Amicus Curiae Brief in Support of Jane Roe:
American College of Obstetricians and Gynecologists, American Psychiatric Association, American Medical Women's Association, New York Academy of Medicine, and a Group of 178 Physicians

This brief was filed by Carol Ryan, Esq. Each of the 178 physicians signed individu- ally. All were medical school deans, department chairmen, or professors. One signer was Charles E. Gibbs, M.D., at the time president of the Texas Association of Obstetricians and Gynecologists.

Interest of Amici Curiae

The individuals whose names are appended hereto as amici curiae are deans and vice presidents of medical schools, heads of departments of obstetrics, gynecol- ogy and pediatrics in medical schools, practicing physicians and surgeons who are specialists in those fields, and other physicians and psychiatrists having a par- ticular interest in the subject matter of this brief. The organizations whose names are appended hereto are among the largest, oldest and most respected national organizations in the medical profession. These organizations are devoted to the promotion of the highest possible quality health care and it is toward that end that they join in this brief as amici. They include many leaders in the medical profes- sion and renowned teachers in medical schools. As teachers, they are impelled to seek to protect the right of their students—the future generations of doctors—to give their patients the benefit of knowledge acquired in the medical schools. As practicing physicians, amici are bound by oath to give their patients the benefit of the best medical knowledge. These physicians are concerned that the Texas anti- abortion law prevents them from fulfilling their sworn duties and responsibilities in the highest traditions of their profession. They believe that the Texas anti-abortion statute is wrong in principle, fundamentally unsound in the light of present day medical and surgical knowledge, and a serious obstacle to good medical practice. Amici believe that the restrictions imposed by the Texas statute on the performance of medically indicated therapeutic abortions interfere with the phy- sician-patient relationship and with the ability of physicians to practice medicine in accordance with the highest professional standards. Amici are also concerned with the burden the law places on physicians to interpret, at their peril, a statute whose meaning and scope are not clear. Accordingly, amici deem it appropriate to offer arguments with respect to this area of law which is of vital concern to them. The American Psychiatric Association is a non-profit, tax exempt, scientific and educational medical organization, comprised of those 18,783 qualified Doctors of Medicine who specialize as psychiatrists in the diagnosis, care and treat-ment of mental diseases and defects of the mind. Abortions are of prime interest to psychiatrists because pregnancy, childbearing, birth and abortions can have material effects upon the mental processes of patients requiring psychiatric diagnosis, evaluation and care.

The Board of Trustees of the APA on December 12–13, 1969, upon recommendation of the Committee on Psychiatry and Law, approved the following:

Position Statement on Abortion

A decision to perform an abortion should be regarded as strictly a medical decision and a medical responsibility. It should be removed entirely from the jurisdiction of criminal law. Criminal

penalties should be reserved for per- sons who perform abortions without medical license or qualification to do so. A medical decision to perform an abortion is based on the careful and informed judgments of the physician and the patient. Among other factors to be considered in arriving at the decision is the motivation of the patient. Often psychiatric consultation can help clarify motivational problems and thereby contribute to the patient's welfare.

Argument

I*. The Statute Is Unconstitutionally Vague.* Under Texas law, abortion is permitted only "for the purpose of saving the life of the mother." If, following the performance of an abortion, under this law, a physi- cian is brought to trial and the jury disagrees with the physician's interpretation of the meaning of these quoted words, the physician is liable to imprisonment for from two to five years in the penitentiary. This Court has declared that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessar- ily guess at its meaning and differ as to its application, violates the first essential of due process of law."

Under this standard the statute must fall, because amici respectfully submit that neither they, nor Dr. Hallford nor any other similarly situated physician receive proper notice from the statute of what acts and consul- tations in their daily practice of medicine will subject them to criminal liability. Amici contend that the phrase "for the purpose of saving the life" is so indefi- nite and vague that physicians must guess at its meaning and do in fact differ as to the meaning of the phrase. The word "save" has a broad range of possible mean- ings. The Random House Dictionary lists, inter alia, "to rescue from danger or possible harm...to avoid...the waste of...to treat carefully in order to reduce wear, fatigue, etc...." ...Life may mean the vitality, the joy, the spirit of existence, as well as merely not dying.

The possible interpretations of the statute range therefore from a test requiring imminence of death to one which would permit abortion if desirable to preserve an enjoyable life, i.e., a test under which the physician could consider the effect of pregnancy upon the quality of the patient's life and not merely upon the fact of life as not death. The statute forces the physician to decide at his peril whether a strict or liberal interpretation, or one in between, is the one intended by the statute. It forces him at his peril to make a decision which may be gainsaid by a jury of non-peer laymen whose guess will be as good as his as to the meaning of this statute. In sum the statute fails to provide the certainty required of penal laws. Physicians have a professional obligation to preserve and advance the health of their patients.

Assuming arguendo that the statute should be read as requiring a judgment by the physician that without an abortion the patient will die, the stat- ute conflicts with the physician's obligation because it commands him to ignore all the health interests of his patient with respect to termination of pregnancy unless he can predict that she will die without an abortion. Moreover, the statute does not tell the doctor what factors he may properly consider in making this predic- tion; nor how certain his prediction must be before he may decide to terminate his patient's pregnancy; nor how soon she must die if she does not have an abortion.He must guess whether the statute allows abortion only if his patient would otherwise die before delivery or if it is sufficient that her life would be significantly shortened thereafter. If a patient threatens suicide, physicians do not know if they may rely upon the threat as a basis for abortion to save life. Psychiatric consultation may not be available because the woman may refuse such treatment. The non-psychiatrist may then be forced to evaluate the probability of suicide.

The physician does not know how he may determine safely whether the patient is sincere in her threat. Further- more, a woman who does not overtly threaten may be as inclined toward suicide as one who makes clear her threat. The non-psychiatrist doctor is not told whether he may consider suicidal tendencies whether they are stated by his patient, or not. If a doctor may properly consider the fact that his patient may take her own life unless she receives an abortion, the question is opened whether he may con- sider the fact that she may seriously imperil her life by obtaining an illegal abor- tion. For a doctor to consider his patient's threat to obtain an illegal abortion by an unlicensed person is a logical step from his considering her threat of suicide, because such illegal abortions are extremely hazardous and are in fact a common cause of maternal deaths.

Physicians are unable to agree on the meaning of the statute because its words have no medical meaning. Medical standards have been established for treating patients and for terminating pregnancy as part of that treatment. The statute cuts across those standards and requires physicians to apply an unclear legal test which supersedes and may negate their medical judgment.

II. *The Texas Anti-Abortion Statute Infringes Upon Constitutionally Protected Fundamental Rights of Physicians and of Patients.*

Unquestionably there is a constitutionally protected right to practice one's chosen profession. The practice of medicine clearly includes the treatment of pregnancy and its attendant conditions. The statute interferes with a physician's practice of medicine by substituting the mandate of a vague legalism for the doctor's best professional judgment as to the medically indicated treatment for his pregnant patients.

Physicians and surgeons in many special branches of medicine routinely make extremely serious decisions regarding their patients' best medical welfare, often with life or death in the balance. But those physicians treating pregnant women run the risk of criminal charges as the result of their professional decisions. The statute unfairly discriminates against those physicians treating pregnant women and thus denies these physicians equal protection of the laws.... The statute forbids all abortions except those necessary to save the life of the mother.

Construing the statute to intend its narrowest possible meaning, i.e., that abortions are lawful only when they will prevent certain and imminent death, it is clear that the operation of the statute may deny women abortions when the abor- tion would prevent injury or safeguard or preserve the patient's mental or physi- cal health. Thus a woman suffering from heart disease, diabetes or cancer whose pregnancy worsens the underlying pathology may be denied a medically indicated therapeutic abortion under the statute because death is not certain.

Such a patient is effectively denied a fundamental constitutional right reserved to her under the Ninth Amendment—the right to medical treatment... A state may not require that a citizen impair his or her health, even if the individual's right to good health and medical care infringes upon some legitimate state interest. The State of Texas may not in pursuit of its policy infringe upon the constitutionally protected right of its pregnant citizens to the medical treatment they require to maintain their good health. The anti-abortion statute denies women their right to secure the best medi- cal treatment available and, further, positively and seriously impairs their health by forcing them to turn to illegal abortionists, most of whom are not licensed physicians

and do not have the most advanced and safest medical techniques avail- able for their use. Statistics are necessarily uncertain, but a frequent estimate is that over one million criminal abortions occur in the United States each year, resulting in an estimated 5,000 maternal deaths annually. That 5,000 American women a year should be denied medically safe procedures and thus be driven to their untimely deaths to avoid bearing unwanted children is unconscionable. Death due to complications following illegal abortion procedures are only part of the problem. Many thousands of other women needlessly suffer serious infections following these procedures in addition to pain, suffering and emotional trauma.... A doctor has a direct, personal, substantial interest for his decision may send him to jail. Not only does the State prevent the physician from making an impar- tial decision about terminating his patient's pregnancy, it unfairly influences this decision in a shocking way. The State says that only if the physician wrongly decides that the operation is needed to preserve her life is he criminally liable. If he wrongly decides the operation is not needed to preserve her life, he is subject to no criminal penalties. The State of Texas thus requires that all errors in a doctor's evaluation of his patient's need for termination of pregnancy be on the side of her death... A physician practising medicine under the Texas statute cannot keep as his sole concern his patient's life. A doctor would have to be superhuman if he were able to ignore the fact that his decision can be second-guessed by a jury which may totally disregard medical evidence. Therefore, his patient cannot receive the impartial decision required by due process of law.... The freedom to be the master of her own body, and thus of her own fate, is as fundamental a right as a woman can possess. The Texas statute, by forcing a woman to carry to full term an embryo— regardless of her wishes, her health, her circumstances, her finances, her family or her future—is the most severe and extreme invasion of her right to privacy. She is forced to function as a baby factory for an unwanted child. In addi- tion to the gross invasion by the state into a pregnant woman's physical autonomy, the law imposes enormous additional obligations on this woman toward her child once it is born. Furthermore, these obligations, involuntarily assumed, continue for many years throughout the child's minority. It is unthinkable for a state to compel reproduction against a woman's wishes. The right of a woman to avoid pregnancy following conception has been recently recognized in State and Federal Courts.

This Court should not fail to protect the fundamental constitutional right of women to decide whether they want to have children.