

(1973), the Court concluded that the constitutional right to privacy was broad enough to include the termination of a pregnancy. According to the majority ruling, a woman's right to privacy gives her an absolute right to terminate her pregnancy during the first trimester. In the second trimester, the government can regulate abortions only to protect the health of the mother. It is only in the third trimester that the government's interest in potential life outweighs the privacy interests of the mother, because at that point the fetus is viable and can live outside the womb. Since the passage of *Roe v. Wade*, an estimated one million abortions have been performed every year in the United States.

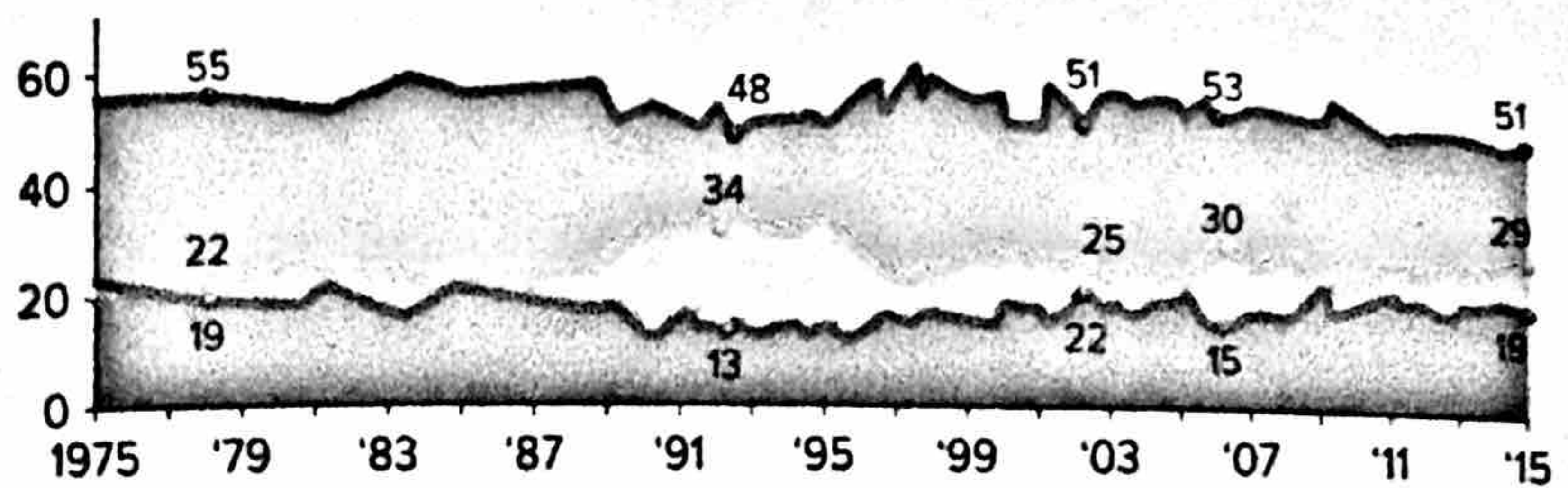
The *Roe* decision intensified the country's division over the issue of abortion.<sup>115</sup> Antiabortion groups have been unsuccessful in persuading Congress to propose a constitutional amendment banning abortions or the Supreme Court to overturn *Roe*. They have been successful, however, in getting state legislatures (and Congress, to a lesser extent) to adopt abortion restrictions. The Supreme Court has upheld state provisions requiring parental consent for abortions performed on minors, informed consent provisions, and a twenty-four-hour waiting period.<sup>116</sup> It also upheld state bans on the use of public facilities for abortions and has required viability testing at twenty weeks.<sup>117</sup> The justices have also validated the Hyde Amendment, which banned the use of Medicaid funds for poor women who wanted to secure abortions.<sup>118</sup> In the case of *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992), the Court declared it would not abandon a woman's right to an abortion first articulated in *Roe*, but the Court did dismantle the trimester system, since viability testing can be conducted in the second trimester. In 2007, the Court outlawed a later-term abortion method called intact dilation and extraction, which abortion opponents refer to as "partial birth abortion."<sup>119</sup>

