Objectives

• While studying this chapter, the student will learn to:
  • Trace and understand the origins of the right of privacy as it relates to abortion rights.
  • Understand the Court’s reasoning in interpreting the constitutionally protected right of privacy.
  • Assess the constitutionality of a ban on partial birth abortion.
  • Compare the right to refuse medical attention with laws that ban assisted suicide.
Liberty, Privacy and Abortion

• Right to Privacy in the Constitution?
• Where do you find it?
• Griswold v. Connecticut
• What are the facts of this case?
• Privacy was made a fundamental right by the Supreme Court.
• If a right is a fundamental right the Court uses the Strict Scrutiny test.
• If a right is not then the Court uses the Rational Basis test.
Liberty, Privacy and Abortion

• In the case of Planned Parenthood v. Casey four Justices of the Court wanted to do what?
• Take the right to privacy out of the fundamental rights area
• That did not happen, what happened.
• The majority did not do that.
Development of Privacy and Griswold

- Griswold outlawed the use of contraceptives.
- Even between married couples.
- In order to find this statute unconstitutional the court had to find a way to pin it under the constitution so what did the court do?
Development of Privacy and Griswold

• They looked at the bill of rights the 1st, 4th, 5th, and 9th amendments and found that these amendments dealt with the right to an individual’s privacy concerns.

• They said that within the PENUMBRAS OF THESE AMENDMENTS we find a right to Privacy for all.

• The court stated “a relationship lying within the zone of privacy created by these fundamental constitutional guarantees…” and that a law forbidding the use of contraceptives has a destructive impact upon the marital relationship.”
Development of Privacy and Griswold

• Of course most of the fundamental rights fall under the Liberty area of the Due Process clause here is where the rights are found fundamental or not.

• The right for parents to direct the upbringing and education of their children is found under the liberty section as well as the right to marry, to worship etc…
Development of Privacy and Griswold

- In the Pierce v. Society of Sisters the court struck down a state law that required children between certain ages to attend public schools only.
- The courts said that requiring this would interfere with the parents right to direct the upbringing and education of their children.
Development of Privacy and Griswold

• Skinner v. Oklahoma 316 U.S.535 (1949)?
• Here the court protected the right to procreate by striking down a state statute that required forced sterilization.
• The 1st amendment also gives the right to associate as a right to privacy in its PENUMBRA.
The Ninth Amendment

• The Ninth amendment states:
• “The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people”
• What does this mean?
Roe v. Wade

- What did the Supreme Court hold in Roe v. Wade?
- The court ruled that the constitution does guarantee a right of abortion, as encompassed in the right of privacy that derives from the liberty concept of the due process clause.
Roe v. Wade

• Therefore, since in Griswold the court found that the right to privacy was a fundamental right the used the strict scrutiny test and found that a woman has a right to an abortion in the first trimester of her pregnancy. That the state had a right to regulate and protect the woman's health in the second trimester. That the State could totally ban abortion in the third trimester as long as the life of the mother was not at stake here the state had a right to protect potential life.
Roe v. Wade

• In the case of Planned Parenthood v. Casey what was at issue?
  • Notice and information to the female
  • Given 24 four hours before the procedure
  • No female under 18 could get an abortion without parent permission
  • Notification to husband if married
  • The Court held what?
Roe v. Wade

- There appeared to be 4 justices who wanted to take privacy out of the fundamental rights category
- Justice Kennedy was the swing vote and there was a plurality of holdings
- A majority upheld the privacy issue and struck down the notice to spouse
- Another majority replaced the trimester framework with the “Viable” and Undue burden test.
Roe v. Wade

- What is viability?
- Potential life
- What is Undue Burden?
- Regulations that are designed to ensure that the choice if informed and those to further the health of women are allowed unless they are a undue burden on the female.
Roe v. Wade

- In Casey the court found:
  - Informed consent – not an undue burden
  - Twenty-Four hour notice – not an undue burden
  - Parental consent – not an undue burden
  - Spousal consent – an undue burden
Government Funding

• Can the government pass a statute prohibiting government funding of abortion?
• The court in Harris found the government passed a law disallowing government funding for abortions
• It found it was not an undue burden
• Why?
Partial Birth Abortion

• What is it?
• That a fetus is born alive and then the doctor kills it.
• The court in Stenberg v. Carhart held that the statute prohibiting partial birth abortion was unconstitutional.
• Why?
• The court applied the same principles it developed in Roe to this case.
Partial Birth Abortion

1. A woman before viability has the right to an abortion;
2. The state cannot pass a law that places an undue burden on the female
3. After viability the state can ban abortion because it has a state interest in promoting and protecting potential life.
4. What did the statute say?
Partial Birth Abortion

• The statute defines “partially delivers vaginally a living unborn child before killing the unborn child” to mean deliberately and intentionally delivering into the vagina a living unborn child, to a substantial portion thereof; for the purpose of performing that the person performing such procedure knows will kill the unborn child and does kill the unborn child.
Partial Birth Abortion

• The statute was deemed unconstitutional for two reasons, what were they?
• It contained no health of the mother exception
Partial Birth Abortion

- It was an undue burden on the woman’s right to choose because it not only banned one type of abortion, the partial birth abortion (DX) but also banned the most commonly used pre viability second trimester abortion method (DE). Even if the statute’s basic aim was to ban the DX, its language made it clear that it also covered the DE, procedure because both can involve the introduction of a substantial portion of a still living fetus through the cervix into the vagina.
End of Life decisions: Right to Refuse Medical Attention and Right to Assisted Suicide

• Everyone has a right to refuse medical attention. Why?
• Because a person who refused medical attention is not killing themselves. What kills them is the illness.
• Assisted suicide is different because the patient does not die of the illness but of the act to die.
• There is no constitutional right to die.
THE END