachusetts* v. *Murgia*, 427 U. S. 307, 318–321 (1976) (MARSHALL, J., dissenting); *Maher* v. *Roe*, *supra*, at 457–458 (MARSHALL, J., dissenting); *Vance* v. *Bradley*, 440 U. S. 93, 113–115 (1979) (MARSHALL, J., dissenting).[3] With all deference, I am unable to understand how the Court can afford the same level of scrutiny to the legislation involved here—whose cruel impact falls exclusively on indigent pregnant women—that it has given to legislation distinguishing opticians from opthalmologists, or to other legislation that makes distinctions between economic interests more than able to protect themselves in the political process. See *ante*, at 26–27, citing *Williamson* v. *Lee Optical*, 348 U. S. 483 (1955). Heightened scrutiny of legislative classifications has always been designed to protect groups "saddled with such disabilities or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *San Antonio School District* v. *Rodriguez*, *supra*, at 28 (1973).[4] And while it is now clear that traditional "strict scrutiny" is unavailable to protect the poor against classifications that

[3] A number of individual Justices have expressed discomfort with the two-tiered approach, and I am pleased to observe that its hold on the law may be waning. See *Craig* v. *Boren*, 429 U. S. 190, 210–211, and n. * (1676) (POWELL, J., concurring); *id.*, at 211–212 (STEVENS, J., concurring); *post*, at 4–5, n. 4 (STEVENS, J., dissenting). Further, the Court has adopted an "intermediate" level of scrutiny for a variety of classifications. See *Trimble* v. *Gordon*, 430 U. S. 762 (1977) (illegitimacy); *Craig* v. *Boren*, *supra* (sex discrimination); *Foley* v. *Connelie*, 435 U. S. 291 (1979) (alienage). Cf. *University of California Regents* v. *Bakke*, 438 U. S. 265, 324 (1978) (opinion of BRENNAN, WHITE, MARSHALL, and BLACKMUN, JJ.) (affirmative action).

[4] For this reason the Court has on occasion suggested that classifications discriminating against the poor are subject to special scrutiny under the Fifth and Fourteenth Amendments. See *McDonald* v. *Board of Election*, 394 U. S. 802, 807 (1969); *Harper* v. *Virginia Bd. of Elections*, 383 U. S. 663, 668 (1966).

disfavor them, *Dandridge* v. *Williams*, 397 U. S. 471 (1970), I do not believe that legislation that imposes a crushing burden on indigent women can be treated with the same deference given to legislation distinguishing among business interests.

B

The Hyde Amendment, of course, distinguishes between medically necessary abortions and other medically necessary expenses.[5] As I explained in *Maher* v. *Roe*, *supra*, such classifications must be assessed by weighing " 'the importance of the governmental benefits denied, the character of the class, and the asserted state interests,' " *id.*, at 458, quoting *Massachusetts Bd. of Retirement* v. *Murgia*, *supra*, at 322. Under that approach, the Hyde Amendment is clearly invalid.[6]

As in *Maher*, the governmental benefits at issue here are "of absolutely vital importance in the lives of the recipients." *Maher* v. *Roe*, *supra*, at 458 (MARSHALL, J., dissenting). An indigent woman denied governmental funding for a medically necessary abortion is confronted with two grotesque choices. First, she may seek to obtain "an illegal abortion that poses a serious threat to her health and even her life." *Ibid.* Alternatively, she may attempt to bear the child, a course that may both significantly threaten her health and eliminate any chance she might have had "to control the direction of her own life," *id.*, at 459.

The class burdened by the Hyde Amendment consists of

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[5] As my Brother STEVENS suggests, see *post*, at n. 8 (STEVENS, J., dissenting), the denial of funding for those few medically necessary services that are excluded from the Medicaid program is based on a desire to conserve federal funds, not on a desire to penalize those who suffer the excluded disabilities.

[6] In practical effect, my approach is not in this context dissimilar to that taken in *Craig* v. *Boren*, *supra*, at 197, where the Court referred to an intermediate standard of review requiring that classifications "must serve important governmental objectives and must be substantially related to achievement of those objectives."

indigent women, a substantial proportion of whom are members of minority races. As I observed in *Maher,* nonwhite women obtain abortions at nearly double the rate of whites, *id.,* at 459. In my view, the fact that the burden of the Hyde Amendment falls exclusively on financially destitute women suggests "a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry." *United States* v. *Carolene Products,* 304 U. S. 144, 152–153, n. 4 (1938). For this reason, I continue to believe that "a showing that state action has a devastating impact on the lives of minority racial groups must be relevant" for purposes of equal protection analysis. *Jefferson* v. *Hackney,* 406 U. S. 535, 575–576 (1972) (MARSHALL, J., dissenting).

As I explained in *Maher,* the asserted state interest in protecting potential life is insufficient to "outweigh the deprivation or serious discouragement of a vital constitutional right of especial importance to poor and minority women." 432 U. S., at 461. In *Maher,* the Court found a permissible state interest in encouraging normal childbirth. *Id.,* at 477, 478, 479. The governmental interest in the present case is substantially weaker than in *Maher,* for under the Hyde Amendment funding is refused even in cases in which normal childbirth will not result: one can scarcely speak of "normal childbirth" in cases where the fetus will die shortly after birth, or in which the mother's life will be shortened or her health otherwise gravely impaired by the birth. Nevertheless, the Hyde Amendment denies funding even in such cases. In these circumstances, I am unable to see how even a minimally rational legislature could conclude that the interest in fetal life outweighs the brutal effect of the Hyde Amendment on indigent women. Moreover, both the legislation in *Maher* and the Hyde Amendment were designed to deprive poor and minority women of the constitutional right to choose abortion.

That purpose is not constitutionally permitted under *Roe* v. *Wade*.

C

Although I would abandon the strict-scrutiny/rational-basis dichotomy in equal protection analysis, it is by no means necessary to reject that traditional approach to conclude, as I do, that the Hyde Amendment is a denial of equal protection. My Brother BRENNAN has demonstrated that the Amendment is unconstitutional because it impermissibly infringes upon the individual's constitutional right to decide whether to terminate a pregnancy. See *ante* (BRENNAN, J., dissenting). And as my Brother STEVENS demonstrates, see *post* (dissenting opinion), the Government's interest in protecting fetal life is not a legitimate one when it is in conflict with "the preservation of the life or health of the mother," *Roe* v. *Wade*, *supra*, at 165, and when the Government's effort to make serious health damage to the mother "a more attractive alternative than abortion," *ante*, at 25, does not rationally promote the governmental interest in encouraging normal childbirth.

The Court treats this case as though it were controlled by *Maher*. To the contrary, this case is the mirror image of *Maher*. The result in *Maher* turned on the fact that the legislation there under consideration discouraged only nontherapeutic, or medically unnecessary, abortions. In the Court's view, denial of Medicaid funding for nontherapeutic abortions was not a denial of equal protection because Medicaid funds were available only for medically necessary procedures. Thus the plaintiffs were seeking benefits which were not available to others similarly situated. I continue to believe that *Maher* was wrongly decided. But it is apparent that while the plaintiffs in *Maher* were seeking a benefit not available to others similarly situated, respondents are protesting their exclusion from a benefit that is available to

all others similarly situated. This, it need hardly be said, is a crucial difference for equal protection purposes.

Under Title XIX and the Hyde Amendment, funding is available for essentially all necessary medical treatment for the poor. Respondents have met the statutory requirements for eligibility, but they are excluded because the treatment that is medically necessary involves the exercise of a fundamental right, the right to choose an abortion. In short, respondents have been deprived of a governmental benefit for which they are otherwise eligible, solely because they have attempted to exercise a constitutional right. The interest asserted by the government, the protection of fetal life, has been declared constitutionally subordinate to respondents' interest in preserving their lives and health by obtaining medically necessary treatment. *Roe* v. *Wade, supra.* And finally, the purpose of the legislation was to discourage the exercise of the fundamental right. In such circumstances the Hyde Amendment must be invalidated because it does not meet even the rational-basis standard of review.

