

TABLE OF CONTENTS

Resolution of Abortion in the U.S.:

- Access and Regulations
- Abortion Bans
- Medication Options
- Refusal Clauses*
- Biased Counseling and Waiting Periods*

Contraception:

- Access
- Equity
- Pharmacist Refusal Clauses
- Emergency Contraception
- Coercive Contraception
- Emerging Contraceptive Technology*

Fetuses:

- Wrongful Death
- Fetal Homicide
- Women's Rights in Relation to Fetus
- Unborn Victims of Violence Act
- State Children's Health Insurance Program (S-CHIP)
- Fetal Pain*
- Appointment of Legal Counsel to Fetuses*

Pregnancy:

- General Pregnancy Rights
- Forced Cesareans
- Forced Sterilization
- Pregnancy and Drugs
- Wrongful Life Claims*

Funding:

- Public Funding for Abortion
- Public Funding for Prenatal Care

Technology:

- Vasectomy
- Detection of Fetal Anomalies—OB/GYN Surgeries and Options Available
- Fetal Sex Determination/Manipulation
- Stem Cell Research

Alternative Reproduction:

- ART Generally
- Artificial Insemination
- In vitro Fertilization
- Surrogacy

Minors:

- Parental Involvement and Judicial Bypass Options
- Sex and Sexuality Education

Underrepresented groups:

- Blacks
- Asians
- Latinas

- Minorities in General
- Sexuality
- Prisoners

International:

- U.S. Policy and International Reproductive Rights
- CEDAW
- UNFPA Funding/History
- Anti-choice Action:
- Anti-Clinic Violence

*Indicates Secondary Reading Sections

INTRODUCTION

Currently, only two law schools in the country have classes focused exclusively on reproductive rights. Yet, a woman's right to choose has become, perhaps, the most contentious and divisive issue in American politics. Not only does the issue surface and re-surface during elections, but reproductive rights have also become a central focus for the American judiciary, a supposedly neutral branch of American government. Due to the necessity and importance of these rights, it is paramount that current law students receive the education they need to become well-trained attorneys, able to guard and fight for these constitutional rights. Freedom of bodily integrity and the right to make a choice regarding whether to raise a family or to terminate a pregnancy are rights for which the current generation of law students must learn to advocate.

In our effort to train law students to defend and expand reproductive rights, Law Students for Choice has created this Model Curriculum for use as an independent study course. We have designed it with the intention of providing the Constitutional background leading up to *Roe v. Wade* and *Casey v. Planned Parenthood*, which have led to the current "undue burden" test all regulations concerning reproductive rights must pass. Moreover, the Model Curriculum considers priority issues facing us today, such as reproductive justice for women of color, global reproductive rights, Assisted Reproductive Technology, and the balance between anti-choice protesters' First Amendment freedoms and women's right to choose. Thus, the Curriculum covers both past and current legal issues.

The syllabus is divided into 11 modules, providing students with a wide range of potential topics from which to guide their studies. The reading is based on a 3-credit course, but can be modified for a 1- or 2-credit course. Each module is broken down into Priority Reading and Secondary Reading. The Priority Reading comprises enough material for a 3-credit course, but because students may have covered some of the selected cases in Constitutional Law classes, the Secondary Reading allows them to learn more in-depth about an area that especially interests them. (The number in parentheses after each source reflects its number of pages; a three-unit course is based on approximately 120 pages of reading per week.) Usually, a student participating in an independent study course may require a supervising professor with whom the student will work to create writing and project assignments. Some of the focus questions specific to each module will help foster ideas, provide discussion material, and highlight the main themes.

All of the reading material in the Curriculum can be found online, usually through Lexis or Westlaw, and additional copies of the Model Curriculum can also be found online at: www.lawstudentsforchoice.org/ed_resources.

Curriculum created by Law Students for Choice Interns: Mags Aleks, Erin Cassard, Diana Geseking, Kim Irish, and Jen Smith

Abortion

Introduction:

While the groundbreaking 1973 Roe v. Wade decision was a victory for reproductive rights and women's advocates in the United States, it also energized anti-choice advocates who have fought hard since 1973 to chip away at the rights outlined in Roe and reaffirmed in Casey. During the last few years state governments and the U.S. Congress have passed various regulations that restrict access to abortion, especially for young women and poor women. Some of this legislation, which gives previously unrecognized rights to fetuses instead of focusing on those of pregnant women, could be used to undermine Roe.

Focus Questions:

Which regulations have courts upheld under Casey's "undue burden" standard? Is this standard still used by courts to determine whether regulations are facially constitutional? What was the effect of Stenberg on the Casey holding? Do all restrictions on abortion have to include an exception for the health of the mother?

Priority Reading:

This section will provide only a brief overview of the present state of abortion law in the United States, including information on surgical and medication abortion. It will also provide information on some of the restrictions that courts have upheld under Casey's undue burden standard. Feel free to skim or skip any cases already covered in Constitutional Law courses, replacing those pages with selections from the "Secondary Reading" section.

Access and Regulations:

- Roe v. Wade, 410 U.S. 113 (1973). (40)
- Planned Parenthood of Southern Pennsylvania v. Casey, 505 U.S. 833 (1992). (80)

Abortion Bans:

- Stenberg v. Carhart, 530 U.S. 914 (2000). (40)
- Partial Birth Abortion Ban Act of 2003, 18 U.S.C. § 1531 (2004).
 - Skim Act to get a feel for the language used by its writers.
- NARAL Pro-Choice America Federation's "Who Decides?", available at <http://www.prochoiceamerica.org/yourstate/whodecides/index.cfm>
 - Review updated information on state and federal regulations and bans on abortion.

Medication Options:

- Hilary Guenther, The Development of the Undue Burden Standard in Stenberg v. Carhart: Will Proposed RU-486 Legislation Survive?, 35 Ind. L. Rev. 1021 (2002). (20)

Secondary Reading:

The priority reading provides a basic foundation of the current status and history of abortion law and is enough to satisfy the requirements for this module. However, because this is a very large topic, students are strongly encouraged to read one article or case from at least two of the following sections: abortion regulations after Roe,

abortion bans, refusal clauses, biased counseling and waiting periods, and medication options.

