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ACADEMIC TREATMENT OF ABORTION AND EUTHANASIA IN LEADING FAMILY LAW TEXTBOOKS

PROLIFE CENTER AT THE UNIVERSITY OF ST. THOMAS

In order to "identify, catalog, and respond to current academic coverage of abortion, infanticide, and euthanasia in law school teaching materials," the six leading textbooks for American family law courses were analyzed. These texts include: *Family Law: Cases, Materials and Problems*, by Peter N. Swisher, Anthony Miller, and Jana B. Singer; *Domestic Relations: Cases and Problems*, by Homer H. Clark Jr. and Ann Laquer Estin; *Modern Family Law*, by D. Kelly Weisberg and Susan Freligh Appleton; *Family Law*, by Leslie Joan Harris, June Carbone, and Lee E. Teitelbaum; *Family Law: Cases, Text, Problems*, by Ira Mark Ellman, Paul M. Kurtz, Elizabeth S. Scott, Lois A. Weithorn, and Brian H. Bix; and *Contemporary Family Law*, by Douglas E. Abrams, Naomi R. Chan, Catherine J. Ross, and David D. Meyer.¹

Many textbooks convey a "right-to-choice" approach, which is mostly portrayed through the selection of notes chosen to accompany the cases. This report will first analyze the textbooks' treatment of euthanasia, followed by an analysis of the treatment of abortion. Because the textbooks surveyed do not include a discussion


of infanticide, this report does not summarize the textbooks’ approaches to that issue.

EUTHANASIA

Despite the familial implications of the United States Supreme Court’s “right to die” decisions, the majority of leading family law textbooks evaluated do not include any discussion of euthanasia or a reference\(^3\) to the monumental decisions in the area.\(^4\) Two textbooks\(^5\) include *Cruzan v. Missouri Department of Health* as a note case. Harris introduces the case with the statement, “As a constitutional matter, family members do not have the right to make health care decisions for their incompetent family members,” followed by approximately one page of excerpts from the majority opinion.\(^6\) Clark summarizes the *Cruzan* opinion in a lengthy paragraph, stating that while the Due Process Clause of the Fourteenth Amendment provides a person with a liberty interest to refuse medical treatment, the Fourteenth Amendment does not forbid Missouri’s insistence that when the right is asserted by a surrogate, the evidence of the incompetent person’s wishes must be proved by clear and convincing evidence.\(^7\)

Only one of the six family law textbooks surveyed, *Modern Family Law* by Weisberg and Appleton, included any detailed discussion of the euthanasia issue.\(^8\) This discussion is embedded in the section of the textbook entitled “Evolution of Right to Privacy” and is introduced with an excerpt of *Cruzan v. Missouri Department of Health*. This excerpt of the decision includes the summary of the major facts and a portion of the majority’s focus on the relationship between the right to refuse medical treatment and the fundamental right to privacy protected by the Constitution.\(^9\) The textbook also includes portions of the two concurring opinions of Justices

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3. Although some texts included cases, such as *Lawrence v. Texas*, which cited landmark euthanasia decisions, there was no separate discussion regarding this issue.
5. HARRIS ET AL., supra note 2; CLARK & ESTIN, supra note 2.
6. HARRIS ET AL., supra note 2, at 151–152.
7. CLARK & ESTIN, supra note 2, at 505.
8. WEISBERG & APPLETON, supra note 2, at 69, 92–100.
9. Id. at 92–95.
O'Connor and Scalia, as well as the dissent by Brennan, Marshall, and Blackmun.\textsuperscript{10}

Following the edited opinion, the textbook draws attention to a variety of issues surrounding the euthanasia issue through several notes.\textsuperscript{11} Some of the shorter notes illuminate the present controversy by mentioning the conflicting traditions of prohibition against suicide and the tradition of patient self-determination,\textsuperscript{12} the effect of the differing visions of the family,\textsuperscript{13} and the competing interests between the state and families present in these cases.\textsuperscript{14} Euthanasia is also likened to the issue of abortion as one that requires a personal choice.\textsuperscript{15}

Weisberg also includes a number of lengthier notes to further elucidate issues surrounding euthanasia.\textsuperscript{16} One note discusses the relationship between advance directives and euthanasia, drawing special attention to a hypothetical situation had Nancy Cruzan executed a "living will" under the Missouri statute.\textsuperscript{17} This note further expounds on the issue by summarizing the provisions of the Uniform Health-Care Decisions Act and federal requirements for Medicare providers.\textsuperscript{18}

