

No. 88-605

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1988

WILLIAM L. WEBSTER, *et al.*,  
v. *Appellants,*

REPRODUCTIVE HEALTH SERVICES, *et al.*,  
*Appellees.*

On Appeal from the United States Court of Appeals  
for the Eighth Circuit

BRIEF OF SEVENTY-SEVEN ORGANIZATIONS  
COMMITTED TO WOMEN'S EQUALITY  
AS *AMICI CURIAE*  
IN SUPPORT OF APPELLEES  
(List of *Amici Curiae* on inside cover)

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**BRIEF OF SEVENTY-SEVEN ORGANIZATIONS  
COMMITTED TO WOMEN'S EQUALITY  
AS AMICI CURIAE  
IN SUPPORT OF APPELLEES**

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**INTEREST OF AMICI CURIAE**

*Amici curiae* share a common concern for the judicial protection of women's rights, including the constitutional right to reproductive autonomy. Because we believe that no ruling of this Court has had a more positive effect on the lives of American women than *Roe v. Wade*, 410 U.S. 113 (1973), we submit this brief to explain why this Court should maintain its protection of the right to choose abortion as defined in *Roe v. Wade* through *Thornburgh v. American College of Obstetricians & Gynecologists*, 476 U.S. 747 (1986).

The more specific interests of each of the seventy-seven *amici curiae* are set forth in Appendix A.<sup>1</sup>

**SUMMARY OF ARGUMENT**

Although the constitutional protection afforded reproductive autonomy is cast in the doctrinal terms of the liberty-based right of privacy, the scope of such protection must be informed by an awareness of its implications for women's equality as well.<sup>2</sup> If this Court were to uphold abortion restrictions that force pregnant women to bear children, it would render empty the constitutional promise of liberty for women by profoundly structuring

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<sup>1</sup> *Amici curiae* file this brief with the consent of all parties and letters of consent have been filed with the Clerk of the Court pursuant to Rule 36.

<sup>2</sup> Significantly, the Court decided *Roe v. Wade* in the same Term in which it condemned "our Nation[']s . . . long and unfortunate history of sex discrimination," *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973) (plurality), and began protecting women from state legislation that would limit women's opportunities to the role of homemaker and mother. See Karst, Book Review, 89 Harv. L. Rev. 1028, 1036 (1976) ("Not merely the sex discrimination cases, but the cases on contraception, abortion, and illegitimacy as well, present various faces of a single issue: the roles women are to play in our society.").



their lives. Moreover, it would do so for women alone; men are not required to endure comparable burdens in the service of the state's abstract interest in promoting life. To ensure that the constitutional guarantee of liberty "extends to women as well as to men," this Court must secure women's right to choose abortion lest it "protect inadequately a central part of the sphere of liberty that our law guarantees equally to all." *Thornburgh*, 476 U.S. at 772.

Freely chosen and planned childbearing is often a joyous experience. But because "few decisions are more personal and intimate, more properly private, or more basic to individual dignity and autonomy than a woman's decision . . . whether to end her pregnancy," *id.*, forced motherhood threatens the core of a woman's constitutionally valued autonomy in two distinct ways.

First, state interference with abortion violates the principle of bodily integrity that underlies much of the Fourteenth Amendment's promise of liberty. The process of bearing a child involves the most intimate and strenuous exercises of the female body and psyche; compelling a woman to devote her body, mind and soul to continue an unwanted pregnancy constitutes an invasion of our deepest sense of privacy and the primacy of self-determination. Forced continued pregnancy also entails a more tangible violation of physical liberty by subjecting women to a host of physical burdens and risks that range from prolonged discomfort and pain during pregnancy and delivery, to a substantial risk of specific medical complications, and even to death. State abortion restrictions thus require women—and women only—to endure physical intrusions and risks that are greater than those previously found by this Court to violate the constitutional principle of bodily integrity.

Second, state interference with abortion denies women the capacity to control their own lives in the most basic of ways. The bearing and raising of children often places severe constraints on women's employment opportunities and therefore threatens their ability to support them-

selves and their families. Moreover, teenagers' inability to postpone motherhood until they have completed a basic education and are psychologically and financially equipped properly to care for children largely predetermines the paths their lives will take before they have even developed their own identities and aspirations. Hence, the imposition of abortion restrictions both belies the constitutional promise of personal autonomy and curtails women's ability to participate equally with men in the public world.

Bald assertions of an unabridged state interest in protecting the potentiality of human life, proclaimed to be sufficiently "compelling" to justify these major invasions of all aspects of women's personal autonomy, must be viewed by this Court with great skepticism. There is no logical stopping point at which such an asserted interest could be cabined. Thus, this Court's cognizance of this interest as "compelling" would not only result in the unprecedented evisceration of a fundamental right; it would also provide states with an open-ended invitation to impose a wide range of other liberty-curtailling policies on pregnant women, dictating their employment, health care, diet, exercise, and even leisure activities.

Moreover, that a state chooses to advance its interest in potential life by restricting women's reproductive autonomy, thereby resurrecting archaic stereotypes about women's proper role in society, counsels further against recognition of that interest as "compelling." States never impose comparable physical burdens or risks on men in requiring them to protect other persons; by singling out only women to sacrifice their bodies and autonomy to protect the mere potentiality of life, abortion restrictions both reflect and reinforce the stereotype that breeding children is women's "natural role." This Court cannot safely cede control over the availability of abortion to a political process that can be expected to undervalue both the importance to women of this aspect of their fundamental liberty and the burdens and risks of forced motherhood. "The greatest dangers to liberty lurk in insidious

encroachment by men of zeal, well-meaning but without understanding." *Olmstead v. United States*, 277 U.S. 438, 479 (1928) (Brandeis, J., dissenting).

## ARGUMENT

### I. RESTRICTIVE ABORTION LAWS INTERFERE WITH WOMEN'S CONSTITUTIONAL RIGHT TO LIBERTY BY RESTRICTING THEIR ABILITY TO MAKE FUNDAMENTAL DECISIONS ABOUT THEIR BODIES AND LIVES.

The liberty-based right to privacy includes the right "to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972). Indeed, control of one's own reproductive capacities is a prerequisite to the exercise of many of the other fundamental choices that are protected from government interference by the Fourteenth Amendment's liberty guarantee, choices by which people determine their participation in the public world, define their personal lives and structure their families.<sup>3</sup> Thus, the decisions whether and when to bear a child lie, for women, "at the very heart" of the fundamental right to liberty. *Carey v. Population Servs. Int'l*, 431 U.S. 678, 685 (1977).<sup>4</sup>

<sup>3</sup> This Court has held that the Fourteenth Amendment guards not only those rights enumerated by the Constitution but also "those fundamental liberties that are 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed.'" *Bowers v. Hardwick*, 478 U.S. 186, 191-92 (1986) (quoting *Palko v. Connecticut*, 302 U.S. 319, 325-26 (1937)). The Court has long protected the liberty to decide when or whether to marry, see *Loving v. Virginia*, 388 U.S. 1 (1967), how to raise and educate children, see *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923), and when or whether to conceive or bear children, see *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Skinner v. Oklahoma*, 316 U.S. 535 (1942).

<sup>4</sup> The Court's recognition of the right to choose abortion followed directly from its holding that states may not prohibit the use of contraceptives. A woman's liberty interest in making her own decision concerning whether she will bear a child does not

At some time in their lives, most women willingly choose to bear and raise children. For many of them, having a wanted child is a joyful and enriching experience. Yet bearing and raising children also entails significant risks and burdens which not all women can assume at all times and in all circumstances. The constitutional guarantee of liberty protects the right of women to assess those risks and burdens, and to decide if and when they are prepared to assume them.

State restrictions on abortion therefore violate women's fundamental right to liberty in at least two different ways.<sup>5</sup> First, they infringe on a woman's right to bodily integrity by imposing on her tremendous physical intru-

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diminish after conception occurs. Indeed, as Justice Stevens points out, "if one decision is more 'fundamental' to the individual's freedom than the other, surely it is the postconception decision that is the more serious." *Thornburgh*, 476 U.S. at 776 (Stevens, J., concurring).

<sup>5</sup> The Solicitor General argues that the proper constitutional inquiry is whether a woman has been afforded a "meaningful opportunity" to avoid an unwanted pregnancy, taking into account such options as abstinence and contraception. Brief for the United States as *Amicus Curiae* Supporting Appellants, at 22 n.16. Not only is this proposed inquiry inconsistent with Supreme Court precedent, but its factual premise that women who become pregnant have in some sense consented to the pregnancy belies reality. Abstinence during the forty years a woman is fertile is not a viable way of life for most women, and sterilization, while effective, requires women permanently to sacrifice rather than exercise their "interest in procreative choice." *Id.* Moreover, no other method of contraception is 100% effective, and many present significant health risks that make them inappropriate for many women. Finally, the large number of women, especially teenagers, who never receive proper information about contraception cannot be said to have a meaningful opportunity to avoid pregnancy. These women and others who are the inevitable losers in the contraceptive lottery no more "consent" to pregnancy than pedestrians "consent" to being struck by drunk drivers.

Indeed, underlying the Solicitor General's position appears to be the outmoded view that women ought not engage in sexual intercourse for reasons other than procreation and that those who do—unlike their male partners—deserve to be punished with an unplanned pregnancy.

sions and significant physical risks and pain. This Court has held that less invasive and dangerous government-imposed bodily intrusions violate the constitutional guarantee of liberty. Second, because the birth of a child significantly circumscribes a woman's life choices, state restrictions on abortion infringe on the fundamental "freedom of choice in the basic decisions of . . . life" protected by the Fourteenth Amendment. *Doe v. Bolton*, 410 U.S. 179, 211 (1973) (Douglas, J., concurring) (emphasis omitted).<sup>6</sup>

**A. Restrictive Abortion Laws Subject Women to Substantial Physical Intrusions and Risks In Violation of Their Fundamental Right To Bodily Integrity.**

A woman's body must adjust dramatically to provide nourishment and space for a developing fetus.<sup>7</sup> During pregnancy, her uterus changes from pear-shaped to nearly spherical and, by the end of pregnancy, has increased to 500 to 1000 times its original capacity. As her uterus enlarges, it displaces and compresses other bodily organs including her heart, appendix and gastrointestinal tract. A woman's resting pulse rate increases by ten to fifteen beats per minute, and her heart may

<sup>6</sup> This Court has held that laws that interfere with women's right to choose abortion or any other fundamental right must be strictly scrutinized and cannot stand absent a compelling state interest. *See, e.g., City of Akron v. Akron Center for Reproductive Health*, 462 U.S. 416, 461 (1983). *See generally San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1, 38 (1973) (strict scrutiny required if law has "'deprived,' 'infringed,' or 'interfered' with the free exercise of some such fundamental personal right or liberty").

Justice O'Connor has proposed that strict scrutiny be applied in the abortion context only to laws that "unduly burden" women's abortion decisions. *Akron*, 462 U.S. at 461-65 (O'Connor, J., dissenting). But unless the undue burden standard is intended to apply to *all* fundamental rights (which would drastically rewrite this Court's fundamental rights jurisprudence), its application would impermissibly single out for weaker protection the one fundamental right unique to women.

<sup>7</sup> J. Pritchard, P. MacDonald & N. Gant, *Williams Obstetrics* 181-205, 218, 260-63 (17th ed. 1985) [hereinafter *Williams Obstetrics*].

increase slightly in size. Her average total weight gain during pregnancy is about 25 pounds.<sup>8</sup>

Although the extent of the physical burdens associated with pregnancy and childbirth varies from woman to woman and the joy of having a wanted child can positively influence the way a woman experiences those physical changes, most women experience pain and significant discomfort. Even the healthiest of women may experience nausea, intermittent vomiting, increased frequency of urination, fatigue, back pain, difficulty sleeping, labored breathing and water retention.<sup>9</sup>

Women also risk many serious, albeit less common, medical complications, including toxemia of pregnancy or preeclampsia (combination of high blood pressure, water retention and protein in urine), eclampsia (preeclampsia plus convulsions potentially leading to coma), gestational diabetes (glucose intolerance during pregnancy), thromboembolic disease (vascular inflammation and blood clots potentially leading to fatal pulmonary embolism), and cardiomyopathy (enlargement of the heart resulting in congestive heart failure).<sup>10</sup>

Labor and delivery, during which a woman's body must meet extraordinary physical demands, pose additional risks. Women usually experience extreme pain during the process of labor and vaginal delivery, which in most cases lasts for six to twelve hours and in some cases longer.<sup>11</sup> Vaginal delivery also entails substantial

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<sup>8</sup> *Id.* at 182, 188, 194, 197.