Abortion Rights After Roe:

- Caitlin E. Borgmann, Winter Count: Taking Stock of Abortion Rights After Casey and Carhart, 31 Fordham Urb. L.J. 675 (2004). (28)
- David Brooks, Editorial: Roe's Birth and Death, N.Y. Times, Apr. 21, 2005, at A4. (2)
- Rachel D. King, A Back Door Solution: Stenberg v. Carhart and the Answers To the Casey/Salerno Dilemma For Facial Challenges to Abortion Statutes, 50 Emory L.J. 873 (2001). (20)
- Dailard, Promoting Prevention to Reduce the Need for Abortion: Good Policy, Good Politics. The Guttmacher Report on Public Policy. Vol. 8, No. 2, (May 2005), available at <http://www.agi-usa.org/pubs/tgr/08/2 /gr080201.html> (5)

Abortion Bans:

- Carhart v. Ashcroft, 331 F. Supp. 2d 805 (D. Neb. 2004). (130)
- National Abortion Federation v. Ashcroft, 330 F. Supp. 2d 436 (S.D.N.Y. 2004). (35)
- Planned Parenthood Federation of America v. Ashcroft, 320 F. Supp. 2d 957 (N.D. Cal. 2004). (45)

Refusal Clauses:

- Wolfe v. Schroering, 541 F.2d 523 (6th Cir. 1976). (5)
- Kenny v. Ambulatory Centre of Miami, 400 So. 2d 1262 (Fla. Dist. Ct. App. 1981). (5)
- Shelton v. University of Medicine & Dentistry, 223 F.3d 220 (3d Cir. 2000). (7)
- Federal "Refusal Clause" Signed Into Law By President Bush As Part of Omnibus Spending Bill, (Dec. 8, 2004), available at <http://www.nfprha.org/pac/factsheets/anda.asp> (3)
- William W. Bassett, Private Religious Hospitals: Limitations Upon Autonomous Moral Choices in Reproductive Medicine, 17 J. Contemp. Health L. & Pol'y 455 (2001). (70)

Biased Counseling and Waiting Periods:

- Karlin v. Foust, 188 F.3d 446 (7th Cir. 1999). (40)
- A Woman's Choice-East Side Women's Clinic v. Newman, 305 F.3d 684 (7th Cir. 2002). (18)
- Note: Science, Law and Politics of Fetal Pain Legislation, 115 Harv. L. Rev. 2010 (2002). (18)
- Unborn Child Pain Awareness Act of 2005 (S.51; H.R. 356), currently pending in both houses.

Medication Options:

- Planned Parenthood Cincinnati Region v. Taft, 337 F. Supp. 2d 1040 (S.D. Ohio 2004). (7)
- Rachel K. Jones & Stanley K. Henshaw, Mifepristone for Early Medical Abortion: Experiences in France, Great Britain and Sweden, Perspectives on Sexual and Reproductive Health, Vol. 34, No. 3, (May/June 2002), available at <http://www.agiusa.org/pubs/journals/3415402.html> (10)

Contraception

Introduction:

The first significant victory in the movement toward legal access to contraceptives came in 1965 when the Supreme Court held states cannot interfere with a married couple's right to privacy to use birth control. In 1972 this decision was extended to single individuals when the Supreme Court held that it is a violation of the Equal Protection Clause to extend the right to use contraception to married couples but not to single individuals. Finally, in 1977 the Supreme Court recognized the privacy rights of minors in relation to contraception, striking down a New York statute prohibiting distribution of contraceptives to minors. Though contraceptives are legal, barriers to access – especially access to emergency contraception (EC) – still exist for many women. While the development of new and more effective contraceptive technologies provided greater freedom for women attempting to control their pregnancies, these technologies have also been used in coercive ways by the legislature and judiciary to limit procreation within certain populations of women, namely poor women, women of color, convicts, mentally retarded individuals, and the mentally ill.

Focus Questions:

If legislative restrictions such as the proposed "Parent's Right to Know Act of 2005" (listed in the "Priority Reading" section for the "Minors Reproductive Rights and Education" section) were signed into law what standard would the courts use to determine whether such legislation is constitutional? What barriers still exist for women seeking prescription contraceptives? What are the main arguments against full coverage of contraception by prescription insurance plans?

Priority Reading:

This reading will cover access to contraception, coverage of contraception by prescription drug plans (equity), pharmacist refusal clauses, emergency contraception, and coercive contraception. Feel free to skim or skip any cases already covered in Constitutional Law courses, replacing those pages with selections from the "Secondary Reading" section.

Access:

- Griswold v. Connecticut, 381 U.S. 479 (1965). (40)
- Eisenstadt v. Baird, 405 U.S. 438 (1972). (25)
- Carey v. Population Services Int'l, 431 U.S. 678 (1977). (30)
- Anna Quindlen, A Simple One Word Answer, Newsweek, Oct. 21, 2002, at 80. (2)

Equity:

- Erickson v. Bartell, 141 F. Supp. 2d 1266 (W.D. Wash. 2001). (10)
- Contraceptive Coverage for All: EPICC Act is Prescription for Women's Equality, available at http://www.reproductiverights.org/pub_fac_epicc.html (2)

Pharmacist Refusal Clauses:

- Monica Davey & Pam Belluck, Pharmacies Balk On After-Sex Pill and Widen Fight, N.Y. Times, April 19, 2005, at A1. (2)

Emergency Contraception:

- Brownfield v. Daniel Freeman Marina Hosp., 208 Cal. App. 3d 405 (Cal. Ct. App. 1989). (7)

Coercive Contraception:

- People v. Pointer, 151 Cal. App. 3d 1128 (Cal. Ct. App. 1984). (7)

Secondary Reading:

The priority reading provides a basic foundation about the current status and history of contraception and is enough to satisfy the requirements for this module. To gain a greater understanding of this area of law, please read additional materials in place of cases skipped in the Primary Reading section.

Equity:

- Krauel v. Iowa Methodist Med. Ctr., 95 F.3d 674 (8th Cir. 1996). (5)
- E. Renee Backmeyer, Lack Of Insurance Coverage For Prescription Contraception By an Otherwise Comprehensive Plan as a Violation of Title VII as Amended by the Pregnancy Discrimination Act—Stretching the Statute Too Far, 37 Ind. L. Rev. 437 (2004). (23)
- Susan J. Stabile, Religious Employers and Statutory Prescription Contraceptive Mandates, 43 Cath. Law. 169 (2004). (9)

Emergency Contraception:

- Yuliya Schaper, Emergency Contraception For Rape Victims: A New Face Of The Old Battleground of Legal Issues In The Bipartisan Abortion Politics In The United States, 29 Rutgers L. Rec. 1 (2005). (12)
- Governments Worldwide Put Emergency Contraception into Women's Hands, Center for Reproductive Rights Briefing Paper (September 2004), available at http://www.crlp.org/pub_bp.html (10)

Coercive Contraception:

