Read through each argument and decide whether it supports Roe's side (R), against the Texas law restricting abortion; Wade's side (W), in favor of the Texas law restricting abortion; both sides (BOTH); or neither side (N).

Argument Given:	**(R/W/B/N)**
The Fourteenth Amendment says "*No State shall…deny to any person within its jurisdiction the equal protection of the laws."* Having different abortion laws in various states keeps poor women in states with restrictive laws from having access to abortions, while wealthier women can travel elsewhere to have a legal and safe abortion.	
The Fourteenth Amendment says "*No State shall…deny to any person within its jurisdiction the equal protection of the laws*." If a fetus is a person from conception, then the Fourteenth Amendment guarantees equal protection of the laws. The life of the fetus must be considered as having equal weight with the life of the mother. Thus the state has a compelling interest in protecting the life of the fetus.	
The Fourteenth Amendment says "*No State shall…deprive any person of life, liberty, or property, without due process of law…."* This clause has been interpreted in some cases to guarantee substantive due process. This means that the government cannot infringe on liberty without proving a compelling interest and any law that infringes on liberty has to be very narrowly crafted. Any law that infringes on a protected liberty interest, in this interpretation of the Fourteenth Amendment, is presumed to be unconstitutional and the State has to jump a high hurdle to prove otherwise.	
The Texas abortion law declaring that a woman cannot have an abortion unless her life is in danger is too vague. Doctors may not know precisely when they are breaking the law when performing an abortion.	
The First, Fourth, and Fifth Amendments apply to the States. Though these Amendments do not mention the right of privacy, privacy is fundamental to the exercise of the rights that are explicitly mentioned. As such, privacy is protected by the penumbras of the 1st, 4th, and 5th Amendments: The First Amendment says "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."* The Fourth Amendment says "*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated…."* The Fifth Amendment says "*No person shall…be compelled in any criminal case to be a witness against himself…."*	
The Ninth Amendment says "*The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."* The Framers did not want the Bill of Rights to be an all-inclusive list of the rights that people in the United States have. The Ninth Amendment says that people retain other rights that are not explicitly listed in the Constitution. Among these rights may be the right to privacy, which would include freedom of choice in the basic decisions of one's life.	
It has long been an acknowledged role of the state to safeguard health and regulate medical practices.	
The U.S. Constitution does not explicitly mention any right of privacy.	
For the U.S. Supreme Court to determine when, where, and how an abortion should occur would be to overstep its authority as a court. It is the job of state legislatures to determine how abortions should be regulated, not federal courts.	
The use of the word "person" in the U.S. Constitution as it was drafted does not include a fetus. Thus, the Fourteenth Amendment cannot be construed to protect the unborn.	
As a pregnancy progresses, the interest of the state in protecting the health of the mother and the life of the fetus becomes more "compelling."	

Key excerpts from the majority opinion

MR. JUSTICE BLACKMUN delivered the opinion of the Court. Chief Justice Burger and Justices Douglas, Brennan, Stewart, Marshall and Powell joined the opinion.

…We forthwith acknowledge our awareness of the sensitive and emotional nature of the abortion controversy, of the vigorous opposing views, even among physicians, and of the deep and seemingly absolute convictions that the subject inspires. One's philosophy, one's experiences, one's exposure to the raw edges of human existence, one's religious training, one's attitudes toward life and family and their values, and the moral standards one establishes and seeks to observe, are all likely to influence and to color one's thinking and conclusions about abortion.

…The principal thrust of appellant's attack on the Texas statutes is that they improperly invade a right, said to be possessed by the pregnant woman, to choose to terminate her pregnancy. Appellant would discover this right in the concept of personal "liberty" embodied in the Fourteenth Amendment's Due Process Clause; or in personal, marital, familial, and sexual privacy said to be protected by the Bill of Rights or its penumbras.

…The Constitution does not explicitly mention any right of privacy. …[T]he 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. The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved. All these are factors the woman and her responsible physician necessarily will consider in consultation.

On the basis of elements such as these, appellant and some amici argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree. Appellant's arguments that Texas either has no valid interest at all in regulating the abortion decision, or no interest strong enough to support any limitation upon the woman's sole determination, are unpersuasive. The Court's decisions recognizing a right of privacy also acknowledge that some state regulation in areas protected by that right is appropriate. As noted above, a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision. The privacy right involved, therefore, cannot be said to be absolute….We, therefore, conclude that the 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.

… (a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician.

(b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.

(c) For the stage subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

This holding, we feel, is consistent with the relative weights of the respective interests involved, with the lessons and examples of medical and legal history, with the lenity of the common law, and with the demands of the profound problems of the present day. The decision leaves the State free to place increasing restrictions on abortion as the period of pregnancy lengthens, so long as those restrictions are tailored to the recognized state interests. The decision vindicates the right of the physician to administer medical treatment according to his professional judgment up to the points where important state interests provide compelling justifications for intervention. Up to those points, the abortion decision in all its aspects is inherently, and primarily, a medical decision, and basic responsibility for it must rest with the physician. If an individual practitioner abuses the privilege of exercising proper medical judgment, the usual remedies, judicial and intra-professional, are available.

Key Excerpts from the Dissenting Opinion

Mr. Justice Rehnquist, dissenting.

The Court's opinion brings to the decision of this troubling question both extensive historical fact and a wealth of legal scholarship. While the opinion thus commands my respect, I find myself nonetheless in fundamental disagreement with those parts of it that invalidate the Texas statute in question, and therefore dissent.