<sup>9</sup> *Id.* at 181-210, 218, 260-63.

<sup>10</sup> *Id.* at 526-30, 600, 731. The recommended treatment for some of the serious complications is complete bed rest until delivery. *Id.* at 750-51. Some pregnancy-related medical problems such as hemorrhoids and varicose veins (which can cause severe discomfort and swelling, requiring surgery) can persist beyond delivery. *Id.* at 261-62.

<sup>11</sup> D. Danforth, M. Hughey & A. Wagner, *The Complete Guide to Pregnancy* 228-31 (1983).

risk of infection and laceration.<sup>12</sup> The dangers are magnified in the approximately one in four deliveries that are accomplished by cesarean section, including risks from general anesthesia, infection and blood clots.<sup>13</sup> Pregnancy-related death also remains a distinct possibility, even for healthy women. Death can result from hemorrhage, hypertension, infection or other complications from cesarean deliveries.<sup>14</sup>

The dangers normally faced are compounded for women in "high risk" groups. Medical conditions such as systemic lupus erythematosus, multiple sclerosis, asthma, diabetes and acquired immunodeficiency syndrome (AIDS) can be exacerbated by the physical changes attending pregnancy.<sup>15</sup> These risks are even greater for older or very young women.<sup>16</sup> The stress of carrying an unwanted pregnancy can aggravate other medical ailments, including high blood pressure and asthma, thereby increasing the woman's risks of serious physical consequences beyond that normally faced.<sup>17</sup>

<sup>12</sup> S. Romney, M.J. Gray, A.B. Little, J. Merrill, E.J. Quilligan & R. Stander, *Gynecology and Obstetrics: The Health Care of Women* 626-27, 632, 637 (2d ed. 1981) [hereinafter *Gynecology and Obstetrics*].

<sup>13</sup> L. Silver & S. Wolfe, *Unnecessary Cesarean Sections: How to Cure a National Epidemic* 9, 13 (1989).

<sup>14</sup> See *Williams Obstetrics*, *supra* note 7, at 3. In 1986, 270 women died during childbirth in the United States. Delivery by cesarean section increases approximately four-fold the risk of death in childbirth. L. Silver & S. Wolfe, *supra* note 13, at 12.

<sup>15</sup> See *Williams Obstetrics*, *supra* note 7, at 597, 600, 609, 619-20; Winton, *Skin Diseases Aggravated by Pregnancy*, 20 *J. Am. Acad. Dermatology* 1, 7 (1989). Medications that normally control pre-existing conditions often pose risks to fetal development, requiring women either to accept those risks or to sacrifice their own health. See *Williams Obstetrics*, *supra*, at 260.

<sup>16</sup> See, e.g., *Williams Obstetrics*, *supra* note 7, at 3, 539; Alan Guttmacher Inst., *Teenage Pregnancy: The Problem That Hasn't Gone Away* 29 (1981).

<sup>17</sup> See *Gynecology and Obstetrics*, *supra* note 12, at 726. Knowledge of fetal anomaly or of a disease, such as AIDS, that may

This Court's protection of the right to choose abortion is based in part on its recognition of the serious physical risks attending pregnancy: "[t]he detriment that the State would impose upon the pregnant woman by denying this choice [whether to have an abortion] altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved." *Roe*, 410 U.S. at 153. Indeed, the trimester approach developed in *Roe* reflected the fact that a first trimester abortion was safer than continued pregnancy. *See id.* at 163.<sup>18</sup>

Legal abortion remains far safer than childbirth. In terms of mortality, "abortion through the 15th week of pregnancy is at least tenfold safer than childbearing." Cates, Smith, Rochat & Grimes, *Mortality From Abortion and Childbirth, Are the Statistics Biased?*, 248 J. A.M.A. 192, 196 (1982). "Moreover, the risk of death from legal induced abortion is no higher at any point in gestation than is the risk of childbearing." C. Tietze & S. Henshaw, *Induced Abortion: A World Review* 110 (1986). Similarly, the non-fatal health risks associated with legal abortion are very limited and substantially lower than those risks, described above, created by continued pregnancy and delivery.<sup>19</sup>

be passed on to the fetus, also greatly increases stress during pregnancy.

<sup>18</sup> *Roe* also relied on the fact that most women faced with an unwanted pregnancy experience a significant improvement in mental health and outlook after an abortion. *Roe v. Wade*, 410 U.S. at 153; *see* Brief of Amicus Curiae American Psychological Association in Support of Appellees (noting that studies of mental health of pregnant women before and after abortion reveal significant reductions in symptoms of stress after abortion and discussing methodological problems in research relied on by *amici curiae* supporting Appellants).

<sup>19</sup> *Williams Obstetrics*, *supra* note 7, at 483-88. By contrast, prior to *Roe*, illegal abortions performed by back-alley abortionists led to the deaths of at least hundreds and perhaps thousands of women each year, and countless other women suffered serious, often permanent, injuries, including sterility. *See* R. Schwarz, *Septic Abor-*



Because after conception has occurred, continued pregnancy entails both a protracted bodily invasion and significantly greater burdens and risks than abortion, a state's decision to prevent women from choosing abortion is an unprecedented affront to the constitutional principle of bodily integrity. Indeed, because this principle is so deeply and historically embedded in our common law<sup>20</sup> as well as our constitutional traditions, it is not surprising that government has rarely attempted to impose analogous intrusions in other contexts.<sup>21</sup> But the principles underlying this Court's infrequent treatment of state-mandated intrusions in such contexts demonstrate that forced childbearing visits unacceptable violations upon women's bodily integrity.

For example, in *Winston v. Lee*, 470 U.S. 753 (1985), the Court held that, in part because of "the extent of [its] intrusion upon the individual's dignitary interest in personal privacy and bodily integrity," *id.* at 761, a state could not, consistent with the Fourth Amendment, compel a criminal defendant to submit to an invasive surgical operation in order to retrieve a bullet necessary for the state's prosecution. By comparison, a state-mandated continued pregnancy more profoundly violates a woman's "dignitary interest in personal privacy." She is constantly aware for nine months that her body is not wholly her own; the state has conscripted her body for its own ends.<sup>22</sup>

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*tion* 7 (1968); Cates, *Legal Abortion: The Public Health Record*, 215 *Science* 1586 (1982); see also *Williams Obstetrics*, *supra* at 484 ("Serious complications of abortion have been most often . . . associated with criminal abortion.").

<sup>20</sup> See discussion *infra* at pp. 27-29.

<sup>21</sup> Indeed, the few contexts in which states have attempted such intrusions on bodily integrity have generally involved criminal defendants, over whom states traditionally exercise a great deal of authority, and courts have declared even these intrusions to be unconstitutional. Pregnant women's bodily integrity and liberty are entitled to at least as much constitutional protection.

<sup>22</sup> By contrast, a woman *desiring* to carry her pregnancy to term perceives the growing fetus as a welcome presence within her body

Moreover, the Court in *Winston* also found that the criminal defendant's right to bodily integrity would be violated by the state's imposition of the risks inherent in a surgical procedure consisting of a small incision in his skin and retrieval of the bullet. By comparison, one in four pregnant women delivers by cesarean section, which requires a much larger incision in the woman's abdomen, and is accompanied by all the risks, pain and permanent disfigurement associated with invasive surgery. In *Rochin v. California*, 342 U.S. 165 (1952), this Court overturned a conviction based on evidence obtained from a "shocking" bodily invasion consisting of the forced stomach pumping of a criminal suspect. The pain and discomfort associated with having one's stomach pumped is comparable to the physical effects of pregnancy, including morning sickness, which is experienced by many pregnant women on a recurring basis, and the compression of bodily organs that results from the enlargement of the uterus. Given that these isolated aspects of pregnancy involve risks and burdens comparable to those found unacceptable when imposed upon criminal defendants, the entire pregnancy and childbirth experience certainly constitutes an intolerable bodily intrusion when imposed by the state on unwilling pregnant women.

In sum, the physical burdens imposed by the compelled continuation of pregnancy amount to a significant invasion of women's bodily integrity.<sup>23</sup> As Chief Justice

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rather than an invasion of her privacy. *Cf. Winston*, 470 U.S. at 765 ("When conducted with the consent of the patient, surgery requiring general anesthesia is not necessarily demeaning or intrusive. In such a case, the surgeon is carrying out the patient's own will concerning the patient's body and the patient's right to privacy is therefore preserved. . . . [But where the state] proposes to take control of respondent's body \* \* \* [t]his kind of surgery involves a virtually total divestment of respondent's ordinary control over surgical probing beneath his skin.").

<sup>23</sup> While a woman might choose to bear children gladly and voluntarily, statutes that curtail her abortion choice are disturbingly suggestive of involuntary servitude, prohibited by the Thirteenth Amendment, in that forced pregnancy requires a woman to provide

Rehnquist has recognized, women "suffer disproportionately the profound physical, emotional, and psychological consequences" of pregnancy. *Michael M. v. Sonoma County Superior Court*, 450 U.S. 464, 471 (1981). For women to maintain bodily integrity, as men do, they must not be subject to state coercion forcing them to carry their every pregnancy to term.

**B. Restrictive Abortion Laws Deprive Women Of The Freedom To Control The Course Of Their Lives And Restrict Their Ability To Participate In Society Equally With Men.**

Few events can more dramatically constrain a woman's opportunities in life than an unplanned child. Because under present social conditions most women assume primary responsibility for raising their children,<sup>24</sup> having an unwanted child would limit their ability fully to participate in public life. Moreover, for many women who would find it difficult to shoulder the numerous burdens accompanying childrearing, forced motherhood would relegate them (certainly for long periods and perhaps permanently) to a daily struggle to make ends meet; any hopes of fulfilling their own plans and dreams would be shattered. Denying women's ability to control when and whether to bear children, thereby denying women the capacity to define their paths through life in the most

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continuous physical service to the fetus in order to further the state's asserted interest. Indeed, the actual process of delivery demands work of the most intense and physical kind: labor of 12 or more grueling hours of contractions is not uncommon. Cf. *United States v. Kozminski*, 108 S. Ct. 2751 (1988) (criminal involuntary servitude is present where compulsion of services is achieved by use of physical or legal coercion).

<sup>24</sup> Fuchs, *Women's Quest for Economic Equality*, 3 J. Econ. Persps. 25, 25 (1989). Although women could relinquish their infants for adoption, the vast majority do not, generally because doing so is exceedingly traumatic. See, e.g., Winkler & Van Keppel, *Relinquishing Mothers in Adoption: Their Long-Term Adjustment*, Monograph No. 3, Institute of Family Studies (1984).

basic of ways, would contravene the principle of personal autonomy underlying the Fourteenth Amendment's liberty guarantee.<sup>25</sup>

Forced motherhood would particularly limit life's options for teenagers who become pregnant, even before they have the opportunity to define their own identities and aspirations or prepare for the weighty responsibilities of motherhood. Childbearing presently curtails most teenagers' ability to obtain even the most basic education: eight out of ten who currently become mothers at age seventeen or younger do not complete high school, and four of ten who have a child by the age of fifteen do not finish even eighth grade.<sup>26</sup> Early motherhood also constrains teenagers' ability to earn a decent income. In part because of their limited educational experience, teenage mothers receive lower hourly wages and earn less annually for the rest of their lives than women who post-

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<sup>25</sup> Among the fundamental rights protected by the Fourteenth Amendment is the "interest in independence in making certain kinds of important decisions." *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 57 U.S.L.W. 4373, 4377 (U.S. Mar. 22, 1989) (quoting *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977)); see also *Carey v. Population Servs. Int'l*, 431 U.S. 678, 684-85 (1977). As Charles Fried has recognized:

"What a person is, what he wants, the determination of his life plan, of his concept of the good, are the most intimate expressions of self-determination, and by asserting a person's responsibility for the results of this self-determination we give substance to the concept of liberty." C. Fried, *Right and Wrong* 146-47 (1978). See also Fried, *Correspondence*, 6 *Phil. & Pub. Aff.* 288-89 (1977) (the concept of privacy embodies the "moral fact that a person belongs to himself and not others or to society as a whole").

