

# SEARCH + SEIZURE CASES (4)

## MAPP V. OHIO (1961)

**FACTS:** rented half her home, police looking for other tenant

- police illegally searched Mapp's home for a fugitive
- she was convicted after police found of possessing obscene material
- appealed her conviction on the basis of freedom of expression

**Q&A:** Were the confiscated material protected from seizure under the 4th?

**SC:** No, all evidence found in illegal search + seizure is "inadmissible" in courts

<sup>4-3</sup>

They violated the 4th by not allowing Mapp to be secure in their persons, home, etc.

Decision left a troubling issue on when and how the exclusionary rule is applied

## TERRY V. OHIO (1968)

**FACTS:** Ohio police officer saw [in plain clothes], saw Terry & two other men walking around his beat

- police grew suspicious as they looked at a store window from multiple times, suspected of "casing a job, a stick up"

→ initial suspicion: "years of watching people... men did not look at me when I looked at them"

- police revealed himself, stopped and frisked them... found two of them were carrying weapons

Terry was convicted of carrying a concealed weapon + sent to 3 years in jail

**Q&A:** Did the search and seizure of Terry violate the 4th?

**SC:** No, the search was reasonable and the weapons could be used as evidence against Terry

<sup>4-1</sup>

\* narrow focus: officer acted on a "harm + reasonable man would have assumed Terry had a weapon which was a threat to officers safety"

\* the search was limited in scope and designed to protect officers safety

created two levels for lawful seizure: \* probable cause to arrest \* reasonable suspicion to stop + question

## WHRENN V. US (1995)

**FACTS:** Whren + Brown were driving in a high-crime area + stopped at a stop sign for an unusual amount of time

\* after the stop sign, Whren did not signal and sped away

<sup>and plainclothes</sup>

\* in an unmarked car, officer saw this + followed / stopped the truck for traffic violations

\* when officer got to the car, he saw Whren holding a bag of crack cocaine, they were arrested on federal charges

\* before the trial, Whren tried to suppress the evidence arguing that the officer used the traffic violation as pretext to stop them because there was no reasonable suspicion or probable cause to stop them for suspicion of drug dealing

\* DC → denied suppression + convicted them, AL → affirmed, SC → granted certiorari

**Q&A:** Did the officer conduct an unreasonable search + seizure in violation of the 4th?

**SC:** No, as long as the officer had reasonable cause to stop a vehicle, they can search it

<sup>4-0</sup>

\* officer had reasonable cause since they did not signal + drove off at fast speeds

\* since an actual violation occurred, the search + seizure was reasonable, no matter any underlying motives

\* gov. interests in traffic safety outweighed any anxiety/concern they experienced during the S+S

↳ 4th requires a balance between S+S benefits with the harm caused to individual, but only in unusually harmful S+S

↳ there was nothing unusually harmful abt this traffic stop

SC: rejects 'subjective' standard → if officer reasonably believed violation had taken place, the officer's 'subjective' intent is irrelevant

## FLOYD v. CITY OF NY (2018) (from lecture slides)

**FACTS:** class action lawsuit against NYPD → arguing that they employ stop + frisk w/o reasonable suspicion

• Floyd = was suspected of burglary + search, Durkert = suspected of having a weapon but had no evidence of weapon suspicion

**Q:** Were these reasonable stops or did they violate the 4<sup>th</sup>?

**SC:** violated the 4<sup>th</sup>, NYPD conducted unreasonable searches + stops in a racially discriminatory manner

• NYPD repeatedly turned a "blind eye" to unconstitutional stop + frisks

• this racial discrimination also violated equal protection of the 14<sup>th</sup>

↳ sufficient basis for discriminating intent based on NYDD's policy + Commissioner Kelly's statement

**POLICY:** targeting the "right people" means stopping them in part bc of their race

**STATEMENT:** forces SOT on young black and hispanic to instill fear of being stopped

**BEDROGY:** NYPD can still SOT but officers must have "reasonable articulable suspicion"

→ appointed court monitor → immediate reforms to SOT → joint remedial process → body cameras

