

"Institutional and External Responses to Supreme Court Policies:
The Case of Abortion"

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Introduction

The purpose of this paper is to examine institutional and external responses to one U.S. Supreme Court decision, Roe v. Wade¹ and its progeny. To some extent, we undertook this project to examine, however indirectly, a recent charge that Supreme Court policy is essentially meaningless in the absence of other institutional reinforcement. One commentator, for example, has charged that Brown v. Board of Education² did little to further the progress of civil rights and it was not until Congress acted^{2a} before recognizable advancements were made.

In this paper, we do not directly dispute the finding that Supreme Court policy in any given area necessarily leads to major changes. We will not, for example, attempt to argue that Roe dramatically led to more abortions, etc. What we do argue is that Supreme Court decisions and their resultant policies can be important for reasons other than their direct impact on the rights at stake. In the case of Roe, we find that its importance lies in its continued viability after more than a decade of concerted effort to nullify its scope. We find, in fact, that if Roe was not reversed by the early 1980s, the likelihood for future change seems tenuous, at best.

We reached this conclusion by tracing the status of abortion from 1973 to 1980 and then from 1980 to 1984. We do this by examining the five elements noted as essential for policy change: public opinion, interest groups, the Congress, the Supreme Court, and the Executive branch. Our analysis reveals that by the early 1980s, the elements considered crucial for policy change weighed

in favor of drastic change in abortion policy. Public opinion leaned toward the pro-life position, the pro-life movement was invigorated, the Senate was controlled by Republicans, the Supreme Court in several recent decisions indicated its willingness to limit Roe, and for the first time since that decision, we had a president who professed to be totally committed to reversing Roe. Yet, for the reasons provided in the following pages, change failed to occur, lending support to the view that Supreme Court decisions may be significant for reasons other than their direct impact on the rights at stake. Elements for policy change were propitious in 1980, by 1984 the pro-life movement had lost much of its luster. As we shall see, this can be explained, in part, by the largely symbolic nature of the Reagan administration's support for change in abortion policy.

Abortion Policy, 1973 to 1980

Public Opinion

Almost all models of the policy process begin with the assumption that public opinion shapes (directly or indirectly) the way in which public officials perceive and act on issues. Attitudes toward abortion in the United States have been the object of a great deal of analysis. The data revealed in Table 1 indicate responses to questions posed concerning abortion attitudes between 1972 and 1980. Several interesting

(Table 1 about here)

observations can be drawn. First, consider attitudes before and immediately after Roe. It appears that the Supreme Court's decision had some discernible impact on public opinion; favorable attitudes uniformly increased, leading one to suspect that

institutional support legitimized the issue. Also, the number of respondents indicating that they did not know how they felt about the issue decreased.

Second, once this notable change in attitude occurred, little variation in public opinion can be discerned through 1980. Even though some have suggested that the public is growing increasingly conservative, there are simply no statistically significant differences over the years following Roe v. Wade.

Did the fact that the public held relatively stable views necessarily imply that the electorate was polarized between the pro-life and pro-choice camps? The answer to this question is clearly NO. The majority of the electorate did not fit squarely on either side of the issue, believing neither that abortion should be eliminated totally nor that abortion should be available on demand. One empirical study by Judith Blake and Jorge H. Del Pinal reveals that this had greater repercussions for the pro-choice camp because,

People who equivocate, who wish to fine-tune the justifications for abortion, apparently are more negative than positive in their views about legalizing abortion. In fact, it may be fair to say that these respondents are "closet
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negatives."

If this finding aptly described the American electorate through 1980, then it would seem that the pro-life movement had public opinion on its side as Ronald Reagan entered office. Even

though the American public clearly did not favor total elimination of abortion, it did favor some governmental restriction of this right. This can be seen even more clearly in the public's response to questions concerning limitations on governmental funding of abortions and parental and spousal consent requirements prior to abortion procedures. Again, according to Blake and Del Pinal,

...although out-and-out negativism toward legalized abortion is rare, so is support for basic planks in the prochoice platform. Even respondents who endorse all four justifications for abortion (health, child defect, financial stress, and elective abortion) undergo enormous attrition in numbers approving when they are asked about Medicaid for abortion, abortion without the husband's or parents' consent, or abortion past the
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first trimester.

This finding is remarkably explanatory of how public officials responded to the abortion issue through 1980. As we shall see in the following sections, government officials acted to mirror public opinion, limiting or restricting federal funds for abortion and in some instances embracing regulations requiring parental consent.

Interest Groups

A second element for which most models of public policy account is the role of interest groups. Whether as direct or

indirect forces on governmental decision making, the relative strength of one set of groups over another can be critical to policy outcome.

When the Supreme Court announced its decision in Roe v. Wade, a severe disequilibrium existed between the right to life and pro-choice sides of the abortion debate. At this time, the right to life side was largely represented by the Roman Catholic Church and small fragmented organizations, while the pro-choice position was ably represented by a well-organized coalition of diverse interests. An illustration of this discrepancy in strength can be seen in Table 2, which presents groups filing amicus curiae briefs in Roe v. Wade. As is readily apparent, the

(Table 2 about here)

pro-choice side heavily outweighed the opposition. By the time the Supreme Court decided Planned Parenthood of Central Missouri v. Danforth⁶ which involved consent provisions, equilibrium had been achieved. Compare, for example, the display of strength by the groups in Planned Parenthood versus Roe depicted in Table 2. In short, the period between 1973 and 1980 was a time of remarkable growth for a previously fragmented movement.

The Pro-life Movement

Many have noted the significance of Roe v. Wade as the catalyst for the formation of the pro-life movement. While this cannot be questioned, the seeds of the movement were planted by the U. S. Supreme Court as early as 1965. In that year, in response to another Supreme Court case, Griswold v. Connecticut,⁷ involving the constitutionality of a state law regulating the

sale of contraceptive devices, the Church "earmarked" 50,000 dollars for an anti-abortion campaign to be jointly administered by the Family Life Division of the U.S. Catholic Conference and the National Conference of Catholic Bishops.⁸ Yet, beyond the Church's involvement in the abortion issue, no strong national groups existed to buttress its efforts. After Roe v. Wade, in response to what it considered to be a devastating loss, the Family Life Division created what is now the largest pro-life group in the United States -- the National Right to Life Committee (NRLC). NRLC is now separate from its creator but the two retain close ties. As Connie Paige has noted, "the Roman Catholic Church created the Right to Life movement. Without the church the movement would not exist as such today."⁹

