No. 88-605

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

WILLIAM L. WEBSTER, State of Missouri,
Appellants,

vs.

REPRODUCTIVE HEALTH SERVICE: Planned Parenthood of Greater Kansas City; Howard I. Schwartz, M.D.; Robert L. Blake, M.D.; Carl C. Pearman, M.D.; Carroll Metzger, R.N.C.; Mary L. Pemberton, B.S.W.;
Appellees,

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF OF THE NATIONAL LEGAL FOUNDATION AMICUS CURIAE, IN SUPPORT OF APPELLANTS

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MOTION OF THE NATIONAL LEGAL FOUNDATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Pursuant to Rule 42(3) of the Rules of this Court, The National Legal Foundation respectfully moves the Court for leave to file a brief amicus curiae in the above entitled case. It is our understanding that Counsel for Appellees have consented to this filing, but no written confirmation has been received. Counsel for Appellants have given consent.

The National Legal Foundation is an organization devoted to advocacy and

support of Constitutional Rights and Liberties. The Foundation is gravely concerned about attempts to restrict states in the exercise of their duty to protect the life and liberty of all persons within their jurisdiction, including the unborn. The Court's disposition of this case could dramatically affect the exercise of that duty.

The Missouri statute attempts to regulate abortions in the state and assure that state resources are not utilized to further such procedure. In particular, the enactment prevents public employees from counseling and encouraging abortions except where the mother's life is in danger and restricts the use of public facilities to perform abortions.

The Court of Appeals struck down both provisions; the counseling provision on vagueness grounds and the restriction on public facilities as an obstacle to a woman's freedom to choose abortion. Both holdings are in error.

The counseling provision is not unconstitutionally vague. It applies only to public employees in the scope of their employment and has been given a precise interpretation by the Attorney General that should be respected by the Court. No penalty attaches for violation of the statute, only a taxpayer proceeding to more clearly define the statute's application.

The withholding of public facilities is no different from withholding public funds for abortions which this Court has previously upheld as valid. The

allocation of public resources is a decision best left to the state legislative process and not the federal courts.

Lastly, the Court should reconsider its decision in Roe v. Wade, 410 U.S. 113 (1973). The arbitrarily established trimester approach of that case conflicts with the self evident truth that the unborn child is human and entitled to the rights to life and liberty guaranteed in the Declaration of Independence.

Counsel of Record for amicus curiae Robert K. Skolrood is Executive Director for The National Legal Foundation and Douglas W. Davis is General Counsel for that organization. Counsel for amicus curiae specialize in Constitutional litigation and have participated in significant cases relating to First Amendment and other constitutional freedoms.

CONCLUSION

For the above stated reasons we respectfully urge the Court to grant this motion for leave to file the accompanying amicus curiae brief in the present case in support of the Appellants.

Douglas W. Davis
The National Legal Foundation

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INTEREST OF AMICUS CURIAE

The National Legal Foundation is constituted for the purpose of advocacy in support First Amendment freedoms and other inalienable rights. While typically this involves the Foundation on the side of individual plaintiffs, in this instance, it argues in support of legitimate and historically acceptable governmental efforts to protect the lives of unborn children. The Court's decision in this case will dramatically affect the ability of our state elected officials to extend the guarantees of life and liberty found in the Declaration of Independence to all men and women regardless of their vulnerability or stage in life. When such protection is denied to the unborn, it opens the door for arbitrary withdrawal of such guarantees to all men and women.

The National Legal Foundation is a non-profit corporation organized to defend, restore, and preserve constitutional liberties, family rights and other inalienable freedoms.

Counsel of record for Amicus Curiae, Robert K. Skolrood is Executive Director and Douglas W. Davis is General Counsel for The National Legal Foundation. Counsel for Amicus Curiae specialize in constitutional litigation and have participated in significant cases relating to First Amendment and other constitutional freedoms.

The National Legal Foundation believes the experience of its attorneys will be of assistance to the court in evaluating this case.

ISSUES PRESENTED

Is the Missouri Statute prohibiting public employees, in the scope of their employment, to "encourage or counsel" a woman to have an abortion not necessary to save her life, unconstitutionally vague?

Is the Missouri Statute forbidding all public funding and use of public facilities for the purpose of performing or assisting an abortion, not necessary to save the life of the mother, unconstitutional?

Should the Court reconsider the Roe v. Wade decision?

SUMMARY OF ARGUMENT

The Missouri Statute's prohibition against public employees, within the scope of their employment, encouraging or counselling a woman to have an abortion except to preserve her life is not unconstitutionally vague. The statute does not apply generally, but only in the public employment context. The words "encourage" and "counsel" are sufficiently clear that a reasonable person, using reasonable common sense, could understand what activity is prohibited. The Attorney General, the only state official with opportunity to interpret the statute, has further clarified the meaning of these terms. His interpretation should be duly regarded and places all effected state employees on notice as to what activities are prohibited.

The prohibition of public funding and utilization of public facilities for abortions is also constitutional. It conforms with this Court's holdings that a state is under no obligation to utilize its resources to remove obstacles, not of its own making, to a woman's freedom to choose an abortion. The Court of Appeals unduly narrowed the application of the state funding cases and its opinion should be reversed.

Lastly, the Court should reconsider and discard the trimester approach of Roe v. Wade, 410 U.S. 113 (1973). That opinion denies the self evident truth that the unborn child is human and therefore possesses the rights to life and liberty found in the Declaration of Independence. This same rationale was applied in the Dred Scott case to arbitrarily deny the self evident humanity of the African-American.

WILLIAM L. WEBSTER

Appellants

v.

REPRODUCTIVE HEALTH SERVICE

Appellees

ARGUMENT

I.

Introduction.

It is vital that this Court begin its analysis of the constitutionality of Missouri's Statute §§188.200-188.215 by recognizing its limited scope. This case must be analyzed in light of the following facts:

1. The statute's proscriptions extend only to public employees within the scope of their employment, public facilities, and public funding. The statute has no application to conduct or speech outside the public employment context.

2. The only remedy authorized by the statute for its violation is a civil taxpayer enforcement proceeding.

3. The state of Missouri stands in the position of an employer in relation to public employees. The state, through the Attorney General, has declared the terms "encourage" and "counsel" to be limited to "affirmative advocacy."

Less than one month after the Missouri statute was signed into law by Governor Ashcroft and before it became effective, the Plaintiffs filed suit to restrain its enforcement and mount a void for vagueness challenge against the terms "counsel" and "encourage". The state administrative and judicial machinery has not been afforded the opportunity to construe the enactment. The Plaintiffs have asked this Court to examine statutory terms in the abstract. It is against this backdrop that the Court is asked to analyze whether the terms "counsel" and "encourage" are void for vagueness.

II.

The Eighth Circuit Court Erred In Holding That The Missouri Statute Is Void For Vagueness.

This Court has long recognized the fundamental principle that an enactment is void for vagueness if its prohibitions are not clearly defined. The dangers inherent in a vague law are threefold:

1. a lack of a "reasonable opportunity to know what is prohibited" may "trap the innocent by not providing fair warning;"

2. vague laws permit arbitrary and discriminatory enforcement on an "ad hoc" basis;

3. and vague laws may lead citizens to "steer far wider than necessary in the exercise of free speech.

Grayned v. City of Rockford, 408 U.S. 104, 108-109 (1972). None of these concerns are applicable in this case.

The Missouri statute does not apply to

public at large but only to public employees, public facilities, and public funds. This Court has expressed a willingness to sustain statutes that regulate federal and state employees in the face of void for vagueness challenges.

In Broderick v. Oklahoma, 413 U.S. 601 (1973), governmental employees mounted a void for vagueness challenge against a statute modeled after the Hatch Act which prohibited them from "taking part in the management or affairs of any political party ....'" Id. at 608. In that case, this Court rejected the notion that the term "taking part in" rendered the statute facially vague:

> There are limitations in the English language with respect to being both specific and manageably brief, and it seems to us that although the prohibitions may not satisfy those intent on finding fault at any cost, they are set out in terms that the ordinary person exercising ordinary common sense can sufficiently understand and comply with ....

Broderick, 413 U.S. at 608, quoting CSC v. Letter Carriers, 413 U.S. 548, 578, 579 (1973).

If the term "take part in" was sufficiently precise to place state employees on notice of the type of conduct that the statute prohibited, it would be an anomaly to hold that the terms "encourage" and "counsel" are so vague that men of common intelligence must necessarily guess at [their] meaning." Connally v. General Construction Company, 269 U.S. 385, 381 (1926).

Unlike the public employees in Broderick, the Missouri public employees in this case have the advantage of an advance ruling by their employer which declares that the words "counsel" and "encourage" are limited only to "affirmative advocacy." The Attorney General's Opinion satisfies Due Process requirements by providing fair warning of

prohibited activity.

The Eighth Circuit's refusal to accept the Attorney General's narrowing construction of the statute ignores controlling Supreme Court precedent. When a federal court is presented with the Attorney General's interpretation of a state statute, it must give that opinion "respectful consideration." Law Students Research Council v. Wadmond, 401 U.S. 154, 163 (1971). A federal court cannot be expected to ignore an authoritative pronouncement when analyzing a state statute to determine whether it will meet a vagueness challenge.

The Attorney General's construction is consistent with a reasonable interpretation of the words "encourage" and "counsel." It is even more appropriate for the court to defer to the state's construction of the terms when there has been no other state judicial or

administrative interpretation.

This Court recently reaffirmed the "well established principle that statutes will be interpreted to avoid constitutional difficulties." Frisby v. Schultz, 487 U.S. ___, 101 L.Ed.2d 420, 430 (1988). In Frisby, this Court narrowly read a statute that prohibited "picketing before or about the residence or dwelling of any individual" to prohibit only "focused picketing taking place solely in front of a particular residence ...." Frisby, 101 L.Ed.2d at 431. The Court justified its narrow reading on representations made during Oral Argument by counsel for the town of Brookfield who stated, that the town itself "takes, and will enforce, a limited view of the 'picketing' proscribed ...." Id., at 431.

In Planned Parenthood Association v. Fitzpatrick, 401 F.Supp. 554, (E.D. PA. 1975), aff'd., sub nom. Franklin v.

Fitzpatrick, 428 U.S. 901 (1976), this Court affirmed a district court opinion which relied upon representation by counsel for Pennsylvania, that requiring "humane disposal" of a fetus was designed to prohibit only the "mindless dumping of aborted fetuses on to garbage piles." Planned Parenthood, 401 F.Supp. at 573. Based upon this representation, that provision of the statute was held to be constitutional on its face.

The Court of Appeals erred by failing to consider the narrowing construction applied to the statute by the Attorney General for the state of Missouri. That construction controls in the face of a vagueness challenge as the Missouri statute imposes no criminal penalty and is reasonable and consistent with the common understanding of the terms, "encouraging" or "counseling" a person to have an abortion. The statute does not prohibit a

public employee from educating women about abortion but only prohibits encouraging or advising a woman to have an abortion. The Attorney General's construction is consistent with this limitation.

Public employees stand in a different position in relation to the state than citizens in general. "[T]he state's interest as an employer in regulating the speech of its employees differs significantly from those it possesses in connection with regulation of the speech of citizens in general." Connick v. Meyers, 461 U.S. 138, 140 (1983).

Unlike citizens in general, state employees have administrative procedures that are provided to obtain advance clarification of prohibited conduct. Public employees are expected and required to consult relevant employment regulations much like "businesses, which face economic demands to plan behavior carefully, can be

expected to consult relevant legislation in advance of action." Village of Hoffman Estates v. Flipside, Hoffman Estates, 455 U.S. 489, 498 (1982). The question of when a public employee crosses the line from informing a woman of her alternatives, to encouraging and counseling a woman to have an abortion is readily apparent. Any doubt can be resolved in advance by consulting employment manuals, personnel policies, or through the Attorney General's office.

Finally, a public employee who does "counsel" or "encourage" a woman to obtain an abortion is not subject to criminal penalty or any punitive civil action. The remedy provided for violation of the statute is a provision for taxpayer proceedings in civil court. This limited remedy does not subject an employee to criminal charges or immediate dismissal and will only operate to clarify the type

of speech and conduct prohibited by the statute.

The Eighth Circuit erred in discounting the civil nature of the statute. Once the court determined that the statute implicated conduct associated with speech, it failed to consider other aspects that would justify a less stringent standard of review. The statute must be viewed as a whole. It carries civil enforcement remedies and is only applicable to public employees who are operating within the scope of their employment. Furthermore, the cases that the Court of Appeals relied upon, Village of Hoffman Estates, Grayned, and Colautti v. Franklin, 439 U.S. 379 (1979), all involve state statutes imposed upon the general populace and not solely upon governmental employees.