Another note references Justice Scalia's recommendation of resorting to the Equal Protection Clause for this decision and then includes a paragraph excerpt from Steven H. Miles and Allison August's \textit{Courts, Gender and "The Right to Die"}\textsuperscript{19} as "evidence of gender bias."\textsuperscript{20} Another note presents the issue of physician assisted suicide.\textsuperscript{21} Within this discussion, both \textit{Washington v. Glucksberg} and

\begin{itemize}
\item \textsuperscript{10} \textit{Id.} at 95–97.
\item \textsuperscript{11} \textit{Id.} at 97–100.
\item \textsuperscript{12} \textit{Id.} at 97.
\item \textsuperscript{13} \textit{Id.} at 98.
\item \textsuperscript{14} \textit{Weisberg \\& Appleton, supra note 2,} at 98.
\item \textsuperscript{15} \textit{Id.} at 97–98.
\item \textsuperscript{16} \textit{Id.} at 98–100.
\item \textsuperscript{17} \textit{Id.} at 98.
\item \textsuperscript{18} \textit{Id.} (within this issue, the textbook describes that one contentious issue within the health care reform debates in 2009 was the extent to which Medicare should cover consultation regarding end-of-life care. For further information on this topic, the textbook cites Robert Pear \\& David M. Herszenhorn, \textit{As Bombast Escalates, a Primer on the Details of the Health Care Overhaul}, N.Y. TIMES, Aug. 10, 2009 at A8).
\item \textsuperscript{19} Steven H. Miles \\& Allison August, \textit{Courts, Gender and "The Right to Die"}, 18 LAW, MED. \\& HEALTH CARE 85, 87 (1990).
\item \textsuperscript{20} \textit{Weisberg \\& Appleton, supra note 2,} at 98–99 (also provides a citation to Susan M. Wolf, \textit{Gender, Feminism, and Death: Physician-Assisted Suicide and Euthanasia,} in \textit{Feminism and Bioethics: Beyond Reproduction} 282 (Susan M. Wolf ed. 1996)).
\item \textsuperscript{21} \textit{Weisberg \\& Appleton, supra note 2,} at 99.
\end{itemize}
Vacco v. Quill are briefly summarized. The textbook states that in Washington v. Glucksberg the Court “found that the asserted right to die is not objectively rooted in American history and tradition and defies the careful description required for protection as a fundamental right.”

The summary goes on to describe the majority’s emphasis on the notion that the protected right in Cruzan was against forced treatment (i.e., a battery) and that Casey’s holding did not “warrant the sweeping conclusion that any and all important, intimate, and personal decisions are so protected [as a fundamental right].”

In the same note, the textbook includes a summary of the companion case, Vacco v. Quill, stating that the decision used similar reasoning to uphold New York’s ban against an equal protection challenge based on the different legal consequences of physicians’ termination of life-sustaining treatment versus their affirmative assistance in hastening death.

Other notes discuss congressional prohibition on federal funding for euthanasia, and the potential results of state experimentation with euthanasia, with one note giving specific attention to the Oregon law entitled the “Death with Dignity Act.” Within these notes, the textbook explores potential issues arising from allowing states to legislate about euthanasia, summarizes the relevant Oregon legislation and statistics relating to patients who have died under the terms of that law, and the prohibition of federal funds for assisted suicide.

While these discussions present interesting and valuable insight into the breadth of the euthanasia issue, the text seems to leave out some important information such as comparative studies with other countries that have allowed the practice of physician-assisted suicide and euthanasia, the effect on insurance coverage and other healthcare costs, as well as a more detailed discussion of the effects of this issue on a family unit. However, without the ability to compare this text’s treatment of euthanasia to other texts’ treatment, it is difficult to fully comprehend

22. Id.
23. Id.
24. Id.
27. Id. at 100 (mentions Gonzales v. Oregon, 546 U.S. 243 (2006), which invalidated the Ashcroft directive).
the extent to which these notes provide a balanced overview of euthanasia.

ABORTION

Unlike the coverage of euthanasia, every textbook surveyed included some detailed discussion of abortion. Many textbooks attempt to address abortion jurisprudence relatively extensively by including it in sections entitled "Reproductive Rights and Interests,"28 "Abortion, Contraception, and Sterilization,"29 or other similarly broad titles. Two textbooks, Contemporary Family Law, by Abrams, and Family Law: Cases, Texts, Problems, by Ellman, include only the portions of abortion jurisprudence related to more narrow family law issues. Each textbook will be described, including a brief discussion of the cases and notes within each text.

MODERN FAMILY LAW BY WEISBERG AND APPLETON

Weisberg begins its discussion of abortion with excerpts from Roe v. Wade.30 The edited version contained in the textbook includes portions from Sections I, VI–XI, and two paragraphs from the Rehnquist dissent, which summarize his disagreement with the definition of the privacy right.31 Following the edited opinion, the textbook includes portions of the firsthand account of Sarah Weddington, which summarizes some of the background of Roe v. Wade, and text describing the issues surrounding Webster v. Reproductive Health Services, which ends describing the death of a woman resulting from an illegal abortion which the author purports could have prevented had there been a "choice of a safe and legal abortion."32 Weisberg also includes a subsection entitled "Anti-Abortion Laws: Historical and Philosophical Perspectives" in which portions of Abortion and the Politics of Motherhood by Kristen Luker; A Defense of Abortion by Judith Jarvis; and Abortion and the