- Stacey L. Arthur, The Norplant Prescription: Birth Control, Woman Control, or Crime Control?, 40 UCLA L. Rev. 1 (1992). (70)
- Karin E. Wilinski, Involuntary Contraceptive Measures: Controlling Women at the Expense of Human Rights, 10 B.U. Int'l L.J. 351 (1992). (25)
 - Focus on sections III and IV.
- Renee Chelian, Remarks on the "CRACK" Program: Coercing Women's Reproductive Choices, 5 J.L. Soc'y 187 (2003). (9)
- Suzanne Sangree, Control of Childbearing by HIV-Positive Women: Some Responses to Emerging Policies, 41 Buff. L. Rev. 309 (1993). (100)
- Quinacrine: A Dangerous Form Of Chemical Sterilization That Can Be Administered During a Pelvic Examination . . . Without Your Knowledge. Incite! Women of Color Against Violence, available at <http://www.incite-national.org/involve/health.html> (skim)

Emerging Contraceptive Technology:

- Schwartz & Gabelnick, Current Contraceptive Research, Alan Guttmacher Institute Special Report, (2002), available at <http://www.agi-usa.org/sections/prev.html> (10)

Fetuses

Introduction:

Fetal rights have developed over the past twenty-five years through judicial interpretation and legislation. Although often couched as a mechanism to protect pregnant women, statutes are generally constructed in such a way as to chip away at legal precedent established in Roe by creating a separate legal status for fetuses. State laws providing protections for fetuses include: fetal homicide laws; wrongful death statutes; and mandatory abortion counseling regarding fetal pain. Recent federal actions include an amendment to the State Children's Health Insurance Program (S-CHIP) expanding the definition of a "child" to include an "unborn child" from conception to birth and the Unborn Victims of Violence Act, which creates a separate offense for harming a fetus during the commission of a federal crime.

Focus Questions:

Can the law recognize the unwanted loss of a pregnancy without undermining a woman's constitutional right to an abortion? What legal issues arise when a woman survives an assault but her fetus, embryo, or zygote does not? How does the manipulation of language create a legal framework for creating rights in fetuses?

Priority Reading:

This reading will provide a broad overview of how fetal rights have developed in various areas of the law. Note: for the Brown article, please read the introduction, Part I, and Part II only. Completing the priority reading will satisfy the requirements for this module.

Wrongful Death:

- Amadio v. Levin, 501 A.2d 1085 (Pa. 1985). (22)
- A Look at Fetal Protection Statutes and Wrongful Death Actions on Behalf of Fetuses, available at <http://www.aclu.org/ReproductiveRights/ReproductiveRights.cfm?ID=9055&c=144> (3)

Fetal Homicide:

- People v. Davis, 872 P.2d 591 (Cal. 1994). (35)
- Alison Tsao, Fetal Homicide Laws: Shield Against Domestic Violence or Sword to Pierce Abortion Rights?, 25 Hastings Const. L.Q. 457 (1998). (14)

Women's Rights in Relation to Fetus:

- Lisa M. Brown, Feminist Theory and the Erosion of Women's Reproductive Rights: The Implications of Fetal Personhood Laws and In Vitro Fertilization, 13 Am. U.J. Gender Soc. Pol'y & L. 87 (2005). (10, please read the introduction, Part I, and Part II only)
- Caroline Morris, Technology and The Legal Discourse of Fetal Autonomy, 8 UCLA Women's L.J. 47 (1997). (18)

Unborn Victims of Violence Act:

- Amanda K. Bruchs, Clash of Competing Interests: Can the Unborn Victims of Violence Act and Over Thirty Years of Settled Abortion Law Co-Exist Peacefully?, 55 Syracuse L. Rev. 133 (2004). (12)
- State Children's Health Insurance Program (S-CHIP): New S-CHIP Prenatal Care Rule Advances Fetal Rights At Low-Income Women's Expense, available at <http://www.guttmacher.org/pubs/tgr/05/5/gr050503.html> (4)

Secondary Reading:

The priority reading provides a basic foundation about the current status and history of fetal rights and is enough to satisfy the requirements for this module. To gain a greater understanding of this area of law, please read one or two additional cases or articles.

Fetal Homicide:

- State v. Merrill, 450 N.W.2d 318 (Minn. 1990). (10)

Fetal Pain:

- Abortion: Frequently Asked Questions – Can an Embryo or Fetus Feel Pain?, available at <http://www.ppfa.org/pp2/portal/files/portal/medicalinfo/abortion/pub-abortion-q-anda.xml#1096486124102::4516956132643891678> (1)

Women's Rights in Relation to Fetus:

- Dawn E. Johnsen, The Creation of Fetal Rights: Conflicts with Women's Constitutional Rights to Liberty, Privacy, and Equal Protection, 95 Yale L.J. 599 (1986). (10)
- Janet Gallagher, Prenatal Invasions & Interventions: What's Wrong with Fetal Rights, 10 Harv. Women's L.J. 9 (1987). (20) (Westlaw)

Appointment of Legal Counsel to Fetuses:

- In the Matter of D.K., 497 A.2d 1298 (N.J. Super. Ct. Ch. Div. 1985). (12)
- Susan Goldberg, Of Gametes and Guardians: The Impropriety of Appointing Guardians Ad Litem For Fetuses and Embryos, 66 Wash. L. Rev. 503 (1991). (15)
- State Children's Health Insurance Program (S-CHIP): Elisabeth H. Sperow, Redefining Child Under The State Children's Health Insurance Program: Capable of Repetition, Yet Evading Results, 12 Am. U.J. Gender Soc. Pol'y & L. 137 (2003). (11)

Legislation:

- Unborn Victims of Violence Act, 10 U.S.C.A § 919(a) (2004), 18 U.S.C.A § 1841 (2004).
- Unborn Child Pain Awareness Act of 2005, (S. 51/ H. R. 356), currently pending in both houses.

Pregnancy

Introduction:

Not only have women had to fight for the right to abortion, but women have had to fight for the right to be pregnant, for the right to determine the course of their pregnancy, and for the right to equal treatment during and after pregnancy. As technology advances, the rights of pregnant women have evolved. Issues of viability have arisen in cases of court-ordered cesareans where the rights of a woman are juxtaposed with those of a fetus. Even though forced sterilizations have decreased, local authorities have found new ways to perpetuate the subjugation of minorities and poor women through selectively prosecuting poor, pregnant women who are drug abusers.

Focus Questions:

How have the rights of pregnant women changed over the years? What role have the courts played in shaping pregnant women's rights? How have minorities and low income women been affected by the changing laws and legislation directed at pregnancy and fetal rights?

Priority Readings:

The following reading material outlines women's struggle to be recognized by courts, legislature, and the medical profession as autonomous beings. The following will lay out the basic groundwork for understanding the battle women have overcome and are still fighting regarding rights during pregnancy.

