

The Right to Privacy: Abortion, Sex, and Death

Terms:

Trimester Framework

Viability (vs Quickening)

Sodomy

Vacuum Aspiration

Dilation and Evacuation (D&E)

Dilation and Curettage (D&C)

Intact Dilation and Extraction (IDX) (aka “Partial Birth” Abortion)

Assigned Cases:

Griswold v. CT; *Roe v. Wade*; *Planned Parenthood v. Casey*; *Lawrence v. TX*; *Cruzan v. MO*; *Pierce v. Society of Sisters*; *Stanley v. GA*; *WA v. Glucksberg and Vacco v. Quill*; *Gonzales v. Carhart*; [*Goodridge v. MA Dept. of Public Health*](#)

Questions for Reading Assigned Cases:

Many of the cases involving privacy, including *Pierce v. Society of Sisters* and *Moore v. East Cleveland* (see below), have dealt with the definition of the American family and the rights of parents and guardians over children. Does the right to privacy provide enough protection for familial decision-making? Too much? How does (and should) this influence arguments over abortion and gay marriage?

The Court’s decision in *Roe v. Wade* was based in medical science as it stood in 1971; a number of years later, Justice O’Connor wrote that, because of this, *Roe* was on “a collision course with itself” because of advances in medicine. To what extent are the current controversies around abortion related to these same advances? What are the politics of these newer controversies?

Both the U.S. Supreme Court and the Massachusetts Supreme Judicial Council have used the ordinary scrutiny test for classifications made on the basis of sexual orientation. Is the way in which the Massachusetts Court used ordinary scrutiny in the *Goodridge* case similar to the way that the U.S. Supreme Court has used ordinary scrutiny in *Lawrence v. Texas* or *Romer v. Evans*? Why do you think that the Massachusetts Court avoided using strict or intermediate scrutiny and used ordinary scrutiny instead?

Cruzan v. MO and *WA v. Glucksberg/ Vacco v. Quill* concern the “right to die.” How does the “right to die” relate to abortion rights? What of issues of family autonomy? Would you make the case for a connection to the right to free exercise of religion as a matter of personal conscience?

Additional Cases:

Bowers v. Hardwick (1986). Georgia law prohibited sodomy without regard to whether participants were straight or gay, married or unmarried. The Supreme Court, in a 5-4 decision, read the statute so that it only applied to homosexual sodomy, which it found to be unprotected by the Constitution as the right to practice homosexual sodomy was not rooted in the nation's history and traditions. The dissenters decried the Court's decision as too dependent on tradition, without a basis in current state interests or a proper sense of the broader right to privacy.

Moore v. East Cleveland (1977). East Cleveland's housing ordinance limited occupancy of a dwelling unit to members of a single, "nuclear" family, strictly defined as parents, children and siblings. This excluded Moore, who lived with her son and two grandsons, one of whom, although grandson, nephew and cousin, did not fit within the ordinance. The four justices in the plurality held that the ordinance violated Moore's privacy rights because it constituted "intrusive regulation of the family." Justice Stevens concurred, arguing that the ordinance constituted a taking of property without just compensation by regulating who could live with Moore. The four dissenters found the ordinance a proper use of police powers intended to exclude groups, such as college students, who might disturb the quiet of a family neighborhood and decrease property values.