28. HARRIS ET AL., supra note 2.
29. CLARK & ESTIN, supra note 2.
30. WEISBERG & APPLETON, supra note 2, at 20–27.
31. Id.
32. Id. (citing SARAH WEDDINGTON, A QUESTION OF CHOICE (1993); BRIEF FOR THE AMICI CURIEA WOMEN WHO HAVE HAD ABORTIONS AND FRIENDS OF AMICI CURIEA IN SUPPORT OF APPELLANTS, WEBSTER v. REPRODUCTIVE HEALTH SERVICES, 492 U.S. 490 (1989)).
Sexual Agenda by Sidney Callahan, are included as examples of scholarly work surrounding abortion.\textsuperscript{33}

Weisberg also includes several shorter notes which provoke inquiries into the criticism of judicial activism from the "political right" regarding the fundamental right in Roe and Roe's precedents,\textsuperscript{34} and summarizes two types of common statutory restrictions in the Roe era and the companion case, Doe v. Bolton, which invalidated a state's restrictions.\textsuperscript{35} Other notes include a discussion of Roe's emphasis on viability, and formulating specific issues that may arise as technology advances to push the time of viability earlier, and the physician's role in evaluating and protecting the health of the mother under a broad interpretation of "health."\textsuperscript{36} Another note states that the legalization of abortion provides a primary explanation for large decreases in crime over the preceding decade.\textsuperscript{37} Lastly, the text includes a note that examines abortion law in other countries and contains a summary of Mary Ann Glendon's Abortion and Divorce in Western Law, in which she contends that Roe put the United States in a "class by itself."\textsuperscript{38}

Two notes also examine the issues of gender equality and sex discrimination within abortion.\textsuperscript{39} The text includes an excerpt from Professor Sylvia Law as an example of a feminist commentator who prefers an equal protection argument for the right to abortion,\textsuperscript{40} as well as a summary of Professor Frances Olsen's comment, "Unraveling Compromise," in which he discusses how far a state should go to protect potential life and argues that to reduce abortion, a state should provide a number of services for women. In a similar vein, the text includes a note about abortion and motherhood which

\begin{footnotes}
33. Weisberg & Appleton, supra note 2, at 34–38.
34. Id. at 30–31.
35. Id. at 31 (including prohibition on abortion except to save the mother's life and the ALI Model Penal Code's permission of abortion if pregnancy would seriously and permanently injure the woman's health; if the fetus suffered from a grave, permanent, and irremediable mental or physical defect; or if the pregnancy resulted from rape).
36. Id.
37. Id. at 33 (citing John J. Donahue III & Steven D. Levitt, The Impact of Legalized Abortion on Crime, 116 Q.J. ECON. 379, 414 (2001)).
38. Weisberg & Appleton, supra note 2, at 33–34 (citing Mary Ann Glendon, Abortion and Divorce in Western Law 22–25 (1987); and footnote citations to several studies offering a variety of information about foreign abortion laws).
39. Weisberg & Appleton, supra note 2, at 32–33.
\end{footnotes}
focuses on Kristin Luker’s argument that pro-choice proponents embrace feminist and progressive objectives while “abortion opponents” believe that “motherhood—the raising of children and families—is the most fulfilling role that women can have.”

The text continues the abortion topic with an edited excerpt of *Gonzales v. Carhart* in a section of the textbook entitled “Burdens on Privacy.” Immediately following the edited opinion, the text includes a two-page excerpt from *Beyond the Slogans: Inside the Abortion Clinic*, by John Leland, containing abortion statistics, physical descriptions of an abortion clinic, and personal stories. Following this article, there are several shorter notes exploring several other aspects of abortion litigation. After inquiring into the extent to which the *Gonzales* opinion reflects “an abortion jurisprudence that follows *Roe,*” one note focuses on the undue burden standard by summarizing *Casey* as a joint opinion that embraced the undue burden standard rather than a rational basis or strict scrutiny standard, and summarizing *Stenberg v. Carhart* as the case in which a majority embraced the undue burden standard. Another note examines the “abortion participants,” discussing the physician’s role after *Gonzales* eliminated the “physician veto” and the medical uncertainty surrounding abortion, as well as the woman’s role and possible psychological effects resulting from her abortion decision.

43. *Id.* at 47–49 (citing John Leland, *Beyond the Slogans: Inside an Abortion Clinic*, N.Y. TIMES, Sept. 18, 2005).
44. *WEISBERG & APPLETTON*, supra note 2, at 49–50.
45. *Id.* at 50.
A longer note follows, evaluating cases after Roe v. Wade and Doe v. Bolton in which the limits of the Court’s holdings were tested. The issue of abortion funding leads this note and the text lists Beal v. Doe, Maher v. Roe, and Poelker v. Doe as cases permitting states to refuse Medicaid for nontherapeutic abortions based on a rational basis test for the state’s encouragement of childbirth over abortion. The text then includes a brief summary of Harris v. McRae, stating that the “Court held that Roe’s protection of the right to abortion does not confer an entitlement to funds to realize that right.” The note then discusses the undue burden standard, citing Justice O’Connor’s dissent from City of Akron v. Akron Center for Reproductive Health, Inc. for an example of an early critic of Roe’s trimester framework, and defining the standard as one that “expressly permits some measures ‘designed to persuade [the woman] to choose childbirth over abortion.’” The note continues with a survey of the informed consent issue mentioning the Court’s upholding state regulations mandating that physicians obtain prior written consent from patients in Planned Parenthood v. Danforth, summarizing the proposed “Unborn Child Pain Awareness Act of 2007,” and describing Rust v. Sullivan in which the Court “upheld regulations disallowing physicians in federally funded clinics from discussing abortion, despite the patient’s request for information, the physician’s judgment that the patient should consider abortion, the health risks of pregnancy, or state malpractice laws requiring disclosure.”


48. WEISBERG & APPLETON, supra note 2, at 52-53.
49. Id. at 52.
50. Id.
concludes by inquiring into the extent that the abortion cases reflect changes in the Supreme Court’s composition.53

Other notes in the text draw attention to the moral difference between the abortion procedure that Gonzales bans and other abortion techniques;54 discuss access to abortion issues;55 survey some of the government’s limited responses to clinic violence, including the Freedom of Access to Clinic Entrances Act (FACE);56 draw a relationship between modern birth control and abortion;57 and mention RU-486 and potential implications Gonzales may have on laws surrounding the abortion pill.58 A final series of notes in the text’s abortion section gives a broad overview of several other legal issues surrounding the abortion issue including transitory abortions,59 federal abortion laws regarding banning certain abortion procedures, mention of a statute that “permits certain relatives of the fetus to sue the physician for damages[,]”60 mention of several states having fetal homicide laws and brief summaries of federal fetal protection


54. WEISBERG & APPLETON, supra note 2, at 53–54.

55. WEISBERG & APPLETON, supra note 2, at 54 (citing Gillian E. Metzger, Abortion, Equality, and Administrative Regulation, 56 EMORY L.J. 865 (2007); and footnote cites to several other statistics and articles).


57. WEISBERG & APPLETON, supra note 2, at 55 (citing Tummino v. Torti, 603 F. Supp. 2d 519 (E.D.N.Y. 2009)).

58. WEISBERG & APPLETON, supra note 2, at 55 (citing Cordray v. Planned Parenthood Cincinnati Region, 911 N.E.2d 871 (Ohio 2009); Carol Sanger, Seeing and Believing: Mandatory Ultrasound and the Path to Protected Choice, 56 UCLA L. REV. 351 (2008)).


measures,\textsuperscript{61} and a short history of the increasing power of the federal
government over family law matters.\textsuperscript{62}

**DOMESTIC RELATIONS: CASES AND PROBLEMS BY CLARK AND ESTIN**

Clark begins its treatment of abortion with excerpts from the
*Roe v. Wade* opinion, including portions from Parts I, V, VII–XII, and Rehnquist’s dissent.\textsuperscript{63} Following the edited opinion, the textbook
includes a paragraph summary of the *Doe v. Bolton* decision, containing both a brief description of the facts of the case and the
holding.\textsuperscript{64}

After providing this information on the two companion cases, Clark includes several notes that further illuminate issues surrounding
the abortion issue. One note unique to the Clark text offers a balanced
view absent in the other texts by exploring a number of criticisms of
the *Roe v. Wade* opinion.\textsuperscript{65} One criticism states that *Roe* failed to
establish the legitimacy of the decision by not articulating a precept
of sufficient abstractness to lift the ruling above the level of a
political judgment,\textsuperscript{66} another contends that *Roe* had no support in the
text of the Constitution,\textsuperscript{67} another says that the woman’s right
announced by *Roe* could not be inferred from the Constitution,\textsuperscript{68} and
the final article advocates that the abortion issue be left to
legislatures, as that would have “enabled them to work out a better
balance between the interests of the mother and those of the fetus.”\textsuperscript{69}
Another note that Clark discusses with increased balance compared
to other texts relates to the question of when life begins.\textsuperscript{70} First stating

