Supreme Court of the United States
Patricia R. HARRIS, Secretary of Health and Human Services, Appellant,
v.
Cora McRAE et al.
**No. 79-1268.**

Argued April 21, 1980.
Decided June 30, 1980.
Rehearing Denied Sept. 17, 1980.
See 448 U.S. 917, 101 S.Ct. 39.

Action was brought challenging statutory and constitutional validity of the Hyde Amendment, which severely limits use of federal funds to reimburse cost of abortions under medicaid program. The United States District Court for the Eastern District of New York, Dooling, J., 491 F.Supp. 630, certified suit as class action and granted preliminary injunction. The Supreme Court vacated and remanded, 433 U.S. 916, 97 S.Ct. 2993, 53 L.Ed.2d 1103. After trial on remand the District Court entered judgment invalidating all versions of the amendment on constitutional grounds, and appeal was taken. The Supreme Court, Mr. Justice Stewart, held that: (1) a state that participates in medicaid program is not obligated under Title XIX of Social Security Act to continue to fund those medically necessary abortions for which federal reimbursement was unavailable under the Hyde Amendment; (2) funding restrictions of the Hyde Amendment violates neither the Fifth Amendment nor the establishment clause of the First Amendment; and (3) neither named individual plaintiffs, officers of women's division of church nor the division itself has standing to challenge amendment on free exercise grounds absent allegation of some personal stake in the controversy.

Judgment of District Court reversed and cause remanded.

See also 100 S.Ct. 2694 and 100 S.Ct. 2701.

Mr. Justice White filed a concurring opinion.

Mr. Justice Brennan filed a dissenting opinion in which Mr. Justice Marshall and Mr. Justice Blackmun joined, 100 S.Ct. 2702.

Mr. Justice Marshall filed a dissenting opinion, 100 S.Ct. 2706.

Mr. Justice Blackmun filed a dissenting opinion, 100 S.Ct. 2711.

Mr. Justice Stevens filed a dissenting opinion, 100 S.Ct. 2712.

West Headnotes

**[1] Constitutional Law 92 976**

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)2 Necessity of Determination
92k976 k. Resolution of Non-Constitutional Questions Before Constitutional Questions. Most Cited Cases
(Formerly 92k46(1))
If a case may be decided on either statutory or constitutional grounds, the Supreme Court, for sound jurisprudential reasons, will inquire first into the statutory question.

**[2] Health 198H 461**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk461 k. Medicaid and Similar Programs in General. Most Cited Cases
(Formerly 356Ak241.60)
Medicaid program created by Title XIX of Social

Security Act is a cooperative endeavor in which the federal government provides financial assistance to participating states to aid them in furnishing health care to needy persons and if a state agrees to establish a qualifying medicaid plan the federal government agrees to pay a specified percentage of the total amount expended. Social Security Act, §§ 1901 et seq., 1903(a)(1) as amended 42 U.S.C.A. §§ 1396 et seq., 1396b(a)(1); U.S.C.A.Const. Amend. 5.

**[3] Health 198H 462**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk462 k. State Participation in Federal Programs. Most Cited Cases
(Formerly 356Ak241.60)
Cornerstone of medicaid is financial contribution by both the federal government and the participating state. Social Security Act, §§ 1901 et seq., 1903(a)(1) as amended 42 U.S.C.A. §§ 1396 et seq., 1396b(a)(1); U.S.C.A.Const. Amend. 5.

**[4] Health 198H 462**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk462 k. State Participation in Federal Programs. Most Cited Cases
(Formerly 356Ak241.60)
Nothing in Title XIX of the Social Security Act establishing medicaid program, as originally enacted, or in its legislative history, suggests that Congress intended to require a participating state to assume the full costs of providing any health services in its medicaid plan but, rather, quite the contrary, purpose of Congress was to provide federal financial assistance for all legitimate state expenditures under an approved medicaid plan. Social Security Act, §§ 1901 et seq., 1903(a)(1) as amended 42 U.S.C.A. §§ 1396 et seq., 1396b(a)(1); U.S.C.A.Const. Amend. 5.

**[5] Health 198H 462**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk462 k. State Participation in Federal Programs. Most Cited Cases
(Formerly 356Ak241.60)
Since the Congress that enacted medicaid program did not intend a participating state to assume a unilateral funding obligation for any health service in an approved medicaid plan, it follows that Title XIX, the medicaid provisions, does not require a participating state to include in its plan any services for which a subsequent Congress has withheld federal funding. Social Security Act, §§ 1901 et seq., 1903(a)(1) as amended 42 U.S.C.A. §§ 1396 et seq., 1396b(a)(1); U.S.C.A.Const. Amend. 5.

**[6] Health 198H 473**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk473 k. In General. Most Cited Cases
(Formerly 356Ak241.60)
Title XIX of Social Security Act, i. e., medicaid part, was designed as a cooperative program of shared financial responsibility, not as a device for the federal government to compel a state to provide services that Congress itself is unwilling to fund and, thus, if Congress chooses to withdraw federal funding for a particular service, a state is not obliged to continue to pay for that service as a condition of continued federal financial support of other services. Social Security Act, §§ 1901 et seq., 1903(a)(1) as amended 42 U.S.C.A. §§ 1396 et seq., 1396b(a)(1); U.S.C.A.Const. Amend. 5.

**[7] Health 198H 462**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk462 k. State Participation in Federal Programs. Most Cited Cases
(Formerly 356Ak241.60)
Although absent an indication of contrary legislative intent by a subsequent Congress, Title XIX of Social Security Act, i. e., medicaid part, as originally enacted does not obligate a participating state to pay for those medical services for which federal reimbursement is unavailable, such is not to say that Congress may not now depart from the original design of Title XIX. Social Security Act, §§ 1901 et seq., 1903(a)(1) as amended 42 U.S.C.A. §§ 1396 et seq., 1396b(a)(1); U.S.C.A.Const. Amend. 5.

**[8] Health 198H 480**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.95)
Even if a state were otherwise required to include medically necessary abortions in its medicaid plan, the withdrawal of federal funding under the Hyde Amendment would operate to relieve the state of that obligation for those abortions for which federal reimbursement is unavailable; legislative history of the Hyde Amendment contains no indication whatsoever that Congress intended to shift the entire cost of such service to the participating state but, rather, suggests that Congress has always assumed that a participating state would not be required to fund medically necessary abortions once federal funding was withdrawn pursuant to the Hyde Amendment. Social Security Act, §§ 1901 et seq., 1903(a)(1) as amended 42 U.S.C.A. §§ 1396 et seq., 1396b(a)(1); U.S.C.A.Const. Amend. 5.

**[9] Health 198H 480**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.95)
Title XIX of Social Security Act, the medicaid part, does not obligate a participating state to pay for those medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment. Social Security Act, §§ 1901 et seq., 1902(a)(17), 1903(a)(1, 17) as amended 42 U.S.C.A. §§ 1396 et seq., 1396a(a)(17), 1396b(a)(1, 17); U.S.C.A.Const. Amend. 5.

**[10] Health 198H 480**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.95)
Although a state participating in medicaid program is not required by federal statutory law to pay for those medically necessary abortions for which federal reimbursement is unavailable under Hyde Amendment, the participating state is free, if it so chooses, to include in its medicaid plan those medically necessary abortions for which federal reimbursement is unavailable. Social Security Act, §§ 1901 et seq., 1902(a)(17), 1903(a)(1, 17) as amended 42 U.S.C.A. §§ 1396 et seq., 1396a(a)(17), 1396b(a)(1, 17); U.S.C.A.Const. Amend. 5.

**[11] Health 198H 480**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered

198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.95)
Hyde Amendment which, in various versions, severely restricted use of federal funds to reimburse cost of abortions under medicaid program is not void for vagueness because the sanction provision in the Medicaid Act contains a clear scienter requirement under which good-faith errors are not penalized and, in any event, exceptions to the Amendment are set out in terms that ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest. Social Security Act, §§ 1901 et seq., 1902(a)(17), 1903(a)(1, 17) as amended 42 U.S.C.A. §§ 1396 et seq., 1396a(a)(17), 1396b(a)(1, 17); U.S.C.A.Const. Amends. 5, 14.

**[12] Constitutional Law 92 1052**

92 Constitutional Law
92VII Constitutional Rights in General
92VII(A) In General
92k1052 k. Fundamental Rights. Most Cited Cases
(Formerly 92k82(1))
Quite apart from the guarantee of equal protection, if a law impinges on a fundamental right explicitly or implicitly secured by the Constitution it is presumptively unconstitutional. U.S.C.A.Const. Amends. 1, 5, 14.

**[13] Constitutional Law 92 3850**

92 Constitutional Law
92XXVII Due Process
92XXVII(A) In General
92k3848 Relationship to Other Constitutional Provisions; Incorporation
92k3850 k. Bill of Rights in General. Most Cited Cases
(Formerly 92k254.2)

**Constitutional Law 92 4384**

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)18 Families and Children
92k4383 Marital Relationship
92k4384 k. In General. Most Cited Cases
(Formerly 92k274(5))

**Constitutional Law 92 4452**

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)22 Privacy and Sexual Matters
92k4451 Abortion, Contraception, and Birth Control
92k4452 k. In General. Most Cited Cases
(Formerly 92k274(5))
The "liberty" protected by the due process clause of the Fourteenth Amendment includes not only the freedoms explicitly mentioned in the Bill of Rights but also a freedom of choice in certain matters of marriage and family life, which implicit constitutional liberty includes the freedom of a woman to decide whether to terminate a pregnancy. U.S.C.A.Const. Amend. 14.

**[14] Abortion and Birth Control 4 106**

4 Abortion and Birth Control
4k106 k. Fetal Age and Viability; Trimester. Most Cited Cases
(Formerly 4k0.5, 4k0.50)

**Abortion and Birth Control 4 108**

4 Abortion and Birth Control
4k108 k. Health and Safety of Patient. Most Cited Cases
(Formerly 4k0.5, 4k0.50)
Although a woman has a constitutionally protected "liberty" interest to decide whether to terminate a

pregnancy, the state has legitimate interest during her pregnancy in both insuring the health of the mother and protecting potential human life, which state interests grows in substantiality as the woman approaches term. U.S.C.A.Const. Amend. 14.

**[15] Health 198H 480**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.95)

The Hyde Amendment, which severely limits use of federal funds to reimburse cost of abortions under medicaid program, places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy, but, rather, by means of unequal subsidization of abortion and other medical services, encourages alternative activity deemed in the public interest. Social Security Act, §§ 1901 et seq., 1902(a)(17), 1903(a)(1, 17) as amended 42 U.S.C.A. §§ 1396 et seq., 1396a(a)(17), 1396b(a)(1, 17); U.S.C.A.Const. Amend. 5.