The Court's opinion decides that a State may impose virtually no restriction on the performance of abortions during the first trimester of pregnancy. [However, no party in the case was currently in her first trimester of pregnancy.] … Even if there were a plaintiff in this case capable of litigating the issue which the Court decides, I would reach a conclusion opposite to that reached by the Court. I have difficulty in concluding, as the Court does, that the right of "privacy" is involved in this case. Texas, by the statute here challenged, bars the performance of a medical abortion by a licensed physician on a plaintiff such as Roe. A transaction resulting in an operation such as this is not "private" in the ordinary usage of that word. Nor is the "privacy" that the Court finds here even a distant relative of the freedom from searches and seizures protected by the Fourth Amendment to the Constitution, which the Court has referred to as embodying a right to privacy.

… The Due Process Clause of the Fourteenth Amendment undoubtedly does place a limit, albeit a broad one, on legislative power to enact laws such as this. If the Texas statute were to prohibit an abortion even where the mother's life is in jeopardy, I have little doubt that such a statute would lack a rational relation to a valid state objective ... But the Court's sweeping invalidation of any restrictions on abortion during the first trimester is impossible to justify under that standard, and the conscious weighing of competing factors that the Court's opinion apparently substitutes for the established test is far more appropriate to a legislative judgment than to a judicial one.

…To reach its result, the Court necessarily has had to find within the scope of the Fourteenth Amendment a right that was apparently completely unknown to the drafters of the Amendment. …. The only conclusion possible from this history is that the drafters did not intend to have the Fourteenth Amendment withdraw from the States the power to legislate with respect to this matter.

Majority Opinion Questions

1. Where in the Constitution does the Court find support for the right to privacy? Do you agree that this provision (part) of the Constitution protects a right to privacy?

2. What are the state's interests in regulating abortion that are recognized by the Court?

3. How is the right to privacy in the abortion context different from other areas in which a right to privacy has been recognized?

4. Describe the right to an abortion that a woman has at each stage of pregnancy (think: trimesters).

5. How well do you believe the opinion balances the interests of pregnant women and the interests of the state? Give reasons for your answer.

Dissenting Opinion Questions

1. What are Justice Rehnquist's reasons for disagreeing with the right to privacy that is recognized in the majority opinion?

2. What kind of abortion law would Justice Rehnquist agree is **unconstitutional**?

3. Justice Rehnquist argues that the drafters of the Fourteenth Amendment did not intend for the rights to be extended to include abortion. Should a right only be recognized if it was intended by the original drafters of the Constitution or the amendments? Explain your answer.

The Supreme Court justices wrestle with the issue of ***precedent*** on a daily basis, knowing that their decisions will affect not just the people in a particular case, but potentially millions of other Americans who could be in similar situations in the future. Their questions are typically about when precedents should be honored and when they should be reversed. Different justices often have different views on this -- some even change their views over time.

The term ***stare decisis*** is a legal term from Latin that means "to stand by things decided." This means to apply precedent.

Here's what a few justices had to say about what might influence them to overturn precedent:

Justice O'Connor

"Well I think you have to be able to persuade at least five members of this nine-member Court that an earlier judgment and opinion decided by this Court is now clearly wrong. That is possible to do. We can be persuaded at times that something we decided earlier has become, over time, no longer defensible.
And the most clear big example of that was in Brown v. *Board of Education when the Supreme Court decided to overrule the old Plessy* v. *Ferguson principle that you could have separate public facilities for people based on race provided they were roughly the same. You know, the same school, one for people of the black race, one for people of the white race. That's what Plessy said was all right. The members of this Court unanimously concluded that just was not valid and it overturned it, [Plessy.]*
So what standard is required? It's just a standard of persuading at least five members of the Court that an earlier precedent is clearly wrong and shouldn't remain the law of the nation."

Justice Breyer:

"That last phrase [persuading at least five members of the Court that an earlier precedent is clearly wrong and shouldn't remain the law of the nation] is very important. Every one of us understands that if you change the law too often, even when it was wrong before, people cannot live their lives. They can't plan how to live; they can't plan their societies. So no one thinks just because a case is wrong that you are going to overturn it. They have to both think it was wrong and think it's harmful and causing a lot of trouble.
Now, if you said never overturn a case, we'd still live in a society that had racial segregation. That would be terrible. So, of course, sometimes you have to overturn a case. But five people [justices] have to agree it was wrong then and it's wrong now and it's causing a lot of harm to the point where even though people have to plan their lives, we better get rid of it. That happens very rarely."

John Roberts:

"... the principles of stare decisis look at a number of factors. Settled expectations is one of them... Whether or not particular precedents have proved to be unworkable is another consideration on the other side ...I do think it is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and evenhandedness.

Stephen Breyer:

"The Court has often recognized the 'fundamental importance of stare decisis, the basic legal principle that commands judicial respect for a court's earlier decisions and the rules of law they embody. The court has pointed out that stare decisis 'promotes the evenhanded, predictable and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'
Stare decisis thereby avoids the instability and unfairness that accompany disruption of settled legal expectations. For this reason, the rule of law demands that adhering to our prior case law be the norm. Departure from precedent is exceptional and requires special justification."

Based on what you read and your own thoughts, answer the following:

1. Why is adhering to precedent (or *stare decisis)* **important**?

2. What do you think would be **acceptable reasons** for reversing an existing precedent? (bulleted list is fine)

3. Given how divided the country is on the issue of abortion, in your opinion, is that a good reason to <u>stick to precedent</u> or to consider <u>overturning</u> the precedent it established? (This question is not asking whether you like the *Roe* decision or not, just whether the **popularity** of a decision should be considered when a Court decides whether to reconsider an established precedent.)