

tions whatsoever for the unborn child during this stage of pregnancy.

During the final trimester of pregnancy—or approximately at that point at which the fetus reaches “viability”—a compelling interest finally arises in protecting unborn life. As the Court stated.

For the stage subsequent to viability in the State, in promoting its interest in the potentiality of human life, may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother. 410 U.S. 164-65.

The exception to this authority in the State to limit abortion following “viability—in cases where the mother’s “life or health” were involved—effectively consumed the rule, however. The critical element was the term “health of the mother.”

According to the Court in the companion case of *Doe v. Bolton*, 410 U.S. 179 (1973) whether or not the “health of the mother” necessitated an abortion was a medical judgment to be made:

In the light of all factors—physical, emotional, psychological, and the woman’s age, relevant to the well-being of the patient. *Id.* at 192.

In other words, to quote Prof. John Noonan of the University of California Law School, the absolute and plenary right to abortion was curbed during the final trimester only by the “necessity of a physician’s finding that she needed an abortion.” J. Noonan, *A Private Choice* 12 (1979). It would be a rare physician who would be incapable of defending an abortion decision on the grounds that in his best medical judgment the “well-being” of the mother demanded it.

As Professor Noonan has summarized the nature of the restrictions placed upon the abortion right in *Roe* and *Doe*:

For the 9 months of life within the womb, the child was at the [pregnant woman’s] disposal—with two restrictions: She must find a licensed clinic after month three; and after her child was viable, she must find an abortionist who believed she needed an abortion. *Id.*

Thus, no significant legal barriers of any kind whatsoever exist today in the United States for a woman to obtain an abortion for any reason during any stage of her pregnancy.

It is this rule of abortion-on-demand imposed upon a citizenry whose values were sharply at variance that has created nearly a decade of intense divisions and passions on the issue of abortion. During this decade, the social views of a relatively small number of individuals have reigned as the law of the land immune from even the most modest efforts of reform. In judicial decisions subsequent to *Roe*, the Supreme Court has expanded upon its decision in *Roe* by striking down statutes to require the consent

to an abortion by the father of the unborn, statutes to require parental consent to abortion performed upon minors, statutes to insure that pregnant women are fully apprised of alternatives to abortion, and statutes to protect live-born fetuses.

The proposed human life federalism amendment is addressed to the *Roe* decision as well as the progeny of *Roe*. The objective of the proposed amendment is relatively simple—it would reverse completely *Roe* against *Wade*, thus restoring the status quo that existed prior to the *Roe* decision when the States possessed authority to legislate with respect to abortion. Unlike many other proposed amendments on the subject of abortion, it would not obligate the States to legislate; it would simply restore to them the authority to do so. By “deconstitutionalizing” the issue of abortion, the proposed amendment would allow the States a wide variety of options with respect to this matter. In their best judgment, the States might choose to have no policy regarding abortion or might restrict and condition it in a variety of ways. For example:

First, they could place restrictions of some form upon late-term abortions;

Second, they could impose obligations upon physicians to save the lives of fetuses capable of surviving an abortion;

Third, they could place limitations upon genetic engineering and other experimental and medical research involving the use of human embryos and fetuses;

Fourth, they could require that women contemplating abortions be fully apprised of the risks of abortion and the alternatives to abortion;

Fifth, they could require some form of parental consent to abortions performed upon minors;

Sixth, they could require some form of spousal consent to abortions;

Seventh, they could establish some minimum waiting period before an abortion could take place or require some form of professional consultation prior to an abortion;

Eighth, they could establish rights of refusal to perform abortions by physicians or nurses, or in entire hospitals;

Ninth, they could limit the commerce in abortifacient devices;

Tenth, they could prohibit abortion generally subject to certain well-defined exceptions and safeguards; or

Eleventh, they could undertake any other form of restriction or regulation upon the abortion procedure.

In removing the abortion controversy from the Federal judicial branch, the people in the States would be reenfranchised to shape abortion policy through their elected representatives. By its very nature, the judiciary is the wrong forum within which to resolve the abortion issue. Because

they cannot control the specific types of cases that come before them and because they are limited in their ability to fashion compromise solutions to difficult issues, the courts are an inappropriate place within which to debate abortion.

The all-or-nothing legalization of abortion-on-demand in *Roe* has done nothing but exacerbate the tensions already created by the abortion controversy. Unlike most legislative solutions, in which some element of deference is paid to all major political or social or occupational groupings, the abortion decision involved a small group of seven men who were totally able to disregard the passionately held views of a large segment of the American people. They did this not in response to the unequivocal demands of the operative document of our Nation, but through a decision whose jurisprudence and whose textual and historical foundations are at least as suspect as the policies that it fostered.

Perhaps the foremost objective of the proposed amendment is to facilitate the development of a social consensus on the difficult issue of abortion. The abortion issue, if it is to be elevated into an issue of constitutional proportions, should be elevated only through the normal consensus-building procedure of the article V amending process rather than through the process of judicial reinterpretation. Senate Joint Resolution 3 would reenfranchise all the people in fashioning a solution to the abortion controversy or, if not a solution, at least an equilibrium. This can only be done by placing this issue back within the representative branches of State governments where it should have remained all along. If the result is that difficult legislative compromises are reached through bitter sessions of negotiation and give-and-take—compromises that are not entirely satisfactory to those on either end of the spectrum on this issue—then the issue of abortion will have been dealt with in the same manner that most other difficult matters are dealt with in a democratic system of government.

If the social divisions that have beset this country since the *Roe* decision are to be overcome, they will have to be overcome through a process in which all shades of opinion are considered and weighed, not simply those of a small minority of the citizenry. There is no more appropriate forum in a free society for these kinds of controversies to be debated and resolved than in State representative, legislative forums. Although some may observe—correctly—that basic issues of individual rights are not subject to referendum in a free society, this, of course, begs the basic question, which is precisely what those rights are and what their relative priorities are. It is

the resolution of these precise questions that is unlikely to occur in the absence of a constitutional amendment of the sort of the human life federalism amendment. I urge my colleagues to support Senate Joint Resolution 3.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the joint resolution.

The resolution was ordered to be engrossed for a third reading and was read the third time.

Mr. BYRD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. BYRD. Is it not part of the order that, once this vote is completed, the Senate will go back to the tax cut cap and there will be up to not more than 3 hours for debate thereon today?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. Will the minority leader yield to me?

Mr. BYRD. Yes, Mr. President, I yield.

Mr. BAKER. While we are on that subject, Mr. President, I wonder if the two managers can give me some idea of how much of the 3 hours they plan to use this evening. I am sure many Members would like to plan the remainder of their day. If we use it all, it will be sometime past 8, around 8:30. I suspect, canvassing this side, that there probably is not a shrill demand for that much time this evening, but we are going to stay here as long as we need to stay.

Mr. BRADLEY. Mr. President, I say to the majority leader that we are allotted 1½ hours. I do not know if we will use it all. My speculation is that we might. We will not know until the next half hour.

Mr. BAKER. Mr. President, I estimate, then, that we shall be here until at least 7, perhaps a little later.

The PRESIDING OFFICER. The question is on agreeing to the joint resolution.

Mr. BOSCHWITZ. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. On this vote, the yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. HELMS (when his name was called). Present.

The result was announced—yeas 49, nays, 50—as follows:

[Rollcall Vote No. 173 Leg.]

YEAS—49

Abdnor	Boschwitz	Danforth
Andrews	Chiles	DeConcini
Armstrong	Cochran	Denton
Baker	D'Amato	Dole

Domenici	Huddleston	Nunn
Durenberger	Humphrey	Pressler
Eagleton	Jepsen	Proxmire
East	Johnston	Quayle
Exon	Kasten	Randolph
Ford	Laxalt	Stennis
Garn	Long	Symms
Grassley	Lugar	Thurmond
Hatch	Mattingly	Trible
Hatfield	McClure	Warner
Hawkins	Melcher	Zorinski
Hecht	Murkowski	
Heflin	Nickles	

NAYS—50

Baucus	Hart	Percy
Bentsen	Heinz	Pryor
Biden	Hollings	Riegle
Bingaman	Inouye	Roth
Boren	Jackson	Rudman
Bradley	Kassebaum	Sarbanes
Bumpers	Kennedy	Sasser
Burdick	Lautenberg	Simpson
Byrd	Leahy	Specter
Chafee	Levin	Stafford
Cohen	Mathias	Stevens
Cranston	Matsunaga	Tower
Dixon	Metzenbaum	Tsongas
Dodd	Mitchell	Wallop
Glenn	Moynihan	Weicker
Goldwater	Packwood	Wilson
Gorton	Pell	

ANSWERED "PRESENT"—1

Helms

The PRESIDING OFFICER (Mr. PRESSLER). On this vote, the yeas are 49, the nays are 50, and 1 Senator voted "present." Two-thirds of the Senators present and voting not having voted in the affirmative, the joint resolution fails of passage.

PERSPECTIVE

Mr. HATCH. Mr. President, while I would have preferred it if the present amendment would have received several more votes, let me take strong issue with those in the so-called prochoice movement who have been so quick to read the obituary of the antiabortion movement.

