WE THE PEOPLE IN PLAIN ENGLISH

THE BILL OF RIGHTS

in Plain English



TEN AMENDMENTS | LINE BY LINE | LANDMARK CASES | REVIEW QUESTIONS

The First Ten Amendments, Explained Line by Line

ANDREW DOMINGUEZ

TRINFINITY Enterprises

We the People in Plain English

The Bill of Rights in Plain English

The First Ten Amendments, Explained Line by Line

Andrew Dominguez

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The Bill of Rights in Plain English: The First Ten Amendments, Explained Line by Line

Part of the series We the People in Plain English.

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Published by Trinfinity Enterprises, Dayton, Nevada. Independently published.

First edition, 2026. Court decisions and events are current through October 2026.

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How to Use This Book

This book walks through the first ten amendments to the United States Constitution, the part we call the Bill of Rights. For each amendment you will find the exact words first, then an explanation in plain English, a look at the Supreme Court cases that shaped what it means today, and a few questions to think about.

The exact wording comes from the National Archives transcription. The spelling and capital letters are the Founders' own, so you will see things like "Militia" with a capital M. I left those alone on purpose. When the original wording uses an old word, I explain it right there in the text.

I am not a lawyer, and this book is not legal advice. If you have a legal problem, talk to a licensed attorney in your state. What I can do is help you read these amendments for yourself and understand how courts have applied them.

A word about fairness. Some of these amendments are at the center of heated arguments today. Where Americans disagree, I lay out the main sides as fairly as I can and tell you who holds each view. I don't tell you which side to pick. That is your job as a citizen.

Introduction: Why We Have a Bill of Rights

A Constitution Without a List of Rights

When the Constitution was signed in Philadelphia on September 17, 1787, it did not include a list of the people's rights. It set up the government: Congress, the President, and the courts. It said what each could do. But it did not spell out what the government could not do to you.

That surprised a lot of people. Most of the states already had their own declarations of rights. Virginia's, written mainly by George Mason, was adopted in June 1776. Mason was at the Philadelphia convention, and near the end he and Elbridge Gerry of Massachusetts asked for a bill of rights to be added. The other delegates voted the idea down. Mason refused to sign the Constitution.

Federalists and Anti-Federalists

Before the Constitution could take effect, nine of the thirteen states had to ratify it, which means formally approve it. That started a long public argument.

The Federalists supported the new Constitution. James Madison, Alexander Hamilton, and John Jay wrote a series of newspaper essays, now called The Federalist Papers, to make their case. Some Federalists argued a bill of rights wasn't needed, because the new government only had the powers the Constitution listed. Hamilton went further in Federalist No. 84. He warned that a list of rights could be dangerous, because it might give the government an excuse to claim powers it was never given.

The Anti-Federalists opposed the Constitution as written. They feared a strong national government could crush the rights of ordinary people the way they believed the British government had. Without a written list of protections, they asked, what would stop it?

The Compromise

In the end, several states ratified the Constitution only with the understanding that amendments protecting rights would come soon after. Massachusetts set that pattern in February 1788, approving the Constitution while recommending amendments. New Hampshire became the ninth state to ratify on June 21, 1788, which put the Constitution into effect.

James Madison Changes His Mind

James Madison of Virginia is often called the Father of the Constitution. At first he did not think a bill of rights was necessary. He came around, partly from his own thinking and partly because he had promised voters in his race for the first House of Representatives that he would support amendments. His friend Thomas Jefferson, then serving in France, also pushed him in letters.

On June 8, 1789, Madison stood up in the House and proposed a set of amendments. He drew on the state declarations of rights and on the amendments the state ratifying conventions had suggested. The House and Senate debated, cut, combined, and reworded his list.

Twelve Amendments, Not Ten

Here is a fact a lot of people don't know. On September 25, 1789, Congress sent twelve amendments to the states, not ten.

The first two on the list did not get approved by enough states at the time. The first dealt with how many people each member of the House would represent. It has never been ratified. The second said that if Congress voted itself a pay raise, the raise could not take effect until after the next election. That one sat for more than two hundred years until it was finally ratified in 1992. Today it is the 27th Amendment. You can read that story in the second book of this series.

The other ten were ratified when Virginia approved them on December 15, 1791. Those ten became the Bill of Rights. What we now call the First Amendment was actually the third article on Congress's original list.

Who the Bill of Rights Protected at First

When it was ratified, the Bill of Rights limited only the national government. It did not stop a state government from doing the same things. The Supreme Court said so plainly in Barron v. Baltimore in 1833.

That changed slowly after the Civil War. The 14th Amendment, ratified in 1868, says no state may take away any person's life, liberty, or property without due process of law. Starting in the 1920s, the Supreme Court began to rule that this language makes most of the Bill of Rights apply to state and local governments too. Lawyers call this incorporation. One right at a time, the Court "incorporated" the protections. Today almost all of them apply to your city police department and your state courts, not only to federal officers. I will point out in each chapter whether a right has been applied to the states.

A Few Terms You Will See

The Supreme Court is the highest court in the country. When it decides what the Constitution means, every other court has to follow that decision.

A case name like Mapp v. Ohio lists the two sides. The "v." stands for versus. A citation like 367 U.S. 643 means the decision is printed in volume 367 of the official United States Reports, starting on page 643.

A majority opinion explains why the Court decided the way it did, and it is the part that counts as law. A dissent is written by justices who disagreed. Dissents don't change the result, but sometimes a later Court comes around to them.