III

The consequences of today's opinion—consequences to which the Court seems oblivious—are not difficult to predict. Pregnant women denied the funding necessary to procure abortions will be restricted to two alternatives. First, they can carry the fetus to term—even though that route may result in severe injury or death to the mother, the fetus, or both. If that course appears intolerable, they can resort to self-induced abortions or attempt to obtain illegal abortions—not because bearing a child would be inconvenient, but because it is necessary in order to protect their health.[7] The

[7] Of course, some poor women will attempt to raise the funds necessary to obtain a lawful abortion. A court recently found that those who were fortunate enough to do so had to resort to "not paying rent or utility bills, pawning household goods, diverting food and clothing money or journeying to another state to obtain lower rates or fraudulently using a

result will not be to protect what the Court describes as "the legitimate governmental objective of protecting potential life," *ante,* at 25, but to ensure the destruction of both fetal and maternal life. "There is another world 'out there,' the existence of which the Court . . . either chooses to ignore or fears to recognize." *Beal* v. *Doe, supra,* at 463 (BLACKMUN, J., dissenting). In my view, it is only by blinding itself to that other world that the Court can reach the result it announces today.

Ultimately, the result reached today may be traced to the Court's unwillingness to apply the constraints of the Constitution to decisions involving the expenditure of governmental funds. In today's decision, as in *Maher* v. *Roe,* the Court suggests that a withholding of funding imposes no real obstacle to a woman deciding whether to exercise her constitutionally protected procreative choice, even though the government is prepared to fund all other medically necessary expenses, including the expenses of childbirth. The Court perceives this result as simply a distinction between a "limitation on governmental power" and "an affirmative funding obligation." *Ante,* at 18. For a poor person attempting to exercise her "right" to freedom of choice, the difference is imperceptible. As my Brother BRENNAN has shown, see *ante* (dissenting opinion), the differential distribution of incentives—which the Court concedes is present here, see *ante,* at 25—can have precisely the same effect as an outright prohibition. It is no more sufficient an answer here than it was in *Roe* v. *Wade* to say that " 'the appropriate forum' " for the resolution of sensitive policy choices is the legislature. See *ante,* at 27, quoting *Maher* v. *Roe, supra,* at 479.

More than 35 years ago, Mr. Justice Jackson observed that the "task of translating the majestic generalities of the Bill

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relative's insurance policy . . . some patients were driven to theft." *Women's Health Center* v. *Maher,* Civ. No. H–79–405 (Conn. 1980) (slip op., at 14).

of Rights . . . into concrete restraints on officials dealing with the problems of the twentieth century, is one to disturb self-confidence." *West Virginia State Bd. of Educ.* v. *Barnette,* 319 U. S. 624, 640 (1943). These constitutional principles, he observed for the Court, "grew in soil which also produced a philosophy that the individual['s] . . . liberty was attainable through mere absence of government restraints." *Ibid.* Those principles must be "transplant[ed] . . . to a soil in which the *laissez-faire* concept or principle of non-interference has withered at least as to economic affairs, and social advancements are increasingly sought through closer integration of society and through expanded and strengthened governmental controls." *Id.,* at 640.

In this case, the Federal Government has taken upon itself the burden of financing practically all medically necessary expenditures. One category of medically necessary expenditure has been singled out for exclusion, and the sole basis for the exclusion is a premise repudiated for purposes of constitutional law in *Roe* v. *Wade.* The consequence is a devastating impact on the lives and health of poor women. I do not believe that a Constitution committed to the equal protection of the laws can tolerate this result. I dissent.

SUPREME COURT OF THE UNITED STATES

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[June 30, 1980]

MR. JUSTICE BLACKMUN, dissenting.

I join the dissent of MR. JUSTICE BRENNAN and agree wholeheartedly with his and MR. JUSTICE STEVENS' respective observations and descriptions of what the Court is doing in this latest round of "abortion cases." I need add only that I find what I said in dissent in *Beal* v. *Doe,* 432 U. S. 438, 462 (1977), and its two companion cases, *Maher* v. *Roe,* 432 U. S. 464 (1977), and *Poelker* v. *Doe,* 432 U. S. 519 (1977), continues for me to be equally pertinent and equally applicable in these Hyde Amendment cases. There is "condescen-

sion" in the Court's holding "that she may go elsewhere for her abortion"; this is "disingenuous and alarming"; the Government "punitively impresses upon a needy minority its own concepts of the socially desirable, the publicly acceptable, and the morally sound"; the "financial argument, of course, is specious"; there truly is "another world 'out there,' the existence of which the Court, I suspect, either chooses to ignore or fears to recognize"; the "cancer of poverty will continue to grow"; and "the lot of the poorest among us," once again, and still, is not to be bettered.

SUPREME COURT OF THE UNITED STATES

No. 79–1268

Patricia R. Harris, Secretary of Health and Human Services, Appellant, *v.* Cora McRae et al. | On Appeal from the United States District Court for the Eastern District of New York.

[June 30, 1980]

MR. JUSTICE WHITE, concurring.

I join the Court's opinion and judgment with these additional remarks.

Roe v. *Wade,* 410 U. S. 113 (1973), held that prior to viability of the fetus, the governmental interest in potential life was insufficient to justify overriding the due process right of a pregnant woman to terminate her pregnancy by abortion. In the last trimester, however, the State's interest in fetal life was deemed sufficiently strong to warrant a ban on abortions, but only if continuing the pregnancy did not threaten the life or health of the mother. In the latter event, the State was required to respect the choice of the mother to terminate the pregnancy and protect her health.

Drawing upon *Roe* v. *Wade* and the cases that followed it, the dissent extrapolates the general proposition that the governmental interest in potential life may in no event be pursued at the expense of the mother's health. It then notes that under the Hyde Amendment, Medicaid refuses to fund abortions where carrying to term threatens maternal health but finances other medically indicated procedures, including childbirth. The dissent submits that the Hyde Amendment therefore fails the first requirement imposed by the Fifth Amendment and recognized by the Court's opinion today—that the challenged official action must serve a legitimate governmental goal, *ante,* pp. 24–25.

The argument has a certain internal logic, but it is not legally sound. The constitutional right recognized in *Roe* v. *Wade* was the right to choose to undergo an abortion without coercive interference by the government. As the Court points out, *Roe* v. *Wade* did not purport to adjudicate a right to have abortions funded by the government, but only to be free from unreasonable official interference with private choice. At an appropriate stage in a pregnancy, for example, abortions could be prohibited to implement the governmental interest in potential life, but in no case to the damage of the health of the mother, whose choice to suffer an abortion rather than risk her health the government was forced to respect.

Roe v. *Wade* thus dealt with the circumstances in which the governmental interest in potential life would justify official interference with the abortion choices of pregnant women. There is no such calculus involved here. The government does not seek to interfere with or to impose any coercive restraint on the choice of any woman to have an abortion. The woman's choice remains unfettered, the government is not attempting to use its interest in life to justify a coercive restraint, and hence in disbursing its Medicaid funds it is free to implement rationally what *Roe* v. *Wade* recognized to be its legitimate interest in a potential life by covering the medical costs of childbirth but denying funds for abortions. Neither *Roe* v. *Wade* nor any of the cases decided in its wake invalidates this legislative preference. We decided as much in *Maher* v. *Roe*, 432 U. S. 464 (1977), when we rejected the claims that refusing funds for nontherapeutic abortions while defraying the medical costs of childbirth, although not an outright prohibition, nevertheless infringed the fundamental right to choose to terminate a pregnancy by abortion and also violated the equal protection component of the Fifth Amendment. I would not abandon *Maher* and extend *Roe* v. *Wade* to forbid the legislative policy expressed in the Hyde Amendment.

Nor can *Maher* be successfully distinguished on the ground that it involved only nontherapeutic abortions that the government was free to place outside the ambit of its Medicaid program. That is not the ground on which *Maher* proceeded. *Maher* held that the government need not fund elective abortions because withholding funds rationally furthered the State's legitimate interest in normal childbirth. We sustained this policy even though under *Roe* v. *Wade,* the government's interest in fetal life is an inadequate justification for coercive interference with the pregnant woman's right to choose an abortion, whether or not such a procedure is medically indicated. We have already held, therefore, that the interest balancing involved in *Roe* v. *Wade* is not controlling in resolving the present constitutional issue. Accordingly, I am satisfied that the straightforward analysis followed in MR. JUSTICE STEWART's opinion for the Court is sound.

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Dallas, Texas☆Reunion Arena☆August 21-22, 1980

June 27, 1980

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Dear Friend:

You are invited to attend the National Affairs Briefing, August 21-22, 1980 at the new Reunion Arena in Dallas, Texas.

Our host committee includes Dr. W. A. Criswell, Dr. Jerry Falwell, Rev. John Gimenez, Dr. E. V. Hill, Dr. James Kennedy, Rev. Tim LaHaye, Dr. Pat Robertson, Dr. Adrian Rogers, Mr. Eddie Chiles, Mrs. Mary Crowley, Mr. Rich DeVoss, Rev. Bailey Smith, and Dr. Charles Stanley. Members of the Host Committee will give challenging messages.