## FAIR TRIAL (1)

### GIDEON v. WAINWRIGHT (1963)

**FACTS:** Gideon was charged in Florida state court for felony breaking and entering

• Florida state law that an attorney can only be appointed in Indigent defendants in capital cases

• when Gideon went to court and asked for an attorney, he did not get one ... so Gideon represented himself

• He was found guilty and sentenced to 5 years in prison

**Q:** Did the state court failure to appoint counsel for Gideon violate the right to fair trial protected by 6<sup>th</sup> + 14<sup>th</sup>?

↳ Does the 6<sup>th</sup> amend. right to counsel in criminal cases extend to felony defendants in state courts?

**SC:** yes, 14<sup>th</sup> guaranteed right to assistance of counsel in criminal cases in state courts  
9-0

↳ 6<sup>th</sup> right to counsel applicable to states via 14<sup>th</sup>

• aligned with the constitution that states must provide attorney when defendant cannot provide their own

↳ unless the defendant competently + intentionally waived it → see 14<sup>th</sup>

• 6<sup>th</sup> guarantee is a fundamental right made upon the states under 14<sup>th</sup>

• this ruling said nothing abt the quality of attorney (decided later in 1984)

## DEATH PENALTY (3)

### FURMAN v. GEORGIA (1972)

**FACTS:** collection of cases: burglary/murder =死刑, robbery/murder =死刑, rape =死刑

**Q:** Does the imposition + carrying out DP in these cases constitute cruel + unusual punishment?

**SC:** yes, was cruel + unusual in these cases, does not hold DP in its itself is cruel + unusual

9-1  
↳ arbitrary nature of the way it was administered → racial bias → degrading to human dignity

states use DP arbitrary manner in regards to race + this unconstitutional

Lawmakers to figure out how to make their capital punishment applied fairly + uniquely

**DISSENT:** "allow judges to give sentences discretion in acceptable fashion"

## GREGG v. GEORGIA (1976)

**FACTS:** one of States that have given death penalty w/ less serious circumstances

· Gregg was found guilty of armed robbery + burglary and sentenced to death

· Gregg argued that the sentence was cruel and unusual, that violated the 8th

**CQ:** Is the imposition of the death sentence prohibited under the 8th + 14th as "cruel + unusual" punishment?

**SC:** no, the death sentence does not violate the 8th + 14th even in extreme cases if the state is careful

1-2

Georgia's death penalty is judicious + careful: (not arbitrary or disproportional)

1. require bifurcate proceedings (trial + sentencing separate)

2. specific jury findings considering severity and nature of the defendant

3. compares context w/ other capital cases

**Dissent:** Justice Brennan → DP is inherently cruel & unusual because it treats humans as "non-humans", takes away dignity

Justice Marshall → DP violates 8th + 14th of C/UP, other ways to deter crime or punish people for life

## MCCLESKEY v. KEMP (1987)

**FACTS:** black man in Georgia murdered a police officer, sentenced to death

· McCleskey raised habeas corpus: statistical evidence stating that race of the defendant/victim played a role in the imposition/sentencing of DP

↳ black defendants who kill white victims are more likely to be sentenced to DP by state → Baldus Study

**CQ:** Did the study prove that McCleskey's sentence violated the 8th + 14th?

**SC:** no, McCleskey could not prove that the trial had any purposeful discrimination effect, therefore there is no constitutional violation

5-4

↳ study shows the discrepancy in sentencing but does not show major systematic defect

↳ this data needs to be presented to the legislative body, not courts

· to prevail in equal protection claims, must prove:

