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

October Term, 1971

No. 70-18

JANE ROE, *et al*

Appellant,

vs.

HENRY WADE

Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS

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MOTION FOR LEAVE TO SUBMIT A BRIEF  
*AMICI CURIAE*  
BRIEF OF WOMEN FOR THE UNBORN ET AL  
IN SUPPORT OF APPELLEES

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**MOTION FOR LEAVE TO SUBMIT A BRIEF  
AMICI CURIAE**

To the Honorable, the Chief Justice and the Associate  
Justices of the Supreme Court of the United States:

Women For The Unborn et al respectfully move for  
leave to file the accompanying brief in these cases as *amici  
curiae*.

**INTEREST OF THE AMICI CURIAE**

The interest of the organizations and the persons listed  
below as *amici curiae* in this case arises from the fact that  
there are appearing before this Court *amici curiae* and other  
groups of women who are advancing the rights of women  
alone. We are stressing the rights of the unborn without over-  
looking the rights of the mothers. This brief will treat the  
psychological, medical and other factors involved as well as  
legal points. However, it will not duplicate material presented  
in other briefs.

Respectfully submitted,

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September 17, 1971

**BRIEF OF WOMEN FOR THE UNBORN ET AL**  
**AS AMICI CURIAE**

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**SUMMARY OF ARGUMENT**

Women have traditionally been the guardians of life.

It is to plead on behalf of life that we have prepared this brief. As women and mothers, we ask the Justices of the Supreme Court to consider our views, which can be summed up in the following four statements:

(1) The unborn child is a distinct individual. Modern genetics has confirmed scientifically what women have long felt intuitively—the presence of another human life, a life to be revered and protected.

(2) Many women who seek abortions are acting from an overpowering but temporary fear. Most of these women really desire to have their baby, and they will later be glad that their effort to secure an abortion was unsuccessful. In order to react constructively to the stresses and tensions of pregnancy, women need the support of society—not the address of the nearest abortion clinic.

(3) While abortion is an easy solution for many social problems, it is not a true solution for any. Its availability may prevent more constructive solutions from emerging.

(4) The social consequences of unlimited abortion are as yet unknown. Furthermore, both the moral and the legal arguments for abortion-on-demand have attained popularity only within the last few years. Since the test of time has not been applied, should a final decision be made which would extend abortion-on-demand to the entire country?

## ARGUMENT

### I

#### The unborn child is a distinct individual.

In August 1963, in a pamphlet entitled “Plan Your Children For Health and Happiness,” Planned Parenthood had this to say about abortion:

“An abortion requires an operation. It kills the life of a baby after it has begun. It is dangerous to your life and health. It may make you sterile so that when you want a child you cannot have it. Birth control merely postpones the beginning of life.”<sup>1</sup>

Aside from the medical factors, we ask the Court to note the clear statement—made in the manner of a truism—that the life involved is a “baby” and that what abortion does is to “kill the life of a baby after it has begun.” The moral distinction between postponing life and taking human life after it has begun could not be put more succinctly.

We realize that the pro-abortionists are often acting out of mercy. They want to save the mother—and occasionally the child—from future suffering. But is that sufficient reason to kill?

The answer to that depends upon what we are killing. When a dog or a cat is suffering terribly, we kill it out of mercy. When a man or a woman is suffering terribly, we do not kill. Why? Not because we think less of a man than of a cat, but because we think more. We believe that the man has a certain infinite dignity we should respect.

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1) Although Planned Parenthood in 1971 looks more favorably on abortion, we believe this 1963 quotation is important because of ad hominem arguments that are frequently made against people opposing abortion. “Abortion kills the life of a baby after it has begun.” If this is only an unusual Roman Catholic religious belief, would it follow that in 1963 Planned Parenthood was dominated by the Catholic Church? Or would it follow that Planned Parenthood was ignorant of modern medicine? Is either hypothesis a plausible one? Like other important social questions, the abortion question must be settled on the evidence itself—not on speculation about the motives or religion of people on either side.

Dr. Mortimer J. Adler, a leading authority on the history of moral questions, wrote the following on February 22, 1970:

“The classical debate over abortion always centered on its relation to homicide. . . . As far back as ancient Greece, the prevailing opinion seems to have been that the destruction of a human life free of personal guilt was murder, and that the distinction between a human child within and a human child outside the womb did not affect this principle.”<sup>2</sup>

According to Dr. Adler, the only unsolved question concerned the existence of human life in the very early stages of pregnancy.<sup>3</sup> Until modern times, no certain answer could be given to that question since the necessary biological information was not available. But, in Dr. Adler’s words, “the advances in medical knowledge seems to have had only one relevant effect: everything we now know about the chemical structure of the genes and their relation to life seems to indicate that the embryo is a fully potential human being from

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2) The February 22, 1970 quotations from Dr. Adler are taken from his column in the Long Island Press.

