

# Text case: Ruling heeds intent of state founders

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The federal Constitution's Fourth Amendment protects citizens from unreasonable search and seizure. Washington state's Constitution takes that further by expressly recognizing a right to privacy. The documents from the 18th and 19th centuries, respectively, are now being rectified with the 21st century practice of text messaging.

The state Supreme Court last week ruled that the state's Constitution assures a right to privacy in text messages that people send from their cellphones, even if they can't know for sure who might be reading them. Separate 5-4 decisions overturned two Cowlitz County heroin convictions that were achieved after a detective read messages, without a warrant, on someone else's phone.

In the 2009 case, a detective started going through the text messages of an arrested suspect; the drug-related texts led to two other men. The detective set up drug deals separately and arrested the two other men.

Justice Steven Gonzalez wrote in the majority opinion that text messages carry the same privacy protections as a letter or a phone call, and that state residents have an expectation that their text messages won't be read by police without a warrant. "Text messages can encompass the same intimate subjects as phone calls, sealed letters and other traditional forms of communication that have historically been strongly protected under Washington law."

One conviction was struck down under the state's privacy act, which prevents police from intercepting in-state private communications without a warrant or the consent of all parties. A second conviction was overturned under the privacy protections of the state Constitution. Article 1, Section 7 reads: "Invasion of private affairs or home prohibited. No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

Next month, the U.S. Supreme Court is scheduled to hear arguments in a Massachusetts case about whether the U.S. Constitution allows police to search a suspect's cellphone without a warrant. That may not have much bearing in this state; in the constant balance of public safety with individual rights, Washington's populist-era Constitution has explicitly come down on the side of individual rights, and this state's present-day, libertarian-leaning population largely reflects the mindset of its Constitution's framers. This leave-me-alone sentiment frequently crosses the state's partisan and geographic boundaries.

The state court's ruling recognizes that a modern form of communication — texting — comes under the same protections as do other more traditional forms, like letters and phone calls. It also provides guidance to law enforcement about how to gather evidence that will hold up to court scrutiny. Officers still can build a case against a miscreant who is indiscreet enough to broadcast intent by cellphone; they now know that they have to take an extra step to do so, a step with plenty of precedent.

• Members of the Yakima Herald-Republic editorial board are Sharon J. Prill, Bob Crider, Frank Purdy and Karen Troianello.