1) purposeful discrimination 2) discriminatory effect

↳ can't show system is arbitrary → race was not a factor in THIS case

· case is proportional to other DPCases

**Dissent Reasons:** 1) need guided discretion like guidelines to help juries

2) this is an empirical challenge, evidence shows safeguards aren't working

3) fear of opening implications of these discussions, decides around this issue

4) court is in the right place to address, court supposed to protect minority

## JUVENILES (2)

### GRAHAM v. FLORIDA (2010)

**FACTS:** 16 year old Graham was sentenced to 12 months for armed burglary and attempted armed robbery

· 6 months later, sentenced Graham to life w/o parole for armed home robbery

· Graham appealed that life sentence w/o parole for a juvenile violated the 8th (it's cruel + unusual)

· District Court → did not violate the 8th nor was the punishment itself cruel/unusual

**CQ:** Does the imposition of a life sentence w/o parole on a juvenile for a non-homicidal offense violate the 8th (C/UP)?

**SC:** yes, the 8th is violated through this sentence on a juvenile

5-3

· the rule implicates a sentence for a entire class of offenders (juveniles)

· categorical approach from cases (Atkins, Roper, Kennedy) means courts must consider:

1) objective indica of societies standards

2) if punishment violate constitution by standards at previous cases

↳ court agreed that 1) + 2) because punishment for that crime was unconstitutional → need opportunity to mature

overall impact: courts must consider age + characteristics of crime

## MILLER v. ALABAMA (2012)

**FACTS:** 14 year old Miller killed cancer w/ a baseball maul burned the trailer cancer was in.

- sent to Lawrence County Juvenile Center then transferred to Lawrence County Circuit Court to be tried as an adult (due to arson...?)

- 2004: trial sent Miller to mandatory term of life w/o parole

- Miller: post-matured while saying the sentence violated the 8th (Clu?)

- trial: denied motion, Appeal: agreed w/ lower court, State SC: denied petition for writ of certiorari

**CQ:** Does the sentence of life w/o parole on a 14-yr-old violate the 8th + 14th Clu &?

**SC:** Yes, the 8th prohibits the sentence of life w/o possibility of parole on juveniles in homicide crimes (condemned C/V)

5-4 - children are constitutionally different than adults, not fully developed moral capacities

↳ life sentence for adults is okay, but for kids it violates the 8th due to unproportional punishment

- reversed Alabama + Arkansas laws

↳ did not ban juvenile life w/o parole but makes it less likely → struck down 29 state laws

## GUANTANAMO + HABEAS (5)

### HAMDY v. RUMSFELD (2004)

**FACTS:** US detained US-citizen Hamdi in Afghanistan based on accusations that Hamdi was fighting for Taliban, Hamdi was held in Guantamano Bay

- when they learned he was a US citizen, he was transferred to a prison in Virginia

- Hamdi's dad filed a writ of habeas corpus to have his detention held unconstitutional

- District Court accepted the petition → public defender argued that Hamdi 5th was violated since they were holding him indefinitely + no access to trial

- gov argued that during time of war, they could deny access to courts for those identified as "enemy combatants"

- gov. did not want to give to court so materials so they appealed

- AC found that the separation of powers required courts to restrain during wartime

↳ exec. + leg. branches are allowed to organize/supervise conduct overseas conflict in a way that courts cannot

**CQ:** Did the gov. violate Hamdi's 5th (due process) by holding him indefinitely w/o attorney based on Exec. discretion or him as "enemy combatant" who fought against? <sup>+[w]</sup>

Does separation of powers require federal courts to defer identification of "enemy combatants" based on Exec. discretion?

**SC:** No + No, 5th guarantees the right for US citizens the right to contest "enemy combatant" + their detention in front of a neutral civilian-military

- Exec. can identify someone as "enemy combatant" but cannot deny them due process

"oo something about Congress  
authorized his detention"

### RASUL v. BUSH (2004)

**FACTS:** During US "war on terror", 2 Australians + 12 Kuwaitis were captured and sent to Guantamano Bay

- families filed habeas corpus in district courts to declare the detention unconstitutional

↳ US gov denied them access to attorneys + held them indefinitely → violated the 5th (due process)

- gov argued that the district court could hear the case because they were not US citizens + never on US sovereign territory

**CQ:** Does US courts have jurisdiction to consider legal appeals on behalf of non-citizens held in the military base Guantamano?

