



Lesson
Precedent, Privacy, Science and Religion:
The Complex Challenges of Making Laws about Abortion

OVERVIEW

In an era when models of civil discourse can be difficult to find, this lesson provides an opportunity to practice respectful dialogue. Using film clips that humanize a topic that is often obscured by well-rehearsed rhetoric, students will examine the complex rationales for U.S. laws governing abortion. They'll reflect on which of the many competing interests they think should be given precedence and why, though the lesson is not about taking a particular stance relative to the legality of abortion. Instead, the focus is on understanding how a law intended to govern one thing also affects other aspects of life.

Video clips provided with this lesson are from *After Tiller*.

POV offers a lending library of DVDs that you can borrow anytime during the school year—FOR FREE! Get started by joining our [Community Network](#).

OBJECTIVES

By the end of this lesson, students will:

- know the content and substance of a U.S. Supreme Court decision (*Roe v. Wade*), the First Amendment to the U.S. Constitution (and how it relates to the doctrine of separation of church and state), the Ninth Amendment (and its relationship to the right of privacy) and the meaning of the Declaration of Independence's guarantee of "life, liberty and the pursuit of happiness"
- understand how science, technology and religious belief have shaped interpretation of the U.S. Constitution
- reflect on the factors that shape their own thinking about law and abortion practice
- read informational texts and view informational video
- use listening, writing, speaking (discussion), research and reasoning skills

GRADE LEVELS: 11– College/University

SUBJECT AREAS

Civics/Government
Current Events
Health
Law

Philosophy
Religious Studies
U.S. History
Women's Studies

MATERIALS

- Internet access for research and video streaming; equipment to show online video to the class

ESTIMATED TIME NEEDED

Two 50-minute class periods, plus time for a prerequisite research assignment

FILM CLIPS

Clip 1: When the Diagnosis Guarantees Suffering (5:55 min.)

The clip begins at 08:56 as Dr. Shelley Sella says, “Both of you have a baby who’s really sick.” It ends at 14:51 when she says, “And try to remember why you made your decision . . . then.”

Relates the stories of two couples who want children but who are choosing abortion because their babies would be born with severe abnormalities (e.g., a portion of the brain missing). Both mothers and fathers are involved and in agreement. Their experiences raise questions about the difference between being alive versus quality of life. The clip also addresses feelings of guilt, regret and grieving.

Clip 2: Consequences of Making Abortion Illegal (01:11 min.)

The clip begins at 17:59 as Dr. Warren Hern says, “When I was in medical school, I loved delivering babies.” It ends at 19:10 with him saying, “So, I’ve looked at this from the beginning as a public health issue.”

Explains why Dr. Hern chose to offer abortion services and includes descriptions of what can happen when abortion is illegal or unavailable, including stories of women who injured themselves when they tried to terminate their own pregnancies and children who were abused because they were unwanted.

Clip 3: The Nebraska Legislature: Making Abortion Unthinkable (2:30 min.)

The clip opens at 19:22 with clinic protesters in Bellevue, Nebraska. It ends at 21:52 with a hearing witness in a news interview saying, “I mean, this guy is a . . . is a sick individual.”

Includes footage of protesters, as well as news coverage of a hearing in the Nebraska State Legislature in which abortion opponents make reference to the idea that a fetus feels pain.

Clip 4: Serena’s Story (02:46 min.)

The clip begins at 57:52, as Dr. Sella asks, “So, Serena tell me, when did you realize you were pregnant?” It ends at 1:00:38, as Dr. Sella finishes her conversation with Serena.

Recounts the story of a young woman who is having a tough time supporting and raising the children she already has. Includes references to the cost of abortion, the potential impact on the child of substance abuse and lack of prenatal care, the role of family support and dealing with concerns about being judged.

Clip 5: Finding a Clinic Space in Maryland (02:05 min.)

The clip starts at 1:02:20 with Dr. LeRoy Carhart searching for a space to rent. It ends at 1:04:25 with an abortion opponent saying, “Let us pray.”

Shows the religious tenor of protests and raises the issue of how laws governing abortion differ from state to state.

Clip 6: Women Are the Experts on Their Own Lives (5:30 min.)

The clip begins at 1:05:45 with Dr. Susan Robinson talking with her staffer about counseling a patient as the staffer says, “She called last week.” It ends at 1:11:15 with Dr. Robinson saying, “I think that’s the— really the only reason that it’s fair to turn a patient down.”

Includes the story of a Catholic woman who has chosen abortion even though she feels guilty because it goes against her faith. It also includes the doctor’s perspective in terms of struggling with the decision about when it is right to refuse to perform a procedure that a woman is requesting.

Clip 7: How Far Does the Right to Protest Go? (5:29 min.)

The clip opens at 1:12:49 with women chanting, “Hey-hey! Ho-ho! *Roe v. Wade* has got to go!” It ends at 1:18:18 with Todd Stave saying, “I needed to fight back.”

