P.S. to the NEWS
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ABORTION AND THE CONSTITUTION

President Carter has proclaimed the week of September 17 to 23 as Constitution Week and urged all Americans "to foster a better understanding of the Constitution." This is a great opportunity to study and put to use some of the valuable, but seldom used, sections.

Article III, Section 2, clearly establishes the authority of Congress over the Supreme Court's "appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make." Thus, Congress has the constitutional power to withdraw jurisdiction from the Supreme Court over any subject-matter except "ambassadors, other public ministers and consuls, and those in which a state shall be a party."

Supreme Court Justice Harry A. Blackmun addressed the American Bar Association in Dallas in May and listed America's problems as "inflation, unemployment, energy problems and the blight of continued racism." He neglected to mention the problem caused by the Supreme Court: the killing of more than a million unborn babies every year since he wrote Roe v. Wade on January 22, 1973.

The Supreme Court may have thought, when it handed down that legally-unprecedented, socially-unpredictable, medically-unsound decision, that it was settling the abortion controversy once and for all. But Blackmun's opinion, which purported to discover a new right in the 14th Amendment no one else had seen for a hundred years, opened a Pandora's box of litigation which the federal courts have had to wrestle with every since.

Here is a partial listing of laws which have been struck down by the federal courts since Roe v. Wade: a state law that allowed abortions only in hospitals, a state law that required advance approval of two doctors and the hospital medical staff, a state law that required the father's consent, a state

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law that required parental consent for an abortion on a minor, a state law that required the husband's consent, a state law that required the doctor to try to save the aborted infant, a state law that required parental consent OR the court's consent, a state law that prohibited saline amniocentesis, and a state law that required parental consultation.

In other cases, the Supreme Court has ruled that the Constitution does not require a state to finance elective abortions with tax funds or require a publicly financed hospital to perform elective abortions. The Court also held that the Social Security Act does not require the states participating in Medicaid to finance elective abortions.

Recent votes in Congress show that there is a clear majority there for the amendment offered by Rep. Henry Hyde (R-Il.), and repeatedly approved in various forms, which reads: "None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus was carried to term." Yet, Brooklyn Federal Judge John F. Dooling entered an order enjoining enforcement of this amendment, and the judicial battle over abortion continues.

The solution to such judicial extremism and rewriting of our Constitution in a field in which the courts have no real competence is for Congress to pass a law denying jurisdiction to the federal courts in all abortion cases. This can be done by simple majority vote in both Houses of Congress, and is a more efficient way to deal with the problem than the cumbersome path of amending the Constitution.

Laws denying jurisdiction to the federal courts have been repeatedly passed by Congress and respected by the federal courts. In 1932 Congress removed federal court jurisdiction in labor injunction cases, and in 1934 prohibited the federal courts from interfering with state public utility rate orders or the collection of state taxes. Both laws were sponsored by prominent liberals, the former by Senator George Norris and Representative Fiorello LaGuardia, and the latter by Senator Hiram Johnson.

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