\begin{itemize}
  \item \textsuperscript{61} WEISBERG & APPLETON, supra note 2, at 56–57 (describes the “Unborn Victims of
Violence Act” and revisions to the State Children’s Health Insurance Program which includes the
unborn in the definition of child, as well as a summary of two opposing views of these revisions
  \item \textsuperscript{62} WEISBERG & APPLETON, supra note 2, at 57 (citing several federal statutes, including a
string of citations to articles at the end of the note relating to “federalism in family law”).
  \item \textsuperscript{63} CLARK & ESTIN, supra note 2, at 168–178.
  \item \textsuperscript{64} Id. at 178.
  \item \textsuperscript{65} Id. at 178–179.
  \item \textsuperscript{66} Id. at 178 (citing Archibald Cox, *The Supreme Court and Abortion*, 2 HUM. LIF REV.
15, 18 (1976)).
  \item \textsuperscript{67} CLARK & ESTIN, supra note 2, at 178 (citing ROBERT H. BORK, *The Tempting of
America: The Political Seduction of the Law*, 112–115 (1990)).
  \item \textsuperscript{68} CLARK & ESTIN, supra note 2, at 178–179 (citing John Hart Ely, *The Wages of Crying
Wolf: A Comment on Roe v. Wade*, 82 YALE L.J. 920 (1973)).
  \item \textsuperscript{69} CLARK & ESTIN, supra note 2, at 179 (citing MARY ANN GLENDON, *Abortion and
Divorce in Western Law* 58–62 (1987)).
  \item \textsuperscript{70} CLARK & ESTIN, supra note 2, at 179.
\end{itemize}
that Roe’s conclusion that the unborn are not included under Fourteenth Amendment protection has been strenuously disputed, the text continues the discussion by briefly summarizing John A. Robertson’s In the Beginning: The Legal Status of Early Embryos and introducing the difficulty in determining the boundary between abortion and contraception.71 Next, the text offers several summaries of other constitutional arguments that have been suggested for the holding in Roe including those offered by Philip B. Heymann and Douglas Barzelay,72 Donald Regan,73 Robert Goldstein,74 Eileen McDonagh,75 Sylvia Law,76 and provides several citations for other similar arguments.77

Another series of notes in the text examine statistics surrounding the public opinion of abortion,78 the decline in the availability of abortion since 1990,79 and the various acts of violence towards abortion clinics, including Congress’s response of the FACE.80 A final note after the Roe opinion includes a long string citation of relevant abortion cases and small paragraph summaries of issues that define “the scope of abortion rights and how far states may go to try to discourage or prevent abortions.”81 The issues the text summarizes include the Court’s striking down of requirements that

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71. Id. at 179 (citing JOHN T. NOONAN, JR., A PRIVATE CHOICE: ABORTION IN AMERICA IN THE SEVENTIES (1979); John A. Robertson, In the Beginning: The Legal Status of Early Embryos, 76 VA. L. REV. 437, 441–443 (1990); and a string citation with various articles discussing issues surrounding the line between contraception and abortion).
73. CLARK & ESTIN, supra note 2, at 180 (citing Donald H. Regan, Rewriting Roe v. Wade, 77 Mich. L. REV. 1569 (1979)).
74. CLARK & ESTIN, supra note 2, at 180 (citing Robert D. Goldstein, Mother-Love and Abortion: A Legal Interpretation, 29 JURIMETRICS J. 349 (1989)).
75. CLARK & ESTIN, supra note 2, at 180 (citing Eileen McDonagh, Breaking the Abortion Deadlock (1996)).
77. CLARK & ESTIN, supra note 2, at 181 (string cite of several articles).
78. Id. at 181 (citing Eric M. Uslander and Ronal E. Weber, Public Support for Pro-Choice Abortion Policies in the Nation and States: Changes and Stability After the Roe and Doe Decisions, 77 Mich. L. Rev. 1772 (1979)).
80. CLARK & ESTIN, supra note 2, at 182 (also citing several cases upholding the constitutionality of the FACE statute).
all abortions be performed in hospitals, prohibition of saline amniocentesis and partial-birth abortion, record-keeping requirements, informed consent procedures, spousal notification and consent, parental notification and consent, prohibition on public funding, waiting periods, and provisions regarding fetal viability. The note concludes with a discussion of the changes in Supreme Court membership and three short paragraphs analyzing recent abortion case law.  

Clark continues its discussion of abortion with an excerpted opinion of Planned Parenthood of Central Missouri v. Danforth. This edited version includes portions of Parts I, II, IV, and Justice Stevens’ concurrence in part and dissent in part. Following the opinion, the text provides a paragraph summarizing both Justices Stewart and Powell’s concurring opinion, and Justices White, Rehnquist, and Chief Justice Burger’s dissent. Clark then includes an excerpt of Casey, focusing only on Part V-C, which considers the spousal notification provision. After this shortened opinion, the text gives a paragraph summary of the Chief Justice’s dissent, draws attention to the Court’s distinction between parental consent and spousal consent requirements, draws attention to the domestic violence statistics included in the opinion, and cites Coe v. County of Cook as an opinion that provides authority for the rights of non-marital fathers.