Yet, leaders of the NRLC and the Catholic Church realized that the only way to forge a broad-based movement would be to separate the two entities. And, to foster the image that they were separate, they installed prominent non-Catholics in leadership positions and aligned with "more progressive" organizations including those opposed to capital punishment. The first chairwoman of the board of the NRLC, in fact, was Marjory Mecklenburg, a Methodist. She had a long history of dedication to the pro-life platform, co-founding Minnesota Citizens Concerned for Life, a highly successful state group. Within a short time, however, Mecklenburg's advocacy of teenage pregnancy programs caused a rift in the organization and she resigned to form American Citizens Concerned for Life. Interestingly, she was succeeded by yet another non-Catholic, Dr. Mildred Jefferson, a black physician. Under the leadership of these women and with

the help of Judy and Paul Brown, who later were dubbed Mr. and
Mrs. Anti-abortion America, a movement came into being.¹⁰

Under Judy Brown's supervision, the NRLC began to coordinate
its activities with state and local pro-life groups and later
with more broad-based New Right organizations.¹¹ It was the ties
that Brown, in part, forged with direct mail wizard Richard
Viguerie that propelled pro-life issues onto the national scene.
The two movements enjoyed a symbiotic relationship; the New
Right saw the anti-abortion position as compatible with its
agenda and as a way of broadening its base, while pro-life forces
gained financial and political support, publicity, and the
opportunity to have an impact on a national level.

Together and individually, the right to life and New Right
movements embarked on a concerted course of political action
designed to affect all arenas of government. At the congressional
level, the goal of the pro-life/New Right leadership was passage
of a human life amendment to ban all abortions. When it became
clear that they lacked sufficient support to get an amendment out
of committee, they looked to other ways to restrict abortions.
Their most important victory during this era was annual passage
of a restriction on the use of federal funds for medicaid
abortions, known as the Hyde Amendment.

Annual passage of funding restrictions during this period
was an incredible accomplishment given the liberal make-up of the
U.S. Senate. Intense pressure was brought to bear on
recalcitrant Senators, and senatorial targets of the political
wrath of the pro-life movement were quick to point out the

effectiveness of this strategy. Senator Hubert Humphrey (D. Minn.) called the Hyde Amendment a "no win type of vote,"¹² while another pro-choice representative, Senator Robert Packwood (R. Ore.) noted, "They are a very significant force. To politicians, they are a frightening force. They are people who are with you 99 percent of the time, but if you vote against them on this issue, it doesn't matter what you stand for."¹³

After pro-life forces were successful in obtaining passage of the Hyde Amendment, they moved into the Executive arena to press for the drafting of narrow Health, Education and Welfare (HEW) regulations to implement the provisions of the Hyde Amendment. When the Secretary of HEW issued regulations permitting funding of abortions performed as a result of rape or of incest so long as the incident was reported to the proper authorities within 60 days, pro-life groups were highly critical calling the regulations "a rather blatant carrying out of a loophole to allow abortion on demand."¹⁴

Pro-life leaders were perhaps more successful in convincing Jimmy Carter to establish several commissions charged with investigating and encouraging alternatives to abortion. One of them even sought to hire Marjory Mecklenburg as a consultant.¹⁵

While the pro-life/New Right movements were making some headway on the national level, their major targets at the time were states and local governments, where their strength continued to lie. During this era, the NRLC alone had "almost 2,000 chapters in all 50 states and the District of Columbia with an estimated 11 million members in its affiliated state or pro-life local groups."¹⁶ Thus, it is not surprising that as was the case

prior to Roe v. Wade, pro-life organizations were able to convince a number of localities to pass restrictive legislation. This time, however, pro-life groups backed up their efforts with concerted litigation.

An excellent illustration of this involved a heavily lobbied for Missouri law that contained parental and spousal consent requirements prior to a woman's receipt of an abortion. The law was immediately challenged by Planned Parenthood of Central Missouri, which claimed that Roe impliedly prohibited spousal consent. Rather than allow experienced pro-choice forces to ramrod them through the courts, the pro-life side retaliated. Not only did they have an ardent pro-life supporter, Attorney General John Danforth on their side to argue for the constitutionality of the state law, they also filed amicus curiae briefs in numbers to support the legislation for which they had lobbied (see Table 2).

Even with this tremendous show of support, pro-life forces lost the case on the merits. The Court struck down the consent requirement. Yet, to many on both sides of the issue, Planned Parenthood signaled a judicial retreat from Roe because the Court left open the possibility that some state regulations would be permissible. According to Frank Susman, the attorney who represented Planned Parenthood,

The first step back from Wade ... came in 1976 with the Supreme Court's decision in Planned Parenthood ... The Court held that the statement in Roe v. Wade which

provided that a woman could secure an abortion in the first trimester by the State did not really mean there could be no regulation, but apparently meant that the Due Process Clause would forbid substantive regulation.

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Taking their cue from the Court, pro-life forces then went on to press for other kinds of restrictive state and local laws and ordinance. One of the most successful examples of these ordinances was passed in Akron, Ohio in 1978. Among its provisions included mandatory parental consent for minors under 15, prohibitions on saline abortions and non-emergency abortions performed in municipal hospitals, and mandatory hospitalization for women seeking abortions past the twelfth week.

Thus, it is clear from these ordinances and others that the Supreme Court's 1973 decision not only served to mobilize a group of committed individuals but to create a movement that quickly went on to enjoy some success. This movement, when combined with the New Right, invaded all arenas and levels of government in search of policy change.

The Pro-choice Movement

The 1973 decision was obviously a cause celebre for the pro-choice movement. Unlike pro-life activists, who came into their own after Roe, the pro-choice coalition was comprised of older, better established organizations that saw Roe as the culmination of several years of hard work. As early as 1962, the American Civil Liberties Union (ACLU) endorsed model penal laws that would have decriminalized abortion. By the late 1960s, the ACLU's

efforts were joined by several other organizations including the newly formed National Abortion Rights Action League (NARAL) -- now the largest pro-choice group in the United States. They and others lobbied heavily for liberal state laws and then initiated litigation throughout the United States in an effort to get a favorable national resolution from the Supreme Court.

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Their tremendous victory of Roe v. Wade was tempered by the recognition of these organizations that a judicial victory would produce a strong conservative backlash. ACLU attorney Judith Mears summed up this trepidation noting that:

Unfortunately the Supreme Court's abortion decisions no more resolves that issue than its 1954 decision in Brown v. Board of Education resolved the issue of racial segregation in public schools ... The questions left unanswered by Roe and Doe are, to an important extent, medical questions. If we are to avoid the disheartening prospect of history repeating itself a la Brown with twenty years of legislative and litigative battles, we must have the cooperation and active assistance of physicians who can assert the primacy of their medical judgment.

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Recognition of the problem, however, did not necessarily mean that action to prevent erosion of Roe was quickly

forthcoming. Although pro-choice forces went into legislative corridors to prevent passage of restrictive legislation, they often found themselves back in the courtroom defending principles enunciated in Roe. Perhaps the best representative of this litigation mentality was the ACLU's creation of the Reproductive Freedom Project, a project formed specially to litigate against restrictive abortion provisions and to compile a docket of pending cases throughout the United States.

Even though the ACLU and NARAL, in particular, saw the importance of defending Roe in court and in the legislative arena, other organizations that were part of the pro-choice coalition directed their energies elsewhere. The National Organization for Women, a group that had strongly endorsed a woman's right to choose in 1968, for example, was largely preoccupied with the ERA ratification struggle. Another group that had been part of the Roe coalition that now also was preoccupied elsewhere was the American Medical Association (AMA). Once a right to choose was guaranteed, the AMA went off to fight other battles including one against national health insurance.

Thus, while it would be unfair to say that the pro-choice movement was ineffective, e.g. no human life amendment was passed, it had lost some of its fervor as the energies of important constituent groups were diverted to other issues. Perhaps more important, pro-choice groups continually found themselves taking defensive positions against the heavy artillery of the pro-life movement.

The Congress

A third key element in all policy models of course, are

policy makers, one of which is the U.S. Congress. To make or to change policy, members of Congress must sort through the pressures that daily come to bear on decision making. The abortion issue was no different. Within eight days of the U.S. Supreme Court's 1973 ruling, several versions of a human life amendment were proposed by various members of Congress at the urgings of pro-life activists. But, during the course of 1973 and in the several years that followed, no constitutional amendment even came close to passing in either house of Congress.

Before the election of Ronald Reagan in 1980, however, pro-life proponents convinced Congress to enact a number of restrictive abortion-related statutes, listed in Table 3. The

(Table 3 about here)

most controversial of these involved federal funding of abortions.

Proposals to restrict the use of federal funds for abortion were originally made in 1974; though it was not until 1976 that both houses of Congress agreed to language suggested by conferees (see Table 4). Actually passed as a rider to the Departments of Labor/HEW budget authorization, the Hyde Amendment stated that no federal funds could be spent for abortion "except where the life of the mother would be endangered if the fetus were carried to term." President Gerald Ford, however, vetoed this provision claiming that Congress presented him with the

dilemma of offending the voting groups
who benefit by these government programs
or offending those primarily concerned

with certain restrictions embodied in the bill. I agree with the restrictions on the use of federal funds for abortion...My objection to this legislation is based purely and simply on the issue of fiscal integrity.

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Just one day later, both the House and the Senate overwhelmingly voted to override the veto. Even known pro-choice supporters including Representative Bella Abzug (D. N.Y.) voted to override the veto because authorization for both departments was at stake.

The Hyde Amendment represented a major triumph for pro-life activists yet one that is puzzling given the Democratic make-up of both houses of Congress at the time. Members of Congress were fully aware that medicaid dollars had been used for more than 300,000 abortions in the last fiscal year and that this measure would severely restrict the ability of low income women to obtain abortions.

Why then did the Hyde Amendment pass? As indicated by even the most liberal members of Congress' vote to override, many simply saw passage of the budget as critical. The Labor/HEW appropriations bill had been held up 11 weeks to debate the abortion funding provision and the functioning of important governmental programs was threatened. Abzug and others had worked hard to get social welfare programs increased and now all was threatened by the rider.

Second, even though many members supported the Supreme Court's 1973 decision, fiscal considerations led many to view the rider as a way to cut 45 million dollars from the budget. After

all, 1976 was an election year and cutting the budget was a major priority.

Finally, a great deal of internal and external pressure was placed on Congress. Pro-life groups and their supporters in the House in particular were not only unwilling to compromise but promised to make voting on this issue a litmus test for support for the pro-life position.

Even though a federal district court immediately enjoined implementation of the Hyde Amendment, that injunction later was lifted in light of three Supreme Court 1977 funding decisions. And, since that time, as indicated in Table 4, the Hyde

(Table 4 about here)

Amendment has continued to be renewed by Congress with only slight modifications.

Clearly those individuals who fought for passage of the Hyde Amendment year after year intended this to be a first step toward elimination of legalized abortion. Even though they could not secure passage of a constitutional amendment, many thought passage of the Hyde Amendment and judicial acceptance of its strictures would severely curtail the number of abortions performed each year.

Studies, however, quickly revealed that the most significant piece of legislation to come out of the Congress appeared to have little affect of abortion per se. The Hyde Amendment simply was not restricting abortions. Yet, during this period, more restrictive legislation, and in particular, any kind of a constitutional amendment as simply not feasible given the

democratic make-up of the Senate.

By 1980, the situation in Congress, however, changed dramatically. Using issues such as abortion and prayer in school, conservative coalitions handily defeated many liberal members of the Congress who sought re-election. Such victories, especially in the Senate where the majority now was Republican, seemingly cleared the way for adoption of further restrictive legislation.

The Supreme Court

Although some traditionalists object to references to the Supreme Court as a participant in the policy process, its important role in many key areas cannot be ignored. This is particularly true in the abortion controversy in which the Supreme Court was the first national institution to map out far-reaching policy. Even in the aftermath of Roe v. Wade, through the landslide election of Ronald Reagan in 1980, the Supreme Court has continued to play a major role in setting abortion policy.

Between 1973 and 1980, the majority of abortion cases heard by the Supreme Court involved consent and funding. Consent was the first issue to reach the Court after Roe. Because Roe v. Wade did not address the issue of whether parental or spousal consent could be regulated, pro-life activists saw this as a possible way to limit the scope of the 1973 decision. Thus, as early as 1974, they were able to convince several state legislatures to enact stringent consent requirements into law. By 1976, the first case to challenge these laws arrived at the Supreme Court. In Parenthood of Missouri v. Danforth the Court

refused to narrow its holding in Roe, striking down Missouri's law that required the written consent of a woman's spouse, or her parents if she was an unmarried minor. ²² Writing for the Court, Justice Harry Blackmun, the author of Roe v. Wade, noted that since the states were prohibited from regulating abortion in the first trimester, the state also was prohibited from delegating that responsibility to husbands or parents. But, Blackmun went on to say, "We emphasize that our holding section 3(4) [parental consent] is invalid does not suggest that every minor, regardless of age or maturity, may give effective consent for termination of her pregnancy." ²³

It was not long before this phrase came back to haunt pro-choice activists as some considered Planned Parenthood to be a major victory. The next consent case that came to the Court was ²⁴ Bellotti v. Baird in 1979. Often referred to as Bellotti II, this suit involved a Massachusetts statute requiring that unmarried women under the age of 18 must secure parental consent prior to an abortion. The legislation provided that, "If one or both parents refuse such consent...the abortion may be obtained by order of a judge of the superior court for good cause shown."

