United States Coalition for Life
Box 315 · Export, Pennsylvania · 412/327-7379

file

Dear Mr. Blackwell,

Just a note to thank you for all the materials we have been receiving and studying. Perhaps we shall have an opportunity to meet in person at a later date.

I am sending materials on population and national policy for your files and for the information of the President. I do not beleive that the full implications of a declining and aging population in the United States have rung a bell with national policy decision makers.

Col. de Marcellus's two major papers on population and national security should be of interest - especially the conclusions he reaches.

Best regards,

Randy Engel (Mrs.)

HOWARD H. BAKER, JR.
TENNESSEE

United States Senate

WASHINGTON, D.C. 20510

July 2, 1982

J.C. Willke, M.D.
President, National Right to Life
Committee, Inc.
Suite 402
419 7th Street, N.W.
Washington, D.C. 20004

Dear Dr. Willke:

In response to your letter of July 1 to President Reagan, I have not announced an intention not to schedule S.J.Res.110 for consideration by the Senate.

As you know, Senator Helms plans to offer S.2148 as an amendment to the legislation extending the debt ceiling. It is premature, at this time, to speculate as to the possible parameters of that debate. I will certainly honor my commitment to allow for full Senate consideration of the abortion issue.

Sincerely,

Howard H. Baker, Jr.

HHBJr:lpz

Tax Use To Aid Infertile Indigents Arouses Debate

By LINDA KOZUB
Staff Writer, The San Diego Union

San Diego Union
Thurs., 12/18/80

Acceptance by county supervisors of a federally funded program to help indigent couples who need medical assistance with infertility problems appeared slim yesterday.

Four votes would be needed to accept the federal grant and transfer it into an account to be used for the program. Supervisors Roger Hedgecock and Paul Eckert voiced their opposition. The leading proponent of the program, Lucille Moore, will no longer be on the board when the matter is voted on next month.

Dr. Georgia P. Reaser of the county Health Services Department told board members yesterday that the U.S. Health, Education and Welfare Department has offered a demonstration program grant for $61,700 for infertility services to low-income couples. Earlier this year, the board authorized the submission of an application by Planned Parenthood Association of San Diego for the grant.

Planned Parenthood is operating on an HEW contract for $283,643 plus a contract for $56,486 in federal revenue-sharing money.

The supervisors yesterday directed the Health Services staff to come back Jan. 13 with a precise breakdown of how the additional $61,700 in special federal grant money is to be used.

Eckert objected to the grant, saying public tax money should not be used for this purpose.

Reaser said the $61,700 grant could be used only for an infertility program. She said the money would allow Planned Parenthood to provide 50 couples a medical history, physical examination, laboratory tests, di-

(Continued on B-4, Col. 1)

ARE INDIGENTS ENTITLED?

Tax Aid For Infertile Stirs Debate

(Continued from B-1)

agnostic and therapeutic services and referrals for surgical or medical treatment.

Hedgecock agreed with Eckert, adding that helping indigents to have babies was contrary to the county's family planning efforts.

"My concern in the world is that there are too many people," Hedgecock said. "I think to go out and find some poor people who may have problems having babies and assist them to do that ... is in counter to the rest of the program."

Reaser said the county-supported family planning program assists couples in spacing their children, provides other birth-control counseling and helps couples who want children.

"We feel those who are poor have just as many rights to have families as those who have more money," she said.

Moore argued on behalf of the program, agreeing with Reaser.

Other family planning services to receive federal money from the federal Department of Health and Human Services include the San Diego Urban League ($74,515) and the County of San Diego ($322,985).

San Diego Union, Thursday, Dec. 18, 1980

Abortion-Clinic Plan Voted

But Valley Residents Oppose Increased Services

By LEW SCARR
Medical Writer, The San Diego Union

The recommended establishment of controversial abortion and sterilization clinics in Imperial County by 1983 is part of a long-range health-care plan adopted by the Health Systems Agency yesterday.

The health systems plan approved by HSA's governing body is a comprehensive overview of health-care services in two counties, with plans for improving them during the next five years.

It covers virtually every phase of the health-care delivery system, but the section devoted to "reproductive health services" — specifically the need for abortion and sterilization services for Imperial County women "at a reasonable cost" — was the only one to draw public fire.

HSA, which monitors health care in San Diego and Imperial counties, did not recommend increasing abortion service for San Diego County because of the number of clinics already in operation.

Opponents of the increase in abortion services in Imperial County arrived at the HSA meeting yesterday hearing what they said were 2,500 signatures asking for a new study of the needs of the valley before final action was taken.

But the HSA officials said they had heard arguments against plans for abortion service at earlier public hearings in Imperial Valley and declined to take any further public testimony yesterday.

Outside the meeting, Donna Darrow and Marian Good, both of El Centro, told reporters that testimony at those hearings was insufficient because the public was not properly notified.

They said officials in El Centro told them the governing body would not act on the health-care plan yesterday and that is why they arrived only with their petitions and not more supporters.

"There is no need for more abortion services in the valley," Darrow said. "Doctors are already providing it."

Good said seven obstetrician-gynecologists told her they are now doing abortions.

But inside, at the HSA meeting, governing body President Joni M. Steinman shut off Darrow when she tried to speak. Other members conceded the abortion issue is difficult.

"There are certain groups in this country that will not be satisfied with anything we do dealing with abortion," said Pamelo O'Neil. "Sectarian and religious issues do not belong in this forum.

"It is our charge to plan for who needs and wants an abortion just as we need to plan for those who may need an appendectomy."

Mary Helen Abbey, another governing body member, said the health systems plan is not creating an abortion service.

"Planning is not delivering a service," Abbey said, "but pointing out a need. Down the line comes provision of a service, but now we are simply making a statement about what we think is a (needed) service.

"We have had our hearings. I think we have dealt with the issue."

Joseph O'Brien, who represents Imperial County on the HSA governing body, said, "I have heard all of the arguments and I am ready to vote."

The vote for the health systems plan, which is a 12-volume analysis of the health-care needs in San Diego and Imperial counties for 1980-1985, was unanimous. Federal law requires health systems agencies to maintain a health systems plan that looks five years ahead and is updated annually.

At a governing body meeting held in October in Imperial County, the HSA approved a draft version of the plan which subsequently has been approved by the state Advisory Health Council.

Good and Darrow said they will take their c... now to the federal Depa... ment of Health and Hum... Services.

U.S. Senate

The Phone number for all Senators is: (202) 224-3121 (Call and ask for each Senate Office by Name)

The Address for all Senators is:
Senator _____
Senate Office Building
Washington, D.C. 20510

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Edwin Meese, III, Presidential Advisor

David Stockman, Director of Management and Budget

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The Phone number for the White House is: (202) 456-1414

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SPECIAL NOTE; For complete details on USAID's connection with the Pathfinder Fund and the IRIDE see pages 23-28 of the USCL White Paper THE INTERNATIONAL POPULATION CONTROL MACHINE AND THE PATHFINDER FUND

Soap-Opera Motivation

US-AID has long had an interest in both the photonovella (a printed, illustrated "soap opera") and the comic book as means of communicating specific messages about family planning and population control. It has found this type of material especially suited to "pictorially naive" audiences.[125]

For example, in 1972 the US-AID mission in Panama purchased, at a cost of $1,100 in Title X funds, 10,000 copies of a Mexican comic book titled *Los Supermachos*, as part of its "responsible parenthood" program. The book's front cover shows a worn-out little Mexican mother kneeling in prayer before a statue of the Blessed Virgin Mary. The blasphemous caption reads: "Little Virgin, you who conceived without sinning, teach me to sin without conceiving."[126]

Additional anti-Catholic and anti-child propaganda, like the photonovellas or comic books I am about to describe, is currently being developed and distributed by US-AID outlets around the world, especially in Latin America, Africa, and Asia.

Pathpapers

A series of occasional papers on innovative projects supported by The Pathfinder Fund

Series Editor: Ronald S. Waite
Number 2 *December 1977*

DeMarchi's Psychosocial Propaganda

Beginning in the mid-1970s, Luigi DeMarchi received a number of Pathfinder grants for "motivational research" to be conducted by IRIDE. His findings were published in the US-AID-Pathfinder publication *Pathpaper* in December 1977. The front-page synopsis of the DeMarchi paper ("New Psychological Approaches to Family Planning Motivation") reads:

> New theoretical concepts for family-planning motivation have been tested in Italy since 1974. Moralistic appeals aimed at the individual's sense of responsibility have little or no influence on sexual and reproductive behavior. *More effective are appeals based on human instincts such as sexual vanity and jealousy, desire for appreciation and satisfaction, or the conflict between generations or social classes.* Three photonovellas—a popular romantic medium similar to a photographic comic book—were written using these themes. Studies in selected towns showed that readers' knowledge of and attitude towards contraception improved and contraceptive sales increased during these campaigns, which indicates that appealing to basic emotional instincts through indigenous media can be effective in motivating family-planning practice.[127] [Emphasis added]

According to DeMarchi, the targets of propaganda should be not only the women who have many children already but also the young people who are just beginning their reproductive lives. "Family-planning motivation must be aimed at fostering small family size as a social ideal among young couples,"

In *Noi Giovani* the hero and heroine, Gianni and Silvia, are a very young, attractive, and intelligent couple with promising careers ahead of them. They are disturbed because their parents have been urging them to get married and raise a family.[136]

Silvia runs into two friends, one of whom is old and haggard from having so many children, and the other lovely and still shapely because—of course—she practices "family planning."

The couple, attending a doctor's lecture on birth control, hear him describe the Pill as "completely harmless" for most women. Later, Gianni tells his friends that he and Silvia will not "repeat the errors of past generations, which have left us with an overpopulated world—full of wars, hunger, and pollution. . . . One time, people made little love and many children. We young people instead want few children [illegible]"

Noi Giovani [*We, the Youth*] and *La Trappola* [*The Trap*]. The generation gap and class conflict are featured in two DeMarchi photonovellas. According to the socialist writer, "Class conflict, particularly as perceived between the general population and the powerful (the rich, the employers, the Church, the government), is another extremely potent and sometimes dangerous emotional drive."[134] "They" (the powerful) can be portrayed as wanting "the people" to be burdened by too many children.[135]

In *La Trappola* the hero is a construction worker named Marco.[137] While on the job at a military base, he overhears a phone call announcing the birth of a new baby to one of his co-workers. To celebrate the event the boss invites the base commander and chaplain (in full Roman Catholic clerical garb) to have drinks at the office. They all toast the new child.

Later, Marco angrily recalls this scene and the plight of the workers, especially those who must work overtime without just wages to support extra-large families. The older men tell him that they are beyond help but he is young and has a future.

The photonovella ends as Marco points his finger at the trio—the boss, the priest, and the military commander—above the caption: "Don't you too fall into the Trap! Do not have more than one or two children! The priests and bosses want [to see] us overflowing with children—as numerous as ants in order to dominate and exploit us."

Il Segreto opens with a couple in bed arguing about withdrawal.[133] The beautiful and sensuous Lisa says the act is frustrating, but she is fearful of becoming pregnant. Franco, her handsome, virile companion, sympathizes with her but has no solution to offer. In the next love-making session, Franco congratulates Lisa on her performance, which she then attributes to her secret: the Pill. Lisa assures Franco that she got the Pill from a doctor, who told her to take it without fear. She concludes with an expression of relief that she no longer has to worry about the "terrible risks of illegal abortion."

DeMarchi identifies Pathfinder as the agency providing the financial support for the research and development leading up to the photonovella format and contents and the field-testing of his materials in Italy.

Il Segreto [*The Secret*]. "Intersexual instincts" is the dominant theme of DeMarchi's photonovella *Il Segreto*, which wants readers to associate "contraceptive proficiency with a man's sexual charms and success (rather than with his prudence and sense of responsibility)" and "equate prolific reproduction with sexual ineptitude."[130] Contraceptive use is to be tied to eliminating frustrations and enhancing sexual satisfaction, thereby destroying the myth that contraception leads to infidelity (a common misconception).[131]

While DeMarchi notes that "machismo, jealousy, and frustration" are not necessarily "admirable social conditions," he justifies their use in family propaganda because they are a fact of life that can be used to change reproductive behavior.[132]

national RIGHT TO LIFE committee, inc.

Suite 402, 419 7th Street, N.W.
Washington D.C. 20004 -- (202) 638-4[illegible]

April 7, 1982

The President
The White House
Washington, D.C. 20500

Dear President Reagan:

I am very pleased to have received your recent letter indicating again your support for a pro-life initiative in this Congress.

As you know, there have been sharp differences in the pro-life movement as to whether the Helms Human Life Bill (S. 158, S. 1741, S. 2148) or the Hatch Amendment (SJR 110) is the wisest strategy, and over which should be pushed first.

The National Right to Life Committee, of which I am president, has all of the 50 state right-to-life organizations represented on its board. In October we were split right down the middle. The Helms Bill had been endorsed by 28 votes (out of 54), and action on the newly introduced Hatch Amendment was deferred when an endorsement was deemed questionable.

Since that time the "Hatch" has been endorsed at three successive Board meetings and by increasingly lopsided votes (30-24, 30-22, and two weeks ago by 32-16).

This most recent vote was to endorse the Helms Bill and the Hatch Amendment as a package. The 16 nays represented 14 states, one of which has since withdrawn its opposition. Clearly there is momentum toward unity in support of both initiatives, one or both of which will probably come to the floor during the next two months.

I am not asking that you favor one over the other. I do believe that you can be a great help to the pro-life movement at this time, however, if you would come out publicly in support of both.

