Phil 324: Law and Morality

Module 11 Reading Guide

## **Griswold v. Connecticut (1965)**

1. Who are the appellants? What did they do?
2. What does the Connecticut law provide? What is so distinctive about this law?
3. What are *peripheral* rights?
4. What is the Court’s argument for the conclusion that the right to privacy is protected by the Constitution?

## **Roe v. Wade (1973)**

1. Who is Jane Roe? Why can’t she get an abortion legally in Texas?
2. Reviewing the history of abortion rights, the Court observes that the criminalization of abortion is a relatively recent invention.
3. Which three reasons have historically been used to justify the criminalization of abortion?
4. What is Texas’ interest in criminalizing abortion?
5. Where can the right to privacy be found in the Constitution?
6. How is the right to privacy relevant to abortion?
7. What are the consequences of criminalizing abortion?
8. What state interests might restrict the right to have an abortion?
9. **What level of scrutiny is applicable to statutes restricting fundamental rights?**
10. **What is the Court’s response to the objection that fetuses count as persons for the purposes of the 14th Amendment?**
11. What is the Court’s response to the objection that “life begins at conception and is present throughout pregnancy”?
12. **The Court then articulates what has come to be known as the “trimester framework.” Please identify: (1) which state interest becomes compelling at which point, and (2) what the government is allowed to do during each trimester.**
13. Please skip the concurrences and dissents.

## **Doe v. Bolton (1973); Maher v. Roe (1977); Harris v. McRae (1980)**

1. What is the Court’s holding in *Doe*?
2. What is *Maher*’s holding? What does this mean for the economically disadvantaged?
3. What is the Hyde Amendment? What is the Court’s holding on the constitutionality of the Hyde Amendment?

## **Planned Parenthood v. Casey (1992)**

1. Note how fractured the Court is in *Casey*. Pay attention to which parts of the opinion make up the Opinion of the Court, and which parts the plurality opinion.

## Part I

1. **What, according to the *Casey*, is the “essential holding” of *Roe*?**

## Part III

1. Skim the discussion of *stare decisis*, but do note the factors that the Court considers.

## Part IV

1. Skim the first two paragraphs.
2. What does the *Casey* plurality find inadequate about *Roe*? (What is the plurality doing in overturning parts of *Roe* while announcing that it is *upholding* it?)
3. What does the *Casey* plurality take to be the “basic flaws” of Roe’s trimester framework?
4. **What test does the *Casey* plurality apply to determine the constitutionality of abortion regulations?**
5. **What, according to the *Casey* plurality, is at stake?**

## Part V

1. How does the plurality apply the undue burden test to various provisions of the Pennsylvania statute at issue?

## Justice Stevens’s Separate Opinion

1. Skim Justice Stevens’s opinion.

## Justice Blackmun’s Separate Opinion

1. What standard of review would Justice Blackmun, the author of *Roe*, apply to the Pennsylvania statute?
2. **How might abortion regulations implicate the Equal Protection Clause?**
3. Please skip the remaining opinions.

## **Whole Woman’s Health v. Hellerstedt (2016)**

## Introduction

1. How does the Court interpret *Casey*’s holding?
2. What does the Texas bill provide?
3. What is the Court’s holding?

## Part I

1. What would be the effects of the two provisions?
2. What is the district court’s finding on the safety of abortion and the financial burden of the surgical center requirement?

## Part III

1. How does the court of appeals interpret the undue burden standard?
2. **For what reasons does this Court reject the court of appeals’ two-part test?**
3. Must courts always defer to the factual findings of the legislature?
4. What is presumably the state’s interest in enacting these provisions?
5. What has the district court done right where the court of appeals has erred?

## Part IV

1. Skim this part. What is the Court’s argument for striking down the admitting privileges requirement?

## Part V

1. Skim this part as well. What is the Court’s argument for striking down the surgical center requirement?

## Justice Ginsburg’s Concurrence

1. What is Justice Ginsburg’s point?

## Justice Thomas’s and Justice Alito’s Dissents

1. Please skip the dissents.

## **June Medical Services v. Russo (2020)**

1. Is there a majority opinion in *June Medical*?
2. What is the Louisiana statute at issue? How does it compare to the Texas statue in *Whole Woman’s Health*?
3. What is the district court’s finding?
4. What is the court of appeals’ ruling? (FYI: Texas and Louisiana are in the same federal circuit. In other words, the Fifth Circuit upheld the virtually verbatim Louisiana statute even though the Court had just reversed them in *Whole Woman’s Health*. In this way, many court watchers suspect that the Court granted cert in *June Medical* not so much to resolve a circuit split as to correct an insubordinate court.)
5. On what grounds does the plurality hold that the Louisiana statute is unconstitutional?
6. Why does Chief Justice Roberts vote to strike down the Louisiana statute even though he dissented in *Whole Woman’s Health*?
7. **Why does Chief Justice Roberts reject the plurality’s interpretation of the undue burden standard? What other test would he apply?**
8. How does the dissents understand the precedential significance of Chief Justice Roberts’ concurrence?
9. Skim the rest.

## **Dobbs v. Jackson Women’s Health Organization (2022)**

1. The casebook provides a summary, but try to explain this to yourself in your own words: What is the Mississippi law at issue?

## The Majority Opinion

1. **When, according to Justice Alito, is a right protected by the Due Process Clause of the 14th Amendment? How does the majority apply this test to abortion?**
2. The paragraph on *stare decisis* factors: Were these the same factors considered by the *Casey* plurality? How might what factors a court considers make a difference as to whether a decision should be afforded *stare decisis* respect?
3. **On what grounds does Justice Alito argue that abortion restrictions do not constitute discrimination on the basis of sex?**
4. **At what stage does abortion become a crime at common law? How does this support the Court’s decision to uphold a 15-week abortion ban?**
5. Why does a general right to autonomy “prove too much”?
6. **What makes the right to abortion different from other autonomy-based rights that the Court has recognized?**
7. Why does Justice Alito think the majority opinion does not “impose on the people a particular theory about when the rights of personhood begin”?
8. Justice Alito then goes on to compare overruling *Roe* to overruling *Plessy*, among other cases.
9. Skim the discussion of *stare decisis*, but do pay attention to the discussion of reliance interests: the majority says it “has neither the authority nor the expertise to” consider how overruling *Roe* would affect “the lives of women.”
10. **What, according to the majority, is the appropriate level of scrutiny for abortion restrictions?**

## Justice Thomas’s Concurrence

1. What other rights does Justice Thomas think the Court should also reconsider?

## Justice Kavanaugh’s Concurrence

1. Why is overruling *Roe* and *Casey* a way to be “scrupulously neutral”?
2. How might overruling *Roe* and *Casey* help “resolve this controversy for America”?
3. Note that Justice Kavanaugh says the questions created by the decision to overrule “are not especially difficult as a constitutional matter.” Would his colleagues agree?

## Chief Justice Roberts’ Concurrence

1. What would the Chief Justice have done differently in this case?

## The Joint Dissent

1. **What does the dissent see as the significance of the right to abortion?**
2. What does the dissent predict the Court’s decision today will allow states, and perhaps the federal government, to do?
3. **What is the dissent’s response to the majority’s attempt to distinguish abortion from other autonomy-based rights?**
4. The dissent makes the argument because *Casey* already decided that overruling *Roe* would violate *stare decisis*, that decision not to overrule itself deserves further *stare decisis* respect (in other words, it’s a “precedent on precedent” situation, as legal scholars call it).
5. **Did “we the people” ratify the Fourteenth Amendment?**
6. **Why does the Constitution guarantee women’s rights today, even though not even many women would have dreamt of having these rights back in 1868? Recall the exchange between Scalia and Dworkin—whose view is closer to the argument the dissent is offering here?**
7. What is the dissent’s response to Justice Kavanaugh?
8. Why does the dissent think the Court’s decision today is a “Jenga tower” waiting to “collapse”?
9. For which “one and only one reason,” according to the dissent, did the Court overrule *Roe* and *Casey*?
10. Skim the rest of the dissent.

## **Ruth Bader Ginsburg, “Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade”**

1. Note that the article was published in 1985, when then-Judge Ginsburg was serving on the D.C. Court of Appeals.
2. **How does the Supreme Court treat gender-based classification and reproductive autonomy cases?**
3. How did the Supreme Court develop its sex discrimination cases? How did the Supreme Court develop its reproductive autonomy cases?
4. **In what sense did “*Roe* venture[] too far in the change it ordered” as Ginsburg sees it?**
5. **Why does Ginsburg think the *Roe* Court “presented an incomplete justification for its action”?**
6. How does *Roe* fail to address the plight of those who lack the financial resources to access abortion services? What, according to Ginsburg, might help?
7. Then Ginsburg summarizes her main points. How might the Court’s decision in *Dobbs* now shed a different light on Ginsburg’s critique of *Roe*?