

No. 88-605  
In The  
Supreme Court of the United States  
October Term, 1988  
WILLIAM L. WEBSTER; STATE OF MISSOURI, *Appellants*,  
v.  
REPRODUCTIVE HEALTH SERVICES; 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 AMICUS CURIAE OF THE HOLY ORTHODOX CHURCH

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The Holy Orthodox Church respectfully submits this brief amicus curiae on behalf of itself and its members. [1]

### **INTEREST OF AMICUS CURIAE**

The Holy Orthodox Church was founded by Jesus Christ and the Apostles, and bears witness to that continuous and unbroken faith. [2] The precepts of the Orthodox Christian faith mandate the protection of innocent human life, especially that of unborn children. The Church regards abortion as murder, and as such, takes a very active role in opposing legalized abortion. That the issue of abortion has both a moral and a legal dimension to it, is indisputable. However, this cannot in any way be equated to an assertion that the two aspects are disparate, or unrelated. Rather, the two have historically been intertwined; it must be recognized that laws have traditionally been positive expressions of moral norms.

The Framers of the Constitution discerned a divine presence not only in daily living, but as reflected in the Constitution itself. "It is impossible for any man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stages of the revolutionary." [3] That is, a law must of its very nature have a moral component to it, which cannot be divorced from the law itself.

Legal precepts, particularly those of constitutional proportions, simply cannot be judged in a vacuum. This notion not only predates the Constitution; [4] it is at the very heart of our civilization. The foundations of our morality can be found in the dawn and early morning light of the Judeo-Christian tradition, of which the Orthodox Church is a unique custodian. From its inception nearly two thousand years ago, it has never deviated from its condemnation of abortion, based on numerous scriptural references and the teaching of the Holy Fathers of the Church. The Church regards the *Roe v. Wade* decision as a gruesome turn on the road of judicial activism, having resulted in a holocaust which has claimed at least twenty million innocent lives. [5]

### **STATEMENT OF THE CASE AND STATEMENT OF FACTS**

Amicus curiae adopts the statement of the case and the statement of the facts as set out in the Appellants' Brief.

### **SUMMARY OF ARGUMENT**

In this case, the Holy Orthodox Church seeks to restore to our nation's law the highest principle which a civilized society can espouse—the recognition that all human life is sacred. In *Roe v. Wade*, 410 U.S. 113 (1973), the Supreme Court relied heavily upon its presentation of historic Christianity's teaching and practices. The assertions made in *Roe* were erroneous, and have no foundation in the church's traditions. Rather than being ambivalent, or even condoning abortion, as suggested by the *Roe* Court's opinion, historic Christianity has always condemned abortion as murder, without regard for any distinctions as to fetal development or viability.

The *Roe* Court also blurred the factual question of when life begins with the distinct legal question of what constitutional value attends to that life. The resulting confusion has tied the hands of legislators, and elevated abortion to the status of a near-absolute right. Unless this Court takes judicial notice, the factual question of when life begins is properly a subject for legislative findings. The strictly legal question of a life's constitutional value is the clear issue before this Court, as the State of Missouri has made an appropriate factual determination.

Science and history both mandate a conclusion that human life and constitutional personhood are coextensive, and any other result is without foundation in American jurisprudence. Consequently, the Holy Orthodox Church urges this Court to overrule *Roe v. Wade*, and accord full constitutional protection to all human life beginning at conception.

## **ARGUMENT**

### **I. THIS IS AN APPROPRIATE CASE IN WHICH TO RECONSIDER *ROE v. WADE***

In *Roe v. Wade*, 410 U.S. 113 (1973), and in subsequent cases, this Court has never reached the critical legal and public policy issue, that of when life begins. *Id.* at 159. However, for constitutional purposes, it is entirely appropriate for this Court to undertake to construe the term "life" as it appears in both the Fifth and Fourteenth Amendments. [6] In the absence of a judicial determination, such matters have traditionally been committed to the political processes. Unfortunately, the Court has nonetheless proceeded to preclude any legislative determination of the question. *Akron v. Akron Center for Reproductive Health*, 462 U.S. 416, 444 (1983).