**SC:** No: lack of control that the US has over Guantamano is enough to hear habeas corpus rights

- based on precedents, right to habeas corpus is allowed in all places of sovereign control → US jurisdiction + controlled the military base

- right to habeas corpus not dependent on citizenship

↳ detainees were free to bring suit and challenge their detention as unconstitutional

## HAMDAN v RUMSFELD (2006)

### FACTS:

- Sulim Hamdan (Osama bin Laden's former chauffeur) was captured Afghan forces + sent to US Guantanamo Bay
- Hamdan received a military tribunal which designated him as an "enemy combatant"
- filed for habeas corpus in federal court to challenge his detention
  - DC granted the petition but he first had to determine if he was a prisoner of war (based on Geneva Conv.) before trial of military commission
  - ↳ AC reversed, Geneva Conv. could not be enforced in federal courts and establishment of military tribunals is authorized by Congress (= constitutional)

(Q): May the rights protected by the Geneva Conv. be enforced in federal courts through habeas corpus petitions?

Was the military established to try Hamdan for war crimes in the War on Terror (which was authorized by Congress + Powers of President)?

### SC:

yes + no

5-4

- an act of Congress or Presidential powers in the Constitution did not express authorization this sort of military commission
- ↳ commission had to comply w/ ordinary laws of US and the laws of war
- ⇒ Geneva Conv. as ordinary laws of war could be enforced by SC + Uniform Code of Military Justice
- Hamdan trial excluded parts (authorized by military trial) violated these (?) → trial was illegal

## BOUMEDIENE v BUSH (2008)

FACTS: 2002: Boumediene and 5 other Algerian natives were seized by Bosnian police after US intelligence suspected they were involved in a plot to attack the U.S. Embassy in Bosnia/Algeria.

- US classified them as "enemy combatants in the War on Terror" → sent to Guantanamo Bay
- Boumediene filed habeas corpus for violation of due process, common law, int'l. law, and other statutes/treaties
- In 2005, the Detainee Treatment Act (DTA) stripped jurisdiction of habeas cases filed by detainees
- 2006: Military Commission Act eliminated courts ability to hear habeas applications from detainees designated as enemy combatants
  - D.C. Circuit argued that MCA did not apply if it did then MCA was unconstitutional under suspension clause
  - ↳ Suspension Clause: habeas corpus cannot be suspended unless in cases of rebellion or invasion of public safety
- ⇒ DC Circuit ruled w/ gov because language of MCA applies to "all cases, w/o exception" related to aspect of detention
  - purpose of MCA was to overturn decision in Hamdan v Rumsfeld
  - Suspension Clause only protects habeas b/c it would've been understood in 1789, at that time they would not understand overseas military  
war
- ⇒ constitutional rights do not apply to non-citizens + Guantanamo is not in the geographical borders of the US

SC granted certiorari after denying review 3 months earlier

(Q): 3) Are detainees at Guantanamo entitled to 5<sup>th</sup> protections + Geneva Conv. of due process?

- 1) Should the MCA strip federal courts' jurisdiction over habeas petitions filed by non-citizens detained at Guantanamo?
- 2) Is the MCA a violation of the Suspension Clause of the Constitution?

### SC:

5-4

- No to all, must offer a valid opportunity to bring challenges
  - procedures in Detainee Treatment Act (2005) are not adequate substitutes for habeas → MCA operates as unconstitutional suspension of that wmt.
  - detainees are not deprived of habeas/suspension clause just because they're "enemy combatants" or held at Guantanamo
- SC reversed D.C. Circuit = found in favor of detainees

Boumediene test:

- 1) citizenship + adequacy of process makes status determinative
- 2) nature of site
- 3) practical obstacles inherent in reaching prisoner entitlemnt to writ

