

# Calendar No. 658

97TH CONGRESS }  
2d Session }

SENATE

REPORT  
No. 97-465

## HUMAN LIFE FEDERALISM AMENDMENT

JUNE 8, 1982.—Ordered to be printed

Mr. HATCH, from the Committee on the Judiciary,  
submitted the following

### REPORT

together with

### ADDITIONAL AND MINORITY VIEWS

[To accompany S.J. Res. 110]

The Committee on the Judiciary, to which was referred the joint resolution (S.J. Res. 110) proposing an amendment to the Constitution to declare that no right to abortion shall be found in the Constitution and to authorize the States and Congress to legislate with respect to abortion, having considered the same, reports favorably thereon with an amendment and recommends that the joint resolution as amended do pass.

The text of Senate Joint Resolution 110 as amended is as follows:

#### I. SENATE JOINT RESOLUTION 110

To amend the Constitution to establish legislative authority in Congress and the States with respect to abortion

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:*

#### "ARTICLE—

"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." ]

The proposed amendment is sponsored by Senator Hatch and co-sponsored by Senators Nickles, Boschwitz, Denton, Symms, Humphrey, and Zorinsky.

## II. SUMMARY

On January 22, 1973, the United States Supreme Court handed down a decision that has since generated social divisions in this Nation virtually without precedent. In the case of *Roe v. Wade*,<sup>1</sup> a majority of seven on the Court identified for the first time a right to abortion within the terms of the Fourteenth Amendment to the Constitution. The nature of this right, outlined in great detail in Justice Blackmun's opinion, was such as to result in the overturning of the laws on abortion in each of the fifty States of the Union.

Prior to the *Roe* decision, 31 States of the Union had enacted statutes that totally protected unborn human life from the time of conception. Of the remaining 19 States that permitted abortion under limited circumstances, abortion was legal only, as a general rule, where necessary to protect the life of the mother, in cases of rape or incest, or in cases where there was a likelihood that a child would be born with a substantial mental or physical deformity. In only four States did anything approximating abortion-on-demand exist and in each of these States there were temporal limits to such a right. The most liberal of these provisions was probably that existing in the State of New York, in which abortions without restrictions were permitted until the sixth month of pregnancy.

As a result of *Roe*, however, a new regime was created in this country on the abortion issue—a regime more permissive with respect to abortion than had existed in any one of the fifty States prior to January 22, 1973. As a result of the *Roe* decision, a right to abortion was effectively established for the entire term of a pregnancy for virtually any reason, whether for sake of personal finances, social convenience, or individual life-style.

Despite misconceptions on this issue, there is relatively little informed disagreement that *Roe* has established a national policy on abortion without legal restrictions of any significant kind. During the first trimester of pregnancy, the plenary right to abortion is made express by the terms of *Roe*. As the Court stated,

For the stage prior to approximately the end of the first trimester of pregnancy, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician.<sup>2</sup>

During the second trimester, a public interest in abortion arises—an interest in protecting and preserving the health of the mother. This interest may be expressed through governmental requirements that such abortions be performed within hospitals, clinics, or other licensed facilities. As the Supreme Court again stated,

For the stage subsequent to approximately the end of the first trimester, the State in promoting its interest in the health

<sup>1</sup> 410 U.S. 113 (1973).

<sup>2</sup> *Id.* at 164.

American Women's Association; Kathy Wilson, National Women's Political Caucus; Barbara Reach, New York City Commission on the Status of Women; Rabbi Mindy Portnoy, Union of American Hebrew Congregations, Central Conference of American Rabbis; Dr. Allan Rosenfield, American Public Health Association.

On December 16, the Subcommittee heard testimony from U.S. Representative Vin Weber of Minnesota; U.S. Representative Louis Stokes of Ohio; Dr. John Willke, National Right to Life Committee; Darla St. Martin, Minnesota Citizens Concerned for Life; Linda Tarr-Whelan, National Education Association; Ruth Jordan, Coalition of Labor Union Women; Beth Lief, NAACP Legal Defense Fund; Denise Neary, Pennsylvania Pro-Life Federation; Jane Wells Schooley, National Organization for Women; U.S. Representative Christopher Smith of New Jersey; Shirley Leviton, National Council of Jewish Women; Mary Bricker-Jenkins, National Association of Social Workers; Elizabeth Verdesi, United Presbyterian Church Council; Jan Wilkins, American Citizens Concerned for Life; Bella Abzug, Women U.S.A.; Alfred Moran, Planned Parenthood of New York City; Paulette Joyer, Feminists for Life of America; Sherry Matulis, Protect Abortion Rights, Inc.; Nellie Gray, March for Life; Emily Moore, National Women's Health Network; Jean Doyle, Florida Right to Life Committee; Paul Brown and Robert Sassone, Life Amendment Political Action Committee; and David O'Steen, Committee for a Pro-Life Congress.

In addition, the Subcommittee received a large number of written statements from other interested individuals and organizations that will become a part of the permanent record of these hearings. Senator Orrin G. Hatch of Utah, Chairman of the Subcommittee on the Constitution, chaired the hearings.

On December 16, 1981, the Subcommittee on the Constitution voted to report out S.J. Res. 110 after having adopted three amendments offered en bloc by Senator Hatch. The amendments were as follows: (1) On page 2, line 8, strike the second "the"; (2) On page 2, line 9, strike "abortions" and insert in lieu thereof "abortion"; and (3) Strike page 2, lines 10 and 11, and insert in lieu thereof: "a provision of a law of a State which is more restrictive than a conflicting provision of a law of Congress shall govern." The vote to report out the proposed amendment as amended was 4-0 with Senators Hatch, DeConcini, Thurmond, and Grassley in support.

On March 10, 1982, the Senate Committee on the Judiciary voted to favorably report out S.J. Res. 110 as amended by a vote of 10-7. Voting in favor of such a report were Senators Thurmond, Laxalt, Hatch, Dole, Simpson, Grassley, East, Denton, Biden, and DeConcini. Voting in opposition were Senators Mathias, Specter, Kennedy, Byrd, Metzenbaum, Leahy, and Baucus.

#### IV. *ROE* v. *WADE*

The U.S. Supreme Court's most consequential decision concerning the matter of abortion came in 1973 in *Roe v. Wade*.<sup>9</sup> That case involved the challenge by a pregnant single woman (under the pseudonym of Jane Roe) to the State of Texas' criminal abortion statute.

<sup>9</sup> 410 U.S. 113 (1973).

## United States Senate

WASHINGTON, D.C. 20510

August 2, 1982

Ms. Juanita Sonnier  
Rt. 5, Box 709  
Briaux Bridge, Louisiana 70517

Dear Ms. Sonnier:

Many thanks for taking the time to inform me of your concern over the controversial issue of abortion, specifically Senate Joint Resolution 110, the Hatch Amendment.

As I am sure you are aware, on Thursday, March 11, 1982 the Senate Judiciary Committee voted in favor of this measure. I voted for this resolution, which passed by a vote of 10-7.

Once again, thank you for contacting me. I appreciate knowing of your opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Biden", written over a horizontal line.

Joseph R. Biden, Jr.  
United States Senator

JRB/tkw