General Pregnancy Rights:

- John A. Robertson, Procreative Liberty and the Control of Conception, Pregnancy, and Childbirth, 69 Va. L. Rev. 405 (1983). (25)

Forced Cesareans:

- Jefferson v. Griffin Spalding County. Hosp. Auth., 274 S.E.2d 457 (Sup. Ct. Ga. 1981). (5)
- In Re A.C., 573 A.2d 1235 (D.C. Cir. 1990). (35)
- In re Baby Boy Doe, 632 N.E.2d 326 (Ill. App. Ct. 1994). (10)

Forced Sterilization:

- Buck v. Bell, 274 U.S. 200 (1927). (5)
- Skinner v. Oklahoma, 316 U.S. 535 (1942). (10)
- In re Sterilization of Moore, 221 S.E.2d 307 (1976). (15)
- Michael G. Silver, Eugenics and Compulsory Sterilization Laws: Providing Redress for the Victims of a Shameful Era in United States History, 72 Geo. Wash. L. Rev. 862 (2004). (20)

Pregnancy and Drugs:

- Georgia v. Luster, 419 S.E.2d 32 (Ga. Ct. App. 1992). (5)
- Dorothy E. Roberts, Punishing Drug Addicts who Have Babies: Women of Color, Equality, and the Right of Privacy, 104 Harv. L. Rev. 1419 (1991). (20)

Legislation:

- Family Medical Leave Act (1993)

- Pregnancy Discrimination Act of 1978 (PDA), 92 Stat. 2076, 42 U.S.C. § 2000e(k)

Secondary Reading:

The priority reading provides a basic foundation about the current status and history of pregnancy and pregnant women's rights, and is enough to satisfy the requirements for this module. To gain a greater understanding of this area of law, please read 2-3 additional cases, journal articles, or website articles.

General Pregnancy Rights:

- Int'l Union, UAW v. Johnson Controls, 499 U.S. 187 (1991). (25)
- Geduldig v. Aiello, 417 U.S. 484 (1974). (15)

Forced Caesarean Sections:

- Nancy K. Rhoden, The Judge in the Delivery Room: The Emergence of Court-Ordered Cesareans, 74 Cal. L. Rev. 1951 (1986). (24)
- James M. Jordan III, Incubating for the State: The Precarious Autonomy of Persistently Vegetative and Brain-Dead Pregnant Women, 22 Ga. L. Rev. 1103 (1988). (16)

Wrongful Life Claims:

- Procanik v. Cillo, 478 A.2d 755 (N.J. 1984). (19)

Forced Sterilization:

- Conservatorship of Valerie N., 40 Cal. 3d 143 (1985). (19)
- Conservatorship of Angela D., 70 Cal. App. 4th 1410 (Cal. Ct. App. 1999). (16)
- Vaughn v. Ruoff, 253 F.3d 1124 (8th Cir. 2001). (7)
- Commentary: Forced Sterilization a Stain on California, L.A. Times, Feb. 16, 2003, at M5. (LEXIS) (5)
- Todd Ackerman, Confined patient pregnant again; Questions are renewed about the state's mental health system, The Houston Chronicle, Nov. 8, 2004, at A1. (LEXIS) (5)

Drugs and Pregnancy:

- Johnson v. Florida, 578 So. 2d 419 (Fla. Ct. App. 1991). (11)
- Ferguson v. Charleston, 532 U.S. 67 (2001). (25)
- Georgia v. Luster, 419 S.E.2d 32 (Ga. Ct. App. 1992). (7)
- Tsing, Anna L., "Monster Stories: Women Charged with Perinatal Endangerment." In Uncertain Terms: Negotiating Gender in American Culture, ed. F. Ginsburg and A. L. Tsing. Boston: Beacon. (1992).
- Marcia Chambers, Dead Baby's Mother Faces Criminal Charge on Acts in Pregnancy, The N.Y. Times, Oct. 9, 1986, at A1. (LEXIS) (5)

Legislation:

- Lisa B. Feinstein, The Forgotten Public Policies Behind the Family and Medical Leave Act: Burden of Proof Structures Placing Unnecessary Burdens on Employees' Statutory Entitlement, 73 Fordham L. Rev. 2561 (2005). (17)

Funding

Introduction:

Abortion: Although Roe declared that the right to an abortion was constitutionally protected, subsequent legislation, affirmed by Supreme Court decisions, determined that the government has no affirmative obligation to fund abortions for those unable to pay for the procedure themselves. Under the Hyde Amendment, renewed each year since 1977, federal Medicaid funds cannot be used to fund abortions for low-income women, except in cases of rape, incest, or when a woman's life is endangered. Many state policies follow federal guidelines and restrict public funding for abortion. Funds appropriated under Title X of Public Health Service Act may not be used in programs where abortion is a family planning method.

Prenatal and Postnatal Care: Medicaid is the largest source of health insurance for low-income parents and allows low-income women to access prenatal and postnatal health care. The "Welfare Reform Act" of 1996 denies non-citizens federal Medicaid funding for prenatal care.

Focus Questions:

How does the Supreme Court scrutinize the Hyde Amendment in its equal protection analysis in *McRae*? How do restrictions on funding affect low-income women, women of color, or noncitizens? Are you convinced placing speech restrictions on providers receiving Title X funds is constitutional?

Priority Reading:

This reading will cover the power of states to limit public funding for abortions and prenatal care, the constitutionality of the Hyde Amendment and similar state regulations, and imposition of gag rules as a condition of funding. Note: for *Harris v. McRae*, please read the majority opinion only.

Public Funding for Abortion:

- *Maier v. Roe*, 432 U.S. 464 (1977). (14)
- *Harris v. McRae*, 448 U.S. 297 (1980). (19, majority opinion only)
- *Rust v. Sullivan*, 500 U.S. 173 (1991). (25)
- *Humphreys v. Clinic for Women, Inc.*, 796 N.E.2d 247 (Ind. 2003). (23)
- Marie Cocco, Hyde Amendment's Deadly Impact, *Albany Times Union*, Apr. 23, 2005. (Westlaw, 2005 WLNR 6517479) (2)
- Julie F. Kay, If Men Could Get Pregnant: An Equal Protection Model for Federal Funding of Abortion Under a National Health Care Plan, 60 *Brook. L. Rev.* 349 (1994). (20)
- Public Funding for Prenatal Care: *Lewis v. Thompson*, 252 F.3d 567 (2d Cir.2001). (24)

Secondary Reading:

The priority reading provides a basic foundation about the current status and history of public funding for abortion/prenatal care and is enough to satisfy the requirements for this module. To gain a greater understanding of this area of law, please read any additional articles which interest you.