With respect to the Hatch Amendment, it would be helpful if you would explicitly state that it would no longer be an acceptable pro-life proposal if the authorization of federal abortion restrictions were removed. We expect that such a weakening amendment will be offered on the Senate floor. If it were successful, the National Right to Life Committee would be forced to oppose the resulting "states' rights" amendment.

A clear public statement of support for both the federalism amendment and the Human Life Bill would engender widespread gratitude among those millions of pro-life people who have supported you across the nation.

It would also be a real shot in the arm for our chances of success in this Congress. I have recently talked to Henry Hyde, who warmly supports both measures.

I have understood and sympathized with why you haven't committed yet on either. Perhaps though, now is the time to support both. I certainly urge you to do so.

With assurances of our continuing respect and support, I remain,

Sincerely for Life,

J.C. Willke, M.D.
President

JCW:sb

cc: Morton Blackwell

national RIGHT TO LIFE committee, inc.

Suite 341, National Press Bldg. — 529 14th Street, N.W. —
Washington, D.C. 20045 — (202) 638-4396

September 9, 1981

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

On my return August 19 from East Africa I was informed of the enclosed letter, which received extensive media exposure through Patrick Buchanan's syndicated column. The letter, allegedly written by you to Mrs. Marie Craven of Chicago, Ill., states in part "I believe that most of the talk about my appointment was stirred up principally by one person in Arizona. I have done a great deal of checking on this and have found this person has something of a record of being vindictive."

The media has assumed that I am that "vindictive" person and this widely publicized assumption has not been denied by the White House.

In my July 15 letter to Attorney General William French Smith, regarding the Kenneth Starr memorandum, I have described Mrs. O'Connor as "dedicated, highly intelligent, capable, and a very likeable person."

In the Senate Steering Committee I stated that Judge O'Connor was "a gracious and a gifted lady." My criticism deals with Judge O'Connor's 1970-1974 voting record on abortion-related issues and not with the individual.

As President of the National Right to Life Committee in 1980, I had the privilege of meeting with you on two occasions, in January in Rye, New York, and in June in Los Angeles.

I had faith then, as I do now, in your integrity and pro-life commitment.

I do not believe that you wrote the letter to Mrs. Craven, but if so, it was because you were given seriously misleading information.

My family and friends, however, are understandably distressed.

The hurt and bewilderment of the pro-life movement will, I believe, only be dispelled by open and honest communication.

I would like to meet with you while I am in Washington for the confirmation hearings, September 9th through 11th.

Thank you for your consideration of this request.

Cordially,

Carolyn Gerster, M.D.

Carolyn Gerster, M.D.
Vice-President in Charge of International Affairs
National Right to Life Committee

CG:sb
Enclosures

Text of Reagan's, Craven's Letters

On the day that President Reagan announced the nomination of Sandra O'Connor, Chicago prolifer Marie Craven wrote to him expressing her opposition. Her letter sparked a revealing response several weeks later. The texts of Mrs. Craven's and President Reagan's letters follow.

July 7, 1981

Dear President Reagan,

A number of prolife people are planning on picketing you at your departure point tonight to protest your appointment of Judge O'Connor from Arizona for the office of Supreme Court Justice. Instead of participating in this protest, I have decided to write this letter.

I have been an active prolifer since April of 1973. I have served and am serving on boards of directors of local prolife groups, have served as chairman of Illinois Citizens Concerned for Life, and have contributed too many valuable hours away from family and small children to let what you have done today go unnoticed.

I have anger, resentment and frustration pent up in me at this moment, because I sincerely feel you have betrayed me and millions of Americans. I include over eight million preborn babies, as well as those who will continue to be aborted simply because they are an inconvenience to so many of our nation's women.

I am a Chicago resident of Irish Catholic heritage, and up until my involvement in prolife a committed Democrat. I worked for your election along with countless others, distributing your campaign literature, making phone calls, organizing blitzes, etc. etc. I don't want credit for any of this; I just want you to know that at this precise moment I know that the power of the office has taken precedence over your party platform and campaign promises.

I feel I am a grass-roots citizen — and I am sickened by witnessing once again the broken promises of the politician.

When you were shot, I prayed for your swift recovery. I continue to pray for you daily, that your judgments will be wise ones. Today I am having difficulty believing that you meant the words of the letter that you sent to the National Right to Life Convention on June 18, 1981.

"I share your hope that some day soon our laws will re-affirm this principle (that abortion is the taking of human life). We've worked together for a long time now, and like you, I am hopeful that we will soon see a solution to this difficult problem."

By this appointment, you have betrayed the prolife position. Judge Sandra O'Connor supported pro-abortion legislation when she was an Arizona legislator. How can, then, this appointment bring us closer to our goal of protecting the preborn children of America?

I only hope that the United States Senate rejects your appointment. Maybe this is your ultimate goal — your appointment of a woman to satisfy the pro-choice feminists — followed by rejection of her appointment by the Senate and an alternate candidate appointed to satisfy all factions.

I hope, for the sake of our nation's most vital resource, our children, I am right.

Sincerely,
Mrs. Marie Craven

This is the rough draft of Mrs. Marie Craven's letter to the President. The final [illegible] had slight changes, but no change in substance. Only one copy of the final

THE WHITE HOUSE

WASHINGTON

August 3, 1981

Dear Mrs. Craven:

I'm sorry to be so long in responding to your letter, but I've found in all the channels of government, it often takes a while for letters such as yours to get through the mail department and over to my desk. So forgive me for that. I thank you for writing and appreciate the opportunity to comment with regard to my Supreme Court appointment and my position on abortion.

I believe that most of the talk about my appointment was stirred up principally by one person in Arizona. I have done a great deal of checking on this and have found this person has something of a record of being vindictive. I have not changed my position; I do not think I have broken my pledge. Mrs. O'Connor has assured me of her personal abhorrence for abortion. She has explained, as her attacker did not explain, the so-called vote against preventing university hospitals in Arizona from performing abortions.

What actually happened occurred back when she was a Senator in the state government. A bill had been passed by the Senate and sent over to the House calling for some rebuilding of the football stadium at the university. The House added an amendment which would have prevented the university hospitals from performing abortions. But the constitution of Arizona makes it plain that any amendment must deal with the subject in the original bill or it is illegal. For this reason the Senate, including Mrs. O'Connor, turned that down.

Much is being made now of her not coming out with flat declarations regarding what she might do in the future. But let me point out it is impossible for her to do this because such statements could then be used to disqualify her in future cases coming before the Supreme Court. She is simply observing a legal protocol that is imposed on anyone who is in the process of a judicial appointment. I have every confidence in her and now want you to know my own position.

I still believe that an unborn child is a human being and that the only way that unborn child's life can be taken is in the context of our long tradition of self-defense, meaning that, yes, an expectant mother can protect her own life against even her own unborn child, but we cannot have abortion on demand or whim or because we think the child is going to be less than perfect.

I thank you for your prayers in my behalf and for your support. I hope that I have cleared the air on this subject now because I would like to feel that I did have your continued approval.

Thanks again.

Sincerely,

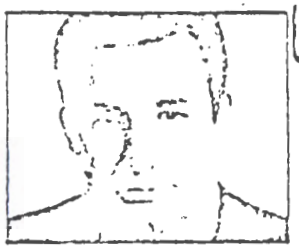
Ronald Reagan

Mrs. Marie Craven
Chicago, Illinois

N.Y. Daily News, Tuesday, August 11, 1981

Reagan's run-in with the Right-to-Lifers

WASHINGTON—In an angry defense of his Supreme Court nomination of Judge Sandra Day O'Connor, President Reagan has charged the past president of the National Right-to-Life Committee with having "something of a record of being vindictive." The unusual personal attack came in response to an impassioned letter from Marie Craven of Chicago, an Irish Catholic mother of five and a Reagan Democrat in 1980.



Patrick Buchanan

"I believe that most of the talk about my appointment was stirred up principally by one person in Arizona," the President replied. "I have done a great deal of checking on this and have found this person has something of a record of being vindictive. I have not changed my position. I do not think I have broken my pledge. Mrs. O'Connor has assured me of her personal abhorrence for abortion. She has explained, as her attacker did not explain, the so-called vote against preventing university hospitals in Arizona from performing abortions."

The "attacker," Dr. Caroline F. Gerster, an Arizona physician and for 10 years a leader in the Right-to-Life movement, is a longtime acquaintance of Judge O'Connor's and claims to have been in an "adversary position" while the latter was Republican leader in the Arizona Senate in the mid-'70s. Dr. Gerster is a prime mover in the campaign to effect withdrawal of the O'Connor nomination.

WHAT TRIGGERED the attack, unprecedented for the President, was a six-page letter from Mrs. Craven, asserting that Mr. Reagan—with the O'Connor nomination—had broken his platform pledge to nominate pro-life judges and justices.

On Saturday afternoon, when she received the Reagan letter, Mrs. Craven was "terribly upset." "His blanket statement astonishes me . . . He's trying to blame the whole thing on one person . . . She [Dr. Gerster] is not alone in her objection."

(Ironically, Carolyn Gerster was the movement leader to whom Candidate Reagan made his personal commitments in a meeting in Rye, N.Y., Jan. 17, 1980. From that meeting, there issued almost universal support from the Right-to-Lifers for Reagan's nomination and election.)

While the President's letter detailed Judge O'Connor's reasons for voting against an amendment to a football stadium bill to outlaw abortions in Arizona university hospitals—she said it was non-germane, therefore, unconstitutional—it did not mention the three O'Connor Senate votes that have caused the Right-to-Lifers the greatest anguish.

The first was a vote that "would remove all legal sanctions against abortions performed by licensed physicians." The second, her co-sponsorship of the Family Planning Act which would have furnished "all medically acceptable family planning methods and information" including "surgical procedures" to anyone regardless of age. The third, her vote against—it carried four-to-two—a memorial to Congress to extend constitutional protections to the unborn—i.e., a Human Life Amendment. According to Mrs. Craven, the President's failure to mention these raises the question as to whether he is fully informed on the O'Connor record.

EHD
Red
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Morton B

file, Nat. Right to Life

DOCUMENT NO. 072547 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 6/22/82 ACTION/CONCURRENCE/COMMENT DUE BY: 6/29/82

SUBJECT: Abortion - Impact on our Coalition

	ACTION	FYI		ACTION	FYI
HARPER	☐	☐	DRUG POLICY	☐	☐
PORTER	☐	☐	TURNER	☐	☐
BARR	☐	☐	D. LEONARD	☐	☐
BAUER	☐	☐	OFFICE OF POLICY INFORMATION		
BOGGS	☐	☐	GRAY	☐	☐
BRADLEY	☐	☐	HOPKINS	☐	☐
CARLESON	☐	☐	OTHER		
FAIRBANKS	☐	☐	✓ Elizabeth Dole	X	☐
FERRARA	☐	☐	_____	☐	☐
GUNN	☐	☐	_____	☐	☐
B. LEONARD	☐	☐	_____	☐	☐
MALOLEY	☐	☐	_____	☐	☐
SMITH	☐	☐	_____	☐	☐
UHLMANN	☐	☐	_____	☐	☐
ADMINISTRATION	☐	☐	_____	☐	☐

Remarks:

Should we push for a Senate vote on Abortion?

Please return this tracking sheet with your response.

Edwin L. Harper
Assistant to the President
for Policy Development
(x6515)

MEMORANDUM

OFFICE OF
POLICY DEVELOPMENT

1982 JUN 18 P 6:19

THE WHITE HOUSE

WASHINGTON

June 18, 1982

FOR: EDWIN L. HARPER

FROM: GARY L. BAUER GLB

SUBJECT: Abortion - Impact on Our Coalition - FYI

Attached is the latest edition of the Lifeletter, a major anti-abortion newsletter published by National Review conservatives. It contains an analysis of how the left is using the peace issue to put back together their coalition. At the same time, we are perceived as keeping distance between ourselves and the emotional moral issues such as abortion that helped build our coalition.

The accompanying letter from John Mackey, Lifeletter's Washington representative, is heartfelt and I believe indicative of the dashed hopes that may cause us serious problems in November. I believe all of us, including myself, have underestimated the expectations that existed for some action on abortion among the right-to-lifers.

cc: Michael M. Uhlmann

The Ad Hoc Committee in Defense of Life, Inc.

605 - 14th St. N.W., Suite 302, Washington, D.C. 20005, Telephone (202) 347-8686

June 17, 1982

Mr. Gary Bauer
Office of Policy Development
212 Old Executive Office Building
17th & Pennsylvania Avenue N.W.
Washington, D.C. 20500

Dear Gary,

Enclosed is our most recent newsletter outlining our deep concern over the "coalition" on the pro-life issue, that President Reagan was able to put together successfully in 1980, and which we now see as being in danger of coming apart at the very time the President's enemies are putting their own coalition back together again.

As you know, we at this committee have worked since 1976 with Reagan people on the abortion issue and consider ourselves some of his most loyal supporters, i.e."Reaganites".

However, to be candid, I have called all around the country the past week on the Helms bill to places like Chicago, Milwaukee, Omaha, Louisville, etc., etc., and I discovered there is a deep sense of "despair" and a feeling of keen disappointment in this Administration, and the Republican Senate in particular for its failure to act on the abortion issue. These people may not participate even in the 1982 Congressional elections.

As you know our people are blue collar ethnics in the North and Midwest and Evangelicals and Fundamentalist Protestants in the South; all basically Democrats, need I say more! You have worked diligently to keep up the slim glimmer of hope these people have had with this Administration and I applaud your efforts. However, the enclosed plea from friends is meant as just that; friends urging concern for mutual interests that if ignored can permanently end a good thing to the mutual detriment of both.

Hope you get a chance to review carefully the concerns outlined in LIFELETTER #8.

Very truly yours,

John Mackey

JOHN P. MACKEY, ESQ.
SPECIAL COUNSEL

P.S. There is a very simple solution outlined as well in the newsletter, Administration support for a Senate vote! Not much to ask I might add!

Helms (*cont.*)

by Helms on March 1, and gained quick nationwide support from anti-abortion activists. It is an expanded version of the original Human Life Bill (HLB) introduced early last year by Helms (in the Senate) and Rep. Henry Hyde (in the House). Its wide-ranging language invokes many other declarations, including the Declaration of Independence, the United Nation's Declaration of Human Rights, and the Nuremburg International Military Tribunal, in support of the right to life of the unborn.

The broad-based language also includes a "separability" clause stipulating that, should the courts strike down sections of the act, the other sections "shall not be affected."

Designed as "Unity" Measure

The Super Bill was designed as a "unity" measure to heal the split in the anti-abortion movement between factions supporting the original HLB and those supporting the "Federalism" constitutional amendment sponsored by Senator Orrin Hatch, which would in effect return the abortion issue to the states for decision. Under *Hatch*, the U.S. Congress could also pass abortion legislation to either ban or permit abortions.

HLB partisans have argued that, unlike *Hatch*, the HLB would have immediate impact on legalized abortion, would protect born children (e.g., the Bloomington baby) from infanticide, and provide a direct challenge to the Supreme Court. *Hatch* backers have insisted that only constitutional amendments can reverse the Court, and that *Hatch* would be the first step in a "Two-Step" amending process.

Helms' Super Bill has gained support from both factions, including virtually all HLB supporters. This "substantial unity" among pro-lifers is given as the primary reason for Helms' call for quick action on the proposal.

AS LIFELETTER GOES TO PRESS, there is no word from Washington on whether Jesse Helms will be able to achieve any kind of breakthrough on the "social issue" front (Helms is reportedly anxious to get all of them -- abortion, busing, school prayer -- moving), but there is plenty of evidence that if he does he'll have worked a major miracle. The Congress is already eyebrow-deep in the budget battles, the Administration is flapping amidst a bewildering array of problems, foreign and domestic, and everybody has a handy bagful of excuses for saying "not just now" on abortion. But in fact there can be no "freeze" on the issue. Time is simply running out, both for anti-aborts and for the Administration that promised them action. If proof were needed, the round of June primary elections provided plenty: mostly-dull races produced similar candidates; nothing seemed really at issue, and no enthusiasm was generated. If administration "officials" view this with relief (it could have been worse, RR is still popular, etc.), they should also see that the political coalition that produced the '80 landslide is nowhere visible now.

•A good example was New Jersey, probably the most significant contest to date. Anti-abort Jeff Bell faced an uphill fight in the GOP primary against a classic political "character" -- Rep. Millicent Fenwick, 72, pipe-smoking grandmother, famous from Doonesbury, Grand Dame of babbling emotions, etc. She's also strongly pro-abort, and as liberal as they come. Bell, a staunch Reaganite conservative, started 30 points behind, but ran hard, and came close (roughly 54-46) scaring "Millitant" into using TV spots that made her sound well to RR's right (no kidding, she even emphasized "pro family" and "anti-communist"). But while Bell took all the right positions and issued fine statements on abortion and the "social issues," his TV spots (probably decisive in Jersey) were all about the economy -- indeed, mainly his solution to the Federal Reserve problem. The result may well illustrate what the "social conservatives" have been trying desperately to tell the Administration: politicians do not live by money alone; voters need inspiration -- the kind of thing RR provided in '80, and his opponents didn't. Now the situation seems exactly reversed; the enemy has rebounded with a vengeance (literally), and they have clearly chosen "the issue" which they think will give them the moral highground -- "Peace."

THE GREAT PEACENIK DEMO in New York (Saturday June 12) is surely the most important event in the anti-abortion war since RR's '80 election victory -- although of course abortion was never mentioned by the spokespersons for the anti-Nuke apparat. The bare facts were indeed impressive: at least half a million people -- mainly white, youngish (20's and 30's), "middle class" -- streamed through the streets of Manhattan into huge Central Park; many said the total was as high as 750,000 (shucks, this was no anti-abort march, nobody in the media quibbled about an extra quarter million, give or take). No doubt many were there for the Folk and Rock bands (Bruce Springsteen), and many more were just there for the fun (it was a gay crowd); not a few were there because they got a free ride. But the highly-professional organizers knew exactly why they were there. Sure, it was all "for peace" just like in the 60's. One Robin Herman (in the New York Times, June 5) reported ingenuously that the Big Demo had been "conceived and organized by groups with a history of protest reaching back to anti-Vietnam Days" -- maybe Robin is too young to re-

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 18, 1982

FOR: EDWIN L. HARPER

FROM: GARY L. BAUER

SUBJECT: Impact of Abortion Issue on 1982 Senate Races

I have attached a brief description of each Senate race this year from the perspective of how abortion is likely to figure in the campaign.

My analysis, done after checking with a variety of sources in our own party as well as various right-to-life groups, indicates that the abortion issue will be a positive issue for us in the vast majority of cases where it is a factor in the race.

Twenty-one seats currently held by Democrats are up for election this year. Of those 21, in 8 cases the position of the Democratic incumbent is the same as his GOP challenger, thus abortion is unlikely to be an issue. In seven races the position of the likely GOP contender is not known at this time or the challenger is not choosing to make abortion an issue. Most importantly in six cases the incumbent has a pro-choice voting record and the GOP challenger or likely challenger has a clear right-to-life position. In these races all indications point to abortion being an issue that we will use to try to dislodge the incumbent. Thus a major vote in the Senate would be helpful.

Twelve seats currently held by Republicans are up for election this year. In three cases abortion is likely to be an issue. In two of those cases, involving Senators Hatch and Durenberger, an abortion vote in the Senate will help rally the troops. In one case, Vermont, Senator Stafford may want to avoid an abortion vote since at least one of his GOP primary opponents is taking a strong anti-abortion stand. In the other nine races abortion is not an issue since both likely candidates share the same position on the issue.

Summary: In nine Senate races abortion appears to be an issue. In eight of those the Republican incumbent or challenger is aided by a vote on abortion in the Senate, while in one case a vote might injure the GOP incumbent in his primary.

Attachment

cc: Roger Porter
Mike Uhlmann

Arizona: The incumbent, Senator Dennis DeConcini, is strongly "pro-life" as are the two Republicans who have filed to be his opponent. Abortion will not be an issue in this campaign.

California: Retiring Senator S. I. Hayakawa has consistently voted "pro-choice". Governor Jerry Brown, odds on favorite for the Democratic nomination, is pro-choice. Of the four major Republicans only Congressman Bob Dornan is considered to have strong anti-abortion beliefs. If Dornan receives the nomination, abortion would be an issue, if not, there would be no real disagreement between the contenders.

Connecticut: Senator Lowell Weicker, Prescott Bush and Rep. Toby Moffett are all pro-choice.

Florida: Senator Lawton Chiles is pro-choice. Likely GOP candidate has not yet attempted to stake out any view on issue.

Delaware: Senator William Roth is basically anti-abortion. Democratic opponent has not made views known.

Hawaii: Senator Spark Matsunaga is pro-choice. There is apparently no serious GOP challenger at this point.

Indiana: Both Republican Senator Richard Lugar and his likely opponent Rep. Floyd Fithian are right-to-life advocates. Abortion is unlikely to be an issue.

Maine: Democratic Senator George Mitchell has at best a confused record on the abortion issue. Running against him is solidly pro-life Republican Congressman David Emery. Right-to-life groups feel that forcing Mitchell to vote this year on abortion could end up a major factor in the campaign.

Maryland: Democratic Senator Paul Sarbannes is pro-choice and a top target of right-to-life groups. His likely opponent is Larry Hogan, one of the earliest supporters of the right-to-life movement. In a close race the abortion issue could throw this seat to the GOP.

Massachusetts: Senator Edward Kennedy is a heavy favorite to win reelection and is strongly pro-choice. The GOP candidate will either be businessman Ray Shamie or a black, female right-to-life leader, Mildred Jefferson. Shamie is also taking an anti-abortion stand. The abortion issue has hounded Kennedy for years since it offends a significant part of his base constituency. Forcing another Kennedy vote this year on the issue is desirable even if unlikely to change the outcome of the race.

Michigan: Senator Donald W. Riegle is pro-choice. He has five possible GOP opponents, some pro-life, some not. Whether abortion is an issue in the campaign will depend on the results of the June 1 primary.

Minnesota: GOP Senator Dave Durenberger is anti-abortion. His Democratic opponent has not been selected but two of the three possibilities are pro-choice. A vote on a major abortion bill this year will help rally the right-to-life grass roots people for the Senator. (Right-to-life groups have one of the strongest organizations in Minnesota.)

Mississippi: Senator John Stennis opposes federal funding of abortion but has sent mixed signals on other abortion issues. The two GOP candidates have not made their views on abortion known. Unlikely to be an issue at this point.

Missouri: Senator John Danforth is considered pro-life. His opponent is not yet clear. Abortion issue will either have no impact or work in the Senator's favor.

Montana: Democratic Senator John Melcher is anti-abortion. Issue is not likely to matter in this race.

Nebraska: Democratic Senator Edward Zorinsky is anti-abortion. Abortion unlikely to be an issue.

Nevada: Democratic Senator Howard Cannon is being challenged in the primary by Rep. Jim Santini. Both have mixed records on the abortion issue. To date the likely GOP candidate has not made his views known on the issue. Abortion unlikely to cause major problems for the incumbent at this point although if the GOP candidate takes a strong right-to-life stance, Cannon could have problems with issue.

New Jersey: The likely match-up here is Rep. Millicent Fenwick versus Rep. Andrew McGuire. Both are pro-abortion. However, if Jeff Bell defeats Fenwick in the primary, the race would feature a strong right-to-life candidate vs. the pro-choice Democrat. Under those circumstances the abortion issue would help GOP.

New Mexico: Republican Senator Harrison Schmitt is pro-choice but none of his likely Democratic opponents have taken opposing views on the abortion issue. Unlikely to be central to the race regardless of Schmitt's Senate votes.

New York: Senator Daniel P. Moynihan is pro-choice. Not clear at this point who GOP nominee will be or his views on issue.

North Dakota: Senator Quentin Burdick is pro-choice. He will be opposed by GOP challenger Gene Knorr who has not taken a clear stand on the issue. If Knorr stakes out right-to-life position, abortion will be an issue for GOP in November. Otherwise, it will have no impact.

Ohio: Senator Howard Metzenbaum is pro-choice. The views of his possible GOP opponent is unclear. Right-to-life groups have Metzenbaum high on their list and need record votes in the Senate to rally their forces in the state.

Pennsylvania: Senator John Heinz has a mixed voting record on abortion but generally votes pro-choice. Neither of his possible Democratic opponents have indicated any disagreement with him on abortion so it is not likely to be an issue.

Rhode Island: GOP Senator John Chafee is pro-choice but again he has no right-to-life Democratic opposition. Not likely to be an issue.

Tennessee: Democratic Senator James Sasser is pro-choice. His GOP opponent Rep. Robin Beard is strongly pro-life. Abortion will be an issue in the campaign, with Beard attempting to use the issue with right-to-life groups against Sasser.

Texas: GOP Congressman James Collins, a strong right-to-life advocate, is running against pro-choice advocate Senator Lloyd Bentson. Abortion will be issue aiding GOP candidate.

Utah: Democratic challenger Major Ted Wilson has taken a stronger right-to-life stand than GOP Senator Orrin Hatch. Hatch is thought to be in serious trouble and is looking for a way to repair the damage he has suffered among right-to-life forces for his support of a Constitutional Amendment that is not considered strong enough on the issue. Hatch wants a vote on something in order to bring right-to-life forces back in the fold.

Vermont: Senator Robert Stafford is pro-choice and faces primary opposition from two candidates, at least one of which, John McClaughry is seeking to make abortion an issue. There is no serious Democratic challenger right now.

Virginia: The Virginia race for retiring Harry Byrd's seat is up in the air. GOP Congressman Paul Trible has a mixed record. He votes against federal funding for abortion but has taken no position on other anti-abortion legislation. The Democratic field is now wide open with several of the possible candidates strongly pro-choice. Abortion could be in the end an issue with GOP more right-to-life.

Washington: Senator Henry Jackson is pro-choice. Likely GOP candidate has shown no inclination to make abortion an issue.

West Virginia: Pro-choice Senator Robert Byrd is facing challenge from strong right-to-life Republican Congressman Cleve Benedict. Our strategists think this could be an upset race and abortion would be an issue for us.

Wisconsin: Senator William Proxmire is anti-abortion. Not likely to be an issue.

Wyoming: GOP Senator Malcom Wallop is pro-choice. Likely Dem opponent has not made abortion an issue.

Ed. James Schall, S.J. 2/18/82

Human Life March

Each year on 22 January, the anniversary of the Supreme Court decision to deny equal protection of our laws to the unborn, an action undermining the whole fabric of our society, Nellie Grey has organized a solemn March for Life here in Washington.

This year, as I stood on Pennsylvania Avenue to watch the largely Catholic groups walk by, I could not help but think that the cold, the Washington air and subway accidents, were not the sole explanation of its relative smallness, even though perhaps 25,000 did participate.

In a year with a pro-life Senate and a pro-life President, the pro-life movement was disheartened partly because of the success of pro-abortion groups in keeping the issues clouded, partly because of the political decision by the Catholic bishops to promote the Hatch Amendment.

This was, I think, a political mistake of monumental proportions which jeopardizes the whole moral stature not of the life movement — this has now passed to the fundamentalists, to lay Catholics who have clearly seen the dimensions of this mis-judgment — but of the bishops themselves.

To sort all of this out requires more patience that I usually have, no doubt. But the general outlines seem clear. The pro-life movement is sidetracked or at least considerably off-balance and ineffective.

Because of a decision coming from the USCC and approved by the bishops in their November Conference, to the effect that we could not get a single, principled human life amendment, with a human life bill in the meantime to give adequate congressional definition to the fact that human life, as the test-tube baby if nothing else shows, begins at conception and what is conceived is legally a person to be protected by our laws.

The bishops' position, of course, does not technically violate this ambition, but it does state it so negatively and make any resulting law so dubious, so likely to enact at the state level what they are trying to prevent, that it is no real solution to the problem at hand.

It is bad tactics, bad law, and bad politics, even though I am the first to say that sometimes you have to get less than you want. But the bishops should have stuck to principles and left the politics to the professionals and the amateurs who vote. Thus, the initial mistake was a reversal in role.

The bishops are religious teachers, a role now confused by their willingness to compromise on a political tactic, which will not work anyhow.

The pro-life movement contains some of the best political tacticians in the country, who have been cut off by this move coming not from the movement but from the USCC. So the Hatch Amendment will lose the day, or else it will win with the help of those who want the weakest thing on the books, if it looks like something must pass.

Everyone will be confused about what to hold, about what will be compromised next. I cannot think of anything that could have been done to confuse the issue more than this move which is both a sign of lack of confidence and a failure to understand roles.

There are, I suspect, further hidden agendas. A lot of people, it is no secret, even in the Church, do not like the life issue. It is "conservative" and prevents us from getting to the important like more government aid, forms of government in not so distant lands, pacifism, and most of the outlines of the liberal agenda.

If the Hatch Amendment is defeated, the weakest possible case, then it will be easy to say that nothing is "possible" so we must accept defeat and "get on" to other things.

Having tried and lost, the issue can be quietly dropped, and the most embarrassing thing about Catholics, their strange idea that life begins at conception and ought to be protected by law if necessary, and if is necessary, can disappear.

When I think about all of this, I recall the Pope on the Mall, bravely, intelligently spelling out the issues. He taught. What must he think about what politically has happened to his visions. He seems to be something of a political strategist himself.

Why is it that our strategy has been so inept, I wonder? Many think this will, in retrospect, represent a turning point in American Catholism, when more and more laity see clearly that the political leadership provided by the hierarchy on major issues does not work, largely because the voting, grassroots people and their organizations are ignored, or co-opted from above.

Pieces must be picked up, of course. The issue is too important, too vital to let this very serious tactical and teaching mistake discourage us to drop the whole issue.

A young woman I know from Texas, very active in the life movement, heard a talk by the representative of the USCC explaining the reasons for their option for the Hatch Amendment, then she heard Senator Helms statement of the basic issues.

She said the Catholic never once mentioned God or gave any religious context to the issue, only a description of political tactics. Helms' talk on the other hand, which I also heard, was touching and principled, recognizing also the religious dimensions of this issue.

Symbolically, I suspect, this is where we now are. Catholic leadership is perceived as playing politics, bad politics at that, since it cannot win, while fundamentalist Protestant leadership sticks to the basics about the principle involved. The issue has in fact become so muddled by a political judgment and tactic that the principle is in doubt. This, at least, is my estimate of the situation.

THE MONITOR 2/18/82
(USPS 0026-9743)
Official newspaper of the Archdiocese of San Francisco, and the Diocese of San Jose

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release September 16, 1981

The President today announced his intention to nominate C. Everett Koop to be Surgeon General of the Public Health Service for a term of four years. He would succeed Julius Benjamin Richmond.

Dr. Koop is currently serving as Deputy Assistant Secretary of Health, Department of Health and Human Services. He was Surgeon-in-Chief of Children's Hospital of Philadelphia, Pennsylvania, and Professor of Pediatric Surgery at the University of Pennsylvania Medical School. He has been associated with the University of Pennsylvania since 1941.

He graduated from Dartmouth College (A.B., 1937), Cornell Medical School (M.D., 1941), Graduate School of Medicine of the University of Pennsylvania (Sc.D., 1947). He has received many honorary degrees and is the author of more than 170 articles and books on the practice of medicine.

Dr. Koop is a member on the Commission on Cancer, American College of Surgeons; the Surgical Steering Committee, Children's Cancer Study Group; Cancer Committee, American Pediatric Surgical Association; Arbitration Panel for Health Care, Commonwealth of Pennsylvania.

He is married, has four children, and resides in Gladwyne, Pennsylvania. He was born on October 14, 1916, in New York City.

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MEMORANDUM IN OPPOSITION TO S. J. RES. 110

Robert M. Byrn
Professor of Law
Fordham University
School of Law

This memorandum is submitted in opposition to S. J. Res. 110.

S. J. Res. 110 was proposed as an amendment to the United States Constitution by Senator Orrin G. Hatch on September 21, 1981 (Congressional Record - Senate, S10194-98).

The substantive portion of the proposed amendment, as reported by the Senate Subcommittee on the Constitution, provides:

> A right to abortion is not secured by this Constitution. The Congress and the several States shall have concurrent power to restrict and prohibit abortion: Provided, that a provision of a law of a State which is more restrictive than a conflicting provision of a law of Congress shall govern.

It is Senator Hatch's intent that the amendment both "overturn the infamous decision of the U.S. Supreme Court in Roe v. Wade, 410 U.S. 113 (1973)," (Congressional Record - Senate, S10194, 9/21/81), with its "virtually unrestricted right" to abortion (id. at S10195), and negate the judicial "progeny" of Wade. (Id. at S10196).

Senator Hatch is cognizant that his amendment neither recognizes that abortion involves the taking of a human life (id. at S10196), nor creates any duty to protect the unborn. (Id. at S10195). Thus the amendment is not prohibitory but permissive. The factual humanity, the Fourteenth and Fifth Amendment personhood of the unborn (vis a vis the Due Process and Equal Protection clauses), and their rights to life and the law's protection of life are entirely absent from S. J. Res. 110. Rather the intent is to create a "right to legislate with respect to abortion" including the discretion to enact legislation totally denying any protection to unborn children. (Id. S10197).

The amendment is not a Human Life Amendment; it is not a Right to Life Amendment. It is a Legislator's Rights Amendment.

I appreciate the good will and the genuine pro-life concerns that have motivated the amendment. I oppose it nevertheless.

The amendment institutionalizes in our fundamental law the notion promulgated by the Court in Wade that some human beings may be categorized as rightless things. (See I, infra.) Were it otherwise, S. J. Res. 110 would be prohibitory not permissive. Fundamental rights would not be put at the disposition of legislatures.

Because the amendment makes things out of people, there is the gravest danger that judicial interpretation will nullify any legislation enacted pursuant to it by subordinating the legislation to the "right to health." (II.A. infra). Further S. J. Res. 110 will not confer on legislatures any powers they do not already have to restrict fetal experimentation or the medical research use of fetuses. (II.B. infra). The amendment will, however, exacerbate the danger that others whose lives are also deemed not meaningful will also be depersonalized. (II.C. infra). Finally if the unborn are things under the Constitution, the validity of any legislation declaring them persons (a Human Life Bill) would be seriously in doubt (II.D. infra).

I. The Status of the Unborn Under S. J. Res. 110: Persons or Things?

Proponents of S. J. Res. 110 disagree on the status of the unborn under the amendment. Their positions range from claims that the amendment affirms the personhood of the unborn to assertions that the unborn will at least be restored to the "ambiguous" status they occupied prior to Roe v. Wade. Given that ambiguity (the argument continues) prolife proponents will be free to relitigate the rights of the unborn with a view to obtaining a judicial declaration of their humanity-cum-personhood.

It is submitted that each of these positions is wrong. As a matter of law, S. J. Res. 110 relegates the unborn to the status of things. "Property does not have rights. People have rights." Lynch v. Household Fin. Corp., 405 U.S. 538, 552 (1972). S. J. Res. 110 recognizes no rights of the unborn. They are not people under the amendment; they are things. This conclusion is inevitable for a number of reasons:

1. The expressed intent of the sponsor is "to 'deconstitutionalize' the abortion issue." (Congressional Record - Senate, S10196, 9/21/81). The abortion issue is multi-faceted. There is more to it than a woman's "right" to abortion. The unborns' factual humanbeingness, their Fourteenth Amendment personhood and their rights to life and the law's protection of life are also constituents of the issue. To deconstitutionalize the issue is to deconstitutionalize the whole issue--to deny to the unborn any constitutional status and all constitutional rights--to depersonalize and dehumanize them--to ratify and institutionalize in our fundamental law their status under Wade as rightless non-persons.

If S. J. Res. 110 were to become the law of the land, it would, in and of and by itself, constitute the irrefutable rebuttal of any future claims

that the Supreme Court erred in Wade when it proclaimed the unborn less than persons and only potentially human. One cannot claim the constitutional status of persons for entities which have been denied that status by an amendment to the Constitution.

In terms of deconstitutionalizing the unborn, Wade and S. J. Res. 110 are indistinguishable.

2. The amendment leaves key portions of Wade intact. There has been widespread misunderstanding of the substantive structure of the Supreme Court's opinion in Wade. Apparently some have approached, read, and subconciously re-ordered the opinion according to their preconceived notions of how the Court ought to have proceeded. For this reason they have failed to perceive how the Court actually did proceed and have concluded, erroneously, that S. J. Res. 110 would reverse all of Wade.

The Court agreed that if the Fourteenth Amendment personhood of the unborn child were established, "the appellant's case, of course, collapses, for the fetus' right to life is then guaranteed specifically by the amendment." 410 U.S. at 156-57. Hence the approach of the Court should have been to decide: (a) whether the unborn child, as a matter of fact, is a live human being, (b) whether all live human beings are "persons" within the Fourteenth Amendment, and (c) whether, in the light of the answers to (a) and (b), the state has a compelling interest in the protection of the unborn child, or to put it another way, whether there are any other interests of the state which would justify denying to the unborn child the law's protection of his life. See Byrn, An American Tragedy, The Supreme Court Decision on Abortion, 41 Fordham Law Review, 807, 813 (1973).

Had the Court proceeded in this fashion and concluded that because the unborn are neither persons nor human, the state has no compelling interest in their lives in the face of a woman's claim of a right of privacy to abort, then arguably S. J. Res. 110, by derogating the abortion right, would cast doubt upon the Court's rationale for creating the right. At least a case could be made that if S. J. Res. 110 repudiates the right to abort, a fortiori it undermines the underpinnings of the right (the nonhumanity/nonpersonhood of the unborn).

However, that was not the way the Court proceeded, nor could it have. Wade is result-oriented. The Court wanted to create a right to abort. But that result could not easily have been reached had the Court properly structured its opinion. After all, the unborn are in fact live human beings. The Fourteenth Amendment guarantees to persons of Due Process and Equal Protection cannot be invidiously class-selective; they must comprehend all live human beings. Ergo, the state has a compelling interest in protecting the lives of the unborn. The Court would have had a difficult time creating a right to abort had it conducted the inquiry in proper order.

Thus, in order for the Court to reach the result it desired, it had to reverse the order of inquiry. It had to, and did, decide at the threshold (before it decided anything else) that there is a fundamental "right of privacy" which "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." 410 U.S. at 153. Having established the fundamental right, the Court could then shift to the state the heavy burden of demonstrating to the Court's satisfaction a compelling state interest in unborn children. Id. at 155. Only after discovering that a fundamental right to abort exists did

the Court examine the state's interests. And with the onus shifted, the result was easier to reach. Presumption of law and fact were erected against the child, and the Court found that the state had failed to demonstrate that the unborn are persons, id. at 156-59, or human beings, id. at 159-61. Even the statement that if the Fourteenth Amendment personhood of the unborn child were established "the fetus' right to life is then guaranteed specifically by the amendment," occurs in the opinion after the right to abort has been espoused by the Court and in the course of examining whether the state had demonstrated a compelling interest in the lives of the unborn by proving their personhood.

In short, the Court found a right to abort before it even addressed the issue of the humanity/personhood of the child. The former is not dependent on the latter. The latter only determines to what extent the state may infringe the former. Expunging the former does not expunge the latter.

Nor can it be claimed that the legislative empowerment clause of S. J. Res. 110 restores the unborn to human/person status. Once the fundamental right to abort is expunged, it is no longer necessary to show a compelling state interest to support protection of the unborn.* To put it another way, the Congress and the states would be empowered to afford the unborn the same protection legislatures now commonly give to certain endangered species. But legislative protection of snail darters does not make snail darters persons.

In sum, the substantive holdings in Wade may be reduced to three:

1. There is a fundamental right of privacy, which

2. Is broad enough to include the abortion decision; and

3. Since the unborn are neither persons nor humans, protection of the unborn is not an interest of the state sufficiently compelling to justify infringement of the right to abort.**

S. J. Res. 110 may expunge "2." It leaves "1." and "3." intact.

3. The amendment would constitutionalize legislative discretion to exclude some or all of the unborn from the law's protection of life when such an exclusion would be constitutionally impermissible with respect to every other class of human beings.

I offer this scenario:

-- S. J. Res. 110 has been ratified.

-- Prior to any Congressional action, New York State enacts an abortion statute incriminating all abortions except those necessary to prevent the pregnant woman's death.***

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* But see the discussion of the woman's right to health in II.A. infra.

** I omit for the moment discussion of that part of Wade which finds a compelling state interest after viability. As Professor John T. Noonan pointed out in testimony before the Senate Subcommittee on the Constitution, on October 5, 1981, that particular interest of the state was negated by making it subject to the health of the woman. The exception will become significant in II.A. infra.

*** That such an exception is justified by the doctrine of necessity and is not a denial of Equal Protection, see Byrn, An American Tragedy: The Supreme Court on Abortion, 41 Fordham Law Review, 807, 853-54 (1973).

-- Congress passes and the President signs legislation incriminating all abortions except (a) those necessary to prevent the death of the pregnant woman or (b) when the fetus has been diagnosed as defective.

-- A newly-elected legislature amends the New York statute to conform to the federal law.

-- A class action is commenced in New York, in accordance with precedented procedures (see Byrn v. N.Y.C. Health and Hospitals Corp., 38 App. Div. 2d 316, 329 N.Y.S. 2d 390 (1972)) wherein a guardian, appointed for all defective fetuses scheduled or to be scheduled for abortion in public hospitals of the City of New York, seeks (a) to enjoin the abortions, and (b) a declaration of the unconstitutionality of the fetal defect amendment to the New York statute on the ground that it denies to the defective unborn the Equal Protection of the Laws.*

-- The Court dismisses the complaint because under S. J. Res. 110, the matter is one of legislative discretion and the unborn are not Fourteenth Amendment persons.

-- The Court would be absolutely correct. The intent of S. J. Res. 110 is to establish a "right to legislate with respect to abortion" (Congressional Record - Senate, S10197, 9/21/81), and the New York State legislature merely exercised that right. Of course, it would possess no such unfettered "right to legislate" were the unborn Fourteenth Amendment persons.** Manifestly, the existence of the legislative right denies the existence of the child's right.

The debasement of the unborn is even more vividly apparent when S. J. Res. 110 is viewed in the light of the criticisms of Wade by legal scholars and the tenor of the Supreme Court dissents in Wade.

Critics of Wade fall into two groups. The first group condemns Wade for its denial of personhood to the unborn. The second group believes that lawmaking on "moral" or "social" issues such as abortion is a purely legislative function with which the courts ought not interfere. (See the authors cited in J. T. Noonan, A Private Choice, 29-32 (1979)). Thus, the second group objects to the Supreme Court's creation of a fundamental right to abort (because the right restricts legislative discretion), but supports the Court's declaration that the unborn are nonpersons (because personhood signifies fundamental rights and fundamental rights restrict legislative discretion).

In short, the second group is pro-legislature, not pro-life. These critics of Wade believe that legislatures ought to be able to enact any sort of abortion laws they want. Just as these scholars now condemn the Supreme Court for creating a right to abort as a means of striking down a restrictive abortion statute, so too would they oppose a Supreme Court decision recognizing the unborn's right to live as a basis for invalidating a permissive abortion law.

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* Under New York law if an amendment to a statute is unconstitutional, the statute remains in force as though the amendment had never been enacted. 1 McKinney's Consolidated Laws of New York, Statutes, sect. 377.

** Obviously an amendment removing deformed or defective blacks, Catholics or any other class from the aegis of New York's homicide statutes would be unconstitutional under the Fourteenth Amendment guarantee of Equal Protection of the laws.

The dissents in Wade are also pro-legislature. They contain no reference to the rights of the unborn. They rely, instead, on the prerogatives of legislatures.

Against this dual background--the pro-legislature dissents in Wade and the pro-legislature criticisms of Wade by influential legal scholars--the pro-legislature thrust of S. J. Res. 110 can hardly be said to acknowledge, even implicitly, the personhood and rights of the unborn. To the contrary, as a pro-legislature response to Wade, S. J. Res. 110 can be said to ratify the non-personhood and rightlessness of the unborn.

Admittedly, S. J. Res. 110 would raise the post-Wade status of the unborn from things that a legislature may not protect to things that are legislatively protectable. But the unborn would remain things--like whales or landmark buildings (let's protect them!) or like a teeming, pesky species (let's not!), depending upon how legislative majorities choose to treat them.

Professor John Noonan has ably pinpointed the underlying jurisprudence of the kind of majoritarianism espoused by S. J. Res. 110: Human beings may be treated as rightless nonpersons [things] if the empowered lawmaker, whether court or legislature, so chooses.* (J. T. Noonan, A Private Choice, 13-19 (1979)). I agree entirely with Professor Noonan's condemnation of this jurisprudence. (Id. at 18):

> But all rights in our constitutional jurisprudence are premised on humanity. Your rights flow from your human character. None of them have security if it rests with a group of nine men, or a majority of them, to define you out of the human race. No discrete and insular minority is safe if all its liberties can be removed by defining it as subhuman. If the legal order is a universe which can be developed without reference to the natural order, only the will of the makers of the legal order controls the recognition of legal existence.

Majoritarianism--whether legislative or judicial--is always objectionable when the majority is empowered to dispense with fundamental rights. "A government...which held the lives...of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all, but a despotism. It is true it is a despotism of the many, if you choose to call it so, but it is none the less a despotism." Loan Association v. Topeka, 87 U.S. (20 Wall) 655, 662 (1875). Accordingly, "One's right to life...and other fundamental rights may not be submitted to vote; they depend on the outcome of no election." West Virginia Board of Education v. Barnette, 319 U.S. 624, 638 (1943). S. J. Res. 110 would make the right to life of the unborn forever dependent on the outcome of elections.

II. The Effects of Constitutionalizing the Status of the Unborn as Things

A. Restrictive legislation enacted pursuant to S. J. Res. 110 may well be held unconstitutional as an infringement of a woman's "right to health."

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* I do not mean to convey that Professor Noonan opposes S. J. Res. 110. He supports it.

1. The right to health. There has been a natural tendency to focus on the "right to abortion" in Wade. Its enormity draws undivided attention. As a result, the fact that Wade recognized another fundamental right has gone practically unnoticed. This is the right to health.*

We are told in Wade, "With respect to the state's important and legitimate interest in potential life the 'compelling' point is at viability. * * * If the state is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period except when it is necessary to preserve the life or health of the mother." 410 U.S. at 163. (Emphasis added.) Even though the state's interest in the post-viable unborn is compelling, it is subject to the woman's right to preserve her health. Note: The right at stake is not the right to abortion (addressed by S. J. Res. 110), but the right to health (not addressed by S. J. Res. 110). Note: The right is even "more" fundamental than the right to abortion. The woman's right to abortion recedes after viability. The woman's right to health exists throughout pregnancy. Indeed, it exists throughout life.

The idea of a fundamental right to preserve one's health did not spring full-grown from the brows of the Justices in Wade. It is amply precedented. Neither the fundamental right of parents to choose how to raise their children nor the fundamental right of free religious exercise overbalances the child's right to preservation of health. Prince v. Mass., 321 U.S. 158, 166-67 (1944). The power of the state to require vaccinations to prevent the spread of communicable disease (a constituent of the police power) is subordinate to the fundamental right of an individual who is seriously allergic to the vaccine, to preserve his health by rejecting the vaccination. Jacobson v. Mass., 197 U.S. 11, 39 (1905). Several courts have cited Wade, outside the abortion context, for the proposition that the right of privacy includes the right to chart the course of one's own therapeutic medical treatment free of governmental interference. Whether the fundamental, constitutional right to health exists as a discrete sub-species of Due Process or as a component of the Right of Privacy, there is no question but that it does exist and that its existence was reaffirmed in Wade.

2. The right to health vs. the right to legislate. The result of this confrontation is foreordained. In upholding the validity of a state compulsory vaccination statute, the Supreme Court spoke to the situation of the individual whose health might be adversely affected by enforcement of the statute. In Jacobson v. Mass., 197 U.S. 11, 38-39 (1905), the Court opined:

> It is easy, for instance, to suppose the case of an adult who is embraced by the mere words of the act, but yet to subject whom to vaccination in a particular condition of his health or body, would be cruel and inhuman in the last degree. We are not to be understood as holding that the statute was intended to be applied to such a case, or, if it was so intended, that the judiciary would not be competent to interfere and protect the health and life of the individual concerned. "All laws," this court has said,

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* I use the right to health here in the same short hand way that S. J. Res. 110 refers to the right to abortion. It is to be noted that the funding cases are not relevant here. Harris v. McRae, 100 S. Ct. 2671 (1980); Poelker v. Doe, 432 U.S. 519 (1977); Maher v. Roe, 432 U.S. 464 (1977), and Beal v. Doe, 432 U.S. 438 (1977) were not directly concerned with the right to abortion or the right to health. The issue was not the existence of these rights but whether the government must fund and facilitate their exercise.

> "should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of that character. The reason of the law in such cases should prevail over its letter." United States v. Kirby. 8 Wall. 482; Lau Ow Bew v. United States, 144 U.S. 47, 58. Until otherwise informed by the highest court of Massachusetts we are not inclined to hold that the statute establishes the absolute rule that an adult must be vaccinated if it be apparent or can be shown with reasonable certainty that he is not at the time a fit subject of vaccination, by reason of his then condition, would seriously impair his health or probably cause his death.

At the very least, a health exception will be read into any legislation--state or federal--which is enacted pursuant to S. J. Res. 110. More likely the legislation will be declared unconstitutional as an impermissible infringement of a woman's right to health.

I agree with Professor John T. Noonan that "There is grave danger that any exception to save life or to prevent death will be interpreted judicially to permit abortion for health reasons; and abortion for health reasons is easily turned into the equivalent of abortion on demand." (Testimony before the Senate Subcommittee on the Constitution, 10/5/81.) Obviously careful draftsmanship is required. I suggest, however, that no amount of care will obviate the danger if the abortion legislation is enacted pursuant to S. J. Res. 110. It simply makes no sense to prefer the continued existence of things (which unborn children are under S. J. Res. 110) to the health of women, no matter how broadly health be defined. It would not be--in the words of the Jacobson court--"a sensible construction," or, if it were the only construction available, the statute would be unconstitutional.

The only assurance of sensible construction is to confront a claim to health with a claim to life. The only way to do this is to restore the constitutional personhood of the unborn child.

3. The right to health vs. the "plenary" power of legislatures. It is fair to ask how a statute enacted pursuant to S. J. Res. 110 could be unconstitutional when S. J. Res. 110--which would itself be part of the Constitution--purports to vest in participants in the legislative process the "plenary" power to legislate as they will. One must not be deceived by the adjective "plenary." It does not mean arbitrary. Both the sponsor of the amendment (Congressional Record - Senate, S10197, 9/21/81) and its proponents (e.g., Testimony of Prof. Victor Rosenblum before the Senate Subcommittee on the Constitution, 11/16/81) recognize that the "plenary" power is restricted by other provisions of the Constitution. One of those other provisions is the guarantee of the right to health.

It is fair to ask in rebuttal how the right to health can limit the amendment when the sponsor believes that Congress and the states "could act under the proposed amendment to totally prohibit abortion." (Congressional Record - Senate, S10196, 9/21/81).

The point is telling on its face, but not so on further inquiry. There are several answers:

(a) The sponsor might have been wrong in his interpretation of the legal effect of the amendment. This was clearly the case when Senator Hatch opined that the amendment would permit legislatures to "place limitations upon the experimental and medical research use of fetuses" (beyond that which they may constitutionally do today). Id. at S10197. (See "C." infra).

(b) The intent of the sponsor does not necessarily represent the interest of Congress. Obviously the amendment and the sponsor's remarks in the presentation of it were drafted to attract the widest level of support in the Congress which includes the least common denominator of opposition to Wade. The least common denominator could well include proponents of a health exception. Statements by sponsors are given weight but they "must be evaluated cautiously" (2A Sutherland's Statutory Construction, Sect. 48.15 at 222 (Sands, ed., 1973)), and legislative intent must be distinguished from the subjective intent of individual legislators. Id., sect. 45.06 at 19.

(c) The sponsor's interpretation of the amendment as creating a comprehensive power and right in legislatures to do what they want about abortion conflicts with his admirably candid admission that legislation under the amendment would be restricted by other portions of the Constitution. Which other portions? The right to health, for instance?

(d) As a matter of legal realism, courts will interpret the amendment as they choose. Such has been the history of the federal courts in the abortion controversy. See Byrn, Judicial Imperialism, Human Life Review, Vol. III, No. 4 at 19 (1977). Professor Victor Rosenblum emphasized in his testimony before the Senate Subcommittee on Separation of Powers (6/1/81) how the Court in Wade ignored the intent of the sponsors of the Fourteenth Amendment that the amendment be "universal" in its protection and apply to "any human being," to "common humanity," to "every member of the human race." How much easier would it be for a court to ignore the sentiments of the sponsor of S. J. Res. 110 when confronted with a choice between affirming the acknowledged right to health of a pregnant woman and the continued existence of a thing! How easy it would be the Court simply to cite the extract from Jacobson v. Mass., which I quoted earlier, and write a health exception into the amendment!

B. S. J. Res. 110 does not empower Congress or the states to act with respect to fetal experimentation or the medical research use of fetuses. To the extent that Congress or the states presently lack complete power to bar fetal research and the medical research use of fetuses, S. J. Res. 110 would not supply it. The amendment grants the power to restrict and prohibit abortions. It does not speak to other insults to the integrity of the unborn.

Professor Rosenblum analogizes S. J. Res. 110 to the Thirteenth Amendment and maintains that Congress and the states would be empowered to eradicate the "badges and incidents" of abortion, just as the badges and incidents of slavery may be eradicated legislatively under the Thirteenth Amendment. (Testimony before the Senate Subcommittee on the Constitution, 11/16/81).

But the Thirteenth Amendment is prohibitory; S. J. Res. 110 is permissive. The Thirteenth Amendment condemns slavery; S. J. Res. 110 permits abortion. It is the prohibitory nature of the Thirteenth Amendment which gives to Congress the power to eliminate the badges and incidents of slavery. As the Supreme Court observed in the Civil Rights Cases, 109 U.S. 9, 20 (1883):

> * * *The Thirteenth Amendment may be regarded as nullifying all state laws which establish or uphold slavery. But it has a reflex character also, establishing and decreeing universal civil and political freedom throughout the United States; and it is assumed, that the power vested in Congress to enforce the article by appropriate legislation, clothes Congress with power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States.* * *

S. J. Res. 110 does not "nullify" abortion; it permits it. It does not have "a reflex character" establishing the personhood and rights of the unborn; its "reflex character" constitutionalizes the nonpersonhood and rightlessness of the unborn. It is not protective of the unborn; it bears no resemblance to the Thirteenth Amendment. S. J. Res. 110 confers a limited right to legislate in the area of abortion. It confers no right to legislate with respect to fetal experimentation or the medical research use of fetuses.

C. The constitutionalization of the unborn as things under S. J. Res. 110 exacerbates the danger that others whose lives are also deemed not to be meaningful will also be depersonalized.

Once one burdensome class of human beings is read out of the Fourteenth Amendment personhood, it becomes easy to extend their fate to other classes. In a decision dealing with the cessation of medical treatment for a comatose patient, a New York court inquired whether the state has an interest in preserving the patient's life. Said the court, "Indeed, with Roe [v. Wade] in mind, it is appropriate to note that the state's interest in preservation of the life of the fetus would appear to be greater than any possible interest the state may have in maintaining the continued life of a terminally ill comatose patient* * *Such claim to personhood [of the patient] is certainly no greater than that of the fetus." Matter of Eichner, 73 A.D.2d 431, 465-66 (1980), affirmed on other grounds, 52 N.Y.2d 363 (1981).

The issue of the cessation of medical treatment for the comatose patient is a complex one. But no involved debate or profound insight is required to perceive that, however they are treated, persons at the end of life ought not be read out of the human race. Yet the New York court did it on the justification that such individuals cannot be persons because fetuses are not.

The New York court relied on Wade. At least as of now Wade still remains controversial. We can challenge it. We can condemn it as the bad law that it is. We can defend other classes against the jurisprudence of Wade by attacking Wade. Were S. J. Res. 110 to become the law of the land, the fetus, as a matter of undeniable constitutional law, would have no claim to personhood. Would not

we then suffer an accelerated judicial depersonalization of other classes whose lives are not "meaningful" (to be followed, perhaps by a series of constitutional amendments creating discretion in legislatures to protect or refrain from protecting the defective newborn, the terminally ill and other of the besieged of our species)?*

D. S. J. Res. 110 would bar a Human Life Bill. It seems self-evident that an amendment to the Constitution which categorizes the unborn as less than persons would bar any congressional legislation declaring them persons.

CONCLUSION

No one questions but that Senator Hatch and the supporters of his amendment genuinely abhor abortion. I suggest, however, that there is no warrant in legal experience to believe that S. J. Res. 110 will accomplish anything except to accelerate disdain for the lives of the unborn (and others). There has never been a time in history when compromise on the personhood of a class has led to respect for their personhood. It did not work for American slaves; it did not work for German Jews; it did not work for the unborn in the pre-Wade days when "moderate abortion reform" statutes were being enacted. It will not work under S. J. Res. 110.

For all the above reasons, I oppose S. J. Res. 110.

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* For a more detailed exposition of the euthanasia aspects of Wade, see Byrn, An American Tragedy: The Supreme Court on Abortion, 41 Fordham Law Review 807, 859-61 (1973).

The proposed Hatch Amendment, as reported by the Senate Subcommittee on the Constitution, provides, "a right to abortion is not secured by this Constitution. The Congress and the several states shall have the concurrent power to restrict and prohibit abortion: Provided, that a provision of a law of a state which is more restrictive than a conflicting provision of a law of Congress shall govern." In the midst of the controversy generated by this proposal, it is important to focus on the merits of the Amendment. On those merits, in my view, the Hatch Amendment is a disaster and its endorsement by the Catholic bishops is, in objective terms, a betrayal of their responsibility. Nevertheless, we must be careful not to allow the dispute to degenerate into a personal feud reminiscent of the Hatfields and McCoys. The bishops and the pro-life supporters of the Amendment, including particularly Senator Hatch, mean well. While an exposure of the weaknesses of the Amendment does reflect on the judgment of its supporters, it involves no reflection on their sincerity. Rather, such exposure will help to lay the principled and practical foundation for cohesive action by all pro-lifers in behalf of a truly effective remedy which can still be obtained this year.

These remarks are occasioned by the article by William E. May, professor of Theology at Catholic University, in the January 17th National Catholic Register. Professor May's pro-life credentials are well established. It is therefore with reluctance that I offer the conclusion that his understanding both of the Hatch Amendment and of the role of the bishops is seriously flawed.

Professor May criticizes my conclusion that the Hatch Amendment accepts the basic premise of Roe v. Wade, the Supreme Court abortion

decision, that the unborn child is a non-person. "The Hatch Amendment," says Professor May, "while not recognizing the personhood of the unborn, in no way accepts the premise that the unborn child is a non-person." In Roe v. Wade, the mother's right of reproductive privacy was asserted as the basis for striking down state laws restricting abortion. Since that right of privacy had been defined by the Supreme Court as a fundamental right, a state restriction of it could stand only if that restriction were justified by a "compelling state interest." Since the Court in Roe held that the unborn child, whether or not he is a human being, is a non-person for purposes of the Fourteenth Amendment, the state was unable to show a sufficiently compelling interest since the protection of a non-person is not enough to outweigh the right of privacy. Even in the third trimester when, the Court conceded, "potential life" is present, the unborn child is still a non-person. The Court said that in the third trimester the state could prohibit abortion but even then the state could not prohibit abortion where it was sought to protect the mother's life or health, including mental health. Even in the third trimester, although the maternal right of privacy is subject to state prohibition of abortion, another maternal right, the right to health, as Professor Robert Byrn has noted, prevails over the state's interest in protecting a non-person. If the unborn child were recognized by the Court as a person, his right to life would prevail over his mother's inherently lesser rights to privacy and health. The Court recognized this in its comment that if the personhood of the unborn child is established, the pro-abortion case "collapses." [410 U.S. at 156] And the Court indicated

that if the unborn child is a person, the state might not be allowed to permit abortion even where it is claimed to be necessary to save the life of the mother. [410 U.S. at 157, fn. 54] Inherently, the right to life of a person cannot be subject to extinction at the discretion of any other person or of any legislature, whether Congress or that of a state. In affirming that the protection of the life of the unborn child is totally at the discretion of Congress and the state legislatures, the Hatch Amendment clearly affirms that the unborn child, like the snail darter or an historic building, is not a person but merely a thing, which legislators are at liberty to protect or not as they see fit. The corrupting effect of this is obvious. There is a Gresham's Law that operates so that bad abortion laws would drive out the good and the long-term trend would be for abortion to become generally permissive. The Hatch Amendment would embed this corrupting principle permanently in the Constitution. Over the decades ahead, the Amendment's institutionalization of legislative discretion over unborn life would increase the loss of life by virtually guaranteeing a heavy death toll inflicted every year under the protection of the Constitution. And the corrupting principle of Hatch would predictably be extended to the retarded, the senile and other target groups. If the unborn child can be defined as a non-person and subjected to death at the discretion of others, why may not his elder brother or his grandmother?

Suppose the Catholic bishops proposed an amendment to provide that Congress and the states shall have discretion to allow or permit the active euthanasia of the retarded and elderly? The

moral indefensibility of such a proposal would be obvious. It is no different with the bishops' endorsement of the Hatch Amendment discretion on abortion. In 1972, the Catholic bishops of New York supported the repeal of the 1970 New York abortion-on-demand law even though that repeal would have reinstated the prior state law which permitted abortion to save the life of the mother. And Pope John Paul II and the Catholic bishops of Italy supported the effort to repeal the permissive Italian abortion law of 1978 even though that repeal would have reinstated the pre-existing interpretations of the former Italian law which allowed abortion in some situations. To support the repeal of a bad law, as in the New York and Italian examples, does not necessarily imply approval of the old law that would be reinstated by the repeal. If it were possible under our Constitution to vote on the simple proposition, "Shall Roe v. Wade be repealed?" we could vote "yes" without declaring our approval of the situation prior to Roe in which abortion was permitted generally for the life of the mother and, in some states, for other reasons. The Hatch Amendment, however, is not a simple repeal of a bad law or a bad decision. It creates and affirms a new status for abortion in the Constitution and it necessarily though implicitly affirms that the unborn child is a non-person. Its constitutional affirmation of non-personhood would prevent a future Supreme Court from over-ruling Roe v. Wade as to the non-personhood of the unborn child. It would render unconstitutional a statutory effort, such as the Helms-Hyde Human Life Bill, to define the unborn child as a person. Since, under Hatch, the unborn child would be a non-person, laws prohibiting abortion in his behalf might still be subject to the

mother's interest in her physical or mental health, even in the third trimester. And, as acknowledged by Wilfred R. Caron, the Catholic bishops own chief counsel, in his memorandum of December 8, 1981, the undefined term "abortion" in Hatch will be likely to be interpreted as the termination of pregnancy only after the implantation of the developing child in the womb, which occurs approximately seven days after conception. Since Congress and the states would have only the authority given them by Hatch and since the "abortion" they would be allowed to restrict would be only a post-implantation termination of pregnancy, Hatch could forbid them to do anything to regulate the pre-implantation abortions (performed by pill or otherwise) which will be the dominant abortions of the near future. This interpretation of Hatch by the bishops' own chief counsel is itself sufficient to justify the description of their continued support of Hatch as a scandal.

The 1974 Declaration on Procured Abortion, issued with the ratification of Pope Paul VI, declares : "It must in any case be clearly understood that a Catholic can never conform to a law which would admit in principle the liceity of abortion. Nor can a Christian take part in a propaganda campaign in favor of such a law, or vote for it." (Emphasis added) Professor May curiously argues that because Hatch would not require Congress and the states to enact permissive abortion laws, it does not fall within this prohibition. But Hatch clearly affirms that a Congressional or state permissive abortion law is licit as far as the Constitution is concerned. Under Hatch, abortion would be constitutionally licit whenever a legislative majority so decreed and apparently Hatch could preclude all restrictions of pre-implantation

abortions. It is incomprehensible how Hatch could be regarded as anything but a constitutional admission of the liceity of abortion.

Professor May finally makes the surprising point that "we have a moral obligation to be submissive" to the bishops' "prudential judgment" on Hatch. He acknowledges, of course, that the bishops' support of Hatch "is surely not a doctrinal statement." Instead, the bishops' decision is a political one, entitled to no more deference than their decision at the same meeting to demand the cessation of military aid to El Salvador. Or their earlier support for the Panama Canal treaties. Or their endorsement of the Democratic budget in opposition to President Reagan's. In these and other matters the bishops appear to follow the lead of the bureaucracy of the U.S. Catholic Conference which, incidentally, has opposed virtually every major Congressional effort to restrict abortion including, in its early stages, even the Hyde Amendment to restrict federal funding of abortion. Father Kenneth Baker, S.J., has aptly observed that the U.S.C.C. "gives the impression of being the Catholic arm of the Democratic Party." By their indiscriminate pronouncements on various issues, the bishops have squandered their credibility. The bishops need the prayers of all of us. But it would be a disservice to them and to the Church to claim that their non-doctrinal, essentially political stand on Hatch is somehow invested with the power of moral obligation on the faithful.

To support the Hatch Amendment is comparable to arguing that each state should have the option to permit or forbid human slavery, on that World War II should have been settled by providing that each locality in Nazi Germany should have the option to permit or

forbid extermination camps for Jews. In every relevant principled and practical respect, the Hatch Amendment is a loser. Both sides of the Hatch Amendment controversy, however, seek the same goal - the restoration of the right to life. Criticisms of the judgment of those who support Hatch involve no imputation as to their sincerity. As its deficiencies become more widely known, the Hatch Amendment's defeat in Congress appears increasingly probable. Let us work and pray that from the candid exchange of views in the Hatch controversy will come a united pro-life effort in support of the Helms-Hyde Human Life Bill (S. 1741), which would establish the personhood of all human beings, born and unborn, and which has a real chance of enactment by Congress this year.

THE WHITE HOUSE

WASHINGTON

February 4, 1982

MEMORANDUM FOR ELIZABETH H. DOLE

THRU: DIANA LOZANO

FROM: MORTON C. BLACKWELL

SUBJECT: Proposed Justice Department Report on S.J. Res. 19 (The Helms-Dornan Human Life Amendment)

This draft is a clear example of the difficulty this Administration has in implementing the philosophy and promises of the President.

I do not propose to make a point by point refutation of the "parade of horribles" set forth in the McConnell draft. Anyone interested in these old criticisms should read the back issues of "Human Life Review." For us, this is not an open question. The President decided his position on the Helms-Dornan Human Life Amendment during the critical days of the early 1980 presidential primaries.

In February, 1980, the President wrote to none other than Nellie Gray specifically supporting the Helms-Dornan Amendment. For the President's Justice Department so closely to parrot the National Abortion Rights Action League's arguments against this amendment would set the pro-life community aflame.

The President held a highly successful meeting on January 22 with 20 top pro-life leaders in the Cabinet room. Issuance of this McConnell draft would make most of them feel they were taken for fools. Many of the twelve percent of the voting public found by Dick Wirthlin to be militantly, single-issue, anti-abortion would never again agree when the President is described as a man of his word.

In short, we need a shakeup at Justice Department to make sure that drafts floating up from there are written by attorneys who are familiar with and committed to the President's philosophy and promises. Otherwise, we will constantly be shaken by public relations disasters which

could and should have been avoided.

There is no shortage of pro-life attorneys and legal scholars, except, it seems, at Justice.

Before any position paper on this issue is released, it should go through the Cabinet Council process and be personally approved by the President.

AUSTRALIAN FEDERATION OF *Right to Life* ASSOCIATIONS

18 January 1982

Written at:
Canberra

Mr. Morton Blackwell,
Sessional Assistant to the President
for Public Liaison,
The White House,
WASHINGTON. D.C.,
United States of America

Dear Mr. Blackwell,

A mutual friend, Dr. Bob Edgeworth (formerly of Canberra, Australia, but now at Louisiana State University) suggested last Friday that I contact you about a matter which is of immediate concern to the Australian Federation of Right to Life Associations - namely, the U.N. draft Convention on the Rights of the Child.

We understand that the draft Convention, which has been under discussion in the U.N. Human Rights Commission for some years, is now at a final stage. From our point of view the draft (a copy is attached) is deficient, in so far as it omits those very important words in the 1959 Declaration on the same subject, i.e. " ... before as well as after birth ... ".

It would appear from the attached copy of the 1980 Commission debates on an earlier draft that some attempt was made to retain these key words but did not succeed.

We are reliably informed that the "final" draft will be considered at the February meeting of the U.N. Human Rights Commission to be held in Geneva and that this meeting represents the last opportunity to insert the key words.

The purpose of writing to you is to draw your attention to the references in the attached document to the role of the U.S. representative in the 1980 U.N. Commission debates. I would assume - and hope - that the representative of the current U.S. Administration might adopt a different attitude.

For our part we have lobbied the Australian Prime Minister (Mr. Fraser) and various Australian Ministers seeking an instruction from them to the Australian representative on the Commission to reopen discussion on the key words which have been omitted. Any success we might have with our own Government would require support from other member countries, including the U.S.A., for something fruitful to be achieved.

Clarification of the matter at the drafting stage within the U.N. Human Rights Commission is more likely of success than any action which might be necessary when the draft Convention goes forward to the U.N. General Assembly.

I trust that you will be able to assist us on this very important matter. Those key words have meant a lot to many people in a great number of countries - not just Australia or the U.S.A. - throughout the World.

Yours sincerely,
Denis Strangman.
(Denis Strangman)
Spokesman.

encl.

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UNITED
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A

General Assembly

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Thirty-sixth session
THIRD COMMITTEE
Agenda item 86

QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD

Document submitted by Poland

STATUS OF A DRAFT CONVENTION ON THE RIGHTS OF THE CHILD

I. Articles agreed upon in the Commission on Human Rights

The States Parties to the Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Natons, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations have, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that in the Universal Declaration of Human Rights, the United Nations had proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the basic unit of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that, as indicated in the Declaration on the Rights of the Child adopted in 1959, the child due to the needs of his physical and mental development requires particular care and assistance with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security,

Recognizing that the child, for the full and harmonious development of his personality, should grow up in family environment, in an atmosphere of happiness, love and understanding,

Bearing in mind that the need for extending particular care to the child has been stated in the Geneva Declaration on the Rights of the Child of 1924 and in the Declaration on the Rights of the Child adopted by the United Nations in 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in the articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in its article 10) and in the statutes of specialized agencies and international organizations concerned with the welfare of children.

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom and brotherhood,

Have agreed as follows:

Article 1

According to the present Convention a child is every human being to the age of 18 years unless, under the law of his state, he has attained his age of maturity earlier.

Article 2

1. The child shall have the right from his birth to a name and to acquire a nationality.

2. The States Parties to the present Convention shall ensure that their legislation recognizes the principle according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, or administrative authorities, the best interests of the child shall be a primary consideration.

2. In all judicial or administrative proceedings affecting a child that is capable of forming his own views, an opportunity shall be provided for the views of the child to be heard, either directly or indirectly through a representative, as a party to the proceedings, and those views shall be taken into consideration by the competent authorities, in a manner consistent with the procedures followed in the State Party for the application of its legislation.

3. The States Parties to the present Convention undertake to ensure the child such protection and care as is necessary for his well-being, taking into account the rights and duties of his parents, legal guardians, or other individuals legally responsible for him, and, to this end, shall take all appropriate legislative and administrative measures.

4. The States Parties to the present Convention shall ensure competent supervision of officials and personnel of institutions directly responsible for the care of children.

Article 4

1. The States Parties to the present Convention shall respect and extend all the rights set forth in this Convention to each child in their territories without distinction of any kind, irrespective of the child's or his parents' or legal guardians' race, colour, sex, language, religion, political or other opinion, national or social origin, family status, ethnic origin, cultural beliefs or pratices, property, educational attainment, birth, or any other basis whatever.

2. States Parties to the present Convention shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or other family members.

Article 5

The States Parties to the present Convention shall undertake all appropriate administrative and legislative measures, in accordance with their available resources, and, where needed, within the framework of international co-operation, for the implementation of the rights recognized in this Convention.

Article 7

The States Parties to the present Convention shall assure to the child who is capable of forming his own views the right to express his opinion freely in all matters, the wishes of the child being given due weight in accordance with his age and maturity.

Article 8

1. Parents or, as the case may be, guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern. States Parties shall use their best

efforts to ensure recognition of the principle that both parents have common and similar responsibilities for the upbringing and development of the child.

2. For the purpose of guaranteeing and promoting the rights set forth in this Convention, the States Parties to the present Convention shall render appropriate assistance to parents and guardians in the performance of the child rearing responsibilities and shall ensure the development of institutions for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child care services and facilities for which they are eligible.

4. The institutions, services and facilities referred to in paragraphs 2 and 3 of this article shall conform with the standards established by competent authorities, particularly in the areas of safety, health, and in the number and suitability of their staff.

II. Revised text of remaining draft articles being submitted to facilitate the drafting process

Article 6

The States Parties to the present Convention shall recognize the right of the child to have his residence to be determined by his parents. If the place of residence specified by the parents is likely to be detrimental to the child's well-being, or in the case of disagreement between the parents, a competent public organ, guided by the child's well-being, shall determine his place of residence.

Article 9

1. The States Parties to the present Convention shall encourage opinion-making quarters to disseminate information which promotes the upbringing of children in the spirit of the principles as laid down in Article 16.

2. The States Parties shall also encourage parents and guardians to provide their children with appropriate protection if, on account of its contents, the disseminated information might negatively affect the physical and moral development of the child.

Article 10

1. A child deprived of parental care shall be entitled to special protection and assistance provided by the State.

2. The States Parties to the present Convention shall provide appropriate environment for the upbringing of a child who is deprived of his natural family environment or who, on account of his well-being, cannot be brought up in such an environment.

3. The States Parties to the present Convention shall take measures, where appropriate, to facilitate adoption of children, and shall provide favourable conditions for establishing foster families.

4. The provisions of the preceding paragraphs apply accordingly, if the parents or one of them cannot provide the child with appropriate care because of imprisonment or another similar judicial or administrative sanction.

Article 11

1. The States Parties to the present Convention recognize the right of a mentally or physically disabled child to special protection and care, commensurate with his condition and those of his parents or guardians, and shall extend appropriate assistance to such a child.

2. A disabled child shall grow up and receive education in conditions designed to achieve his fullest possible social integration. His special educational needs shall be cared for free of charge; aids and appliances shall be provided to ensure equal opportunity and access to the care services and facilities for which he is eligible.

Article 12

1. The States Parties to the present Convention shall ensure the child with health care facilities and, in case of need, rehabilitation facilities of the highest attainable standard.

2. In particular, States Parties to the present Convention shall undertake measures with a view to:

(a) lowering the infant mortality rate,

(b) ensuring medical assistance and health care to all children,

(c) providing expectant mothers with appropriate health care services and ensuring working mothers a paid leave or a leave granting adequate social security benefits for a reasonable period of time, before and after confinement.

Article 13

The States Parties to the present Convention shall ensure to every child the right to social security benefits for which he is eligible on account of the situation of his parents or legal guardians or another situation and shall take appropriate legal and administrative measures in order to guarantee the implementation of this right.

Article 14

1. The States Parties to the present Convention recognize the right of every child to a standard of living which guarantees his normal physical, mental and moral development.

2. The parents shall, within their powers and financial possibilities, secure conditions of living indispensable for a normal development of the child.

3. The States Parties to the present Convention shall take appropriate measures to implement this right, particularly with regard to feeding, clothing and housing, and, within their means, shall extend the necessary material assistance to parents and other persons bringing up children, special regard to be given to incomplete families and children deprived of parental care.

Article 15

1. The States Parties to the present Convention shall guarantee all children compulsory and free education, at least at an elementary school level.

2. The States Parties to the present Convention shall develop various forms of secondary, general and vocational education, aiming at a gradual introduction at this level of free education, so as to enable all children to develop their talents and interests in conditions of equal opportunity.

Article 16

1. The States Parties to the present Convention recognize that raising up and educating the child should promote development of his personality and intensify his respect for human rights and fundamental freedoms.

2. The States Parties to the present Convention shall ensure that the child be prepared for independent life in a free society, in the spirit of understanding, tolerance and friendship among all peoples, ethnic and religious groups and educated in harmony with the principles of peace established by the United Natons.

Article 17

The States Parties to the present Convention undertake to ensure to all children opportunities for leisure and recreation commensurate with their age. Parents and other persons responsible for children, educational institutions and state organs shall supervise the practical implementation of the foregoing provision.

Article 18

1. The States Parties to the present Convention undertake to protect the child against all forms of discrimination, social exploitation or degradation of his dignity. The child shall not be subject of traffic in any form.

2. The States Parties to the present Convention shall ensure that the child be not employed in any form at work harmful to his health or development nor dangerous to his life, and they undertake to sue persons acting to the contrary.

3. The States Parties to the present Convention shall comply with the law prohibiting employment of children below the age of fourteen years, in accordance with the ILO Convention No. 5 of 13 June 1921.

Article 19

1. The child undergoing penal procedure shall have the right to special treatment and privileges.

2. The child shall not be liable to capital punishment. Any other punishment shall be adequate to the subsequent phase of his development.

3. The penitentiary system shall be aimed at re-education and re-socialization of the sentenced child. It shall enable the child to serve the sentence of deprivation or limitation of freedom under special circumstances and, in particular, in separation from adult offenders.

Article 20

The States Parties to the present Convention every three years shall submit periodical reports on the implementation of the present Convention to the Economic and Social Council through the Secretary-General of the United Nations.

Article 21

The reports submitted by the States Parties to the present Convention under article 20 shall be considered by the Economic and Social Council, which may bring its observations and suggestions to the attention of the General Assembly of the United Nations.

Article 22

The present Convention is open for signature by all States.

Article 23

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 24

The present Convention shall remain open for accession by any State. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 25

1. The present Convention shall enter into force six months after the date of deposit of the fifteenth instrument of ratification or accession.

2. For each State ratifying or acceding to the present Convention after the deposit of the fifteenth instrument of ratification or accession.

3. For each State ratifying or acceding to the present Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the day after the deposit by such State of its instrument of ratification or accession.

Article 26

As depositary of the present Convention, the Secretary-General of the United Nations shall inform all States of:

(a) signatures, ratifications and accessions under Articles 22, 23 and 24,

(b) the date of the entry into force of the present Convention under Article 25.

Article 27

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

XI. QUESTION OF A CONVENTION ON THE RIGHTS OF THE CHILD

276. The Commission decided at its 1526th meeting that an informal open-ended working group should be established to consider agenda item 13 "Question of a Convention on the rights of the child".

277. The report of the working group reads as follows:

"...

1. The open-ended Working Group held meetings on 22, 25, 26, 27, 28 and 29 February and 7 March 1980. At its first meeting, Mr. Adam Lopatka (Poland) was elected Chairman-Rapporteur by acclamation. The Working Group adopted this report at its last meeting, held on 7 March 1980. By consensus decision of the Working Group, that meeting was chaired by Mr. Andrzej Olszówka (Poland).

2. The Working Group had before it the text of a draft Convention on the Rights of the Child annexed to Commission resolution 20 (XXXIV) of 8 March 1978 and the report of the Secretary-General on the views, observations and suggestions on the question submitted by Member States, competent specialized agencies, regional intergovernmental organizations and non-governmental organizations (E/CN.4/1324 and Corr.1 and Add.1-5). In addition, the Working Group had before it the text of a revised draft Convention submitted by Poland on 5 October 1979 (E/CN.4/1349). The Working Group also had before it a number of Sub-Commission documents relating to the exploitation of child labour which the Sub-Commission, by paragraph 4 of resolution 7 B (XXXII), had recommended be taken into account in drafting the appropriate articles of the Convention (E/CN.4/Sub.2/433; E/CN.4/Sub.2/434; E/CN.4/Sub.2/SR.835 and 836). Two non-governmental organizations in consultative status also submitted written statements for consideration by the Commission (E/CN.4/NGO/265 and 276).

3. At its first meeting, following the proposal of the Chairman, the Working Group took up the revised draft Convention contained in document E/CN.4/1349, which incorporated the four preambular paragraphs adopted by the Working Group the previous year, as its basic working document.

4. In the course of the general discussion at that meeting, some representatives suggested that the term 'child' should be clearly defined, and perhaps replaced by a more precise term with greater juridical significance, such as 'minor' before proceeding with the adoption of further paragraphs. It was also pointed out that, at the previous session, the Working Group had adopted the title of the Convention on the understanding that it might later decide to change it. However, other representatives expressed support for the idea of proceeding with the discussion and formulation of the rest of the preamble immediately. It was therefore decided to postpone the discussion of the definition until the Working Group considered article 1 of the draft Convention.