They join us in urging you to lay aside other pressing responsibilities to become an informed leader on domestic and foreign policy issues in this non-partisan gathering.

It's more comfortable not to know. We all grew up softened by the cynical watchword of the apathetic, "What you don't know won't hurt you."

We're here to tell you what we don't know can not only hurt us, it can also strip us of our individuality.....it can morally and financially bankrupt us..... and it can remove the opportunity to live and work in freedom under God.

This briefing will give you as a Christian leader a knowledge about what is really going on in the erratic swings of the economy, the intrigues of international affairs and the domestic crisis which is morally enslaving our country. The collective business, political and religious knowledge and experience that will be shared there would span our nation's history many times over.

And whether you hear it - and what you do about

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it - could determine whether that history will continue.

Governor Reagan will speak, and President Carter has also been invited.

The additional panel of speakers and participants who have agreed to address these vital issues include:

U. S. Senator William Armstrong
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Governor John Connally
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We're writing you because you are a committed Christian leader who cares what happens to our country. You don't like to play "voting lever roulette" for the frightening stakes of today's live-or-die game.

We are asking you to attend because we know you are concerned, and that you desire to be informed and not manipulated by media hype.

You'll walk away from the National Affairs Briefing not only with enlightened perspective from the distinguished panel of speakers, but with carefully researched and documented data. And you'll walk away from the National Affairs Briefing with the know-how to inform and mobilize your church and community in this non-partisan effort to do something that can determine the moral character of America.

Now you know why it is important for you to come and bring your wife, if you wish, and an associate or a key lay-leader.

We are all praying that you will send the registration card and fee now and tell us you are coming. The packet of materials you will receive at the door will be worth far more to you and to our nation than the $50.00 registration fee.

Yours for the redemption of our nation,

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P.S. Please send your registration early for first choice in accomodations. Use the return envelope and response card to send your $50.00 per person registration fee. TODAY!

Themes:

Broadly, only two themes matter to this audience: First, the moral decline of America, the symptoms of which are all about us. Second, the peril we face from atheist tyranny abroad. Let's break those down.

1. America is basically good, because its people are fundamentally religious in values and beliefs.

2. But our country's leaders and policies have foresaken the Judeo-Christian tradition, replaced it with secular humanism (I know, you can't be that specific in the speech); and the woeful results are all about us: abortion, pornography, crime rates, the welfare morass, child abuse, etc. In other words, the lights are going out in the "city on a hill."

3. Moreover, government has recently been, not just ignoring religion, but harassing it. Various government agencies have attempted to control church-related institutions, have claimed jurisdiction over church employees, and have attempted to stifle church publications. (Yes, amazing but all true.)

4. No wonder that, at the same time, our foreign policy has been unable to distinguish between friend and foe. The Administration refuses to recognize the inherent evil of Marxist atheism. Hence, its unilateral disarmament, its inability to stand for anything.

5. But now the religious grassroots of the country are stirring, reaffirming America's faith, ideals, and traditions:
   - *personal responsibility
   - *the primacy of the family and the sanctity of the home
   - *the independence of church institutions (and other social institutions, perhaps) from government
   - *the can-do confidence (shades of Kemp-Roth!) that comes with the certainty of divine providence for America when its people are faithful

6. This is not a matter of partisanship. It is too important for politics as usual. (Much as these folks might like political clout, it is terribly difficult for them to assume an overtly political stance, inasmuch as most of them are the very strictest church-and-state separationists. They are overcoming that scruple precisely because of the horrors they see about them. So we do not ask them to trust in any single candidate, any party, any one campaign. Rather, we affirm the principles we share, the beliefs we treasure, the goals for which we are together working.

7. For examples -- and you cannot avoid getting detailed in terms of some commitments about the future -- our (next) President must make clear to every federal official that the independence and integrity of our churches and church schools are absolutely protected by the Constitution. (That sounds obvious but, properly phrased, it will guarantee RR a mighty ovation.) This relates, of course, to the current assaults against them by Carter's I.R.S., N.L.R.B., Dept. of Labor, and the courts. By the way, Reagan's platform pledges to "halt the unconstitutional regulatory vendetta launched by Mr. Carter's IRS Commissioner against independent schools." He would do well to tell them that, in exactly those words.

   The prestige of the presidency -- Teddy Roosevelt's "bully pulpit" -- must take the lead in efforts to restore the sanctity of human life.

   Our education policies -- in the words of the GOP platform -- "must be based on the primacy of parental rights and responsibilities."

   One of the issues dearest to their hearts: again in the words of our platform, RR should "support Republican initiatives in the Congress to restore the right of individuals to participate in voluntary, non-denominational prayer in schools and other public facilities." This is something he is used to referring to. It will have its greatest impact with this audience.

8. This is an extremely delicate, but equally important matter. A pitch for greater political involvement by evangelicals across the board. Their leaders have major problems convincing the rank and file that politics is not inherently evil. RR should restate, in his own way, the arguments now being used by the national leaders -- Falwell, Billings, Robertson, Bright -- to activate their tremendous political potential.

   To wit: No other land or people have been as blessed by God as we have here. Each blessing brings with it the responsibility to use it wisely, to share it, to preserve it. Our natural resources, our power, our riches. And most of all, our liberty and the political system which sustains it. So we have, not just a right to vote and work in campaigns and run for office, but a duty to do so. That is the only way to ensure that the blessings of freedom will be handed down to our children, etc.

as its ever been...the words"In God WeTrust."

Its on every dollar bill. In fcat its probley the only thing baout the dollar that can be said to beas good today

Long before Jimmy Carer's demand that we trust <u>him</u> the American people set forth their belief in whom ultime trust should be placed in this world:In God We Trust.That not just amotto' Solzhenitsyn thats the foundation of our freedom.

Under tyrnanny, the love of God is a weapon; under freedom the love of God is a tool

This struglle transcends political partis and political prsonalities. There is no partisanship involved in the strglle to bring to public debate the tradtaionla valuees that are so obvioulsy under attcak today.

Ecah of us, guided by conscience, loyal to our princlilesl must ask, in the dpeths of his own spsirt: what role shall I take in this stuggle. If the anser is dircet political action, then bring to that cation the very best those values can give. If the aner is somethung differnet, something as ordinary--and as important--as local, non-partisan communiy work, bring to thatvwork the streghs that come form

But this baove all: never allow yourslef to be browbetan by those who say you have no right, no consitutional right, to see your view prevail in free and open debate. [illegible]

from the desk of . . .

John P. Mackey

Bill
See p 19
re religious
argument

See Pages 19 to 22 re religious arguments

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HARRIS, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* McRAE ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

No. 79–1268. Argued April 21, 1980—Decided June 30, 1980

Page 19 Key Pts

Title XIX of the Social Security Act established the Medicaid program in 1965 to provide federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons. Since 1976, versions of the so-called Hyde Amendment have severely limited the use of any federal funds to reimburse the cost of abortions under the Medicaid program. Actions were brought in Federal District Court by appellees (including indigent pregnant women, who sued on behalf of all women similarly situated, the New York City Health and Hospitals Corp., which operates hospitals providing abortion services, officers of the Women's Division of the Board of Global Ministries of the United Methodist Church (Women's Division), and the Women's Division itself), seeking to enjoin enforcement of the Hyde Amendment on grounds that it violates, *inter alia*, the Due Process Clause of the Fifth Amendment and the Religion Clauses of the First Amendment, and that, despite the Hyde Amendment, a participating State remains obligated under Title XIX to fund all medically necessary abortions. Ultimately, the District Court, granting injunctive relief, held that the Hyde Amendment had substantively amended Title XIX to relieve a State of any obligation to fund those medically necessary abortions for which federal reimbursement is unavailable, but that the Amendment violates the equal protection component of the Fifth Amendment's Due Process Clause and the Free Exercise Clause of the First Amendment.

Held:

1. Title XIX does not require a participating State to pay for those medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment. Pp. 7–11.

(a) The cornerstone of Medicaid is financial contribution by both the Federal Government and the participating State. Nothing in Title

XIX as originally enacted or in its legislative history suggests that Congress intended to require a participating State to assume the full costs of providing any health services in its Medicaid plan. To the contrary, Congress' purpose in enacting Title XIX was to provide federal financial assistance for all legitimate state expenditures under an approved Medicaid plan. Pp. 8–10.

(b) Nor does the Hyde Amendment's legislative history contain any indication that Congress intended to shift the entire cost of some medically necessary abortions to the participating States, but rather suggests that Congress has always assumed that a participating State would not be required to fund such abortions once federal funding was withdrawn pursuant to the Hyde Amendment. Pp. 10–11.