- Linda Maher, Government Funding in Title X Projects: Circumscribing the Constitutional Rights of the Indigent: *Rust v. Sullivan*, 29 Cal. W. L. Rev. 143 (1993). (20) (Westlaw)
- Michele E. Kenney, A Pitfall of Judicial Deference: Equal Protection of the Laws Fails Women in *Lewis v. Thompson*, 68 Brook. L. Rev. 525 (2002). (13)
- Beth A. Mandel, Fighting for Fetal Rights at the Expense of Women's Health: The Redefinition of "Child" Under the State Children's Health Insurance Program, 73 U. Cin. L. Rev. 319 (2004). (25)
- Poor Parents on Medicaid Targeted for Cuts, available at <http://www.nwlc.org/pdf/6-2005MedicaidParents.pdf> (3)

Technology

Introduction:

Technology helps to make our lives easier with each passing year. New reproductive technology allows women to conceive children despite previous unsuccessful attempts, detects fetal anomalies prior to birth, and determines fetal sex early in pregnancy. These advancements are accompanied by ethical questions regarding whether reproductive technology should or should not be utilized by scientists, doctors, and the general public.

Focus Questions:

What are the key arguments on each side of the stem cell research debate? How should fetal sex determination (or sex selection) be regulated? What are arguments for and against the detection of fetal anomalies prior to birth?

Priority Reading:

The cases and articles below will provide you with a background in the legal and ethical issues surrounding various types of reproductive technology. It is important to keep in mind that this emerging area of law is continually changing, and that the journal articles especially will give you a broad foundation in both the scientific and the legal questions central to this debate.

Vasectomy:

- Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535 (1942). (7)
- Berry v. Davis, 242 U.S. 468 (1917). (1)

Detection of Fetal Anomalies—OB/GYN Surgeries and Options Available:

- Stenberg v. Carhart, 530 U.S. 914 (2000). (49)
- This case is also covered in the Abortion Module. If you are familiar with Stenberg, please choose one of the Secondary Reading selections as a substitution.
- Mary B. Mahowald, Aren't We All Eugenicists?: Commentary on Paul Lombardo's "Taking Eugenics Seriously," 30 Fla. St. Univ. L. Rev. 219 (2003). (14)

Fetal Sex Determination / Manipulation:

- Jodi Danis, Sexism and "The Superfluous Female": Arguments for Regulating Pre-Implantation Sex Selection, 18 Harv. Women's L. J. 219 (1995). (30)
- Owen Jones, Sex Selection: Regulating Technology Enabling the Predetermination of a Child's Gender, 6 Harv. J. L. & Tech. 1 (1992). (30)
- Carey Goldberg, Test Reveals Gender Early In Pregnancy: Ethicists Fear Use in Sex Selection, Boston Globe, June 27, 2005, at A1. (1)

Stem Cell Research:

- Doe v. Shalala, 122 Fed. Appx. 600, C.A. 4 (Md.) (2004). (3 – unpublished opinion)
- Angela Campbell, Ethos and Economics: Examining the Rationale Underlying Stem Cell and Cloning Research Policies in the United States, Germany, and Japan, 31 American J. of L. & Med. 47 (2005). (40)

Secondary Reading:

The priority reading provides a basic foundation about the current status and history of the use of reproductive technology and is enough to satisfy the requirements for this module. To gain a greater understanding of this area of law, please read 1-2 additional articles which interest you.

Detection of Fetal Anomalies—OB/GYN Surgeries and Options Available:

- Michael A. Malinowski, Choosing the Genetic Makeup of Children: Our Eugenics Past-Present, & Future?, 36 Ct. L. Rev. 125 (2003). (50)

Stem Cell Research:

- Mikyung Kim, An Overview of the Regulation and Patentability of Human Cloning and Embryonic Stem Cell Research in the United States and Anti-Cloning Legislation in South Korea," 21 Santa Clara Computer and High Tech. L. J. (2005). (50)
- Arthur C. D'Andrea, Federalizing Bioethics, 83 Texas L. Rev. (2005). (40)
- Senator Bill Frist, M.D., The Promise and Peril of Embryonic Stem Cell Research: A Call for Vigilant Oversight, 2 Yale J. of Health Policy, Law & Ethics 167 (2001). (7)

Alternative Reproduction

Introduction:

Alternative Reproduction, or Assisted Reproductive Technologies (ART), refers to a variety of procedures designed to enable a joining of sperm and egg by means other than sexual intercourse. Procedures include: artificial insemination; in vitro fertilization; the practice of sperm/ova donation; and surrogate motherhood. These technologies challenge traditional notions of family and raise a host of new legal issues regarding: parental status; contract enforceability; equal access; and the right to procreate or not to procreate.

Focus Questions:

Under the current state of the law, what advantages do married couples have when trying to access ART? What are the competing interests in a frozen embryo dispute and how do courts weigh these competing interests? What are the public policy justifications for the enforceability or non-enforceability of surrogacy contracts?

Priority Reading:

This reading will cover: ART generally; determining the parental status of a child conceived by ART; access to ART and discrimination against the LGBT community and single women; disputes over frozen pre-embryos; and enforceability of surrogacy agreements. To complete the module, please read all materials listed below and then read one item from the secondary reading. Note: for the Harvard article below, please read Part II only, and for Johnson v. Calvert, read the majority opinion only.

ART Generally:

- Justyn Lezin, (Mis) Conceptions: Unjust Limitations on Legally Unmarried Women's Access to Reproductive Technology and Their Use of Known Donors, 14 Hastings Women's L.J. 185 (2003). (14)
- Changing Realities of Parenthood: The Law's Response to the Evolving American Family and Emerging Reproductive Technologies, 116 Harv. L. Rev. 2052 (2003). (6, read Part II only)

Artificial Insemination:

- In re Adoption of Anonymous, 345 N.Y.S.2d 430 (Sur. Ct. Kings County 1973). (5)
- Benitez v. North Coast Women's Care Medical Group, Inc., 106 Cal. App. 4th 978 (Cal. Ct. App. 2003). (13)

In vitro fertilization:

- Kass v. Kass, 91 N.Y.2d 554 (N.Y. 1998). (12)
- J.B. v. M.B., 783 A.2d 707 (N.J. 2001). (15)
- Embryo 'Adoption' Matches Donors and Would-be Parents, available at <http://www.christianitytoday.com/ct/1999/144/22.0.html> (2)

Surrogacy:

- Johnson v. Calvert, 851 P.2d 776 (Cal. 1993). (16, please read majority opinion only)
- R.R. v. M.H., 689 N.E.2d 790 (Mass. 1998). (10)

Secondary Reading:

The priority reading provides a basic foundation about the current status and history of alternative reproduction. To complete the requirements for the module, please read one additional case or article.

