



Webster v. Reproductive Health Services, 492 U.S. 490, 531, 543 n.3 (1989)(O'Connor, J., concurring)

A Missouri statute stated in its preamble that human life began at conception and that unborn children had protectable interests in life and well-being. Among other things, the statute prohibited the use of public employees and facilities to perform abortions not necessary to save the mother's life, and it prohibited the use of public funds to counsel a woman to have an abortion that was not necessary to save her life. The Supreme Court reasoned that it was not necessary to determine the constitutionality of the statute's preamble because it simply expressed a value judgment and did not regulate abortions. The Court declined to invalidate the statute's prohibition against the use of public funds, employees, and facilities to provide abortions because the prohibition placed no governmental obstacle in the path of a woman who chose to have an abortion. She was no less off than if the state had chosen not to provide public health care. The Court found that the statute's prohibition against public funded counseling in favor of abortions was moot because appellees contended that they were not adversely affected by this provision.

The Court Cited the AMA Brief Providing

It is well known that fetal lungs do not mature until 33-34 weeks gestation. . . . If an assessment of the gestational age indicates that the child is less than thirty-three weeks, a general finding can be made that the fetal lungs are not mature. This finding can then be used by the physician in making his determination of viability under section 188.029"); cf. Brief for American Medical Association et al. as *Amici Curiae* 42 (no suggestion that fetal weight and gestational age cannot be determined from the same sonogram)

The District Court found that "the only method to evaluate [fetal] lung maturity is by amniocentesis," a procedure that "imposes additional significant health risks for both the pregnant woman and the fetus." 662 F. Supp. 407, 422 (WD Mo. 1987). Yet the medical literature establishes that to require amniocentesis for all abortions after 20 weeks would be contrary to sound medical practice and, moreover, would be useless for the purpose of determining lung maturity until no earlier than between 28 and 30 weeks gestational age. *Ibid.*; see also Brief for American Medical Association et al. as *Amici Curiae* 41.