The court's reliance upon Baggett v. Bullitt, 377 U.S. 360 (1964) which involved a statute requiring state

employees, upon pain of perjury to swear a loyalty oath or be precluded from employment is also misplaced. The Missouri statute imposes no sanction upon any employee, precludes no employee from continued employment nor does it infringe upon the personal conscience of any individual.

This case falls squarely within the parameters of Letter Carriers and Broderick, both of which implicated First Amendment freedoms of speech and imposed civil penalties requiring dismissal of public employees. Both cases withstood void for vagueness challenges.

The Missouri statute is aimed exclusively at state employees who are operating within the scope of their employment and who affirmatively advocate an abortion. In light of all these factors any person of common sense would be able to ascertain what conduct the

state is attempting to proscribe. The Eighth Circuit erred in its determination that the Missouri statute was void for vagueness.

III.

The Eighth Circuit Erred In Holding That The State Has Created Obstacles By Refusing To Make Its Facilities, Employees, Or Funds Available To Procure Abortions.

In Roe v. Wade, 410 U.S. 113 (1973), the Supreme Court concluded that the right of privacy, whether founded in the Fourteenth Amendment or the Ninth Amendment is "broad enough to encompass a woman's decision whether or not to terminate her pregnancy." Id., at 153. The right declared in Roe does not confer the constitutional right of access, or a consitutional right of entitlement to funds, services, or facilities:

Roe did not declare an unqualified

> "constitutional right to an abortion," as the District Court seemed to think. Rather, the right protects the woman from unduly burdensome interference with her freedom to decide whether to terminate her pregnancy. It implies no limitation on the authority of a State to make a value judgment favoring childbirth over abortion, and to implement that judgment by the allocation of public funds.

Maher v. Roe, 432 U.S. 464, 473-474 (1977) (emphasis added). A woman's right to decide protects her from state created obstacles, but it "need not remove those not of its own creation." Harris v. McCrae, 448 U.S. 297, 316 (1980). In Harris, the court made clear that a woman's right to decide does not include "a constitutional entitlement to the financial resources to avail herself of the full range of protected choices." Id., at 316.

In striking down the Missouri statute, the Court of Appeals stated that prohibiting public employees from

encouraging or counseling abortion "is an unacceptable infringement of the woman's fourteenth amendment right to choose an abortion after receiving the medical information necessary to exercise the right knowingly and intelligently." Webster, 851 F.2d at 1079.

This case however, is no different from either Harris or Maher. The Court of Appeals assumed that a woman has a constitutional entitlement to receive advice by a doctor in order to make her decision knowingly and intelligently. This rationale is no different than saying that an indigent woman has a right to receive public funds in order that she may exercise her right to decide. Whether the woman's lack is a lack of funds or a lack of information is irrelevant. Both are a form of difficulty but neither has been created by the state.

The Eighth Circuit determined that the

state's "choice of childbirth over abortion" was exercised in a manner that "prevents the patient from making a fully informed and intelligent choice." Webster, 851 F.2d at 1080. The court also characterized the Missouri statute as a "state imposed blackout on the information necessary to make a decision." Id., at 1080. These statements missed the mark. Both Maher and Harris involved a state imposed withholding of funds that certainly burdened, and often prevented, an indigent woman from procurring an abortion. The withholding of information by public employees in this case may ultimately prevent a woman from making a fully informed choice, but the lack was not created by the state, the state has merely refused to alleviate a pre-existing condition.

To illustrate this point, the Supreme Court has declared that the Constitution

guarantees the right to travel from one state to another and that this fundamental right can only be outweighed by a compelling state interest. Shapiro v. Thompson, 394 U.S. 618 (1969). But by no stretch of the imagination does it follow that citizens now have a constitutional right to compel a state to provide them with the information and equipment necessary to effect this constitutional right, e. g. maps and transportation. Likewise, citizens of a state have no constitutionally guaranteed right to compel their state to provide them with information necessary to carry out a decision to have an abortion.

The Eighth Circuit's decision overturning the statutory provisions which forbid the performance or assistance of nontheraputic abortions in public facilities or by public employees is tainted by the same flawed reading of

Harris, Maher, and Poelker v. Doe, 432 U.S. 519 (1977) (per curiam). The Court of Appeals held that so long as the state recovered all funding expended for use of public facilities and the costs of employees services in providing an abortion, no state funding issue exists. Thus, the withholding of public facilities and employees could be "for no other expressed reason than the state's desire to discourage abortions." This desire, according to the Court of Appeals, was not a "sufficient justification" to withstand a "compelling state interest" requirement. Webster, 851 F.2d at 1083. Such a holding ignores precedent established by this Court in Harris and Maher. A woman's right to decide whether to have an abortion "implies no limitation on the authority of a state to make a value judgment favoring childbirth over abortion ...." Maher, 432 U.S. at 474.

