

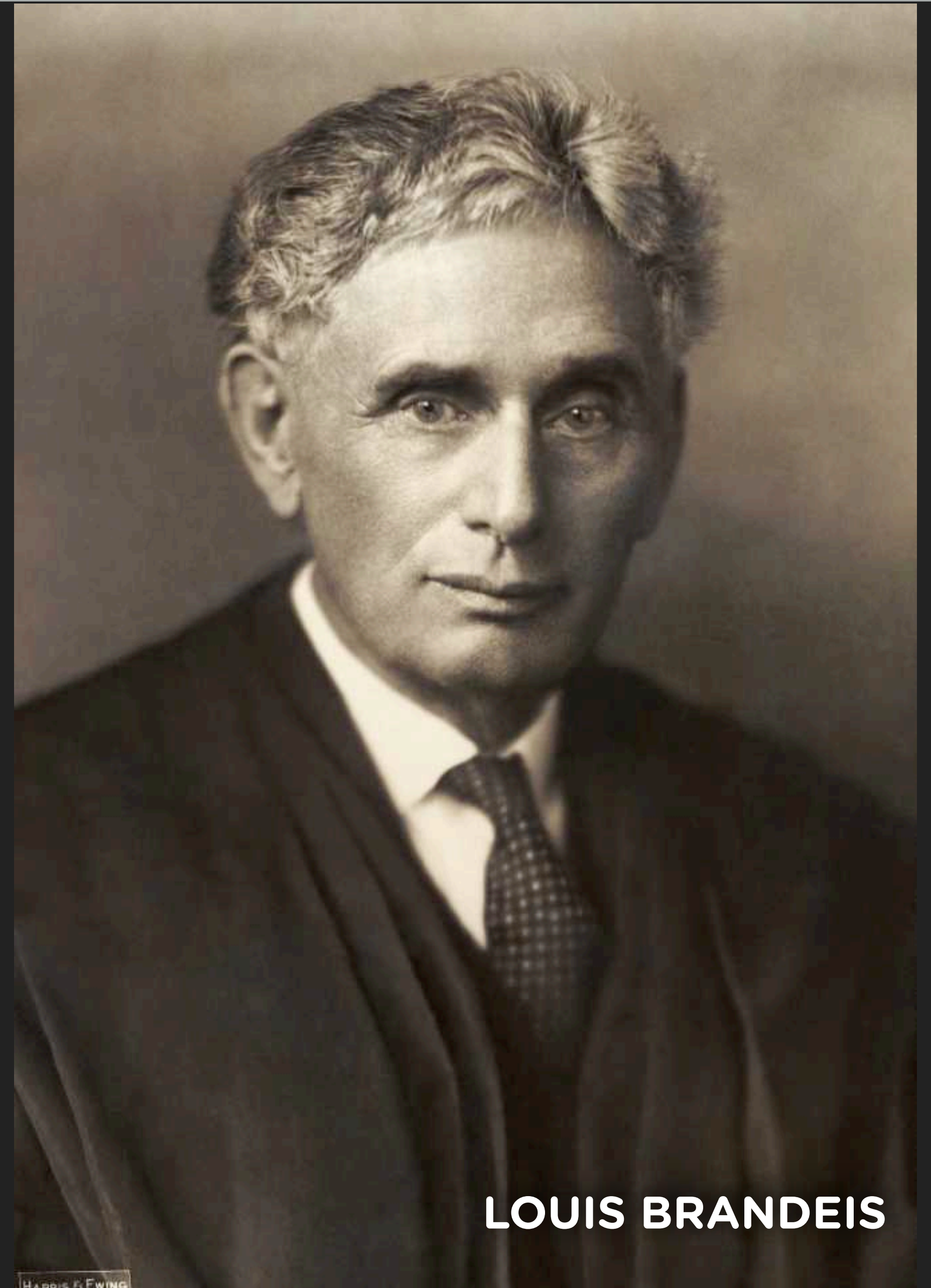


MR. POGREBA, PARKER SCHOOL

Unit 6 Civil Liberties: Abortion and the Right to Privacy

THE RIGHT TO PRIVACY

- ▶ The founders did not include a **right to privacy** in the Bill of Rights.
- ▶ The concept first gained currency in the United States in 1890, when two attorneys—including a future Supreme Court justice—argued it was essential for a person's well being.
- ▶ As Dorothy Glancy wrote in 1979, "the right to privacy was the right of each individual to **protect his or her psychological integrity** by exercising control over information which both **reflected and affected that individual's personality.**"



LOUIS BRANDEIS

REPRODUCTIVE RIGHTS

- ▶ In 1965, the Court ruled in the **Griswold v. Connecticut** decision that states could not restrict access to birth control for married couples.
- ▶ The court argued for the existence of an inherent **right to privacy** rooted in the **penumbras** of the First, Third, Fourth, and Ninth Amendments.



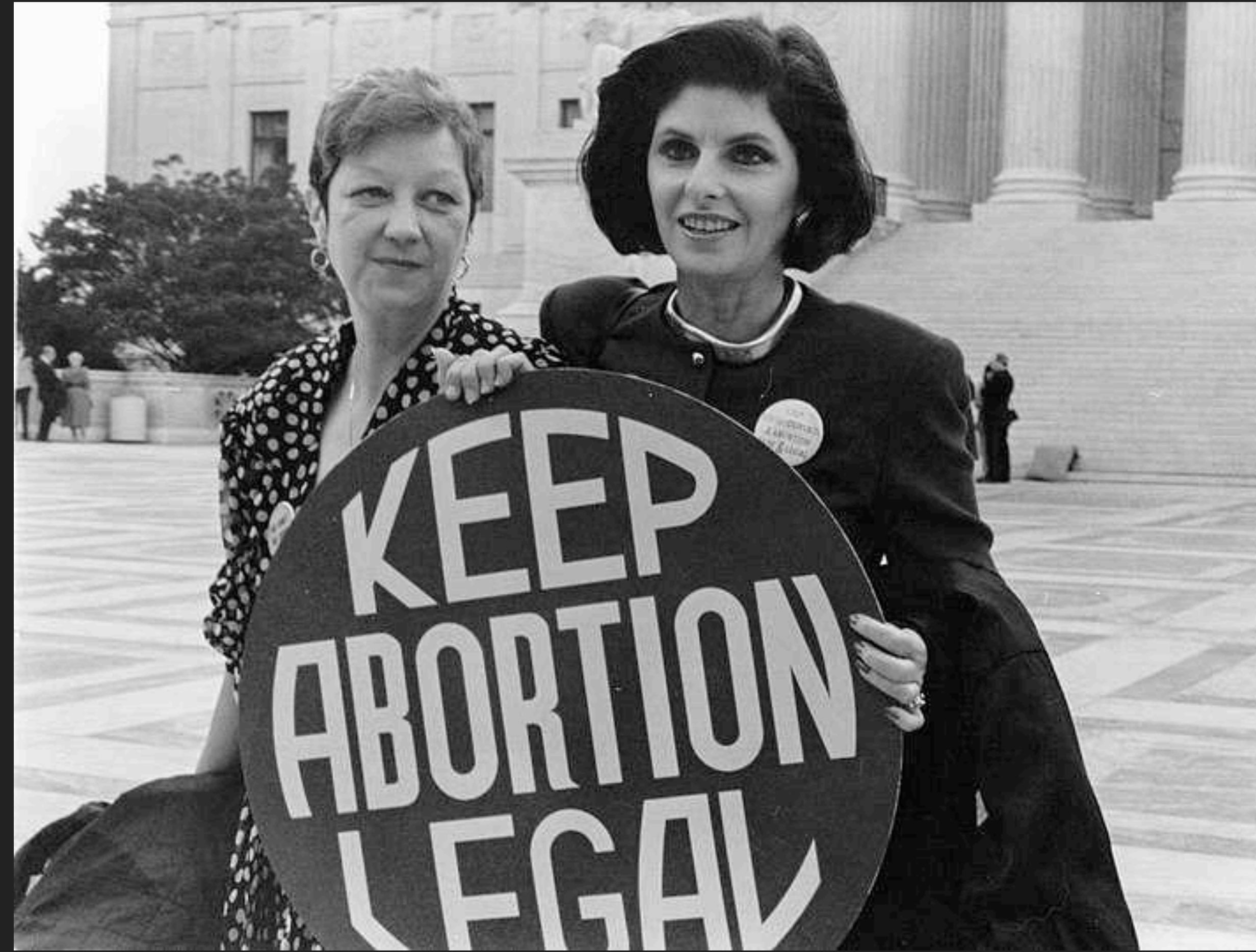
To hold that a right so basic and fundamental and so deep-rooted in our society as the right of privacy in marriage may be infringed because that right is not guaranteed in so many words by the first eight amendments to the Constitution is to ignore the Ninth Amendment and to give it no effect whatsoever.”

“One of the most effective ways of diluting or expanding a constitutionally guaranteed right is to substitute for the crucial word or words of a constitutional guarantee another word or words, more or less flexible and more or less restricted in meaning.”

RIGHT TO PRIVACY

ROE V. WADE (1973)

- ▶ In 1973, the Court ruled in **Roe v. Wade** that states could not forbid abortion.
- ▶ Roe established a three-part system for abortion regulations:
 - ▶ **First trimester:** abortions cannot be outlawed
 - ▶ **Second trimester:** state may regulate abortion for the mother's health
 - ▶ **Third trimester:** state may regulate over prohibit abortion to protect the life of the fetus.
- ▶ Planned Parenthood v. Casey abandoned the trimester system and replaced it with "**viability.**"
- ▶ In 1976, the **Hyde Amendment** prohibited federal funding for abortion.



NORMA MCCORVEY

“Legal challenges to undue restrictions on abortion procedures do not seek to vindicate some generalized notion of privacy; rather, they center on a woman’s autonomy to determine her life’s course, and thus, to enjoy equal citizenship stature.”