*Thornburgh*, 476 U.S. at 777 n.5 (Stevens, J., concurring).

<sup>26</sup> Fielding, *Adolescent Pregnancy Revisited*, 299 *Mass. Dep't Pub. Health* 893, 894 (1978). Moreover, less than two percent of teenage mothers complete college, compared to more than one-fifth of those women who do not bear children until age 24. Center for Population Options, *The Facts: Teenage Childbearing, Education, and Employment* 1 (1987).

pone childbearing.<sup>27</sup> These teenage mothers earn about half as much income as those who first give birth in their twenties, and sixty-seven percent of families headed by teenage mothers live below the poverty level.<sup>28</sup>

Even for many women who become pregnant after their teens, opportunities in the public world are severely constrained. Many women lose their employment during pregnancy because employers unlawfully discriminate against them or do not adapt their jobs either to perceived fetal hazards<sup>29</sup> or to the perceived physical constraints of pregnancy;<sup>30</sup> many other women lose their jobs or suffer significant financial hardships because employers do not provide or do not pay for job-protected leave for childbearing or infant care.<sup>31</sup> Over the long term, because today's workplace generally does not accommodate the responsibilities of those caring for young children, and because day care often is inadequate, unavailable or unaffordable, many mothers (especially those who are young, unmarried, minority, or lower income) must leave their jobs in order to care for their children.<sup>32</sup>

<sup>27</sup> This comparison holds true even when factors such as socioeconomic status are taken into account. *Risking the Future: Adolescent Sexuality, Pregnancy, and Childbearing* (Vol. I) 130 (C. Hayes ed. 1987).

<sup>28</sup> Center for Population Options, *supra* note 26, at 1 (figures for families with children aged five or younger).

<sup>29</sup> Courts have upheld exclusionary fetal hazard policies in the workplace, even though they appear to violate Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e (1982). *See, e.g., Wright v. Olin Corp.*, 697 F.2d 1172 (4th Cir. 1982).

<sup>30</sup> *See, e.g., Harriss v. Pan American World Airways, Inc.*, 649 F.2d 670 (9th Cir. 1980).

<sup>31</sup> *See* House Comm. on Educ. & Labor, *Family and Medical Leave Act of 1988*, H.R. Rep. No. 511, 100th Cong., 2d Sess. 18-25 (1988); R. Spalter-Roth & H. Hartmann, *Unnecessary Losses: Costs to Americans of the Lack of Family and Medical Leave* 5 (1988).

<sup>32</sup> *See Women's Work, Men's Work: Sex Segregation on the Job* 73-74 (B. Reskin & H. Hartmann eds. 1986) [hereinafter *Women's Work*]. Working outside the home for pay is not inherently in-

Others must either accept part-time work with significantly less pay and few if any job benefits<sup>33</sup> or move to less skilled positions so that they can work a regular schedule.<sup>34</sup> Even those remaining in their original jobs often cannot advance because their child care responsibilities conflict with job requirements as presently defined.<sup>35</sup>

As a result, childbearing imposes severe financial constraints on women,<sup>36</sup> many of whom depend on their income to support themselves. Indeed, 60% of women in the labor force are either single (25%), divorced (12%), widowed (4%), separated (4%), or have husbands whose annual earnings are less than \$15,000 (15%).<sup>37</sup> Many of these women even now do not make ends meet; already, women maintain 51% of families below the poverty level, including 75% of poor black families, 49% of poor Hispanic families, and 42% of poor white families.<sup>38</sup>

compatible with childrearing. However, societal allocation of resources, in concert with established employment practices, operate to disadvantage individuals raising children.

<sup>33</sup> See Blau & Ferber, *Women in the Labor Market: The Last Twenty Years*, in 1 *Women and Work: An Annual Review* 19, 28 (L. Larwood, A. Stromberg & B. Gutek eds. 1985); O'Neill, *Role Differentiation and the Gender Gap in Wage Rates*, in 1 *Women and Work: An Annual Review*, *supra*, at 50, 57.

<sup>34</sup> *Women's Work*, *supra* note 32, at 74.

<sup>35</sup> *Id.*

<sup>36</sup> Compared to childless women, mothers earn considerably less per hour and their wages drop sharply with each additional child. Fuchs, *supra* note 24, at 35. For example, of white women between the ages of 30 and 39 who worked more than 1,000 paid hours in 1986, those with 3 children earned 70 cents to every dollar earned by women with no children. *Id.* No similar relations between children and hourly earnings exists for men who become fathers. *Id.*

<sup>37</sup> Women's Bureau, Office of the Secretary, U.S. Dep't of Labor, Leaflet No. 88-2, *20 Facts on Women Workers 2* (1988) (based on March 1987 statistics).

<sup>38</sup> *Id.* at 4; see also I. Garfinkel & S. McLanahan, *Single Mothers and Their Children: A New American Dilemma* 12-15 (1986).

If this Court were to overrule *Roe*, thereby depriving women of the right to control the frequency and timing of their pregnancies, it would deny women the ability to plan and shape their futures and assume their place in the public world.<sup>39</sup> Some of those who suffer will be teenagers for whom many of life's options will be foreclosed even before they have finished growing up. Some will be single mothers, whether widowed, divorced, or never married, who are struggling to feed and care for the children they already have. Some will be older women, married or single, who have already raised a family. If women were denied the ability to control their reproductive capacities, the Fourteenth Amendment's promise of liberty would be rendered hollow for them.<sup>40</sup>

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<sup>39</sup> Because *Roe v. Wade* has afforded women greater control over the timing of their childbearing, women have been able to plan for and minimize somewhat the accompanying burdens. In part as a result, women as a class have experienced significant economic gains over the past 16 years, gains that would be jeopardized were the Court to deprive women of the right to choose abortion. In fact, since *Roe*, women's labor force representation has increased significantly, and the occupations in which they work have become significantly less sex segregated. *Women's Work*, *supra* note 32 at 23-24. Moreover, the wage gap between women and men has diminished. Economist Victor Fuchs demonstrates that the group most responsible for the decrease in the wage gap between women and men that occurred between 1980-1986 was composed of women born between 1946 and 1950 who were in their late thirties in 1986. A key difference between these women and those born half a decade before is that they had substantially fewer children, Fuchs, *supra* note 24, at 36-37, and more control over the timing of the children they did bear.

<sup>40</sup> Overruling *Roe* would severely constrain the lives, not only of women who become pregnant, but of all women. If women no longer had the right to choose abortion, all women capable of bearing children would have to attempt to plan their lives knowing that, as long as contraceptive devices fail, their lives might be interrupted at any time by an unwanted pregnancy.

**II. THE STATE'S BALD ASSERTION OF A "COMPELLING" INTEREST IN PROTECTING POTENTIAL LIFE DOES NOT JUSTIFY A RETREAT FROM *ROE v. WADE*.**

**A. A Critique Of Viability Does Not Absolve This Court Of Its Responsibility To Accommodate Women's Fundamental Right To Reproductive Autonomy.**

According to this Court, the state has an "important and legitimate interest in protecting the potentiality of human life."<sup>41</sup> For any given pregnancy, however, promoting this interest by prohibiting abortion necessarily deprives a pregnant woman of her fundamental right to decide whether and when to bear a child. The Court in *Roe* concluded that the state's interest becomes sufficiently compelling to override a woman's right only after the point of fetal viability, and even then only in cases in which the woman's health is not endangered by continued pregnancy.

Both Missouri and the Solicitor General now ask this Court to relabel the state's interest in protecting potential life as compelling prior to viability so as to override a woman's right at all times. This extraordinary request is based solely on the assertion that viability provides an unworkable dividing line. Current medical evidence reveals that this critique is unfounded.<sup>42</sup> But even were the critique acceptable, the conclusion that the state's interest is always compelling would not logically follow; the unworkability of viability as a dividing line would equally support the opposite conclusion: that the state's interest in protecting potential life is *never* sufficiently compelling to outweigh a woman's fundamental right to choose abortion. Hence, the critique of viability merely begs the central question of how to evaluate the state's asserted interest in the context of abortion restrictions.

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<sup>41</sup> *Roe*, 410 U.S. at 162.

<sup>42</sup> See, e.g., *Amici Curiae* Brief of Distinguished Scientists and Physicians, Including Nobel Laureates, in Support of Appellees.



Where giving effect to a state interest—even one asserted to be “compelling” in the abstract—entails interference with the exercise of a fundamental right, such as the right to choose abortion, this Court struggles to protect the right and closely scrutinizes the context and manner in which the interest is asserted. The Court has carefully evaluated, for example, whether the state’s proposed infringement on the right is narrowly tailored to promoting the asserted interest,<sup>43</sup> whether the manner in which the state pursues the interest may reflect or perpetuate stereotypes,<sup>44</sup> and whether the interest outweighs in importance the protection of a particular right in a particular context.<sup>45</sup> These inquiries reflect a consistent judgment that even extremely weighty interests do not easily justify interference with fundamental rights;<sup>46</sup> therefore, this Court must examine closely Missouri’s asser-

<sup>43</sup> See, e.g., *Eu v. San Francisco County Democratic Cent. Comm.*, 57 U.S.L.W. 4251, 4253 (U.S. Feb. 21, 1989); see also *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 185 (1979) (states must “adopt the least drastic means to achieve their ends”).

<sup>44</sup> See, e.g., *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 726 (1982).

<sup>45</sup> See, e.g., *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 286 (1986) (O’Connor, J., concurring) (“[A] state interest in the promotion of racial diversity has been found sufficiently ‘compelling,’ at least in the context of higher education, to support the use of racial considerations in furthering that interest.”) (emphasis added).

<sup>46</sup> Thus, for example, the Court has recognized that, although “as a general proposition” the government “has a vital national interest” in protecting foreign diplomats in accordance with international law, that interest is not “automatically . . . compelling” when its assertion infringes upon First Amendment rights. *Boos v. Barry*, 108 S. Ct. 1157, 1165 (1988); see also *Coy v. Iowa*, 108 S. Ct. 2798, 2802 (1988) (defendant’s Sixth Amendment rights “outweighed” state’s interest in “protecting victims of sexual abuse”); *Korematsu v. United States*, 323 U.S. 214, 244 (1944) (Jackson, J., dissenting) (Court cannot “distort Constitution to approve all that the [state] may deem expedient” and in the national interest when fundamental rights are at stake).

tion of an interest in potential life sufficiently compelling to prohibit abortion from the moment of conception.

While Missouri relies on its flawed critique of the viability distinction, several of Missouri's *amici curiae* suggest that support for the existence of a broad compelling interest in potential life lies in various states' recognition of the fetus as a legal person under property, tort and criminal law. This argument is unpersuasive. Without question, states possess sufficiently important interests to justify such recognition of the fetus in certain limited contexts. For example, granting a cause of action for prenatal injuries resulting from the tortious conduct of others compensates the subsequently born child and his or her parents for the injuries, and also deters such tortious acts.<sup>47</sup> These and similar measures properly promote the interests and well-being of the child, while at the same time promoting the interests of the pregnant woman. But acceptance of such measures provides no guidance for the treatment of the very different clash of asserted state interest and fundamental right involved in the abortion context.

**B. Recognition Of A Compelling State Interest In Protecting Potential Life Throughout Pregnancy Would Both Completely Eviscerate Women's Right To Choose Abortion And Portend Even Broader Invasions Of Women's Fundamental Rights.**

This Court has never accepted as compelling an asserted interest so broad that it would eliminate virtually all constitutional protection afforded a fundamental right. Were this Court to accept Missouri's blanket contention that its interest in potential life outweighs women's fundamental right to procreative autonomy at all stages of pregnancy, states would be free to criminalize abortion in virtually all

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<sup>47</sup> Similarly, penalizing third parties for causing a woman's pregnancy to terminate without her consent, either through civil wrongful death actions or criminal "feticide" laws, protects pregnant women from serious physical harm, severe bodily intrusion and the termination of wanted pregnancies.

circumstances,<sup>48</sup> to investigate all abortions to determine whether they were spontaneous or intentionally induced,<sup>49</sup> and then to prosecute for murder women who intentionally ended their pregnancies.<sup>50</sup> In analogous circumstances where a state proffered an interest which, if deemed compelling, would have had "no logical stopping point" and would have completely overridden a particular constitutional right, this Court has refused to recognize the interest as compelling. See, e.g., *City of Richmond v. J. A. Croson Co.*, 109 S. Ct. 706, 723 (1989) (interest in redressing generalized societal discrimination deemed not to be sufficiently compelling to justify race-conscious remedies because it "has no logical stopping point") (citation omitted); *id.* at 723 (interest in providing role models deemed not to be sufficiently compelling to justify race-conscious remedies because it "could be used to 'justify' race-based decisionmaking essentially limitless in scope and duration").<sup>51</sup>

<sup>48</sup> Accepting Missouri's recharacterization would allow states to criminalize abortions even when a woman's pregnancy is the result of rape or incest, and when childbearing poses a serious risk to the woman's health or life. Cf. *Roe v. Wade*, 410 U.S. 113, 118 (Texas criminal statute proscribed all abortions except those necessary to protect life of pregnant woman).

<sup>49</sup> Approximately 31% of all pregnancies terminate by spontaneous abortion prior to the third trimester. Wilcox, Weinberg, O'Connor, Baird, Schlatterer, Canfield, Armstrong & Nisula, *Incidence of Early Loss of Pregnancy*, 319 *New Eng. J. Med.* 189 (1988).

<sup>50</sup> Moreover, complete strangers could have free reign to intervene in the lives of women and their families. This troubling scenario was actually played out in the recent case of *In re Klein*, No. 1736-89 (N.Y. App. Div. Feb. 8, 1989). There, a man requested guardianship of his comatose, pregnant wife for the purpose of authorizing an abortion he believed could improve her chances of recovery. Two anti-abortion activists who had never even met the Klein family sought to intervene and prevent the abortion. Relying in part on *Roe*, a New York appellate court ruled that "these absolute strangers to the Klein family, whatever their motivation, have no place in the midst of this family tragedy." *Slip op.* at 4.

<sup>51</sup> See also *Cohen v. California*, 413 U.S. 15, 25 (1971) (interest in preserving public order deemed not to be sufficiently weighty to

Indeed, recognition of a broad "compelling" interest in protecting potential life necessarily would legitimize many other state intrusions on procreative autonomy that would be "essentially limitless in scope and duration."<sup>52</sup> Missouri's reasoning would allow states to criminalize the use of any contraceptive devices, such as intrauterine devices and some oral contraceptives, that prevent implantation of a fertilized ovum after conception. More fundamentally, since the "potentiality" of life exists equally before sperm-ovum fusion as after, states could invoke the same "compelling" interest proffered here to justify laws prohibiting the use or sale of *all* contraceptives. At bottom, embracing the position advocated by Missouri would not only require the reversal of *Roe*, but would call into question *Griswold* and *Eisenstadt* as well.<sup>53</sup>

Moreover, embracing Missouri's position would provide states with an open-ended invitation to force pregnant women to act in whatever ways the state determined were optimal for the fetus, thereby reducing pregnant women to no more than fetal containers. A frightening pervuew of the potential intrusions is found in Mo. Rev. Stat. § 1.205 itself (part of which is at issue here), which states that "[t]he life of each human being begins at conception" and "[u]nborn children have protectable interests in life, health and well-being." A Missouri court relied on section 1.205 in ordering a pregnant woman to submit to a cesarean section against her

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justify restrictions on free expression because it is "inherently boundless").

<sup>52</sup> *Croson*, 109 S. Ct. at 723.

<sup>53</sup> To be sure, the probability that any given act of sexual intercourse will lead to the birth of a child is less than 100%. But the probability that any given embryo will lead to a live birth is itself only approximately 69%, given the rate of spontaneous abortion. *See supra* note 49. In any case, some potential for life still exists even prior to conception, and if a state attempted to protect that life by proscribing the use of contraceptives, this Court would be hard-pressed to justify a constitutional ruling that the state's interest in postconception potential life is compelling but its interest in preconception potential life is not.

wishes, finding that "the life, health and well-being" of her fetus "may be jeopardized" by her decision. *Deaconess Hosp. v. McRoberts*, No. 874-00172 (St. Louis Cir. Ct. May 21, 1987).

Within a month of this Missouri case, a District of Columbia court granted a hospital's similar request for an order compelling a woman who was critically ill with cancer to undergo a cesarean section, despite the unanimous objections of the woman, her family and her physicians and despite the uncontroverted fact that it might hasten the woman's death. See *In re A.C.*, 533 A.2d 611 (D.C. 1987), *vacated & reh'g en banc granted*, 539 A.2d 203 (D.C. 1988). The fetus was not viable and did not survive; the woman herself died two days later. The District of Columbia Court of Appeals, which had refused to stay the order, issued an opinion subsequent to the woman's death in which it stated "we well know that we may have shortened [her] life span" but concluded that the value of her remaining life was outweighed by the "slim" chance that the fetus might survive. 533 A.2d at 613-14, 617.<sup>54</sup>

Although cases citing protection of fetal interests to justify other types of infringements upon pregnant women's autonomy have been relatively rare—largely because of *Roe*—a handful of such cases have arisen in the last decade. Courts have jailed pregnant women based on a belief that the women might act contrary to the interests of the fetuses they carried.<sup>55</sup> A woman was prosecuted

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<sup>54</sup> Courts in at least 11 states have ordered women to submit to cesarean sections. See Kolder, Gallagher & Parsons, *Court-Ordered Obstetrical Interventions*, 316 *New Eng. J. Med.* 1192 (1987) (also citing six cases in which courts refused to order such surgery).

<sup>55</sup> A District of Columbia court recently ordered the incarceration of a woman solely to prevent her from using cocaine during the remainder of her pregnancy. See *United States v. Vaughn*, 117 *Daily Wash. L. Rep.* 441 (D.C. Super. Ct. Mar. 7, 1989). The woman had pled guilty to the misdemeanor of second degree theft (for check forgery); the prosecutor recommended that the woman not be jailed and the judge stated that he would have accepted the recom-

and faced imprisonment for allegedly waiting "many hours" before seeking medical help after she noticed some vaginal bleeding and experienced some uterine contractions.<sup>56</sup> In another case, a child was allowed to sue his mother to recover for prenatal injuries allegedly caused by the woman's failure to act as a "reasonable" pregnant woman.<sup>57</sup>

If this Court accepts a compelling state interest in the fetus from conception, laws like section 1.205 could be used to force women to submit not only to cesarean sections, but also to other types of surgery and medical treatment deemed to be in the interest of the fetuses they carry, including *in utero* fetal surgery. Pregnant women could be denied medical care needed to protect their own health, such as radiation or chemotherapy to treat cancer or the use of prescription or nonprescription drugs. A wide range of common conditions and conduct

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mentation but for the fact that the woman was pregnant and tested positive for cocaine use. In fact, the judge indicated that he might even jail a pregnant woman to prevent her from ingesting alcohol or smoking cigarettes. *Id.* at 442; see also *In re Stevens S.*, 126 Cal. App. 3d 23, 178 Cal. Rptr. 525 (1981) (reversing juvenile court's order that woman with alleged mental illness be institutionalized during last two months of pregnancy; appellate decision came only after woman had given birth and had been released).

<sup>56</sup> The woman's pregnancy was complicated by a dangerous condition, placenta previa, which caused her to hemorrhage and lose a great deal of blood. Her son was born with severe brain damage and died within six weeks. The woman was prosecuted for causing her son's death through her own loss of blood. See *People v. Stewart*, No. M508197 (San Diego Mun. Ct. Feb. 27, 1987) (transcript of decision); Defendant's Memorandum of Points and Authorities in Support of Demurrer to Complaint Without Leave to Amend and in Support of Motion to Dismiss, *People v. Stewart*.

<sup>57</sup> *Grodin v. Grodin*, 102 Mich. App. 396, 301 N.W.2d 869 (1981). But see *Stallman v. Youngquist*, 125 Ill. 2d 267, 531 N.E.2d 355, 359 (1988) (court refused to recognize cause of action for prenatal injuries in suit filed by girl against her mother, noting that otherwise "[m]other and child would be legal adversaries from the moment of conception until birth").

arguably posing some threat to fetal health could provoke state intervention, criminal prosecution or civil liability, including: being overweight, being underweight, exercising, not exercising, failing to eat "well," failing to "stay off of her feet," smoking, drinking alcohol, ingesting caffeine, and suffering physical harm.

In short, acceptance of Missouri's assertion of a broad compelling interest in protecting potential life would do far more than eviscerate the fundamental right to abortion, already an unprecedented step at odds with the Court's consistent effort to balance state interests with individual rights. It would also provide the constitutional foundation for a frontal assault on other fundamental liberties.

**C. The Imposition Of Unparalleled Burdens Only On Women To Service The State's Asserted Interest In Potential Life Impermissibly Reflects And Reinforces Outmoded Stereotypes Of Women As Child-bearers.**

Missouri's decision to advance its interest through pre-visibility abortion restrictions must also be rejected because it entails the resurrection of "archaic and over-broad generalizations" about women's proper role in society. *Califano v. Webster*, 430 U.S. 313, 317 (1977) (per curiam). States have long sought to restrict women's autonomy and opportunities for participation in public life, citing women's ability to bear children as the principal justification for this unequal and disadvantageous treatment. For example, states excluded women from certain professions,<sup>58</sup> limited the hours women could work outside the home,<sup>59</sup> and discouraged women's involvement in political and civic affairs.<sup>60</sup>

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<sup>58</sup> See, e.g., *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130 (1872) (women excluded from practice of law).

<sup>59</sup> See, e.g., *Muller v. Oregon*, 208 U.S. 412 (1908).

<sup>60</sup> See, e.g., *Hoyt v. Florida*, 368 U.S. 57 (1961) (women exempted from jury duty), *overruled*, *Taylor v. Louisiana*, 419 U.S. 522

For many years this Court accepted such detrimental treatment as the "natural" consequence of women's reproductive capacities and as furthering important state interests, such as "preserv[ing] the strength and vigor of the race." *Muller v. Oregon*, 208 U.S. 412, 421 (1908). This Court has now soundly rejected the outmoded view that "the female [is] destined solely for the home and the rearing of the family," *Stanton v. Stanton*, 421 U.S. 7, 14 (1975), and it has invalidated legislation that perpetuates women's image as the "'weaker sex' or . . . child rearers." *Califano*, 430 U.S. at 317. Despite the likely absence of malicious intentions and the widespread acceptance (even among women) of unequal treatment, the Court has recognized that the Constitution prohibits the state from disadvantaging any individual woman on the basis of stereotypes.<sup>61</sup>

The Court has therefore refused to accept asserted state interests that reflect "traditional . . . assumptions about the proper roles of men and women." *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 726 (1982). In *Hogan* itself, the Court precluded Mississippi from operating a women-only nursing school, rejecting the state's asserted interest in increasing educational opportunities for women because the state's action gave "credibility to the old view that women, not men, should become nurses . . ." *Id.* at 730.

Abortion restrictions reflect and reinforce the same stereotypes of women that this Court has found illegitimate. By requiring women to sacrifice their bodies and their liberty in ways that the state never demands of men, state laws manifest the stereotype that it is women's

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(1975); *Breedlove v. Suttles*, 302 U.S. 277 (1937) (women exempted from paying poll tax if they "chose" not to vote).

<sup>61</sup> See, e.g., *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973) (plurality) ("[O]ur Nation has had a long and unfortunate history of sex discrimination . . . rationalized by an attitude of 'romantic paternalism' which, in practical effect, put women, not on a pedestal, but in a cage.").



“natural role” to bear children. The fact that the state’s interest in depriving women of control over their own reproductive capacities can be cloaked in noble terms does not diminish the actual harm and invasion of liberty suffered by individual women denied abortion. And the fact that many people (including women) presently are not troubled by this stereotype is no more constitutionally relevant today than was the popularity of “romantic paternalism” many years ago. Just as previous state limitations on women’s ability to participate in public life presumed that the “paramount destiny and mission of women are to fulfil[l] the noble and benign offices of wife and mother,” *Bradwell*, 83 U.S. at 141, laws that deprive women of their ability to choose whether to end a pregnancy force women to fulfill that same destiny.

Moreover, reinforcing this stereotype by upholding restrictive abortion laws would lead states once again to restrict women’s autonomy in the name of enforcing their “motherly duties” in the non-abortion contexts discussed above.<sup>62</sup> The Court held in 1908 that states could limit the hours women worked outside the home because work was thought harmful to reproductive capacity: “[working long hours has] injurious effects upon the body, and as healthy mothers are essential to vigorous offspring, the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race.” *Muller*, 208 U.S. at 421. We risk repeating and even worsening this “long and unfortunate history of sex discrimination,” *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973) (plurality), by allowing states, in the name of fetal protection, to control women’s decisions and actions regarding employment, medical treatment, exercise, diet and overall lifestyle.<sup>63</sup>

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<sup>62</sup> See discussion *supra* at pp. 21-24.

<sup>63</sup> Many of the *amici curiae* supporting Appellants reveal that their willingness to impose unprecedented burdens on women through forced childbearing stems from their own stereotyped views of women. Some *amici curiae* portray women as incapable of moral

Although Missouri asserts an interest in compelling unwilling women to sacrifice their bodies, health and well-being for nine months to protect *potential* life, Missouri and other states never impose comparable duties on men to protect *actual* life. The value that our law attaches to the individual right to liberty is so great that people are generally not required to reach out to aid another person, even when it is possible to save another from grave injury or certain death at little or no risk to one's self.<sup>64</sup> Particularly instructive is *McFall v.*

decisionmaking. See, e.g., Brief of Covenant House and Good Counsel, Inc., *Amici Curiae* 9-10, 17 (discussing wide variety of behavior of pregnant women that could harm fetus, from smoking to obtaining inadequate prenatal care, and concluding that state must protect potential life from conception "[i]f any children are to have reasonable assurances of healthy birth and productive life" (emphasis in original)). Others describe women as the victims of their own abortion decisions. See, e.g., Brief *Amici Curiae* of Focus on the Family, and Family Research Council of America, in Support of Appellants 13-24 (purporting to describe adverse medical and psychological risks of abortion, as well as "serious sexual problems experienced by women who had abortions"). Virtually all trivialize or deny entirely the tremendous harms to women's liberty, equality and health inflicted by state restrictions on abortion. See, e.g., Brief of the United States Catholic Conference as *Amicus Curiae* in Support of Appellants 15-19 (downplaying medical risks of pregnancy and denying existence of pre-*Roe* maternal mortality and morbidity due to illegal abortion).

<sup>64</sup> W. Keeton, D. Dobbs, R. Keeton & D. Owen, *The Law of Torts* § 56, at 375-76 (5th ed. 1984); *Restatement (Second) of the Law of Torts* § 314 (1965); see also Uniform Anatomical Gift Act § 2(b), (c) (1987) (organ donations unlawful if made against wishes of decedent).

A small number of states require people to stop at the scene of or report an accident. These requirements do not, however, present passersby with any risk of physical harm. For example, the Minnesota Good Samaritan statute specifies that assistance is never required if providing it poses a "danger or peril to self or others." Minn. Stat. § 604.05 (1) (1988). Nor does the law ever require a father to put himself at appreciable physical risk to help his child. Professor Tribe notes that "the law nowhere forces men to devote their bodies and restructure their lives even in those tragic situations (such as organ transplants) where nothing less will permit their children to survive." L. Tribe, *American Consti-*

*Shimp*, in which the court refused to order a man to donate bone marrow, a procedure far less risky and painful than many aspects of pregnancy and childbirth, even though the donation was necessary to save the life of his cousin. According to the court:

The common law has consistently held to a rule which provides that one human being is under no legal compulsion to give aid or to take action to save that human being or to rescue . . . . For our law to *compel* the Defendant to submit to an intrusion of his body would change every concept and principle upon which our society is founded. To do so would defeat the sanctity of the individual, . . . and one could not imagine where the line would be drawn.

10 Pa. D. & C. 3d 90 (Allegheny Cty. 1978) (per curiam) (emphasis in original).<sup>65</sup>

To permit the state's interest in potential life to prevail over women's fundamental rights would have the

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*tutional Law* 1354 (2d ed. 1988) (emphasis in original); see also Regan, *Rewriting Roe v. Wade*, 77 Mich. L. Rev. 1569, 1588 (1979) (“[C]onsider a simple burning building, with a child trapped inside. Would a court impose criminal liability on anyone, even the child's parent, who did not attempt to save the child at the risk of second-degree burns over one or two percent of his or her body? . . . [E]ven if the potential rescuer is specified to be the child's parent, liability is unlikely. In all other cases, the suggested imposition is unthinkable in the context of our legal system.”).

<sup>65</sup> See also *In re Guardianship of Pescinski*, 67 Wis. 2d 4, 226 N.W.2d 180, 182 (1975) (rejecting family's attempt to force incompetent schizophrenic man to donate kidney to sister because of “the absence of real consent on his part,” even where dire need of transfer was established).

In addition, the medical risks to which Missouri would subject unconsenting pregnant women starkly contrast with the right of consent afforded all others. Ordinarily when a person faces serious medical risks that might result from recommended surgery, the choice lies with that individual whether to accept those risks and consent to the procedure. At common law it was recognized that “a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages.” *Schloendorff v. Society of New York Hosp.*, 211 N.Y. 125, 129-30, 105 N.E. 92, 93 (1914), *overruled on other grounds*, *Bing v. Thunig*, 2 N.Y.2d 656, 143 N.E.2d 3, 163 N.Y.S.2d 3 (1957).

perverse effect of elevating fetuses to "superhuman" status by giving fetuses protections that states do not give to persons. This provides further evidence that this legislative "trade-off" rests upon an illegitimate stereotype that women are essentially, and "naturally," child-bearers, and that women are therefore appropriate targets for a subordination of bodily freedom and autonomy that never has been and never would be placed in comparable fashion upon others in society. Just as the right of a potential donor or rescuer to refuse to help is fully protected by the common law's respect for bodily freedom, so too must the law respect the right of a woman to choose whether to undergo the great burdens of pregnancy and childbirth.

\* \* \* \* \*

This Court is asked to view the state's interest in protecting potential life as so compelling that it eviscerates women's fundamental right to reproductive choice throughout pregnancy. The Court has never before found a purported state interest to be compelling in a context where that interest would justify intrusions with "no logical stopping point" on a fundamental right.<sup>66</sup> The Court in *Roe* understood and discharged its responsibility to protect fundamental rights from undue government interference by allowing women's right and the state's interest to supersede each other at different temporal stages of pregnancy. Retreating today from this commitment to the safeguarding of fundamental rights would cede complete control over women's (and only women's) reproductive autonomy (and hence a core aspect of their

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<sup>66</sup> *Croson*, 109 S. Ct. at 723. Even if the Court found the asserted interest in protecting potential life "compelling," abortion restrictions would still fail heightened scrutiny because they are not the least restrictive means of promoting this interest. For example, the Surgeon General of the United States' recent report on abortion concludes that governments could curtail the incidence of abortion through various non-coercive means, such as implementing sex education programs and subsidizing the costs of childbearing and rearing for women bearing unplanned children. See Surgeon General's Report on Abortion, reprinted in 135 Cong. Rec. E906-E909 (daily ed. March 21, 1989).

social, economic and political freedom) to a political process that frequently has failed to treat women fairly; particularly given the highly charged emotional environment in which legislative "balances" necessarily would be struck, legislatures can be expected again to undervalue both the importance of protecting women's autonomy and the burdens of state-imposed continued pregnancy and childbirth. Allowing state legislatures to dictate women's most intimate and fundamental decisions in life would fail utterly to respect the Constitution as an operative restraint on unwarranted legislative intrusions on fundamental liberties and would fail to discharge this Court's duty to be the "ultimate guardian" of those liberties.

#### CONCLUSION

To ensure that the constitutional guarantee of liberty "extends to women as well as to men," *Thornburgh*, 476 U.S. at 772, this Court must reaffirm *Roe v. Wade* and prohibit states from forcing women to continue pregnancies through laws such as the Missouri provisions at issue in this case.

Respectfully submitted,

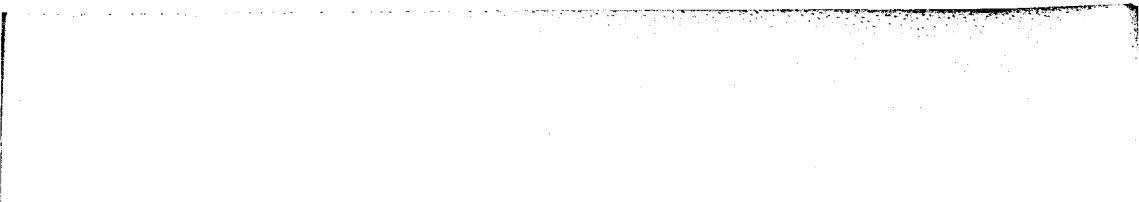
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Washington, D.C.  
 March 30, 1989

# APPENDIX



APPENDIX

STATEMENTS OF INTEREST

THE NATIONAL ABORTION RIGHTS ACTION LEAGUE (NARAL), has 250,000 members in 34 state affiliates and the national organization. Founded in 1969, NARAL is the largest national organization dedicated solely to keeping abortion safe, legal and accessible. NARAL recognizes that guaranteeing women the full range of reproductive choices is critical to women's autonomy and equality.

THE WOMEN'S LEGAL DEFENSE FUND (WLDF) is a non-profit national advocacy organization of over 2500 members dedicated to challenging sex discrimination and to advancing women's concerns through the legal system. WLDF believes that reproductive freedom is fundamental to women's achievement of equality in society. Therefore WLDF makes this issue one of its highest priorities and has a long history of activism and legislative and judicial advocacy in this area.

THE ABORTION RIGHTS COUNCIL (ARC) was founded in 1968 and currently has 5,000 members and 12,000 supporters in the State of Minnesota. It has as its sole purpose keeping abortions safe and legal for all women. ARC opposes any further restrictions on women's access to abortions and supports the principles established in *Roe v. Wade*.

ABORTION RIGHTS MOBILIZATION (ARM) is a Section 501 (c) (3) organization, using lawsuits, education and other techniques to maintain separation of church and state and "to implement and guarantee a woman's right to legal abortion as decreed by the U.S. Supreme Court," following ARM's by-laws.

THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN (AAUW), a national organization of over 150,000 women and men, is strongly committed to achieving legal, social, and economic equity for women. AAUW

supports basic constitutional rights for all persons, including first amendment rights of free speech and separation of church and state, the right to privacy, and equal protection under the law. The right to reproductive choice continues to be a priority issue for AAUW.

THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, is a union of over 1 million public employees, including over 300,000 health care workers. AFSCME also represents thousands of workers in social service agencies caring for abused, neglected and abandoned children. Over half of AFSCME's members are women.

THE AMERICAN VETERANS COMMITTEE, INC. (AVC), founded in 1943, is a national organization of veterans who served honorably in the Armed Forces of the United States in World War I, World War II, Korean War, or Vietnam War. AVC has filed *amicus* briefs in many court cases expressing AVC's strong belief that discrimination based on race, color, religion, sex, or national origin is detrimental to our Nation. AVC believes that the U.S. Constitution entitles a pregnant woman, in light of her unique burden of pregnancy, to determine whether to terminate her pregnancy, and that the Missouri statute involved in this case violates both that constitutional right and the right of medical personnel under the First Amendment to provide information about such termination to their patients.

BOSTON WOMEN'S HEALTH BOOK COLLECTIVE, INC. (BWHBC), is a non-profit women's health education and advocacy organization which seeks to empower individuals and groups to make informed personal and political decisions affecting health and medical care, especially as they relate to women. Founded in 1970, BWHBC operates a Women's Health Information Center near Boston and serves approximately 10,000 people each year. We have had a longstanding interest in reproductive rights, including access to safe, legal, affordable abortion services. Our 20 years of contact with thousands



of women and their families has only reinforced our belief in the importance of contraception and abortion services for those who need and want them.

BUFFALO LAWYERS FOR CHOICE is an organization currently of approximately 50 attorneys—men and women—formed in 1989 in Buffalo. All the attorneys in the organization practice in Buffalo. Although they are from diverse backgrounds and practices, the group's members all have supported the right of women to choose abortion and have supported equality between men and women. Buffalo Lawyers for Choice intends to continue as an active organization supporting local groups that protect individuals' ability to control their bodies and their lives. Many of the members have been active in the past in Planned Parenthood of Buffalo and Erie County and in national Planned Parenthood organizations, as well as civil liberties organizations. Because of an intense interest in the rights of women and men to make their own decisions about reproductive issues, Buffalo Lawyers for Choice wishes to be recognized as an *amicus Curiae* in the *Webster* case.

CALIFORNIA WOMEN LAWYERS is an organization founded in 1973 for the primary purpose of improving the situation of women in the State of California. CWL is the largest women lawyers organization in the world, with several thousand individual members, and speaking for 30 women's bar organizations in California. From its inception, CWL's agenda has included increasing the numbers of women appointed to the bench, admitted to law schools, offered jobs and partnerships in law firms, and eliminating gender bias in the courts. It has also been committed to all issues affecting a woman's right to choice, lobbying against various parental consent bills and working with a broad-based coalition to encourage funding and support for programs supportive of choice.

THE CENTER FOR WOMEN POLICY STUDIES (CWPS), founded in 1971, was the first national policy

research and advocacy institute focused exclusively on issues of women's social and economic rights. The Center's current programs include the National Resource Center on Women and AIDS, the first national effort focused exclusively on women, particularly low income women and women of color; a key concern is the potential abrogation of women's reproductive rights in the name of protecting public health. CWPS also is conducting the second stage—policy implementation and public education—of the Reproductive Laws for the 1990s Project. Finally, our Young Women's Project seeks to bring women in their twenties into the policy process and will address issues of reproductive choice from their perspectives.

For almost 20 years, CHOICE (Concern For Health Options: Information, Care & Education) has been an educator, consumer advocate, counselor, and information resource in the areas of reproductive health, sexuality, and maternity care. Because of its background and experience in public education and counseling, CHOICE was selected by the City of Philadelphia to operate its city-wide hotline for information on AIDS. CHOICE, through its information hotlines, teen improvisational theatre company, training center, and publications, has pursued an organizational philosophy that decisions regarding sexuality and reproduction are highly personal, and that those very private choices should not be constrained by private or public intimidation, economic or social status, lack of relevant information, or unwarranted governmental interference.

CHOICE NETWORK OF TARRANT COUNTY, TEXAS, is a coalition formed in 1983 and dedicated to keeping abortion safe and legal and to assuring reproductive freedom for all women, regardless of age or economic status.

THE COLUMBIA-GREENE RAPE CRISIS CENTER, based in New York, was founded in 1981. It assists approximately 400 women per year who have been

the victims of sexual assault, and their families and friends, to overcome the trauma of sexual assault. It also serves 7,000 community residents per year through its sexual abuse prevention project. Pregnancy can result from any number of situations, many of which do *not* include "irresponsibility" on the part of the woman. The Rape Crisis Center sees many unwanted pregnancies resulting from sexual crimes and supports a woman's freedom of choice over her personal medical and emotional concerns, including the right to terminate an unwanted pregnancy.

Founded in 1977, THE COMMITTEE TO DEFEND REPRODUCTIVE RIGHTS—CMRW is a San Francisco-based grass roots organization with a nationwide membership of almost 2,000 people. CDRR-CMRW and its membership advocate the right to legal, affordable, and safe abortion services for all women, regardless of their age, race, income level, or sexual preference. CDRR-CMRW recognizes that the right to choose if and when to bear children is a fundamental and private right that every woman should be able to exercise free from coercion, governmental regulation, or intervention. CDRR-CMRW considers abortion a vitally important and needed health service and a constitutionally-protected right for all women.

THE CONNECTICUT WOMEN'S EDUCATIONAL AND LEGAL FUND, INC., was incorporated in 1973 as a nonprofit public interest law firm advocating for women's legal rights. We have over 400 members, and serve thousands of people in New England each year through our litigation, community education, research, and information and referral programs. We choose to join this brief as *amicus curiae* because we believe it is essential to protect the rights of women to choose safe and legal abortion. As an organization working for equality, we believe that every woman, without regard to religious belief, income, race, age or disability, must have an equal opportunity to control her own health and reproduction.

D.C. FEMINISTS AGAINST PORNOGRAPHY, founded in 1980, is a feminist community organization dedicated to community education on issues of sexism, racism, and sexual violence in the media. D.C. FAP provides slide shows, public discussions, and other community education activities in the Washington Metropolitan area, testified before the Meese Commission on Pornography, has debated both right wing puritans and pornographers on issues of women's rights, sexuality and other media issues.

THE 80% MAJORITY CAMPAIGN is a pro-choice research and information service which is very involved with activist organizations and abortion providers all over the country. The organization publishes an eight-page newsletter twice a month which provides information and analysis of the abortion issue to our subscribers. This commitment was undertaken out of the belief that the constitutional right to make reproductive decisions is fundamental to women's personal freedom and dignity. It would be a national tragedy to retreat from the acknowledgment of that right into the political arena where those who can shout the loudest often prevail.

EQUAL RIGHTS ADVOCATES, INC. (ERA) is a San Francisco-based public interest legal and educational corporation founded in 1974 that is dedicated to securing economic, social, and political equality for women. It has a long history of interest, activism, and advocacy in all areas of the law which affect equality between the sexes. ERA believes that the right to control one's reproductive life is fundamental to women's ability to gain equality in other aspects of society. This concern has been expressed through our participation as counsel and as *amicus* in numerous cases involving women's reproductive rights, including *Committee to Defend Reproductive Rights v. Myers*, 29 Cal.3d 252 (1981) and related cases.

The collective membership of the FEMINIST HEALTH CENTER OF PORTSMOUTH regard the decision to terminate or complete a pregnancy to be essen-

tial to the individual freedom of women everywhere. We believe the Constitution protects our right to make this most private decision and we urge the Justices of the Supreme Court to uphold the Constitution of the United States of America and protect our right to privacy.

THE FEMINIST INSTITUTE promotes social change that ensures women's autonomy and independence. Our women's health policy and pro-choice projects promote public policies that ensure women's control over their own bodies. We are concerned that, as women become free from subjugation to patriarchal control within the family, they in turn not become subject to state control of their reproduction. Control over one's own body is fundamental to the exercise of personal autonomy, without intervention or restriction by the government.

FUND FOR NEW LEADERSHIP, a political action committee founded in 1987, represents more than 250 young (ages 20-40) Democrats. The purpose of the Fund is to raise money for Democratic Party candidates and organizations, and to increase the political participation, knowledge, and campaign skills of young Democrats. The Fund also seeks to provide a forum for the discussion of contemporary social, economic, and political problems in America. The Fund for New Leadership is interested in the case of *Webster v. Reproductive Health Services* because we believe that women's right to choose abortion is closely related to women's equality in society. If women were to lose their reproductive rights, we feel that women's lives and women's opportunities to participate equally in society would be greatly diminished.

GAY AND LESBIAN DEMOCRATS OF AMERICA is a national organization of individuals and local organizations founded in 1982 to encourage the involvement of lesbians and gay men in electoral politics and public policy. Among the issues that GLDA has worked on are the protection of the right to privacy and of all civil rights. GLDA has supported efforts to protect the re-

productive rights of women and thus is interested in the case of *Webster v. Reproductive Health Services*.

THE HARVARD WOMEN'S LAW ASSOCIATION was founded in 1969. It is currently celebrating its twentieth year at Harvard Law School, where women have been students for 38 years. Most of the almost 700 women currently attending Harvard Law School attend some Women's Law Association events; many participate in the Battered Women's Project which the Women's Law Association cosponsors. Over 200 women, almost one-third of the women at Harvard Law School, are paying, voting members of the Women's Law Association. Among the Women's Law Association's objectives are informing the law school and the broader community about issues of concern to all women at Harvard Law School and promoting women's rights, such as the right to choose an abortion.

HAWAII WOMEN LAWYERS is dedicated to the improvement of the status of women attorneys and the support of issues of concern to all women, so as to promote the advancement of all women.

THE HAWAII WOMEN LAWYERS FOUNDATION is a professional organization of women and men attorneys and others. One of its main purposes is to advance the status of women in the community. Members have been involved in many projects which aid women lawyers and women in the community in general. Foundation members are aware that women's right to choose abortion is constitutionally protected. Women must have the right to reproductive freedom if they are to have physical control over their own bodies. Without reproductive autonomy, women can neither control the course of their lives nor participate equally in society. The Hawaii Women Lawyers Foundation supports reproductive freedom for women and opposes any and all efforts to limit women's right to choose abortion.

THE HUMAN RIGHTS CAMPAIGN FUND is a lobbying organization representing the national gay and

lesbian community. Since its founding nearly 10 years ago, the Campaign Fund has been committed to working toward full civil rights for lesbians and gay men and ultimately for all Americans. In pursuit of this goal, we are interested in any governmental actions—legislative, judicial, or administrative—that could affect civil rights.

Founded in 1975, the ILLINOIS WOMEN'S AGENDA is a statewide coalition of organizations and individuals committed to full equality and justice for women. Current IWA membership consists of several hundred individual members and over 50 affiliated organizations, representing 80,000 women throughout Illinois in the fields of law, academia, labor, and business, among others. The IWA develops and participates in a wide range of programs for women through research, public education, and advocacy.

THE INSTITUTE FOR WOMEN'S POLICY RESEARCH (IWPR) is an independent, nonprofit, scientific research institution established to respond to the need for women-centered, policy-oriented research. IWPR conducts research that addresses the full spectrum of issues that impact women's lives—with sensitivity to and consideration for diversity based on race, ethnicity, and class. The focus of the Institute's research is both national and international in scope. Organized in 1987 by Dr. Heidi Hartmann and Dr. Teresa Odendahl, and a Washington-based steering committee, the work of the organization is accomplished by four full-time and three part-time staff members with occasional assistance from consultants, interns, and volunteers. IWPR is supported with funds provided by foundations, women's groups, labor unions, and more than 400 individuals. In all aspects of its endeavors, IWPR is committed to expanding access, strengthening relationships, and fostering partnerships which strengthen the economic, social, and political well-being of all women. IWPR gives its full support to the *amicus curiae* brief in the case of *Webster*

*v. Reproductive Health Services.* IWPR urges the Court to uphold women's right to reproductive choice and to strike down the Missouri law, because, among other reasons, women's right to reproductive choice is a key element in their ability to achieve economic equity.