**[16] Health 198H 480**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.95)

Regardless of whether the freedom of a woman to choose to terminate her pregnancy for health reasons lies at the core or periphery of the due process liberty recognized in *Wade*, it does not follow that the woman's freedom of choice carries with it a constitutional entitlement to the financial resources to avail herself of full range of protected choices. Social Security Act, §§ 1901 et seq., 1902(a)(17), 1903(a)(1, 17) as amended 42 U.S.C.A. §§ 1396 et seq., 1396a(a)(17), 1396b(a)(1, 17); U.S.C.A.Const. Amends. 5, 14.

**[17] Health 198H 480**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.95)

Although government may not place obstacles in the path of a woman's exercise of her freedom of choice to terminate her pregnancy, it need not remove those not of its own creation, with indigency falling in the latter category, in that financial constraints that restrict an indigent woman's ability to enjoy full range of constitutionally protected freedom of choice are the product not of governmental restrictions on access to abortions, but rather of her indigency. Social Security Act, §§ 1901 et seq., 1902(a)(17), 1903(a)(1, 17) as amended 42 U.S.C.A. §§ 1396 et seq., 1396a(a)(17), 1396b(a)(1, 17); U.S.C.A.Const. Amends. 5, 14.

**[18] Health 198H 480**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.95)

Although under medicaid program the Congress has opted to subsidize medically necessary services generally, but not certain medically necessary abortions, the fact remains that the Hyde Amendment, which limits use of federal funds to reimburse cost of abortions, leaves an indigent woman with at least the same range of choice in deciding whether to obtain a medically necessary abortion as she would

have had if Congress had chosen to subsidize no health care costs at all. Social Security Act, §§ 1901 et seq., 1902(a)(17), 1903(a)(1, 17) as amended 42 U.S.C.A. §§ 1396 et seq., 1396a(a)(17), 1396b(a)(1, 17); U.S.C.A.Const. Amends. 5, 14.

**[19] Constitutional Law 92 ⚿4452**

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)22 Privacy and Sexual Matters
92k4451 Abortion, Contraception, and Birth Control
92k4452 k. In General. Most Cited Cases
(Formerly 92k274(5))

**Health 198H ⚿480**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.95)
Funding restrictions of the Hyde Amendment, which severely limits use of federal funds to reimburse the cost of abortions under medicaid program, do not impinge on the "liberty" interest protected by the due process clause of the Fifth Amendment, as held to include freedom of a woman to decide whether to terminate her pregnancy. Social Security Act, §§ 1901 et seq., 1902(a)(17), 1903(a)(1, 17) as amended 42 U.S.C.A. §§ 1396 et seq., 1396a(a)(17), 1396b(a)(1, 17); U.S.C.A.Const. Amends. 5, 14.

**[20] Health 198H ⚿480**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.95)
The Hyde Amendment, which severely limits use of federal funds to reimburse cost of abortions under medicaid program, is not unconstitutional on ground that it "penalizes" exercise of a woman's choice to terminate a pregnancy by abortion; however, a substantial constitutional question would arise if Congress attempted to withhold all medicaid benefits from an otherwise eligible candidate simply because that candidate exercised her constitutionally protected freedom to terminate her pregnancy by abortion. Social Security Act, §§ 1901 et seq., 1902(a)(17), 1903(a)(1, 17) as amended 42 U.S.C.A. §§ 1396 et seq., 1396a(a)(17), 1396b(a)(1, 17); U.S.C.A.Const. Amends. 5, 14.

**[21] Constitutional Law 92 ⚿1050**

92 Constitutional Law
92VII Constitutional Rights in General
92VII(A) In General
92k1050 k. In General. Most Cited Cases
(Formerly 92k82(1))
A refusal to fund constitutionally protected activity, without more, cannot be equated with imposition of a "penalty" on that activity. U.S.C.A.Const. Amends. 1, 5, 14.

**[22] Constitutional Law 92 ⚿4108**

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)4 Government Property, Facilities, and Funds
92k4108 k. Public Funds; Grants and Loans. Most Cited Cases
(Formerly 92k274(5))
Although the "liberty" protected by the due process clause affords protection against unwarranted gov-

ernment interference with freedom of choice in the context of certain personal decisions, it does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom. U.S.C.A.Const. Amends. 5, 14.

**[23] Abortion and Birth Control 4 ⚿135**

4 Abortion and Birth Control
4k132 Contraceptives and Birth Control
4k135 k. Possession or Use. Most Cited Cases
(Formerly 92k82(10))

**Schools 345 ⚿8**

345 Schools
345I Private Schools and Academies
345k8 k. Pupils, Tuition, and Discipline. Most Cited Cases
(Formerly 92k82(10))

**Constitutional Law 92 ⚿1075**

92 Constitutional Law
92VII Constitutional Rights in General
92VII(B) Particular Constitutional Rights
92k1074 Right to Education
92k1075 k. In General. Most Cited Cases
(Formerly 92k82(12))

Although government may not prohibit use of contraceptives, or prevent parents from sending their child to a private school, such does not mean that the government has an affirmative constitutional obligation to ensure that all persons have financial resources to obtain contraceptives or send their children to private schools. U.S.C.A.Const. Amends. 5, 14.

**[24] Constitutional Law 92 ⚿4128**

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)5 Social Security, Welfare, and Other Public Payments
92k4124 Medical Assistance
92k4128 k. Abortion Funding. Most Cited Cases
(Formerly 92k278.7(1))

To translate limitation on governmental power implicit in the due process clause into an affirmative funding obligation would require Congress to subsidize the medically necessary abortion of an indigent woman even if Congress had not enacted a medicaid program to subsidize other medically necessary services and nothing in the due process clause supports such an extraordinary result. U.S.C.A.Const. Amends. 5, 14.

**[25] Constitutional Law 92 ⚿2500**

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2499 Particular Issues and Applications
92k2500 k. In General. Most Cited Cases
(Formerly 92k70.1(7.1), 92k70.1(7))

Whether freedom of choice that is constitutionally protected warrants federal subsidization is a question for Congress, not a matter of constitutional entitlement. U.S.C.A.Const. Amends. 5, 14.

**[26] Constitutional Law 92 ⚿4128**

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)5 Social Security, Welfare, and Other Public Payments
92k4124 Medical Assistance
92k4128 k. Abortion Funding. Most Cited Cases
(Formerly 92k274(2))

**Health 198H ⚿480**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.95)
Since the constitutional entitlement of a physician who administers medical care to an indigent woman is no broader than that of his patient, the funding restriction of the Hyde Amendment, which severely limits use of federal funds to reimburse the cost of abortions under medicaid program, does not violate due process rights of physician who advises a medicaid recipient to obtain a medically necessary abortion. Social Security Act, §§ 1901 et seq., 1902(a)(17), 1903(a)(1, 17) as amended 42 U.S.C.A. §§ 1396 et seq., 1396a(a)(17), 1396b(a)(1, 17); U.S.C.A.Const. Amends. 5, 14.

**[27] Constitutional Law 92 ⚿1295**

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1294 Establishment of Religion
92k1295 k. In General. Most Cited Cases
(Formerly 92k84.1, 92k84(1), 92k84)
A legislative enactment does not contravene the establishment clause if it has a secular legislative purpose, if its principal or primary effect neither advances nor inhibits religion, and if it does not foster an excessive governmental entanglement with religion. U.S.C.A.Const. Amends. 1, 14.

**[28] Constitutional Law 92 ⚿1396**

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1394 Health Care
92k1396 k. Abortion and Birth Control. Most Cited Cases
(Formerly 92k84.5(17), 92k84)

**Health 198H ⚿455**

198H Health
198HIII Government Assistance
198HIII(A) In General
198Hk452 Constitutional and Statutory Provisions
198Hk455 k. Validity. Most Cited Cases
(Formerly 356Ak241.55)

**Health 198H ⚿480**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.55)
Hyde Amendment, which severely limits use of federal funds to reimburse the cost of abortions under medicaid program, does not run afoul of the establishment clause of the First Amendment notwithstanding that funding restrictions therein may coincide with the religious tenets of the Roman Catholic Church. Social Security Act, §§ 1901 et seq., 1902(a)(17), 1903(a)(1, 17) as amended 42 U.S.C.A. §§ 1396 et seq., 1396a(a)(17), 1396b(a)(1, 17); U.S.C.A.Const. Amend. 1.

**[29] Constitutional Law 92 ⚿1293**

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(A) In General
92k1293 k. Aiding, Funding, Financing, or Subsidization of Religion. Most Cited Cases
(Formerly 92k84.5(7.1), 92k84.5(7), 92k84)
Although neither a state nor federal government can constitutionally pass laws which aid one religion, aid all religions, or prefer one religion over another, it does not follow that a statute violates the establishment clause because it happens to coincide or harmonize with the tenets of some or all religions.

U.S.C.A.Const. Amend. 1.

**[30] Constitutional Law 92 1414**

92 Constitutional Law
92XIII Freedom of Religion and Conscience
92XIII(B) Particular Issues and Applications
92k1413 Criminal Law
92k1414 k. In General. Most Cited Cases
(Formerly 92k84.5(1), 92k84)
That the Judaeo-Christian religions oppose stealing does not mean that a state or federal government may not, consistent with the establishment clause, enact laws prohibiting larceny. U.S.C.A.Const. Amend. 1.

**[31] Constitutional Law 92 826**

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)8 Freedom of Religion and Conscience
92k826 k. Abortion and Birth Control. Most Cited Cases
(Formerly 92k42.2(1))
Indigent pregnant females who sued on behalf of other women similarly situated lacked standing to challenge on free exercise grounds the Hyde Amendment, which severely limits use of federal funds to reimburse the costs of abortions under medicaid program, where none of the named plaintiffs alleged, much less proved, that she sought an abortion under compulsion of religious belief. Social Security Act, §§ 1901 et seq., 1902(a)(17), 1903(a)(1, 17) as amended 42 U.S.C.A. §§ 1396 et seq., 1396a(a)(17), 1396b(a)(1, 17); U.S.C.A.Const. Amend. 1.

**[32] Constitutional Law 92 826**

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)8 Freedom of Religion and Conscience
92k826 k. Abortion and Birth Control. Most Cited Cases
(Formerly 92k42.2(1))
Officers in women's division of church lacked the personal stake in the controversy needed to confer standing to raise free exercise challenge to Hyde Amendment, which severely limits use of federal funds to reimburse the cost of abortions under medicaid program; although the officers provided a detailed description of their religious beliefs, they failed to allege either that they were or expected to be pregnant or that they were eligible to receive medicaid. Social Security Act, §§ 1901 et seq., 1902(a)(17), 1903(a)(1, 17) as amended 42 U.S.C.A. §§ 1396 et seq., 1396a(a)(17), 1396b(a)(1, 17); U.S.C.A.Const. Amend. 1.