Timeline

Date	What happened
September 17, 1787	Constitution signed in Philadelphia
February 6, 1788	Massachusetts ratifies and recommends amendments
June 21, 1788	New Hampshire becomes the ninth state to ratify, enough to put the Constitution into effect
March 4, 1789	The date set for the new government to begin; the first Congress is slow to assemble

Date	What happened
June 8, 1789	James Madison proposes amendments in the House
September 25, 1789	Congress sends twelve amendments to the states
December 15, 1791	Virginia's approval completes ratification of ten amendments, the Bill of Rights
1833	Barron v. Baltimore: the Bill of Rights limits only the federal government
July 9, 1868	14th Amendment ratified
1925	Gitlow v. New York: the Court begins applying the Bill of Rights to the states
May 7, 1992	The second of the original twelve is ratified as the 27th Amendment

Review Questions

1. Why did George Mason refuse to sign the Constitution?
2. What was Alexander Hamilton's worry about writing down a list of rights?
3. How many amendments did Congress send to the states in 1789, and what happened to the first two?
4. What does "incorporation" mean, and why does it matter for your local police and courts?

Amendment 1: Religion, Speech, Press, Assembly, and Petition

In a Nutshell

The government may not set up an official religion or stop you from practicing your faith. It may not punish you for what you say or print, with a few narrow exceptions. And you have the right to gather peacefully and to complain to the government and ask it to fix things.

The Text

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Why It Was Written

Many of the colonists came from places where the government chose the official church, taxed people to pay for it, and punished people who worshiped differently. Several colonies did the same thing. Before the Revolution, Virginia taxed people to support the Anglican church, and in the years leading up to the war, scores of dissenting ministers, many of them Baptists, were jailed for preaching without a license. Virginia did not settle the question until 1786, when it passed Thomas Jefferson's Statute for Religious Freedom.

The colonists also remembered British laws that punished printers for criticizing the King's officials. In 1735, a New York printer named John Peter Zenger was tried for printing attacks on the colony's governor. The jury found him not guilty, and the case became a famous early stand for a free press.

Put those memories together and you can see why these freedoms come first. If you can't speak, print, gather, or complain, you can't defend any of your other rights.

Line by Line

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof

Notice the first word: "Congress." As written, this amendment only limited the national government. Today, through the 14th Amendment, it also limits states, cities, school boards, and public universities. It still does not limit private businesses, private schools, churches, or your employer. If a private company fires you for a post, that may be unfair, but it is not a First Amendment violation, because the company is not the government.

This passage has two parts, and lawyers give each one a name.

The Establishment Clause says the government cannot make laws "respecting an establishment of religion." An establishment of religion meant an official state church, like the Church of England. At the very least, this means the government cannot set up a national church, make you join one, or force you to pay for one. How much further it goes is one of the big arguments in American law, which I cover below.

The Free Exercise Clause says the government cannot prohibit the "free exercise" of religion. In plain words, you can believe what you want, worship how you want, or not worship at all. The government can't punish you for your beliefs. Your actions are a harder question. The Court has said the government can usually apply a general law to everyone, even when it burdens someone's religious practice, as long as the law wasn't aimed at religion. Congress and many states have passed laws that give religious believers extra protection beyond that.

> or abridging the freedom of speech, or of the press

To "abridge" means to cut short or reduce. The government cannot cut back your freedom of speech or of the press.

Speech covers more than talking. Courts have counted writing, art, music, flags, armbands, and many online posts as speech. The press covers more than big newspapers. It protects anyone who publishes, from a national network to a person with a pamphlet or a blog.

This freedom protects speech the government doesn't like. That is the whole point. Popular speech rarely needs protection.

You might ask, "So I can say anything at all?" Not quite. The Court has allowed a few narrow categories of speech to be punished. These include speech meant to stir up and likely to produce immediate lawless action, true threats of violence, lies about a person that damage their reputation (defamation), obscenity, fraud, and speech that is part of a crime. Outside of those narrow areas, the government faces a very high bar before it can punish what you say.

One common saying is that you can't "falsely shout fire in a theatre." That line comes from Justice Oliver Wendell Holmes in a 1919 case, Schenck v. United States, which upheld prison sentences for passing out leaflets against the military draft. Holmes himself narrowed that thinking in later dissents, and the Court replaced the test he used in 1969. The saying is still repeated, but it is not the legal test today.

> or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

"Peaceably" is the key word. You have the right to gather with other people, for a protest, a march, a meeting, or a prayer vigil, as long as it stays peaceful. Cities may set reasonable rules about the time, place, and manner of a gathering, like requiring a permit for a parade down Main Street. They can't use those rules to shut down a message they don't like.

To "petition the Government for a redress of grievances" means to ask the government to fix a wrong. Writing your congressman, signing a petition, testifying at a city council meeting, and filing a lawsuit

against the government all fall under this right. The Court has also said this amendment protects freedom of association, meaning your right to join with others in groups to pursue shared goals.

Key Supreme Court Cases

Everson v. Board of Education, 330 U.S. 1 (1947)

A New Jersey township paid back parents for the cost of busing their children to school, including Catholic schools. The Court ruled 5 to 4 that this was allowed, because it was a general safety benefit for all students. More importantly, the Court said for the first time that the Establishment Clause applies to the states. Justice Hugo Black's opinion borrowed Thomas Jefferson's phrase about a "wall of separation between church and State," from Jefferson's 1802 letter to a group of Baptists in Danbury, Connecticut.

West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943)

West Virginia required students to salute the flag and say the Pledge of Allegiance. Children from Jehovah's Witness families refused, because they believed it broke God's command against bowing to images. The Court ruled the government cannot force anyone to say or salute something against their conscience. It overturned a decision it had made just three years earlier. Justice Robert Jackson wrote one of the most quoted lines in American law, that no official can "prescribe what shall be orthodox" in politics, religion, or other matters of opinion.

Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969)

Three students in Iowa wore black armbands to school to protest the Vietnam War and were suspended. The Court ruled for the students. Students do not "shed their constitutional rights" at the schoolhouse gate. A public school can limit student speech only when it would substantially disrupt school or invade the rights of others.

New York Times Co. v. Sullivan, 376 U.S. 254 (1964)

An Alabama city official sued the New York Times over a civil rights advertisement that had some factual errors, and an Alabama jury awarded him $500,000. The Court overturned the award. It ruled that a public official can win a defamation lawsuit only by proving the speaker knew the statement was false or showed reckless disregard for whether it was true. The Court called this "actual malice." It protects honest mistakes in public debate.

Brandenburg v. Ohio, 395 U.S. 444 (1969)

A Ku Klux Klan leader was convicted under an Ohio law for a speech at a rally. The Court overturned his conviction. It ruled that the government can punish speech that advocates force or lawbreaking only when the speech is aimed at producing immediate lawless action and is likely to produce it. This is still the test for incitement today. Notice that the Court protected a speaker most Americans found hateful. The rule protects everyone because it protects even him.

Kennedy v. Bremerton School District, 597 U.S. 507 (2022)

A public high school football coach in Washington State was put on leave after he kept kneeling to pray on the field after games. The Court ruled 6 to 3 that the school violated his free speech and free exercise

rights. The Court also said it had "long ago abandoned" an older test from Lemon v. Kurtzman (1971), and that the Establishment Clause must be read by looking to historical practices and understandings. The three dissenting justices argued the coach's prayers pressured students to join in.

Where People Disagree

On religion, one view, often called separationist, holds that the government should stay strictly neutral and keep religion out of public institutions like public schools and government buildings. Supporters point to Jefferson's "wall of separation" and argue this protects both government and religion, and people of minority faiths or no faith. Another view, often called accommodationist, holds that the Establishment Clause bans an official church and forced worship, but allows the government to acknowledge religion and treat religious groups the same as everyone else. Supporters point to practices from the founding era, such as paid chaplains in Congress. In recent years the Court has moved toward the second view, and the debate continues.

On free exercise, the Court ruled in Employment Division v. Smith, 494 U.S. 872 (1990), that a neutral law that applies to everyone does not violate free exercise just because it burdens someone's religion. Some justices and scholars have argued Smith should be overturned. In Fulton v. City of Philadelphia, 593 U.S. 522 (2021), the Court ruled for a Catholic foster care agency on narrower grounds and left Smith in place.

On speech, Citizens United v. Federal Election Commission, 558 U.S. 310 (2010), ruled that the government may not limit independent political spending by corporations and unions. Supporters say spending money to spread a political message is protected speech, no matter who does it. Critics say it lets wealthy groups drown out ordinary voters. Some have proposed a constitutional amendment to overturn it.

What It Means for You

You can worship anywhere, or not at all, and the government can't punish you for it. You can criticize the President, your governor, or the police without going to jail for it. You can write a letter to the editor, post your opinion, or join a peaceful protest.

Remember two limits. First, this amendment protects you from the government, not from your boss or a website's rules. Second, it protects peaceful speech and gatherings. Threats, defamation, and violence are not protected.

Review Questions

1. Why does the word "Congress" at the start of this amendment matter, and how did that change over time?
2. What is the difference between the Establishment Clause and the Free Exercise Clause?
3. Name three kinds of speech the government can punish.
4. Why did the Court protect the speaker in Brandenburg v. Ohio, even though most people found his message hateful?
5. Can a private company punish you for something you posted? Why or why not?

Amendment 2: The Right to Keep and Bear Arms

In a Nutshell

The Second Amendment protects the right of the people to have and carry guns. The Supreme Court has ruled this is an individual right, including for self-defense in the home and in public, and that it applies to state and local governments. The government can still pass some gun laws, if they fit the nation's historical tradition of gun regulation.

The Text

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Why It Was Written

In the 1700s, most Americans distrusted standing armies, meaning full-time professional soldiers kept in peacetime. They had watched British troops occupy Boston, and the war for independence began in April 1775 when British soldiers marched out to seize military supplies the colonists had stored at Concord, Massachusetts.

The colonists relied instead on the militia. The militia was not a club or a private group. It was made up of ordinary citizens, mostly able-bodied men, who were expected to own a gun and turn out to defend their town or state when called. In 1792, Congress passed a law requiring most free white men between 18 and 45 to enroll in the militia and supply their own "good musket or firelock."

The Constitution gave Congress power to organize and call up the militia. Anti-Federalists worried the national government could neglect or disarm the state militias and rely on a federal army instead. The Second Amendment answered that fear.

Line by Line

> A well regulated Militia, being necessary to the security of a free State

"Well regulated" in the 1700s meant well trained, organized, and in good working order. It did not mean "covered by a lot of regulations" the way we use the word today. The Supreme Court said as much in its 2008 Heller decision.

A "free State" here means a free country or a free people, not only one of the thirteen states.

This first part of the amendment is called the prefatory clause. It gives a reason for the right: a well-organized militia is necessary to keep a free people secure. How much that reason limits the right that follows is the question at the heart of the gun rights debate.

> the right of the people to keep and bear Arms, shall not be infringed.

This part is called the operative clause. It contains the actual rule. To "keep" arms means to have them. To "bear" arms means to carry them. "Shall not be infringed" means the right may not be violated or chipped away.