This has created the confusing and circular assertion that life and personhood are unrelated, but nonetheless it is impermissible for legislatures to make findings as to when life begins. Unlike any other factual question, the political processes are now forbidden from employing the fruits of scientific research. If elected officials are to be prohibited, as a matter of law, from making necessary and proper factual findings, then this Court must determine for purposes of the Constitution, whether or not life is present in an unborn fetus. The State of Missouri has undertaken to make such a determination, and to address the merits of this case, this Court must make a ruling upon the validity of that assertion. Even though the question of when life begins may be difficult, [7] that does not remove the necessity of a just and proper judicial disposition of this case.

The Court has elevated abortion above all other constitutional rights; in practice, it may not be restricted, even if a life is indeed present. Unlike other constitutional rights, abortion need not be balanced against competing governmental interests. The implication is that the right to an abortion is more central to the tradition of individual liberty in America than the cherished rights of free speech and religion.

The Missouri statute at issue here presents an important opportunity for this Court to resolve the ambiguities created by previous decisions, and clarify the precise relationship between human life and constitutional personhood. The Court need not make a ruling on the factual question of when life begins; indeed, this is properly left to legislatures and trial courts. However, it is imperative that there be a clear statement of the constitutional value of human life, *whatever* point science indicates it begins. If personhood does not attach until birth, then it is crucial to have guidance as to the legal status of pre-natal human life. The instant case frames the issue as clearly as is possible.

### **II. *ROE v. WADE* WAS WRONGLY DECIDED AND OUGHT TO BE OVERRULED**

Amicus does not suggest to this Court that the theology or canons of the Orthodox Church, or of any other religious body, should form the basis of American constitutional law. However, in its lengthy historical exegesis, the *Roe* Court sought to show that abortion was philosophically and morally grounded in the Judeo-Christian tradition. To the extent such a perception is the foundation of *Roe*, the Orthodox Church bears an undivided witness to the fact that it is a perception which is utterly inconsistent with the experience of historic Christianity.

In the early centuries of the Church, its moral traditions and teachings were universally embraced, holding sway over almost the whole of Europe, the Middle East, and northern Africa, from Hadrian's Wall to the frontiers of the Persian Empire. Though this unanimity

was later lost, the divergent moral strands of western thought, including Anglo-American jurisprudence, ultimately trace their lineage to this rich heritage.

### **A. The Court's Finding in *Roe v. Wade*, That Abortion is Consistent With Historic Moral Practices, is Erroneous**

The *Roe* Court relied heavily upon the contention that "Christian theology and canon law came to fix the point of animation at 40 days for a male and 80 days for a female, a view that persisted until the 19th century," and that "there was otherwise little agreement about the precise time of formation or animation." 410 U.S. at 134. The Court apparently found that Aristotle's three stage theory of life formed the basis of Christianity's beliefs, and "came to be accepted by early Christian thinkers." *Id.* at 133, n.22. The implicit conclusion is that the ancient Christian Church did not consider abortion in early pregnancy to be the taking of a human life. With all due respect to this Honorable Court, such was simply not the case.

Early Christian thought was not in any sense comparable or equivalent to prior Jewish or Greco-Roman traditions. The Church's teaching represented a significant departure from Aristotelian thought, and from the beginning regarded abortion as abhorrent and an abomination before God. The biologically erroneous Aristotelian view was rarely alluded to, and even in such cases where mention was made of the attempted distinction between "formed" and "unformed" fetuses, it was for the purposes of reiterating its moral irrelevance. To the extent that some western Christian writers espoused certain elements of Aristotelian philosophy, they must be regarded as rather exceptional scholastic forays, whose basic premises and ultimate results have now been conclusively demonstrated to be false. The Christian Church, from its inception, expressed a distinct and fundamental horror of abortion, at whatever stage of pregnancy, and considered it to be the killing of a human being.

#### **1. Early Christian Writings, and the Fathers of the Church, All Condemned Abortion as Murder**

Among the most highly regarded of ancient Christian writings is the *Didache*, which dates from the late first century. [8] Its teaching is unambiguous: "Do not murder a child by abortion or kill a newborn infant." *Id.* at II, 2. This is echoed in another didactic writing universally esteemed in the ancient Church, the *Epistle of Barnabas*, from the early second century: "Never do away with an unborn child or destroy it after its birth." *Id.* at XIX, 5.

The writings of the Fathers of the Church and other authorities further attest to the unanimity with which abortion was condemned. Among the earliest was the philosopher and apologist Athenagoras of Athens, who wrote to the Emperor Marcus Aurelius (c.177) to defend Christians against false charges of murder: "What reason would we have to commit murder when we say that women who induce abortions are murderers, and will have to give account of it to God?" [9] St. Basil the Great (c.330-379) was unequivocal: "A woman who deliberately destroys a fetus is answerable for murder." [10] St. John Chrysostom (c.345-407) who in his famous homilies railed against men who secured the abortions of their illegitimate offspring, called their actions "even worse than murder." Of such men who impelled women to have abortions, he said, "You do not let a prostitute remain a prostitute, but make her a murderer as well." [11]

Finally, Canon 91 of the Quinisext Ecumenical Council (691 A.D.), decreed that people "who furnish drugs for the purpose of procuring abortion, and those who take fetus-killing poisons, they are made subject to the penalty prescribed for murderers." The same canonical position along with the opinions of individual Church Fathers, were compiled in the *Photian Collection*, which was adopted as the official ecclesiastical law book of the Orthodox Church in 883 A.D.

#### **2. The Early Church Recognized That Life Begins at Conception, and Rejected Distinctions Based Upon Fetal Development or Viability**

The *Roe* Court observed that there was "little agreement about the precise time of formation or animation.

There was agreement, however, that prior to this point the fetus was to be regarded as part of the mother, and its destruction, therefore, was not homicide." 410 U.S. at 134. This assertion has no basis in the practices or theology of historic Christianity.

Among the earliest testimonies that fetal development was irrelevant is that of St. Basil the Great, who wrote that "any hairsplitting distinction as to its being formed or unformed is inadmissible with us." [12] He also condemned suppliers of abortifacients, regardless of the stage of pregnancy: "Those who give potions for the destruction of a child *conceived* in the womb are murderers, as are those who take potions which kill the child." [13]

St. Basil's brother, St. Gregory of Nyssa (c.335-394), saw the fetus as a complete human being from the time of conception, and specifically rejected theories based upon formation or quickening: "There is no question about that which is bred in the uterus, both growing, and moving from place to place. It remains, therefore, that we must think that the point of commencement of existence is one and the same for body and soul." [14] Even Tertullian of Carthage (c.160-c.230), a prominent Latin ecclesiastical writer who seemed to accept the formed/unformed distinction as a biological matter, dismissed its moral importance: "Abortion is a precipitation of murder, nor does it matter whether or not one takes a life when formed, or drives it away when forming, for he is also a man who is about to be one." [15]

Though less specific, Holy Scripture also recognizes that an unborn child's life is sacred, and begins no later than conception: "Before I formed you in the womb, I knew you, and before you were born I consecrated you; I appointed you a prophet to the nations." *Jeremiah* 1:5, 6. [16] Also noteworthy is St. Luke's use of the same Greek word, *brephos* (baby), for both the unborn St. John the Baptist (*Luke* 1:44) and the newly-born Christ child (*Luke* 2:12). Even more indicative are those examples, in both Old and New Testaments, where God enters into a direct personal relationship with a specific individual before birth, by "consecrating," "appointing," "calling," and //setting apart" the unborn child through His grace. [17] This testifies to the Bible's view that the fetus is not only a human being but a person. That this understanding of an unborn person's receptivity to divine grace extends back to conception is further evidenced by the ancient practice, as formalized in the Church calendar, of celebrating not only the conception of Christ (Annunciation, March 25), but that of His mother (December 9), and St. John the Baptist (September 23).

The canon law of the ancient Church, still in effect in the Orthodox Church today, is entirely consistent with the foregoing exposition of theological, patristic, and scriptural evidence. The first canonical pronouncement specifically on abortion was that of the regional Council of Elvira, Spain (c.303 A.D.), imposing life-long excommunication. In 314-315 A.D., the regional Council of Ancyra adopted Canon 21:

Regarding women who become prostitutes and kill their babies, and who make it their business to concoct abortives, the former rule barred them for life from communion, and they are left without recourse. But, having found a more philanthropic alternative, we have fixed the penalty at ten years, in accordance with the fixed degrees.

The reference to prostitutes attests to the Fathers' recognition that abortion was only resorted to by women in the most desperate social circumstances. Three centuries into the Christian era, abortion was unthinkable to the broad mass of Christian people; canon law was adopted which lightened the penalty imposed upon those most in need of mercy. More importantly, the "former rule," imposing life-long excommunication, is Apostolic Canon 66, which pertains to homicide. [18] The fact that for centuries the Church treated abortion at any stage of pregnancy as homicide, without regard to fetal development, is indicative of the illusory nature of the formed/unformed distinction.

In addition, the *Roe* Court's reliance upon the writings of Augustine of Hippo (354-430) and Thomas Aquinas (1225-1274), as indicative of early Christian thought was misplaced. [19] While concepts such as "ensoulment" or "quickening" gained some currency in certain ecclesiastical circles beginning in the fifth century, this serves only to underscore the danger inherent in drawing broad-based conclusions based upon excerpts of writings from selected theologians. Augustine never laid claim to being infallible, nor did he presume to speak for the entire Church. [20] In fact, in the conclusion of his final treatise, he offered his opinions humbly to the judgment of the Church: "Let those who think that I am in error consider again and again carefully what is here said, lest perchance they themselves may be mistaken. And when, by means of those who read my writings, I become not only wiser, but even more perfect, I acknowledge God's favor to me." [21]

However, there is no doubt that despite their misunderstanding of fetal development, they sought to protect the fetus and considered its destruction homicide. We can, with the benefit of historical and scientific hindsight, attribute the misapplication of a correct impulse to a biological error stemming ultimately from Aristotle. The *Roe* Court adopted this error as the basis of its analysis of the moral acceptability of abortion over the past two thousand years; but as would be the case with a hypothetical body of jurisprudence based on

the Ptolemaic geocentric system or the phlogiston theory of combustion, this Court should not hesitate to look beyond what we now understand to be a factual error, albeit a persistent one.

Historic Christianity recognized conception as the time at which life and soul were united, and regarded abortion at any stage of pregnancy as homicide. Though the Orthodox Church, for historical reasons relating to its organizational and doctrinal continuity with historic Christianity, is more acutely aware of this fact, this should not be taken as sectarian pleading. Rather, it is a unique witness to an older and sounder tradition that is our common heritage. The fact that the theological writings of Christian antiquity were formulated by men with little understanding of biology, but whose views are entirely compatible with our modern understanding, is further testament to their moral perspicacity.

### **B. Human Life Begins at Conception**

The incorrectness of the *Roe* Court's assertion that there has been a historic lack of consensus on abortion has been demonstrated in section II A, *supra*. Even so, it is not the judiciary's proper role to evaluate consensus. *The Federalist No. 78* (A. Hamilton.) The legal and social morass resulting from the *Roe* decision is in large part a product of the confusion over what was actually decided. The *Roe* Court blurred the strictly *factual* question of when life begins with the quite distinct *legal* determination of what constitutional value attends to that life.

Modern science has borne out the prescient wisdom of the Holy Fathers of the Church, that life begins at conception, and at no other arbitrary or scholastically derived juncture. [22] However, this Court need not make a scientific determination of when life begins, any more than it was necessary in *Roe* to determine when a fetus is "viable;" this is a matter which is properly committed to the political processes. The Missouri legislature has undertaken to make findings of fact, as is appropriate in matters of social and economic regulation. It is improper for the judiciary to enjoin the political processes from determining the factual basis for proposed legislation. Traditionally, the federal courts give the greatest possible deference to legislative determinations with respect to such questions. [23]

This Court need only interpret the term "person," and thereby determine the constitutional value of unborn human life. Unless this Court should foreclose the option by taking judicial notice, or adopting a constitutional definition of "life" embracing a manifest legal fiction, the State of Missouri is entitled to make a judgment as to when life begins. The judiciary's role is to determine the constitutional value of that life.

### **C. A Human Life is a "Person" for Purposes of the Constitution**

To the extent that a construction of the term "person," as used in the Constitution, was made in *Roe*, it was done on the basis of the facts as presented and understood by the Court as that time. Amicus respectfully submits that the factual underpinnings of *Roe v. Wade* were erroneous, or at best incomplete. Reliance upon Aristotle and other selected writers from antiquity do not validate the *Roe* Court's conclusion that the morality of abortion has traditionally been ambivalent. As shown *supra*, some theorists have had erroneous views of the factual question of when life begins, but there has been no divergence as to the legal and moral value of that life once it has been established.

In *Roe* the Court went to some lengths to demonstrate that most references to "persons" in the Constitution had solely a postnatal connotation. However, this begs the question as to what "person" means in the Fourteenth Amendment. It must also be observed that most constitutional references to persons only dealt with adults, and in the original intent of the document, only white males. However, again, this still does not speak to the Fourteenth Amendment, which obviously was intended to vindicate the rights of black children as well as adults, and has subsequently been applied to protect the rights of women as well as men. There is no basis in history, jurisprudence, or simple logic to justify specially exempting the unborn from the scope of the Amendment.

Furthermore, the appropriate constitutional definition of "person" has already been made by this Court. Justice Douglas, writing for the Court, found that illegitimate children are "persons," on the grounds that:

They are humans, live, and have their being. They are clearly "persons" within the meaning of the Fourteenth

Amendment. *Levy v. Louisiana*, 361 U.S. 68, 70 (1968).

Unborn children clearly are human, do live, and have their being, in accordance with Justice Douglas' perceptive holding. An unborn child has as little control over its status as an illegitimate child, and is far more vulnerable. They are "persons" under the Constitution, and there is no rational basis whatsoever for creating an arbitrary or scholastic distinction so as to exclude them.

Another critical distinction which the *Roe* Court ignored was the Fourteenth Amendment's differentiation of citizenship and personhood:

No State shall make or enforce any law which shall abridge the privileges or immunities of *citizens* of the United States; nor shall any State deprive any *person* of life, liberty, or property, without due process of law; nor deny to any *person* within its jurisdiction the equal protection of the laws. [24]

As understood by the Framers of the Fourteenth Amendment, citizenship relates to political rights, while personhood deals with the more basic rights inherent in all human beings. *See, e.g., Bishop, The Privileges or Immunities Clause of the Fourteenth Amendment*, 79 Nw. U. L. Rev. 142, 151-153 (1984). The latter is a much broader classification than the former, encompassing both citizens and non-citizens; all citizens are persons, but the reverse is not true. Even a decision as monstrous as *Dred Scott v. Sanford*, 60 U.S. (19 How.) 393 (1857), conceded that slaves were persons under the Constitution, but denied them the privileges of citizenship.

Therefore, the many references to "persons" cited by the *Roe* Court in support of its finding of purely postnatal application were, contextually, referring to persons who were also citizens. [25] The references to "persons" relied upon by the *Roe* Court were made in political contexts, such as eligibility to vote or to hold political office, which of course would preclude *all* persons under a certain age, whether born or not. Such strict textual interpretation, done without regard for historical meaning and context, is devoid of constitutional justification.

In addition, this Court had already, some eighty-seven years prior to *Roe*, recognized corporations as "persons" under the Fourteenth Amendment. *Santa Clara County v. Southern Pacific Railroad Co.*, 118 U.S. 394, 396 (1886). That corporations are not male, female, black, white, pre-natal, nor post-natal, is transparently obvious. There is also no conflict between the recognition of personhood, but simultaneous denial of citizenship, as corporations cannot vote nor hold political office. Thus, while *Santa Clara* is entirely consistent with the Fourteenth Amendment, *Roe* is not. The distinctions made in *Roe* and its progeny are artificial and have no basis in the adjudication of constitutional claims. This is made readily apparent through attempting to reconcile *Santa Clara* and *Roe*. Reading them together creates a result which is "hauntingly Orwellian—something can be a person without being human, and can be human without being a person. [26] No civilized society can possibly endorse such a conclusion.