**[33] Constitutional Law 92 826**

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(A) Persons Entitled to Raise Constitutional Questions; Standing
92VI(A)8 Freedom of Religion and Conscience
92k826 k. Abortion and Birth Control. Most Cited Cases
(Formerly 92k42.2(1))
Although women's division of church alleged that its membership included pregnant medicaid eligible women who as a matter of religious practice and in accordance with their conscientious beliefs would choose to but were precluded or discouraged from obtaining abortion reimbursement by medicaid because of the Hyde Amendment, which severely limits use of federal funds for abortions under the medicaid program, the division did not satisfy standing requirements for an organization to assert the free exercise rights of its membership since the claim asserted was one that ordinarily required participation of individual members for a proper understanding and resolution of their free exercise

claim. Social Security Act, §§ 1901 et seq., 1902(a)(17), 1903(a)(1, 17) as amended 42 U.S.C.A. §§ 1396 et seq., 1396a(a)(17), 1396b(a)(1, 17); U.S.C.A.Const. Amend. 1.

**[34] Constitutional Law 92 ⚿3033**

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)5 Scope of Doctrine in General
92k3031 Limits of Doctrine
92k3033 k. Creation of Substantive Rights. Most Cited Cases
(Formerly 92k209)

**Constitutional Law 92 ⚿3039**

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)5 Scope of Doctrine in General
92k3038 Discrimination and Classification
92k3039 k. In General. Most Cited Cases
(Formerly 92k211(1))

**Constitutional Law 92 ⚿3043**

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)5 Scope of Doctrine in General
92k3038 Discrimination and Classification
92k3043 k. Statutes and Other Written Regulations and Rules. Most Cited Cases
(Formerly 92k211(2))
Guarantee of equal protection under the Fifth Amendment is not a source of substantive rights or liberties but, rather, a right to be free from invidious discrimination in statutory classifications and other governmental activity. U.S.C.A.Const. Amend. 5.

**[35] Constitutional Law 92 ⚿3051**

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)6 Levels of Scrutiny
92k3051 k. Differing Levels Set Forth or Compared. Most Cited Cases
(Formerly 92k213.1(2))
Where a statutory classification does not itself impinge on a right or liberty protected by the Constitution, the validity of classification must be sustained unless the classification rests on grounds wholly irrelevant to achievement of any legitimate governmental objective; however, such presumption of constitutional validity disappears if the statutory classification is predicated on criteria that are, in a constitutional sense, "suspect." U.S.C.A.Const. Amend. 5.

**[36] Constitutional Law 92 ⚿3552**

92 Constitutional Law
92XXVI Equal Protection
92XXVI(E) Particular Issues and Applications
92XXVI(E)5 Social Security, Welfare, and Other Public Payments
92k3548 Medical Assistance
92k3552 k. Abortion Funding. Most Cited Cases
(Formerly 92k242.3(1))

**Health 198H ⚿480**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.95)

The Hyde Amendment, which severely limits use of federal funds to reimburse cost of abortions under medicaid program, is not predicated on a constitutionally suspect classification for equal protection purposes, notwithstanding that principal impact of the Hyde Amendment falls on the indigent as, standing alone, poverty is not a suspect classification. Social Security Act, §§ 1901 et seq., 1903(a)(1) as amended 42 U.S.C.A. §§ 1396 et seq., 1396b(a)(1); U.S.C.A.Const. Amend. 5.

**[37] Constitutional Law 92 3093**

92 Constitutional Law
92XXVI Equal Protection
92XXVI(B) Particular Classes
92XXVI(B)1 Age
92k3093 k. Social Security, Welfare, and Other Public Payments. Most Cited Cases
(Formerly 92k242.3(1))

**Health 198H 480**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.95)
Since Hyde Amendment, which severely limits use of federal funds to reimburse the cost of abortions under medicaid program, is facially neutral as to age, restricting funding for abortions for women of all ages, the district court erred, as regards equal protection clause challenge, in relying solely on the disparate impact of the Amendment in concluding that it discriminated on the basis of age against teen-age women desiring medically necessary abortions. Social Security Act, §§ 1901 et seq., 1903(a)(1) as amended 42 U.S.C.A. §§ 1396 et seq., 1396b(a)(1); U.S.C.A.Const. Amend. 5.

**[38] Constitutional Law 92 3040**

92 Constitutional Law
92XXVI Equal Protection
92XXVI(A) In General
92XXVI(A)5 Scope of Doctrine in General
92k3038 Discrimination and Classification
92k3040 k. Intentional or Purposeful Action Requirement. Most Cited Cases
(Formerly 92k253.2(2))
Equal protection component of Fifth Amendment prohibits only purposeful discrimination, and when a facially neutral federal statute is challenged on equal protection grounds, it is incumbent upon the challenger to prove that Congress selected or reaffirmed a particular course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group. U.S.C.A.Const. Amend. 5.

**[39] Constitutional Law 92 3766**

92 Constitutional Law
92XXVI Equal Protection
92XXVI(E) Particular Issues and Applications
92XXVI(E)18 Privacy and Sexual Matters
92k3766 k. Birth Control and Abortion. Most Cited Cases
(Formerly 92k253.2(2))

**Health 198H 480**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.95)
Hyde Amendment, which severely limits use of federal funds to reimburse the cost of abortions under medicaid program, does not violate equal protection component of the due process clause of the Fifth Amendment, as the Amendment bears a ra-

tional relationship to a legitimate governmental interest in protecting the potential life of the fetus, and by encouraging childbirth except in the most urgent circumstances the Amendment is rationally related to legitimate governmental objective of protecting such potential life. Social Security Act, §§ 1901 et seq., 1903(a)(1) as amended 42 U.S.C.A. §§ 1396 et seq., 1396b(a)(1); U.S.C.A.Const. Amend. 5.

**[40] Constitutional Law 92 ⚿3552**

92 Constitutional Law
92XXVI Equal Protection
92XXVI(E) Particular Issues and Applications
92XXVI(E)5 Social Security, Welfare, and Other Public Payments
92k3548 Medical Assistance
92k3552 k. Abortion Funding. Most Cited Cases
(Formerly 92k242.3(1))

**Health 198H ⚿480**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.95)

For purpose of equal protection challenge to the Hyde Amendment, which severely limits use of federal funds to reimburse the cost of abortions under medicaid program, it is not irrational that Congress has authorized federal reimbursement for medically necessary services generally, but not for certain medically necessary abortions, as abortion is inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life. Social Security Act, §§ 1901 et seq., 1903(a)(1) as amended 42 U.S.C.A. §§ 1396 et seq., 1396b(a)(1); U.S.C.A.Const. Amend. 5.

**[41] Constitutional Law 92 ⚿2516(1)**

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2499 Particular Issues and Applications
92k2516 Health
92k2516(1) k. In General. Most Cited Cases
(Formerly 92k70.1(7.1), 92k70.1(7))

In making an independent appraisal of the competing interests involved, the district court in resolving equal protection attack on the Hyde Amendment, which severely limits use of federal funds to reimburse cost of abortions under medicaid program, went beyond the judicial function as such decisions are entrusted under the Constitution to Congress, not the courts, and it is the role of the courts only to ensure that congressional decisions comport with the Constitution. Social Security Act, §§ 1901 et seq., 1903(a)(1) as amended 42 U.S.C.A. §§ 1396 et seq., 1396b(a)(1); U.S.C.A.Const. Amend. 5.

**[42] Constitutional Law 92 ⚿2516(1)**

92 Constitutional Law
92XX Separation of Powers
92XX(C) Judicial Powers and Functions
92XX(C)2 Encroachment on Legislature
92k2499 Particular Issues and Applications
92k2516 Health
92k2516(1) k. In General. Most Cited Cases
(Formerly 92k70.3(9.1), 92k70.3(9))

**Constitutional Law 92 ⚿3552**

92 Constitutional Law
92XXVI Equal Protection
92XXVI(E) Particular Issues and Applications
92XXVI(E)5 Social Security, Welfare, and Other Public Payments

92k3548 Medical Assistance
92k3552 k. Abortion Funding. Most Cited Cases
(Formerly 92k242.3(1))

**Health 198H 480**

198H Health
198HIII Government Assistance
198HIII(B) Medical Assistance in General; Medicaid
198Hk472 Benefits and Services Covered
198Hk480 k. Abortion or Birth Control. Most Cited Cases
(Formerly 356Ak241.95)

Since enacting the Hyde Amendment, which severely limits use of federal funds to reimburse cost of abortions under medicaid program, Congress has neither invaded a substantive constitutional right or freedom, nor enacted legislation that purposefully operates to the detriment of the suspect class, the only requirement of equal protection was a congressional action rationally related to a legitimate governmental interest; it was not the mission of court to decide whether the balance of competing interest reflected in the Amendment was wise social policy. Social Security Act, §§ 1901 et seq., 1903(a)(1) as amended 42 U.S.C.A. §§ 1396 et seq., 1396b(a)(1); U.S.C.A.Const. Amend. 5.

****2677** *Syllabus* FN*

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

***297** Title XIX of the Social Security Act established the Medicaid program in 1965 to ****2678** provide federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons. Since 1976, versions of the so-called Hyde Amendment have severely limited the use of any federal funds to reimburse the cost of abortions under the Medicaid program. Actions were brought in Federal District Court by appellees (including indigent pregnant women, who sued on behalf of all women similarly situated, the New York City Health and Hospitals Corp., which operates hospitals providing abortion services, officers of the Women's Division of the Board of Global Ministries of the United Methodist Church (Women's Division), and the Women's Division itself), seeking to enjoin enforcement of the Hyde Amendment on grounds that it violates, *inter alia*, the Due Process Clause of the Fifth Amendment and the Religion Clauses of the First Amendment, and that, despite the Hyde Amendment, a participating State remains obligated under Title XIX to fund all medically necessary abortions. Ultimately, the District Court, granting injunctive relief, held that the Hyde Amendment had substantively amended Title XIX to relieve a State of any obligation to fund those medically necessary abortions for which federal reimbursement is unavailable, but that the Amendment violates the equal protection component of the Fifth Amendment's Due Process Clause and the Free Exercise Clause of the First Amendment.

*Held* :

1. Title XIX does not require a participating State to pay for those medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment. Pp. 2683-2685.

(a) The cornerstone of Medicaid is financial contribution by both the Federal Government and the participating State. Nothing in Title XIX as originally enacted or in its legislative history suggests that Congress intended to require a participating State to assume the full costs of providing any health services in its Medicaid plan. To the contrary, Congress' purpose in enacting Title XIX was to provide federal financial ***298** assistance for all legitimate state expenditures under an approved Medicaid plan. Pp. 2683-2684.

(b) Nor does the Hyde Amendment's legislative his-

tory contain any indication that Congress intended to shift the entire cost of some medically necessary abortions to the participating States, but rather suggests that Congress has always assumed that a participating State would not be required to fund such abortions once federal funding was withdrawn pursuant to the Hyde Amendment. Pp. 2684-2685.

2. The funding restrictions of the Hyde Amendment do not impinge on the "liberty" protected by the Due Process Clause of the Fifth Amendment held in *Roe v. Wade*, 410 U.S. 113, 168, 93 S.Ct. 705, 734, 35 L.Ed.2d 147, to include the freedom of a woman to decide whether to terminate a pregnancy. Pp. 2685-2689.

(a) The Hyde Amendment places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy, but rather, by means of unequal subsidization of abortion and other medical services, encourages alternative activity deemed in the public interest. Cf. *Maher v. Roe*, 432 U.S. 464, 97 S.Ct. 2376, 53 L.Ed.2d 484. P. 2687.