Notice the phrase "the right of the people." The same words appear in the First Amendment (the right of the people to assemble) and the Fourth (the right of the people to be secure in their homes). In Heller, the Court's majority pointed to those other uses to argue that this is a right of individuals, not only of the states or the militia as a group.

Key Supreme Court Cases

United States v. Miller, 307 U.S. 174 (1939)

Two men were charged with carrying a sawed-off shotgun across state lines without registering it under a 1934 federal law. The Court upheld the law, reasoning that no evidence had been offered that a short-barreled shotgun had any connection to an effective militia. For almost seventy years, many lower courts read Miller to mean the right only protected guns tied to militia service.

District of Columbia v. Heller, 554 U.S. 570 (2008)

Washington, D.C., banned handguns in the home and required other guns to be kept unloaded and disassembled or locked. A special police officer named Dick Heller sued. The Court ruled 5 to 4 that the Second Amendment protects an individual right to keep and bear arms, unconnected with militia service, and that the D.C. ban violated it. Justice Antonin Scalia wrote for the majority. He also wrote that the right is "not unlimited," and listed examples of laws the opinion did not question, such as bans on possession by felons and the mentally ill and bans on carrying guns in sensitive places like schools and government buildings.

Justice John Paul Stevens wrote the main dissent. He argued the amendment's history shows it was meant to protect the state militias, not to protect private gun ownership for self-defense.

McDonald v. City of Chicago, 561 U.S. 742 (2010)

Chicago had a handgun ban much like D.C.'s. Since D.C. is federal land, Heller had not decided whether the Second Amendment limits states and cities. In McDonald the Court ruled 5 to 4 that it does. The right to keep and bear arms now applies to state and local governments through the 14th Amendment.

New York State Rifle and Pistol Association v. Bruen, 597 U.S. 1 (2022)

New York required people to show "proper cause," meaning a special need, before they could get a license to carry a handgun in public. The Court ruled 6 to 3 that this violated the Second Amendment. The right includes carrying a handgun in public for self-defense. The Court also set a new test: a gun law is constitutional only if the government can show it fits the nation's historical tradition of firearm regulation. The dissent argued that this test ignores the real danger of gun violence and is hard for judges to apply.

United States v. Rahimi, 602 U.S. 680 (2024)

A federal law bans people under certain domestic violence restraining orders from having guns. Zackey Rahimi challenged it after he was charged under it. The Court ruled 8 to 1 that the law is constitutional. Chief Justice John Roberts wrote that since the founding, the law has allowed disarming people who are found to pose a credible threat to the physical safety of others. He also wrote that Bruen does not require a modern law to be a "historical twin" of an old one. Justice Clarence Thomas dissented.

Where People Disagree

Very few constitutional questions are argued as strongly as this one.

Supporters of broad gun rights argue the amendment's main clause says "the right of the people," and that an armed citizen is the last line of defense against crime and against a government that might turn tyrannical. They point to Heller and Bruen as correct readings of the text and history, and many argue that current law still restricts the right too much.

Supporters of stronger gun laws argue that the amendment's opening words tie the right to the militia, and that the Founders could not have imagined modern weapons or modern rates of gun deaths. They point to Justice Stevens's dissent in Heller and argue that elected lawmakers, not judges looking at history, should decide which gun laws make communities safer.

Since Bruen, lower courts have reached different answers on many questions, such as bans on certain rifles and large-capacity magazines, age limits, and where guns may be carried. The Supreme Court has started taking up some of them. In June 2026, it struck down a Hawaii law that barred permit holders from carrying a gun onto private property open to the public, like a store or gas station, unless the owner gave express permission (Wolford v. Lopez, 6 to 3). The same month, it ruled unanimously that the federal government could not prosecute a man for keeping a gun at home based only on his regular marijuana use, without showing his drug use made him dangerous (United States v. Hemani). Expect more cases.

What It Means for You

In every state, the Second Amendment protects your right as a law-abiding adult to keep a handgun in your home for self-defense, and to carry one in public for self-defense. States can still require licenses, background checks, and training, can bar dangerous people from having guns, and can ban guns in some sensitive places, as long as the rules fit the historical tradition the Court has described.

Gun laws are very different from state to state and change often. Before you buy, carry, or travel with a gun, check the current law in your state and in any state you will pass through.

Review Questions

1. What did "well regulated" mean when the amendment was written?
2. What was the militia in the 1700s?
3. What did the Court decide in District of Columbia v. Heller, and what did the dissent argue?

4. What test did Bruen set for gun laws, and how did Rahimi explain that test?
5. Why should you check your own state's gun laws even though the Second Amendment applies everywhere?

Amendment 3: No Soldiers in Your Home

In a Nutshell

In peacetime, the government cannot make you house soldiers in your home unless you agree. In wartime, it can only do so in a way Congress sets out by law. It is the least-used amendment in the Bill of Rights, and that is a sign it has worked.

The Text

> No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Why It Was Written

To "quarter" a soldier means to give him a place to sleep and live. Before the Revolution, Parliament passed Quartering Acts in 1765 and 1774 that required the colonies to provide housing and supplies for British troops. The 1774 act came as part of a group of laws the colonists called the Intolerable Acts, passed after the Boston Tea Party.

The colonists hated it. When Thomas Jefferson listed the King's offenses in the Declaration of Independence in 1776, one of them was "quartering large bodies of armed troops among us." Soldiers living in your town, and possibly your house, meant the government was always watching, eating your food, and holding power over your family.

Line by Line

> No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner

In peacetime, the rule is simple. No soldier may be housed in any home without the owner's consent. The owner has the final word.

> nor in time of war, but in a manner to be prescribed by law.

In wartime, the Founders knew the army might truly need shelter. Even then, it can't be left to an officer's whim. Congress has to set the rules by law ahead of time. That keeps the decision with the people's elected representatives.

Key Cases

The Supreme Court has never decided a case that turned mainly on the Third Amendment, and it has not formally ruled that the Third applies to the states.

Griswold v. Connecticut, 381 U.S. 479 (1965)

This case was about a Connecticut law that banned the use of birth control, even by married couples. The Court struck down the law. In explaining why, Justice William O. Douglas pointed to several amendments, including the Third, as protecting "zones of privacy," the idea that some parts of life, like your home, are off-limits to the government. Whether the Constitution protects a general right of privacy has been debated ever since. I cover that in the chapter on the Ninth Amendment.

Engblom v. Carey, 677 F.2d 957 (1982)

This was a federal appeals court case, not a Supreme Court case. During a 1979 strike by prison guards in New York, the state moved National Guard soldiers into the guards' housing at the prison. Two guards sued. The U.S. Court of Appeals for the Second Circuit ruled that the Third Amendment applies to the states and that it can protect people who lawfully live in a place, like renters, not only owners. It sent the case back for a trial on the facts. Its ruling only binds courts in that region.

What It Means for You

In practice, you will probably never need this amendment. Courts have almost never had to apply it, because forcing soldiers into private homes has not been a real issue in this country for a very long time. But it stands as a clear statement that your home belongs to you, and the government needs your permission to move in.

Review Questions

1. What does it mean to "quarter" a soldier?
2. What British laws made this amendment seem necessary?
3. What is the difference between the rule in peacetime and the rule in wartime?
4. How did Griswold v. Connecticut use the Third Amendment?

Amendment 4: Searches and Seizures

In a Nutshell

The government cannot search you, your home, or your things, or seize you or your property, unless it is reasonable. Usually that means police need a warrant from a judge, based on probable cause and naming exactly what they are looking for. Evidence found in an illegal search usually can't be used against you in court.

The Text

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Why It Was Written

Before the Revolution, British officials in the colonies used "writs of assistance." These were general search warrants that let customs officers search any home, shop, or ship, at any time, for smuggled goods. They didn't have to say what they were looking for, where, or why. Once issued, a writ lasted until the King died.

In 1761, a Boston lawyer named James Otis argued against these writs in court. He lost the case, but his speech made a lasting impression. A young John Adams was in the courtroom, and years later he wrote that "then and there the child Independence was born."

The colonists also knew about English cases that rejected general warrants. In Entick v. Carrington in 1765, an English court ruled that the King's officers had no right to break into a writer's home and carry off his papers on a general warrant.

Line by Line

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated

To be "secure" means to be safe and free from interference. The amendment protects four things. Your "person" is your body. Your "house" is your home, and courts have extended that to the area right around it, like a porch or backyard. Your "papers" are your documents and records. Your "effects" are your personal belongings, like a car, a bag, or a phone.

A "search" happens when the government looks into something you have a reasonable right to keep private. A "seizure" happens when the government takes your property, or stops you so that you are not free to leave. An arrest is a seizure of your person, and so is a traffic stop.

Notice the word "unreasonable." The amendment does not ban all searches. It bans unreasonable ones. A great deal of Fourth Amendment law is about deciding what is reasonable.

> and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

A warrant is a written order from a judge giving police permission to search or arrest. This part sets out what a valid warrant needs.

"Probable cause" means enough facts to lead a reasonable person to believe a crime has been committed and that evidence will be found in the place to be searched. It is more than a hunch. It is less than proof beyond a reasonable doubt.

"Supported by Oath or affirmation" means the officer asking for the warrant has to swear that the facts are true. An affirmation is a solemn promise for people who, for religious or personal reasons, do not take oaths.

"Particularly describing" means the warrant must name the specific place and the specific people or things. That was a direct answer to the writs of assistance. A warrant to search a garage for a stolen car doesn't let police read the letters in your bedroom drawer.

You might ask, "Do police always need a warrant?" No. The Court has recognized a number of exceptions. Police can search if you freely agree to it. They can seize evidence in plain view from a place they are lawfully standing. They can act without a warrant in an emergency, such as chasing a suspect or saving someone inside. They can search a person they lawfully arrest, and the area within reach. And they can search a car without a warrant if they have probable cause, because a car can drive away before a warrant is signed.

Key Supreme Court Cases

Mapp v. Ohio, 367 U.S. 643 (1961)

Cleveland police forced their way into Dolly Mapp's home looking for a bombing suspect. They waved a paper they claimed was a warrant, but none was ever produced in court. They found no suspect, but they did find obscene books, and she was convicted for having them. The Court overturned her conviction. It ruled that evidence gathered in an illegal search can't be used in state courts. This is called the exclusionary rule. Federal courts had followed it since Weeks v. United States in 1914. Mapp applied it to the states.

Katz v. United States, 389 U.S. 347 (1967)

FBI agents attached a listening device to the outside of a public phone booth and recorded Charles Katz placing illegal bets. They had no warrant. The government argued it hadn't searched anything, since it never entered the booth. The Court disagreed and said the Fourth Amendment "protects people, not

places." Justice John Marshall Harlan's concurring opinion gave the test courts still use: a search happens when the government intrudes on a person's actual expectation of privacy that society is prepared to recognize as reasonable.

Terry v. Ohio, 392 U.S. 1 (1968)

A Cleveland detective watched two men walk back and forth in front of a store window many times and believed they were getting ready to rob it. He stopped them and patted down their outer clothing, and found guns. The Court ruled that police may briefly stop a person when they have reasonable suspicion of crime, and pat down the outer clothing for weapons if they reasonably believe the person is armed and dangerous. Reasonable suspicion is less than probable cause, but it must rest on specific facts, not a hunch. These are often called Terry stops or stop and frisk.

Riley v. California, 573 U.S. 373 (2014)

After an arrest, police went through the man's smartphone without a warrant and found evidence tying him to a gang shooting. The Court ruled unanimously that police generally need a warrant to search the data on a cell phone, even after a lawful arrest. Chief Justice Roberts wrote that a modern phone holds "the privacies of life," and the answer to what police must do before searching one is simple: "get a warrant."

Carpenter v. United States, 585 U.S. 296 (2018)

Investigators got 127 days of a robbery suspect's cell phone location records from his phone companies without a warrant. The Court ruled 5 to 4 that getting this kind of detailed location history is a search, and police generally need a warrant to get it.

Where People Disagree

The exclusionary rule has long been debated. Supporters say it is the only real way to make police follow the Constitution, since without it officers would lose nothing by breaking the rules. Critics say it lets guilty people go free because of police mistakes, and that the remedy should be discipline or lawsuits against the officers instead. Over time the Court has added exceptions, such as the good-faith exception in United States v. Leon, 468 U.S. 897 (1984), for officers who reasonably relied on a warrant that later turned out to be flawed.

Technology is the other big debate. Under the "third-party doctrine," from cases like Smith v. Maryland, 442 U.S. 735 (1979), information you share with a business, like the phone numbers you dial, has generally had less protection. Carpenter carved out an exception for cell phone location data. In Chatrie v. United States in June 2026, the Court went further and ruled 6 to 3 that police conduct a search when they get a person's phone location data from a company like Google, even for a short window around a crime. It also found that the warrant in that case was good enough. Courts are still working out how the rule applies to emails, search history, cloud storage, cameras, and data bought from brokers.

What It Means for You

If police knock and don't have a warrant, you are generally not required to let them in, and you do not have to agree to a search. If you say no, say it calmly and clearly, and do not physically resist. If an officer goes ahead anyway, a court can sort it out later.

Your phone gets strong protection. Police generally need a warrant to go through it, even if you are arrested.

These rules apply to government officers. A private store security guard, your landlord, or your employer is governed by other laws.

Review Questions

1. What were writs of assistance, and why did the colonists hate them?
2. What is probable cause, and how is it different from reasonable suspicion?
3. Name three situations where police can search without a warrant.
4. What is the exclusionary rule, and what is one argument for it and one against it?
5. Why did the Court treat cell phones differently from other items found during an arrest?

Amendment 5: Rights of People Accused of Crimes, and Your Property

In a Nutshell

For serious federal crimes, a grand jury must agree there is enough evidence before you can be charged. You can't be tried twice for the same crime, and you can't be forced to testify against yourself. The government must follow fair legal process before taking your life, liberty, or property, and if it takes your property for public use, it has to pay you a fair price.

The Text

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Why It Was Written

Several of these rights go back hundreds of years in English law. The idea of "due process" traces to Magna Carta in 1215, where the King promised that no free man would be imprisoned or lose his property except by the lawful judgment of his peers or by "the law of the land."

The right not to testify against yourself grew out of the English courts of the Star Chamber and the High Commission. Those courts made people swear an oath to answer any question, then used their answers to convict them. In 1637, a Puritan named John Lilburne, arrested for bringing banned pamphlets into England, refused to take that oath. He was whipped, put in the pillory, and jailed. His stand became famous, and in 1641 Parliament abolished both courts.

Line by Line

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger

A "capital" crime is one that can be punished by death. An "infamous" crime is a serious crime, generally one punishable by more than a year in prison. A "grand jury" is a group of ordinary citizens, usually 16 to 23 people in federal court, who hear the prosecutor's evidence in private and decide whether there is

enough to charge someone. If they agree, they issue an "indictment," which is the formal charge. A "presentment" is a charge the grand jury brings on its own.

This protection is meant to keep prosecutors from charging people with serious crimes when the evidence is weak.

The exception covers members of the armed forces, and the militia when called up in war or public danger. Their cases go through the military justice system instead.

This is one of the few rights in the Bill of Rights the Supreme Court has never applied to the states. In Hurtado v. California, 110 U.S. 516 (1884), it ruled that states may charge people in other ways. Some states still use grand juries for serious crimes. Others let a prosecutor file charges, usually followed by a hearing before a judge.

> nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb

This is the Double Jeopardy Clause. "Jeopardy" means danger. To be put in jeopardy "of life or limb" is old wording for being put at risk of punishment in a criminal trial. In plain words, once you are found not guilty, the government cannot try you again for the same crime. It also can't try you again after a conviction, or punish you twice for the same offense.

There are limits. If a trial ends in a hung jury, where jurors can't agree, the government can usually try again. If you appeal your conviction and win, you can usually be retried. And the "same offense" rule applies to each government separately. Since the state and federal governments are each separate sovereigns, both can prosecute you for the same act if it breaks both of their laws. The Court reaffirmed that in Gamble v. United States, 587 U.S. 678 (2019).

> nor shall be compelled in any criminal case to be a witness against himself

This is the right against self-incrimination. When people say someone "took the Fifth," this is what they mean. The government can't force you to be a witness against yourself in a criminal case. You can refuse to answer questions that might help convict you, in court, before Congress, or in a police station, and in a criminal trial the jury may not treat your silence as a sign of guilt.

The right covers testimony, meaning what you say. It does not stop police from taking your fingerprints, a photo, or, in many situations, a blood sample.

> nor be deprived of life, liberty, or property, without due process of law

"Due process of law" means the government has to follow fair rules before it punishes you or takes something from you. At a minimum, you have a right to notice of what you are accused of and a fair chance to be heard by a neutral decision maker.

Courts read this clause two ways. "Procedural due process" is about fair procedures, as I just described. "Substantive due process" is the idea that some rights are so basic the government cannot take them

away no matter what procedures it uses. Substantive due process is much more debated, and I cover that debate in the 14th Amendment chapter in the second book.

The 14th Amendment has its own Due Process Clause that applies to the states. This one applies to the federal government. The Court has also read this clause to require the federal government to treat people equally, in Bolling v. Sharpe, 347 U.S. 497 (1954), decided the same day as Brown v. Board of Education.

> nor shall private property be taken for public use, without just compensation.

This is the Takings Clause. The government has the power to take private property for public use, such as a road, a school, or a military base. That power is called eminent domain. This clause puts two limits on it. The taking must be for "public use," and the owner must be paid "just compensation," which courts generally measure as fair market value.

Key Supreme Court Cases

Miranda v. Arizona, 384 U.S. 436 (1966)

Ernesto Miranda was arrested in Phoenix and questioned for about two hours without being told he could stay silent or have a lawyer. He confessed, and the confession was used to convict him. The Court ruled 5 to 4 that before police question someone in custody, they must warn the person that they have the right to remain silent, that anything they say can be used against them, that they have the right to a lawyer, and that one will be appointed if they can't afford one. Statements taken without these warnings generally can't be used to prove guilt. These are the "Miranda warnings" you hear on television.

Kelo v. City of New London, 545 U.S. 469 (2005)

New London, Connecticut, used eminent domain to take homes, including Susette Kelo's, as part of a plan to redevelop a neighborhood and bring in jobs and tax money. The homes would go to private developers. The owners argued that was not a "public use." The Court ruled 5 to 4 for the city, holding that economic development counts as a public purpose. The ruling was unpopular across the political spectrum, and in the years that followed a large majority of the states passed laws limiting takings for economic development.

Where People Disagree

Miranda has had critics from the start. Some argued it would let guilty people go free on a technicality, and Congress passed a law in 1968 trying to get around it in federal cases. In Dickerson v. United States, 530 U.S. 428 (2000), the Court ruled that Miranda is a constitutional rule and Congress can't overrule it. In Vega v. Tekoh, 597 U.S. 134 (2022), the Court ruled that a Miranda violation, by itself, does not let a person sue the officer for money. Supporters see Miranda as a simple, clear rule that protects people who don't know their rights. Critics see it as a rule the Constitution's text does not require.

On takings, people disagree about how far "public use" should stretch. Supporters of Kelo say cities need tools to rebuild struggling areas. Critics say it lets the government take homes from people with less power and hand them to people with more.

What It Means for You

If you are arrested, you have the right to stay silent and to ask for a lawyer. Say it clearly: "I am going to remain silent, and I want a lawyer." The Court has ruled that you have to speak up to claim these rights. Simply staying quiet may not be enough. In Berghuis v. Thompkins, 560 U.S. 370 (2010), it held a suspect who stayed mostly silent for almost three hours had not clearly invoked the right.

If the government wants your land for a public project, it has to pay you fair value, and you have a right to challenge the amount in court.

Review Questions

1. What does a grand jury do, and does every state have to use one?
2. Name two situations where a person can be tried a second time.
3. What does it mean to "take the Fifth"?
4. What are the Miranda warnings, and when do police have to give them?
5. What did the Court decide in Kelo, and how did many states respond?

Amendment 6: Your Rights at a Criminal Trial

In a Nutshell

If you are charged with a crime, you have the right to a speedy and public trial before a fair jury from the place where the crime happened. You have the right to know the charges, to face and question the witnesses against you, to call your own witnesses, and to have a lawyer, even if you can't afford one.

The Text

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Why It Was Written

The colonists had seen trials moved far from home. Parliament passed laws allowing some colonists accused of certain crimes to be shipped to England for trial, far from their families, their witnesses, and a jury of their neighbors. The Declaration of Independence listed this among its grievances, accusing the King of "transporting us beyond Seas to be tried for pretended offences," and of "depriving us in many cases, of the benefits of Trial by Jury."

English law also had a history of secret proceedings and trials by written statements, where the accused never got to face the person accusing them. The most famous example is the 1603 treason trial of Sir Walter Raleigh. He was convicted largely on a written statement from a man who never appeared in court, even though Raleigh demanded to face him.

Line by Line

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law

"Speedy" means the government can't let charges hang over you for years. There is no fixed number of days in the Constitution itself. Courts weigh the length of the delay, the reason for it, whether you demanded a trial, and whether the delay hurt your defense. Congress set specific deadlines for federal cases in the Speedy Trial Act of 1974, and the states have their own rules.

"Public" means trials happen in the open, so the community can see that justice is done fairly. Judges can close parts of a trial only for strong reasons.

An "impartial" jury is one that has not made up its mind before the trial. Lawyers question potential jurors in a process called "voir dire," and can ask the judge to remove jurors who can't be fair.

The trial must take place in the state and district where the crime happened. The "district" is the court district Congress set by law ahead of time. This is called the vicinage requirement, from an old word meaning neighborhood.

The jury right covers serious crimes. The Court has ruled that for "petty" offenses, generally those punishable by six months or less in jail, there is no constitutional right to a jury, though many states provide one anyway.

> and to be informed of the nature and cause of the accusation

You have the right to be told clearly what crime you are charged with and the basic facts behind it, so you can prepare a defense. You can't be tried on secret or vague charges.

> to be confronted with the witnesses against him

This is the Confrontation Clause. The witnesses against you have to testify in court, under oath, where you can see them and your lawyer can cross-examine them, which means question them to test their story. The government generally can't convict you based on a written statement from someone who never shows up.

> to have compulsory process for obtaining witnesses in his favor

"Compulsory process" means the court will order witnesses to come and testify for you, using a subpoena, a court order to appear. Without this right, the government could force its witnesses to appear while your witnesses stayed home.

> and to have the Assistance of Counsel for his defence.

"Counsel" means a lawyer. "Assistance of Counsel" means you have the right to have a lawyer help you. For most of American history, that meant you could hire one if you could pay. Since 1963, it means the government must provide a lawyer to anyone charged with a serious crime who can't afford one. Courts have also ruled that the help has to be real. If your lawyer's work falls below a reasonable standard and it likely changed the outcome, your conviction can be thrown out.

Key Supreme Court Cases

Gideon v. Wainwright, 372 U.S. 335 (1963)

Clarence Earl Gideon was charged in Florida with breaking into a pool hall. He couldn't afford a lawyer and asked the court to appoint one. Florida only appointed lawyers in death penalty cases, so the judge said no. Gideon defended himself and was convicted. From prison, he wrote his own petition to the Supreme Court in pencil. The Court ruled unanimously that states must provide a lawyer to people

charged with serious crimes who cannot afford one. At his retrial, with a lawyer, Gideon was found not guilty.

Duncan v. Louisiana, 391 U.S. 145 (1968)

Gary Duncan, a young Black man, was convicted of simple battery in Louisiana after slapping a white youth on the elbow, and was sentenced to 60 days in jail and a fine. The crime carried up to two years, but Louisiana gave him no jury trial. The Court ruled that the right to a jury trial for serious crimes applies to the states.

Crawford v. Washington, 541 U.S. 36 (2004)

Michael Crawford was convicted after prosecutors played a recorded police statement from his wife, who did not testify at trial. The Court ruled that "testimonial" statements, like formal statements to police, can't be used against a defendant unless the person who made them testifies, or was unavailable and the defendant had an earlier chance to cross-examine them. Justice Scalia's opinion retold the Raleigh trial to explain why.

Ramos v. Louisiana, 590 U.S. 83 (2020)

Evangelisto Ramos was convicted of murder in Louisiana by a 10 to 2 jury vote and sentenced to life without parole. Louisiana and Oregon were the only states that allowed convictions for serious crimes without a unanimous jury. The Court ruled 6 to 3 that the Sixth Amendment requires a unanimous jury to convict for a serious crime, in state and federal court alike. It overruled a 1972 case, Apodaca v. Oregon, that had allowed split verdicts.

Where People Disagree

Most people agree with the right to a lawyer. The argument is over whether it works in practice. Public defenders in many places carry very large caseloads, and critics argue that a lawyer with hundreds of open cases can't give each client the defense Gideon promised. Others respond that funding is a choice for state legislatures and voters, not the courts.

Another debate is plea bargaining. Most criminal cases never go to trial. They end with the defendant pleading guilty, often to a lesser charge. Supporters say plea deals save time and give defendants a better outcome than they would risk at trial. Critics argue that the threat of a much longer sentence after trial pressures people to give up their Sixth Amendment rights, sometimes even when they are innocent.

What It Means for You

If you are ever charged with a crime that could put you in jail, ask for a lawyer right away. If you can't afford one, tell the judge, and the court will appoint one. Don't try to explain your way out of it on your own. That is exactly what the right to counsel is for.

If you are called for jury duty, remember that this amendment depends on you. The promise of an impartial jury only works if ordinary people show up and serve with an open mind.

Review Questions

1. Why did the colonists care so much about being tried where the crime happened?
2. What does it mean to "confront" a witness, and why does it matter?
3. What happened to Clarence Earl Gideon, and what did his case change?
4. What did Ramos v. Louisiana decide about jury votes?
5. Why do some people worry that plea bargaining weakens Sixth Amendment rights?

Amendment 7: Jury Trials in Civil Cases

In a Nutshell

In federal court, if you sue someone, or someone sues you, for money in the kind of case that historically got a jury, either side can ask for a jury trial. Once a jury decides the facts, a judge can't simply overrule them except under long-settled legal rules.

The Text

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Why It Was Written

A civil case is a lawsuit between people or businesses, or between a person and the government, over things like contracts, injuries, or property. It is different from a criminal case, where the government charges someone with a crime.

The original Constitution guaranteed a jury in criminal trials, but said nothing about civil cases. Anti-Federalists noticed. They feared federal judges, appointed for life, could decide lawsuits on their own, without any check from ordinary citizens.

The colonists had good reason to worry. Under laws like the Sugar Act of 1764 and the Stamp Act of 1765, Parliament sent many cases about trade and taxes to vice-admiralty courts, which had no juries. A royal judge decided both the facts and the law. Local juries had a habit of siding with their neighbors against the King's tax collectors, and taking away the jury took away that protection.

Line by Line

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved

"Suits at common law" is a key phrase. In English law, there were two kinds of courts. Courts of "law" handled most lawsuits for money damages, and they used juries. Courts of "equity" handled cases asking for other kinds of relief, like an order making someone do something or stop doing something, and a judge decided those alone. The amendment keeps the jury right for the first kind. