

State Constitutional Law

11 - Due Process

Reproductive Autonomy and Same-Sex Marriage

Questions to guide us

How should we understand the differences between policy preferences and constitutional interpretation?

How should a constitution be interpreted?

What constitutional provisions are a legitimate source for a particular right? What is too much of a stretch?

How should stare decisis factor into the analysis?

Class discussion with difficult topics

You can speak from the first-person related to views and experiences.

Two requirements:

- a student sharing personal views or experience will not be treated as a stand-in for all members of a group
- personal experience is not a trump card

Class discussion with difficult topics

You are encouraged to develop and test arguments that you do not support.

Developing and thinking through an argument is *not* the same as endorsing that argument.

Class discussion with difficult topics

Reminder: let's have the opportunity to be wrong.

Reproductive Autonomy

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.

Strict Scrutiny

Does the law further a “compelling governmental interest,” and is it “narrowly tailored” to achieve that interest?

Undue Burden

Does the law have the purpose or effect of imposing an “undue burden,” defined as a “substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.”

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)

“[N]o person shall be deprived of life, liberty, or property, without due process of law.”

Iowa Const., Art I, § 9

Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services

(Pa. 2024) (Wecht, concurrence)

“All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.”

Penn. Const., Art I, § 1

“Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.”

Penn. Const., Art I, § 28

“All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship.”

Penn. Const., Art I, § 3

Class discussion

Potential constitutional sources of right to reproductive autonomy

- Due process
- Right to privacy
- Inalienable natural rights
- Equal protection / ERA
- Religious liberty / freedom of conscience
- Explicit provision that recognizes right to reproductive autonomy

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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)