[emphasis added]. There exists no principled distinction between the Missouri legislature exercising its value judgments by withholding funds, or by withholding the services of its employees and the use of its facilities. The Eighth Circuit made no attempt to expound upon the distinction it attempts to draw, except to say that such a value judgment "narrows and in some cases forecloses the availability of abortion to women." Webster, 851 F.2d at 1081.

This Supreme Court has held that a state has unlimited authority to make value judgments in the allocation of its resources. Maher, 432 U.S. at 474. The Eighth Circuit limited the exercise of the state's judgment to the withholding of state finances. It is not for the federal judiciary to make such value determinations. Those decisions must be left to the legislature.

IV.

This Court Must Reconsider And Discard The Trimester Approach Of Roe V. Wade.

The underlying rationale of the Court's Opinion in Roe v. Wade, which has permitted abortion on demand under a trimester approach, is based upon an erroneous perception of life and liberty found in the case of Scott v. Sanford, 60 U.S. (19 How.) 393 (1957) (hereafter Dred Scott).

Central to Chief Justice Taney's rationale in Dred Scott was the Court's assertion that the black slave was merely, "an ordinary article of merchandize and property." Dred Scott, 60 U.S. at 451. By so holding, the Court dehumanized African-Americans, equating them, in Abraham Lincoln's words, with "the beasts

of the field." A. Lincoln, "Speech at Edwardsville, Illinois, Sept. 11, 1858," in 3 Collected Work of Abraham Lincoln 95 (R. Basler ed. 1953). The Dred Scott Court was able to assert that the slaveholder had absolute authority to do whatever he wished with his "property" and that any attempt by Congress to prohibit the expansion of slavery into the territiories was forbidden. In fact the Court asserted that there was nothing "which entitles property of that kind [slaves] to less protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights." Dred Scott, 60 U.S. at 452.

The Court in Roe proceeded upon the same basis as Dred Scott, the only distinction being that Dred Scott classified men as "property" based on their race, while Roe

classified them as "property" based on their stage of development.

The Court in Roe disclaimed any intent to "resolve the difficult question of when life begins," Roe, 410 U.S. at 160, as did the court below, Webster, 851 F.2d at 1076 n.7. Yet implicit in the Roe Opinion is the assumption that the child in the womb is something less than human; that the child in the womb is in fact "property". The implication is more readily apparent where the Court freely conceded that if the "suggestion of personhood is established, the appellant's [Roe's] case, of course collapses, for the fetus' right to life is then guaranteed specifically by the [Fourteenth] Amendment." Roe, 410 U.S. at 156-57. For the Roe Opinion to withstand scrutiny, the unborn child had to be "dehumanized" in the same manner as the slaves of Dred Scott.

The assumption has been completely

established since Roe v. Wade. Roe and its progeny have created abortion on demand. A woman may freely destroy her fetal "property" as she chooses. In language strikingly similar to Dred Scott's assertion that the government had only "the power coupled with the duty of guarding and protecting the owner in his rights," 60 U.S. at 452, with respect to slaves, and could not, therefore block their ownership in the territories previously free from slavery by law, the Court has interpreted Roe to stand for the proposition that "government may not place obstacles in the path of a woman's exercise of her freedom of choice." Harris, 448 U.S. at 316.

The most effective opponent of slavery was Abraham Lincoln. In his debates with Stephen Douglas, Lincoln vigorously attacked the underlying presumption of Dred Scott that man as man should ever be

classified as something less than human before the law. His arguments apply with equal force to the Roe rationale.

In opposition to the Dred Scott opinion, Lincoln relied upon the Declaration of Independence.[1] That document states:

> We hold these truths to be self evident: that all men are created equal; that they are endowed, by their Creator, with certain inalienable rights; that among these are life, liberty and the pursuit of happiness.