Dissent: Justice Scalia → DTA is adequate to replace habeas + court should not be undermining efforts of who is/ isn't military combatant

## ALMARALEH v BATES (2012) unpublished

- FACTS:**
- 2009: Bagram detainees have right to habeas → gov approves moving → non-Afghan citizens transferred to Bagram
  - 2010 cases - do Bagram detainees have the same rights as those in G. Bay?
  - gov. argued that they don't have the same control + it would undermine their efforts
  - detainees argued they were being held in Bagram to be deprived of their rights

**CQ:** Do detainees held at Bagram have the right to file habeas petitions?

**SC:** used 3 part Boumediene test:

1. Bagram is similarly situated as G. Bay
  2. territory is vastly different, nature of site is different than G. Bay → gov. does not have strong jurisdiction in Bagram
  3. Bagram is a "theatre of war" → in war zone
- ⇒ detainees in Bagram do not have a right to file habeas, rules in favor of the gov.
- ↳ jurisdiction cannot be determined in Bagram because active war zone
- ⇒ after this decision, Bagram's population increased significantly

# RELIGION (4)

### West Virginia Board of Ed v. Barnette (1943)

- FACTS:**
- flag saluting mandatory part of W. Virginia public schools
  - students from Jehovah's Witnesses refused + were sent home
  - almost going to be disciplined further + parents were also in trouble!

**CQ:** Does the mandatory flag-salute violate the first amendment (of religion?)?

**SC:** yes, it is unconstitutional (overruled Minersville v. Powells)

- b-3**
- It cannot enforce a unanimity of any topic
  - worshipping / eliminating dissent is an improper / ineffective way of generating unity

**Disent:** Justice Frank - Court is taking on the role of the leg. branch

### LUXUMI v. CITY OF HILLCREST (1993)

- FACTS:**
- Church of Lukumi Babalu Aye practiced Santeria (Afro-Caribbean)
  - Santeria used animal sacrifice as a form of worship
  - when a church was going to open in Hillcrest, Florida... city adopted new ordinances around religious sacrifice
  - ordinance prohibited possession of animals for sacrifice, unless for more "licenced activities" → "public morals, safety, animal cruelty concerns"

**CQ:** Did the ordinance violate the 1st amend. free exercise clause?

**SC:** no, ordinance was not neutral or generally applicable

- unanimous
- ordinance needs to be justified by compelling govt. interest + narrowly tailored
  - ordinance suppressed religious conduct than what was necessary... a targeted religious behavior → found strict scrutiny

### EEOC v. ABERCROMBIE (2015)

- FACTS:**
- store "look policy" forbids black clothing + caps (caps undistressed)
  - if questions about policy, HR needs to be contacted and then they will give accommodations
  - 2008, Elauf applied + wore a hijab to the interview but did not indicate she would need an accommodation
  - employer didn't say anything either but Elauf was not hired on the appearance section which lowered overall score
  - EEOC argued Abercrombie violated Title VII of CRA by not hiring her because of her headscarf
  - Abercrombie said that Elauf needed to notify the interviewer

**CQ:** Can an employer be held liable (under Title VII) for refusing to hire an applicant based on their religious practice if the employer was unaware that an accommodation was needed?

**SC:** Yes, to hold them liable under Title VII, applicant must show that needing an accommodation was the motive for not hiring

B-1

- Title VII does not have a knowledge requirement for liable motives
- if the decision to not hire someone because of religious accommodations  $\Rightarrow$  violation  $\checkmark$
- Title VII does not mean mere neutrality but an affirmative duty to accommodate religious practices

### Kennedy v. Bremerton (2022)

**FACTS:** Football coach Kennedy conducted prayers w/ students before + after games

- School district agreed that he discontinued this act to avoid a possible liability for violating Establishment Clause
- sued for violating 1st Amend + Title VII  $\rightarrow$  district + circuit court said school had authority only because of the risk of constitutional liability

**CQ:** Is a public school employee's prayer during school sports activities protected speech?

Can the public school employer prohibit it to avoid violating the Establishment Clause?