The instant case clearly frames the contradictions and ambiguities precipitated by the *Roe* decision, and Amicus urges this Court to resolve them by reaffirming the moral, social, and legal recognition of the value of unborn human life.

## CONCLUSION

The historic morality which forms the foundation of American constitutional thought is firmly grounded in the Judeo-Christian tradition. That tradition has unambiguously recognized that life begins at conception, and that abortion is murder. The notion that abortion on demand is an inherent right which cannot be denied, is of recent origin. Samuel Adams recognized that such innovations should be resisted: "If the liberties of America are ever completely ruined,... it will in all probability be the consequence of a mistaken notion of *prudence*, which leads men to acquiesce in measures of the most destructive tendency for the sake of present ease." [27]

The "present ease" of abortion on demand does not, and cannot, alter the historical and moral truth that "universal life would proceed according to nature if we would practice continence from the beginning instead of destroying, through immoral and pernicious acts, human beings who are given birth by Divine Providence." [28] The assembled jurisdictions of the Holy Orthodox Church in the United States speak with one voice in urging this Court to recognize the sanctity of human life, and reverse the decision of the Court of Appeals.

Dated this 21st day of February, 1989.

Respectfully submitted,

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## Endnotes

\*Counsel of Record. Orthodox Christians for Life is a National with 700 members in the US, Canada, and several other countries. We were organized in 1986 and are still active and coordinate the annual Orthodox presence at the March for Life in Washington DC on or about Jan. 22.

