

Original Right to Privacy

Samuel D. Warren and Louis Brandeis argue in Harvard Law Review (1890) that newspapers are the primary sources of "the unwarranted invasion of individual privacy" and urged that the courts "protect the privacy of private life."

Original Right to Privacy

Justice Brandeis, dissenting in *Olmstead v. US* (1928), argued 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."

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

Oregon initiative required students to attend public school, with no allowance for private school

Religious school challenges on grounds that law “*conflict[ed] with the right of parents to choose schools where their children will receive appropriate mental and religious training*”

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.”

J. McReynolds, writing for the Court

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

***Skinner v. Oklahoma* (1942)**

Oklahoma's Habitual Criminal

Sterilization Act of 1935 allowed for compulsory sterilization after three or more convictions for crimes

"amounting to felonies involving moral turpitude"

Jack T. Skinner, had been convicted once for chicken-stealing and twice for armed robbery.

***Skinner v. Oklahoma* (1942)**

“In evil or reckless hands [sterilization] 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.”

Justice Douglas (for the Court)

***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

History of Abortion in U.S.

Under Common Law, abortion was legal until “Quickening” (fetal movement, usually (18-24 months)

1821– Connecticut passes 1st abortion law

American Medical Association campaigns to get abortion outlawed in every state

History of Abortion in U.S.

1959 – American Law Institute Model Penal Code allows abortion w/ physician choice

1962 – Thalidomide found to cause birth defects. Sherri Finkbine goes to Sweden for abortion, 52% of public approves, 32% disapprove.

1965 – Rubella epidemic. Gallup Poll finds 77% approve of abortion for birth defects, only 18% approve for economic reasons

History of Abortion in U.S.

1967 – Colorado passes first liberal abortion law, followed by North Carolina and California

1968 – Reform laws passed in Arkansas, Delaware, Georgia, Kansas, Maryland, Mississippi, New Mexico, Oregon

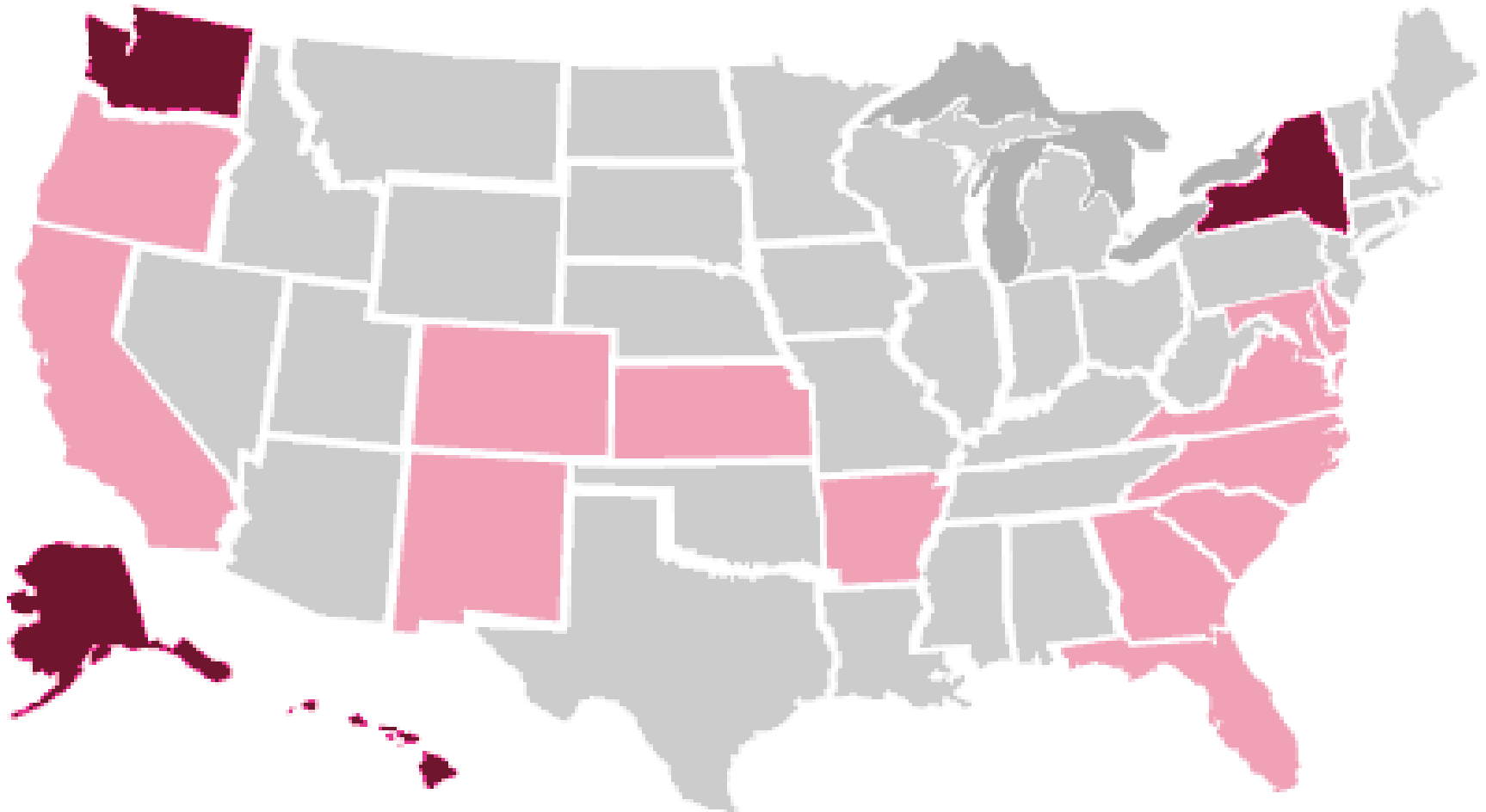
History of Abortion in U.S.

1968 – President Johnson’s Committee on the Status of Women calls for repeal of all abortion laws.

1969 – Sen. Robert Packwood (R-OR) introduces bill to legalize abortion in D.C.

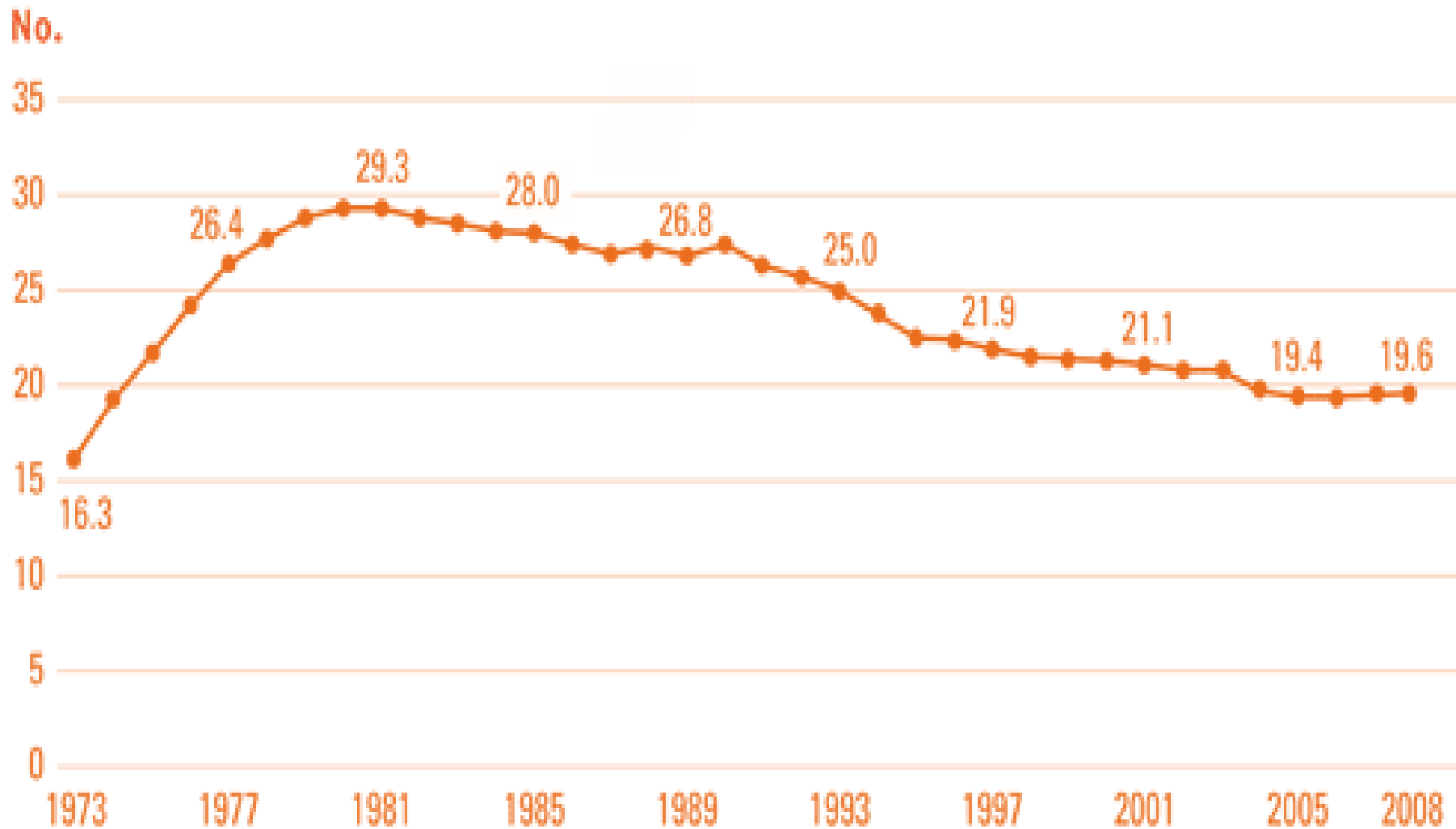
1970 – Hawaii, New York, Washington, Alaska and Florida repeal abortion laws; So. Carolina and Virginia adopt Model Penal Code

Pre-Roe Legal Reform/Repeal



- States that had repealed their antiabortion laws (4)
- States that had reformed their antiabortion laws (13)

Abortions per 1,000 women aged 15-44, by year



Abortion Characteristics, 2008

	Women Obtaining abortions	All Women Aged 15-44
Married	14.8	43.6
Not married, cohabiting	29.2	8.4
Not married, not cohabiting	56	47.9

Abortion Characteristics, 2008

	Women Obtaining abortions	All Women Aged 15-44
Below Poverty Level	42.4%	15.9%
>Poverty Level < 200% Poverty	26.5%	18.6%
> 200% Poverty	31.1%	65.4%

Frequency of Abortion

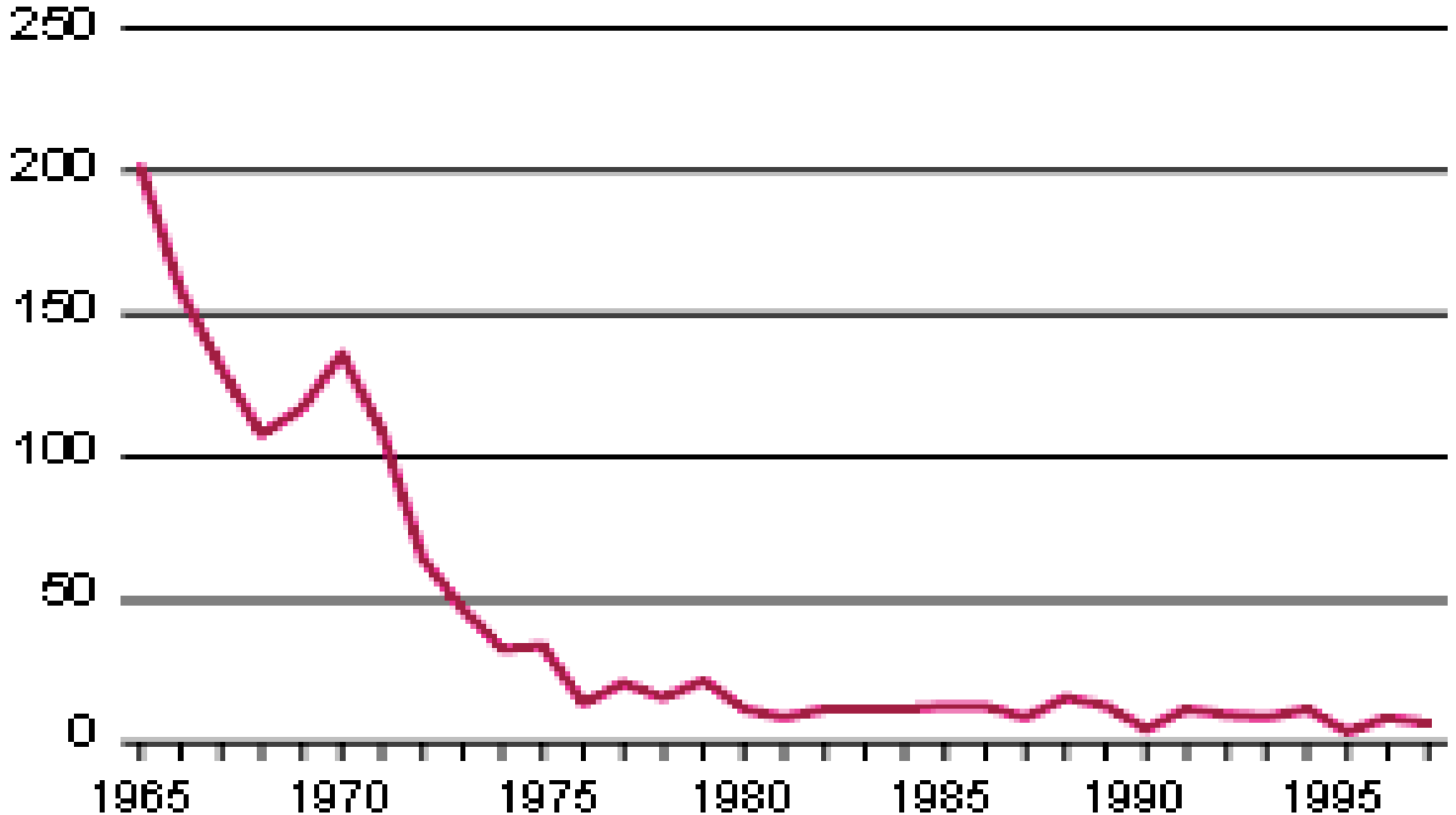
In 2003, 19.4% of pregnancies ended in abortion (CDC Survey)

Approx. 40% of American women will have an abortion at some point in their lives

Abortion is less common in U.S. than many developing countries (~50% lower than Mexico, for example)

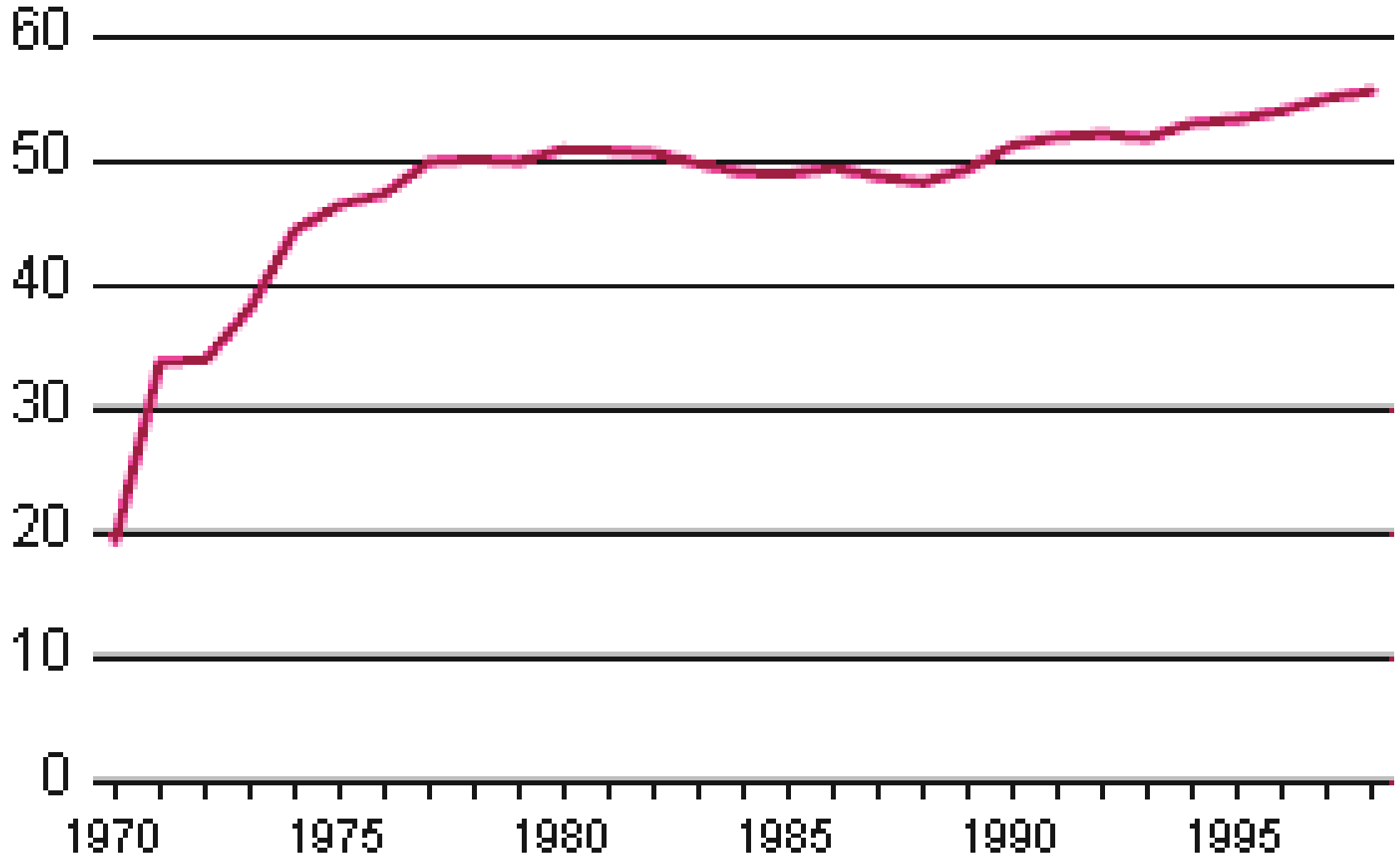
Abortion Mortality pre & post *Roe*

of deaths



% of Abortions Before 8 Weeks

% of abortion at or before eight weeks' gestation



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

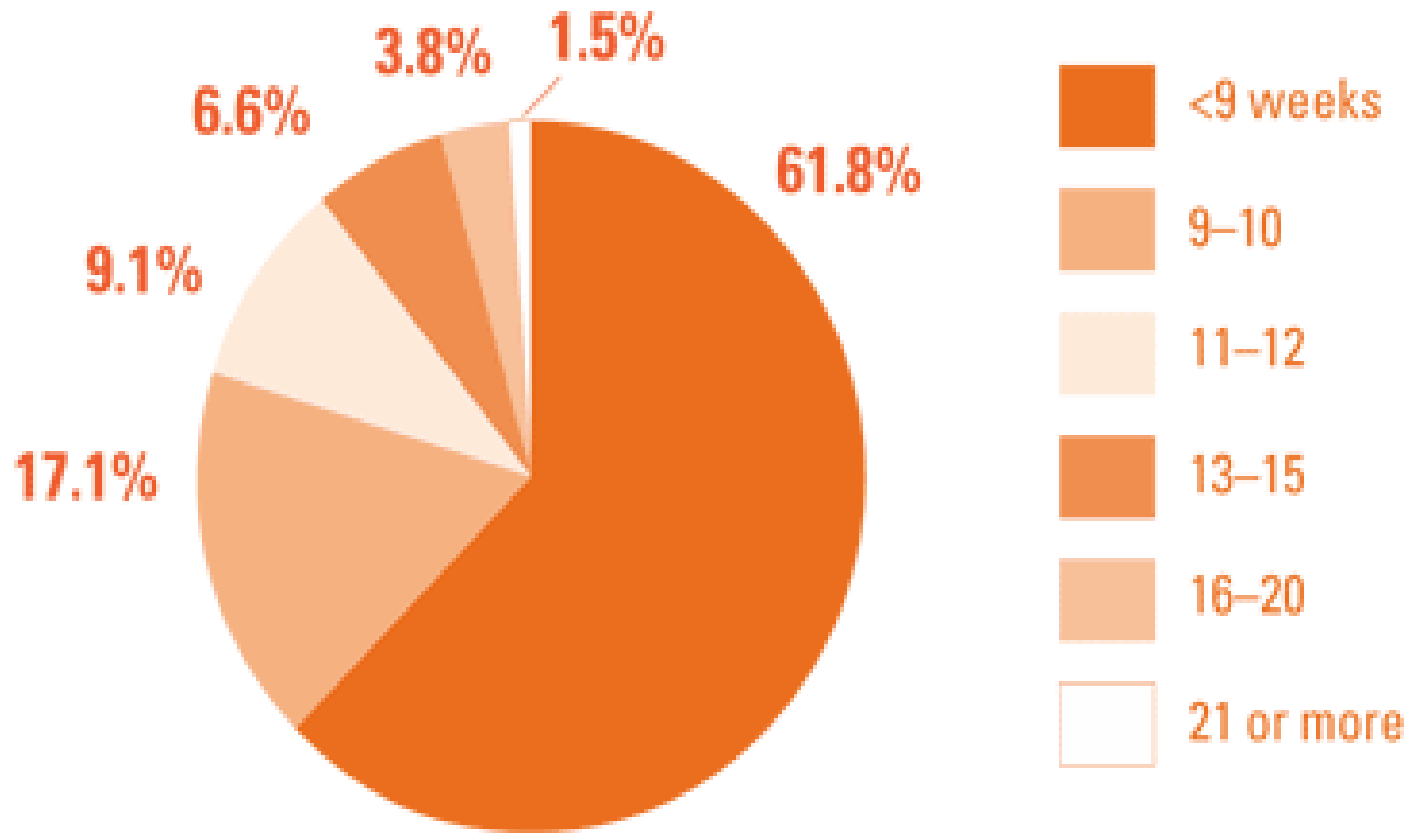
Webster v. Reproductive Health Services (1989)

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

When Women Have Abortions (2006)

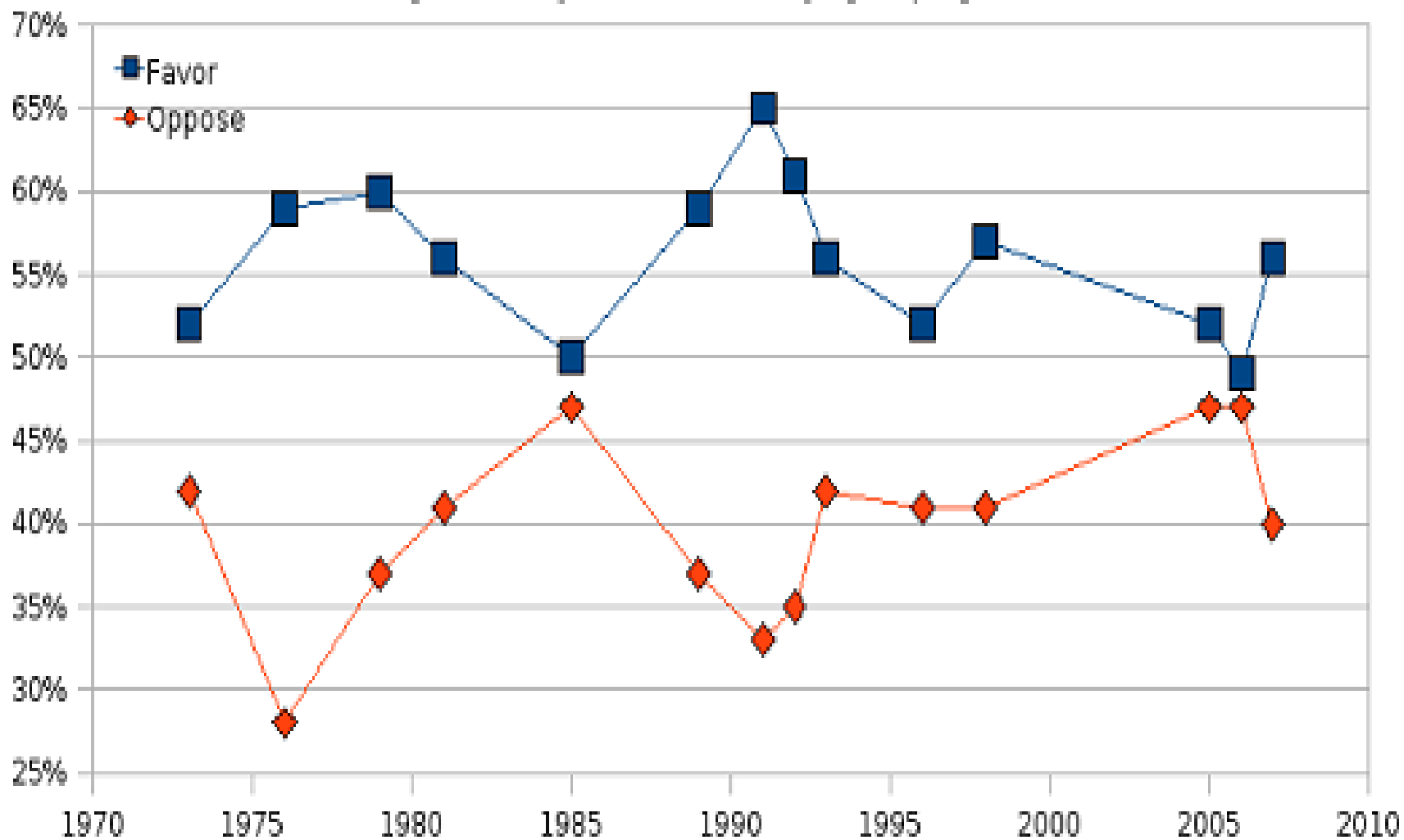
88% \leq 12 weeks, 1.5% \geq 21 weeks



*In weeks from the last menstrual period.

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?"



Abortion Methods and Trimester

Practice of Induced Abortion Methods

