Ron Paul's Approach to Reversing Roe v. Wade

As we observed yesterday, ever since the *Roe v. Wade* (and the less publicized *Doe v. Bolton*) decision, the primary strategy among pro-life people has been to overturn *Roe* by electing so-called pro-life Republican presidents who will appoint strict constructionist justices to the Supreme Court. Theoretically, this strategy will eventually lead to the overturning of *Roe v. Wade*.

This writer and his wife have been active in the pro-life movement for decades. Between us, we have participated in life rallies, life marches, life chains, and prayer outside abortion mills in states as widespread as Massachusetts, California, Texas, Wisconsin, and Florida. This year, we donated money to help send a group of 60 students from Ave Maria University in Florida to the March for Life in Washington. Needless to say, we have great admiration for the many thousands of people who marched down Constitution Avenue yesterday, and for Nellie Gray, who has organized this event from its inception. However, at yesterday's rally, Gray told those gathered that the battle for life had to be won at the federal level, that it was not enough to send the issue back to the states, where abortion could be legal in one state and illegal in the next.

Of course, that strategy overlooks the fact that abortion, like other crimes, *was criminalized* on the state level prior to *Roe v. Wade*. In fact, it was *Roe v. Wade* that interjected the federal government into the abortion issue in the first place and at the same time made abortion on demand legal throughout the United States. Since the federal "solution" to the abortion issue has resulted in a holocaust of 50 million preborn babies since 1973, why should a return to the pre-1973 approach of prohibiting abortion on the state level be rejected now in favor of another federal "solution"?

Transferring powers from the states to the federal government does not automatically mean that the laws would be better or that they would be applied as originally intended. (Such transfers of power can be a very dangerous thing and can have unintended consequences, since they result in a consolidation of power as well as more distance between the governed and government.) This is true even when the

intent behind giving more power to the federal government is to end injustice, as was the case with the language in the 14th Amendment to the U.S. Constitution that was intended to extend civil rights to freed slaves after the Civil War. Despite the intent, it was this same 14th Amendment that eventually provided the Supreme Court with its convoluted justification for writing *Roe v. Wade*. The 14th Amendment, adopted in 1868, provided: "nor shall any State deprive any person of *life*, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis added.)

Prior to the adoption of the 14th Amendment, it was the responsibility of each state to provide its citizens with equal protection of the laws. However, a series of court rulings eventually culminated in using the 14th Amendment as a pretext to make the states' business the federal government's business. Following this precedent, the Supreme Court that wrote *Roe v. Wade* first completely ignored the literal meaning of the 14th Amendment, which, (quite ironically) states that "nor shall any State deprive any person of *life*, liberty, or property, without due process of law." (Emphasis added.) The court then reaffirmed a right to privacy unknown to the authors of the Constitution and found only in the "penumbra" of the Constitution (which had been cited in previous "privacy" decisions, most notably, in *Griswold v. Connecticut* in 1965) and — following the precedent of previous courts — included the "right" to abortion in this newly invented right.

It is a case of reaping what we sow. By transferring the authority to oversee equal protection of the laws from the states to the federal government (particularly the federal courts), we have inadvertently also given the federal courts the converse power to *abolish* those rights! In this case, the most fundamental right of all — the right to life!

Fortunately, there exists a simpler, more practical strategy to protect life (and other things we cherish), provided for in Article III, Section 2 of the U.S. Constitution. This section allows Congress to strip the Supreme Court of any cases (e.g., abortion cases) where the Supreme Court does not possess original jurisdiction. Congress can also limit the jurisdiction of any lower federal courts, since Congress created those courts. Congress could make *Roe v. Wade* a non-problem overnight, since by prohibiting the federal courts from hearing abortion cases the states could then put back in place anti-abortion laws.

This remedy has already been introduced by Rep. Ron Paul (R-Texas) in the new (111th) Congress as H.R. 539, the "We the People Act." H.R. 539 would remove the jurisdiction of the Supreme Court and other federal courts from cases related to the free exercise or establishment of religion; the right of privacy, including any such claim related to any issue of sexual practices, orientation, or reproduction (e.g., abortion); the right to marry without regard to sex or sexual orientation (same-sex marriage).

The legislation would also prohibit the federal courts from relying on any judicial decision involving any issue referred to in the above list. In other words, it would remove *Roe v. Wade* and similar decisions from judicial precedent.

In 2003, Rep. Paul (an obstetrician who has delivered over 4,000 children) wrote an essay entitled "Pro-Life Action Must Originate from Principle." We encourage you to follow the link and read the entire essay, but here are a few of its key points:

• "Those who cherish unborn life have become frustrated by our inability to overturn or significantly curtail *Roe v. Wade*. Because of this, attempts were made to fight against abortion using political convenience rather than principle."

• "When we surrender constitutional principles, we do untold damage to the moral underpinnings on

which our Constitution and entire system of government rest. Those underpinnings are the inalienable right to life, liberty, and property."

• "Pro-lifers should be fiercely loyal to this system of federalism, because the very same Constitution that created the federal system also asserts the inalienable right to life."

• "Pro-life forces have worked for the passage of bills that disregard the federal system.... Each of these bills rested on specious constitutional grounds and undermined the federalism our Founders recognized and intended as the greatest protection of our most precious rights."

• "Each of these bills transfers to the federal government powers constitutionally retained by the states, thus upsetting the separation and balance of powers that federalism was designed to guarantee. To undermine federalism is to indirectly surrender the very principle upon which the protection of our inalienable right to life depends."

Following the March for Life, marches were encouraged to visit their congressional representatives to lobby for the right to life. As to how many of these marchers knew about H.R. 539, or encouraged their representative to cosponsor it, we have no way of knowing. But we suspect most missed the boat on what may be the only way to reverse the scourge of *Roe v. Wade* in most of our lifetimes.

However, each marcher (and each supporter who watched from home) still has the opportunity to contact his representative by e-mail, phone, fax, or an old-fashioned letter.

The fight for life must continue!