**SC:** Free exercise + free speech of the 1st protect individuals from gov. reprisal

B-3

- because the senior disciplined Kennedy 3 times for singly praying, they burdened his right to freely exercise so the school district sought to restrict his action due to religious character
- "time + context confirm that he did not offer prayers while acting as a coach  $\rightarrow$  District cannot give compelling enough narrowly tailored to achieve what test are abandoned" replaced w/ consideration of "historical practices and understandings"
- applying this test, there is no unconstitutional conflict in this case  $\therefore$  not

Dissent: Justice Sotomayor - not about private prayer at work, establishment clause prohibits the use of public official to do this openly

## ABORTION + PRIVACY (5)

### GRISSWOLD v. CONNECTICUT (1965)

**FACTS:** 1970 law that banned use of any device birth control for married couples

- Buxton + Griswold (Planned Parenthood owner) opened a birth control clinic to properly challenge the law
- arrested for violating the 1970 law
- challenged the constitutionality of the law under the 14th

**CQ:** Does the constitution protect the right of marital privacy to have access to or counsel in the use of contraceptives regardless of state restrictions?

**SC:** Yes, right to privacy is inferred from the Bill of Rights  $\rightarrow$  prevents states from making illegal the use of contraceptives for married couples

T-2

- not explicit in the constitution but Bill of Rights creates penumbras that protect right to privacy (19, 3, 4, 9)  $\Rightarrow$  zone of privacy

$\hookrightarrow$  not everything the constitution protects is laid out

Fundamental right to privacy to protect liberty

States must show the law is absolutely necessary + compelling

Dissent: Justice Black - Privacy is not protected in the Constitution

Justice Stewart - This is a "monstrous" silly law but still unconstitutional

$\Rightarrow$  people divided about what privacy is + if its protected

## Roe v Wade (1973)

**FACTS:** • Roe filed a lawsuit against Wade (district attorney of Dallas) + challenged TX law where abortion was illegal  
exemptions if the woman's life was at risk

OK but Roe also told me that she was pregnant but single → right to safe medical procedure → can physicians legally give them out?  
• Roe argued that the laws were unconstitutionally vague + violated right to privacy (L, 3, 4, 5)

**CQ:** Does the constitution recognize a woman's right to terminate her pregnancy by abortion?  
Can states pass restrictive abortion laws?

**SC:** yes, 14 amend protects a pregnant woman's right to have an abortion through privacy

7-2  
• this right is balanced against gov. interest in protecting women's health + "potential human life"  
state laws must account variability at the stage in pregnancy

rejects fetal life argument because there is no clear consensus, no "right" answer

recognized physicians right to practice medicine freely

• Due process protects privacy → including women's pregnancy over state interest

• law cannot be vague or broad, need to distinguish the time / manner service is performed

• abortion standards: 3-tri system

- 1<sup>st</sup> tri: woman may abort if having it (if her physician agrees too)

- 2<sup>nd</sup> tri: state can impose regulations reasonable to maternal health →

- 3<sup>rd</sup> tri: once "the FETUS" is "viable" then state may impose regulations OR BAN IT ALTOGETHER

as long as there's exceptions for a woman's life IN DANGERRRRR

## PLANNED PARENTHOOD v. CASEY (1992)

**FACTS:** • 1989 Pennsylvania provisions amended abortion laws to require consent + 24hr waiting period b/c procedure

→ minor seeking abortion needed parental consent (law has judicial bypass procedure) → married women needed to inform husband

• clinics + physicians challenged these provisions

• circuit court upheld all of them minus husband one

**CQ:** Can states require women wanting an abortion [to obtain consent, wait 24 hrs, notify husband and consent from parents (if minors)] without violating  
the right to an abortion (as guaranteed by Roe v Wade)?

Is the PA Abortion Control Act constitutional? Can states limit access?