Looking to the "plain unmistakable language of the Declaration," Lincoln asserted that "the authors of that notable

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[1]Some might argue that the Declaration of Independence is not a legal document and has no legal significance. Lincoln thought otherwise, specifically dating the founding of the nation to the Declaration of Independence in his Gettsburg Address. The Supreme Court has recognized the binding legal effect of the Declaration of Independence in at least two cases, Inglis v. The Trustees of the Sailor's Snug Harbor, 27 U.S. (3 Peters) 121, 7 L.Ed. 617 (1830) (citizenship determination) Ware v. Hylton, 3 U.S. (3 Dallas) 199, 1 L.Ed. 568 (1796) (application of international law).

instrument intended to include all men ...." when they asserted the self-evident truth that "all men are created equal and that they are endowed by their Creator with certain inalienable rights." A. Lincoln, Speech at Springfield, Illinois, June 26, 1857, 2 Collected Works of Abraham Lincoln 405 (R. Basler ed. 1953) (emphasis in original). Lincoln defined his assertion in rebutting Douglas and Chief Justice Taney's phrase that "all men" did not include African-Americans.

> I think the authors of that notable instrument intended to include all men, but they did not intend to declare all men equal in all respects. They did not mean to say all were equal in color, size, intellect, moral developments, or social capacity. They defined with tolerable distinctness, in what respects they did consider all men created equal - equal in "certain inalienable rights, among which are life, liberty, and the pursuit of happiness. This they said, and this meant .... They meant to set up a standard maxim for free society, which should be familiar to all, and revered by all; constantly looked to, constantly labored for, and even

> though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere.

Id., 405-406.

The Declaration of Independence established that "all men" enjoy "inalienable rights" including the right to life and liberty. As Lincoln stated, the principle upon which our government was founded admits of no exception. As Lincoln noted in a speech in Chicago on July 10, 1858:

> I should like to know if taking this old Declaration of Independence, which declares that all men are equal upon principle and making exceptions to it where will it stop. If one man says it does not mean a negro, why not another say it does not mean some other man? If that declaration is not the truth, let us get the Statute book, in which we find it and tear it out!

Collected Works 2: 500-501.

Lincoln did not need the latest scientific data to proclaim what was self-

evident. The African-American was a human being - not a stone, not a beast or other animal - and therefore the claims of the Declaration of Independence were rightfully his. The unborn child stands in the same posture today. It is equally self evident that the unborn child is a human being - not a stone, not a beast or other animal: science only confirms this truth, it does not create it. All attempts to classify the unborn as more or or less of a person by an arbitrary trimester approach are no different than classifying persons as more or less human based on the color of their skin. Roe stands in the same place of opposition to the equality of man and the inalienable rights of life and liberty as Dred Scott and should likewise be repudiated.

In a speech at Edwardsville, Illinois, Lincoln reiterated that treating African-Americans as less than human had

consequences beyond the immediate issue of slavery:

> Now, when by all these means you have succeeded in dehumanizing the negro; when you have put him down, and made it forever impossible for him to be but as the beasts of the field; when you have extinguished his soul, and placed him where the ray of hope is blown out in darkness like that which broods over the spirits of the damned; are you quite sure the demon which you have roused will not turn and rend you? .... Our defense is in the preservation of the spirit which prizes liberty as the heritage of all men, in all lands, everywhere. Destroy this spirit, and you have planted the seeds of despotism around your own doors. Familiarize yourselves with the chains of bondage, and you are preparing you own limbs to wear them. Accustomed to trample on the rights of those around you, you have lost the genius of your own independence, and become the fit subjects of the first cunning tyrant who rises.

Collected Works, 3:95.

Roe, applying the rationale of Dred Scott against the unborn child, is no less of a threat to liberty. When once we exclude any human because of race or stage of development from the guarantees of life

and liberty found in the Declaration of Independence and thereby treat them as "property" or "potential life," we abandon the rule of law which protects men and women equally and substitute the rule of men, which picks and chooses among persons arbitrarily in deciding who will and who will not receive the protection of the law.

To overturn the rationale of Dred Scott required Constitutional Amendments and a Civil War. Even now, our nation struggles with the effects of discrimination against African Americans. To stamp out this injustice once again as it has appeared in Roe v. Wade against unborn men and women does not, as yet, require such measures. This Court must recognize the authority, indeed the duty, of the states to enact laws in support of a Declaration of Independence that guarantees life and liberty to all men. The Missouri statute

begins this process. The Eighth Circuit Court of Appeals has erred in its analysis of the Missouri statute and must be reversed.

Respectfully submitted,

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