In 2016, the Court decided its most important abortion case in over two decades striking down a Texas law restricting access to abortions in *Whole Woman's Health v. Hellerstedt*. The law had placed two strict requirements on abortion providers in the state. First, all such clinics had to meet the state's standards for ambulatory surgical centers concerning buildings, equipment, and staffing. Second, the statute had required that doctors performing abortions must have admitting privileges at a nearby hospital. The effect of the 2013 law was the closing of half of the state's forty abortion clinics with the expectation that another ten would close if the law was upheld. The Court, however, decided by a vote of 5 to 3 that the law's provisions did not offer sufficient medical benefits to justify the burdens it placed on a woman's access. By its use of the "undue burden" test, the Court's decision meant that similar requirements in other states would likely be found unconstitutional as well.

## Abortion and Public Opinion

Do you think abortions should be legal under any circumstances, legal only under certain circumstances, or illegal in all circumstances?

■ % Legal under any circumstances ■ % Legal only under certain circumstances  
■ % Illegal in all circumstances

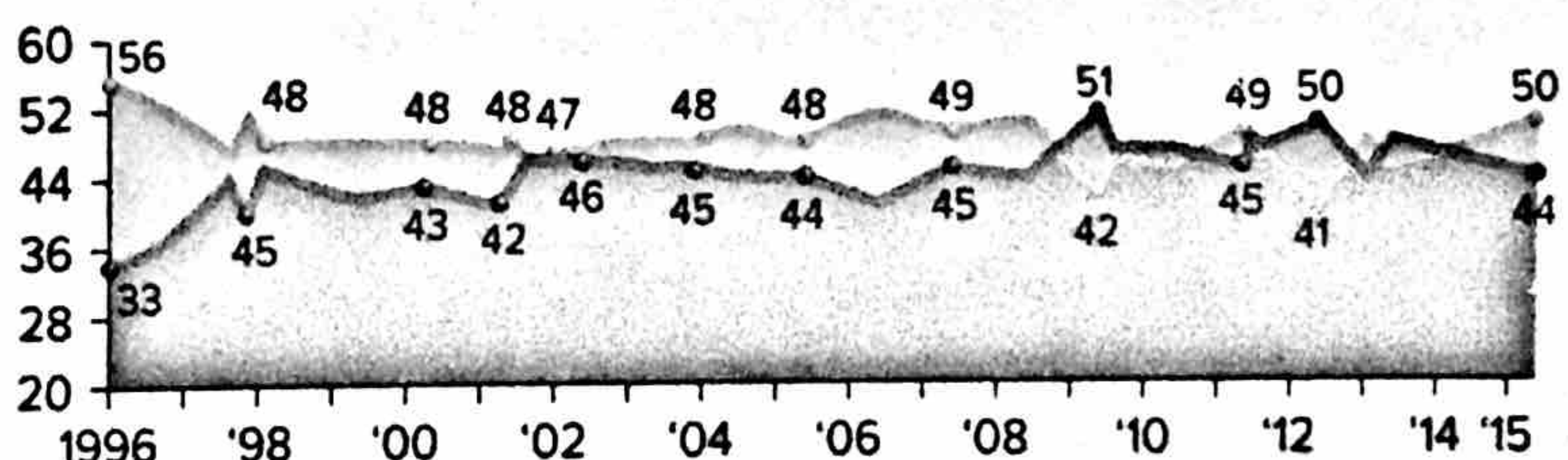


A majority of the people polled believe that abortion should be legal only under certain circumstances.

Source: Gallup, May 6-10, 2015.