Shows protestors at the middle school of Todd Stave’s daughter. Stave is a landlord who rents space to Dr. Carhart, an abortion provider. The segment questions whether or not targeting someone’s child is a reasonable and protected form of protest or undue intimidation.

ACTIVITY

LAYING THE GROUNDWORK

Before you begin, you may want to send home a note to parents/guardians explaining what students will be doing and that the purpose of the assignment is to look at how key U.S. legal documents apply to real-life situations. Make it clear that you will not be asking students to take a position on abortion. Invite families to connect school and home by asking students what they learned and sharing their own views on abortion with their children.

1. RESEARCH

Prior to the in-class activity, give students the following assignment:

Read the summary of the debate over abortion at ProCon.org. Make clear that the purpose of the reading is to become familiar with the particulars of the debate, not to choose a side. Students will encounter references to some of the debate points in the film clips they will see in class and will need to know the reading well enough to recognize those references.

In addition, assign each student to one of four teams (see below). Each team will be responsible for researching its topic and team members should be prepared to apply what they learn to the film clips they will watch in class.

The Teams

DECLARATION OF INDEPENDENCE

Students are responsible for knowing the meaning of the guarantee of “life, liberty and the pursuit of happiness.” Questions to explore include:

- How is the meaning of the Declaration of Independence affected by the law’s determination of when “life” begins?
- What is the legal difference between “life” and “personhood”? According to the law, does a fetus have a right to “life, liberty and the pursuit of happiness”?
- How have changes in science and technology influenced the legal definition of when life begins?
- Does “liberty” include the freedom to make one’s own medical decisions?

Note: In terms of reading level, this is the easiest of the assignments.

ROE V. WADE

Students are responsible for knowing the facts of the case and the reasoning used in the majority opinion to justify legalizing abortion. Questions to explore include:

- Does the U.S. Constitution guarantee a right to privacy?
- Do men have a legal right to prevent their spouses and girlfriends from undergoing medical procedures and/or the right to force them to undergo medical procedures?
- Does the legal right to abortion mean that states or individuals are forbidden by law from creating obstacles to obtaining abortion services?
- What are the current legal limits on abortion and why do those limits exist?
- How have changes in science and technology challenged the U.S. Supreme Court’s initial definition of “viability” of a fetus outside a mother’s womb?
- What role does/should legal precedent play in establishing abortion policy?

FIRST AMENDMENT

Students are responsible for knowing what the First Amendment to the U.S. Constitution says about freedom of religion and freedom of speech. Questions to explore include:

- Does basing laws restricting abortion primarily on religious beliefs violate the separation of church and state?
- Does the First Amendment guarantee protesters the right to blockade clinics, talk with patients or protest outside the homes of clinic staff or landlords who rent to abortion providers (or the workplaces or schools of clinic staff or landlords)?

NINTH AMENDMENT

Students are responsible for knowing how the enumeration clause relates to the right to privacy. Questions to explore include:

- Is privacy one of the rights granted by the U.S. Constitution even though it is not specifically spelled out?
- If the right to privacy exists, does it include the right to decide whether or not to carry a pregnancy to term?

Note: In terms of reading level, this is the most difficult of the assignments.

2. SHOWING THE FILM CLIPS

After students have had a chance to complete their research, provide an opportunity for them to apply what they have learned by analyzing clips from the film *After Tiller*. You may show as many or as few clips as you wish, though we recommend showing at least three: one each featuring the perspective of a patient, a doctor and a protester. Save one clip for assessment.

Because students will not be viewing the entire film, briefly explain what the documentary is about and who Dr. Tiller was. Note that the doctors in the film all provide third-trimester abortions and be sure that students understand the difference between early and late termination of pregnancy. This would also be a good time for a quick check-in to make sure students understood the major points of the readings at ProCon.org.

The procedure for showing each clip is the same. Ask students to look at the ways that the clip provides relevant information in terms of the particular document that they researched. After the clip, allow time for students to discuss their general reactions and then invite at least one member from each team to explain how the clip related to that team's assigned topic. Ideally, there will be enough clips so that every student has an opportunity to explain a connection.

Wrap up the discussion by helping students see patterns in their responses. Check for understanding to make sure that all students know the basic information uncovered by each team and the importance of the Declaration of Independence, the First and Ninth Amendments to the Constitution and the U.S. Supreme Court's decision in *Roe v. Wade* to participate in policy debates over access to abortion in the United States. Invite students to reflect on their own values and beliefs relative to key concepts like the right to privacy, freedom of speech, freedom of religion and the right to "life, liberty and the pursuit of happiness." When those rights conflict with one another, which should be given precedence and why?

3. ASSESSMENT

Assign students to watch a clip that you did not show in class and write summaries of their research. Each summary should include analysis of the later clip and at least one example from the clips viewed in class.