(b) Regardless of whether the freedom of a woman to choose to terminate her pregnancy for health reasons lies at the core or the periphery of the due process liberty recognized in *Wade, supra*, it does not follow that a woman's freedom of choice carries with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices. Although government may not place obstacles in the path of a woman's exercise of her freedom of choice, it need not remove those not of its own creation, and indigency falls within the latter category.****2679** Although Congress has opted to subsidize medically necessary services generally, but not certain medically necessary abortions, the fact remains that the Hyde Amendment leaves an indigent woman with at least the same range of choice in deciding whether to obtain a medically necessary abortion as she would have had if Congress had chosen to subsidize no health care costs at all. P. 2688.

(c) To translate the limitation on governmental power implicit in the Due Process Clause into an affirmative funding obligation would require Congress to subsidize the medically necessary abortion of an indigent woman even if Congress had not enacted a Medicaid program to subsidize other medically necessary services. Nothing in the Due Process Clause supports such an extraordinary result. Pp. 2688-2689.

3. Nor does the Hyde Amendment violate the Establishment Clause of the First Amendment. The fact that the funding restrictions in the Hyde Amendment may coincide with the religious tenets of the Roman ***299** Catholic Church does not, without more, contravene that Clause. P. 2689.

4. Appellees lack standing to raise a challenge to the Hyde Amendment under the Free Exercise Clause of the First Amendment. The named appellees consisting of indigent pregnant women suing on behalf of other women similarly situated lack such standing because none alleged, much less proved, that she sought an abortion under compulsion of religious belief. The named appellees consisting of officers of the Women's Division, although they provided a detailed description of their religious beliefs, failed to allege either that they are or expect to be pregnant or that they are eligible to receive Medicaid, and they therefore lacked the personal stake in the controversy needed to confer standing to raise such a challenge to the Hyde Amendment. And the Women's Division does not satisfy the standing requirements for an organization to assert the rights of its membership, since the asserted claim is one that required participation of the individual members for a proper understanding and resolution of their free exercise claims. Pp. 2689-2690.

5. The Hyde Amendment does not violate the equal protection component of the Due Process Clause of the Fifth Amendment. Pp. 2690-2693.

(a) While the presumption of constitutional validity of a statutory classification that does not itself impinge on a right or liberty protected by the Consti-

tution disappears if the classification is predicated on criteria that are "suspect," the Hyde Amendment is not predicated on a constitutionally suspect classification. *Maher v. Roe, supra*. Although the impact of the Amendment falls on the indigent, that fact does not itself render the funding restrictions constitutionally invalid, for poverty, standing alone, is not a suspect classification. P. 2691.

(b) Where, as here, Congress has neither invaded a substantive constitutional right or freedom, nor enacted legislation that purposefully operates to the detriment of a suspect class, the only requirement of equal protection is that congressional action be rationally related to a legitimate governmental interest. The Hyde Amendment satisfies that standard, since, by encouraging childbirth except in the most urgent circumstances, it is rationally related to the legitimate governmental objective of protecting potential life. Pp. 2691-2693.

491 F.Supp. 630, reversed and remanded.

***300** Sol. Gen. Wade H. McCree, Jr., Washington, D. C., for appellant.

Rhonda Copelon, New York City, for appellees.

Mr. Justice STEWART delivered the opinion of the Court.

This case presents statutory and constitutional questions concerning the public funding of abortions under Title XIX of the Social Security Act, commonly known as the "Medicaid" Act, and recent annual Appropriations****2680** Acts containing ***301** the so-called "Hyde Amendment." The statutory question is whether Title XIX requires a State that participates in the Medicaid program to fund the cost of medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment. The constitutional question, which arises only if Title XIX imposes no such requirement, is whether the Hyde Amendment, by denying public funding for certain medically necessary abortions, contravenes the liberty or equal protection guarantees of the Due Process Clause of the Fifth Amendment, or either of the Religion Clauses of the First Amendment.

I

The Medicaid program was created in 1965, when Congress added Title XIX to the Social Security Act, 79 Stat. 343, as amended, 42 U.S.C. § 1396 *et seq.* (1976 ed. and Supp. II), for the purpose of providing federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons. Although participation in the Medicaid program is entirely optional, once a State elects to participate, it must comply with the requirements of Title XIX.

One such requirement is that a participating State agree to provide financial assistance to the "categorically needy" FN1 with respect to five general areas of medical treatment: (1) inpatient hospital services, (2) outpatient hospital services, (3) other laboratory and X-ray services, (4) skilled nursing ***302** facilities services, periodic screening and diagnosis of children, and family planning services, and (5) services of physicians. 42 U.S.C. §§ 1396a(a)(13)(B), 1396d(a)(1)-(5). Although a participating State need not "provide funding for all medical treatment falling within the five general categories, [Title XIX] does require that [a] state Medicaid pla[n] establish 'reasonable standards . . . for determining . . . the extent of medical assistance under the plan which . . . are consistent with the objectives of [Title XIX].' 42 U.S.C. § 1396a(a)(17)." *Beal v. Doe*, 432 U.S. 438, 441, 97 S.Ct. 2366, 2369, 53 L.Ed.2d 464.

FN1. The "categorically needy" include families with dependent children eligible for public assistance under the Aid to Families with Dependent Children program, 42 U.S.C. § 601 *et seq.*, and the aged, blind, and disabled eligible for benefits under the Supplemental Security Income program, 42 U.S.C. § 1381 *et seq.* See 42 U.S.C. §

1396a(a)(10)(A). Title XIX also permits a State to extend Medicaid benefits to other needy persons, termed "medically needy." See 42 U.S.C. § 1396a(a)(10)(C). If a State elects to include the medically needy in its Medicaid plan, it has the option of providing somewhat different coverage from that required for the categorically needy. See 42 U.S.C. § 1396a(a)(13)(C).

Since September 1976, Congress has prohibited-either by an amendment to the annual appropriations bill for the Department of Health, Education, and Welfare [FN2] or by a joint resolution-the use of any federal funds to reimburse the cost of abortions under the Medicaid program except under certain specified circumstances. This funding restriction is commonly known as the "Hyde Amendment," after its original congressional sponsor, Representative Hyde. The current version of the Hyde Amendment, applicable for fiscal year 1980, provides:

FN2. The Department of Health, Education, and Welfare was recently reorganized and divided into the Department of Health and Human Services and the Department of Education. The original designation is retained for purposes of this opinion.

"[N]one of the funds provided by this joint resolution shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest when such rape or incest has been reported promptly to a law enforcement agency or public health service." Pub.L. 96-123, § 109, 93 Stat. 926.

See also Pub.L. 96-86, § 118, 93 Stat. 662. This version of the Hyde Amendment is broader than that applicable for fiscal year 1977, which did not include the "rape or incest" ***303** exception, ****2681** Pub.L. 94-439, § 209, 90 Stat. 1434, but narrower than that applicable for most of fiscal year 1978, and all of fiscal year 1979, which had an additional exception for "instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term when so determined by two physicians," Pub.L. 95-205, § 101, 91 Stat. 1460; Pub.L. 95-480, § 210, 92 Stat. 1586. [FN3] [FN4]

FN3. The appropriations for HEW during October and November 1977, the first two months of fiscal year 1978, were provided by joint resolutions that continued in effect the version of the Hyde Amendment applicable during fiscal year 1977. Pub.L. 95-130, 91 Stat. 1153; Pub.L. 95-165, 91 Stat. 1323.

FN4. In this opinion, the term "Hyde Amendment" is used generically to refer to all three versions of the Hyde Amendment, except where indicated otherwise.

On September 30, 1976, the day on which Congress enacted the initial version of the Hyde Amendment, these consolidated cases were filed in the District Court for the Eastern District of New York. The plaintiffs-Cora McRae, a New York Medicaid recipient then in the first trimester of a pregnancy that she wished to terminate, the New York City Health and Hospitals Corp., a public benefit corporation that operates 16 hospitals, 12 of which provide abortion services, and others-sought to enjoin the enforcement of the funding restriction on abortions. They alleged that the Hyde Amendment violated the First, Fourth, Fifth, and Ninth Amendments of the Constitution insofar as it limited the funding of abortions to those necessary to save the life of the mother, while permitting the funding of costs associated with childbirth. Although the sole named defendant was the Secretary of Health, Education, and Welfare, the District Court permitted Senators James L. Buckley and Jesse A. Helms and Representative Henry J. Hyde to intervene as defendants. [FN5]

FN5. Although the intervenor-defendants

> are appellees in the Secretary's direct appeal to this Court, see this Court's Rule 10(4), the term "appellees" is used in this opinion to refer only to the parties who were the plaintiffs in the District Court.

***304** After a hearing, the District Court entered a preliminary injunction prohibiting the Secretary from enforcing the Hyde Amendment and requiring him to continue to provide federal reimbursement for abortions under the standards applicable before the funding restriction had been enacted. *McRae v. Mathews*, 421 F.Supp. 533. Although stating that it had not expressly held that the funding restriction was unconstitutional, since the preliminary injunction was not its final judgment, the District Court noted that such a holding was "implicit" in its decision granting the injunction. The District Court also certified the *McRae* case as a class action on behalf of all pregnant or potentially pregnant women in the State of New York eligible for Medicaid and who decide to have an abortion within the first 24 weeks of pregnancy, and of all authorized providers of abortion services to such women. *Id.*, at 543.

The Secretary then brought an appeal to this Court. After deciding *Beal v. Doe*, 432 U.S. 438, 97 S.Ct. 2366, 53 L.Ed.2d 464, and *Maher v. Roe*, 432 U.S. 464, 97 S.Ct. 2474, 53 L.Ed.2d 534, we vacated the injunction of the District Court and remanded the case for reconsideration in light of those decisions. *Califano v. McRae*, 433 U.S. 916, 97 S.Ct. 2993, 53 L.Ed.2d 1103.

On remand, the District Court permitted the intervention of several additional plaintiffs, including (1) four individual Medicaid recipients who wished to have abortions that allegedly were medically necessary but did not qualify for federal funds under the versions of the Hyde Amendment applicable in fiscal years 1977 and 1978, (2) several physicians who perform abortions for Medicaid recipients, (3) the Women's Division of the Board of Global Ministries of the United Methodist Church (Women's Division), and (4) two individual officers of the Women's Division.

****2682** An amended complaint was then filed, challenging the various versions of the Hyde Amendment on several grounds. At the outset, the plaintiffs asserted that the District Court need not address the constitutionality of the HydeAmendment***305** because, in their view, a participating State remains obligated under Title XIX to fund all medically necessary abortions, even if federal reimbursement is unavailable. With regard to the constitutionality of the Hyde Amendment, the plaintiffs asserted, among other things, that the funding restrictions violate the Religion Clauses of the First Amendment and the Due Process Clause of the Fifth Amendment.