Clark then provides the edited opinion of Bellotti v. Baird, including portions of Parts I–IV. The notes following this case include a paragraph providing brief summaries of Stevens’ concurrence, Rehnquist’s concurrence, and White’s dissent, a discussion of the relationship between the Bellotti and Danforth decisions; a list of questions and issues raised by the mature minor exception; and an inquiry into whether the Bellotti decision

82. CLARK & ESTIN, supra note 2, at 183–184.
83. Id. at 184–185.
84. Id. at 185–190.
85. Id. at 185–188 (the textbook provides summaries of Part IV-A, IV-E, IV-F, and IV-G, and excerpts from Part IV-C and IV-D).
86. CLARK & ESTIN, supra note 2, at 190.
87. Id. at 190–197.
88. Id. at 197.
89. Id. at 197–208.
90. Id. at 208.
91. Id. at 208–209.
92. CLARK & ESTIN, supra note 2 at 209 (citing Elizabeth Buchanan, The Constitution and the Anomaly of the Pregnant Teenager, 24 ARIZ. L. REV. 553 (1982)).
adequately respects the right of parents to protect and make medical decisions for their children.93

Excerpts of Hodgson v. Minnesota follow, including edited versions of Parts I–IV, VI, VII, and Kennedy’s concurrence in judgment in part and dissent in part.94 The text provides several notes following the decision including a summary of Ohio v. Akron Center of Reproductive Health, in which a single parent notification with a judicial bypass was upheld,95 the issues that state constitutions may introduce to the questions of parental consent,96 a description of conclusions regarding judicial bypass proceedings from Judging Teenagers: How Minors Fare When They Seek Court-Authorized Abortions, by Patricia Donovan,97 a summary of differing results regarding the “maturity” of minors in several court decisions,98 and the issue of parental support with non-consenting parents and potential obligations of the grandparent.99

FAMILY LAW: CASES, MATERIALS, AND PROBLEMS BY SWISHER, MILLER, AND SINGER

The abortion topic is embedded in a section of the book entitled “Having Children: The Alternative Choices” and begins with an excerpted opinion of Roe v. Wade.100 Similar to the other texts that include an edited version of Roe, Swisher provides portions of Parts I, II, VI–XII, and Rehnquist’s dissent. The text provides several short notes immediately following the decision including an evaluation of the symmetry of Blackmun’s opinion,101 and a note stating that regarding the right to privacy established in Roe, the majority is not concerned with “establishing a theory of constitutional interpretation to support the belief in the existence of the right.”102 Another series of short notes pertains to when life begins stating that “viability is not a fixed moment,”103 that the point of viability could be moved back as

93. CLARK & ESTIN, supra note 2, at 209.
94. Id. at 219–223 (including portions of Parts I, II, IV, and V).
95. Id. at 223–224.
96. Id. at 224.
97. Id. at 225 (citing Patricia Donovan, Judging Teenagers: How Minors Fare When They Seek Court-Authorized Abortions, 15 Fam. Plan. Persp. 259 (1980)).
98. CLARK & ESTIN, supra note 2, at 225.
99. Id. at 225.
100. SWISHER et al., supra note 2, at 243.
101. Id. at 252.
102. Id.
103. Id.
scientific discoveries advance, and that "pro-life or anti-abortion advocates" criticize allowing abortion based on the belief that life begins at the moment of conception.

The notes continue with a longer note that examines subsequent cases defining the parameters of several abortion issues. Within this note, the text briefly examines Planned Parenthood of Missouri v. Danforth and the issue of spousal consent, Doe v. Bolton and the issue of performing abortions in hospitals, the issue of public funding as addressed in several cases, and the issue of minor consent (stating that the basic rule "is that a state can statutorily require parental consent by one parent as long as there is a provision for judicial bypass"). The note also includes a section of "miscellaneous" cases that further discuss the scope of abortion issues by providing summaries of Akron v. Akron Center for Reproductive Health and Webster v. Reproductive Health Services.

The book next includes the longest excerpted opinion of Casey presented in any of the texts. This edited version includes sections of Parts I, II, IV, V, VI, and approximately one page of Justice Scalia's concurrence in judgment in part and dissent in part. After the opinion, the text provides a list of the issues considered in Casey, each with a "tally of how the justices voted on each of the issues" to better illustrate the case's complexity. The text also provides three further notes about the decision including an observation that the Justices did not vote along party lines in the case, an indication that recent Supreme Court appointees have a

104. Id.
105. Id. at 253 (suggests formulating an argument against Roe conceding that "it is impossible to know when, or at least to reach a consensus as to when, life begins").
106. SWISHER et al., supra note 2 at 253–256.
109. SWISHER et al., supra note 2, at 255–256.
110. Id. at 256–256.
111. Id. (Part V includes portions from Parts V-B, V-C, and V-D).
112. Id. at 266–267.
113. Id. at 267.
pro-choice bent, and a summary of the stare decisis portion of the opinion which the text chose to leave out of the edited version.

Lastly, Swisher includes several other brief notes, which survey a variety of developments in the abortion issue. The first of these notes summarizes the Freedom of Choice Act of 1992 as a desire to codify the Supreme Court's holding in Roe. Another note discusses the RU-486 pill, giving information about the procedure the pill induces, the history of the pill in the United States, and arguments in favor and against use of the drug. A pair of notes gives examples of violence at abortion clinics and evaluates the Court's response to demonstrations surrounding abortion. These two notes summarize the Supreme Court decisions of Bray v. Alexandria Women's Health Clinic and Schenck v. Pro-Choice Network of Western New York, as well as the Freedom of Access to Clinic Entrances Act of 1994. A final note in the abortion section of Swisher summarizes provisions of the Partial Birth Abortion Act of 1996, noting, however, that it had not yet been enacted.

