

State Constitutional Law

10 - Due Process

Recap on Due Process

Procedural Due Process

Substantive Due Process

Procedural Due Process

State v. Veale

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

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

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

Procedural Due Process Inquiry

1. Is this a legally protected interest?
2. If so, what process is due?

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.”

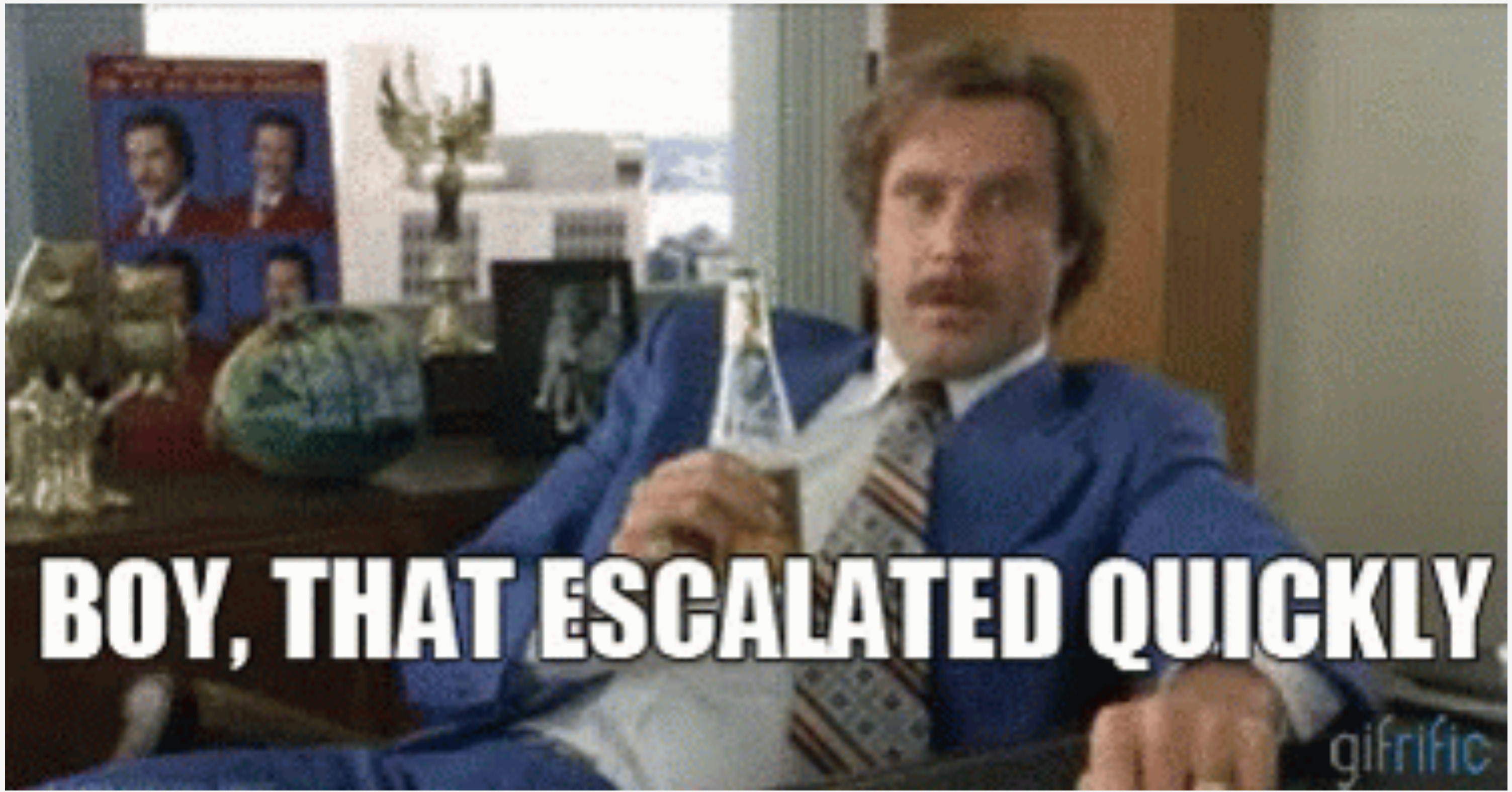
Art. 1, §8, Tenn. Const.

“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.



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

Abortion cases

In re T.W.

551 So.2d 1186 (Fla. 1989)

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

440 P.3d 461 (Kan. 2019)

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

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

New assigned reading for Thursday:

Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services

(Pa. 2024) (Wecht, concurrence)

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Right of Intimate Association

State v. Saunders

381 A.2d 333 (N.J. 1977)

Crime of fornication

“an act of illicit sexual intercourse by a man, married or single, with an unmarried woman”

1. Infringement on right to privacy?
2. If so, compelling state interest to justify infringement?

Compelling state interests asserted:

1. Preventing venereal disease
2. Preventing number of illegitimate children
3. Safeguarding marriage and public morals

Concurrence

“The Legislature cannot infringe on the rights of individuals who in private and without affecting others adopt and live by standards which differ from those of society.”

Commonwealth v. Bonadio

415 A.2d 47 (Pa. 1980)

Commonwealth v. Wasson

842 S.W.2d 487 (Ky. 1992)

KRS 510.100 punishes “deviate sexual intercourse with another person of the same sex” as a criminal offense, and specifies “consent of the other person shall not be a defense.”

Civil Union and Same-Sex Marriage

Baker v. State

744 A.2d 864 (Vt. 1999)

The Common Benefits Clause

“That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community.” Vermont Const. (Chapter I, Article 7).

Three-part analysis

1. Significance of the benefits
2. Government's goals
3. Classification under- or over-inclusive

Goodridge v. Department of Public Health

798 N.E.2d 941 (Mass. 2003)

