

State Constitutional Law 09 - Due Process

Equality Review

Conceptions of Equality

Equal treatment → Non-discrimination from the state

Equal opportunity → Minimum state obligation to address existing inequality

Equal outcome → State guarantee to fix existing inequality

Federal Constitutional Backdrop

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State ... deny to any person within its jurisdiction the equal protection of the laws.”

U.S. Constitution, Fourteenth Amendment.

Tiers of Scrutiny

- Rational basis
- Intermediate scrutiny
- Strict scrutiny

Race

Sheff v. O'Neill

678 A.2d 1267 (Conn. 1996)

Malabed v. North Slope Borough

70 P.3d 416 (Alaska 2003)

Gender

Commonwealth v. Penn. Interscholastic Athletic Ass'n
334 A.2d 839 (Pa. Commw. Ct. 1975)

State v. Rivera
612 P.2d 526 (Haw. 1980)

Age

Driscoll v. Corbett

69 A.3d 197 (Pa. 2013)

Arneson v. State

864 P.2d 1245 (Mont. 1993)

Sexual Orientation

Gartner v. Iowa Dep't of Public Health
830 N.W.2s 335 (Iowa 2013)

Economic

AFSCME Iowa Council 61 v. State
928 N.W.2d 21 (Iowa 2019)

Procedural Due Process

If the government is going to deny someone a life, liberty, or property interest, what process is due?

State v. Veale

972 A.2d 1009 (N.H. 2009)

Important Precedent:

Paul v. Davis

424 U.S. 693 (1976)

“No subject shall be deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.”

Part I, Article 15, New Hampshire Const.

Due Process Inquiry

Is this a legally protected interest?

If so, what process is due?

Balancing test for determining what process is due

1. Private interest that will be affected
2. Risk of erroneous deprivation and probable value of additional procedural safeguards
3. Government interest (including burden of additional safeguards)

M.E.K. v. R.L.K.

921 So.2d 787 (Fla. App. 2006)

Supreme Court Precedent:

Lassiter v. Dep't of Social Serv. of Durham County, N.C. (1981)

Florida Precedents:

O.A.H. v. R.L.A. (1998)

In the Interest of M.C. (2005)

Substantive Due Process

Federal Backdrop

Due Process Clause of the Fourteenth Amendment protects

1. Rights specified within the bill of rights
2. “Fundamental” rights that are not specified within the Constitution.

Fundamental rights are only recognized if they are “deeply rooted in our history and tradition” and “essential to the nation’s concept of ordered liberty.”

Right to Privacy

What is it? Do we want a constitutional right to privacy? What should the right protect?

Reproductive Autonomy

Davis v. Davis

842 S.W.2d 588 (Tenn. 1992)

Supreme Court Precedents:

Buck v. Bell (1927)

Skinner v. Oklahoma (1942)

“That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.”

Art. 1, §8, Tenn. Const.

“That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of those ends they have at all times, an inalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.”

Art 1. §1, Tenn. Const.

“That government being instituted for the common benefit, the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind.”

Art 1. §2, Tenn. Const.

A man with a mustache, wearing a blue suit and a striped tie, is sitting in an office chair. He is holding a clear glass bottle of beer in his right hand. The office background includes a desk with a globe, a trophy, and a framed picture of two men. The text "BOY, THAT ESCALATED QUICKLY" is overlaid at the bottom of the image in a large, white, bold font with a black outline.

BOY, THAT ESCALATED QUICKLY

**Why connect right to privacy with
right to violently overthrow
government?**

In re T.W.

551 So.2d 1186 (Fla. 1989)

“Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public’s right of access to public records and meetings as provided by law.”

Art I., §23, Florida Const.

Rule for evaluating constitutionality of government intrusion into private life.

“The right of privacy demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.”

Hodes & Nauser, MDs, P.A. v. Schmidt

440 P.3d 461 (Kan. 2019)

“All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.”

§ 1, Kansas Bill of Rights, Kansas Const.

No State shall “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

U.S. Constitution, Fourteenth Amendment.

Dissent

“Today, we hoist our sail and navigate the ship- of-state out of its firm anchorage in the harbor-of-common-good and onto the uncertain waters of the sea-of-fundamental-values.”

Planned Parenthood of the Heartland Inc. v. Reynolds ex rel. State

975 N.W.2d 710 (Iowa 2022)

Important Iowa Precedents:

Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Med. (PPH I) (Iowa 2015)

Planned Parenthood of the Heartland v. Reynolds (PPH II) (Iowa 2018)

Important Supreme Court Precedents:

Roe v. Wade (1973)

Planned Parenthood v. Casey (1992)

Dobbs v. Jackson Women's Health Organization (2022) (pending at time of Iowa opinion)