

Regular Session, 1999

HOUSE CONCURRENT RESOLUTION NO. 257

BY REPRESENTATIVES PERKINS, THORNHILL, JENKINS,
THOMPSON, AND WRIGHT AND SENATOR SCHEDLER

A CONCURRENT RESOLUTION

To appeal to the Congress of the United States to limit the appellate jurisdiction of the federal courts regarding the specific medical practice of partial-birth abortions.

WHEREAS, Louisiana is one of twenty-five states which has recently prohibited the specific medical procedure termed "partial-birth abortions"; and

WHEREAS, numerous other states are working this legislative session to enact the same ban; and

WHEREAS, federal district courts have thus far struck down laws in seventeen different states, effectively declaring that partial-birth abortions cannot be banned; and

WHEREAS, this intrusion of the federal courts into these state decisions concerning this medical procedure can be remedied only by federal congressional action to limit the jurisdiction of these federal courts; and

WHEREAS, the United States Constitution does not create or regulate these inferior federal courts, but instead explicitly gives congress the power to do so; and

WHEREAS, the U.S. Constitution makes the jurisdiction of the federal courts subject to congressional proscription through Article III, Section 2, Para. 2, by declaring that federal courts "shall have appellate jurisdiction both

as to law and fact with such exceptions and under such regulations as congress shall make"; and

WHEREAS, the intent of the framers of our documents was clear on this power of congress, such as when Samuel Chase (a signer of the Declaration of Independence and a U.S. Supreme Court Justice appointed by President George Washington) declared, "The notion has frequently been entertained that the federal courts derive their judicial power immediately from the constitution; but the political truth is that the disposal of the judicial power (except in a few specified instances) belongs to Congress. If Congress has given the power to this court, we possess it, not otherwise"; and

WHEREAS, Justice Joseph Story, in his authoritative *Commentaries on the Constitution*, similarly declares, "In all cases where the judicial power of the United States is to be exercised, it is for Congress alone to furnish the rules of proceeding, to direct the process, to declare the nature and effect of the process, and the mode, in which the judgments, consequent thereon, shall be executed...And if Congress may confer power, they may repeal it ... [The power of Congress [is] complete to make exceptions"]; and

WHEREAS, this position is confirmed not only by the signers of the Constitution themselves, such as George Washington and James Madison, but also by other leading constitutional experts and jurists of the day, including Chief Justice John Rutledge, Chief Justice Oliver Ellsworth, Chief Justice John Marshall, Richard Henry Lee, Robert Yates, George Mason, and John Randolph; and

WHEREAS, the United States Supreme Court has long recognized and affirmed this power of congress to limit the appellate jurisdiction of the federal courts, as in 1847 when the court declared that the "court possesses no appellate power in any case unless conferred upon it by act of Congress" and in 1865 when it declared "it is for Congress to determine how far appellate

jurisdiction shall be given; and when conferred, it can be exercised only to the extent and in the manner prescribed by law"; and

WHEREAS, congress has on numerous occasions exercised this power to limit the jurisdiction of federal courts, and the Supreme Court has consistently upheld this power of congress in rulings over the last two centuries, including cases in 1847, 1866, 1868, 1876, 1878, 1882, 1893, 1898, 1901, 1904, 1906, 1908, 1910, 1922, 1926, 1948, 1952, 1966, 1973, 1977, etc; and

WHEREAS, it is congress alone which can remedy this current crisis and return to the states the power to make their own decisions on partial-birth abortions by excepting this issue from the appellate jurisdiction of the federal courts.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana respectfully appeals to the Congress of these United States to limit the appellate jurisdiction of the federal courts regarding the specific medical practice of partial-birth abortions.

BE IT FURTHER RESOLVED that a copy of this Resolution be sent to the Speaker of the United States House of Representatives, the President of the United States Senate, and the Chief Clerical Officers of the United States House of Representatives and the United States Senate.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE