The Rehnquist and Roberts Revolutions

Eric J. Williams, PhD.
Dept. Chair of CCJS, SSU
Overview of Today’s Lecture

- Rise of the Rehnquist Court
- Economic Rights and Federalism
- Chief Justice Roberts—just an umpire?
- Civil Liberties and the Future of the Court
Rehnquist takes over as Chief in 1986

- Scalia (1986), Kennedy (1988) and Thomas (1991) join O’Connor (1981) and Rehnquist to form the Court’s new “conservative” majority

- Court fails to meet expectations of the Right in matters of Civil Liberties, but really shift the Court in the areas of Economic Rights and Federalism
Sandra Day-O’Connor

• Appointed as the first female Justice in 1981

• Longtime friend of Rehnquist
  – Classmates at Stanford; she finished 3rd, Rehnquist finished 1st
  – Both moved to Arizona and supported Barry Goldwater
Sandra Day-O’Connor

• The “Swing Justice” from the late-80s until her retirement in 2005
• Tried to carve out a middle ground between the polarized sides of the Court
• Often more in line with the public than any other Justice
Rehnquist Court and Civil Liberties

• Failed to roll back the Warren and Berger Court’s decisions on Civil Liberties and Civil Rights

• *Casey v. Planned Parenthood of PA* (1992)

• Many thought the Court would overturn *Roe v. Wade*
  
  — Instead, Court reaffirms the central holding of *Roe* while scrapping the trimester system
  
  — Creates the Undue Burden Test
O’Conner also Critical Vote in...


• Expanding privacy rights to include right to refuse medical treatment in *Cruzan v. Director v. Director, MO Dept. of Health* and sexual rights in *Lawrence v. Texas* (2003)
The Real Shift is in Issues of Federalism and Economic Rights


- Court overturns the Gun Free School Zone Act

- Argues that Congress oversteps its power under the Commerce Clause
The Real Shift is in Issues of Federalism and Economic Rights

- Starting with *New York v. US* (1992) the Court limits the Federal Government’s right to infringe on state sovereignty
- One exception was *Bush v. Gore* (2000)
Chief Justice Roberts joins the Court in 2005

- In confirmation hearings, Roberts says he will promote unanimity Stare Decisis

- Says a Justice’s job is like an umpire in baseball who just calls balls and strikes

- The last two terms, the Court has had the largest percentage of 5-4 or 6-3 decisions in history
The Roberts Court and Civil Liberties

• The Second Amendment


• First time the Court reads the 2nd amendment as an individual rather than a collective right
The Roberts Court and Civil Liberties

• Scalia argues that the first half of the amendment is a “prefatory clause” that just announces the purpose of the amendment.

• The second clause is the “operative clause”.

• *MacDonald v. Chicago* (2010) incorporates the amendment to the states.
The 1st Amendment

• The Free Exercise Clause

• The Court has been much less protective of free exercise rights of individuals

• Establishment Clause of the 1st Amendment

• The Court has also blurred the line between Church and State, especially in the area of public symbols
The 4th Amendment, *Miranda*, and the Exclusionary Rule

- The Court has been much more willing to create exceptions to the Exclusionary Rule

- The “good faith exception” doctrine has been greatly expanded

- Several cases have chipped away at *Miranda*

- Citizen’s United had tried to have the FEC prevent the release of *Faranheit 9/11* before the 2004 election.

- Citizen’s United wanted to show ads to promote a documentary called *Hillary: The Movie*.

- FEC found that the ads violated the McCain-Feingold Act (BCRA):
  - prohibited unions and corporations from using money from their general treasuries to fund “electioneering communications”


• Found parts of the BCRA unconstitutional

• Gives corporations and unions First Amendment rights to political speech
NFIB v. Sebelius (2012)

• One of several cases challenging the constitutionality of parts of the Patient Protection and Affordable Care Act of 2010

• Specifically dealt with the individual mandate
NFIB v. Sebelius (2012)

• Chief Justice Roberts, writing only for himself, finds the Individual Mandate is not authorized under the Commerce Clause, but is constitutional as a tax

• Although four Justices agree with ruling, no Justice agrees with his reasoning

- *Windsor* found the DOMA of 1996 unconstitutional

- The Court avoided the broader issue of whether or not bans on same-sex marriage violate the equal protection clause by finding *Hollingsworth* did not have standing to sue