After a lengthy trial, which inquired into the medical reasons for abortions and the diverse religious views on the subject,[FN6] the District Court filed an opinion and entered a judgment invalidating all versions of the Hyde Amendment on constitutional grounds.[FN7] The District Court rejected the plaintiffs' statutory argument, concluding that even though Title XIX would otherwise have required a participating State to fund medically necessary abortions, the Hyde Amendment had substantively amended Title XIX to relieve a State of that funding obligation. Turning then to the constitutional issues, the District Court concluded that the Hyde Amendment, though valid under the Establishment Clause,[FN8] violates the equal protection component of the Fifth Amendment's Due Process Clause and the Free Exercise Clause of the First Amendment. With regard to the Fifth Amendment, the District Court noted that when an abortion is "medically necessary to safeguard the pregnant woman's health, . . . the disentitlement to [M]edicaid assistance impinges directly on the woman's right to decide, in consultation with her physician and in reliance on his judgment, to terminate ***306** her pregnancy in order to preserve her health."[FN9] *McRae v. Califano*, 491 F.Supp. 630, 737. The court concluded that the Hyde Amendment violates the equal protection guarantee because, in its view,

the decision of Congress to fund medically necessary services generally but only certain medically necessary abortions serves no legitimate governmental interest. As to the Free Exercise Clause of the First Amendment, the court held that insofar as a woman's decision to seek a medically necessary abortion may be a product of her religious beliefs under certain Protestant and Jewish tenets, the funding restrictions of the Hyde Amendment violate that constitutional guarantee as well.

FN6. The trial, which was conducted between August 1977 and September 1978, produced a record containing more than 400 documentary and film exhibits and a transcript exceeding 5,000 pages.

FN7. *McRae v. Califano*, 491 F.Supp. 630.

FN8. The District Court found no Establishment Clause infirmity because, in its view, the Hyde Amendment has a secular legislative purpose, its principal effect neither advances nor inhibits religion, and it does not foster an excessive governmental entanglement with religion.

FN9. The District Court also apparently concluded that the Hyde Amendment operates to the disadvantage of a "suspect class," namely, teenage women desiring medically necessary abortions. See n. 26, *infra*.

Accordingly, the District Court ordered the Secretary to "[c]ease to give effect" to the various versions of the Hyde Amendment insofar as they forbid payments for medically necessary abortions. It further directed the Secretary to "[c]ontinue to authorize the expenditure of federal matching funds [for such abortions]." App. 87. In addition, the court recertified the *McRae* case as a nationwide class action on behalf of all pregnant and potentially pregnant women eligible for Medicaid who wish to have medically necessary abortions, and of all authorized providers of abortions for such women.[FN10]

FN10. Although the original class included only those pregnant women in the first two trimesters of their pregnancy, the recertified class included all pregnant women regardless of the stage of their pregnancy.

****2683** The Secretary then applied to this Court for a stay of the judgment pending direct appeal of the District Court's decision. We denied the stay, but noted probable jurisdiction of this appeal. 444 U.S. 1069, 100 S.Ct. 1010, 62 L.Ed.2d 750.

II

[1] It is well settled that if a case may be decided on either statutory or constitutional grounds, this Court, for sound ***307** jurisprudential reasons, will inquire first into the statutory question. This practice reflects the deeply rooted doctrine "that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable." *Spector Motor Service, Inc. v. McLaughlin*, 323 U.S. 101, 105, 65 S.Ct. 152, 154, 89 L.Ed. 101. Accordingly, we turn first to the question whether Title XIX requires a State that participates in the Medicaid program to continue to fund those medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment. If a participating State is under such an obligation, the constitutionality of the Hyde Amendment need not be drawn into question in the present case, for the availability of medically necessary abortions under Medicaid would continue, with the participating State shouldering the total cost of funding such abortions.

The appellees assert that a participating State has an independent funding obligation under Title XIX because (1) the Hyde Amendment is, by its own terms, only a limitation on federal reimbursement for certain medically necessary abortions, and (2) Title XIX does not permit a participating State to exclude from its Medicaid plan any medically ne-

cessary service solely on the basis of diagnosis or condition, even if federal reimbursement is unavailable for that service.[FN11] It is thus the appellees' view that the effect of the Hyde Amendment is to withhold federal reimbursement for certain medically necessary abortions, but not to relieve a participating ***308** State of its duty under Title XIX to provide for such abortions in its Medicaid plan.

> FN11. The appellees argue that their interpretation of Title XIX finds support in *Beal v. Doe*, 432 U.S. 438, 97 S.Ct. 2366, 53 L.Ed.2d 464. There the Court considered the question whether Title XIX permits a participating State to exclude *non* -therapeutic abortions from its Medicaid plan. Although concluding that Title XIX does not preclude a State's refusal "to fund *unnecessary* -though perhaps desirable-medical services," the Court observed that "serious statutory questions might be presented if a state Medicaid plan excluded necessary medical treatment from its coverage." *Id.*, at 444-445, 97 S.Ct., at 2371 (emphasis in original). The Court in *Beal*, however, did not address the possible effect of the Hyde Amendment upon the operation of Title XIX.

The District Court rejected this argument. It concluded that, although Title XIX would otherwise have required a participating State to include medically necessary abortions in its Medicaid program, the Hyde Amendment substantively amended Title XIX so as to relieve a State of that obligation. This construction of the Hyde Amendment was said to find support in the decisions of two Courts of Appeals, *Preterm, Inc. v. Dukakis*, 591 F.2d 121 (CA1 1979), and *Zbaraz v. Quern*, 596 F.2d 196 (CA7 1979), and to be consistent with the understanding of the effect of the Hyde Amendment by the Department of Health, Education, and Welfare in the administration of the Medicaid program.

[2][3][4] We agree with the District Court, but for somewhat different reasons. The Medicaid program created by Title XIX is a cooperative endeavor in which the Federal Government provides financial assistance to participating States to aid them in furnishing health care to needy persons. Under this system of "cooperative federalism," *King v. Smith*, 392 U.S. 309, 316, 88 S.Ct. 2128, 2132, 20 L.Ed.2d 1118, if a State agrees to establish a Medicaid plan that satisfies the requirements of Title XIX, which include several mandatory categories of health services, the Federal Government agrees to pay a specified percentage of "the total amount expended . . . as medical assistance under the State plan . . . ." ****2684** 42 U.S.C. § 1396b(a)(1). The cornerstone of Medicaid is financial contribution by both the Federal Government and the participating State. Nothing in Title XIX as originally enacted, or in its legislative history, suggests that Congress intended to require a participating State to assume the full costs of providing any health services in its Medicaid plan. Quite the contrary, the purpose of Congress in enacting Title XIX was to provide federal financial assistance for all legitimate state expenditures under an approved Medicaid plan. See S.Rep.No.404, 89th Cong., 1st ***309** Sess., pt. 1, pp. 83-85 (1965); H.R.Rep.No.213, 89th Cong., 1st Sess., 72-74 (1965), U.S.Code Cong. & Admin.News 1965, p. 1943.

[5][6][7] Since the Congress that enacted Title XIX did not intend a participating State to assume a unilateral funding obligation for any health service in an approved Medicaid plan, it follows that Title XIX does not require a participating State to include in its plan any services for which a subsequent Congress has withheld federal funding.[FN12] Title XIX was designed as a cooperative program of shared financial responsibility, not as a device for the Federal Government to compel a State to provide services that Congress itself is unwilling to fund. Thus, if Congress chooses to withdraw federal funding for a particular service, a State is not obliged to continue to pay for that service as a condition of continued federal financial support of other services. This is not to say that Congress may not now depart from the original

design of Title XIX under which the Federal Government shares the financial responsibility for expenses incurred under an approved Medicaid plan. It is only to say that, absent an indication of contrary legislative intent by a subsequent Congress, Title XIX does not obligate a participating State to pay for those medical services for which federal reimbursement is unavailable.[FN13]

FN12. In *Preterm, Inc. v. Dukakis*, 591 F.2d 121, 132 (CA1 1979), the opinion of the court by Judge Coffin noted:

> "The Medicaid program is one of federal and state cooperation in funding medical assistance; a complete withdrawal of the federal prop in the system with the intent to drop the total cost of providing the service upon the states, runs directly counter to the basic structure of the program and could seriously cripple a state's attempts to provide other necessary medical services embraced by its plan." (Footnote omitted.)

FN13. When subsequent Congresses have deviated from the original structure of Title XIX by obligating a participating State to assume the full costs of a service as a prerequisite for continued federal funding of other services, they have always expressed their intent to do so in unambiguous terms. See *Zbaraz v. Quern*, 596 F.2d 196, 200, n. 12 (CA7 1979).

***310** [8][9][10] Thus, by the normal operation of Title XIX, even if a State were otherwise required to include medically necessary abortions in its Medicaid plan, the withdrawal of federal funding under the Hyde Amendment would operate to relieve the State of that obligation for those abortions for which federal reimbursement is unavailable.[FN14] The legislative history of the Hyde Amendment contains no indication whatsoever that Congress intended to shift the entire cost of such services to the participating States. See *Zbaraz v. Quern, supra*, at 200 ("no one, whether supporting or opposing the Hyde Amendment, ever suggested that state funding would be required"). Rather, the legislative history suggests that Congress has always assumed that a participating State would not be required to fund medically necessary abortions once federal funding was withdrawn pursuant to the ****2685** Hyde Amendment.[FN15] See *Preterm, Inc. v. Dukakis, supra*, 591 F.2d, at 130 ("[t]he universal assumption in debate was that if the Amendment passed there would be no requirement that states carry on the service"). Accord, *Zbaraz v. Quern, supra*, 596 F.2d, at 200; ***311***Hodgson v. Board of County Comm'rs*, 614 F.2d 601, 612-613 (CA8 1980); *Roe v. Casey*, 623 F.2d 829, 834-837 (CA3 1980). Accordingly, we conclude that Title XIX does not require a participating State to pay for those medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment.[FN16]

FN14. Since Title XIX itself provides for variations in the required coverage of state Medicaid plans depending on changes in the availability of federal reimbursement, we need not inquire, as the District Court did, whether the Hyde Amendment is a substantive amendment to Title XIX. The present case is thus different from *TVA v. Hill*, 437 U.S. 153, 189-193, 98 S.Ct. 2279, 2299-2301, 57 L.Ed.2d 117, where the issue was whether continued appropriations for the Tellico Dam impliedly repealed the substantive requirements of the Endangered Species Act prohibiting the continued construction of the Dam because it threatened the natural habitat of an endangered species.

FN15. Our conclusion that the Congress that enacted Title XIX did not intend a participating State to assume a unilateral funding obligation for any health service in an approved Medicaid plan is corroborated by the fact that subsequent Congresses

simply assumed that the withdrawal of federal funding under the Hyde Amendment for certain medically necessary abortions would relieve a participating State of any obligation to provide for such services in its Medicaid plan. See the cases cited in the text, *supra.*

FN16. A participating State is free, if it so chooses, to include in its Medicaid plan those medically necessary abortions for which federal reimbursement is unavailable. See *Beal v. Doe*, 432 U.S., at 447, 97 S.Ct., at 2372; *Preterm, Inc. v. Dukakis, supra*, at 134. We hold only that a State *need* not include such abortions in its Medicaid plan.