THE INTERNATIONAL CENTER FOR RESEARCH ON WOMEN (ICRW) is a nonprofit organization located in Washington, D.C., and founded in 1976, that works to improve the productivity and economic status of poor women in developing countries and to influence development policy on their behalf. ICRW's programs address the dual economic and family responsibilities of women through policy-oriented research, technical assistance, and public education. While primarily focusing on women's economic situation, ICRW programs also consider the important relationship between women's economic participation, their health, and their families' health. Whether in developing or developed nations, women's ability to control their reproduction must be considered a fundamental right and one that is crucial to women's health and their ability to participate fully in social and economic development.

LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC. (LLDEF), founded in 1973 as a not-for-profit corporation in New York, is the nation's oldest and largest national legal advocacy organization working in furtherance of the rights of lesbians and gay men. Lambda's work has included challenging the constitutionality of statutes that criminalize private adult, consensual sexual contact, ending discrimination against gay people and people with AIDS, seeking recognition of lesbian and gay relationships, and seeking equal access to medical treatment for people with AIDS. As an organization representing the lesbian and gay community's belief in the constitutional right to liberty and bodily autonomy, Lambda strongly supports the position that women in our society are constitutionally entitled to make their own decisions about whether to choose abortion.



LAWYERS FOR REPRODUCTIVE RIGHTS has recently been founded by approximately 15 lawyers in Philadelphia, Pennsylvania, to educate fellow lawyers and the public on legal issues of reproductive rights and to work to ensure that all reproductive options are available. Our organization is a revival of a group formed approximately eight years ago which at that time represented more than 800 lawyers in the Philadelphia metropolitan area.

THE LEAGUE OF WOMEN VOTERS OF MISSOURI (Missouri League) is a nonpartisan, nonprofit membership organization with 1,509 members and 16 local Leagues throughout the state of Missouri. The Missouri League has worked to promote public policies that affirm the constitutional right of privacy of the individual to make reproductive choices. For example, the Missouri League has distributed publications to legislators, the media, and the general public, and has cosponsored an annual educational forum on public policy on reproductive choices.

THE LEAGUE OF WOMEN VOTERS OF THE UNITED STATES (LWVUS) is a nonpartisan, nonprofit membership organization with members in state and local Leagues in all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. The LWVUS strongly believes that public policy in a pluralistic society must affirm the constitutional right of privacy of the individual to make reproductive choices. The LWVUS further believes that the *Roe v. Wade* decision is an important protection of this constitutional right.

THE MISSOURI WOMEN'S NETWORK is a banding together of Missouri organizations and individual women and men to facilitate communication, promote education, and to strengthen advocacy for women's issues based on the 1977 National Plan of Action for Women (adopted in Houston).

THE MS. FOUNDATION FOR WOMEN is the nation's only public, multi-issue, women's fund. The Foun-

dation has long recognized that the extent to which women can control their reproductive capacities is a principal factor in determining the quality and character of their lives; this is especially true for poor women and women of color, who are often the first victims of anti-choice legislation. The Ms. Foundation for Women has been responding to attacks on reproductive freedom with a combination of grantmaking, technical assistance, and advocacy since its founding almost 15 years ago.

THE NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC. (NASW), a nonprofit professional association with over 120,000 members, is the largest association of social workers in the United States. Founded in 1955, NASW has chapters in every state as well as the Virgin Islands, Puerto Rico, and Europe. NASW is devoted to promoting the quality and effectiveness of social work practice, to advancing the knowledge base of the social work profession and to improving the quality of life through utilization of social work knowledge and skill. NASW is deeply committed to the principle of self-determination and to the protection of individual rights and personal privacy. The Association has been in the forefront of the struggle for women's equality, and is particularly concerned in the present instance that the state not override a pregnant woman's autonomy nor restrict her right to choose abortion.

The purpose of the NATIONAL COMMITTEE TO FREE SHARON KOWALSKI, founded in October 1987, is to ensure that, in particular, Sharon Kowalski, an adult disabled lesbian, receive rehabilitation and access to her partner currently denied by her father and guardian and, in general, the right to self-determination for lesbian and heterosexual women, gay men, and people with disabilities not be abridged. The National Committee, headquartered in Washington, D.C. has 17 local chapters and a membership of 4,000. We have pointed the *amicus* brief because without the ability to make decisions about one's body unencumbered by state prohibi-

tions—for example, for a lesbian, whether to make love with a woman or, for any woman, whether to remain pregnant—the concept of individual freedom and autonomy becomes an empty reality.

THE NATIONAL COUNCIL FOR RESEARCH ON WOMEN is an independent association of established centers and organizations that provide institutional resources for feminist research, policy analysis, and educational programs for women and girls. The Council also works to strengthen ties with other national and international organizations and coalitions. Through its member centers and affiliates, the Council links over 2,000 women and men scholars and practitioners in this country and abroad and serves constituencies that include government, the media, business and industry, and the nonprofit sector, as well as the academic community and the general public.

THE NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS, INC. (BPW/USA) is the world's oldest and largest organization of working women. Founded in 1919, and with 125,000 members in 3,400 local organizations across the country, BPW/USA promotes full participation, equity, and economic self-sufficiency for working women. BPW/USA includes among its members men and women of every age, religion, race, political party, and socioeconomic background. BPW's platform commits us to "support reproductive freedom as a right for all women." We believe that if the Supreme Court reverses the decision of the lower courts in *Webster v. Reproductive Health Services*, this will seriously infringe on the reproductive freedom of all women and seriously limit our ability to achieve equity, economic self-sufficiency, and full participation in American society.

THE NATIONAL GAY & LESBIAN TASK FORCE (NGLTF) is a national membership advocacy and political organization to protect and advance the civil and social rights of lesbians and gay men. Founded in 1973,

NGLTF has 15,000 members and offices in Washington, D.C. NGLTF strongly supports the reproductive freedom of all women and the expansion of a fundamental right to privacy for all people in the area of reproductive and sexual decision-making. Bodily integrity is an essential aspect of reproductive decisions and sexual privacy.

NATIONAL GAY RIGHTS ADVOCATES is a non-profit public-interest law firm founded in 1978. NGRA engages in impact litigation throughout the country on behalf of lesbians and gay men. Today, NGRA has over 20,000 members from every state and the District of Columbia. Preserving the constitutional rights to liberty and privacy, rights that are principal components of a woman's right to choose abortion, are of fundamental concern to NGRA's work and its membership. If these essential rights are eroded, lesbians and gay men also will be denied equal participation in American society.

THE NATIONAL WOMAN ABUSE PREVENTION PROJECT is a national domestic violence information and policy resource center. Founded in 1986, the Project provides information, training, and technical assistance to battered women in their work, and develops policy guidelines for professionals on issues affecting battered women. We are joining the Women's Legal Defense Fund and NARAL as an *amicus curiae* in the *Webster* case because any decision weakening *Roe v. Wade* would greatly reduce the ability of many battered women, who often become pregnant as a result of forced sexual conduct, to protect themselves or to have the economic ability to leave their abuser.

THE NATIONAL WOMEN'S CONFERENCE COMMITTEE, formerly the IWY Continuing Committee of the 1977 First National Women's Conference (Houston, TX), is the nonprofit, all-volunteer Committee working to implement the National Plan of Action adopted by 2,000 delegates representing every state and territory, mandated by Congress to adopt recommendations to ad-

vance the status of women of the United States and to monitor progress on this National Plan of Action. Guaranteeing reproductive freedom to all women is one of the 25 priority planks in the National Plan of Action. Four hundred seventy members were appointed to the IWY Continuing Committee. Currently we are joined in our advocacy for women's rights by 14 statewide networks and many individual grassroots supporters.

THE NATIONAL WOMEN'S LAW CENTER is a Washington-based legal organization which has been working since 1972 to advance and protect women's legal rights. The Center's primary goal is to ensure that public and private sector practices and policies better reflect the needs and rights of women. The fundamental right to abortion recognized in *Roe v. Wade* is of profound importance to the lives, liberty, health, and safety of women throughout the country. Because of the tremendous significance to women of the freedom to choose whether to bear children, the National Women's Law Center seeks to preserve women's right to abortion.

THE NATIONAL WOMEN'S STUDIES ASSOCIATION, with a membership of nearly 4,000 feminist educators and scholars promotes the development of Women's Studies Programs, feminist scholarship, and education in a broad sense about women's lives. By studying, researching, and discussing women and gender relationships, NWSA believes we can understand systems that deny equality and envision alternative ways to structure society to guarantee that women and others who are denied privileges will have the opportunity to make choices about their lives and shape the world they live in. NWSA believes women cannot achieve equality without control over their reproductive lives. Historically women's oppression was cemented by state or religious control over whether, when, and how they bore children.

THE NEW HAMPSHIRE WOMEN'S LOBBY was formed in 1980. Its purpose is to bring about changes in laws, regulations, public attitudes, and perceptions re-

lating to a woman's role in society by addressing the laws of the state of New Hampshire. We are a 1,000-member organization with a statewide board of 30, and believe that supporting this brief is in the best interests of greatest choice for New Hampshire women.

NEW YORK STATE COALITION ON WOMEN'S LEGAL ISSUES (COWLI) is a statewide organization established to identify and eradicate gender bias which is pervasive in our society. Among its other purposes, COWLI offers practical and substantive expertise and commentary on the effects on women of existing laws and of proposed legislation. COWLI also provides special assistance to the courts by drawing attention to the deleterious effects on women of biased implementation of laws. COWLI is particularly concerned with this appeal because it focuses on the critical issue of reproductive freedom. COWLI is committed to ensuring reproductive freedom for all, as well as gender equality in the Courts.

NEW YORK WOMEN IN CRIMINAL JUSTICE is an organization of women whose members include police, probation, and correction officers; judges, attorneys, and social workers; others who work in the criminal justice system; inmates and ex-offenders. Our main concerns are that offenders who go through the system not come out worse than when they went in, and that as many offenders as possible be diverted from the system. We also strongly support the right of a woman to choose abortion, knowing that the offspring of women in prison become the dysfunctional children in school and often the criminals of the future. The right to choose should not be restricted to only those women who can afford abortions (whether or not they remain legal); the right to choose should be available to all women, most especially those who understand the heavy burden that would be imposed upon both the children and the women in and just out of prison.

THE NORTH CAROLINA ASSOCIATION OF WOMEN ATTORNEYS, INC. (NCAWA), is a non-

profit corporation founded in 1978 whose objects are the promotion of the participation of women in the legal profession and the promotion of the rights of women under the law. The NCAWA has been instrumental in the passage of laws affecting women on issues such as domestic violence, equitable distribution of marital property, and child support enforcement. There are approximately 1,700 women attorneys in North Carolina and almost one-third of all new lawyer applicants are women. We believe it is the obligation of all women attorneys, as well as the stated objective of our organization, to act as advocates for women's rights. In 1979 the NCAWA adopted a resolution endorsing the right of all women to exercise their reproductive freedom to carry their pregnancies to term with adequate prenatal care or to have an abortion. Based on this resolution and our objectives, the North Carolina Association of Women Attorneys joins in this *amicus* brief.

NORTH CAROLINA EQUITY, a nonprofit organization, is dedicated to the economic advancement of women. NC Equity serves as a catalyst on women's issues and advances networking of women. We support women's full realization and exercise of their most basic legal rights, including a woman's right to control her own body. This right must include her right to choose an abortion.

THE NORTHWEST WOMEN'S LAW CENTER is a private, nonprofit organization in Seattle, Washington, that works to advance the legal rights of women by means of litigation, legislation, education, and providing information and referrals. Protecting women's freedom of reproductive choice is one of the Law Center's priority issue areas. The Law Center has participated in several cases involving reproductive rights before the U.S. Supreme Court and other courts.

THE NOW LEGAL DEFENSE AND EDUCATION FUND (NOW LDEF) is a non-profit civil rights organization that performs a broad range of legal and edu-

cational services nationally in support of women's efforts to eliminate sex-based discrimination and secure equal rights. NOW LDEF was founded in 1971 by the leaders of the National Organization for Women.

QUEEN'S BENCH OF THE SAN FRANCISCO BAY AREA is a bar association in the San Francisco area designed to promote the interests of women attorneys. Founded in 1921, it has almost 700 members. Queen's Bench is joining in this *amicus curiae* brief because of its concern in maintaining the fundamental legal principles affecting women that were established in *Roe v. Wade*.

RADICAL WOMEN is the oldest socialist feminist organization in the U.S. Formed in 1968, it has eight U.S. branches and one in Australia. The community-based organization includes working women, young and elderly women, women of color, and lesbians. The battle for women's rights, including the right to safe and accessible abortions, is crucial to women's equality, socially, politically, and economically. The right to abortion is a fundamental right to privacy and for the court to interfere is a gross injustice. The abolition of *Roe v. Wade*, or any changes whatsoever, will especially affect low-income women, namely women of color, who will not be able to obtain private services found by other women who can afford to pay.

THE SANTA BARBARA WOMEN'S POLITICAL COMMITTEE, a political action committee with over 300 members, was formed in 1987 with a commitment to increasing the role of women in the political and governmental processes of Santa Barbara and of the State of California. The Committee is also committed to furthering the interests of women as a group through the political process. Issues such as reproductive choice, pay equity, and child care are central to our concerns. Because the protection of the constitutional right of reproductive choice is our top priority for 1989, we are especially in-



terested in the resolution of *Webster v. Reproductive Health Services* by the U.S. Supreme Court.

THE TOLEDO WOMEN'S BAR ASSOCIATION's purpose is to foster communication among women attorneys; promote and advance the position of and opportunities available to women attorneys in order to more accurately reflect the role of women in a democratic society; ensure women attorneys' participation in bar associations; and encourage participation in social and political areas affecting the community. It monitors legislation, policies, and practices which affect the status of and opportunities available to women and seeks changes where necessary. It promotes and provides continuing legal education in areas of current interest to the community and, in particular, to the legal profession; and gathers and disseminates information of interest to women.

THE TUCSON WOMEN'S COMMISSION was founded in late 1975 by the Mayor and Council of the City of Tucson to assist women in attaining full equality of opportunity in all aspects of life. The Tucson Women's Commission has long held that good public policy respects the principle of bodily integrity and trusts women's ability to make their own decisions about their reproductive lives. The Tucson Women's Commission also maintains that public policy in the best interest of women will support a full range of options, information, and services so that every woman has the ability to make real choices about when, whether, and under what conditions to bear a child.

VOTERS FOR CHOICE/FRIENDS OF FAMILY PLANNING is a national, independent, pro-choice political action committee. The mission of Voters for Choice is to preserve safe and legal abortion for all women by helping elect pro-choice candidates to U.S. Congress.

WASHINGTON WOMEN UNITED (WWU), founded in 1978, is a private nonprofit organization whose pur-

pose is to lobby the Washington State Legislature on issues of concern to women. Reproductive choice is WWU's first legislative priority. The organization has opposed state legislation that would limit a woman's reproductive choice. WWU is also active in a state coalition that has worked to maintain Medicaid funds for abortion.

WIDER OPPORTUNITIES FOR WOMEN supports the *amicus* brief of the Women's Legal Defense Fund and NARAL regarding *Webster v. Reproductive Health Services*. Because of our 25-year history working for equality of opportunity and economic self-sufficiency for women and girls, we urge the Court to uphold women's right to choose abortion and to strike down the Missouri law.

WOMEN EMPLOYED is a national organization of working women, based in Chicago, with a membership of 1,500. Over the past 16 years, the organization has assisted thousands of working women with problems of sex discrimination. Women Employed works to empower women to improve their economic status and to remove barriers to economic equity through advocacy, direct service, and public education. Women Employed strongly believes that any limitation on women's reproductive rights will have a profoundly negative impact on women's opportunities to achieve economic equity.

WOMEN IN FILM, founded in 1974, is a nonprofit professional organization of approximately 1,500 members. Our goals are to improve the employment, depiction, and position of women in the film and television industries. We are particularly committed to expanding equal employment opportunities for women in film and television, and we believe that a commitment to equal opportunity must include a commitment to the principle of freedom of choice on issues relating to childbearing and abortion. We are based in Los Angeles, California.

THE WOMEN LAWYERS' ASSOCIATION OF LOS ANGELES (WLALA), founded in 1919, is the largest

local bar association in the State of California emphasizing the concerns of women. WLALA has as members over 1,200 female and male lawyers, judges, and law students who are personally and professionally concerned with the importance of preserving a woman's right to choose for herself whether to terminate a pregnancy. WLALA last appeared as *amicus curiae* before this Court on this issue in *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747 (1986).

WOMEN'S AGENDA is a statewide, non-partisan, women's economic justice organization composed of 2,100 individual members and 150 endorsing organizations committed to equity and justice for women, opportunities for children, and security for families. Women's Agenda believes that every woman must have the fundamental right to choose whether or when to have children. If a woman does not have the right to control her fertility, she has no rights. Women's Agenda believes that reproductive freedom is a women's economic justice issue.

THE WOMEN'S BAR ASSOCIATION OF MASSACHUSETTS is a statewide bar association of over 1,000 members. The WBA is committed to the advancement of women attorneys and to the protection of all women in the legal system. Since its founding in 1978, the WBA has been particularly concerned with the protection of a woman's right to choice. It has filed *amicus* briefs in cases concerning public funding of abortion, restrictions on family planning agencies, and the rights of minors to abortion. The WBA also sponsors a panel of attorneys who represent minors seeking judicial consent for abortion and is a member of the Massachusetts Coalition for Choice.

THE WOMEN'S CENTER OF THE UNIVERSITY OF CONNECTICUT is committed to creating a social, economic, and political world that supports the full equity of women. Without unrestricted access to the full range of health care procedures, including abortion for women of all ages, equity cannot be achieved. Continued at-

tacks aimed at limiting women's access to reproductive freedoms are directly contrary to establishing a system whereby women are afforded equal protection under the law.

THE WOMEN'S CITY CLUB OF NEW YORK, INC., founded in 1916, is a membership organization concerned with contemporary societal programs—with the welfare of men, women, and children, in promoting such welfare by advocacy of an efficient government and a just legal system. We are concerned with this case for the following reasons: we feel that the principle established in *Roe v. Wade* was a step forward in establishing the freedom of women for domain over their own bodies and that any step backward is a challenge to that freedom and the equality of women in our society.

THE WOMEN'S EQUAL RIGHTS LEGAL DEFENSE AND EDUCATION FUND (WERLDEF) is a non-profit California corporation. Established in 1978, WERLDEF was organized to ensure that women will be treated equally under the law. We achieve our goals by educating women about their legal rights, and assisting them in vindicating those rights by providing access to the courts. WERLDEF often receives calls from women who are pregnant and in crisis because they are neither financially nor emotionally able to raise a child and who are psychologically unable to carry their pregnancy to term and then put their baby up for adoption.

THE WOMEN'S EQUITY ACTION LEAGUE (WEAL) was founded in 1968 as a national, nonprofit membership organization sponsoring research, education, litigation, and advocacy in order to advance the economic status of women. WEAL supports and recognizes a woman's constitutional right to reproductive choice. Basic to a woman's economic empowerment is the right to make a fully-informed decision regarding the planning of her family.

WOMEN'S EQUITY AFFILIATES, LTD., is a 501 (c) (4) Ohio corporation consisting of state affiliates,

first established here in 1968, whose purpose is achieving and maintaining equal economic status for women. We are just now in the process of reestablishing our state groups. We are interested in the instant case because we know that an unplanned childbirth is an economic crisis, particularly for working women. The majority of American women are now working because our economy and their husbands cannot otherwise support them. We therefore object to our Justice Department's engaging in what amounts to legislation by entering into pending cases and enlarging the issues, to the economic disadvantage of women. The expense of rearing a child, including the workplace disadvantages to the caregiver, is a heavy legal sanction for the law to impose on an act which is not illegal.

Since the WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM was founded in 1915, it has stood for freedom and equality. Choice and control over one's own life and decisions are integral aspects of freedom and equality. To overturn *Roe v. Wade* or to limit in any way women's—and especially poor women's—access to abortion would be the gravest infringement upon the rights and opportunities for women to be truly free, equal, and self-defined. In 110 chapters across the U.S. and in 28 countries, WILPF works for a world free of racism and sexism; the building of a constructive peace through world disarmament; and the changing of government policies to meet human needs.

THE WOMEN'S LAW ASSOCIATION OF THE WASHINGTON COLLEGE OF LAW OF THE AMERICAN UNIVERSITY was founded in 1982. The association has 50 active members and sponsors events for the benefit of the entire law school community. The organization's purpose is to serve as a forum for the discussion of issues and the promotion of interests affecting women in the law school community and in society. As an organization committed to legal and social equality for women, we believe that the legal attempt of *Webster v.*

*Reproductive Health Services* to erode women's constitutional right to decide if and when to bear children seriously jeopardizes women's ability to be equal citizens in society.

THE WOMEN'S LAW PROJECT is a nonprofit law firm dedicated to advancing the status and opportunities of women. The Women's Law Project believes that the right to reproductive choice is an essential component of women's ability to play an equal role with men in this society, and has engaged in extensive litigation and public education designed to protect women's legal right to abortion. Since its founding in 1974, the Women's Law Project has challenged in the courts a wide variety of state statutes designed to restrict abortion rights, including the Pennsylvania statute invalidated by this Court in *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747 (1986).

THE WOMEN'S MEDICAL FUND, INC., is a volunteer charity, recognized by the Internal Revenue Service as a 501(c)(3), which has helped more than 3,000 women pay for abortion care. Founded in the 1970s, the Fund has helped victims of rape who were pregnant from that crime, victims of incest, women in jail and in prison, the mentally ill, battered wives impregnated by their batterers, destitute women living in shelters with their children, handicapped women, pregnant women with histories of repeated C-sections and other surgeries, and children as young as age 11. The Women's Medical Fund, Inc., hears daily from destitute women unwillingly pregnant. Our administrators are aware of the tragedies that are avoided because abortion is safe and legal.

WOMEN'S RIGHTS COALITION is an active legislative effort composed of more than 60 local and statewide organizations across the State of Oregon. Founded in 1973, the Coalition brings together a wide range of service, professional, and advocacy groups who have the common belief that Oregon women should have equal rights and reproductive freedom.

THE YALE JOURNAL OF LAW AND FEMINISM is a nationally circulated journal dedicated to addressing feminist issues in law and legal scholarship. Preservation of the legal right to abortion is central to our concerns because a woman's control over her body is a necessary starting point for our broader concerns about the status of women in society.

*Amici Curiae*

National Abortion Rights Action League  
Women's Legal Defense Fund  
League of Women Voters of the United States  
National Federation of Business  
and Professional Women's Clubs, Inc.  
National Women's Law Center  
NOW Legal Defense and Education Fund  
Women's Law Project  
American Association of University Women  
National Association of Social Workers, Inc.  
Women's International League for Peace and Freedom  
Ms. Foundation for Women  
Women's Equity Action League  
Northwest Women's Law Center  
Equal Rights Advocates, Inc.  
Connecticut Women's Educational and Legal Fund, Inc.  
National Woman Abuse Prevention Project  
Wider Opportunities for Women  
American Veterans Committee, Inc.  
Voters for Choice/Friends of Family Planning  
Lambda Legal Defense and Education Fund, Inc.  
Boston Women's Health Book Collective, Inc.  
Human Rights Campaign Fund  
American Federation of State, County,  
and Municipal Employees  
Women Lawyers' Association of Los Angeles  
Queen's Bench of the San Francisco Bay Area  
Yale Journal of Law and Feminism  
Abortion Rights Council  
Center for Women Policy Studies  
Women's Equal Rights Legal Defense and Education Fund  
Committee to Defend Reproductive Rights—CMRW  
New York State Coalition on Women's Legal Issues  
Abortion Rights Mobilization  
Women's Bar Association of Massachusetts  
California Women Lawyers  
National Gay & Lesbian Task Force  
New York Women in Criminal Justice  
Harvard Women's Law Association