With respect to the abortion issue, would you consider yourself to be pro-choice or pro-life?  
Trend from polls where pro-life/pro-choice was asked after question on legality of abortion

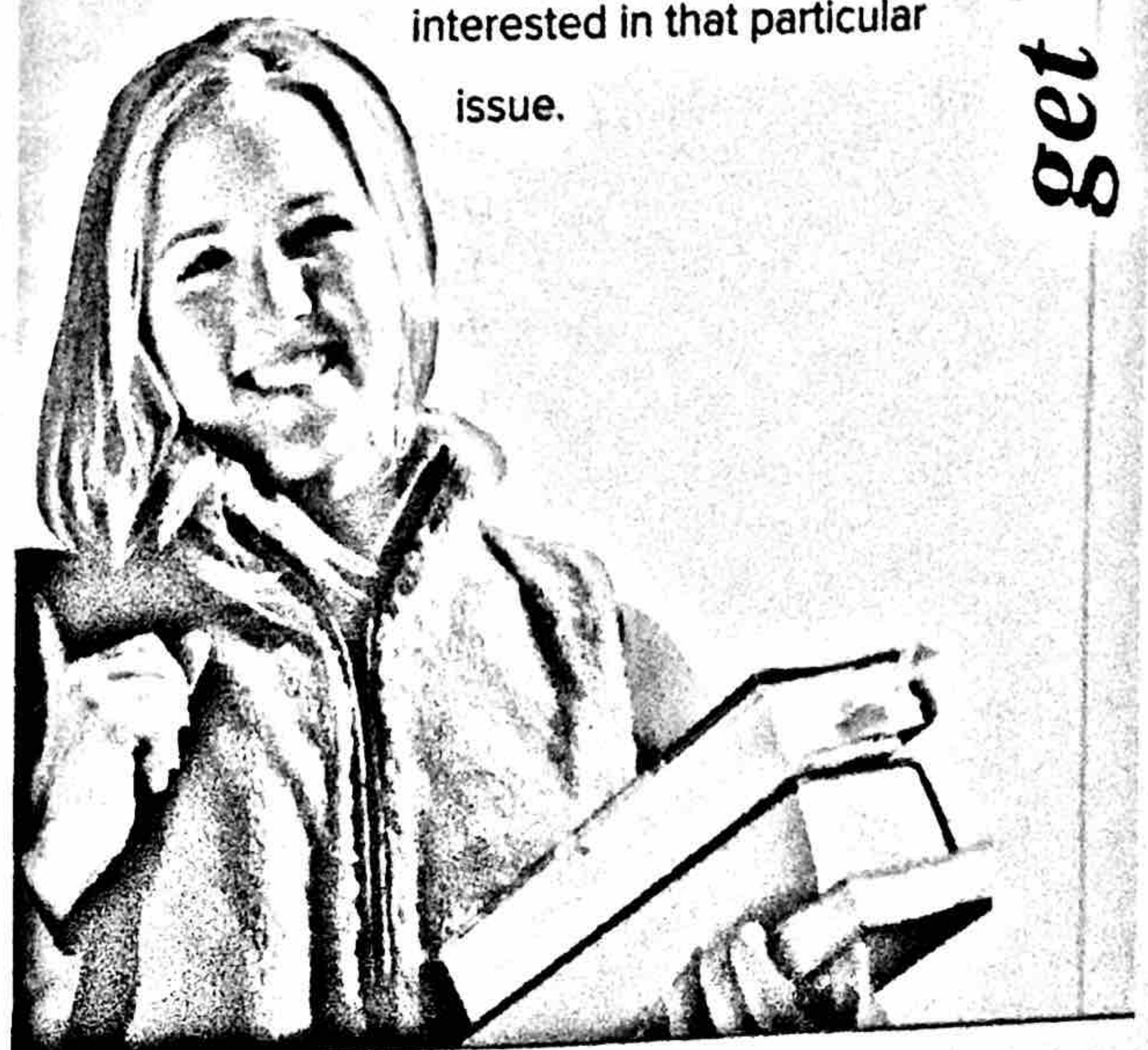
■ % Pro-choice ■ % Pro-life



Slightly more Americans polled identify themselves as Pro-choice rather than Pro-life.

Source: Gallup, May 6-10, 2015.

Using a service like LexisNexis, Westlaw, or [www.law.cornell.edu](http://www.law.cornell.edu), examine the amicus curiae briefs that were submitted for different civil liberties cases. Summarize your arguments for the class and analyze why those particular groups are interested in that particular issue.



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get involved!