III

[11] Having determined that Title XIX does not obligate a participating State to pay for those medically necessary abortions for which Congress has withheld federal funding, we must consider the constitutional validity of the Hyde Amendment. The appellees assert that the funding restrictions of the Hyde Amendment violate several rights secured by the Constitution-(1) the right of a woman, implicit in the Due Process Clause of the Fifth Amendment, to decide whether to terminate a pregnancy, (2) the prohibition under the Establishment Clause of the First Amendment against any "law respecting an establishment of religion," and (3) the right to freedom of religion protected by the Free Exercise Clause of the First Amendment. The appellees also contend that, quite apart from substantive constitutional rights, the Hyde Amendment violates the equal protection component of the Fifth Amendment. FN17

FN17. The appellees also argue that the Hyde Amendment is unconstitutionally vague insofar as physicians are unable to understand or implement the exceptions in the Hyde Amendment under which abortions are reimbursable. It is our conclusion, however, that the Hyde Amendment is not void for vagueness because (1) the sanction provision in the Medicaid Act contains a clear scienter requirement under which good-faith errors are not penalized, see *Colautti v. Franklin*, 439 U.S. 379, 395, 99 S.Ct. 675, 685, 58 L.Ed.2d 596; and, (2), in any event, the exceptions in the Hyde Amendment "are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with, without sacrifice to the public interest." *Broadrick v. Oklahoma*, 413 U.S. 601, 608, 93 S.Ct. 2908, 2914, 37 L.Ed.2d 830.

***312** [12] It is well settled that, quite apart from the guarantee of equal protection, if a law "impinges upon a fundamental right explicitly or implicitly secured by the Constitution [it] is presumptively unconstitutional." *Mobile v. Bolden*, 446 U.S. 55, 76, 100 S.Ct. 1490, 1504, 64 L.Ed.2d 47 (plurality opinion). Accordingly, before turning to the equal protection issue in this case, we examine whether the Hyde Amendment violates any substantive rights secured by the Constitution.

A

We address first the appellees' argument that the Hyde Amendment, by restricting the availability of certain medically necessary abortions under Medicaid, impinges on the "liberty" protected by the Due Process Clause as recognized in *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147, and its progeny.

[13] In the *Wade* case, this Court held unconstitutional a Texas statute making it a crime to procure or attempt an abortion except on medical advice for the purpose of ****2686** saving the mother's life. The constitutional underpinning of *Wade* was a recognition that the "liberty" protected by the Due Process Clause of the Fourteenth Amendment includes not

only the freedoms explicitly mentioned in the Bill of Rights, but also a freedom of personal choice in certain matters of marriage and family life.[FN18] This implicit constitutional liberty, the Court in *Wade* held, includes the freedom of a woman to decide whether to terminate a pregnancy.

> FN18. The Court in *Wade* observed that previous decisions of this Court had recognized that the liberty protected by the Due Process Clause "has some extension to activities relating to marriage, *Loving v. Virginia*, 388 U.S. 1, 12 [87 S.Ct. 1817, 1823, 18 L.Ed.2d 1010] (1967); procreation, *Skinner v. Oklahoma*, 316 U.S. 535, 541-542 [62 S.Ct. 1110, 1113-1114, 86 L.Ed. 1655] (1942); contraception, *Eisenstadt v. Baird*, 405 U.S., [438,] at 453-454 [ 92 S.Ct. 1029, at 1038, 1039, 31 L.Ed.2d 349]; *id.*, at 460, 463-465 [92 S.Ct., at 1042, 1043-1044] (WHITE, J., concurring in result); family relationships, *Prince v. Massachusetts*, 321 U.S. 158, 166 [64 S.Ct. 438, 442, 88 L.Ed. 645] (1944); and child rearing and education, *Pierce v. Society of Sisters*, 268 U.S. 510, 535 [45 S.Ct. 571, 573, 69 L.Ed. 1070] (1925); *Meyer v. Nebraska* [262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042 (1923)]." 410 U.S., at 152-153, 93 S.Ct., at 726-727.

***313** [14] But the Court in *Wade* also recognized that a State has legitimate interests during a pregnancy in both ensuring the health of the mother and protecting potential human life. These state interests, which were found to be "separate and distinct" and to "gro[w] in substantiality as the woman approaches term," *id.*, at 162-163, 93 S.Ct., at 731, pose a conflict with a woman's untrammeled freedom of choice. In resolving this conflict, the Court held that before the end of the first trimester of pregnancy, neither state interest is sufficiently substantial to justify any intrusion on the woman's freedom of choice. In the second trimester, the state interest in maternal health was found to be sufficiently substantial to justify regulation reasonably related to that concern. And at viability, usually in the third trimester, the state interest in protecting the potential life of the fetus was found to justify a criminal prohibition against abortions, except where necessary for the preservation of the life or health of the mother. Thus, inasmuch as the Texas criminal statute allowed abortions only where necessary to save the life of the mother and without regard to the stage of the pregnancy, the Court held in *Wade* that the statute violated the Due Process Clause of the Fourteenth Amendment.

In *Maher v. Roe*, 432 U.S. 464, 97 S.Ct. 2376, 53 L.Ed.2d 484, the Court was presented with the question whether the scope of personal constitutional freedom recognized in *Roe v. Wade* included an entitlement to Medicaid payments for abortions that are not medically necessary. At issue in *Maher* was a Connecticut welfare regulation under which Medicaid recipients received payments for medical services incident to childbirth, but not for medical services incident to nontherapeutic abortions. The District Court held that the regulation violated the Equal Protection Clause of the Fourteenth Amendment because the unequal subsidization of childbirth and abortion impinged on the "fundamental right to abortion" recognized in *Wade* and its progeny.

***314** It was the view of this Court that "the District Court misconceived the nature and scope of the fundamental right recognized in *Roe*." 432 U.S., at 471, 97 S.Ct., at 2381. The doctrine of *Roe v. Wade* , the Court held in *Maher*, "protects the woman from unduly burdensome interference with her freedom to decide whether to terminate her pregnancy," *id.*, at 473-474, 97 S.Ct., at 2382, such as the severe criminal sanctions at issue in *Roe v. Wade*, *supra*, or the absolute requirement of spousal consent for an abortion challenged in *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52, 96 S.Ct. 2831, 49 L.Ed.2d 788.

But the constitutional freedom recognized in *Wade* and its progeny, the *Maher* Court explained, did not

prevent Connecticut****2687** from making "a value judgment favoring childbirth over abortion, and . . . implement[ing] that judgment by the allocation of public funds." 432 U.S., at 474, 97 S.Ct., at 2382. As the Court elaborated:

"The Connecticut regulation before us is different in kind from the laws invalidated in our previous abortion decisions. The Connecticut regulation places no obstacles-absolute or otherwise-in the pregnant woman's path to an abortion. An indigent woman who desires an abortion suffers no disadvantage as a consequence of Connecticut's decision to fund childbirth; she continues as before to be dependent on private sources for the service she desires. The State may have made childbirth a more attractive alternative, thereby influencing the woman's decision, but it has imposed no restriction on access to abortions that was not already there. The indigency that may make it difficult-and in some cases, perhaps, impossible-for some women to have abortions is neither created nor in any way affected by the Connecticut regulation." *Ibid.*

The Court in *Maher* noted that its description of the doctrine recognized in *Wade* and its progeny signaled "no retreat" from those decisions. In explaining why the constitutional***315** principle recognized in *Wade* and later cases-protecting a woman's freedom of choice-did not translate into a constitutional obligation of Connecticut to subsidize abortions, the Court cited the "basic difference between direct state interference with a protected activity and state encouragement of an alternative activity consonant with legislative policy. Constitutional concerns are greatest when the State attempts to impose its will by force of law; the State's power to encourage actions deemed to be in the public interest is necessarily far broader." 432 U.S., at 475-476, 97 S.Ct., at 2383 (footnote omitted). Thus, even though the Connecticut regulation favored childbirth over abortion by means of subsidization of one and not the other, the Court in *Maher* concluded that the regulation did not impinge on the constitutional freedom recognized in *Wade* because it imposed no governmental restriction on access to abortions.

[15] The Hyde Amendment, like the Connecticut welfare regulation at issue in *Maher*, places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy, but rather, by means of unequal subsidization of abortion and other medical services, encourages alternative activity deemed in the public interest. The present case does differ factually from *Maher* insofar as that case involved a failure to fund nontherapeutic abortions, whereas the Hyde Amendment withholds funding of certain medically necessary abortions. Accordingly, the appellees argue that because the Hyde Amendment affects a significant interest not present or asserted in *Maher* -the interest of a woman in protecting her health during pregnancy-and because that interest lies at the core of the personal constitutional freedom recognized in *Wade*, the present case is constitutionally different from *Maher*. It is the appellees' view that to the extent that the Hyde Amendment withholds funding for certain medically necessary abortions, it clearly impinges on the constitutional principle recognized in *Wade*.

***316** It is evident that a woman's interest in protecting her health was an important theme in *Wade*. In concluding that the freedom of a woman to decide whether to terminate her pregnancy falls within the personal liberty protected by the Due Process Clause, the Court in *Wade* emphasized the fact that the woman's decision carries with it significant personal health implications-both physical and psychological. 410 U.S., at 153, 93 S.Ct., at 726. In fact, although the Court in *Wade* recognized that the state interest in protecting potential life becomes sufficiently compelling in the period after fetal viability to justify an absolute criminal prohibition of nontherapeutic abortions, the Court held that even after fetal viability a State may not prohibit abortions "necessary to preserve the life or ****2688** health of the mother." *Id.*, at 164, 93 S.Ct., at 732. Because even the compelling interest of the State in protecting potential life after fetal viability was

held to be insufficient to outweigh a woman's decision to protect her life or health, it could be argued that the freedom of a woman to decide whether to terminate her pregnancy for health reasons does in fact lie at the core of the constitutional liberty identified in *Wade*.