Surrogacy:

- In re Baby M., 537 A.2d 1227 (N.J. 1988). (48)
- Alayna Ohs, The Power of Pregnancy: Examining the Constitutional Rights in a Gestational Surrogacy Contract, 29 Hastings Const. L. Q. 339 (2002). (16)

In vitro fertilization:

- Davis v. Davis, 842 S.W.2d 588 (Tenn. 1992). (6)
- Ellen Waldman, The Parent Trap: Uncovering the Myth of "Coerced Parenthood" in Frozen Embryo Disputes, 53 Am. U. L. Rev. 1021 (2004). (16)

ART Generally:

- Model Act Governing Assisted Reproduction Technology/ Proposed Legislation available at http://www.abanet.org/family/committees/ART_moddraft405.pdf (41)

Minors' Reproductive Rights and Education

Introduction:

Minors seeking abortion in many U.S. states face more restrictions on their individual choices than adult women. Parental involvement laws, which require minors to receive consent or doctors to notify parents before the minor may receive an abortion, provide for a judicial bypass option. However, this leaves minors at the mercy of a subjective local judicial system and sometimes with no safe option for abortion. The Child Interstate Abortion Notification Act—federal legislation that made its way through the House in 2005—would make it even more difficult for a minor from a state with parental involvement laws to obtain an abortion.

Under the Adolescent Family Life Act (AFLA), the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), and the Marriage and Healthy Family Development Initiative (MHFDI), Congress has granted over 1.1 billion dollars in federal funds to support abstinence-based education since 1996. Currently, no funding is offered to support comprehensive sex education programs. The Bush administration has consistently increased funding for abstinence-based education for the last five years, even though there is no evidence that these programs lower rates of teenage sex. Some of the sex education curricula funded actually discourage students from using condoms by giving students inaccurate information about the ability of condoms to prevent unwanted pregnancy and sexually transmitted infections.

Focus Questions:

If a minor is not comfortable involving her parents in her decision to have an abortion, what challenges does she face? What are the arguments for and against the constitutionality of the Parent's Right to Know Act? What legal arguments have been used to challenge the constitutionality of federally funded abstinence-only or abstinence-only-until-marriage sex education programs? Have these arguments succeeded in the courts?

Priority Reading:

This reading will cover various restrictions on access to abortions for minors (including parental notification/consent and judicial bypass options), parental notification for contraception, and sex and sexuality education. Note: students who are not electing to complete the Abortion Module will find it helpful to read *Carey v. Population Services International*, 431 U.S. 678 (1977) and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) before beginning this module.

Parental Involvement and Judicial Bypass Options for Abortion:

- *Bellotti v. Baird* (*Bellotti II*), 443 U.S. 622 (1979). (20)
- *Ohio v. Akron Ctr. for Reprod. Health* (*Akron II*), 497 U.S. 502 (1990). (20)
- *Hodgson v. Minnesota*, 497 U.S. 417 (1990). (30)
- *Lambert v. Wicklund*, 520 U.S. 292 (1997). (4)
- Child Interstate Abortion Notification Act (H.R.748; S.396), passed it. Opponents label it "Teen Endangerment Act," at http://crlp.org/hill_pri_ccpa.html
- Abby Goodnough, State Judge Allows Teenager in Florida to Get an Abortion, *N.Y. Times*, May 3, 2005, at A1.

Parental Notification for Contraception:

- Parent's Right to Know Act (S. 1279; H.R. 3011), pending in both houses
- Stephanie Bornstein, The Undue Burden: Parental Notification Requirements for Publicly Funded Contraception, 15 Berkeley Women's L.J. 40 (2000). (20)

Sex and Sexuality Education:

- Bowen v. Kendrick, 487 U.S. 589 (1988). (20)
- Coleman v. Caddo Parish Bd. of Educ., 635 So.2d 1238 (La. Ct. App. 1994). (15)
 - Skip the "Contempt Matters" section.
- Abstinence-Only Programs: Ideology Over Science, NARAL Pro-Choice America Issue Brief, (January 2005), available at http://www.prochoiceamerica.org/facts/abstinence_only_federal.cfm (6)
- James McGarth, Abstinence-Only Adolescent Education: Ineffective, Unpopular, and Unconstitutional, 38 U.S.F. L. Rev. 665 (2004). (16)
- Naomi K. Seiler, Abstinence-Only Education and Privacy, 24 Women's Rights L. Rep. 27 (2002). (11)
- The Responsible Education About Life (REAL) Act (S. 368, H. R. 2553). (3)
- This proposed legislation, introduced in 2005, provides states with the first grants for comprehensive sex education programs.

Secondary Reading:

The priority reading provides a basic foundation about the current status and history of the laws affecting minors' reproductive rights and sex education. No additional readings are required to fulfill this module; however, if time permits feel free to read additional selections.

Parental Involvement:

- Planned Parenthood v. Danforth, 428 U.S. 52 (1976). (23)
- H. L. v. Matheson, 450 U.S. 398 (1980). (29)
- Planned Parenthood v. Camblos, 155 F.3d 352 (4th Cir. 1998). (30)
- Academy of Pediatrics v. Lungren, 16 Cal. 4th 307 (1997). (65)
- Planned Parenthood of the Rocky Mts. Servs. Corp. v. Owens, 287 F.3d 910 (10th Cir. 2002). (20)
- Martin Guggenheim, Minor Rights: The Adolescent Abortion Cases, 30 Hofstra L. Rev. 589 (2002). (55)
- J. Ehrlich, Grounded in the Reality of their Lives: Listening to Teens Who Make the Abortion Decision without Involving Their Parents, 18 Berkeley Women's L.J. 61 (2003). (70)
- Jodi Wilgoren, Kansas Prosecutor Demands Files on Late-Term Abortion Patients, N.Y. Times, Feb. 25, 2005, at A5. (2)

Judicial Bypass:

- Helena Silverstein & Kathryn L. Alessi, Religious Establishment in Hearings to Waive Parental Consent for Abortion, 7 U. Pa. J. Const. L. 473 (November 2004). (30)
- Teresa S. Collitt, Seeking Solomon's Wisdom: Judicial Bypass of Parental Involvement in a Minor's Abortion Decision, 52 Baylor L. Rev. 513 (Summer 2000). (50)

Sex Education:

- Julie Jones, Money, Sex, and the Religious Right: A Constitutional Analysis of Federally Funded Abstinence-Only-Until-Marriage Sexuality Education, 35 Creighton L. Rev. 1075 (2002). (20)
- Jonathan Saltzman, ACLU suit sees religious content in abstinence plan, Boston Globe, (May 2005), available at http://www.boston.com/news/education/k_12/articles/2005/05/17/aclu_suit_sees_religious_content_in_abstinence_plan/ (2)
- The Silver Ring Thing Website, available at <http://www.silverringthing.com/index.html> (browse)

Underrepresented Groups

Introduction:

Minority women are disproportionately affected by barriers to abortion, such as waiting periods, lack of public funding, and provider shortages. A high percentage of ethnic minorities live in neighborhoods lacking reproductive healthcare providers, making prenatal care and abortion services difficult to obtain in practice. The criminalization of pregnant women who are addicted to drugs has also affected black and Latina women to a greater degree than other women.