Fifth preambular paragraph

5. At its second meeting, the Working Group began its consideration of the rest of the preamble.

6. The representative of the Holy See, in accordance with other delegations, suggested that the text of the fifth preambular paragraph should be amended by inserting the words, taken from the Declaration of the Rights of the Child, 'before as well as after birth' after the words 'particular care and assistance'. A number of delegations argued in support of the amendment on the grounds that their national legislation contained provisions protecting the rights of the unborn child from the time of conception. They stated that the purpose of the amendment was not to preclude the possibility of abortion, since many countries had adopted legislation providing for abortion in certain cases, such as a threat to the health of the mother. Some delegations referred to the fact that the Declaration of the Rights of the Child of 1959 contained the sentence proposed.

7. Other delegations, however, opposed the amendment. In their view, this preambular paragraph should be indisputably neutral on issues such as abortion. They stated that the definition of 'child' should be contained in article 1 and that nothing in the preamble should prejudge or slant the definition formulated in article 1.

8. Some representatives appealed to the proponents of the amendment not to insist on it at that stage, and to accept the text contained in the draft on the understanding that the Working Group could revert to it at a later stage. The representative of Ireland suggested that the amendment could be inserted in the text in square brackets and the Working Group could make a final decision after having discussed article 1. The representative of the Holy See expressed agreement with the proposed solution, which was supported by a number of other delegations. The fifth preambular paragraph was therefore adopted with the proposed amendment in square brackets, on the understanding that the final language would be agreed upon after the adoption of article 1.

9. Subsequently, at the third meeting, the representative of Greece suggested that the words 'physical and mental' before the word 'development' at the beginning of the paragraph should be deleted since they were already contained later on in the paragraph. It was decided that the Working Group should consider this proposal when it came back to this paragraph to decide on its final formulation.

10. Debate on the amendment proposed by the Holy See was resumed at the fourth meeting, after adoption of article 1. Several delegations argued that the text inserted in square brackets should be deleted in order to ensure the neutrality of the preamble. One representative expressed the view that, since article 1 had been adopted with a neutral wording, the Convention should not appear to give a different interpretation in the preamble. It was also stated that since national legislation differed greatly on the question of abortion, the Convention could be widely ratified only if it did not take sides on the issue.

11. Other delegations, speaking in support of the amendment, stated that, in their view, the wording was sufficiently neutral since it did not specify the length of the period before birth which was covered. They again argued that all national legislations included provisions for the protection of the child before birth. One delegation considered that the proposal could be extended to cover legal protection in view of the fact that most legislations protected, for example, the inheritance rights of children who had not even yet been born.

12. A number of representatives expressed the view that, if agreement could not be reached at the current session, discussion should proceed on the rest of the Convention in the hope that the group might achieve a consensus after further consultations. One delegate pointed out that a compromise might be possible on the basis of the fact that all delegations agreed that some kind of protection and assistance before birth was necessary: in his view, the disagreement lay in the precise definition of what kind of protection and assistance should be specified in the Convention.

13. The observer of the International Union for Child Welfare, supported by some delegations, suggested that, since the seventh preambular paragraph of document E/CN.4/1349 made reference to the Declaration on the Rights of the Child of 1959, the Holy See amendment could be deleted on the understanding that the Declaration (including its third preambular paragraph containing a wording similar to the proposed amendment) remained in force under the proposed Convention. Other delegations, however, opposed returning to the original text.

14. At the same meeting, the Working Group decided on a further postponement of the issue until an acceptable compromise could be found.

15. At the fifth meeting of the Working Group, the Chairman announced that a compromise text had been elaborated following consultation. The new text would amend the beginning of the paragraph to read:

> 'recognizing that, as stated in the Declaration on the Rights of the Child, the child due to the needs of his physical and mental development ...'.

The rest of the original preambular paragraph would remain, without the insertion in square brackets proposed by the Holy See.

16. Further discussion ensued, in the course of which the delegate of Australia proposed that the reference to the Declaration on the Rights of the Child be made more specific by adding the words 'adopted in 1959'.

17. The delegate of the United States proposed that the words 'as stated in' be changed to 'as indicated in'; that a semi-colon be inserted after the words 'moral and social development' and that the words 'as well as legal protection' be changed to read 'and also requires legal protection'.

18. Some delegations objected to the amendment proposed by the United States, indicating that they needed time to reflect on its legal significance. Others were not satisfied by that delegation's explanation that the amendment

was necessary in order to ensure the complete neutrality of the text, and expressed concern that the draft Convention would be slanted in favour of legalizing abortion. They re-emphasized their contention that the draft Convention should ensure protection for children both before and after birth. In reply, the delegate of the United States argued that any attempt to institutionalize a particular point of view on abortion in the draft Convention would make the Convention unacceptable from the outset to countries espousing a different point of view. Accordingly, he insisted that the draft Convention must be worded in such a manner that neither proponents nor opponents of abortion can find legal support for their respective positions in the draft Convention.

19. After further discussion, a compromise text was adopted which read as follows:

> 'Recognizing that, as indicated in the Declaration on the Rights of the Child adopted in 1959, the child due to the needs of his physical and mental development requires particular care and assistance with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security.'

(*)

Sixth preambular paragraph

20. At the second meeting of the Working Group, the representative of the Netherlands proposed that the word 'happiness' be inserted immediately before the words 'love and understanding' at the end of the paragraph.

21. The Working Group then adopted the sixth preambular paragraph with the proposed amendment.

Seventh preambular paragraph

22. The Working Group adopted the seventh preambular paragraph without changes at its second meeting.

Eighth preambular paragraph

23. At the second meeting of the Working Group, the representative of the Netherlands proposed to insert the word 'individual' before the word 'freedom' in the last part of the paragraph.

24. Some delegations, however, opposed the amendment on the grounds that it detracted from the notion of freedom contained in the text. One representative stated that the text could be approved as it stood, on the understanding that the Working Group could return to it at a later stage if it was felt that the concept of individual freedom was not sufficiently covered by other articles of the draft Convention.

25. The eighth preambular paragraph was then adopted without changes on the above-mentioned understanding.

New preambular paragraph

(29)

26. At the third meeting, the representative of the United Kingdom reproposed a new preambular paragraph which had been submitted by his delegation the year before but had not been considered owing to lack of time. The new paragraph, which he suggested should be inserted between the third and fourth preambular paragraphs of the new draft, read as follows:

> 'Recalling that in the Universal Declaration of Human Rights, the United Nations had proclaimed that childhood is entitled to special care and assistance,'.

27. Several delegations expressed support for this proposal. Some delegations pointed out that they did not oppose the insertion of the new paragraph although, in their view, it was somewhat repetitious of preambular paragraph five. The new paragraph was therefore adopted for insertion into the preamble as proposed. Subsequently, one delegation observed that the order of the paragraphs in the preamble could be rearranged at a later stage for the sake of logical consistency.

Article 1

28. At its third meeting, the Working Group considered article 1 of the draft Convention. There was considerable debate concerning the initial and terminal points which define the concept of child, as contained in the article.

29. Some delegates opposed the idea that childhood begins at the moment of birth, as stated in the draft article, and indicated that this is contrary to the legislation of many countries. They argued that the concept should be extended to include the entire period from the moment of conception. Other delegates asserted that the attempt to establish a beginning point should be abandoned and that wording should be adopted which was compatible with the wide variety of domestic legislation on this subject.

30. The representative of Morocco proposed that the words 'from the moment of his birth' should be deleted from the article in order to solve the difficulty. Several delegations supported the proposed amendment.

31. The first part of the article was therefore adopted with the amendment proposed by Morocco.

32. Concerning the terminal point of the concept of child as defined in the article, some delegates pointed out that the age of 18 appeared to be quite late in light of some national legislations and that a lower age limit should be recommended. It was suggested that, since the General Assembly had set the age limit at 15 in connexion with the International Year of the Child, the same position should be adopted in the draft Convention. It was also pointed out that 14 was the age of the end of compulsory education in many countries, and the legal marriage age for girls in many parts of the world. In this view, setting the age limit of 14 would also establish a clear distinction between the concept of minor and that of child, since the former was protected under many national legislations while the latter was not.

33. Other delegates, however, opposed the lowering of the age limit to 15 because their domestic legislation embodied protective measures for children beyond that age, and they believed that the draft Convention should apply to as large an age group as possible. They argued in favour of retaining the wording of the draft article which, in any event, is qualified by the reference to national legislation.

34. The observer for the International Union for Child Welfare, a non-governmental organization in consultative status, suggested that reference to an upper age limit could be eliminated by amending the text of the article to read:

> 'According to the present Convention a child is every human being who has not attained the age of majority in conformity with the law of his state.'

35. A number of delegations, however, opposed the idea of making the definition depend on the concept of majority age, since this varied widely between countries and also within national legislations, according to whether the civil, penal, political or other aspects of majority were at issue. Others, while not opposing this formulation, pointed out that the original text took care of the objections raised by making reference to national legislation.

36. At the fourth meeting of the Working Group, the second part of article 1 was adopted in its original version. One representative recalled that he had expressed reservations concerning the specifying of the age of 18 in article 1 and said that his delegation might consider it necessary to refer again to this matter, including in the plenary of the Commission. Another delegation reserved its position on the number '18', stating that a person at that age is not a child.

Article 2

37. At the fourth meeting, the Working Group considered article 2 (1) of the draft Convention. The representative of the United States of America proposed that the wording of the article should be amended to read:

> '1. In accordance with the laws or practices of each Contracting State, the child shall have the right from his birth to acquire a name and a nationality.'

He pointed out that the proposed amendment would bring the draft Convention in line with article 24 of the International Covenant on Civil and Political Rights and would help to prevent difficulties under the immigration and nationality laws of various States. In particular, he maintained that the amendment would avoid any implication that the draft Convention would automatically entitle stateless children entering the territory of a State party to the nationality of that State.

38. Some delegations opposed the amendment on humanitarian grounds, in order to provide protection for stateless children. It was also argued that the wording of article 2 (1) was of a general nature, while the second paragraph would include more specific provisions.

39. On the suggestion of the Chairman, the Working Group adopted the following compromise text:

'1. The child shall have the right from his birth to a name and to acquire a nationality.'

40. At the fifth meeting, the delegation of Australia submitted the following amendment to article 2 (2):

'2. The States parties to the present Convention shall ensure that their legislation recognizes the principle according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.'

41. The representative of Australia explained that the first part of his amendment was meant to remove the implication in the original draft that the principle in question was not already contained in most national legislations; the second, and most important, part was aimed at bringing the draft Convention as close as possible to the general principles of the Convention on the Reduction of Statelessness of 1961.

42. Discussion on the proposed amendment began at the fifth meeting of the Working Group. Some delegations expressed their opposition on the grounds that the law of their countries did not provide for automatic granting of nationality to children of foreign parents born there.

43. The Working Group, however, was unable to continue consideration of article 2 (2) because of lack of time.

Other provisions of the draft Convention

44. In addition, the Working Group had before it the following amendments which were not discussed by the Working Group owing to lack of time:

(a) A proposal by the representative of Australia to amend article 3 as follows:

'Replace article 3 (2) by:

The States parties to the present Convention undertake to ensure the child such protection and care as is necessary for his well-being, taking into account the rights and responsibilities of his parents and the stage of the child's development towards full responsibility and, to this end, shall take all necessary legislative and administrative measures.

Replace article 3 (3) by:

The States parties to the present Convention shall ensure competent supervision of persons and institutions directly responsible for the care of children.'

(b) A proposal submitted by the delegation of the United States of America to replace article 3 by the following:

'Article 3

1. In all official actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, or administrative authorities, the best interests of the child shall be a primary consideration.

2. In all judicial or administrative proceedings affecting a child that has reached the age of reason, an opportunity for the views of the child to be heard as an independent party to the proceedings shall be provided, and those views shall be taken into consideration by the competent authorities.

3. Each State party to this Convention shall support special organs which shall observe and make appropriate recommendations to persons and institutions directly responsible for the care of children.

4. The States parties to this Convention undertake, through passage of appropriate legislation, to ensure such protection and care for the child as his status requires.'

(c) A proposal by the representative of Australia to amend article 4 as follows:

'Delete article 4 (2).

Insert new article 4 bis:

The States parties to the present Convention shall take all appropriate measures, individually or jointly within the framework of international co-operation, for the full and effective implementation of the rights recognized in the Convention.'

45. Several delegations expressed the view that the Working Group should ask the Commission to request the Economic and Social Council to authorize the Working Group to meet for one week prior to the next session of the Commission in order to facilitate completion of the work on the draft Convention. Several other delegations, however, opposed this view.

Annex

Paragraphs of the draft Convention on the Rights of the Child adopted by the Working Group

The States Parties to the Convention,

Considering that in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the

dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations have, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that in the Universal Declaration of Human Rights, the United Nations had proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the basic unit of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that, as indicated in the Declaration on the Rights of the Child adopted in 1959, the child due to the needs of his physical and mental development requires particular care and assistance with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security,

Recognizing that the child, for the full and harmonious development of his personality, should grow up in family environment, in an atmosphere of happiness, love and understanding,

Bearing in mind that the need for extending particular care to the child has been stated in the Geneva Declaration on the Rights of the Child of 1924 and in the Declaration on the Rights of the Child adopted by the United Nations in 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in the articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in its article 10) and in the statutes of specialized agencies and international organizations concerned with the welfare of children,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom and brotherhood,

Have agreed as follows:

Article 1

According to the present Convention a child is every human being to the age of 18 years unless, under the law of his State, he has attained his age of majority earlier.