In 1976, the Supreme Court remanded Bellotti v. Baird for reconsideration in light of Planned Parenthood. When a district court struck down the law as unconstitutional, Bellotti II then returned to the U.S. Supreme Court in 1979 and the Justices affirmed the decision of the lower federal court. Once again, however, the Court refused to rule decisively on whether requiring parental consent, itself, was unconstitutional.

According to Justice Lewis Powell, the Court was "not persuaded that as a general rule, the requirement of obtaining both parents' consent unconstitutionally burdens a minor's right to seek an abortion. The abortion decision has implication far broader than those associated with most other kinds of medical treatment."²⁵ Powell's opinion for the Court, then, while rendering the Massachusetts law unconstitutional, did not prohibit other states from adopting parental consent requirements. In this regard, both sides claimed victory -- pro-choice activists actually won the case, but pro-life forces won the principle as well as the right to lobby further for state consent provisions.

Pro-life efforts after Bellotti II paved the way for the last case of the period, H.L. v. Matheson²⁶ in 1981. In H.L. the Court was asked to decide whether a Utah law requiring a physician to "notify, if possible" the parents of a minor seeking an abortion fell within the cracks of Planned Parenthood and Bellotti II. And, indeed, according to the Court, pro-life forces had finally hit upon the correct formula for limiting Roe. Writing for the five person majority of the Court, Chief Justice Warren Burger noted that "The Constitution does not compel a state to fine-tune its statutes so as to encourage or facilitate abortions. To the contrary, state action encouraging childbirth, except in the most urgent circumstances is 'rationally related to the legitimate governmental objective of protecting potential life'. "²⁷

A second issue that the Court, like Congress, has addressed is funding. Although it took several Supreme Court decisions to

secure a definitive ruling on consent, the Court immediately took a hard line position on federal funding of abortions. In fact, pro-choice activists never received a favorable ruling from the Court during this period.

The first of the series of these defeats came in 1977 in the forms of Ma²⁸her v. Ro²⁹e, Be³⁰al v. Do³¹e, and Poelker v. Do³¹e.

Ma²⁸her involved a Connecticut Welfare Department regulation that restricted Medicaid funding to "medically necessary" abortions performed during the first trimester. In a six to three decision, the Supreme Court upheld the constitutionality of Connecticut's regulation noting that "The State unquestionably has a 'strong and legitimate interest in encouraging normal childbirth'."³¹

While Poelker involved publicly financed hospitals, Be³⁰al also dealt with the Medicaid program. At issue in Be³⁰al, however, was Title XIX of the Social Security Act. According to Title XIX, states participating in the program must establish "reasonable standards" to determine for which procedures to provide financial assistance. Pennsylvania, a state participating in the federal Medicaid program, excluded all but "medically necessary" abortions from coverage under its program. In yet another six to three decision, the Court ruled that:

when Congress passed Title XIX in 1965, non-therapeutic abortions were unlawful in most States. In view of the then prevailing state law, the contention that Congress intended to require -- rather than permit -- participating States to

fund non-therapeutic abortions requires
far more proof than respondents have
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offered.

In addition to upholding states' rights to limit funding for abortion services for the indigent, on the same day as Mahe and Beal, the Court dealt pro-choice forces an additional blow in Poelker v. Doe, which involved the right of publicly-funded hospitals to refuse to provide abortion services. In a per curiam opinion, the Court stressed that it found "no constitutional violation in the city of St. Louis' choice "to provide publicly financed hospital services for childbirth without providing corresponding services for non-therapeutic
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abortions."

While the Court discouraged pro-choice groups with its three
1977 decisions, two 1980 decisions, Harris v. McRae 34 and
Williams v. Zbaraz 35 were perhaps more devastating to the pro-choice movement because of their finality. At issue in Harris was the constitutionality of the Hyde Amendment.

After its passage in 1976, pro-choice forces immediately sought and obtained an injunction in U.S. district court. The Supreme Court, however, vacated the district court decision for reconsideration in light of its 1977 decisions. In August 1977, the district court lifted the injunction and the original Hyde Amendment went into effect.

In 1980, pro-choice groups brought an amended suit of McRae v. Harris to the same district court where the earlier injunction had been obtained. That district court found that the Hyde Amendment's exclusion of medically necessary abortions from the

Medicaid program was violative of the First and Fifth Amendments.

Anticipating further legal challenge, the district court stayed its order for 30 days to allow the U.S. government to appeal the decision to the U.S. Supreme Court. This appeal was granted and the Justices heard oral argument on April 20, 1980. On June 20 of the same year, the Court upheld the constitutionality of the Hyde Amendment. Writing for the majority, Justice Potter Stewart noted emphatically that the Court "cannot overturn duly enacted statutes simply because they may be unwise, improvident or out of harmony with a particular school of thought." ³⁶ Thus, like Congress, the Court appeared to be growing more conservative and responsive to the growing wave of pressure.

The Executive Branch

Many studies of highly volatile issues such as abortion have indicated that presidential action is critical for policy change. Between 1973 and 1980, three presidents attempted to wrestle with the abortion issue. All "personally opposed abortion," yet none took the requisite initiative for policy change. In other words, for the most part, rhetoric outweighed action.

Soon after Richard Nixon was inaugurated, the Supreme Court announced Roe v. Wade. While the significance of the decision was immediately apparent to some, the death of Lyndon Johnson on the day the decision was handed down, coupled with the announcement two days earlier of the end to the Viet Nam War and escalating Watergate charges, explain why no public comments concerning Roe were forthcoming from the White House; the

President was understandably preoccupied with other matters. However, as early as April 3, 1971, Nixon publicly stated his opposition to abortion as a method of birth control. ³⁷ And, one year later, he reinforced this position by rejecting the recommendation of his own Commission on Population Growth that urged liberalization of restrictive abortion laws.

Regardless of Nixon's stated policy preferences, when Roe v. Wade was docketed for argument before the U.S. Supreme Court, his administration took no action, even though it is not unusual for an administration to present its position to the Court in the form of an amicus curiae brief. Perhaps the President believed that the Supreme Court, which by the time Roe was decided included four of his appointees, would share his views. Ironically, of course, Harry Blackmun, Nixon's second appointment to the Court, wrote the strong opinion.

After Roe, there was no effort by the Nixon administration to restrict its scope. No policy statements were forthcoming and no support was given to proposals pending in Congress.

The trend established by Nixon of verbal opposition to abortion yet failure to act was adopted by his successor, Gerald Ford. When Ford took office in 1974 he made no public statements about the issue. In fact, it was not until his wife publicly voiced her support for Roe that Ford was forced to comment. At that time he made known his support for a "local option amendment to the U.S. Constitution," which would have allowed the states to regulate abortion policy. ³⁸ Later, when abortion became an issue during the 1976 campaign, he reiterated this posture noting, however, that "there are instances when abortion should be

permitted: the illness of a mother; of rape or any other
unfortunate things that might happen. So there has to be some
flexibility." ³⁹

Even though Ford voiced his support for a local option amendment, he took absolutely no action on behalf of this idea or any others designed to restrict Roe. In fact, if anything, Ford could be considered pro-choice. For example, he vetoed the appropriations legislation that contained the Hyde Amendment in part because of fiscal reasons and in part because he thought that Congress was putting him in a difficult position in an election year. And, like Richard Nixon, Gerald Ford sent no representatives of his Justice Department into the Supreme Court to argue for the constitutionality of state abortion laws, which he presumably favored given his support of a local option amendment. Planned Parenthood v. Danforth, for example, presented Ford with the perfect opportunity to demonstrate his support for the concept. Yet, Ford sent no representatives to the Supreme Court.

Most surprising of all may have been the contrast Ford drew between himself and his challenger for the 1976 Republican nomination, Ronald Reagan. In interviews and in speeches Ford portrayed Reagan as an extremist on the issue while noting his own compassion for women.

Unlike Ford, Jimmy Carter repeatedly refused to support any kind of constitutional amendment. Yet, unlike Reagan, Carter could never be considered a spokesperson for one side of the abortion debate. In fact, somewhat ironically, although he

supported, in concept, a woman's right to choose, he probably did more than Nixon or Ford to provide federally encouraged alternatives to abortion. Carter, for example, adamantly opposed the use of federal funds for abortion, a position advocated in the Democratic Party platform on which he ran. It was the Carter administration, in fact, that successfully defended the constitutionality of the Hyde Amendment in the Supreme Court. Conversely, Carter urged the expenditure of federal funds for programs to encourage alternatives to abortion. One program backed by the Carter White House was designed to provide money to families that adopted "hard to place children." In fact, "a fledgling teenage pregnancy program" established by Carter tried to hire Marjory Mecklenburg of American Citizens Concerned for Life as a consultant.

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Thus, what is particularly interesting is that by the end of 1980, President Carter had established within the Executive branch a variety of programs designed to encourage alternatives to abortion. It seems then that even the most moderate of presidents serving during this era was reaching out to appease the growing ranks of conservatives on this issue.

Abortion and the 1980 Elections

The factors leading up to Ronald Reagan's landslide victory over Jimmy Carter are numerous, still under speculation, and beyond the scope of this study. Yet, there is some agreement that the contrast between Carter's and Reagan's stances on abortion as well as that of their respective parties' platform, played a critical role. Reagan was the first serious presidential contender to state without hesitation or equivocation his support

for a human life amendment. Given our findings -- e.g. favorable public opinion and the growing momentum of the pro-life movement -- Reagan's complete embracement of the ideals of that movement, was a successful election strategy. And, once Reagan was elected, many believed that radical changes would be forthcoming. Clearly, there were strong reasons for this speculation as the elements critical for policy change seemingly fell into the pro-life camp and pro-life activists looked to Ronald Reagan as their leader to bring about this change.

Yet, what seemed to be inevitable never really happened. Why? Two responses can be offered. First, as was the case with other chief executives who opposed abortion, the Reagan administration spoke to appease pro-life supporters but failed to act, or second, the Reagan administration simply was ineffective. To sort out the answers to these questions, the following sections analyze President Reagan's actions concerning the abortion issue. Special attention is given to the key elements considered earlier in this paper.

Ronald Reagan and Abortion, 1980-1984

There is strong agreement among scholars that presidents can initiate policy change in a number of ways. First and perhaps most immediate are the appointments that a president makes during his term of office. None of the President Reagan's highly visible appointments were drawn from the ranks of the pro-life movement. Yet, clearly certain members of the administration who were later to play a role in the abortion controversy were staunch supporters of the pro-life position. Among these were:

U.S. Solicitor General Rex E. Lee, an elder in the Mormon Church and former dean of Brigham Young University Law School; Surgeon General of the U.S., C. Everett Koop, author of The Right to Live, The Right to Die, which "drew links between communism and abortion;"⁴¹ Marjory Mecklenburg, head of the Office of Adolescent Pregnancy; and, William Olson, a pro-life activist attorney, Acting Chair of the Legal Services Corporation Board.

On top of the fact that none of these appointments were highly visible, Reagan made the mistake of initially alienating pro-life forces with his nomination of Sandra Day O'Connor to the Supreme Court. Because O'Connor was reported to have supported pro-choice legislation while she was an Arizona state legislator, pro-life activists immediately expressed their outrage at her appointment. They were especially angry because they had earlier succeeded in obtaining passage of a plank in the Republican party platform guaranteeing presidential appointment of jurists who strongly supported the pro-life position. In essence, Reagan negated much of the good will he had built up through his nomination of O'Connor, his most visible appointment. This was particularly hard blow for pro-life forces who blamed the Court for their problems; O'Connor's appointment simply was feared as adding to them.⁴²

A second way in which a president can initiate policy change is through proposing legislation and lobbying for its passage. At the time Reagan took office in 1981, there was only one legislative plan that would have satisfied his pro-life supporters -- a total ban on abortions. Within several months of Reagan's taking office, however, the pro-life movement was

plagued by a devastating split over tactics. One side, led by Senator Jesse Helms (R. N.C.) and Representative Henry Hyde (R. Ill.), favored legislation defining a fetus as a person and therefore entitled to all the rights and privileges guaranteed by the U.S. Constitution. ⁴³ Senator Orrin Hatch (R. Utah) and his supporters, who included a number of pro-life groups such as the NRLC and the National Conference of Catholic Bishops, in contrast favored a constitutional amendment as the most expedient way of overruling Roe. After some debate, they settled on "A right to an abortion is not secured by this constitution" as their phraseology.

The split between Helms/Hyde and Hatch first came into the public eye in 1982 when the Senate Judiciary Committee voted 10 to 7 for a slightly different version of the Hatch amendment. Even though this was the first time that a congressional committee had acted favorably on anti-abortion legislation, through procedural manipulations, Helms did not allow the amendment to come to a vote in the Senate. Instead, he tried to secure passage of legislation banning abortions believing that there were simply not enough votes in the Senate to secure passage of an amendment. Liberal Senators then began a filibuster against the Helms proposal and on September 15, the Senate finally voted 47 to 46 to "kill" the anti-abortion proposal.

In 1983, the debate began anew. This time the Senate Judiciary Committee split evenly on the Hatch amendment. Generally, when proposed legislation fails to receive a positive vote in the Judiciary Committee, it is not reported to the floor

of the full Senate for a vote. In this instance, however, Senator Joseph Biden (D. Del.), who had voted in 1982 but not in 1983 for the Hatch amendment, suggested sending the amendment to the Senate. Finally, on June 6, 1983, the Senate defeated the amendment 49 to 50, falling 18 votes short of the necessary total. Interestingly, Jesse Helms voted "present" and not in favor of the amendment.

Was the defeat of legislation defining life or the human life amendment Ronald Reagan's fault? To answer this question, we must examine what Ronald Reagan did in this period. Unquestionably, he was faced with a very difficult situation; his pro-life constituency was divided over which strategy to use. Rather than entering the fray, Reagan chose instead to give public support to which ever proposal was pending. In 1982, he and his staff pressured the Senate to adopt the Helms proposal. While, in 1983, he voiced his strong support for the human life amendment.
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What the President clearly failed to do was to take any leadership role in this debate. He simply repeatedly voiced his support for any measure that would restrict Roe noting his desire "to restore legal protections for the unborn whether by statute
45
or by constitutional amendment." Yet perhaps, the President should have done what others have done when there was congressional disagreement over tactics. He could have summoned competing pro-life factions to the White House and used the power of that office to secure a single, unified course of action. Even though he attended a strategy meeting for 30 minutes between White House staffers and anti-abortion leaders at the "11th hour"

at the close of the 1982 filibuster, he did little to reconcile competing factions. He simply left this task up to White House staffers, who admitted that "the issue doesn't burn in the hearts of most people around here."⁴⁶ Thus, while Reagan's support for the general goals of the pro-life movement is beyond question, he took little direct action to further their most desired goals.

A final way in which a president can expedite policy change is through judicial action. The Reagan administration took advantage of its one opportunity -- at least at the level of the Supreme Court -- to advocate the pro-life position. That case⁴⁷ was Akron v. Akron Center for Reproductive Health in which the ACLU Reproductive Freedom Project in cooperation with the local ACLU affiliate challenged the series of restrictive Akron ordinances. Akron generated a tremendous amount of publicity from the beginning and debate became particularly volatile when the case were accepted for review by the Supreme Court.

The importance of the issues at stake probably stem from a number of factors: it was the first time since 1973 that the Supreme Court would reexamine a range of abortion restrictions. Prior to this time, the Court had limited its review to narrower issues. To decide Akron, it appeared that the Court would be forced to reexamine its entire abortion policy.

Also, Akron was the first abortion case in which Justice Sandra Day O'Connor would participate. Many were anxious to see whether O'Connor was as pro-choice as her pro-life critics had portrayed her prior to her confirmation proceedings. Finally, Akron represented a true test of strength for the respective

sides of the issue. As revealed in Table 5, pro-choice

(Table 5 about here)

organizations filed amicus curiae briefs in numbers attesting to the weight of public, legal, and scientific opinion on its side.

Pro-life activists followed suit viewing Akron as a culmination
48 of their efforts to place pressure on the Court. As Linda

Greenhouse, of The New York Times noted,

A key part of the antiabortion movement's strategy during the past few years has been to "send the Supreme Court a message." According to this scenario, continual efforts to amend the Constitution and to strip the Court of its jurisdiction to decide abortion cases would keep the pressure on Justices who have grown increasingly weary and conservative, eventually persuading them to reconsider their 1973 decision that established a constitutional right to
49 abortion.

Unlike other Republican presidents who did not, for whatever reason, send representatives into the Supreme Court in abortion litigation, Reagan's Solicitor General, Rex E. Lee, prepared and filed a very controversial amicus curiae brief in Akron. It was, in fact, the first time that the Justice Department filed an amicus curiae brief in an abortion case not involving
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construction of a federal statute. Lee's amicus curiae brief, which was cleared by Attorney General William French Smith and

presidential advisors James Baker and Edwin Meese, left little doubt about where the Reagan administration stood on the subject of abortion. Even though it did not specifically call for the Justices to overrule Roe, Lee claimed that "the time has come to call a halt" to judicial limitations on state regulation of abortion.⁵¹ In essence, Lee asked the Court to defer to the judgment of state legislators on this issue. His argument on this point was so strong, in fact, that during oral argument, Justice William Brennan asked Lee whether his brief necessitated the overruling of Marbury v. Madison,⁵² the 1803 case in which the Court first enunciated the principle of judicial review.

Even though Reagan was the first president to use his Justice Department to advance the pro-life position, in the final analysis, "the decision was a legal embarrassment for the Reagan administration."⁵³ In a six to three opinion, the Court struck down the vast majority of the ordinances at stake and used the abortion decision as an opportunity to reaffirm the principles enunciated in Roe unwaveringly. Writing for the majority, Justice Powell asserted:

These cases come to us a decade after
... Roe v. Wade. ... arguments continue to
be made ... that we erred in interpreting
the Constitution. Nonetheless, the
doctrine of stare decisis, while perhaps
never entirely persuasive on a
Constitutional question, is a doctrine
that demands respect in a society

governed by the rule of law. We respect

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it today, and reaffirm Roe v. Wade.

Perhaps the only positive aspect of Akron for the Reagan administration was that Justice O'Connor dissented from the majority opinion. At this time, however, it is unclear whether she dissented because she opposes abortion or was deeply committed to states rights. Nevertheless, pro-life activists were devastated by this loss.

By the end of 1983, this decision, coupled with Congressional defeat of the amendment, left pro-life forces at a new low, at least when compared with their situation at the time of Reagan's election. Again, then, we must ask whether the Reagan administration was ineffective or whether his campaign promises were largely rhetoric. At this point in time, the answer to this question seems clear: the Reagan administration has taken numerous symbolic stances on abortion rather than effective concrete action; he failed to appoint pro-life leaders to visible administration positions, he failed to unify the pro-life leadership concerning strategies, and while his Justice Department filed what some have called a highly symbolic show of support for the pro-life position, its rhetoric failed to influence the Court. And, as the 1984 presidential elections draw closer, the Reagan administration again has begun to take highly public actions on the issue. It sent a representative to a conference of pro-life activists and his speeches once again are peppered with pro-life jargon. He even published a collection of his speeches on the issue with an afterword by Surgeon General Koop with all proceeds to go to furthering the

pro-life cause.

Yet, beyond the interesting story of the politics behind the move for a change in abortion policy, is once again, the significance of a Supreme Court decision. Although we have not attempted to show that Roe directly affected the rights at stake, we have shown that aspects of its importance lie in its continued vitality and its affect on the entire political system. Critics who point to the impotence of the Supreme Court must look beyond the issue at stake to appreciate fully the impact on any Supreme Court decision.

TABLE 1*

RESPONSES TO ABORTION QUESTIONS, 1972-1980 (IN PERCENTAGES)

Items ^a	1972 N=1613			1973 N=1504			1974 N=1484			1975 N=1484			1976 N=1499			1977 N=1530			1978 N=1532			1980 N=1468		
	Yes	No	DK	Yes	No	DK	Yes	No	DK	Yes	No	DK	Yes	No	DK	Yes	No	DK	Yes	No	DK	Yes	No	DK
1) If the woman's health is seriously endangered by the pregnancy.	84	12	4	91	8	2	90	7	2	88	9	3	89	9	2	88	9	3	88	9	3	88	10	2
2) If she is pregnant as a result of rape.	75	20	6	81	16	3	83	13	4	80	16	4	81	16	4	81	16	3	81	16	3	80	16	4
3) If there is a strong chance of serious defect in the baby.	75	20	5	82	15	2	83	14	3	80	16	3	82	16	2	83	14	3	80	18	2	80	16	3
4) If the family has a very low income and cannot afford any more children.	46	48	6	52	45	3	52	43	4	51	45	5	51	45	4	52	45	3	45	51	4	50	46	2
5) If she is not married and does not want to marry the man.	41	53	6	47	49	3	48	48	4	46	49	5	48	48	4	48	48	4	40	56	4	46	49	4
6) If she is married and does not want any more children.	38	57	5	46	51	3	45	50	5	44	52	4	45	52	3	45	51	4	39	58	3	45	51	3

*SOURCE: Derived, in part, from Helen Rose Fuchs Ebaugh and C. Allen Haney, "Shifts in Abortion Attitudes: 1972-1978," Journal of Marriage and the Family August 1980:492. Based on the National Opinion Research Center General Surveys, 1972-1980.

^aThe question was: Please tell me whether or not you think it should be possible for a pregnant woman to obtain a legal abortion if...

TABLE 2

AMICUS CURIAE BRIEFS FILED IN ROE AND PLANNED PARENTHOOD

Amicus Curiae for Roe:^a

1. Center for Constitutional Rights, New Women's Lawyers, Women's Health and Abortion Project, National Abortion Action Coalition
2. American Association of University Professors, Young Mens Christian Association, National Organization for Women, National Conference of the American Ethical Union, Professional Women's Caucus, Unitarian Universalist Womens Federation, Women's Alliance for the First Unitarian Church
3. Planned Parenthood, American Association of Planned Parenthood Physicians
4. State Communities Aid Association, Community Action for Legal Services
5. American Ethical Union, American Friends Society, American Humanist Association, American Jewish Congress, Episcopal Diocese of New York, New York State Council of Churches, Union of America Hebrew Congegations, Unitarian Universalist Association, United Church of Christ, Board of Christian Social Concerns of the United Methodist Church
6. National Legal Program on Health Problems of the Poor, National Welfare Rights Organization, American Public Health Association
7. American College of Obstetricians and Cynecologists, American Psychiatric Association, American Medical Women's Association, New York Academy of Medicine
8. California Committee to Legalize Abortion, South Bay Chapter of the National Organization for Women, Zero-Population Growth

Amicus Curiae for Wade:

1. Americans United for Life
2. Women for the Unborn, Celebrate Life Women Concerned for the Unborn, Minnesota Citizens for Life, New York State Council of Columbiattes
3. League for Infants, Fetuses, and the Elderly

Amicus Curiae for Planned Parenthood:^b

1. Planned Parenthood Federation, Association of Planned Parenthood Physicians
2. Center for Constitutional Rights, Women's Law Project

Amicus Curiae for Danforth:

1. District of Columbia Right to Life, Families for Life, Feminists for Life, Virginia Society for Human Life, Health Personnel Concerned for Life, Legal Defense Fund for Unborn Children Long Island Coalition for Life, March for Life, Maryland Pro-Life, Knights of Columbus, Missouri Citizens for Life, New Jersey Right to Life, Prince George County Right to Life, Diocesan Union of Holy Name Society, Scientists for Life, South Dakota Right to Life, Women for the Unborn, Life Advocates, Lifebeat, Pro-Life Legal Action Committee, Maryland Action for Human Life, Concerned Pro-life Students, St. Bridgets Parish, American Conservative Citizens Assembly, Ad Hoc Study Committee of the University of Minnesota, St. Peters Council of Catholic Women. Prolife Rural America, Lawyers for Life
2. Social Workers in Support of Life, Lawyers for Life
3. Missouri Nurses for Life
4. Americans United for Life
5. United States Catholic Conference

^aRoe was represented by several attorneys including Roy Lucas of the Population Law Center.

^bPlanned Parenthood was represented by several attorneys including Judith Mears of the American Civil Liberties Union Reproductive Freedom Project.

TABLE 3*

FEDERAL ABORTION RESTRICTIONS

Family Planning Services and Population Research Act of 1970 (PL 91-572). Barred the use of funds for programs in which abortion is a method of family planning.

Health Programs Extension Act of 1973 (PL 93-45). Barred judges or public officials from ordering recipients of federal funds to perform abortions or sterilization procedures or to make facilities available for such procedures if doing so was contrary to a recipient's religious beliefs or moral convictions. Also barred discrimination against personnel for participating or lack of participation in abortions or sterilization procedures.

Legal Services Corporation Act of 1974 (PL 93-355). Barred lawyers in federally funded legal aid programs from providing legal assistance for procuring a "non-therapeutic abortion." Also barred legal aid in proceedings to compel an individual or institution to perform an abortion, assist in an abortion or provide facilities for an abortion.

Public Health Service Act, 1977 Amendments (PL 95-215). Required the secretary of Health, Education, and Welfare to conduct a study to determine whether medical, nursing or osteopathic schools denied admission or otherwise discriminated against any applicant because of the applicant's reluctance or willingness to counsel, suggest, recommend, assist or in any way participate in the performance of abortions or sterilizations contrary to the applicant's religious beliefs or moral convictions.

Pregnancy Disability Amendment to Title VII of 1964 Civil Rights Act (PL 95-555). Provided that employers were not required to pay for health insurance benefits for abortion except to save the mother's life, but did not preclude employers from providing abortion benefits.

Public Health Service Act, 1979 Amendments (PL 96-76). Barred recipients of federal funds from denying admission or otherwise discriminating against any applicant for training or study because of the applicant's reluctance or willingness to counsel, suggest, recommend, assist or participate in performing abortions or sterilizations contrary to or consistent with the applicant's religious beliefs or moral convictions.

Budget Reconciliation Act of 1981, Title IX (PL 97-35). Allowed grants or payments only to programs or projects that do not provide abortions, abortion counseling or referral, or subcontract with or make payments to any person providing such services, except counseling for a pregnant adolescent if the adolescent and her parents or guardians request such referral.

Appropriations Bills. Since Oct. 1, 1976, appropriations bills for the Department of Health, Education and Welfare have contained provisions barring the use of Medicaid funds for most abortions.¹ Other appropriations bills containing abortion restrictions include:

Foreign Assistance and Related Programs, fiscal years 1979, 1982 (PL 95-148, PL 97-121). Barred the use of funds appropriated under the bill for abortions or for lobbying for abortion.

District of Columbia, fiscal 1981, 1983 (PL 96-530, PL 97-378). Barred federal funding for abortions except to save the mother's life or in cases of rape or incest promptly reported to law enforcement or public health officials.

Department of Defense, fiscal 1982 (PL 97-114). Barred the use of funds in the bill for abortions except to save the mother's life.

*SOURCE: "Federal Abortion Restrictions," CQ Weekly Report 20 August 1983, p.1692.

TABLE 4*

IMPLEMENTATION OF THE HYDE AMENDMENT, 1976 TO 1980

Date	Action	Effect	Interval
Oct. 1976	Hyde Amendment passed by Congress, but enjoined by Courts	Federal funding of abortion continued	10 mo.
Aug. 1977	Injunct lifted after Supreme Court Ruling	Federal funding restricted except to save life of woman	6 mo.
Feb. 1978	Guidelines expanded by Congress	Federal funding expanded to ie situations of rape, incest and physical damage to woman.	2 yr.
Feb. 1980	Hyde Amendment again enjoined by Supreme Court	Federal funding of abortion resumed.	7 mo.
Sept. 1980	Injunction lifted after Supreme Court ruling	Federal funding restricted	Ongoing

*SOURCE: Willard Cates, "The Hyde Amendment in Action," Journal of the American Medical Association (1981):1109.

AMICUS CURIAE BRIEFS FILED IN AKRON

Amicus Curiae for the City of Akron:

1. Legal Defense Fund for Unborn Children
2. United Families Foundation and Women Exploited
3. Womankind
4. Americans United for Life

Amicus Curiae for the Akron Center for Reproductive Health:

1. Women Lawyers of Sacramento, Placer County Women Lawyers, Auburn Women's Center
2. National Association for the Advancement of Colored People Legal Defense Fund
3. National Abortion Federation
4. The Committee for Abortion Rights and Against Sterilization, National Bar Association (Women Lawyers Division), National Emergency Civil Liberties Committee, National Lawyers Guild, National Women's Health Network, Reproductive Rights National Network
5. National Organization for Women, National Abortion Rights Action League, Women and Health Roundtable, Women's Law Project

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410 U.S. 113, 1973.

2 347 U.S. 483, 1954.

2a

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Judith Blake and Jorge Del Pinal, "Negativism, Equivocation, and Wobbly Assent: Public "Support" for the Prochoice Platform on Abortion," Demography 18 (August 1981):315.

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Connie Paige, Right to Lifers (New York: Summit Books, 1983), p. 56.

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Ibid., p. 51.

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See Andrew H. Merton, Enemies of Choice (Boston: Beacon Press, 1981) and Paige, Right to Lifers.

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*The authors would like to express their appreciation to Andreas Sobiach for his research assistance.

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15 "Carter Health Program Seeks to Hire Abortion Foe," New York Times, 8 February 1979, p. 16.

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17 Frank Susman, "Roe v. Wade and Doe v. Bolton Revisited in 1976 and 1977 - Reviewed?, Revised?, Revested?, or Revolved?," St. Louis University Law Journal 22 (1978):583.

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20 C Q Almanac 1976 (Washington, D.C.: Congressional Quarterly, Inc., 1976): 790.

21 According to a Centers for Disease Control report, 94 percent of the pre-Roe medically eligible women received an abortion after passage of the Hyde Amendment. Willard Cates, Jr., "The Hyde Amendment in Action," Journal of the American Medical Association 246(1981):1109-1112.

22 The Court, however, did uphold a provision of the statute that required the woman, herself, to give written consent prior to the procedure.

23 428 U.S. 75, 1976.

24 443 U.S. 622, 1979.

25 443 U.S. at 649, 1979.

26 450 U.S. 398, 1981.

27 67 L.Ed. 2d. at 400, 1981.

28 432 U.S. 464, 1977.

29 432 U.S. 438, 1977.

30 432 U.S. 519, 1977.

31 432 U.S. at 478, 1977.

32 432 U.S. at 447, 1977.

33 432 U.S. at 521, 1977.

34 448 U.S. 297, 1980.

35 448 U.S. 358, 1980.

36 448 U.S. at * , 1980.

37 "Nixon Abortion Statement," New York Times, 4 April 1971,
p. 28.

38 "Ford is Firm for an Amendment to Let States Act on
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40 "Carter Health Program," p. 16. See also David E.
Rosenbaum, "White House Backs Subsidy for Adopting Unwanted
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41 Ronald Brownstein and Nina Easton, Reagan's Ruling Class
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Stuart Taylor, Jr., "Supreme Court Given Brief on Reagan Abortion Views," New York Times, 30 July 1983, p. 7.

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1 Cranch 137, 1803.

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55

Before the 1980 election, Ellen McCormack, a staunch pro-life proponent, who in fact had run for president in 1976 on a pro-life platform, predicted this phenomenon noting that "Governor Reagan's strong pro-life statements did not result in pro-life policies ... [while he was governor of California]," Ellen McCormack, Letter to the Editor, "Ronald Reagan Owes Answers on Abortion," New York Times, 12 July 1980, p. 16.