FAMILY LAW BY HARRIS, TEITELBAUM, AND CARBONE

In Harris's short discussion of abortion, under the heading entitled "Reproductive Choice," Roe is summarized in four short paragraphs and Casey is summarized in approximately a page.

114. Id.
115. SWISHER et al., supra note 2, at 267–268 (stating that "[s]ince the factual assumptions and the law have not changed, overruling Roe would be based upon a doctrinal difference—and that is not a good reason to overrule a constitutional case—except for the most egregious cases such as Lochner or Plessy v. Ferguson").
116. Id. at 268–270.
117. Id. at 268.
118. Id. at 268–269 (Brooks, RU-486: Politics of Abortion and Science, 2 J. PHARM. & L. 261 (1993); Canlen, The Long Labor of RU-486, CAL. LAWYER, 34 (May 1997); Hanson, Approval of RU-486 as a Postcoital Contraceptive, 17 PUGET SOUND L. REV. 163 (1993)).
119. SWISHER et al., supra note 2, at 270 (citing McMurtry & Pennock, Ending the Violence: Applying the Ku Klux Klan Act, RICO, and FACE to the Abortion Controversy, 30 LAND & WATER L. REV. 203 (1995)).
120. SWISHER et al., supra note 2, at 269–270.
122. SWISHER et al., supra note 2, at 270.
123. HARRIS et al., supra note 2, at 135 (summarizing Justice Blackmun's opinion that right to privacy is a fundamental right, that Texas, by holding to one of many views of the status of a fetus, could not "override the rights of the pregnant woman; also summarizing Justice Rehnquist's dissent stating that the right to privacy did not include a right to terminate a pregnancy nor that it was accorded the protection of a fundamental right).
124. Id. at 135–36 (summarizing Justice O'Connor's focus on stare decisis, stating that the basic decision in Roe was not repudiated, although specific tests employed in Roe were rejected).
The text then summarizes the more recent case of *Gonzales v. Carhart*, including about one page of excerpts from the majority opinion, as well as excerpts from three paragraphs of Justice Ginsberg's dissent.\(^{125}\)

Following these introductory summaries, Harris includes significantly shortened versions of both *Planned Parenthood of Central Missouri v. Danforth* and *Casey*.\(^{126}\) Both of these edited versions focus on spousal consent and spousal notification and are followed by a couple of short notes, which raise questions and discuss the issue in more detail. One note inquires as to whether there may be some intermediate ground between husband and wife, rather than the "zero-sum game" involved in *Danforth*'s majority.\(^{127}\) Another note mentions *Casey*'s upholding of the parental notification provision and provides a question that requires examining the difference between parental notification and spousal notification.\(^{128}\) Yet another note discusses the "access of a woman of limited means to abortion," summarizing the Hyde Amendment and a number of states that have enacted similar provisions.\(^{129}\) Lastly, *Harris* provides a string cite to several articles discussing the "relationship between the right to abortion and the constitution of the family" with a parenthetical after each citation offering a sentence explanation of the article's content.\(^{130}\)

**FAMILY LAW: CASES, TEXT, PROBLEMS BY ELLMAN, KURTZ, SCOTT, WEITHORN, AND BIX**

The *Family Law* text by Ellman includes the abortion issue as part of the section that discusses minors. The text introduces the issue with excerpts of the *Bellotti v. Baird* opinion.\(^{131}\) The edited version of this opinion includes portions of Parts I–IV, as well as a summary of Justice Stevens' concurrence in judgment.\(^{132}\)

125. *Id.* at 136–38.
126. *Id.* at 138–42.
127. *Id.* at 140.
128. *Id.* at 142.
129. *Id.* at 142–43 (citing Stanley K. Henshaw et al., *Restrictions on Medicaid Funding for Abortions: A Literature Review* 3 (Guttmacher Institute, June 2009)).
131. ELLMAN et al., supra note 2, at 1107–13.
132. *Id.* at 1107–13.
Following this excerpt, there are several notes in the textbook, including a summary of Massachusetts law after the Bellotti decision that provides an excerpt by Professor Robert Mnookin’s article Bellotti v. Baird: A Hard Case.\(^{133}\) A pair of notes following this summary of Massachusetts law differentiates between parental consent provisions\(^ {134}\) and parental notification statutes, and also provides a summary excerpt of the H.L. v. Matheson majority opinion and a portion of Justice Marshall’s dissent, as well as a summary excerpt of the Hodgson v. Minnesota decision.\(^ {135}\) In these two notes, a few other cases are mentioned in lesser detail, as well as two articles: Parental Involvement in Minors’ Abortion Decisions by Henshaw and Kost, and Protecting Our Daughters: The Need for the Vermont Parental Notification Law by Collett.\(^ {136}\)