Slightly less than 3 years ago the human life federalism amendment was conceived. Since then, the Senate Subcommittee on the Constitution has conducted 11 days of hearings on this amendment, the most thorough and balanced set of legislative hearings ever on the issue of abortion. In the process, we have established the most comprehensive record on the issue of abortion ever prepared by a committee of the Congress. We have heard from the Nation's leading constitutional scholars, medical and psychological doctors, theologians and religious leaders, philosophers and sociologists, and citizen's organizations—from all perspectives.

During the past 2 years, the human life federalism amendment has become the first constitutional amendment—indeed the first legislative measure of any kind—on the subject of abortion to be reported out of, first, a subcommittee of the Congress and, then, a full committee. The human life federalism amendment has become the first constitutional amendment on the subject of abortion ever to be subject to a favorable report by an official body of the U.S. Congress. The report of the

Committee on the Judiciary, during both the 97th and 98th Congresses, is one of the most compelling documents on the subject of abortion and Roe against Wade ever prepared.

During the past 2 years, the human life federalism amendment has been the subject of unprecedented public debate and media commentary. Finally, this week it has become the first constitutional measure on abortion ever to be considered on the floor of either House of Congress in the history of the country. The debate did not involve public funding of abortion, or Federal employee abortions, or Peace Corps abortions, or courtstripping; rather, the debate involved abortion as a national public policy and Roe against Wade as an expression of that policy. We have had 2 full days of debate in the Congress, and we have had nearly two dozen U.S. Senators physically come to this floor to argue in support of a constitutional amendment to overturn Roe against Wade. Indeed, we have had a near majority of the entire U.S. Senate cast their votes in favor of a constitutional amendment to overturn this decision.

Finally, Mr. President, we have done all this with honor. We have conducted a high level of debate—as have opponents—and we have argued the issues as clearly and as rationally as we are able. We have gone through the entire legislative process in bringing the human life federalism amendment to this floor—not once but on two occasions. We have never attempted to shortcut the regular legislative process nor unfairly exploit the procedural and parliamentary rules of this body. We have fought to obtain a debate on the issue of abortion on this floor not a debate on procedural tactics or on the constitutionality of exotic legislative proposals. We have succeeded in this, in my opinion.

Mr. President, we have also cleared some of the smoke that has existed on this issue for many years. We have framed the issue of abortion as clearly and as directly as I believe that it can possibly be framed, and we have allowed each elected Representative in the Senate to choose their position. As a result, Members of this body will—as they ought to be—be fully accountable to their constituents on what has proven the most controversial and divisive issue of the past decade. There is, in my respectful opinion, no longer any credible argument that can be made by opponents of Senate Joint Resolution 3 that they are, in fact, seriously concerned about the legal structure of abortion on demand that has been erected in this country as a result of a single decision of the Supreme Court.

In conclusion, while some may be eager to write the obituary of this movement, I would suggest that this

week's debate is, on the contrary, evidence of unprecedented life. Despite the loud cries of a small number of unrepresentative groups that claim to be prolife, the prolife movement is more united in behalf of Senate Joint Resolution 3 than it has ever been on any measure to reverse Roe against Wade.

What we have achieved during the past 2 years is merely the start of renewed efforts by the prolife movement to deal with the tragedy of abortion in an effective and responsible manner. The death notices of the movement, to say the least, are premature. For opponents of today's constitutional amendment to argue that the support of a majority of United States Senators for overturning the Supreme Court's decision in Roe against Wade is the movement's death knell is wishful thinking of the most extreme kind. Rather, it is simply the first effort in what will be an ongoing effort to restore full protection to unborn life.

At this point I would like to thank those whose untiring efforts in this cause deserve special commendation. While any list like this risks missing some important people, I feel it represents the major contributors to this historic effort.

Mark Gallagher; Ernie Ohlhoff; Douglas Johnson; Sue Burke; Dr. Jack Willke; Prof. Lynn Wardle; Prof. Richard Stith; Prof. John Noonan; Dennis Horan; Prof. Victor Rosenblum; Pat Truman; Tom Marzen.

Dave Osteen; Darla St. Martin; Jan Carroll; David Mall; and Prof. Bill Marshner.

Senators: Eagleton; DeConcini; Thurmond; Grassley; Rep. Weber; and Rep. Ashbrook (memoriam).

Staff: Marcia Verville (Eagleton); Bob Feidler (DeConcini); Sherri Flans; Marci Anderson; Sharon Peck; Steve Markman; and Randall Rader.

