

The Right to Privacy and Personal Liberty

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- Nowhere in the Constitution will you find the word, “privacy.”
- Nevertheless, there is a strong libertarian streak in American politics that generally assumes that people have the right to be “let alone.”
- To what extent (if at all) did the Framers have privacy in mind, and to what extent (if any) does the Constitution protect individuals’ rights to privacy?

Origins of Privacy Rights

- *Olmstead v. U.S.* (1928)
- Legacy of “Substantive Due Process” rights
- *Poe v. Ullman* (1961)
- *Griswold v. Connecticut* (1965)
- *Eisenstadt v. Baird* (1972)



Louis Brandeis (1856–1941)

From Privacy to Abortion Rights

- *Roe v. Wade* (1973)
- *Planned Parenthood v. Danforth* (1976)
- *Harris v. McCrae* (1980)
- *Akron v. Akron Center for Reproductive Health* (1983)
- *Webster v. Reproductive Health* (1989)



Norma McCorvey (aka Jane Roe)

Abortion Rights in Recent Years

- *Planned Parenthood of Southeastern Pa. v. Casey* (1992)
- *Stenberg v. Carhart* (2000)
- *Gonzales v. Carhart* (2007)
- *Whole Woman's Health v. Hellerstedt* (2016)
- *June Medical Services, LLC v. Gee* (pending)



Privacy and the right to die

- *Cruzan v. Director, Missouri Department of Health* (1990)
- *Vacco v. Quill* (1997)
- *Gonzales v. Oregon* (2006)



Nancy Cruzan

Substantive Due Process and LGBTQ Rights

- *Bowers v. Hardwick* (1988)
- *Romer v. Evans* (1996)
- *Lawrence v. Texas* (2003)
- *Windsor v. United States* (2013)
- *Obergefell v. Hodges* (2015)



Jim Obergefell and John Arthur

LGBTQ Discrimination in the Private Sector

- *Price Waterhouse v. Hopkins* (1989)
- *Oncale v. Sundowner Offshore Services, Inc.* (1998)
- *Bostock v. Clayton County, Georgia* (pending)
- *R.G. Harris Funeral Homes, Inc. v. EEOC* (pending)



Aimee Stephens

Conclusion

- The right to privacy is still assumed to exist, but there may be more uncertainty over this constitutional principal than ever before.
- In more recent years, the Court has turned to substantive due process to read new rights (such as for the LGBTQ community) into the Constitution.
- But as we've seen, substantive due process can be a double-edged sword.