2. The funding restrictions of the Hyde Amendment do not impinge on the "liberty" protected by the Due Process Clause of the Fifth Amendment held in *Roe* v. *Wade*, 410 U. S. 168, to include the freedom of a woman to decide whether to terminate a pregnancy. Pp. 12–19.

(a) The Hyde Amendment places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy, but rather, by means of unequal subsidization of abortion and other medical services, encourages alternative activity deemed in the public interest. Cf. *Maher* v. *Roe*, 432 U. S. 464. Pp. 14–16.

(b) Regardless of whether the freedom of a woman to choose to terminate her pregnancy for health reasons lies at the core or the periphery of the due process liberty recognized in *Wade*, *supra*, it does not follow that a woman's freedom of choice carries with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices. Although government may not place obstacles in the path of a woman's exercise of her freedom of choice, it need not remove those not of its own creation, and indigency falls within the latter category. Although Congress has opted to subsidize medically necessary services generally, but not certain medically necessary abortions, the fact remains that the Hyde Amendment leaves an indigent woman with at least the same range of choice in deciding whether to obtain a medically necessary abortion as she would have had if Congress had chosen to subsidize no health care costs at all. Pp. 16–17.

(c) To translate the limitation on governmental power implicit in the Due Process Clause into an affirmative funding obligation would require Congress to subsidize the medically necessary abortion of an indigent woman even if Congress had not enacted a Medicaid program to subsidize other medically necessary services. Nothing in the Due Process Clause supports such an extraordinary result. P. 18.

3. Nor does the Hyde Amendment violate the Establishment Clause of

the First Amendment. The fact that the funding restrictions in the Hyde Amendment may coincide with the religious tenets of the Roman Catholic Church does not, without more, contravene that Clause. Pp. 19–20.

4. Appellees lack standing to raise a challenge to the Hyde Amendment under the Free Exercise Clause of the First Amendment. The named appellees consisting of indigent pregnant women suing on behalf of other women similarly situated lack such standing because none alleged, much less proved, that she sought an abortion under compulsion of religious belief. The named appellees consisting of officers of the Women's Division, although they provided a detailed description of their religious beliefs, failed to allege either that they are or expect to be pregnant or that they are eligible to receive Medicaid, and they therefore lacked the personal stake in the controversy needed to confer standing to raise such a challenge to the Hyde Amendment. And the Women's Division does not satisfy the standing requirements for an organization to assert the rights of its membership, since the asserted claim is one that required participation of the individual members for a proper understanding and resolution of their free exercise claims. Pp. 20–22.

5. The Hyde Amendment does not violate the equal protection component of the Due Process Clause of the Fifth Amendment. Pp. 22–27.

(a) While the presumption of constitutional validity of a statutory classification that does not itself impinge on a right or liberty protected by the Constitution disappears if the classification is predicated on criteria that are "suspect," the Hyde Amendment is not predicated on a constitutionally suspect classification. *Maher* v. *Roe*, *supra*. Although the impact of the Amendment falls on the indigent, that fact does not itself render the funding restrictions constitutionally invalid, for poverty, standing alone, is not a suspect classification. Pp. 22–24.

(b) Where, as here, Congress has neither invaded a substantive constitutional right or freedom, nor enacted legislation that purposefully operates to the detriment of a suspect class, the only requirement of equal protection is that congressional action be rationally related to a legitimate governmental interest. The Hyde Amendment satisfies that standard, since, by encouraging childbirth except in the most urgent circumstances, it is rationally related to the legitimate governmental objective of protecting potential life. Pp. 24–27.

Reversed and remanded.

STEWART, J., delivered the opinion of the Court, in which BURGER, C. J., and WHITE, POWELL, and REHNQUIST, JJ., joined. WHITE, J., filed a

concurring opinion. BRENNAN, J., filed a dissenting opinion, in which MARSHALL and BLACKMUN, JJ., joined. MARSHALL, BLACKMUN, and STEVENS, JJ., filed dissenting opinions.

SUPREME COURT OF THE UNITED STATES

No. 79–1268

Patricia R. Harris, Secretary of Health and Human Services, Appellant, *v.* Cora McRae et al.	On Appeal from the United States District Court for the Eastern District of New York.

[June 30, 1980]

MR. JUSTICE STEWART delivered the opinion of the Court.

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

I

The Medicaid program was created in 1965, when Congress added Title XIX to the Social Security Act, 79 Stat. 343, as amended, 42 U. S. C. § 1396 *et seq.* (1976 ed. and Supp. II), for the purpose of providing federal financial assistance to States that choose to reimburse certain costs of medical treat-

ment for needy persons. Although participation in the Medicaid program is entirely optional, once a State elects to participate, it must comply with the requirements of Title XIX.

One such requirement is that a participating State agree to provide financial assistance to the "categorically needy" [1] with respect to five general areas of medical treatment: (1) inpatient hospital services, (2) outpatient hospital services, (3) other laboratory and X-ray services, (4) skilled nursing facilities services, periodic screening and diagnosis of children, and family planning services, and (5) services of physicians. 42 U. S. C. §§ 1396a (a)(13)(B), 1396d (a)(1)–(5). Although a participating State need not "provide funding for all medical treatment falling within the five general categories, [Title XIX] does require that [a] state Medicaid plan[] establish 'reasonable standards . . . for determining . . . the extent of medical assistance under the plan which . . . are consistent with the objectives of [Title XIX].' 42 U. S. C. § 1396a (a)(17)." *Beal* v. *Doe,* 432 U. S. 438, 441.

Since September 1976, Congress has prohibited—either by an amendment to the annual appropriations bill for the Department of Health, Education, and Welfare [2] or by a joint resolution—the use of any federal funds to reimburse the cost of abortions under the Medicaid program except under

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[1] The "categorically needy" include families with dependent children eligible for public assistance under the Aid to Families with Dependent Children program, 42 U. S. C. § 601 *et seq.*, and the aged, blind, and disabled eligible for benefits under the Supplemental Security Income Program, 42 U. S. C. § 1381 *et seq.* See 42 U. S. C. § 1396a (a)(10)(A). Title XIX also permits a State to extend Medicaid benefits to other needy persons, termed "medically needy." See 42 U. S. C. § 1396a (a)(10)(C). If a State elects to include the medically needy in its Medicaid plan, it has the option of providing somewhat different coverage from that required for the categorically needy. See 42 U. S. C. § 1396a (a)(13)(C).

[2] The Department of Health, Education, and Welfare was recently renamed the Department of Health and Human Services. The original designation is retained for purposes of this opinion.

certain specified circumstances. This funding restriction is commonly known as the "Hyde Amendment," after its original congressional sponsor, Representative Hyde. 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 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. No. 94–439, § 209, 90 Stat. 1434, but narrower than that applicable for most of fiscal year 1978,[3] 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.[4]

On September 30, 1976, the day on which Congress enacted the initial version of the Hyde Amendment, these consolidated cases were filed in the District Court for the Eastern District of New York. The plantiffs—Cora McRae,

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[3] The appropriations for HEW during October and November 1977, the first two months of fiscal year 1978, were provided by joint resolutions that continued in effect the version of the Hyde Amendment applicable during fiscal year 1977. Pub. L. No. 95–130, 91 Stat. 1153; Pub. L. No. 95–165, 91 Stat. 1323.

[4] In this opinion, the term, "Hyde Amendment," is used generically to refer to all three versions of the Hyde Amendment, except where indicated otherwise.

a New York Medicaid recipient then in the first trimester of a pregnancy that she wished to terminate, the New York City Health and Hospitals Corp., a public benefit corporation that operates 16 hospitals, 12 of which provide abortion services, and others—sought to enjoin the enforcement of the funding restriction on abortions. They alleged that the Hyde Amendment violated the First, Fourth, Fifth, and Ninth Amendments of the Constitution insofar as it limited the funding of abortions to those necessary to save the life of the mother, while permitting the funding of costs associated with childbirth. Although the sole named defendant was the Secretary of Health, Education, and Welfare, the District Court permitted Senators James L. Buckley and Jesse A. Helms and Representative Henry J. Hyde to intervene as defendants.[5]

After a hearing, the District Court entered a preliminary injunction prohibiting the Secretary from enforcing the Hyde Amendment and requiring him to continue to provide federal reimbursement for abortions under the standards applicable before the funding restriction had been enacted. *McRae* v. *Mathews*, 421 F. Supp. 533. Although stating that it had not expressly held that the funding restriction was unconstitutional, since the preliminary injunction was not its final judgment, the District Court noted that such a holding was "implicit" in its decision granting the injunction. The District Court also certified the *McRae* case as a class action on behalf of all pregnant or potentially pregnant women in the State of New York eligible for Medicaid and who decide to have an abortion within the first 24 weeks of pregnancy, and of all authorized providers of abortion services to such women. *Id.*, at 543.

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[5] Although the intervenor-defendants are appellees in the Secretary's direct appeal to this Court, see Sup. Ct. Rule 10 (4), the term "appellees" is used in this opinion to refer only to the parties who were the plaintiffs in the District Court.

The Secretary then brought an appeal to this Court. After deciding *Beal* v. *Doe,* 432 U. S. 438, and *Maher* v. *Roe,* 432 U. S. 464, we vacated the injunction of the District Court and remanded the case for reconsideration in light of those decisions. *Califano* v. *McRae,* 433 U. S. 916.

On remand, the District Court permitted the intervention of several additional plaintiffs, including (1) four individual Medicaid recipients who wished to have abortions that allegedly were medically necessary but did not qualify for federal funds under the versions of the Hyde Amendment applicable in fiscal year 1977 and 1978, (2) several physicians who perform abortions for Medicaid recipients, (3) the Women's Division of the Board of Global Ministries of the United Methodist Church (Women's Division), and (4) two individual officers of the Women's Division.

An amended complaint was then filed, challenging the various versions of the Hyde Amendment on several grounds. At the outset, the plaintiffs asserted that the District Court need not address the constitutionality of the Hyde Amendment because, in their view, a participating State remains obligated under Title XIX to fund all medically necessary abortions, even if federal reimbursement is unavailable. With regard to the constitutionality of the Hyde Amendment, the plaintiffs asserted, among other things, that the funding restrictions violate the Religion Clauses of the First Amendment and the Due Process Clause of the Fifth Amendment.

After a lengthy trial, which inquired into the medical reasons for abortions and the diverse religious views on the subject,[6] the District Court filed an opinion and entered a judgment invalidating all versions of the Hyde Amendment on constitutional grounds.[7] The District Court rejected the

[6] The trial, which was conducted between August of 1977 and September of 1978, produced a record containing more than 400 documentary and film exhibits and a transcript exceeding 5,000 pages.

[7] The opinion of the District Court is as yet unreported.

plaintiffs' statutory argument, concluding that even though Title XIX would otherwise have required a participating State to fund medically necessary abortions, the Hyde Amendment had substantively amended Title XIX to relieve a State of that funding obligation. Turning then to the constitutional issues, the District Court concluded that the Hyde Amendment, though valid under the Establishment Clause,[8] violates the equal protection component of the Fifth Amendment's Due Process Clause and the Free Exercise Clause of the First Amendment. With regard to the Fifth Amendment, the District Court noted that when an abortion is "medically necessary to safeguard the pregnant woman's health, . . . the disentitlement to [M]edicaid assistance impinges directly on the woman's right to decide, in consultation with her physician and in reliance on his judgment, to terminate her pregnancy in order to preserve her health." [9] The Court concluded that the Hyde Amendment violates the equal protection guarantee because, in its view, the decision of Congress to fund medically necessary services generally but only certain medically necessary abortions serves no legitimate governmental interest. As to the Free Exercise Clause of the First Amendment, the Court held that insofar as a woman's decision to seek a medically necessary abortion may be a product of her religious beliefs under certain Protestant and Jewish tenets, the funding restrictions of the Hyde Amendment violate that constitutional guarantee as well.

Accordingly, the District Court ordered the Secretary to "[c]ease to give effect" to the various versions of the Hyde Amendment insofar as they forbid payments for medically

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[8] The District Court found no Establishment Clause infirmity because, in its view, the Hyde Amendment has a secular legislative purpose, its principal effect neither advances nor inhibits religion, and it does not foster an excessive governmental entanglement with religion.

[9] The District Court also apparently concluded that the Hyde Amendment operates to the disadvantage of a "suspect class," namely, teenage women desiring medically necessary abortions. See n. 26, *infra*.

necessary abortions. It further directed the Secretary to "continue to authorize the expenditure of federal matching funds [for such abortions]." In addition, the Court recertified the *McRae* case as a nationwide class action on behalf of all pregnant and potentially pregnant women eligible for Medicaid who wish to have medically necessary abortions, and of all authorized providers of abortions for such women.[10]

The Secretary then applied to this Court for a stay of the judgment pending direct appeal of the District Court's decision. We denied the stay, but noted probable jurisdiction of this appeal. 444 U. S. —.

II

It is well settled that if a case may be decided on either statutory or constitutional grounds, this Court, for sound jurisprudential reasons, will inquire first into the statutory question. This practice reflects the deeply rooted doctrine "that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable." *Spector Motor Co.* v. *McLaughlin,* 323 U. S. 101, 105. Accordingly, we turn first to the question whether Title XIX requires a State that participates in the Medicaid program to continue to fund those medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment. If a participating State is under such an obligation, the constitutionality of the Hyde Amendment need not be drawn into question in the present case, for the availability of medically necessary abortions under Medicaid would continue, with the participating State shouldering the total cost of funding such abortions.

The appellees assert that a participating State has an independent funding obligation under Title XIX because (1) the Hyde Amendment is, by its own terms, only a limitation on

[10] Although the original class included only those pregnant women in the first two trimesters of their pregnancy, the recertified class included all pregnant women regardless of the stage of their pregnancy.

federal reimbursement for certain medically necessary abortions, and (2) Title XIX does not permit a participating State to exclude from its Medicaid plan any medically necessary service solely on the basis of diagnosis or condition, even if federal reimbursement is unavailable for that service.[11] It is thus the appellees' view that the effect of the Hyde Amendment is to withhold federal reimbursement for certain medically necessary abortions, but not to relieve a participating State of its duty under Title XIX to provide for such abortions in its Medicaid plan.

The District Court rejected this argument. It concluded that although Title XIX would otherwise have required a participating State to include medically necessary abortions in its Medicaid program, the Hyde Amendment substantively amended Title XIX so as to relieve a State of that obligation. This construction of the Hyde Amendment was said to find support in the decisions of two Courts of Appeals, *Preterm, Inc.* v. *Dukakis*, 591 F. 2d 121 (CA1 1979), and *Zbaraz* v. *Quern*, 596 F. 2d 196 (CA7 1979), and to be consistent with the understanding of the effect of the Hyde Amendment by the Department of Health, Education, and Welfare in the administration of the Medicaid program.

We agree with the District Court, but for somewhat different reasons. The Medicaid program created by Title XIX is a cooperative endeavor in which the Federal Government provides financial assistance to participating States to aid

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[11] The appellees argue that their interpretation of Title XIX finds support in *Beal* v. *Doe*, 432 U. S. 438. There the Court considered the question whether Title XIX permits a participating State to exclude *non*-therapeutic abortions from its Medicaid plan. Although concluding that Title XIX does not preclude a State's refusal "to fund *unnecessary*—though perhaps desirable—medical services," the Court observed that "serious statutory questions might be presented if a state Medicaid plan excluded necessary medical treatment from its coverage." *Id.*, at 444–445 (emphasis in original). The Court in *Beal*, however, did not address the possible effect of the Hyde Amendment upon the operation of Title XIX,

them in furnishing health care to needy persons. Under this system of "cooperative federalism," *King* v. *Smith,* 392 U. S. 309, 316, if a State agrees to establish a Medicaid plan that satisfies the requirements of Title XIX, which include several mandatory categories of health services, the Federal Government agrees to pay a specified percentage of "the total amount expended . . . as medical assistance under the State plan. . . ." 42 U. S. C. § 1396b (a)(1). The cornerstone of Medicaid is financial contribution by both the Federal Government and the participating State. Nothing in Title XIX as originally enacted, or in its legislative history, suggests that Congress intended to require a participating State to assume the full costs of providing any health services in its Medicaid plan. Quite the contrary, the purpose of Congress in enacting Title XIX was to provide federal financial assistance for all legitimate state expenditures under an approved Medicaid plan. See S. Rep. No. 404, 89th Cong., 1st Sess., 83–85 (1965); H. R. Rep. No. 213, 89th Cong., 1st Sess., 72–74 (1965).