**SC:** Court upheld Roe but also upheld some of these provisions

5-4  
new standard to assess validity of abortion restrictions

- if the regulation has the purpose of imposing an "undue burden" / "substantial obstacle" it is not valid

in this standard, only one that failed was the husband notification

• 24 hr waiting: allowed

• Parental consent: allowed

• Husband Notification: struck down (to protect those in abusive relationships)

## WOMEN'S WHOLE HEALTH v. HELLERSTEIN (2015)

**FACTS:** • TX HB 2 contained provisions related to abortion - one of them was that any physician performing have admitting privileges at hospitals 30 miles

- also, all abortion clinics must comply w/ standards for ambulatory surgical centers (like size, equip, etc.)

• petitioners sued to invalidate these provisions in El Paso + McAllen (would shut down 34/40 clinics if law stays)

argued that these violated equal protection, overreaching law authority, unconstitutional arbitrary + unreasonableness state action

district + circuit court dismissed these claims as it failed the undue burden

**CQ:** Are laws that restrict abortion access and serve gov. interest in promoting health be analyzed with "substantial burden"?

**SC:** yes, these laws have an undue burden on abortion access + is unconstitutional

5-3

must weigh gov. interests with the burden that they impose

HB 2: medical benefits do not outweigh the need to limit abortion access

"judicial review of such statutes do not need to be wholly deferential to legislative findings"

"admitting privileges do not advance state interest in protecting women's health but placed a larger burden (it forced half of the abortion clinics to close)"

"additionally provisions did nothing to advance the ones already in place"

→ if these requirements were in place, only 7-8 clinics would be able to run (across the entire state!) → this is a major burden

## DOBBS v. JACKSON (2022)

**FACTS:** 2016, Mississippi passed the "Gestational Age Act" which prohibits all abortions w/ few exceptions after 15 weeks

- Jackson's women's health organization (only licensed abortion facility) challenged law

- District + Circuit Affirmed that Mississippi law was not constitutional because SC precedents prohibits states from banning abortion prior to viability

**Q:** Is the Mississippi abortion ban unconstitutional?

**SC:** No, the constitution does not confer a right to abortion in [overruled Roe + Casey], MS law is constitutional  
9-3

- constitution does not mention abortion → it is not deeply rooted in national history or essential component of "ordered liberty"

"Roe underwent democratic process, not a component of liberty"

protecting pre-viable prenatal life is a compelling state interest

- five factors that are considered when overruling Roe + Casey:

1) they "short-circuited the democratic process"

2) both lacked grounding in constitutional text, history, or precedent

3) the tests they established were not "workable"

4) caused distortion of law in other areas

5) overruling them would not uphold concrete judicial interests

**Dissent:** majority betrays guiding constitutional principles

→ gov. cannot make choice for women, leaves women with no rights

→ if they're reading the constitution originally (examining how it was written) it would only not protect egregious rights

→ will undermine other rights protected by privacy

→ not a neutral ruling because by leaving it to the states we know what they would do (ex. guns too)

→ if you don't have the right to establish your family the way you want -- do you really have freedom?

## MARRIAGE • (4)

### LOVING v. VIRGINIA (1967)

**FACTS:** - 1958, Jeter (a black woman) + Loving (white man) got married in District of Columbia, then moved to Virginia

- couple charged with violating the antimiscegenation law (anti-interracial marriage)

- couple was arrested and would only be able to drop charges if they left VA

- couple argued the law was racist + perpetuated white supremacy → gov.: nah, not racist because it applied to both black + white

**Q:** Did VA's antimiscegenation violate the equal protection clause of the 14th?

**SC:** Yes, racial distinctions were subject to strict scrutiny under equal protection  
9-0!

- VA had no other legitimate purpose other than to discriminate (+ only purpose to uphold white supremacy)

- court also found VA law violated the Due Process Clause

- freedom of marriage at various races was up to the individual... not for the state to interfere on

**Chief Justice Warren:** prevention of marriage was a deprivation of liberty in 14th: requires freedom of choice to marry + states cannot interfere

