

ANSWER KEY

Document C: Due process.

Document D: Using birth control or providing advice related to it.

Document E: The Court acknowledged a parental “right to privacy” as it relates to the decisions parents make in raising their children. The Constitution does not list every right. The right of parents to make these types of decisions is a natural right.

Document F: Freedom of speech.

Document G: The Due Process Clause only applied to the states those rights understood to be fundamental to the notion of liberty.

Document H: The right to be free from “arbitrary ... restraints.”

Document I: Law is grounded in morality and, in some cases, religious precepts.

Document J: 1. Answers will vary. 2. Areas (such as the home, the conscience, papers and effects), that are free from arbitrary government intrusion. 3. The privacy of the marital relationship has been acknowledged for centuries and predates the Bill of Rights.

Document K: The Ninth Amendment allows individuals to make legitimate claims of rights beyond those written in the Constitution.

Document L: The dissenter disagrees with the Connecticut law as a matter of policy preference but he finds nothing in it that violates the Constitution.

Document M: Yes.

Roe v. Wade

Document A: After “quickening” had occurred.

Document B: Both laws prohibited drugs and devices designed to cause abortion. The 1803 law permitted abortion before quickening; in contrast, the 1857 law prohibited abortion for the entirety of

pregnancy. The 1803 law provided for the punishment of death, the 1857 Texas law provided for prison sentences of 2-5 years.

Document C: Due process.

Document D: Parts of the First, Third, Fourth, Fifth, and Ninth Amendments.

Document E: The Tenth Amendment, which says that powers not granted to the federal government are kept by the states, made abortion a state issue. Abortion laws, therefore, differed from state to state.

Document F: Do not allow abortion.

Document G: 1. *Ms* magazine. 2. They reveal the personal, emotional and divisive nature of the issue, as well as the widespread nature of the controversy.

Document H: The right of privacy, as it relates to “bear[ing] and beget[ting]” a child, is a right held by all individuals. In *Griswold*, the Court said this right only applied to married people.

Document I: 1. *Griswold* said there is a right to privacy; *Eisenstadt* said the right applies to everyone, not just married people; *Roe* held that the established right to privacy applied to the abortion decision. 2. Both the Court and the 1803 law were identifying a point in pregnancy after which abortion could be/was illegal. “Viability” (1973) is the point at which the baby can live outside the womb; “quickening” (1803) was the point at which movement could be felt by the mother. Both are terms that reflect medical understanding for their time. 3. Critics of *Roe* contend that, unlike the two earlier cases, it involves the taking of innocent life. Supporters contend that the right to an abortion is fundamental to their liberty and privacy. 4. Some students will say yes, because the trimester framework balances individual liberty with the state’s interest in protecting life. Others will say no,

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because this type of determination should be made by state legislatures.

Document J: He disagreed that the issue of abortion involved the right to privacy, and he disagreed that abortion was a fundamental right.

Document K: Justice White believed this to be a judgment call and not something the Constitution itself supports. He believed this issue should be resolved through the people and the political process, not a Court ruling.

Lawrence v. Texas

Document A: A “crime against nature” and a “disgrace to human nature.” It was punished by death.

Document B: 1. Oppression of the people by their rulers and oppression of one part of society by another part. 2. Any majority that comes together in such a varied society will most likely be rooted in principles of “justice and the general good.”

Document C: The best way to ensure government is not acting arbitrarily and violating the rights of a disfavored minority is to make its laws generally applicable to all.

Document D: 1. The right of married couples to privately choose contraceptive methods. 2. The promotion of virtues including harmony, loyalty, longevity, perpetuating a “way of life.”

Document E: The right of privacy is a right held by all individuals. According to *Griswold*, this right only applied to married couples.

Document F: *Griswold* said there is a right to privacy; *Eisenstadt* said the right applies to everyone, not just married people; *Roe* held that the established right to privacy applied to the abortion decision.

Document G: As time has gone on, Americans have supported it more.

Document H: 1. The Court claimed that there was no connection between the right to privacy claimed in *Bowers* and the right to privacy found in *Griswold* and *Eisenstadt*. Those two rulings did not bar states from banning certain sexual acts. 2. Laws can reflect the morality of the majority of the people.

Document I: Liberty concerning private sexual behavior between consenting adults in the privacy of one’s home is protected by the Constitution; the meaning of liberty, and public morality (that forms the basis for laws against certain exercises of personal liberty,) is an evolving notion to be determined by each generation, it is not static within the meaning of “liberty” written into the Fifth and Fourteenth Amendment’s Due Process Clause.

Document J: Because it criminalizes the same behavior depending on who does it and therefore violates the Equal Protection Clause of the Fourteenth Amendment.

Document K: The Due Process Clause does not create or expand liberty, but rather expressly allows states to restrict liberty as long as due process is provided.

Document L: The Constitution is not a guarantee against silly laws.

Document M: There can be conflicts between individual sexual privacy and law.