Since the Congress that enacted Title XIX did not intend a participating State to assume a unilateral funding obligation for any health service in an approved Medicaid plan, it follows that Title XIX does not require a participating State to include in its plan any services for which a subsequent Congress has withheld federal funding.[12] Title XIX was designed as a cooperative program of shared financial responsibility, not as a device for the Federal Government to compel a State to provide services that Congress itself is unwilling

[12] In *Preterm, Inc.* v. *Dukakis, supra,* 591 F. 2d, at 132, the opinion of the Court by Judge Coffin noted:

"The Medicaid program is one of federal and state cooperation in funding medical assistance; a complete withdrawal of the federal prop in the system with the intent to drop the total cost of providing the service upon the states, runs directly counter to the basic structure of the program and could seriously cripple a state's attempts to provide other necessary medical services embraced by its plan." (Footnote omitted.)

to fund. Thus, if Congress chooses to withdraw federal funding for a particular service, a State is not obliged to continue to pay for that service as a condition of continued federal financial support of other services. This is not to say that Congress may not now depart from the original design of Title XIX under which the Federal Government shares the financial responsibility for expenses incurred under an approved Medicaid plan. It is only to say that, absent an indication of contrary legislative intent by a subsequent Congress, Title XIX does not obligate a participating State to pay for those medical services for which federal reimbursement is unavailable.[13]

Thus, by the normal operation of Title XIX, even if a State were otherwise required to include medically necessary abortions in its Medicaid plan, the withdrawal of federal funding under the Hyde Amendment would operate to relieve the State of that obligation for those abortions for which federal reimbursement is unavailable.[14] The legislative history of the Hyde Amendment contains no indication whatsoever that Congress intended to shift the entire cost of such services to the participating States. See *Zbaraz* v. *Quern, supra,* 596 F. 2d, at 200 ("no one, whether supporting or opposing the Hyde Amendment, ever suggested that state funding would be re-

[13] When subsequent Congresses have deviated from the original structure of Title XIX by obligating a participating State to assume the full costs of a service as a prerequisite for continued federal funding of other services, they have always expressed their intent to do so in unambiguous terms. See *Zbaraz* v. *Quern, supra,* 596 F. 2d, at 200, n. 12.

[14] Since Title XIX itself provides for variations in the required coverage of state Medicaid plans depending on changes in the availability of federal reimbursement, we need not inquire, as the District Court did, whether the Hyde Amendment is a substantive amendment to Title XIX. The present case is thus different from *TVA* v. *Hill,* 437 U. S. 153, 189–193, where the issue was whether continued appropriations for the Tellico Dam impliedly repealed the substantive requirements of the Endangered Species Act prohibiting the continued construction of the Dam because it threatened the natural habitat of an endangered species.

quired"). Rather, the legislative history suggests that Congress has always assumed that a participating State would not be required to fund medically necessary abortions once federal funding was withdrawn pursuant to the Hyde Amendment.[15] See *Preterm, Inc.* v. *Dukakis, supra,* 591 F. 2d, at 130 ("[t]he universal assumption in debate was that if the Amendment passed there would be no requirement that states carry on the service"). Accord, *Zbaraz* v. *Quern, supra,* 596 F. 2d, at 200; *Hodgson* v. *Board of County Commissioners,* No. 79–1665, slip op., at 22 (CA8 1980); *Roe* v. *Casey,* No. 79–1108, slip op., at 12–17 (CA3 1980). Accordingly, we conclude that Title XIX does not require a participating State to pay for those medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment.[16]

III

Having determined that Title XIX does not obligate a participating State to pay for those medically necessary abortions for which Congress has withheld federal funding, we must consider the constitutional validity of the Hyde Amendment. The appellees assert that the funding restrictions of the Hyde Amendment violate several rights secured by the Constitution—(1) the right of a woman, implicit in the Due Process

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[15] Our conclusion that the Congress that enacted Title XIX did not intend a participating State to assume a unilateral funding obligation for any health service in an approved Medicaid plan is corroborated by the fact that subsequent Congresses simply assumed that the withdrawal of federal funding under the Hyde Amendment for certain medically necessary abortions would relieve a participating State of any obligation to provide for such services in its Medicaid plan. See the cases cited in the text, *supra.*

[16] A participating State is free, if it so chooses, to include in its Medicaid plan those medically necessary abortions for which federal reimbursement is unavailable. See *Beal* v. *Doe, supra,* 432 U. S., at 447; *Preterm, Inc.* v. *Dukakis, supra,* 591 F. 2d, at 134. We hold only that a State *need* not include such abortions in its Medicaid plan.

Clause of the Fifth Amendment, to decide whether to terminate a pregnancy, (2) the prohibition under the Establishment Clause of the First Amendment against any "law respecting an establishment of religion," and (3) the right to freedom of religion protected by the Free Exercise Clause of the First Amendment. The appellees also contend that, quite apart from substantive constitutional rights, the Hyde Amendment violates the equal protection component of the Fifth Amendment.[17]

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

A

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

In the *Wade* case, this Court held unconstitutional a Texas statute making it a crime to procure or attempt an abortion

[17] The appellees also argue that the Hyde Amendment is unconstitutionally vague insofar as physicians are unable to understand or implement the exceptions to the Hyde Amendment under which abortions are reimbursable. It is our conclusion, however, that the Hyde Amendment is not void for vagueness because (1) the sanction provision in the Medicaid Act contains a clear scienter requirement under which good-faith errors are not penalized, see *Colautti* v. *Franklin*, 439 U. S. 379, 395, and, (2), in any event, the exceptions to the Hyde Amendment "are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest." *Broadrick* v. *Oklahoma*, 413 U. S. 601, 608.

except on medical advice for the purpose of saving the mother's life. The constitutional underpinning of *Wade* was a recognition that the "liberty" protected by the Due Process Clause of the Fourteenth Amendment includes not only the freedoms explicitly mentioned in the Bill of Rights, but also a freedom of personal choice in certain matters of marriage and family life.[18] This implicit constitutional liberty, the Court in *Wade* held, includes the freedom of a woman to decide whether to terminate a pregnancy.

But the Court in *Wade* also recognized that a State has legitimate interests during a pregnancy in both ensuring the health of the mother and protecting potential human life. These state interests, which were found to be "separate and distinct" and to "grow[] in substantiality as the woman approaches term," *id.*, at 162–163, pose a conflict with a woman's untrammeled freedom of choice. In resolving this conflict, the Court held that before the end of the first trimester of pregnancy, neither state interest is sufficiently substantial to justify any instrusion on the woman's freedom of choice. In the second trimester, the state interest in maternal health was found to be sufficiently substantial to justify regulation reasonably related to that concern. And, at viability, usually in the third trimester, the state interest in protecting the potential life of the fetus was found to justify a criminal prohibition against abortions, except where necessary for the preservation of the life or health of the mother. Thus, inas-

[18] The Court in *Wade* observed that previous decisions of this Court had recognized that the liberty protected by the Due Process Clause "has some extension to activities relating to marriage, *Loving* v. *Virginia*, 388 U. S. 1, 12 (1967); procreation, *Skinner* v. *Oklahoma*, 316 U. S. 535, 541–542 (1942); contraception, *Eisenstadt* v. *Baird*, 405 U. S., at 453–454; *id.*, at 460, 463–465 (WHITE, J., concurring in result); family relationships, *Prince* v. *Massachusetts*, 321 U. S. 158, 166 (1944); and child rearing and education, *Pierce* v. *Society of Sisters*, 268 U. S. 510, 535 (1925); *Meyer* v. *Nebraska*, [262 U. S. 390, 399 (1923).]" 410 U. S., at 152–153.

much as the Texas criminal statute allowed abortions only where necessary to save the life of the mother and without regard to the stage of the pregnancy, the Court held in *Wade* that the statute violated the Due Process Clause of the Fourteenth Amendment.

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

It was the view of this Court that "the District Court misconceived the nature and scope of the fundamental right recognized in *Roe.*" 432 U. S., at 471. The doctrine of *Roe* v. *Wade,* the Court held in *Maher,* "protects the woman from unduly burdensome interference with her freedom to decide whether to terminate her pregnancy," *id.,* at 473–474, such as the severe criminal sanctions at issue in *Roe* v. *Wade, supra,* or the absolute requirement of spousal consent for an abortion challenged in *Planned Parenthood of Central Missouri* v. *Danforth,* 428 U. S. 52.

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

> "The Connecticut regulation before us is different in kind from the laws invalidated in our previous abortions deci-

sions. The Connecticut regulation places no obstacles—absolute or otherwise—in the pregnant woman's path to an abortion. An indigent woman who desires an abortion suffers no disadvantage as a consequence of Connecticut's decision to fund childbirth; she continues as before to be dependent on private sources for the service she desires. The State may have made childbirth a more attractive alternative, thereby influencing the woman's decision, but it has imposed no restriction on access to abortions that was not already there. The indigency that may make it difficult—and in some cases, perhaps, impossible—for some women to have abortions is neither created nor in any way affected by the Connecticut regulation." *Id.*, at 474.