3) Now that modern science has thrown light on this question, it should be noted that advocates of abortion are increasingly abandoning any distinction between early and late pregnancy.

Consider, for example, the position taken by New Yorkers for Abortion Law Repeal (Box 240, Planetarium Station, New York City, New York). During the 1971 New York legislative session, this organization lobbied extensively for a removal of that part of the new abortion law restricting abortion-on-demand to the first 24 weeks. In their informational material, New Yorkers for Abortion Law Repeal raised the question, “Isn’t there a possibility that after 24 weeks the fetus will survive?” and replied, “With recent developments in medical technology, it is rapidly becoming possible for a fetus to survive outside the uterus at ANY stage of development—but this is not adequate reason to forbid abortion.” (The emphasis on the word “any” was made by the abortion organization itself.)

We request the Court to note the two statements: first, that viability is becoming possible at any stage of development; second, that it makes no difference whatever.

the moment of conception. It is not surprising, therefore, that the proponents of abortion in the contemporary controversy tend to disregard the question of the human status of the embryo."

In considering the constitutionality of laws restricting abortion, is not the human status of the unborn child a significant consideration?

## II

### The woman is acting from fear.

Would it not be best to leave the abortion decision to the woman herself? After all, should not every woman possess the right to control her own body?

While these questions are sincerely asked, we believe they overlook two important factors. The first we have already discussed. A woman should have the right to control her own body, but the unborn baby is not just a part of her body.

But there is also a second factor. Let us consider the pregnant woman herself.

A woman who is pregnant experiences periods of great stress. Like most people at moments of high tension, she is often tempted to do certain things which she would not contemplate for an instant under normal circumstances. The fear within her is so overpowering that all long-range considerations fade away.

We do not want to overstate our case. Rarely does the fear result in suicide or permanent psychological damage to the woman. (In fact, suicide in the pregnant woman is about 1/6th the rate seen in nonpregnant women of the same age.<sup>4</sup>) Nevertheless, the temporary fear is great enough to

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4) Hilgers, T. and Shearin, R., Induced Abortion: A Documented Report (Written Presentation to Minnesota State Legislature, January 1971), p. 17.

bring many of us to near-panic. On such occasions, we can actually do what we really do not want to do—unless there is someone who will both restrain us from taking “the easy way out” and help us to face our fear in a constructive way.

What we are describing is something very common, as is pointed out by Gardiner in Williams Obstetrics, 13th edition, 1966. Here is what he says:

“It is not unusual (however) for women who will become good mothers, or those who have already demonstrated their excellent maternal qualities with their older children, to react initially to the diagnosis of pregnancy with resentment, frustration and depression, only to express strong, genuine, positive feelings of acceptance as the pregnancy advances and fetal movements appear.”<sup>5</sup>

A Norwegian study by P. Kolstad<sup>6</sup> confirms Gardiner’s statement. Kolstad reports on 113 women who were refused a legal abortion and who then carried the pregnancy to term. 84% were later glad that the pregnancy was not terminated, 9% were uncertain, and only 7% were discontented.

(Incidentally, this study, as well as a similar study by Hook<sup>7</sup> in Sweden, disputes the claim that a woman refused a legal abortion will simply go elsewhere. In the Swedish study, which involved 249 women refused a legal abortion,

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5) Eastman, N. and Hellman, L., William’s Obstetrics (Meredith Publishing Company), p. 345.

6) Kolstad, P., “Therapeutic Abortion: A Clinical Study Based Upon 968 Cases From a Norwegian Hospital, 1940-53” in the Proceedings of the Scandinavian Gynecological and Obstetrical Society, Vol. 36: Supplement 6, 1957.

7) Hook, K., “Refused Abortion: A Follow Up Study of 249 Women Whose Applications Were Refused by the National Board of Health in Sweden,” Proceedings of the Scandinavian Psychiatric Association, Vol. 39: Supplement 168, 1963.



86% did not go elsewhere and carried their pregnancy to term.)

If so many women seeking an abortion really want their children, why do they act in this way? Gardiner describes the emotional reactions of the women involved as "so real and life-threatening" that they "reject the existence of the pregnancy before they, themselves, are engulfed and destroyed." He refers to this phenomenon as a "spell" of "distorted thinking and reasoning."<sup>8</sup>

In other words, a pregnant woman often feels like a person with claustrophobia. The walls are closing in. There is an overpowering desire to escape. Just as a man with claustrophobia may try to leave a moving train, although he will later be glad that someone restrained him, so a woman may seek an abortion but afterwards rejoice that she has been allowed to give birth.

If all this is true, is it really merciful for our society to step aside?

On September 9, 1971, an article in the New York Times expressed concern about young girls arriving in New York for abortions.<sup>9</sup> According to the article, some taxicab drivers were taking advantage of them. Because of the strain the young girls were under as well as their relative inexperience, they could not protect themselves from the excessive prices charged by unscrupulous drivers.

Imagine! Because she is young, fearful, and alone, society is afraid to leave to the girl herself the decision about the proper taxicab to take from the airport. But society is

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8) Eastman and Hellman, op. cit., p. 346.

9) "Cabbies Accused of Fleecing Abortion-Case Women," The New York Times, p. 87.

now asked to let that same girl face alone<sup>10</sup> the most awesome decision of all—whether to take the life within her or give birth to her child.

As women,<sup>11</sup> we believe the state laws restricting abortions protect both thousands of unborn babies and thousands of mothers. Therefore, we respectfully ask the Justices of this Court not to strike them down.

---

10) It is sometimes said that the abortion decision would be left to the woman and her doctor.

While this might have some validity in cases of therapeutic abortion, does it apply to abortions performed for economic and social reasons—not for medical reasons? Since a medical judgment is not involved, the doctor's role in the decision for a socio-economic abortion is likely to be no greater than the bus driver's role in a woman's decision to take a bus trip to Chicago. While the driver is needed as an instrument, would one be justified in claiming that the decision for such a journey had been made by the woman and her bus driver?

Forgetting that medical factors are not involved, the argument is sometimes raised that the prohibition against socio-economic abortions interferes with a doctor's right to practice medicine as he judges best. In reality, socio-economic abortions have nothing to do with medicine—any more than piercing the ears or operating on the nose for reasons of facial beauty are connected with medicine. A socio-economic abortion does not improve the woman's health. Needless to say, it certainly does not improve the health of the child.

11) How representative of American women are the views we are expressing? According to a Harris Poll of June 1970, 55% of American women opposed abortion-on-demand, while only 37% favored it. Opposition to abortion crossed religious lines, as the following breakdown indicates:

<u>Abortion-On-Demand</u>	<u>Approve</u>	<u>Disapprove</u>	<u>Not Sure</u>
<u>Total Population</u>	40%	50%	10%
By Religion:			
Protestant	39%	49%	12%
Catholic	30%	64%	6%
Jewish	71%	18%	11%

The easy solution of abortion

discourages more constructive solutions.

Even if one overlooks the biological evidence concerning the unborn child, or the psychological testimony that most women seeking to take the life of their unborn baby, like most persons seeking to take their own life, desire to be stopped by someone, is abortion really a satisfactory solution to any social problem?

Will the availability of the easier abortion "solution" discourage our society from seeking deeper and more permanent solutions?

Such a fear appears to lie behind the opposition to abortion-on-demand within the black community. Despite assurances by abortion advocates, many members of the black community seem to suspect that numerous abortion clinics in ghetto areas could end up as the "white man's" solution to the problems of poverty and race.<sup>1 2</sup>

When the poor cry out for bread, what response will they receive? The more difficult response—an equitable distribution of society's resources? Or the easier response—a list of centers where abortions can be performed on those who would not seek them except for their desperate poverty? While these two responses are not mutually exclusive, to what extent will the availability of the second lessen society's incentive to seek the first?

Sponsors of non-abortional family planning have also expressed concern that reliance on abortion could lessen the effectiveness of their efforts.<sup>1 3</sup> Could abortion-on-demand adversely affect other programs which require a commitment

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12) According to the 1970 Harris Poll, 57% of the black community opposed abortion-on-demand, 29% favored it, and 14% were uncertain.

13) "Consultants' Report On Abortion," British Medical Journal (May 30, 1970), p. 534.

of society's resources—e.g., programs to assist the unwed mother or efforts to provide easily accessible counseling services for all women who need such support in order to respond constructively to the anxieties they experience during pregnancy?

Perhaps these fears about the adverse social effects of easy abortion will turn out to be unfounded. At the moment, however, that is far from certain. Until some kind of definite evidence is available concerning the social pattern that is emerging in those states which have removed all restrictions on abortion, should a final decision be made which would extend abortion-on-demand to the entire country? For if easy abortion does indeed produce such undesirable social effects, would this not be a ground in itself for state regulation of the practice?

If a verdict of unconstitutionality is reached concerning state laws which protect the unborn child and the mother herself from an immediate decision to terminate life, then the legislative discussion is over. If these laws are held to be constitutional, their wisdom will continue to be debated in our state and national legislatures.

If any doubt exists, would it not be better to allow the discussion to continue?

On behalf of the unborn child. . .the mother. . .and society itself. . .we ask the Court to preserve the right of the state to protect unborn human life.

## CONCLUSION

For the reasons stated herein, Women For The Unborn *et al* respectfully submit that the statutes challenged herein should be sustained on the grounds that permissive abortion constitutes an infringement on the rights and interests of women as well as of unborn children.

Respectfully submitted,

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