SENATE SCHEDULE

Mr. BAKER. Mr. President, there is an order now that provides for a vote on the Tax Rate Equity Act tomorrow at 10 o'clock. The Senate will come in at 8:45 and resume consideration of that measure at 9.

The Senate is free to continue debate as long as necessary this evening, for not to exceed 3 hours, the time to be equally divided. No amendments are in order, by unanimous consent.

It is clear, then, Mr. President, that there can be no votes, unless they are procedural votes, for the remainder of this day. Therefore, I wish to announce that I do not anticipate any more record votes during this calendar day.

AUTHORITY FOR COMMITTEE ON ARMED SERVICES TO MEET TODAY

Mr. GOLDWATER. Mr. President, will the Senator give us an approximate time when we might adjourn or recess?

Mr. BAKER. Mr. President, I think there will not be any more votes today. There will be debate which will continue for not more than 3 hours, and the next vote will occur tomorrow at 10 a.m.

Mr. GOLDWATER. I am wondering if I might get unanimous consent for the Armed Services Committee to meet at 7 p.m. tonight.

Mr. BAKER. Mr. President, I yield to the minority leader on that subject.

Mr. BYRD. I do not think we have any problem. I will have to check. We will be back to the majority leader shortly.

Mr. GOLDWATER. The reason I asked is if we do not and the Senate will be in recess by 6:30 p.m., we will be prevented from having a meeting this afternoon. We have to wrap it up. If we have to stay 3 hours, it sort of shoots the whole thing down.

So I wish to have permission to hold the hearing.

Mr. BAKER. Mr. President, let me confer with the minority leader to see if we cannot work that out.

Mr. GOLDWATER. I thank the majority leader.

Mr. BAKER. I thank the Senator.

Mr. President, I am advised by the minority leader that there is no objection to the request I am about to put. I will put it now for his consideration and that of all Members.

Mr. President, I ask unanimous consent that if the Senate is still in session at 7 p.m. today, notwithstanding, the Committee on Armed Services may be authorized to sit.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. I thank the Senator.

TAX RATE EQUITY ACT OF 1983

The PRESIDING OFFICER. The Senate will continue with the consideration of H.R. 1183, which will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 1183) to amend the Internal Revenue Code of 1954 to limit to \$700 the maximum reduction in individual income tax resulting from the third year of the rate cuts enacted by the Economic Recovery Tax Act of 1981.

Mr. BYRD. Mr. President, may we have order in the Senate and in the galleries?

The PRESIDING OFFICER. There will be order in the galleries.

Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BRADLEY. Mr. President, I yield to the Senator from Hawaii.

May we have order?

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Hawaii.

Mr. BYRD. Mr. President, I beg the Senator's pardon for interrupting, but he is entitled to be heard.

The PRESIDING OFFICER. The Senator makes a good point. Those conversing will retire to the cloakroom. The Senate will be in order.

Mr. INOUE. Mr. President, I rise to support passage of H.R. 1183, the Tax Rate Equity Act. This legislation marks the last in a series of efforts we have made to correct the mistakes of President Reagan's misguided tax policies.

What are these mistakes?

A short look back into the history of the Reagan administration's tax policy will reveal how the policy misfired.

The Senate first considered the notion of across-the-board tax cuts in October 1978. Although the proposal was soundly defeated, 36 to 60, the so-called Kemp-Roth proposal was slowly seeping into mainstream Republican politics.

The basic concept of the proposal was simple: The notion was that you could cut taxes across the board and pay for these massive tax cuts with a boom in economic growth. The idea sounded wonderful: It was the magic key to unlock the door to our future growth and prosperity.

These ideas continued to gain momentum. By July 1980, the Republican Party's platform committee had endorsed the Kemp-Roth proposal. In September, candidate Reagan endorsed the proposal and projected that, if elected, he would produce a budget surplus in 1983.

In March 1981, President Reagan introduced his tax cut plan and by August it had passed the Senate. During consideration of that measure, Members on this side of the aisle tried to tie the third year to the level of interest rates and deficits. We were defeated. Shortly thereafter the trouble began.

In October, 2 short months after the Economic Recovery Tax Act was passed into law, OMB Director David Stockman projected a budget deficit of \$60 billion for the coming fiscal year.

By December, all the mirrors around Reaganomics began to break. OMB Director Stockman, in a publicized magazine article, admitted that the Reagan tax cuts are nothing more than trickle down economics. By January we began seeing press reports that the White House staff was lobbying the President to increase taxes. The President, however, was reluctant to tamper with his program.

In February 1982, the administration forecast a budget deficit of \$91.5