The Court in *Maher* noted that its description of the doctrine recognized in *Wade* and its progeny signaled "no retreat" from those decisions. In explaining why the constitutional principle recognized in *Wade* and later cases—protecting a woman's freedom of choice—did not translate into a constitutional obligation of Connecticut to subsidize abortions, the Court cited the "basic difference between direct state interference with a protected activity and state encouragement of an alternative activity consonant with legislative policy. Constitutional concerns are greatest when the State attempts to impose its will by force of law; the State's power to encourage actions deemed to be in the public interest is necessarily far broader." *Id.*, at 475–476. Thus, even though the Connecticut regulation favored childbirth over abortion by means of subsidization of one and not the other, the Court in *Maher* concluded that the regulation did not impinge on the constitutional freedom recognized in *Wade* because it imposed no governmental restriction on access to abortions.

The Hyde Amendment, like the Connecticut welfare regulation at issue in *Maher*, places no governmental obstacle in the path of a woman who chooses to terminate her preg-

nancy, but rather, by means of unequal subsidization of abortion and other medical services, encourages alternative activity deemed in the public interest. The present case does differ factually from *Maher* insofar as that case involved a failure to fund nontherapeutic abortions, whereas the Hyde Amendment withholds funding of certain medically necessary abortions. Accordingly, the appellees argue that because the Hyde Amendment affects a significant interest not present or asserted in *Maher*—the interest of a woman in protecting her health during pregnancy—and because that interest lies at the core of the personal constitutional freedom recognized in *Wade*, the present case is constitutionally different from *Maher*. It is the appellees' view that to the extent that the Hyde Amendment withholds funding for certain medically necessary abortions, it clearly impinges on the constitutional principle recognized in *Wade*.

It is evident that a woman's interest in protecting her health was an important theme in *Wade*. In concluding that the freedom of a woman to decide whether to terminate her pregnancy falls within the personal liberty protected by the Due Process Clause, the Court in *Wade* emphasized the fact that the woman's decision carries with it significant personal health implications—both physical and psychological. 410 U. S., at 153. In fact, although the Court in *Wade* recognized that the state interest in protecting potential life becomes sufficiently compelling in the period after fetal viability to justify an absolute criminal prohibition of nontherapeutic abortions, the Court held that even after fetal viability a State may not prohibit abortions "necessary to preserve the life or health of the mother." *Id.*, at 164. Because even the compelling interest of the State in protecting potential life after fetal viability was held to be insufficient to outweigh a woman's decision to protect her life or health, it could be argued that the freedom of a woman to decide whether to terminate her pregnancy for health reasons does in fact lie at the core of the constitutional liberty identified in *Wade*.

But, regardless of whether the freedom of a woman to choose to terminate her pregnancy for health reasons lies at the core or the periphery of the due process liberty recognized in *Wade*, it simply does not follow that a woman's freedom of choice carries with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices. The reason why was explained in *Maher*: although government may not place obstacles in the path of a woman's exercise of her freedom of choice, it need not remove those not of its own creation. Indigency falls in the latter category. The financial constraints that restrict an indigent woman's ability to enjoy the full range of constitutionally protected freedom of choice are the product not of governmental restrictions on access to abortions, but rather of her indigency. Although Congress has opted to subsidize medically necessary services generally, but not certain medically necessary abortions, the fact remains that the Hyde Amendment leaves an indigent woman with at least the same range of choice in deciding whether to obtain a medically necessary abortion as she would have had if Congress had chosen to subsidize no health care costs at all. We are thus not persuaded that the Hyde Amendment impinges on the constitutionally protected freedom of choice recognized in *Wade*.[19]

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[19] The appellees argue that the Hyde Amendment is unconstitutional because it "penalizes" the exercise of a woman's choice to terminate a pregnancy by abortion. See *Memorial Hospital* v. *Maricopa County*, 415 U. S. 250; *Shapiro* v. *Thompson*, 394 U. S. 618. This argument falls short of the mark. In *Maher*, the Court found only a "semantic difference" between the argument that Connecticut's refusal to subsidize nontherapeutic abortions "unduly interfere[d]" with the exercise of the constitutional liberty recognized in *Wade* and the argument that it "penalized" the exercise of that liberty. 432 U. S., at 474, n. 8. And, regardless of how the claim was characterized, the *Maher* Court rejected the argument that Connecticut's refusal to subsidize protected conduct, without more, impinged on the constitutional freedom of choice. This reasoning is equally applicable in the present case. A substantial constitutional question would

Although the liberty protected by the Due Process Clause affords protection against unwarranted government interference with freedom of choice in the context of certain personal decisions, it does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom. To hold otherwise would mark a drastic change in our understanding of the Constitution. It cannot be that because government may not prohibit the use of contraceptives, *Griswold* v. *Connecticut*, 381 U. S. 479, or prevent parents from sending their child to a private school, *Pierce* v. *Society of Sisters*, 268 U. S. 510, government, therefore, has an affirmative constitutional obligation to ensure that all persons have the financial resources to obtain contraceptives or send their children to private schools. To translate the limitation on governmental power implicit in the Due Process Clause into an affirmative funding obligation would require Congress to subsidize the medically necessary abortion of an indigent woman even if Congress had not enacted a Medicaid program to subsidize other medically necessary services. Nothing in the Due Process Clause supports such an extraordinary result.[20] Whether freedom of choice that is constitutionally

arise if Congress had attempted to withhold all Medicaid benefits from an otherwise eligible candidate simply because that candidate had exercised her constitutionally protected freedom to terminate her pregnancy by abortion. This would be analogous to *Sherbert* v. *Verner*, 374 U. S. 398, where this Court held that a State may not, consistent with the First and Fourteenth Amendments, withhold *all* unemployment compensation benefits from a claimant who would otherwise be eligible for such benefits but for the fact that she is unwilling to work one day per week on her Sabbath. But the Hyde Amendment, unlike the statute at issue in *Sherbert*, does not provide for such a broad disqualification from receipt of public benefits. Rather, the Hyde Amendment, like the Connecticut welfare provision at issue in *Maher*, represents simply a refusal to subsidize certain protected conduct. A refusal to fund protected activity, without more, cannot be equated with the imposition of a "penalty" on that activity.

[20] As this Court in *Maher* observed: "The Constitution imposes no obligation on the [Government] to pay the pregnancy-related medical expenses of indigent women, or indeed to pay any of the medical expenses of indigents." 432 U. S., at 469.

protected warrants federal subsidization is a question for Congress to answer, not a matter of constitutional entitlement. Accordingly, we conclude that the Hyde Amendment does not impinge on the due process liberty recognized in *Wade*.[21]

B

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

1

It is well settled that "a legislative enactment does not contravene the Establishment Clause if it has a secular legislative purpose, if its principal or primary effect neither advances nor inhibits religion, and if it does not foster an excessive governmental entanglement with religion." *Committee for Pub. Ed. & Rel. Lib.* v. *Regan*, 444 U. S. —, —. Applying this standard, the District Court properly concluded that the Hyde Amendment does not run afoul of the Establishment Clause. Although neither a State nor the Federal Government can constitutionally "pass laws which aid one religion, aid all religions, or prefer one religion over an-

[21] Since the constitutional entitlement of a physician who administers medical care to an indigent woman is no broader than that of his patient, see *Whalen* v. *Roe*, 429 U. S. 589, 604, and n. 33, we also reject the appellees' claim that the funding restrictions of the Hyde Amendment violate the due process rights of the physician who advises a Medicaid recipient to obtain a medically necessary abortion.

other," *Everson* v. *Board of Education,* 330 U. S. 1, 15, it does not follow that a statute violates the Establishment Clause because it "happens to coincide or harmonize with the tenets of some or all religions." *McGowan* v. *Maryland,* 366 U. S. 420, 442. That the Judaeo-Christian religions oppose stealing does not mean that a State or the Federal Government may not, consistent with the Establishment Clause, enact laws prohibiting larceny. *Ibid.* The Hyde Amendment, as the District Court noted, is as much a reflection of "traditionalist" values towards abortion, as it is an embodiment of the views of any particular religion. See also *Roe* v. *Wade, supra,* 410 U. S., at 138–141. In sum, we are convinced that the fact that the funding restrictions in the Hyde Amendment may coincide with the religious tenets of the Roman Catholic Church does not, without more, contravene the Establishment Clause.

