

## DOCUMENT A

### **Lord Ellenborough's Act, 1803**

*Note: Connecticut adopted this British Law in 1821.*

That if any Person or Persons...shall wilfully, maliciously, and unlawfully administer to, or cause to be administered to or taken by any of his Majesty's Subjects, any deadly Poison, or other noxious and destructive Substance or Thing, with Intent such his Majesty's Subject or Subjects thereby to murder, or thereby to cause and procure the Miscarriage of any Woman then being quick with Child... shall be and are hereby declared to be Felons, and shall suffer Death as in Cases of Felony without Benefit of Clergy.

- ▶ **What stage of abortions did Lord Ellenborough's Act criminalize?**

## DOCUMENT B

### **Article 1191 of Texas Penal Code, first adopted in 1857**

If any person shall designedly administer to a pregnant woman or knowingly procure to be administered with her consent any drug or medicine, or shall use towards her any violence or means whatever externally or internally applied, and thereby procure an abortion, he shall be confined in the penitentiary not less than two nor more than five years; if it be done without her consent, the punishment shall be doubled. By "abortion" is meant that the life of the fetus or embryo shall be destroyed in the woman's womb or that a premature birth thereof be caused.

- ▶ **Compare and contrast this law's definition of and penalty for abortion with the law in Document A.**

## DOCUMENT C

### Section of The Fourteenth Amendment, 1868

[N]o state shall ... deprive any person of life, liberty, or property, without due process of law.

- ▶ **What is required in order for states to deprive people of liberty?**

## DOCUMENT D

### Majority Opinion, *Griswold v. Connecticut*, 1965

Various guarantees create zones of privacy. The right of association contained in the penumbra [arc] of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers “in any house” in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

The Fourth and Fifth Amendments were described ... as protection against all governmental invasions “of the sanctity of a man’s home and the privacies of life.”

- ▶ **On which Bill of Rights amendments does the Court base the right to privacy?**

## DOCUMENT E

### “Large Abortion Billboard Alongside Road,” 1971



- ▶ If abortions were legal in some states, how could they be illegal in others?

## DOCUMENT F

### Pro-Life Demonstrators, 1971



- What is the message of these demonstrators?

Abortion Petition in Ms Magazine Debut Issue, 1972

“We have had abortions”

These 53 American women invite you to join them in a campaign for honesty and freedom

Last year, 343 prominent and respected Frenchwomen were willing to sign a public manifesto declaring that they had undergone abortions. This *acte de révolte* dramatized their individual determination to take their lives and liberation into their own hands. It also showed their willingness to stand with and to speak for their less well-known sisters, who were forced to suffer unwanted pregnancies or illegal abortions in silence.

To many American women and men it seems absurd, in this allegedly enlightened age, that we should still be arguing for a simple principle: that a woman has the right to sovereignty over her own body. Still, there are tragically few places in the country where a woman can obtain an abortion without the expense and deception of conforming to inhuman laws, or the expense and physical danger of going outside the law. (Organizations offering information on the laws and on abortion availability are listed on page 126 of this issue.) The vast majority of abortion laws in this country are remnants of obscurantist attitudes and medieval prejudices.

In fact, at least one of every four women in the United States has had an abortion. Until the recent legal reform in two states, all of those had to be either therapeutic or illegal. Given the difficulty of securing a therapeutic abortion, the great majority of abortions endured by American women have been illegal—and therefore dangerous. This has caused untold suffering, especially on the part of poor women who must resort to self-induced or butchered abortions. Some idea of the lives to be saved by repealing abortion laws is suggested by the recent drastic reduction in deaths from childbirth, a statistic that includes deaths from bungled abortions, in New York City alone. During the first nine months of the new legal abortion program, “deaths from childbirth” dropped by at least 60 per cent.

To save lives and to spare other women the pain of socially-imposed guilt, 53 respected women residents in the United States have volunteered to begin the American Women’s Petition by signing the statement below. Our purpose is not to alienate or to ask for sympathy, but to repeal archaic and inhuman laws. Because of the social stigma still wrongly attached to abortion, many women in public life, or with husbands in public life, have felt unable to join us. We are mostly women active in community work, or in the arts. But we invite all women, from every walk of life, to help eliminate this stigma by joining us in this petition, and signing the statement below. The complete list will be sent to the White House, to every State Legislature, and to our sisters in other countries who are signing similar petitions for their lawmakers.

Barbaralee D. Diamondstein

The attitudes and laws against abortion in this country are causing untold suffering. Approximately one million American women had “illegal” abortions in 1971—many of them self-induced or performed by the unqualified, some of them fatal.

I have had an abortion. I publicly join millions of other American women in demanding a repeal of all laws that restrict our reproductive freedom.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Identification: \_\_\_\_\_

Send to: American Women’s Petition, “Ms,” 370 Lexington Avenue, New York, N.Y. 10017

Eve Auchincloss	Nora Ephron	Grace Paley
Sunny Aurelio	Lee Grant	Beverly Pepper
Lorraine Beebe	Gael Greene	Eleanor Perry
Joan Bingham	Nancy Grossman	Frances Fox Piven
Patricia Bosworth	Barbara Barrie Harnick	Letty Cotin Pogrebin
Kay Boyle	Lillian Hellman	Mary Rodgers
Adelyn D. Breekin	Dorothy Pittman Hughes	Naomi Ellen Rubin
Susan Brownmiller	Elizabeth Janeway	Nora Sayre
Hortense Calisher	Lucy Jarvis	Anita Siegel
Jaqueline Michot Ceballos	Jill Johnston	Marcia B. Siegel
Lucinda Cisler	Billie Jean King	Anne Sexton
Shirley Clarke	Maxine Kumin	Ruth P. Smith
Judy Collins	Irma Lazarus	Susan Sonntag
Mary Cunningham	Vivica Lindfors	Gloria Steinem
Anselma Dell’Olio	Marya Mannes	Lena Tabori
Karen DeCrow	Dorothy Millstone	Barbara W. Tuchman
Barbaralee D. Diamondstein	Marcia Colman Morton	Shirley Ann Wheeler
Susan Edmiston	Anais Nin	

## DOCUMENT G

### **Abortion Petition in *Ms Magazine* Debut Issue, 1972**

- ▶ In what magazine did the petition appear?
- ▶ What do Documents F and G reveal about the controversial nature of the abortion issue?

## DOCUMENT H

### ***Eisenstadt v. Baird*, 1972**

If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision to whether to bear or beget a child.

- ▶ What is the difference between this decision and the one in *Griswold v. Connecticut* (Document D)?

## DOCUMENT I

### MAJORITY OPINION



#### **Majority Opinion (7-2), *Roe v. Wade*, 1973**

It is ... apparent that at common law, at the time of the adoption of our Constitution, and throughout the major portion of the 19th century ... a woman enjoyed a substantially broader right to terminate a pregnancy than she does in most States today. At least with respect to the early stage of pregnancy, and very possibly without such a limitation, the opportunity to make this choice was present in this country well into the 19th century. Even later, the law continued for some time to treat less punitively an abortion procured in early pregnancy....

The Constitution does not explicitly mention any right of privacy. In a line of decisions, however ... the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution....

This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy....

[T]he right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation.

The pregnant woman cannot be isolated in her privacy. ...[I]t is reasonable and appropriate for a State to decide that at some point in time another interest, that of health of the mother or that of potential human life, becomes significantly involved....

With respect to the State's important and legitimate interest in the health of the mother, the "compelling" point, in the light of present medical knowledge, is at approximately the end of the first trimester.

With respect to the State's important and legitimate interest in potential life, the "compelling" point is at viability. ...If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period, except when it is necessary to preserve the life or health of the mother....

The [Texas] statute, that excepts from criminality only a lifesaving procedure on behalf of the mother, without regard to pregnancy stage and without recognition of the other interests involved, is violative of the Due Process Clause of the Fourteenth Amendment....



## DOCUMENT I

### MAJORITY OPINION



- ▶ **How did this decision build upon the rulings in *Griswold* and *Eisenstadt* (Documents D and H)?**
- ▶ **Compare the Court's use of the term "viability" to the phrase "quick with child" in Document A.**
- ▶ **Why do you think the decision in *Roe* remains controversial, while the rulings in *Griswold* and *Eisenstadt* do not?**
- ▶ **Should the Court have devised the trimester framework?**

## DOCUMENT J

### **Dissenting Opinion (William Rehnquist), *Roe v. Wade*, 1972**

I have difficulty in concluding, as the Court does, that the right of "privacy" is involved in this case....

The fact that a majority of the States reflecting, after all, the majority sentiment in those States, have had restrictions on abortions for at least a century is a strong indication, it seems to me, that the asserted right to an abortion is not "so rooted in the traditions and conscience of our people as to be ranked as fundamental." Even today, when society's views on abortion are changing, the very existence of the debate is evidence that the "right" to an abortion is not so universally accepted as the appellant would have us believe.

- ▶ **On what bases does Rehnquist disagree with the majority opinion?**



## DOCUMENT K

### **Dissenting Opinion (Byron White), *Roe v. Wade*, 1973**

The Court, for the most part, sustains this position: during the period prior to the time the fetus becomes viable, the Constitution of the United States values the convenience, whim, or caprice of the putative mother more than the life or potential life of the fetus; the Constitution, therefore, guarantees the right to an abortion as against any state law or policy seeking to protect the fetus from an abortion not prompted by more compelling reasons of the mother.... With all due respect, I dissent. I find nothing in the language or history of the Constitution to support the Court's judgment....

The Court apparently values the convenience of the pregnant mother more than the continued existence and development of the life or potential life that she carries. Whether or not I might agree with that marshaling of values, I can in no event join the Court's judgment because I find no constitutional warrant for imposing such an order of priorities on the people and legislatures of the States... This issue, for the most part, should be left with the people and to the political processes the people have devised to govern their affairs.

#### **► Why does White object to the majority ruling?**

## DIRECTIONS

*Answer the Key Question in a well-organized essay that incorporates your interpretations of Documents A-K, as well as your own knowledge of history.*

## KEY QUESTION

Evaluate the Court's constitutional reasoning in *Roe v. Wade*.