## LAWRENCE V. TEXAS (2003)

**FACTS:** Police responding to a weapons call entered Lawrence's apt

- Lawrence & Garner were engaged in consensual same-sex sexual activity
- They were arrested for violating anti-sodomy TX law -- forbids same sex people from engaging in intimate activity
- Precedent of Bowers v. Hardwick (1986) fed Appeals court to rule that the TX law was constitutional under Due process of 14<sup>th</sup>
- Lawrence: right to privacy, free of intrusion from state in private consensual activity → Texas: protecting traditional marriage

**CQ:** Does the arrest of Lawrence/Garner under the TX "homosexual conduct" law violate equal protection of the 14<sup>th</sup>?

Does the arrest violate the liberty & privacy rights under due process of 14<sup>th</sup>?

Should Bowers v. Hardwick be overruled?

**SC:** no, yes, yes

6-3

- To violates due process, the couple was free as adults to engage in intimate conduct as exercise of their liberty protected by due process
- State interest does not outweigh the intrusion into the private & personal life of the individual
- privacy from Griswold & Roe reaffirmed
- anti-sodomy laws in 13 states now unconstitutional

## WINDSOR V. US (2013)

**FACTS:** 1996 Defense of Marriage Act (DOMA) defined "marriage" & "spouse" as a legal union for one man and one woman, section 3 prevent same-sex benefits

some states have legalized same-sex marriage ... other cases have ruled DOMA is unconstitutional under the 5<sup>th</sup>

Windsor & Spier were a same-sex couple who legally married in 2007 in NY state

Windsor inherited Spier's belongings (when she passed) but because their marriage was not recognized by federal law, they imposed taxes on the inheritance if they were recognized federally, no taxes would have been imposed for marital exemption

2010 - Windsor filed saying DOMA was unconstitutional, gov: defend DOMA

Early 2011 - Pres & Attorney General: we won't defend DOMA → we will enforce it

mid 2011 - Bipartisan group in the house intervened in defense of DOMA

District & Court of Appeals: DOMA is unconstitutional

**CQ:** Does the agreement between the Feds & lower court [that DOMA is constitutional] deprive the Supreme Court jurisdiction to decide the case?

Does DOMA deprive same-sex couples legally married under state law from 5<sup>th</sup> amend. equal protection rights under federal law?

**SC:** no, unanswered 4-4

"United States Gov retains a significant stake in the issue to support SC jurisdiction"

since the case considers taxes & refunding money & stands to suffer real economic injury → gov had standing!

DOMA denies federal recognition of same-sex marriage that some states offer → leaves a disfavored status → violates 5<sup>th</sup> equal protection → unconstitutional

↳ section 3 specifically, strips unique of benefits/protections → violates equal protection

states have the authority to define marital status → DOMA goes against that authority

↳ left definition to states, no fundamental right to same-sex marriage

**Disent:** Courts lack jurisdiction to recall

## OBERTERFELD V. HODGES (2015)

**FACTS:** groups in OH, MI, KY, TN sued states to challenge the ban/recognition of same-sex marriage

argued the state laws violated 14<sup>th</sup> amend. of equal protection & due process

lower courts agreed w/ plaintiffs, 14th circuit reversed

**CQ:** Does the 14<sup>th</sup> require states to license our marriage of couples of the same-sex?

Does the 14<sup>th</sup> require states to recognize the marriage of same-sex couples issued in another state? Can this be extended to other states?

**SC:** yes, 14<sup>th</sup> guarantees the right to marry ... a procedural liberty

5-4

precedent has recognized marriage as a liberty bc it is inherent to individual autonomy

↳ from griswold: certain personal liberties are central to individual liberty

marriage is a key stone to social order (by raising a whole family), addressed through 14th + personal liberty

1st amend protects rights of religious orgs. but does not allow states to deny same-sex couples the right to marry

Dissent: Roberts → constitution does not guarantee this ... court has created their own (personal) vision