[16][17][18][19][20][21] But, regardless of whether the freedom of a woman to choose to terminate her pregnancy for health reasons lies at the core or the periphery of the due process liberty recognized in *Wade*, it simply does not follow that a woman's freedom of choice carries with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices. The reason why was explained in *Maher* : although government may not place obstacles in the path of a woman's exercise of her freedom of choice, it need not remove those not of its own creation. Indigency falls in the latter category. The financial constraints that restrict an indigent woman's ability to enjoy the full range of constitutionally protected freedom of choice are the product not of governmental restrictions on access to abortions, but rather of her indigency. Although Congress has opted to subsidize ***317** medically necessary services generally, but not certain medically necessary abortions, the fact remains that the Hyde Amendment leaves an indigent woman with at least the same range of choice in deciding whether to obtain a medically necessary abortion as she would have had if Congress had chosen to subsidize no health care costs at all. We are thus not persuaded that the Hyde Amendment impinges on the constitutionally protected freedom of choice recognized in *Wade*. FN19

FN19. The appellees argue that the Hyde Amendment is unconstitutional because it "penalizes" the exercise of a woman's choice to terminate a pregnancy by abortion. See *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306; *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600. This argument falls short of the mark. In *Maher*, the Court found only a "semantic difference" between the argument that Connecticut's refusal to subsidize nontherapeutic abortions "unduly interfere[d]" with the exercise of the constitutional liberty recognized in *Wade* and the argument that it "penalized" the exercise of that liberty. 432 U.S., at 474 n. 8, 97 S.Ct., at 2382 n. 8. And, regardless of how the claim was characterized, the *Maher* Court rejected the argument that Connecticut's refusal to subsidize protected conduct, without more, impinged on the constitutional freedom of choice. This reasoning is equally applicable in the present case. A substantial constitutional question would arise if Congress had attempted to withhold all Medicaid benefits from an otherwise eligible candidate simply because that candidate had exercised her constitutionally protected freedom to terminate her pregnancy by abortion. This would be analogous to *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965, where this Court held that a State may not, consistent with the First and Fourteenth Amendments, withhold *all* unemployment compensation benefits from a claimant who would otherwise be eligible for such benefits but for the fact that she is unwilling to work one day per week on her Sabbath. But the Hyde Amendment, unlike the statute at issue in *Sherbert*, does not provide for such a broad disqualification from receipt of public benefits. Rather, the Hyde Amendment, like the Connecticut welfare provision at issue in *Maher*, represents simply a refusal to subsidize certain protected conduct. A refusal to fund protected activity, without more, cannot be equated with the imposition of a "penalty" on that activity.

[22][23][24][25][26] Although the liberty protected by the Due Process Clause affords protection

against unwarranted government interference with freedom of choice in the context of certain personal ***318** decisions, it does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom. To hold otherwise would mark a drastic change in our understanding of the Constitution. It cannot be that because government may not prohibit the use of contraceptives, *Griswold v. Connecticut*, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510, or prevent parents from sending their child to a private school, *Pierce v. Society of Sisters*, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070, government, therefore, has an affirmative constitutional obligation to ensure that all persons have the financial resources to obtain contraceptives ****2689** or send their children to private schools. To translate the limitation on governmental power implicit in the Due Process Clause into an affirmative funding obligation would require Congress to subsidize the medically necessary abortion of an indigent woman even if Congress had not enacted a Medicaid program to subsidize other medically necessary services. Nothing in the Due Process Clause supports such an extraordinary result.[FN20] Whether freedom of choice that is constitutionally protected warrants federal subsidization is a question for Congress to answer, not a matter of constitutional entitlement. Accordingly, we conclude that the Hyde Amendment does not impinge on the due process liberty recognized in *Wade*.[FN21]

FN20. As this Court in *Maher* observed: "The Constitution imposes no obligation on the [government] to pay the pregnancy-related medical expenses of indigent women, or indeed to pay any of the medical expenses of indigents." 432 U.S., at 469, 97 S.Ct., at 2380.

FN21. Since the constitutional entitlement of a physician who administers medical care to an indigent woman is no broader than that of his patient, see *Whalen v. Roe*, 429 U.S. 589, 604, and n. 33, 97 S.Ct. 869, 878, and n. 33, 51 L.Ed.2d 64, we also reject the appellees' claim that the funding restrictions of the Hyde Amendment violate the due process rights of the physician who advises a Medicaid recipient to obtain a medically necessary abortion.

B

The appellees also argue that the Hyde Amendment contravenes rights secured by the Religion Clauses of the First ***319** Amendment. It is the appellees' view that the Hyde Amendment violates the Establishment Clause because it incorporates into law the doctrines of the Roman Catholic Church concerning the sinfulness of abortion and the time at which life commences. Moreover, insofar as a woman's decision to seek a medically necessary abortion may be a product of her religious beliefs under certain Protestant and Jewish tenets, the appellees assert that the funding limitations of the Hyde Amendment impinge on the freedom of religion guaranteed by the Free Exercise Clause.

1

[27][28][29][30] It is well settled that "a legislative enactment does not contravene the Establishment Clause if it has a secular legislative purpose, if its principal or primary effect neither advances nor inhibits religion, and if it does not foster an excessive governmental entanglement with religion." *Committee for Public Education v. Regan*, 444 U.S. 646, 653, 100 S.Ct. 840, 846, 63 L.Ed.2d 94. Applying this standard, the District Court properly concluded that the Hyde Amendment does not run afoul of the Establishment Clause. Although neither a State nor the Federal Government can constitutionally "pass laws which aid one religion, aid all religions, or prefer one religion over another," *Everson v. Board of Education*, 330 U.S. 1, 15, 67 S.Ct. 504, 511, 91 L.Ed. 711, it does not follow that a statute violates the Establishment Clause because it "happens to coincide or harmonize with the tenets of some or all religions." *McGowan v. Maryland*, 366 U.S. 420,

442, 81 S.Ct. 1101, 1113, 6 L.Ed.2d 393. That the Judaeo-Christian religions oppose stealing does not mean that a State or the Federal Government may not, consistent with the Establishment Clause, enact laws prohibiting larceny. *Ibid.* The Hyde Amendment, as the District Court noted, is as much a reflection of "traditionalist" values towards abortion, as it is an embodiment of the views of any particular religion. 491 F.Supp., at 741. See also *Roe v. Wade*, 410 U.S., at 138-141, 93 S.Ct., at 719-721. In sum, we are convinced that the fact that the funding restrictions in the ***320** Hyde Amendment may coincide with the religious tenets of the Roman Catholic Church does not, without more, contravene the Establishment Clause.

2

[31][32] We need not address the merits of the appellees' arguments concerning the Free Exercise Clause, because the appellees ****2690** lack standing to raise a free exercise challenge to the Hyde Amendment. The named appellees fall into three categories: (1) the indigent pregnant women who sued on behalf of other women similarly situated, (2) the two officers of the Women's Division, and (3) the Women's Division itself.[FN22] The named appellees in the first category lack standing to challenge the Hyde Amendment on free exercise grounds because none alleged, much less proved, that she sought an abortion under compulsion of religious belief.[FN23] See *McGowan v. Maryland*, *supra*, at 429, 81 S.Ct., at 1106. Although the named appellees in the second category did provide a detailed description of their religious beliefs, they failed to allege either that they are or expect to be pregnant or that they are eligible to receive Medicaid. These named appellees, therefore, lack the personal stake in the controversy needed to confer standing to raise such a challenge to the Hyde Amendment. See *Warth v. Seldin*, 422 U.S. 490, 498-499, 95 S.Ct. 2197, 2204-2205, 45 L.Ed.2d 343 .

FN22. The remaining named appellees, including the individual physicians and the New York City Health and Hospitals Corp., did not attack the Hyde Amendment on the basis of the Free Exercise Clause of the First Amendment.

FN23. These named appellees sued on behalf of the class of "women of all religious and nonreligious persuasions and beliefs who have, in accordance with the teaching of their religion and/or the dictates of their conscience determined that an abortion is necessary." But since we conclude below that the named appellees have not established their own standing to sue, "[t]hey cannot represent a class of whom they are not a part." *Bailey v. Patterson*, 369 U.S. 31, 32-33, 82 S.Ct. 549, 550, 7 L.Ed.2d 512. See also *O'Shea v. Littleton*, 414 U.S. 488, 494-495, 94 S.Ct. 669, 675, 38 L.Ed.2d 674.

[33] Finally, although the Women's Division alleged that its ***321** membership includes "pregnant Medicaid eligible women who, as a matter of religious practice and in accordance with their conscientious beliefs, would choose but are precluded or discouraged from obtaining abortions reimbursed by Medicaid because of the Hyde Amendment," the Women's Division does not satisfy the standing requirements for an organization to assert the rights of its membership. One of those requirements is that "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 343, 97 S.Ct. 2434, 2441, 53 L.Ed.2d 383. Since "it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion," *Abington School Dist. v. Schempp*, 374 U.S. 203, 223, 83 S.Ct. 1560, 1572, 10 L.Ed.2d 844, the claim asserted here is one that ordinarily requires individual participation.[FN24] In the present case, the Women's Division concedes that "the permissibility, advisability and/

or necessity of abortion according to circumstance is a matter about which there is diversity of view within . . . our membership, and is a determination which must be ultimately and absolutely entrusted to the conscience of the individual before God." It is thus clear that the participation of individual members of the Women's Division is essential to a proper understanding and resolution of their free exercise claims. Accordingly, we conclude that the Women's Division, along with the other named appellees, lack standing to challenge the Hyde Amendment under the Free Exercise Clause.

FN24. For example, in *Board of Education v. Allen*, 392 U.S. 236, 249, 88 S.Ct. 1923, 1929, 20 L.Ed.2d 1060, the Court found no free exercise violation since the plaintiffs had "not contended that the [statute in question] in any way coerce[d] them *as individuals* in the practice of their religion." (Emphasis added.)

C

It remains to be determined whether the Hyde Amendment violates the equal protection component of the Fifth Amendment. This challenge is premised on the fact that, although ***322** federal reimbursement is available under Medicaid for medically necessary ****2691** services generally, the Hyde Amendment does not permit federal reimbursement of all medically necessary abortions. The District Court held, and the appellees argue here, that this selective subsidization violates the constitutional guarantee of equal protection.

[34][35] The guarantee of equal protection under the Fifth Amendment is not a source of substantive rights or liberties,[FN25] but rather a right to be free from invidious discrimination in statutory classifications and other governmental activity. It is well settled that where a statutory classification does not itself impinge on a right or liberty protected by the Constitution, the validity of classification must be sustained unless "the classification rests on grounds wholly irrelevant to the achievement of [any legitimate governmental] objective." *McGowan v. Maryland*, 366 U.S., at 425, 81 S.Ct., at 1105. This presumption of constitutional validity, however, disappears if a statutory classification is predicated on criteria that are, in a constitutional sense, "suspect," the principal example of which is a classification based on race, *e. g., Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873.

FN25. An exception to this statement is to be found in *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506, and its progeny. Although the Constitution of the United States does not confer the right to vote in state elections, see *Minor v. Happersett*, 21 Wall. 162, 178, 22 L.Ed. 627, *Reynolds* held that if a State adopts an electoral system, the Equal Protection Clause of the Fourteenth Amendment confers upon a qualified voter a substantive right to participate in the electoral process equally with other qualified voters. See, *e. g., Dunn v. Blumstein*, 405 U.S. 330, 336, 92 S.Ct. 995, 999, 31 L.Ed.2d 274.

1

[36][37][38] For the reasons stated above, we have already concluded that the Hyde Amendment violates no constitutionally protected substantive rights. We now conclude as well that it is not predicated on a constitutionally suspect classification. In reaching this conclusion, we again draw guidance from the Court's decision in *Maher v. Roe*. As to whether the Connecticut***323** welfare regulation providing funds for childbirth but not for nontherapeutic abortions discriminated against a suspect class, the Court in *Maher* observed:

"An indigent woman desiring an abortion does not come within the limited category of disadvantaged classes so recognized by our cases. Nor does the fact that the impact of the regulation falls upon

those who cannot pay lead to a different conclusion. In a sense, every denial of welfare to an indigent creates a wealth classification as compared to nonindigents who are able to pay for the desired goods or services. But this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis." 432 U.S., at 470-471, 97 S.Ct., at 2381, citing *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 29, 93 S.Ct. 1278, 1294, 36 L.Ed.2d 16; *Dandridge v. Williams*, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491.

Thus, the Court in *Maher* found no basis for concluding that the Connecticut regulation was predicated on a suspect classification.

It is our view that the present case is indistinguishable from *Maher* in this respect. Here, as in *Maher*, the principal impact of the Hyde Amendment falls on the indigent. But that fact does not itself render the funding restriction constitutionally invalid, for this Court has held repeatedly that poverty, standing alone is not a suspect classification. See, *e. g. James v. Valtierra*, 402 U.S. 137, 91 S.Ct. 1331, 28 L.Ed.2d 678. That *Maher* involved the refusal to fund nontherapeutic abortions, whereas the present case involves the refusal to fund medically necessary abortions, has no bearing on the factors that render a classification "suspect" within the meaning of the constitutional guarantee of equal protection. FN26

FN26. Although the matter is not free from doubt, the District Court seems to have concluded that teenage women desiring medically necessary abortions constitute a "suspect class" for purposes of triggering a heightened level of equal protection scrutiny. In this regard, the District Court observed that the Hyde Amendment "clearly operate[s] to the disadvantage of one suspect class, that is to the disadvantage of the statutory class of adolescents at a high risk of pregnancy . . . , and particularly those seventeen and under." 491 F.Supp., at 738. The "statutory" class to which the District Court was referring is derived from the Adolescent Health Services and Pregnancy Prevention and Care Act, 42 U.S.C. § 300a-21 *et seq.* (1976 ed., Supp. II). It was apparently the view of the District Court that since statistics indicate that women under 21 years of age are disproportionately represented among those for whom an abortion is medically necessary, the Hyde Amendment invidiously discriminates against teenage women.

> But the Hyde Amendment is facially neutral as to age, restricting funding for abortions for women of all ages. The District Court erred, therefore, in relying solely on the disparate impact of the Hyde Amendment in concluding that it discriminated on the basis of age. The equal protection component of the Fifth Amendment prohibits only purposeful discrimination, *Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597, and when a facially neutral federal statute is challenged on equal protection grounds, it is incumbent upon the challenger to prove that Congress "selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 279, 99 S.Ct. 2282, 2296, 60 L.Ed.2d 870. There is no evidence to support such a finding of intent in the present case.

***324 **2692** 2

[39] The remaining question then is whether the Hyde Amendment is rationally related to a legitimate governmental objective. It is the Government's position that the Hyde Amendment bears a rational relationship to its legitimate interest in protecting the potential life of the fetus. We agree.

In *Wade*, the Court recognized that the State has an "important and legitimate interest in protecting the potentiality of human life." 410 U.S., at 162, 93 S.Ct., at 731. That interest was found to exist throughout a pregnancy, "grow[ing] in substantiality as the woman approaches term." *Id.*, at 162-163, 93 S.Ct., at 731. See also *Beal v. Doe*, 432 U.S., at 445-446, 97 S.Ct., at 2371. Moreover, in *Maher*, the Court held that Connecticut's decision to fund the costs associated with childbirth but not those associated with nontherapeutic abortions was a rational means of advancing the legitimate state interest in protecting potential life by ***325** encouraging childbirth. 432 U.S., at 478-479, 97 S.Ct., at 2385. See also *Poelker v. Doe*, 432 U.S. 519, 520-521, 97 S.Ct. 2391, 2392, 53 L.Ed.2d 528.

[40] It follows that the Hyde Amendment, by encouraging childbirth except in the most urgent circumstances, is rationally related to the legitimate governmental objective of protecting potential life. By subsidizing the medical expenses of indigent women who carry their pregnancies to term while not subsidizing the comparable expenses of women who undergo abortions (except those whose lives are threatened),[FN27] Congress has established incentives that make childbirth a more attractive alternative than abortion for persons eligible for Medicaid. These incentives bear a direct relationship to the legitimate congressional interest in protecting potential life. Nor is it irrational that Congress has authorized federal reimbursement for medically necessary services generally, but not for certain medically necessary abortions.[FN28] Abortion is inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life.

FN27. We address here the constitutionality of the most restrictive version of the Hyde Amendment, namely, that applicable in fiscal year 1976 under which federal funds were unavailable for abortions, "except where the life of the mother would be endangered if the fetus were carried to term." Three versions of the Hyde Amendment are at issue in this case. If the most restrictive version is constitutionally valid, so too are the others.

FN28. In fact, abortion is not the only "medically necessary" service for which federal funds under Medicaid are sometimes unavailable to otherwise eligible claimants. See 42 U.S.C. § 1396d(a)(17)(B) (inpatient hospital care of patients between 21 and 65 in institutions for tuberculosis or mental disease not covered by Title XIX).

[41] After conducting an extensive evidentiary hearing into issues surrounding the public funding of abortions, the District Court concluded that "[t]he interests of ****2693** . . . the federal government . . . in the fetus and in preserving it are not sufficient, weighed in the balance with the woman's threatened health, to justify withdrawing medical assistance unless the ***326** woman consents . . . to carry the fetus to term." 491 F.Supp., at 737. In making an independent appraisal of the competing interests involved here, the District Court went beyond the judicial function. Such decisions are entrusted under the Constitution to Congress, not the courts. It is the role of the courts only to ensure that congressional decisions comport with the Constitution.

[42] Where, as here, the Congress has neither invaded a substantive constitutional right or freedom, nor enacted legislation that purposefully operates to the detriment of a suspect class, the only requirement of equal protection is that congressional action be rationally related to a legitimate governmental interest. The Hyde Amendment satisfies that standard. It is not the mission of this Court or any other to decide whether the balance of competing interests reflected in the Hyde Amendment is wise social policy. If that were our mission, not every Justice who has subscribed to the judgment of the Court today could have done so. But we cannot, in the name of the Constitution, overturn duly enacted

statutes simply "because they may be unwise, improvident, or out of harmony with a particular school of thought." *Williamson v. Lee Optical Co.*, 348 U.S. 483, 488, 75 S.Ct. 461, 464, 99 L.Ed. 563, quoted in *Dandridge v. Williams*, 397 U.S., at 484, 90 S.Ct., at 1161. Rather, "when an issue involves policy choices as sensitive as those implicated [here] . . . , the appropriate forum for their resolution in a democracy is the legislature." *Maher v. Roe*, *supra*, 432 U.S., at 479, 97 S.Ct., at 2385.

IV

For the reasons stated in this opinion, we hold that a State that participates in the Medicaid program is not obligated under Title XIX to continue to fund those medically necessary abortions for which federal reimbursement is unavailable under the Hyde Amendment. We further hold that the funding restrictions of the Hyde Amendment violate neither the Fifth Amendment nor the Establishment Clause of the First Amendment. It is also our view that the appellees ***327** lack standing to raise a challenge to the Hyde Amendment under the Free Exercise Clause of the First Amendment. Accordingly, the judgment of the District Court is reversed, and the case is remanded to that court for further proceedings consistent with this opinion.

*It is so ordered*.

Mr. Justice WHITE, concurring.

I join the Court's opinion and judgment with these additional remarks.

*Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), held that prior to viability of the fetus, the governmental interest in potential life was insufficient to justify overriding the due process right of a pregnant woman to terminate her pregnancy by abortion. In the last trimester, however, the State's interest in fetal life was deemed sufficiently strong to warrant a ban on abortions, but only if continuing the pregnancy did not threaten the life or health of the mother. In the latter event, the State was required to respect the choice of the mother to terminate the pregnancy and protect her health.

Drawing upon *Roe v. Wade* and the cases that followed it, Mr. Justice STEVENS' dissent extrapolates the general proposition that the governmental interest in potential life may in no event be pursued at the expense of the mother's health. It then notes that under the Hyde Amendment, Medicaid refuses to fund abortions where carrying to term threatens maternal health but finances other medically indicated procedures, including childbirth. The dissent submits that the Hyde Amendment therefore fails the first requirement imposed by the Fifth Amendment and recognized by the Court's opinion today-that the challenged official action must serve a legitimate governmental goal, *ante*, at 2691-2692.

****2694** The argument has a certain internal logic, but it is not legally sound. The constitutional right recognized in *Roe v. Wade* was the right to choose to undergo an abortion without coercive interference by the government. As the Court ***328** points out, *Roe v. Wade* did not purport to adjudicate a right to have abortions funded by the government, but only to be free from unreasonable official interference with private choice. At an appropriate stage in a pregnancy, for example, abortions could be prohibited to implement the governmental interest in potential life, but in no case to the damage of the health of the mother, whose choice to suffer an abortion rather than risk her health the government was forced to respect.

*Roe v. Wade* thus dealt with the circumstances in which the governmental interest in potential life would justify official interference with the abortion choices of pregnant women. There is no such calculus involved here. The Government does not seek to interfere with or to impose any coercive restraint on the choice of any woman to have an abortion. The woman's choice remains unfettered, the Government is not attempting to use its interest in life to justify a coercive restraint, and hence in disbursing its Medicaid funds it is free to implement rationally what *Roe v. Wade* recognized to be its legitimate

interest in a potential life by covering the medical costs of childbirth but denying funds for abortions. Neither *Roe v. Wade* nor any of the cases decided in its wake invalidates this legislative preference. We decided as much in *Maher v. Roe*, 432 U.S. 464, 97 S.Ct. 2376, 53 L.Ed.2d 484 (1977), when we rejected the claims that refusing funds for nontherapeutic abortions while defraying the medical costs of childbirth, although not an outright prohibition, nevertheless infringed the fundamental right to choose to terminate a pregnancy by abortion and also violated the equal protection component of the Fifth Amendment. I would not abandon *Maher* and extend *Roe v. Wade* to forbid the legislative policy expressed in the Hyde Amendment.

Nor can *Maher* be successfully distinguished on the ground that it involved only nontherapeutic abortions that the Government was free to place outside the ambit of its Medicaid program. That is not the ground on which *Maher* proceeded.***329** *Maher* held that the government need not fund elective abortions because withholding funds rationally furthered the State's legitimate interest in normal childbirth. We sustained this policy even though under *Roe v. Wade*, the government's interest in fetal life is an inadequate justification for coercive interference with the pregnant woman's right to choose an abortion, whether or not such a procedure is medically indicated. We have already held, therefore, that the interest balancing involved in *Roe v. Wade* is not controlling in resolving the present constitutional issue. Accordingly, I am satisfied that the straightforward analysis followed in Mr. Justice STEWART's opinion for the Court is sound.

U.S.N.Y.,1980.
Harris v. McRae
448 U.S. 297, 100 S.Ct. 2671, 65 L.Ed.2d 784

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