RUTH BADER GINSBURG

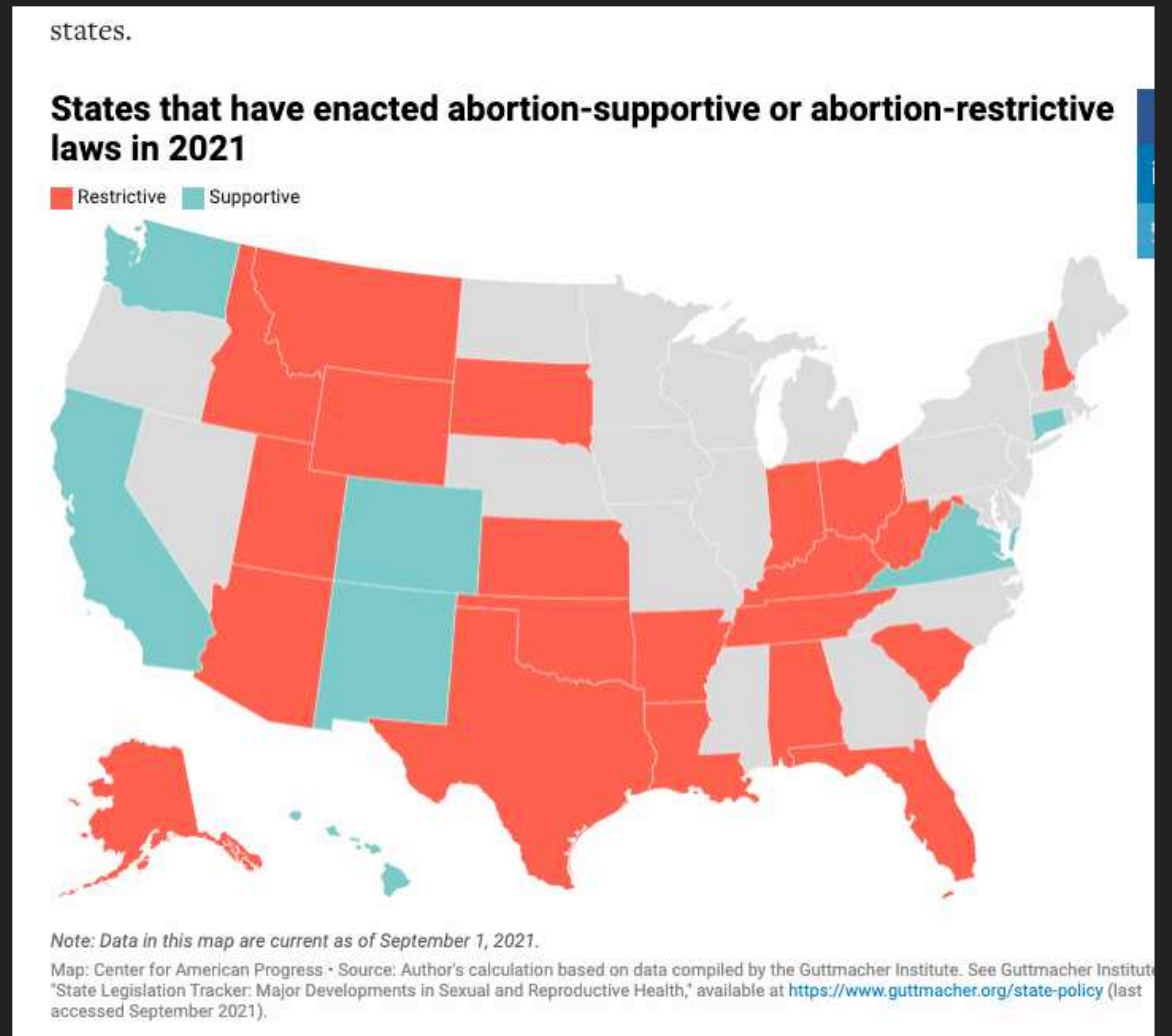
“My idea of how choice should have developed was not a privacy notion, not a doctor’s right notion, but a woman’s right to control her own destiny, to be able to make choices without a Big Brother state telling her what she can and cannot do.”

WHY WAS
GINSBURG
SKEPTICAL OF THE
REASONING OF
ROE?

RUTH BADER GINSBURG

THREATS TO ROE

- ▶ State legislatures have chipped away at Roe:
 - ▶ Insurance coverage restrictions
 - ▶ Gestational bans (6, 15, 20 weeks)
 - ▶ Waiting periods and mandatory counseling
 - ▶ Parental notification laws
 - ▶ Method bans
 - ▶ Reason Bans
 - ▶ Targeted restriction of abortion provider (TRAP) laws
- ▶ Abortion rights are a core federalist fight.



QUESTIONS

- ▶ Explain the Court's reasoning in Roe as it relates to **due process and the 14th Amendment**.
- ▶ Explain what parts of the **First, Third, Fourth, and Ninth Amendments** contain the right to privacy as it relates to abortion?
- ▶ How did **Planned Parenthood v. Casey** restrict the right to abortion and limit Roe?
- ▶ How did Roe ensure that abortion is a federalism question. What are the implications of the reasoning?
- ▶ Should states be able to restrict abortions for reason-based decisions like gender, race, and/or disability of the fetus?