

Roe v. Wade



PHIL 102
Ethics, Politics, & Law

Eisenstadt v. Baird [1972]



- **Massachusetts law**
- **Conviction**
- **6-1 decision**
- **Equal Protection Clause**
- **Justice Brennan**

"If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."

Roe v. Wade [1973]



- **Texas law**
- **Norma McCorvey**
- **Allegation of rape**
- **Sarah Weddington**
- **Question of mootness**

Roe v. Wade [1973]



- **District Court ruling –
9th & 14th Amendment rights**
- **Right to privacy**
- **Pro-life amici arguments – 14th Amendment
“person”**
- **Not a 14th Amendment “person”**
- **Texas argument – life at conception**
- **Borderline case of life**

Trimesters



- **First trimester morbidity statistics**
- **Woman's privacy rights control**
- **Second trimester morbidity statistics**
- **State's interest in protecting women's health and safety**
- **Viability and the third trimester**
- **Abortion may be regulated**
- **State's interest in potential life**
- **State may outlaw most abortions**

Post-Roe Developments



- **Legal controversies**
- **The right to privacy?**
- **Social upheaval**
- **Politics**
- **States' response**
- **Changing makeup of the Court**
- **Restricting abortion**
- **Overturing *Roe v. Wade***
- **The future**

Central Holdings of *Roe v. Wade*



- **Right to privacy covers abortion decisions**
- **Right to privacy found in the Due Process Clause of the Fourteenth Amendment**
- **Woman's right is controlling in 1st trimester**
- **State's interest in health and safety comes into play in the 2nd trimester**
- **State's interest in potential life is compelling in the 3rd trimester**

Financial Obligations



- **Non-therapeutic abortions**
- **Hyde Amendment and therapeutic abortions**
- **State resources in Missouri**
- **Wealth, poverty, and Equal Protection**
- **Financial burdens and "undue" burdens?**
- **Current state of the law is clear**
- **Legislative redress**

Burdens to Choice



- **Financial burdens**
- **Time**
- **Emotional**
- **Coercion**
- **Medical**
- **“Undue burdens”**

The Move to Overturn *Roe v. Wade*



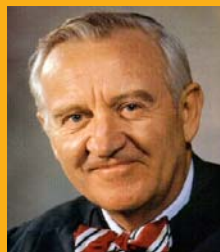
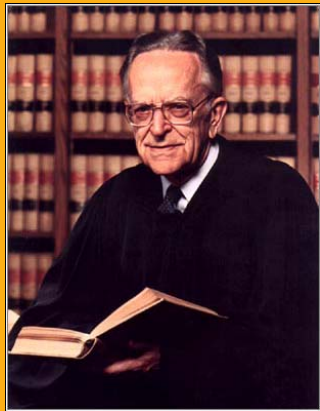
- **Presidential politics & the Court**
- **Reagan administration**
- **Judicial appointments**
- **Arguments to the Court**
- **Charles Fried**
- ***Webster v. Reproductive Health Services* (1989)**
- ***Planned Parenthood v. Casey* (1992)**

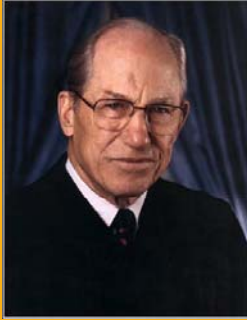
Webster v. Reproductive Services



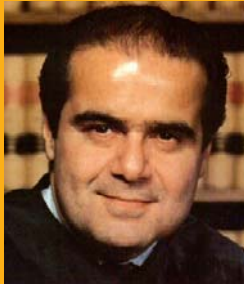
- **Missouri "Preamble" – "the life of each human being begins at conception"**
- **20 week test for viability**
- **Ban on public employees or facilities**
- **Ban on state counseling**
- **Chief Justice Rehnquist's opinion**
- **Justice Blackmun's dissent**
- **Justice O'Connor's concurrence**

Surge to uphold

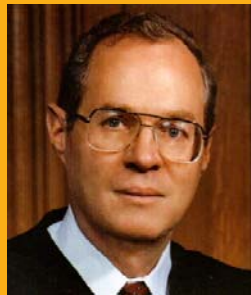




Surge to overturn



Unknown

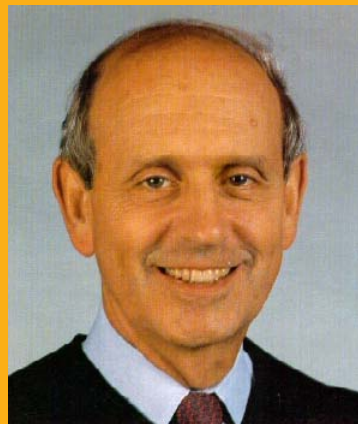
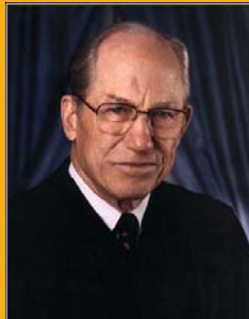


Planned Parenthood v. Casey

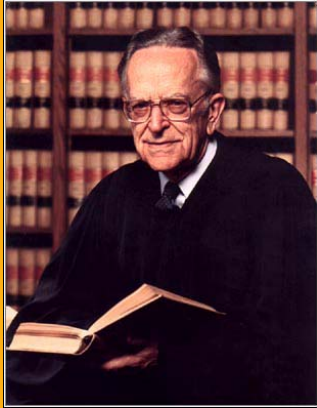


- **Pennsylvania statute**
 - Informed consent
 - 24 hour cooling off period
 - Parental consent for minors
 - Spousal notification
 - Reporting
- **Rehnquist, White, Scalia, and Thomas**
- **Blackmun and Stevens**
- **O'Connor, Kennedy, and Souter**
- *Stare decisis*

Big Change!



Change



Change



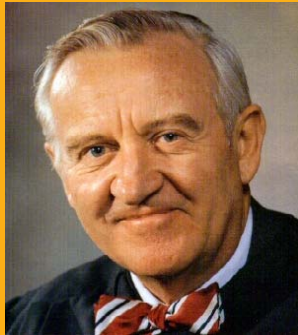
Big Change!



Change



Change



Likely to affirm



Likely to overturn



Still unpredictable