1. Counsel for Amicus has obtained the oral consent of both parties to this case. Written consent shall be filed with the Clerk of the Court immediately upon its receipt.
  2. The Holy Orthodox Church includes all major Orthodox Christian groups in the United States: Albanian, American, Antiochian, Bulgarian, Carpatho-Russian, Greek, Romanian, Russian, Serbian, and Ukrainian. Regardless of the jurisdiction, all Orthodox Christians share a unity of faith and tradition extending back almost two thousand years to the time of Jesus Christ and the Apostles.
  3. *The Federalist*, No. 37 (J. Madison). George Washington echoed this sentiment it would be peculiarly improper to omit, in this first official act, my fervent supplications to that Almighty Being, who rules over the universe, who presides in the council of nations, and whose providential aids can supply every human defect.... In tendering this homage to the great Author of every public and private good, I assure myself that it expresses your sentiments not less than my own.... No people can be bound to acknowledge and adore the invisible hand, which conducts the affairs of men, more than the people of the United States." Washington, *First Inaugural Address*, quoted in, Eliot, *American Historical Documents, 1000-1904*, at 226 (New York: P.F. Collier & Son Corp., 1938).
  4. See, e.g., John Locke, *Second Treatise on Civil Government*, ch. IV, secs. 22 and 23 (New York: Liberal Arts Press, 1952).
  5. This brief is filed with the blessings of: *The American Carpatho-Russian Orthodox Greek Catholic Diocese*: His Grace, Bishop Nicholas; V. Rev. Frank P. Miloro, Dean of Christ the Savior Orthodox Theological Seminary; *The Antiochian Orthodox Christian Archdiocese of North America*: His Eminence, Most Rev. Metropolitan Philip; Rt. Rev. Antun, Auxiliary Bishop; V. Rev. Peter E. Gillquist, Chairman of the Council of Coordinators, Antiochian Evangelical Orthodox Mission, and member, Worship and Evangelization Committee, National Council of Churches; V. Rev. Jack N. Sparks, Dean of St. Athanasius College; *The Greek Orthodox Archdiocese of North and South America*: Rt. Rev. Maximos, Bishop of Pittsburgh; Rev. Dr. Stanley S. Harakas, Archbishop Iakovos Professor of Orthodox Theology and Christian Ethics, Holy Cross Greek Orthodox School of Theology; Rev. Dr. Theodore Stylianopoulos, Professor of New Testament and Orthodox Spirituality, Holy Cross Greek Orthodox School of Theology, and member of the Central Committee of the World Council of Churches; Rev. Fr. George A. Alexson, Secretary-Treasurer of the Greater Washington Orthodox Clergy Council, and Pastor, St. Katherine's Greek Orthodox Church of Northern Virginia; *The Orthodox Church in America*: His Beatitude Theodosius, Archbishop of Washington, Metropolitan of All America and Canada; Rt. Rev. Peter, Bishop of New York and New Jersey; Rt. Rev. Dimitri, Bishop of Dallas and the South; Rt. Rev. Herman, Bishop of Philadelphia and Eastern Pennsylvania; Rt. Rev. Gregory, Bishop of Sitka and Alaska; Rt. Rev. Nathaniel, Bishop of Detroit and the Romanian Episcopate; Rt. Rev. Job, Bishop of Hartford and New England; Rt. Rev. Tikhon, Bishop of San Francisco; Rt. Rev. Mark, Acting Bishop of Chicago and the Midwest; V. Rev. Leonid Kishkovsky, Secretary of External and Ecumenical Affairs, and President-Elect of the National Council of Churches; V. Rev. John Meyendorff, Dean of St. Vladimir's Orthodox Theological Seminary, and Professor of Church History and Patristics; V. Rev. Daniel K. Donlick, Dean of St. Tikhon's Orthodox Theological Seminary; V. Rev. Joseph P. Kreta, Dean of St. Herman's Orthodox Theological Seminary; V. Rev. Thomas Hopko, Associate Professor of Dogmatic Theology, St. Vladimir's Orthodox Theological Seminary, and member, Faith and Order Commission of the World Council of Churches; V. Rev. John Kowalczyk, Adjunct Professor of Religious Education and the Christian Family, St. Tikhon's Orthodox Theological Seminary, and Pro-Life Coordinator of the Diocese of Eastern Pennsylvania; V. Rev. Vladimir Borichevsky, Professor of Moral and Pastoral Theology, St. Tikhon's Orthodox Theological Seminary; Rev. Fr. Alexander F.C. Webster, Senior Research Associate, Ethics and Public Policy Center, Washington, D.C. (for identification only); Holy Transfiguration Orthodox Monastery, Elwood City, Pennsylvania; Holy Dormition Orthodox Monastery, Rives Eaton, Michigan; *The Russian Orthodox Church in Exile*: His Eminence, Most Rev. Vitaly, Metropolitan of New York and Eastern America, First Hierarch of the Russian Orthodox Church in Exile; Most Rev. Anthony, Archbishop of Los Angeles and Southern California; Most Rev. Antony, Archbishop of San Francisco and Western America; Most Rev. Laurus, Archbishop of Syracuse and Holy Trinity Monastery, Rector of Holy Trinity Orthodox Seminary, and Abbot of Holy Trinity Orthodox Monastery, Jordanville, New York; Rt. Rev. Alyphy, Bishop of Chicago, Detroit, and Midwest America; Rt. Rev. Hilarion, Bishop of Manhattan; Rt. Rev. Daniel, Bishop of Erie and Protector of the Old Rite; Rev. Fr. Alexey Young, Editor of 'Orthodox America'; Rev. Fr. Gregory Williams, Editor of 'Living Orthodoxy'; *The Serbian Orthodox Church in the United States and Canada*: His Grace, Bishop Christopher; *The Ukrainian Orthodox Church of America and Canada*: His Grace, Bishop Vsevolod.
- In addition, this brief is endorsed by: Orthodox Christians for Life—John Protopapas, Co-Founder and Chairman; Rev. Fr. Edward Pehanich, Co-Founder and Spiritual Advisor, and Diocesan Representative for the Carpatho-Russian Orthodox Greek Catholic Diocese; Valerie Protopapas, Educational Director, and Sanctity of Life Director for the Diocese of New York and New Jersey (OCA); and V. Rev. Gordon T. Walker, liaison to the Antiochian Evangelical Orthodox Mission. This brief is also endorsed by: Dr. Lewis J. Patsavos, Professor of Canon Law, and Dr. John Chirban, Professor of Psychology and Counseling, Holy Cross Greek Orthodox School of Theology; Dr. John Erickson, Professor of Canon law and Church History, St. Vladimir's Orthodox