2

We need not address the merits of the appellees' arguments concerning the Free Exercise Clause, because the appellees lack standing to raise a free exercise challenge to the Hyde Amendment. The named appellees fall into three categories: (1) the indigent pregnant women who sued on behalf of other women similarly situated, (2) the two officers of the Women's Division of the Board of Global Ministries of the United Methodist Church (Women's Division), and (3) the Women's Division itself.[22] The named appellees in the first category lack standing to challenge the Hyde Amendment on free exercise grounds because none alleged, much less proved, that she sought an abortion under compulsion of religious belief.[23] See *McGowan* v. *Maryland, supra,* 366 U. S., at 429.

[22] The remaining named appellees, including the individual physicians and the New York City Health and Hospitals Corp., did not attack the Hyde Amendment on the basis of the Free Exercise Clause of the First Amendment.

[23] These named appellees sued on behalf of the class of "women of all religious and nonreligious persuasions and beliefs who have, in accordance

Although the named appellees in the second category did provide a detailed description of their religious beliefs, they failed to allege either that they are or expect to be pregnant or that they are eligible to receive Medicaid. These named appellees, therefore, lack the personal stake in the controversy needed to confer standing to raise such a challenge to the Hyde Amendment. See *Warth* v. *Seldin*, 422 U. S. 490, 498–499.

Finally, although the Women's Division alleged that its membership includes "pregnant Medicaid eligible women who, as a matter of religious practice and in accordance with their conscientious beliefs, would choose but are precluded or discouraged from obtaining abortions reimbursed by Medicaid because of the Hyde Amendment," the Women's Division does not satisfy the standing requirements for an organization to assert the rights of its membership. One of those requirements is that "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt* v. *Washington Apple Advertising Comm'n*, 432 U. S. 333, 343. Since "it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion," *Abington School Dist.* v. *Schempp*, 374 U. S. 202, 223, the claim asserted here is one that ordinarily requires individual participation.[24] In the present case, the Women's Division concedes that "the permissibility, advisability and/or necessity of abortion according to circumstance is a matter about which

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with the teaching of their religion and/or the dictates of their conscience determined that an abortion is necessary." But since we conclude below that the named appellees have not established their own standing to sue, "[t]hey cannot represent a class of whom they are not a part." *Bailey* v. *Patterson*, 369 U. S. 31, 32–33. See also *O'Shea* v. *Littleton*, 414 U. S. 488, 494–495.

[24] For example, in *Board of Education* v. *Allen*, 392 U. S. 236, 249, the Court found no free exercise violation since the plaintiffs had "not contended that the [statute in question] coerce[d] them *as individuals* in the practice of their religion." (Emphasis added.)

there is diversity of view within . . . our membership, and is a determination which must be ultimately and absolutely entrusted to the conscience of the individual before God." It is thus clear that the participation of individual members of the Women's Division is essential to a proper understanding and resolution of their free exercise claims. Accordingly, we conclude that the Women's Division, along with the other named appellees, lack standing to challenge the Hyde Amendment under the Free Exercise Clause.

C

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

The guarantee of equal protection under the Fifth Amendment is not a source of substantive rights or liberties,[25] but rather a right to be free from invidious discrimination in statutory classifications and other governmental activity. It is well-settled that where a statutory classification does not itself impinge on a right or liberty protected by the Constitution, the validity of classification must be sustained unless "the classification rests on grounds wholly irrelevant to the achievement of [any legitimate governmental] objective."

[25] An exception to this statement is to be found in *Reynolds* v. *Sims*, 377 U. S. 533, and its progeny. Although the Constitution of the United States does not confer the right to vote in state elections, see *Minor* v. *Happersett*, 21 Wall. 162, 178, *Reynolds* held that if a State adopts an electoral system, the Equal Protection Clause of the Fourteenth Amendment confers upon a qualified voter a substantive right to participate in the electoral process equally with other qualified voters. See, *e. g.*, *Dunn* v. *Blumstein*, 405 U. S. 330, 336.

McGowan v. *Maryland, supra,* 366 U. S., at 425. This presumption of constitutional validity, however, disappears if a statutory classification is predicated on criteria that are, in a constitutional sense, "suspect," the principal example of which is a classification based on race, *e. g., Brown* v. *Board of Education,* 347 U. S. 483.

1

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

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

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

It is our view that the present case is indistinguishable from *Maher* in this respect. Here, as in *Maher,* the principal impact of the Hyde Amendment falls on the indigent. But

that fact does not itself render the funding restriction constitutionally invalid, for this Court has held repeatedly that poverty, standing alone, is not a suspect classification. See, *e. g., James* v. *Valtierra,* 402 U. S. 137. That *Maher* involved the refusal to fund nontherapeutic abortions, whereas the present case involves the refusal to fund medically necessary abortions, has no bearing on the factors that render a classification "suspect" within the meaning of the constitutional guarantee of equal protection.[26]

2

The remaining question then is whether the Hyde Amend-

[26] Although the matter is not free from doubt, the District Court seems to have concluded that teenage women desiring medically necessary abortions constitute a "suspect class" for purposes of triggering a heightened level of equal protection scrutiny. In this regard, the District Court observed that the Hyde Amendment "clearly operate[s] to the disadvantage of one suspect class, that is to the disadvantage of the statutory class of adolescents at a high risk of pregnancy . . . , and particularly those seventeen and under." The "statutory" class to which the District Court was referring is derived from the Adolescent Health Services and Pregnancy Prevention and Care Act, 42 U. S. C. § 300a–21 *et seq.* (Supp. II 1979). It was apparently the view of the District Court that since statistics indicate that women under 21 years of age are disproportionately represented among those for whom an abortion is medically necessary, the Hyde Amendment invidiously discriminates against teenage women.

But the Hyde Amendment is facially neutral as to age, restricting funding for abortions for women of all ages. The District Court erred, therefore, in relying solely on the disparate impact of the Hyde Amendment in concluding that it discriminated on the basis of age. The equal protection component of the Fifth Amendment prohibits only purposeful discrimination, *Washington* v. *Davis,* 426 U. S. 229, and when a facially neutral federal statute is challenged on equal protection grounds, it is incumbent upon the challenger to prove that Congress "selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects on an identifiable group." *Personnel Administrator of Mass.* v. *Feeney,* 442 U. S. 256, 279. There is no evidence to support such a finding of intent in the present case.

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

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

It follows that the Hyde Amendment, by encouraging childbirth except in the most urgent circumstances, is rationally related to the legitimate governmental objective of protecting potential life. By subsidizing the medical expenses of indigent women who carry their pregnancies to term while not subsidizing the comparable expenses of women who undergo abortions (except those whose lives are threatened),[27] Congress has established incentives that make childbirth a more attractive alternative than abortion for persons eligible for Medicaid. These incentives bear a direct relationship to the legitimate congressional interest in protecting potential life. Nor is it irrational that Congress has authorized federal reimbursement for medically necessary services generally,

[27] We address here the constitutionality of the most restrictive version of the Hyde Amendment, namely, that applicable in fiscal year 1976 under which federal funds were unavailable for abortions "except where the life of the mother would be endangered if the fetus were carried to term." Three versions of the Hyde Amendment are at issue in this case. If the most restrictive version is constitutionally valid, so too are the others.

but not for certain medically necessary abortions.[28] Abortion is inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life.

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

Where, as here, the Congress has neither invaded a substantive constitutional right or freedom, nor enacted legislation that purposefully operates to the detriment of a suspect class, the only requirement of equal protection is that congressional action be rationally related to a legitimate governmental interest. The Hyde Amendment satisfies that standard. It is not the mission of this Court or any other to decide whether the balance of competing interests reflected in the Hyde Amendment is wise social policy. If that were our mission, not every Justice who has subscribed to the judgment of the Court today could have done so. But we cannot, in the name of the Constitution, overturn duly enacted statutes simply "because they may be unwise, improvident, or out of harmony with a particular school of thought." *Williamson* v. *Lee*

[28] In fact, abortion is not the only "medically necessary" service for which federal funds under Medicaid are sometimes unavailable to otherwise eligible claimants. See 42 U. S. C. § 1396d (a)(17)(B) (inpatient hospital care of patients between 21 and 65 in institutions for tuberculosis or mental disease not covered by Title XIX).

Optical Co., 348 U. S. 483, 488, quoted in *Dandridge* v. *Williams*, 397 U. S. 471, 484. Rather, "when an issue involves policy choices as sensitive as those implicated [here] . . . , the appropriate forum for their resolution in a democracy is the legislature." *Maher* v. *Roe, supra,* at 479.

IV

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

It is so ordered.