

Privacy

Origins

Samuel D. Warren and Louis Brandeis urged in an 1890 *Harvard Law Review* article that the courts "protect the privacy of private life" identifying newspapers as the primary sources of "the unwarranted invasion of individual privacy."

Olmstead v. US (1928)

Brandeis dissented from decision allowing wiretapping without a warrant, arguing that the Constitution "conferred, as against the Government, the right to be let alone - the most comprehensive of rights and the right most valued by civilized men."

***Meyer v. Nebraska* (1923)**

Nebraska prohibited study of foreign languages to encourage assimilation and as response to WWI

Supreme Court finds prohibition interferes with family decisions regarding children's education, violates basic due process

***Meyer v. Nebraska* (1923)**

Liberty "[w]ithout doubt...denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

Justice McReynolds

***Pierce v. Society of Sisters* (1925)**

**Oregon had passed law effectively
banning parochial schools**

**Court ruled against law on basis of
parental rights – prior to
incorporation of religious free
exercise**

***Pierce v. Society of Sisters* (1925)**

“The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”

Justice McReynolds

Skinner v. Oklahoma (1942)

OK law allowed for sterilization of three time felons (based in Eugenics).

Skinner was convicted 3 times of armed robbery

Supreme Court finds that OK law insufficiently related to purpose of reducing criminality partly b/c of exception for white collar criminals

Skinner v. Oklahoma (1942)

“The power to sterilize, if exercised, may have subtle, far-reaching and devastating effects. In evil or reckless hands it can cause races or types which are inimical to the dominant group to wither and disappear. There is no redemption for the individual whom the law touches. Any experiment which the State conducts is to his irreparable injury. He is forever deprived of a basic liberty.”

Moore v. East Cleveland (1977)

Local ordinance defined family for purpose of zoning as nuclear family so that only spouses, parents/children, and siblings could cohabit

Moore was grandmother living with two grandsons who were first cousins

Sup Ct found that ordinance unnecessarily intruded into family life

Griswold v. Connecticut (1965)

Connecticut prohibited distribution or use of any form of contraceptive, including doctors' RX to married women, on moral grounds

Law was unenforced and regularly evaded. Planned Parenthood set up clinic in order to challenge law

Griswold v. Connecticut (1965)

Court finds that law violates:

**1st Amend: right of association
(intimate)**

3rd Amend: quartering soldiers

**4th Amend: unreasonable search
and seizure**

Griswold v. Connecticut (1965)

Court finds that law violates:

5th Amend: right against self-incrimination

9th Amend: express rights do not exclude other rights

14th Amend: due process (incorporation)

***Eisenstadt v. Baird* (1971)**

MA law prohibited sale or distribution of contraceptives to unmarried individuals

Court finds that right to privacy is individual and not restricted to married couples

Extends *Griswold* to unmarried individuals

***Roe v. Wade* (1973)**

Texas law (*Roe*):

prohibited legal abortion except to save a woman's life.

**Old style law found in most states,
contrasts w/ GA law in *Doe v. Bolton*,
argued and decided same days**

***Doe v. Bolton* (1973)**

Georgia law: banned abortion except as performed by a licensed physician when necessary in "his best clinical judgment" because the pregnancy would endanger the woman's life or injure her health; the fetus would likely be born with a serious defect; or the pregnancy resulted from rape (as approved by hospital committee)

***Roe v. Wade* (1973)**

State Interests & Blackmun's response:

Morality: outdated and private)

Women's safety: abortion now safer than child birth, regulation=safety

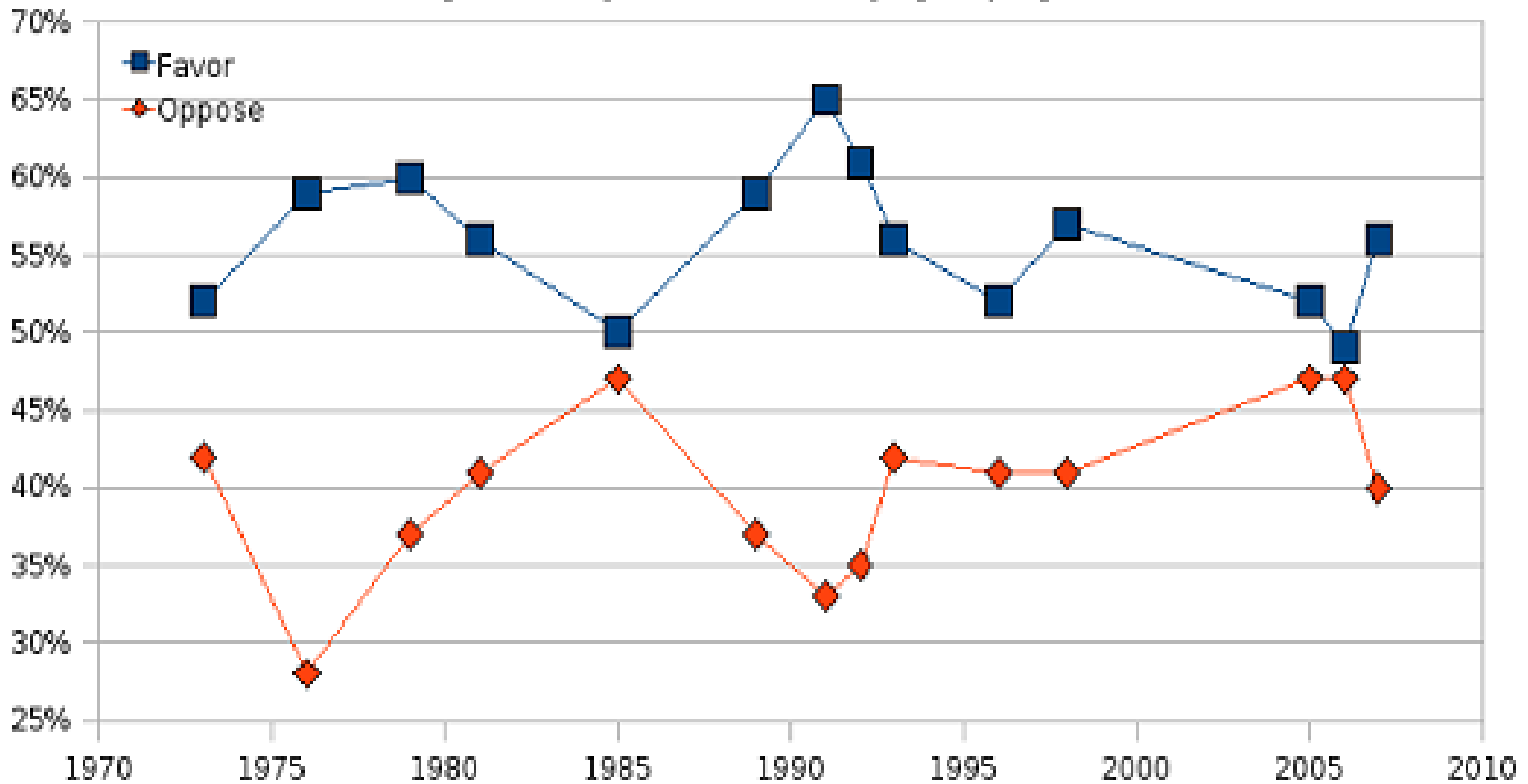
Potential life: state's interest in protecting pre-natal life should be balanced against woman's fundamental right to privacy

Roe v. Wade: Trimesters

1-3 months	4-6 months	7-9 months
Reasonable health regulations	Substantial health regulations	Substantial health regulations
Insufficient interest in potential life (non-viable)	Insufficient interest in potential life (non-viable)	Sufficient interest in potential life (viable)

U.S. Public Opinion About Part of *Roe v. Wade*

POLL QUESTION: "In general, do you favor or oppose this part of the U.S. Supreme Court decision making abortions up to three months of pregnancy legal?"



Ohio v. Akron Center for Reproductive Health (1983)

Ohio law required 24 hour waiting period, provision of information intended to dissuade woman from having abortion, parental notification (age 16-18) and consent (age 15 and less) without judicial bypass.

Sup Ct found provisions violated fundamental right to privacy

Webster v. Reproductive Health Services (1989)

Missouri law moved trimester framework forward by four weeks to allow for margin of error and better neonatal care and prohibited nontherapeutic abortions in public hospitals

Plurality opinion found privacy to be a liberty interest requiring only ordinary scrutiny – allowed movement to 20 weeks

Planned Parenthood v. Casey (1992)

5 elements:

Informed consent

Spousal notification

Parental consent

24-hour waiting period

Reporting requirements

Planned Parenthood v. Casey (1992)

Liberty finds no refuge in a jurisprudence of doubt. Yet 19 years after our holding that the Constitution protects a woman's right to terminate her pregnancy in its early stages ... that definition of liberty is still questioned.

O'Connor, Kennedy, Souter

Planned Parenthood v. Casey (1992)

“Undue burden”: a law or policy having "the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.”

***Planned Parenthood v. Casey* (1992)**

The spousal notice requirement

“embodies a view of marriage consonant with the common law status of married women, but repugnant to our present understanding of marriage and of the nature of the rights secured by the Constitution. Women do not lose their constitutionally protected liberty when they marry.”

O’Connor, Kennedy, Souter