Freedom of sexual expression and reproductive rights are inextricably linked. A consistent thread in anti-choice positions is opposition to sexual activity outside the bounds of heterosexual marriage. Much of the pro-choice movement strives to affirm sexuality that extends beyond the confines of procreation between married heterosexuals. Same-sex couples and single parents continue to face an increasingly difficult fight to maintain and acquire rights to have and raise children (although in some places the fight is improving).

Focus Questions:

What are the main issues minorities and other underrepresented groups face regarding reproductive rights? How have the mainstream feminist and reproductive rights movements either included or excluded underrepresented groups?

Priority Readings:

These readings will provide a basic background on how reproductive rights have been shaped and have shaped minorities, low-income people, and people with diverse sexual identities. They will touch on the criminalization of black mothers, the disproportionate lack of access to health care and reproductive care for Latinas, and how the law interprets "new" families with same-sex and single parents.

Minorities in General:

- Tiesha Peal, The Continuing Sterilization of Undesirables in America, 6 Rutgers Race & L. Rev. 225 (2004). (9)

Blacks:

- Melanie M. Lee, Defining the Agenda: A New Struggle for African-American Women in the Fight for Reproductive Self-Determination, 6 Wash. & Lee R.E.A.L. J. 87 (2000). (7)

Latinas:

- Angela Hooton, Symposium: The Feminism and Legal Theory Project: Celebrating Twenty Years of Feminist Pedagogy, Praxis and Prisms: A Broader Vision on the Reproductive Rights Movement: Fusing Mainstream and Latina Feminism, 13 Am. U.J. Gender Soc. Pol'y & L. 59 (2005). (12)
- National Latina Agenda for Reproductive Justice, available at <http://www.latinainstitute.org/pdf/FinalAgenda-2Fc.pdf> (20)

Asians:

- Expanding Options: A Reproductive and Sexual Health Survey of Asian American Women, National Asian Women's Health Organization, (Jan. 1997), available at <http://www.nawho.org/pubs/NAWHOOptions.pdf> (25)

Native Americans:

- Jay Heavner, Broken Treaties, Empty Promises: An Introduction to Native American Women's Reproductive Health Issues, available at http://members.aol.com/_ht_a/lillithsrealm/myhomepage/Sterilization/BrokenTreaties.htm (4)

Sexuality:

- Brooke Rodgers-Miller, Adam and Steve and Eve: Why Sexuality Segregation in Assisted Reproduction in Virginia is No Longer Acceptable, 11 Wm. & Mary J. Women & L. 293 (2005). (10)
- Tsippi Wray, Lesbian Relationships and Parenthood: Models for Legal Recognition of Nontraditional Families, 21 Hamline L. Rev. 127 (1997). (9)

Prisoners:

- Rachel Roth, "No New Babies?": Gender Inequality and Reproductive Control in the Criminal Justice and Prison Systems, 12 Am. U.J. Gender Soc. Pol'y & L. 391 (2004). (14)

Secondary Reading:

The priority reading provides a basic foundation about the current status and history of underrepresented groups' reproductive rights, and is enough to satisfy the requirements for this module. To gain a greater understanding of this area of law, please read 1-2 additional cases, journal articles, or website articles.

Minorities:

- Danielle Epstein & Lena Mukherjee, Constitutional Analysis of the Barriers Same-Sex Couples Face in Their Quest to Become a Family Unit, 12 St. John's J.L. Comm. 782. (7)
- Burrell, The Norplant Solution: Norplant and the Control of African-American Motherhood, 5 UCLA Women's L.J. 401 (1997). (20)
- Leslie G. Espinoza, Dissecting Women, Dissecting Law: The Court-Ordering of Caesarean Section Operations and the Failure of Informed Consent to Protect Women of Color, 13 Nat'l Black L.J. 211 (1994). (WESTLAW) (30)
- Linda C. McClain, "Irresponsible" Reproduction, 47 Hastings L.J. 339 (1996). (22)

Sexuality:

- Alana Bell and Tamar Miller, When Harry Met Larry and Larry got Sick: Why Same-Sex Families Should be Entitled to Benefits Under the Family and Medical Leave Act, 22 Hofstra Lab. & Emp. L.J. 276 (2004). (19)
- Matt Larsen, Lawrence v. Texas and Family Law: Gay Parents' Constitutional Rights in Child Custody Proceedings, 60 N.Y.U. Ann. Surv. Am. L. 53 (2004). (20)
- Marybeth Herald, A Bedroom of One's Own: Morality and Sexual Privacy after Lawrence v. Texas, 16 Yale J.L. & Feminism 1 (2004). (18)
- Lawrence v. Texas, 539 U.S. 558 (2003). (29)

- Williams v. Pryor, 220 F. Supp. 2d 1257 (N.D. Ala. 2002). (67)
- Regalado v. Texas, 872 S.W.2d 7 (Tex. App. 1994). (6)
- State v. Brennan, 772 So. 2d 64 (La. 2000). (19)

International Women's Reproductive Rights

Introduction:

The U.S. has always played a major international role as one of the most influential states regarding laws, regulations, statutes, conventions, and human rights. It is one of the only countries which has not ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), yet promotes itself as one of the most progressive countries regarding women's rights. As much of the world becomes more liberal regarding abortion rights, the U.S. has been increasing the restrictions it places upon access and availability. The Mexico City Policy ("Global Gag Rule") has deprived many organizations around the world of the funding they require for family planning, AIDS and HIV treatment and education, and general health programs.

Focus Questions:

How has the U.S. refusal to ratify CEDAW shaped its role and image as a global power? What are some of the challenges women in developing countries face regarding reproductive rights? Does the Mexico City Policy impair organizations' ability to exercise their right to free speech?

Priority Readings:

This module will cover the federal government's trend to limit support for women's reproductive rights which in turn affects the basic rights of women throughout the world. The following readings will establish an understanding of international women's reproductive rights and the present challenges women face through the use of cases, which explore the Mexico City Policy's constitutionality, journal articles, which examine the effects of U.S. foreign policy on women's rights globally, and other articles, which cover UNFPA funding and CEDAW.