- Theological Seminary; the Orthodox Christian Association of Medicine, Psychology, and Religion; the Orthodox Brotherhood of the United States; the National Association of Romanian Orthodox Women in America; and American Romanian Orthodox Youth.
6. "No person shall be ... deprived of life, liberty, or property, without due process of law..." U.S. Const. amend. V. "No State shall ... deprive any person of life, liberty, or property, without due process of law. . . ." U.S. Const. amend. XIV, sec. 1.
  7. *Roe v. Wade*, 410 U.S. 113, 159 (1973).
  8. Also known as *The Teaching of the Twelve Apostles*, it is a codification of the oral tradition handed down by the Apostles to their successors. Cf. *II Thessalonians* 2:15. It was called "scripture" by Clement of Alexandria (+c.215), and was recommended for catechists by St. Athanasius (c.297-373).
  9. Athenagoras, *Legation for Christians*, 6 *Patrologia Graeca* 969 (Paris: J.P. Migne ed., 1844-1865).
  10. St. Basil the Great, *Letters* CLXXXVIII, Canon 2.
  11. St. John Chrysostom, *Homilies in Romans*, XXIV. See also the authoritative treatise by Fr. John Kowalczyk, *An Orthodox View of Abortion*, (Minneapolis: Light & Life Publishing Co., 2d ed. 1979).
  12. St. Basil the Great, *supra* note 10.
  13. *Id.*, Canon 8 (emphasis supplied).
  14. St. Gregory of Nyssa, *On the Soul and the Resurrection*.
  15. Tertullian of Carthage, *Apology IX*.
  16. See also, *Job* 10:8, 9, 11; *Psalms* 139:13-16; *Ecclesiastes* 11:5; *Luke* 1:41-44.
  17. See, e.g., *Psalms* 139:13-16; *Isaiah* 44:2; *Isaiah* 49:1, 5; *Jeremiah* 1:5; and *Galatians* 1:15-16.
  18. Apostolic Canon 66 permitted penitents to return to communion only on their deathbeds. As the name suggests, an Apostolic Canon is a teaching received directly from the Twelve Apostles.
  19. 410 U.S. at 133 n.22.
  20. "If some have spoken imprecisely, or for some reason unknown to us, even deviated from the right path, but no question was put to them nor did anyone challenge them to learn the truth—we admit them to the list of Fathers, just as if they had not said it, because of their righteousness of life and distinguished virtue and their faith, faultless in other respects. We do not, however, follow their teaching in which they stray from the path of truth." St. Photius, *Letter to the Patriarch of Aquileia*, quoted in, Haugh, *Photius and the Carolingians*, 136-137 (Belmont, Mass: Nordland, 1975); and Archbishop Philaret of Chernigov, 3 *Historical Teaching of the Fathers of the Church*, 254-255 (St. Petersburg, 1882).
  21. Augustine of Hippo, *On the Gift of Perseverance*, ch. 68. See also, Fr. Seraphim Rose, *The Place of Blessed Augustine in the Orthodox Church* (Platina, California: St. Herman of Alaska Brotherhood, 1983).
  22. See, Subcommittee on the Separation of Powers, Senate Committee on the Judiciary, *The Human Life Bill*, S. 158, 97th Cong., 1st Sess. 7-13 (1981).
  23. *United States v. Carolene Products Co.*, 304 U.S. 144, 152-153 n.4 (1938).
  24. U.S. Const. amend. XIV, sec. 1 (emphasis supplied).
  25. 410 U.S. at 157.
  26. East and Valentine, *Reconciling Roe v. Wade*, in Horan, Grant, and Cunningham, *Abortion and the Constitution*, at 90 (Washington: Georgetown University Press, 1987).
  27. 2 *The Writings of Samuel Adams*, 287-288 (New York: G.P. Putnam's Sons, H.A. Cushing ed., 1904) (emphasis in original).
  28. Clement of Alexandria, II *Paedagogus*, ch. X, 96, I.