

## The Right To Privacy

- I. Right to Privacy
  - A. Not specifically mentioned in Constitution
  - B. Various rights imply a right to privacy
    1. First Amendment guarantee of free exercise of religion
    2. Fourth Amendment protection against unreasonable searches and seizures
    3. In 1928 Justice Louis Brandeis described privacy as "the right to be left alone-the most comprehensive of rights and the right most valued by civilized men"
- II. Birth Control
  - A. *Griswold v. Connecticut* (1965)
    1. Struck down a law prohibiting the dissemination of information about and/or the sale of contraceptives
    2. Various amendments cast penumbras thereby creating zones of privacy
      - a. First, Third, Fourth, Ninth, Fourteenth
- III. Abortion
  - A. *Roe v. Wade* (1973)
    1. A Texas law banning abortion violated a woman's right to privacy
    2. Divided pregnancy into three stages
      - a. First Trimester
        - 1) Absolute right
      - b. Second Trimester
        - 1) State may regulate abortions to protect the life of the mother
      - c. Third Trimester
        - 1) State interest in protecting potential life outweighs the rights of the mother
        - 2) Abortions to save the life of the mother must be legal
  - B. Very controversial
    1. Polarized the parties
    2. Pro-choice and pro-life
    3. Supreme Court Nominations
    4. Led to rise of pro-life groups that helped elect Ronald Reagan in 1980
  - C. Amendment to a law banned the use of Medicaid funds for abortions
    1. Henry Hyde (R-IL)
    2. Upheld by *Harris v. McRae* (1980)
  - D. *Webster v. Reproductive Health Services* (1989)
    1. Upheld some restrictions on abortion
    2. Did not overturn Roe
      - a. O'Connor the deciding vote

- E. *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992)
    - 1. Upheld a 24 hour waiting period and parental consent requirement
    - 2. Did not overturn Roe but abolished the trimester approach and replaced it with the undue burden test
      - a. Laws can regulate abortions as long as they don't create an undue burden for the mother
  - F. In 1993 Bill Clinton ended bans on fetal tissue research, abortions at military hospitals, and federal funding for overseas population control programs. Also lifted a gag rule preventing public health clinics receiving federal money from discussing abortion.
    - 1. All of these were later reversed by George W. Bush
  - G. Clinton also ended the ban on testing RU-486 which was made available in 2000 and appointed two pro-choice justices to the Supreme Court
  - H. Congress passed two partial birth abortion bans in the 1990s, but both were vetoed by Clinton
  - I. *Stenberg v. Carhart* (2000)
    - 1. Struck down a Nebraska partial birth abortion ban because it did not have an exemption for a woman's health
  - J. In 2003 George W. Bush signed the Partial Birth Abortion Ban Act into law
  - K. *Gonzales v. Carhart* (2007)
    - 1. Upheld the Partial Birth Abortion Ban Act even though it contained no exceptions for the health of the mother
- IV. Homosexuality
- A. *Bowers v. Hardwick* (1986)
    - 1. Upheld Georgia anti-sodomy law
  - B. *Lawrence v. Texas* (2003)
    - 1. Overturned Bowers by striking down a Texas law and similar laws in 14 other states
- V. The Right to Die
- A. *Cruzan v. Director, Missouri Department of Health* (1990)
    - 1. Parents could not withdraw a feeding tube from their comatose daughter
  - B. *Vacco v. Quill* (1997)
    - 1. Terminally ill patients do not have a right to Physician assisted suicide
  - C. *Gonzales v. Oregon* (2006)
    - 1. Oregon passed a law allowing assisted suicide
    - 2. Attorney General John Ashcroft issued a legal opinion that physician assisted suicide is not a legitimate medical purpose and called for the revocation of physicians prescription drug licenses
    - 3. Court ruled against Ashcroft's actions and upheld the Oregon law
    - 4. Since then other states have passed assisted suicide laws