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## Human Life Federalism Amendment - II. Legislative Update

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# HUMAN LIFE FEDERALISM AMENDMENT II. LEGISLATIVE UPDATE

JAMES ROBINSON

The Hatch amendment has been reported by the judiciary committee in the Senate.<sup>1</sup> The current intention of Senator Hatch is to try to bring this before the Senate about mid-June. Like all things in Congress, and this one in particular, much depends upon the developments in other parts of the world and what happens on the current budget fight. Apparently, Senator Baker, the majority leader, has promised Senators Hatch and Helms that they will have an opportunity to bring the abortion issue in this Congress, and that the tentative date is the middle of June.

The present status of the Hatch amendment should be regarded as somewhat of a sequel to its status when this group met in New Orleans.<sup>2</sup> At that time, the result of several years of congressional effort to deal with the problems created by *Roe v. Wade* had produced a rather strange situation. Immediately after the Supreme Court decision, the general assessment was: one-third of the House and one-third of the Senate were prepared to vote for a complete overruling of the Supreme Court decision; one-third of the House and one-third of the Senate were prepared to support the Supreme Court decision and approximately one-third of the House and one-third of the Senate were uncommitted.

After several years of effort and quite a few votes, particularly in the area of federal funding, the House had moved steadily into an anti-abortion position. A clear majority of the House was ready to overrule the

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<sup>1</sup> S.J. Res. 110, 97th Cong., 1st Sess., 127 CONG. REC. S10196 (daily ed. Sept. 21, 1981). The Human Life Federalism Amendment (Hatch amendment) has now been recently revised. S. REP. NO. 465, 97th Cong., 2d Sess. 7 (1982); *see id.* at 1-2.

<sup>2</sup> Robinson, *Political Developments in the Abortion Area*, 25 CATH. LAW. 319, 321-23 (1980).

Supreme Court decision. A clear majority of the Senate, however, was ready to defend the Supreme Court's position.

As was mentioned at New Orleans, it was going to be interesting to see how the conflict was resolved.<sup>3</sup> It was resolved in 1980. In the elections that took place that year, a number of Senators who were defending the Supreme Court decision had been defeated. Some of the victors had been in the House. As a result, the Hatch amendment is now on the floor of the Senate, and the Senate apparently has assumed a posture similar to that of the House—a majority opposition to *Roe v. Wade*. It seems that the voters have moved both houses of Congress on this particular issue.

For the first time, there will be a major debate on the floor of the Senate concerning the question of the *Roe v. Wade* decision, and eventually a vote will be taken on the Hatch amendment. The most likely amendment to appear on the floor is the so-called state's rights amendment. A number of senators who are opposed to the Supreme Court's decision on abortion have indicated a preference for an amendment that would simply grant exclusive power to the states. They have announced that they will be offering such an amendment as a substitute for the Hatch amendment. The general feeling is that they will not be able to muster a majority to overrule the committee decision to report the Hatch amendment. The vote on the Hatch amendment will, therefore, in all probability occur.

There will be other amendments offered. It is not at all clear just what form they will take. However, unless the prochoice element in the Senate becomes convinced that the Hatch amendment is about to pass and they wish to start voting on weakening amendments, it is doubtful that any of the other amendments would have much of a chance of success. At this point, there is no indication that the prochoice forces are in a position where they feel they have to try to weaken the amendment and thereby run the risk of helping it to pass.

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<sup>3</sup> *Id.* at 326.