

## July 18, 2016; Opening Discussion on Abortion

Want to start a lively debate with a group of friends or strangers? If so, simply bring up the topic of abortion, step back, and wait for the sparks of discussion to erupt into flames of passionate argumentation. Few legal topics get the adrenaline racing like the topic of abortion. This is understandable considering the fact that the destiny of a human life is hanging in the balance.

I am well aware of the controversial nature of this subject as I begin this series on abortion. For this reason, I have postponed tackling the topic for over two years. But, with the Supreme Court's June 27<sup>th</sup> decision in the case of *Whole Woman's Health Clinic v. Hellerstedt*, the topic has again been thrust into the public conscience by the media.

As a community, it is important that we have an open dialogue on the topic. As with most subjects, there are at least two sides to consider. My goal is to explore both sides and present their respective points of view. I believe that there is much to be learned from a balanced discussion of both perspectives. I am hopeful that readers will share their own thoughts and insights, but do so in a respectful manner and tone. This is how we as a community can make an informed, intelligent decision on the topic of abortion, or on any other matter.

Because I approach the topic from a legal standpoint, the center of my discussion will be on how abortion has been handled by our legal system. Discussions will focus primarily around U.S. Supreme Court decisions since they are (usually) the final word on a legal topic. Towards the end of the series, we'll take a close look at Guam's own history with abortion, including our abortion laws and how our legal system has handled challenges to these laws.

In preparation for discussing leading Supreme Court decisions impacting abortion laws, let's review some basic details of the Court's decision-making process. As I've mentioned in an earlier column, although the number of Supreme Court justices has fluctuated over the years, currently a full court consists of nine justices. Having an odd number of justices makes sense because the Court's final decisions are determined through a majority-rules process. That is, the "winning" side must garner at least five votes.

This is where things get a little messy and very confusing, especially for non-lawyers. Many people think that basic legal principles are practically carved in stone and should be easy for a court to decide. Unfortunately, this is rarely the case, especially when an alleged constitutional issue is under consideration. We have to keep in mind that the Constitution is a relatively short document written almost 230 years ago. Much has changed since the Constitution went into effect and situations are constantly arising that the framers of the Constitution couldn't have anticipated.

For example, the Second Amendment provides in part that "the right of the people to keep and bear arms, shall not be infringed." That's all the Constitution has to say about guns.

When courts are faced with gun-related issues, the judges and justices return to this provision for guidance. But how helpful is it really? Does this provision mean that anyone can possess a gun? Does a 16 year-old have a right to have a gun? How about a mentally deranged person? Can a person own any type of gun? How about a machine gun or a mortar? Can a person carry his gun into a movie theater, or a classroom? How far can federal and state legislatures go in regulating gun ownership?

The questions become more difficult to answer when a given topic isn't even mentioned in the Constitution. For example, you won't find the word "abortion" anywhere in the Constitution. So, when faced with a question concerning abortions, how do Supreme Court Justices make their decisions?

That is the million-dollar question. Many factors come into play as the justices consider the arguments on both sides. The justices will review their past decisions that touch on the topic. They attempt to be consistent with these past decisions because our legal system is based on the principle of consistency. This approach helps build and maintain public confidence in Court itself. The justices are also sensitive to the timing of their decisions. People can get very emotional about certain controversial topics. Take women's rights, race relations, and gay marriage as examples. An ill-timed decision could result in public unrest or outright revolution.

Taking all these factors into consideration, there is frequently much room for differing opinions among the justices. For this reason, the Supreme Court seldom reaches a unanimous decision on controversial subjects. As we review the leading Supreme Court decisions concerning abortion, we'll take a close look at what factors swayed the justices in their decision-making process. Just like the justices themselves, I expect readers to have differing opinions on the outcomes of these cases. Ultimately, that's part of democracy.