Another note discusses the issue of determining a minor’s maturity and to show the reality that courts do not apply a consistent standard in this determination; the Ellman textbook offers several summaries of court decisions in which judges placed importance and value on different characteristics of a young woman.\(^ {137}\) Also included in this note are inquiries provoked by Developmental Trends in Adolescents’ Psychological and Legal Competence to Consent to Abortion by Amuel and Rappaport as well as a statement by the Interdivisional Committee on adolescent abortion. A final note in Ellman briefly analyzes how “some courts have interpreted their state constitutions to provide more protection of minors’ abortion rights than has been recognized under the federal Constitution” and offers a concluding evaluation by Martin Guggenheim’s Minor Rights: Adolescent Abortion Cases.\(^ {138}\)

CONTEMPORARY FAMILY LAW BY ABRAMS, CAHN, ROSS, AND MEYER

The Abrams text includes the abortion issue as it relates to “Medical Decisionmaking for One’s Spouse,” and begins the discussion of abortion with an excerpt of Casey.\(^ {139}\) This version of

\(^{133}\) \textit{Id.} at 1113–14 (citing Robert Mnookin, Bellotti v. Baird: A Hard Case, \textit{in In the Interest of Children} 239–40 (R. Mnookin et al., eds. 1985)).

\(^{134}\) ELLMAN \textit{et al.}, \textit{supra} note 2, at 1114 (string citation of several cases).

\(^{135}\) \textit{Id.} at 1114–17.

\(^{136}\) \textit{Id.} at 1117.

\(^{137}\) \textit{Id.} at 1117–20.

\(^{138}\) \textit{Id.} at 1120–21 (citing Martin Guggenheim, Minor Rights: Adolescent Abortion Cases, 30 Hofstra L. Rev. 589 (2002)).

\(^{139}\) ABRAMS \textit{et al.}, \textit{supra} note 2, at 214.
Casey includes portions of Parts I, II, V-C, Blackmun’s concurrence in part, concurrence in judgment in part, and dissent in part, and Rehnquist’s concurrence in judgment in part and dissent in part. Following this portion of the decision, the text then includes a summary of Bellotti v. Baird, along with issues raised by An Emerging Right for Mature Minors to Receive Information by Catherine J. Ross and “Special Weight” for Best-Interests: Minors in the New Era of Parental Autonomy by Richard F. Storrow and Sandra Martinez.

As a conclusion to its discussion of abortion, Abrams provides a longer note entitled “Casey’s Vitality” in which it offers summaries of more recent abortion jurisprudence. After briefly summarizing the holdings of Ayotte v. Planned Parenthood of Northern New England and Stenberg v. Carhart, the text includes a longer summary of the Gonzales v. Carhart decision. This summary of the opinion includes approximately four paragraphs of Kennedy’s majority opinion, a brief description of Thomas and Scalia’s concurrence, and approximately eight paragraphs from Justice Ginsburg’s dissent.

CONCLUSION

In the six leading family law textbooks surveyed there appeared to be a “right-to-choice” bias in the abortion and euthanasia issues. While there was little discussion of euthanasia in the textbooks, there were arguments and issues missing from the small amount of text that was provided. There would be value to covering the euthanasia issue with more breadth and depth, as several relationships between euthanasia and family law exist.

The textbooks treated the relevant abortion cases in a fairly uniform way, but the bias presented itself most strongly in the notes selected to further illuminate the jurisprudence and controversy surrounding the cases. The texts that provide the most coverage, Weisberg and Appleton, and Clark and Estin, are the only ones to provide any critique of the monumental Roe decision. While the

140. Id. at 214–22.
141. Id. at 223–24 (also citing Danforth, 428 U.S. at 52; Am. Acad. of Pediatrics v. Lungren, 16 Cal. 4th 307 (1997)).
142. ABRAMS et al., supra note 2, at 224.
143. Id. at 224–27.
144. Id.
citations of these critiques are notable within these two texts, the
discussion of these topics was comparatively short, and edited to such
an extent it was difficult to fully explore the criticisms of pro-choice
arguments. The other texts focus on more narrow issues of abortion,
and as a result, offer little criticism of the abortion issue as a whole,
focusing more on the extent to which abortion should be regulated
and the inconsistency courts have displayed, particularly in
determining a “mature minor.”

The bias in the texts also presents itself in the language and
phrases chosen to convey the issues and the conflicting sides. Rather
than referring to the pro-life side as “pro-life,” many texts more often
referred to that group as “anti-abortion.” Another example of the bias
within the textbooks’ language is one heading used to introduce the
Gonzales v. Carhart opinion: “Burdens on Privacy.”145 Finally, in
discussing the euthanasia issue, as mentioned before, one textbook
compares the choice to die to the choice to have an abortion,
categorizing them both as private choices.146 This specific comparison
and categorization is the general tenor found throughout the texts,
implying that whatever one’s choice may be regarding abortion or
euthanasia, either decision is viable, and most importantly, it is a
choice for the particular person to make based on individual
circumstances.

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145. WEISBERG & APPLETON, supra note 2, at 39.
146. id. at 97–98.