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# Freedom of Choice Act: A Great Danger

by

Peter J. Riga

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Even Professor L. Tribe has given up attempting a constitutional underpinning to *Roe v. Wade* (N.Y.T. July 27, 1992). In this he joins the most recent plurality opinion of *Casey v. Planned Parenthood* which also did not bother to give us the constitutional moorings of the privacy right of abortion. *Casey's* rationale? Americans have made a cultural decision about contraception and family limits. For almost 20 years they have had *Roe* to fall back on in case of contraceptive failure. The court will not second guess that cultural liberation of women. Behold the constitutional jurisprudence of abortion *circa* 1992!

But in conformity with the desires and wishes of about 80% of the American people (Justices do read polls as well as election returns), *Casey* upheld restrictions on the abortion freedom: Informed consent, parental notification, waiting period and no constitutionally mandated funding for this procedure.

This curtailment of the abortion freedom was evidently too much for the Professor and his tribe of radical proponents of abortion on demand. Through the Freedom of Choice Act presently before Congress, they want Congress to guarantee in statute what *Roe* mandated up to 1987; in addition, they want funding for this procedure so that the poor will have the same right to destroy their unborn as do the rich.

Clearly, *Roe* was abortion on demand subsumed as a constitutional right somewhere in the Constitution. In its companion case of *Bolton*, health was defined so widely and so subjectively that abortion, even in the third trimester, was permitted. Professor Tribe and his abortion absolutists want this legislated in congressional statute in addition to its funding for the poor. As we all know, funding always increases anything that in fact is funded by the government.

This proposed Freedom of Choice Act will be extremely dangerous and altogether divisive of the country such as it has not been since *Dredd Scott*. Tensions in this area are already very high; any funding of this procedure will push many over the cliff of protest to violent action. Consider the following if the Freedom of Choice Act becomes federal law:

1. The U.S. will be the only Western nation to give absolutely no protection to the unborn. Under the proposed congressional legislation, *Roe* will be statutorily

enacted which, as explained, is abortion on demand. The court in *Webster*, *Harris* and *Casey* had moved toward a more humane view of other Western nations in giving some measure of protection to the unborn (minuscule as that really is). Under *Roe* and under the proposed Freedom of Choice Act, dogs and cats will have more protection for their lives than the unborn. Every other Western nation permits free access to abortion for the first trimester and after that, only for the life of the mother. Under *Roe*, we live under a regime of barbarism, with the lives of a whole group of human beings at the absolute and unfettered whim of another group of human beings.

2. All the polls show overwhelming opposition to abortion on demand. Most Americans simply do not understand that *Roe* and the proposed Freedom of Choice legislation is abortion on demand. Americans want the abortion freedom unfettered for the early stage of pregnancy and after that only for the mother's life. They overwhelmingly accept the *Casey* restrictions: informed consent, parental notification, a waiting period and full disclosure. They *overwhelmingly* oppose any funding of this procedure for anyone. If Americans truly understood all the implications of the *Freedom of Choice Act*, they would reject it emphatically. Like *Roe*, ignorance of the holdings of this Act is the real problem.

3. So far, the abortion debate has been mostly non violent even though the killing is one-sided. Pro choice people continue the killing while the pro life people can only continue to protest, attempt to change court personnel and the legislative process. As long as the pro life side perceives its ability to explain its case publicly and to be able to persuade people about what is really happening, there will be tension, but a *modus vivendi*. So far this has been a non violent process because no one has been forced to participate or acquiesce in the killing. The *Harris* decision assured the American people that there is no constitutional mandate on the government to fund what is for many, the killing of the innocent. This case was really a safeguard against civil turmoil.

The Freedom of Choice Act, if passed, grants money for abortion of poor women who meet certain standards. This is an extremely dangerous situation because now the balance which was precarious before, shall now have shifted in favor of forcing the pro life people to directly participate in the killing by monies forcibly extracted from them through taxation. We are no longer in an area of choice but in an area of force, force against the pro life people. This is a formula for violence and widespread civil disobedience when one side perceives itself to be directly participating in a heinous and murderous act against its will, namely, the killing of the unborn innocent. If there ever was a formula for violence, it is the funding of this procedure by the Freedom of Choice Act. To demand of those who consider abortion a species of murder, that they help fund that act by money forcibly extracted from them by taxes, is to insure not only unrest and rancor, but a breach of civil peace from people who think they are being forced to support the killing. This is totally unlike the example of Quakers who are taxed to support war. In war no one denies that there is an enemy who directly endangers the common good. Quakers religiously object to violence even against enemies. In the Freedom of Choice Act, all citizens are called upon by taxes to help kill the totally innocent. For the pro life people, this

is the equivalent of a declaration of war on them by the pro choice people.

It is one thing to say that it is only I who am responsible for my own act of abortion and to demand freedom for that act; it is quite another to ask those who think it is a species of murder, to help me pay for it.

This must not be.

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