

**RIGHTS IN CONFLICT:  
Reproductive Freedom**

**Professors Linda Greenhouse & Reva Siegel  
Winter 2011  
Thursdays, 3:00-5:00  
(Jan. 20, Jan. 27, Feb. 3, Feb. 10, Feb. 17, Feb. 24)**

**Overview:**

This seminar will explore elite and popular debate leading to recognition of reproductive rights under the U.S. Constitution, with the goal of examining how constitutional decision-making unfolds through social conflict. Using the emergence of the claim for a right to abortion as an historical case study, we will probe the relation between social movement, politics, and law over the decades. How has mobilization and counter-mobilization shaped and limited the law? What larger social and legal questions are at stake in debates over constitutional doctrines concerning the regulation of sexual behavior? What role has the Supreme Court itself played in fostering the continuing political and legal struggle over abortion? By considering theories of backlash, we will seek to understand how the Court will, and ought, to decide constitutional questions concerning abortion and same-sex marriage.

**Contact Information**

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**Required Text**

LINDA GREENHOUSE & REVA B. SIEGEL, *BEFORE ROE V. WADE: VOICES THAT SHAPED THE ABORTION DEBATE BEFORE THE SUPREME COURT'S RULING* (2010)

The book is available as an e-book for the Amazon Kindle, but you will almost certainly find it more convenient to obtain the hard copy. It is available on Amazon for under \$20.

All other course material will be available electronically or distributed in class.

**SYLLABUS**

**Session 1 – January 20 -- The Abortion Debate & Women's Liberation**

GREENHOUSE & SIEGEL, *BEFORE ROE V. WADE* (2010), Part I (pp. 1-115).

**Session 2– January 27-- Constitutionalization of Conflict and the Road to Roe**

1. GREENHOUSE & SIEGEL, BEFORE ROE V. WADE, Part II (pp. 119-220.)
2. Neil Siegel & Reva Siegel, *Pregnancy and Sex-Role Stereotyping, From Struck to Carhart*, 70 OHIO ST. L. J. 1095 (2009).

**Session 3 – February 3 – Roe v. Wade**

1. GREENHOUSE & SIEGEL, BEFORE ROE V. WADE, Part III (pp. 223-306.)
2. *Roe v. Wade*, 410 U.S. 113 (1973).

**Session 4 -- February 10 -- Countermobilization: Rise of Pro-Family Movement & the New Right**

1. Reva Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the de facto ERA*, 94 CAL. L. REV. 1323, 1389-1403 (2003) (on countermobilization against ERA).
2. Ann Freedman, Congressional Testimony on the ERA, Nov. 3, 1983.
3. ALLEN HUNTER, VIRTUE WITH A VENGEANCE: THE PRO-FAMILY POLITICS OF THE NEW RIGHT Chapter 3, “Capturing the Anti-Feminist Backlash” (1985).
4. WILLIAM MARTIN, WITH GOD ON OUR SIDE: THE RISE OF THE RELIGIOUS RIGHT IN AMERICA 173-181 (1996).
5. ROSEMARY THOMPSON, THE PRICE OF LIBERTY 5-17 (1978).
6. ROSEMARY THOMPSON, WITHSTANDING FEMINISM’S CHALLENGE TO FAMILIES: ANATOMY OF A WHITE HOUSE CONFERENCE, FORWARD AND 1-9 (1981).
7. SARAH GORDON, THE SPIRIT OF THE LAW: RELIGIOUS VOICES AND THE CONSTITUTION 133-168 (1996) (Chapter 5, Holy War: Evangelical Women and the Battle Against Secularism, 1975-2000).

### **Session 5 -February 17-- The Constitution of Sexual Freedom Today**

- 1 . Background memo on anti-abortion strategies for constitutional change after *Roe*.
2. Excerpt from the Senate Judiciary Committee report on Bork, pp. 30-36, 92, 96-99.
3. Linda Greenhouse, two analyses and one retrospective on the Bork hearings: *The Bork Battle: Visions of the Constitution*, N.Y. TIMES, Oct. 4, 1987; *What Went Wrong*, N.Y. TIMES Oct. 8, 1987; *Why Bork Is Still a Verb in Politics, 10 Years Later*, N.Y.TIMES, Oct. 5, 1997.
4. Jeanne Cummings, *Targeting Roe: In Abortion Fight, Little-Known Group Has Guiding Hand*, WALL ST. J., Nov. 30, 2005, at A1.
5. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992)
6. Reva B. Siegel, *Roe's Roots: The Women's Rights Claims That Engendered Roe*, 90 Boston U. L. Rev. 1875 (2010).

### **Session 6 – February 24 – The Constitutionalization of Sexual Freedom: The Future?**

1. *The America We Seek: A Statement of Pro-Life Principle and Concern*, First Things, May 1996, available at <http://www.firstthings.com/article/2007/10/005-the-america-we-seek-a-statement-of-pro-life-principle-and-concern>
- 2.. Reva B. Siegel, *Dignity and the Politics of Protection: Abortion Restrictions Under Casey/Carhart*, 117 YALE L. J. 1694 (2008), pp. 1706-53, 1792-1800.
3. *Gonzales v. Carhart*, 550 U.S. 124, 145-68, 169-91 (2007) (Read: Headnote; Parts II through IV of majority opinion, and dissenting opinion by Justice Ginsburg.)
4. Greenhouse & Siegel, *Before (and After) Roe v. Wade*. 120 YALE L.J. (forthcoming 2011).
5. “Effective Life-Saving Ultrasound Legislation”  
<http://www.atcmag.com/v11n4/article8.asp>
6. *Planned Parenthood of the Heartland v. Heineman*, case no. 4:10cv3122, (LEXIS 70484) U.S. D.C. (Neb.) (July 14, 2010).

