The landmark 1973 *Roe v. Wade* decision did far more than establish the right to abortion; it solidified and expanded the constitutional “right to privacy,” which has also been described as the right to autonomy or to be let alone. This right to privacy is part of the right to liberty protected by the Fifth and Fourteenth Amendments, which state that no person shall be deprived of “life, liberty or property, without due process of law.”

The Constitution’s protection of liberty and privacy underlies the Supreme Court’s recognition of fundamental rights related to contraception and procreation, marriage, family relations, child rearing, and intimacy. Although the Supreme Court’s recognition of the right to privacy predates *Roe*, *Roe* is an important affirmation of and foundation for a broad array of privacy and liberty rights. While not exclusively dependent on *Roe*, *Roe* influenced privacy and liberty principles in each of these areas—principles that could be undermined if the Supreme Court overturns *Roe*.

**The Right to Contraception and the Right to Procreate**

*Roe* reaffirmed prior decisions protecting individuals’ rights to contraception and to decide whether to bear a child. Subsequent cases upholding the right to contraception, in turn, rely on *Roe*. For example, a 1977 Supreme Court case overturned a law that restricted distribution of nonprescription contraceptives to adults and prohibited the sales or distribution of contraceptives to individuals under 16. The case explicitly relied on *Roe* for its central holding that “the Constitution protects individual decisions in matters of childbearing from unjustified intrusion by the State.”

**The Right to Marry**

*Loving v. Virginia* acknowledged the constitutional right to marry, and *Roe* affirmed that it is among the fundamental liberties protected by the right to privacy. Subsequent cases protecting the right to marry have relied on *Roe*. For example, a 1978 Supreme Court decision upheld the right of single parents obligated to pay child support to marry without first obtaining the permission of a judge, and based this conclusion in part on *Roe*. This same fundamental liberty right was reaffirmed as recently as 2015 by the Supreme Court in a case that guaranteed same-sex couples the right to marry.
While not originally understood as arising primarily from the Due Process Clause, the right to privacy has been recognized since at least 1891, when the Supreme Court proclaimed “[n]o right is held more sacred . . . than the right of individual to the possession and control of his own person, free from all restraint or interference of others.” Union Pacific Railway Co. v. Botsford, 141 U.S. 250, 251 (1891); see Roe v. Wade, 410 U.S. 113, 153 (1973) (citing Botsford as recognizing right to privacy rooted in the Constitution).

The Supreme Court later confirmed that the right to obtain contraception was first established by Gissuweld v. Connecticut, a 1965 case striking down a law banning the distribution of contraceptives to married persons. 381 U.S. 479 (1965). In Eisenstadt v. Baird, decided a year before Roe, the Supreme Court extended this right to unmarried persons, stating “[t]he right of privacy means anything . . . it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.” 405 U.S. 438, 453 (1972). Eisenstadt thus recognized the right to contraception extended beyond the use of birth control, it also encompassed freedom to make fundamental decisions involving procreation.


Roe, 410 U.S. at 152. The foundational case on the right to marry is Lving v. Virginia, a 1967 decision that struck down anti-miscegenation laws and permitted interracial unions, which did so on both right to privacy and equal protection grounds. 388 U.S. 1 (1967).

Zablocki v. Redhill, 434 U.S. 344, 374, 386-87 (1978). The challenged law not only required single parents obligated to pay child support to obtain a court order before marrying, it also provided that such permission would not be granted unless the parent proved both that he or she was current on the child support payments and that the children were not likely to become public charges.


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This right is said to derive from decisions dealing with procreation and parental rights. Some cases, such as, Moore v. City of E. Cleveland, Ohio, directly cite Roe to establish family rights. See 431 U.S. 494, 498-99 (1977).

Moore v. City of E. Cleveland, Ohio

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Lawrence, 539 U.S. at 558.

Id. at 565.


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