U.S. Policy and International Reproductive Rights:

- DKT Memorial Fund, Ltd., v. Agency for Int'l Dev., 691 F. Supp. 394 (D.D.C. 1988). (40)
- Planned Parenthood Federation, Inc. v. Agency for Int'l Dev., 915 F.2d 59 (2d Cir. 1990). (10)
- Center for Reprod. Law & Policy v. Bush, 304 F.3d 183 (2d Cir. 2002). (15)
- Patty Skuster, Advocacy In Whispers: The Impact of the USAID Global Gag Rule Upon Free Speech and Free Association in the Context of Abortion Law Reform in Three East African Countries, 11 Mich. J. Gender & L. 97 (2004). (15)
- E. Dana Neacsu, Imposing Sexual Restraint Abroad, 2002 L. Rev. M.S.U.-D.C.L. 885 (2002). (10)
- Breaking the Silence: The Global Gag Rule's Impact on Unsafe Abortion, available at http://www.reproductiverights.org/pdf/bo_ggr.pdf (25)

CEDAW:

- CEDAW, available at <http://www.unhchr.ch/html/menu3/b/e1cedaw.htm> (skim) (10)
- History of CEDAW, available at <http://www.feminist.org/news/newsbyte/uswirestory.asp?id=8295> (3)
- National Right to Life, available at <http://www.nrlc.org/Federal/ForeignAid/CEDAW%20to%20Senate%202.html> (3)

UNFPA Funding/History:

- US Withdrawal of UNFPA Funding/History, available at <http://www.nfprha.org/pac/factsheets/unfpa.asp> (5)

International Comparative Law:

- Decade After Cairo—Women's Health in a Free Market Economy, from the Women's
- Global Network for Reproductive Rights, (<http://www.wgnrr.nl/startpage.php>) available at <http://www.wgnrr.nl/pdf//cairoch.pdf> (25)

Secondary Reading:

The priority reading provides a basic foundation about the current status and history of women's reproductive rights throughout the world and is enough to satisfy the requirements for this module. To gain a greater understanding of this area of law, please read 2-3 additional cases, journal articles, or website articles.

U.S. Policy and International Reproductive Rights:

- Bringing Rights to Bear: An analysis of the work of the UN treaty monitoring bodies on reproductive and sexual rights, a publication of The Center for Reproductive Rights, (November 2002), available at http://www.reproductiverights.org/pdf/pub_bp_brb.pdf (33)
- Julia L. Ernst, The Legacy of Roe: The Constitution, Reproductive Rights, and Feminism: The Global Pattern of U.S. Initiatives Curtailing Women's Reproductive Rights: A Perspective on the Increasingly Anti-choice Mosaic, 6 U. Pa. J. Const. L. 752 (2004). (20)
- Yvette Aguilar, Gagging on a Bad Rule: The Mexico City Policy and its Effect on Women in Developing Countries, 5 SCHOLAR 37 (2002). (16)

CEDAW:

- Testimony on Ratification of CEDAW; Senate Foreign Relations Committee (June 2002), available at http://www.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_senate_hearings&docid=f:80461.wais (105)
- Letter to Senate Foreign Relations Committee Urging that CEDAW Move to the Full Senate, available at <http://www.hrw.org/press/2002/07/uscedawltr0730.htm> (1)

UNFPA Funding/History:

- Rachel Farkas, The Bush Administration's Decision to Defund the United Nations Population Fund and Its Implications for Women in Developing Nations, 18 Berkeley Women's L.J. 237 (2003). (10)

Anti-Choice Clinic Protests and Violence –

First Amendment

Introduction:

Tension exists between protecting access to reproductive rights and ensuring the free speech rights of anti-choice protestors. During the past 11 years, the United States Supreme Court has established guidelines for states and municipalities to follow when drafting legislation to protect the rights of those entering health care facilities and those protesting outside clinics. The Court's decision in *Hill v. Colorado* offers the greatest protection to patients, while honoring the First Amendment rights of protestors.

Focus Questions:

What protection does the First Amendment provide to protestors? What particular actions does the FACE Act prohibit? Distinguish the Supreme Court's rulings in *Madsen*, *Schenck*, and *Hill*. What does the Court uphold as constitutional?

Priority Reading:

Three key Supreme Court cases are included here to provide a solid background in the arguments surrounding the conflict between First Amendment rights of anti-choice protestors and a woman's right to safely access medical care. An article discussing the Supreme Court's decision in *Hill v. Colorado* will shed more light on bubble zone legislation. In addition, reading the FACE Act and information about restrictive state TRAP laws that prevent doctors from providing abortions are essential to understanding continuing developments in this area of law.

Anti-Choice Violence:

- *Madsen v. Women's Health Care Ctr., Inc.*, 512 U.S. 753 (1994). (30)
- *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357 (1997). (22)
- *Hill v. Colorado*, 530 U.S. 703 (2000). (40)
- Freedom of Access to Clinic Entrances (FACE) Act [18 U.S.C.A. § 248] (17)
 - This law imposes criminal and civil penalties on anyone who uses "force, threat of force or physical obstruction" to prevent a person from providing or receiving reproductive health services.
- Targeted Regulation of Abortion Providers (TRAP) laws, available at www.crlp.org/pub_fac_trap.html (8)
 - The Center for Reproductive Rights' website provides a thorough explanation of TRAP laws, which are on the books in many states. TRAP laws impose more stringent requirements on physicians who provide abortions than on those who do not, in an effort to deter physicians from becoming or remaining abortion providers.
- Kristen G. Cowan, *The Tailoring of Statutory Bubble Zones: Balancing Free Speech and Patients' Rights*, 91 J. Crim. L. & Criminology 385 (2001). (36)

Secondary Reading:

The priority reading provides a basic foundation about the current status and history of antichoice clinic protests and violence and is enough to satisfy the requirements for this

module. To gain a greater understanding of this area of law, please read 1-2 additional cases and 1 additional journal article.

Anti-Choice Violence:

- Scheidler v. Nat'l Org. for Women, 537 U.S. 393 (2003). (15)
- Sabelko v. City of Phoenix, 120 F.3d 161 (9th Cir. 1997). (5)
- Edwards v. City of Santa Barbara, 150 F.3d 1213 (9th Cir. 1998). (6)
- United States v. Scott, 187 F.3d 282 (2d Cir. 1999). (8)
- McGuire v. Reilly, 260 F.3d 36 (1st Cir. 2001). (15)
- Planned Parenthood of the Columbia/Willamette, Inc. v. American Coalition for Life Activists, 290 F.3d 1058 (9th Cir. 2002). (40)
- Christopher P. Keleher, Double Standards: The Suppression of Abortion Protestors' Free Speech Rights, 51 DePaul L. Rev. 825 (2002). (78)
- Jason Schlosberg, Judgment on 'Nuremberg': An Analysis of Free Speech and Anti-Abortion Threats Made on the Internet, 7 B.U. J. SCI. & TECH. L. 52 (2001). (28)
- Jamie Edwards, McGuire v. Reilly: The First Amendment and Abortion Clinic Buffer Zones in the Wake of Hill v. Colorado, 6 U.C. Davis L. Rev. 787 (2003). (24)
- Rachel L. Braunstein, A Remedy for Abortion Seekers Under the Invasion of Privacy Tort, 68 Brooklyn L. Rev. 309 (2002). (36)
- MSNBC News Map of U.S. Clinic Violence, available at <http://www.msnbc.com/modules/clinics/> (1)
- National Abortion Federation, available at http://www.prochoice.org/about_abortion/violence/index.html (10)