



Written by [Kurt Hyde](#) on January 22, 2013

Congress Has the Power to Overturn *Roe v. Wade*

On January 22, 1973 the U.S. Supreme Court handed down its decision in *Roe v. Wade*. The effect of that decision has made abortion on demand legal in the United States. Randall K. O'Bannon, director of research for National Right to Life, estimates the total number of abortions in the United States passed the 55 million mark in April or May of last year.



During the 40 years since *Roe v. Wade*, many pro-life groups have been organized to overturn it. Most of these groups have concentrated on two strategies: getting the U.S. Supreme Court to overturn its own decision or passing a constitutional amendment.

U.S. Constitution, Article III, Section 2

All along, there has been a third strategy that has gotten precious little attention: the power granted to Congress in Article III, Section 2 of the U.S. Constitution to limit the appellate jurisdiction of the Supreme Court:

The supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

It's one of the numerous checks and balances in our Constitution. When any branch of our federal government strays from its constitutional authority, the other branches have the authority and responsibility to keep that branch within its bounds. Congress has the authority to overturn *Roe v. Wade* via this strategy.

Comparing Three Ways of Overturning *Roe v. Wade*

The three ways to overturn *Roe v. Wade* are:

- A constitutional amendment — That requires a two-thirds majority vote in each House of Congress followed by ratification by three-fourths of the states.
- Getting the U.S. Supreme to reverse its previous decision — This is by far the hardest method of overturning *Roe v. Wade*, since judges are typically reluctant to reverse their own decisions or the decisions of their predecessors. Some have suggested appointing at least five solidly pro-life justices who would be willing to vote to overturn *Roe v. Wade*. This has already shown itself to be unworkable.
- Passing a law based on Article III, Section 2 of the Constitution to limit the jurisdiction of the U.S. Supreme Court — This requires a simple majority of both Houses of Congress and the president's signature. If the president vetoes the bill, the veto can be overridden by two thirds of each House.

Overturning *Roe v. Wade* via Article III, Section 2 is clearly less difficult than either the constitutional amendment route or by trying to get the U.S. Supreme Court to reverse itself.

**Golden Opportunity in 2005**

Congress has already had a golden opportunity to overturn *Roe v. Wade* via Article III, Section 2. On February 10, 2005 Texas Congressman Ron Paul submitted H.R. 776, the Sanctity of Life Act of 2005. This bill, which would have prohibited the Supreme Court from hearing abortion cases, stated:

The Supreme Court shall not have jurisdiction to review, by appeal, writ of certiorari, or otherwise, any case arising out of any statute, ordinance, rule, regulation, practice, or any part thereof, or arising out of any act interpreting, applying, enforcing, or effecting any statute, ordinance, rule, regulation, or practice, on the grounds that such statute, ordinance, rule, regulation, practice, act, or part thereof:

- (1) Protects the rights of human persons between conception and birth; or
- (2) Prohibits, limits, or regulates —
 - (A) the performance of abortions; or
 - (B) the provision of public expense of funds, facilities, personnel, or other assistance for the performance of abortions.

The Sanctity of Life Act of 2005 was submitted near the beginning of the 109th Congress in plenty of time to pass. The Republicans were in the majority in both houses of Congress with 231 Republicans in the House and 55 Republicans in the Senate. Many of these Republicans were endorsed by pro-life groups. The Republican president was endorsed by numerous pro-life groups. Yet this bill never passed.

What Are Politicians Taught at Their Campaign Schools?

On March 11, 1986 I attended the Free Congress Institute for Campaign Training in Washington, D.C. The keynote speaker, Paul Weyrich, advised the would-be candidates that if they got elected, it would in large probability be due to a major issue that was troubling a significant number of voters. He raised more than just a few eyebrows when he advised the would-be candidates not to be in a hurry to solve that troubling problem during their first term if the term of office was two years or less. He explained that getting re-elected at least once would help make subsequent re-elections considerably easier. In Weyrich's defense it must be noted that he did advocate solving that problem eventually.

Which Way for Pro-Life Advocates?

After 40 years of successfully endorsing candidates and raising money for them, maybe it's time for the politically active pro-life groups to question the candidates they support for federal office to see how pro-life they really are by asking them if they'll submit or support legislation to overturn *Roe v. Wade* via Article III, Section 2 of the U.S. Constitution. It may be that many of these politicians are ignorant of this part of the Constitution. It may be that many of these candidates are not really pro-life and are just trying to make friends with a goose that lays golden eggs.

Education is the key. If pro-life activists become better educated about the U.S. Constitution, they could demand that political candidates agree to support overturning *Roe v. Wade* via Article III, Section 2 as a condition for receiving donations or endorsements. Then there will be a good chance for *Roe v. Wade* to be overturned by act of Congress. That's the best hope there is of seeing an end to the current toll of about 1.2 million abortions per year in this country.



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