

Roe v. Wade



**PHIL 102
Ethics, Politics, & Law
Dr. Jeff Johnson
Spring Quarter 2008**

Eisenstadt v. Baird [1972]



- **Massachusetts law**
 - Married/unmarried
 - Registered pharmacists & doctors
- **Equal protection clause**
- **Privacy**

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

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
- Overturning *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*

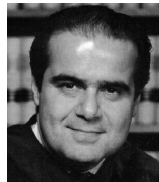


- Presidential politics & the Court
- Reagan administration
- Judicial appointments
- Arguments to the Court
- Charles Fried
- *Webster v. Reproductive Health Services* (1989)
- *Planned Parenthood v. Casey* (1992)

Webster v. Reproductive Services



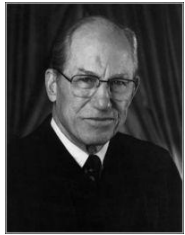
- Missouri "Preamble" – "the life of each human being begins at conception"
- 20 week test for viability
- Ban on public employees or facilities
- Ban on state counseling
- Chief Justice Rehnquist's opinion
- Justice Blackmun's dissent
- Justice O'Connor's concurrence
- Justice Scalia's concurrence



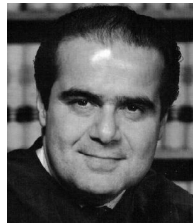
Likely to uphold Roe v. Wade



Photograph: Ken Heinen



**Likely to overturn
Roe v. Wade**



???

Unkown

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***Planned
Parenthood v.
Casey***



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

Change



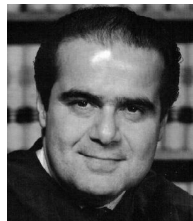
Change



Big change



Likely to overturn
Abortion rights



Likely to uphold
abortion rights