EXTENSIONS

1. View the entire film. Then use the film's framework and ask students to fill in the blank: After Tiller we need _____. For example, "After Tiller we need empathy" (other possible answers include "information," "understanding," "dialogue"). Discuss whom students are referencing in their sentences when they say "we."
2. Research the history of U.S. laws related to other aspects of reproductive rights (e.g., contraception or forced sterilization). Explore the links between policy governing abortion and policy governing other aspects of reproductive health.
3. In terms of abortion, compare the legal approach of the U.S. to the approach taken by other nations.
4. Add a fifth legal doctrine for consideration: the tension between state and federal powers. Which aspects of policy governing abortion are appropriately ceded to each individual state, which belong at the federal level and why?

RESOURCES

After Tiller

<http://aftertillermovie.com/>

The film website offers a number of resources, including additional information about the film, resources, ways to get involved and links to news reports.

POV: After Tiller

www.pbs.org/pov/aftertiller/

The **POV** site for the film includes a general discussion guide with additional activity ideas.

POV: Media Literacy Questions for Analyzing POV Films

www.pbs.org/pov/educators/media-literacy.php

This list of questions provides a useful starting point for leading rich discussions that challenge students to think critically about documentaries.

Exploring Constitutional Conflicts

<http://law2.umkc.edu/faculty/projects/ftrials/conlaw/rightofprivacy.html>

This website explores several amendments, including the Ninth Amendment and arguments for a constitutional right to privacy.

First Amendment Center

www.firstamendmentcenter.org

The site of this nonpartisan project provides blog posts on a range of relevant topics, including the right to protest and separation of church and state.

FiveThirtyEight DataLab: Maps of Access to Abortion by State

<http://fivethirtyeight.com/datalab/maps-of-access-to-abortion-by-state/>

This statistical site offers a map that depicts individual states' abortion laws.

Legal Information Institute: *Roe v. Wade*

www.law.cornell.edu/supremecourt/text/410/113

This Cornell University Law School website provides summaries and opinions related to U.S. Supreme Court rulings. This page addresses the *Roe v. Wade* decision.

National Constitution Center

<http://constitutioncenter.org/>

The website of this Philadelphia museum is home to an annotated, online text of the U.S. Constitution.

ProCon.org

www.procon.org

To encourage critical thinking and civil discourse, this nonpartisan website provides summaries of debates over controversial issues.

Shmoop: Abortion and Privacy

www.shmoop.com/right-to-privacy/abortion-privacy.html

This website, which is easier to read than most legal sites, provides a good explanation of the link between abortion law and the right to privacy.

STANDARDS

Common Core State Standards for English Language Arts & Literacy in History/Social Studies, Science, and Technical Subjects

(http://www.corestandards.org/assets/CCSSI_ELA%20Standards.pdf)

[SL.11-12.1](#) Initiate and participate effectively in a range of collaborative discussions (one-on-one, in groups and teacher-led) with diverse partners on grades 11–12 topics, texts and issues, building on others' ideas and expressing their own clearly and persuasively.

[SL.11-12.2](#) Integrate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, orally) in order to make informed decisions and solve problems, evaluating the credibility and accuracy of each source and noting any discrepancies among the data.

[SL.11-12.3](#) Evaluate a speaker's point of view, reasoning and use of evidence and rhetoric, assessing the stance, premises, links among ideas, word choice, points of emphasis and tone used.

[SL.11-12.4](#) Present information, findings and supporting evidence, conveying a clear and distinct perspective, such that listeners can follow the line of reasoning, alternative or opposing perspectives are addressed and the organization, development, substance and style are appropriate to purpose, audience and a range of formal and informal tasks.

[SL.11-12.6](#) Adapt speech to a variety of contexts and tasks, demonstrating a command of formal English when indicated or appropriate.

[W.9-10.1, 11-12.1](#) Write arguments to support claims in an analysis of substantive topics or texts, using valid reasoning and relevant and sufficient evidence.

[W.9-10.2d](#) Use precise language and domain-specific vocabulary to manage the complexity of the topic.

W. 11-12.2d Use precise language, domain-specific vocabulary and techniques such as metaphor, simile and analogy to manage the complexity of the topic.

[W.9-10.4, 11-12.4](#) Produce clear and coherent writing in which the development, organization and style are appropriate to task, purpose and audience.

Content Knowledge: (<http://www.mcrel.org/standards-benchmarks/>) a compilation of content standards and benchmarks for K-12 curriculum by McRel (Mid-continent Research for Education and Learning).

Language Arts, Standard 1: Uses the general skills and strategies of the writing process.

Language Arts, Standard 2: Uses the stylistic and rhetorical aspects of writing.

Language Arts, Standard 8: Uses listening and speaking strategies for different purposes.

Language Arts, Standard 9: Uses viewing skills and strategies to understand and interpret visual media.

U.S. History, Standard 31: Understands economic, social and cultural developments in the contemporary United States.

ABOUT THE AUTHOR

Faith Rogow, Ph.D., is the co-author of *The Teacher's Guide to Media Literacy: Critical Thinking in a Multimedia World* (Corwin, 2012) and past president of the National Association for Media Literacy Education. She has written discussion guides and lesson plans for more than 200 independent films.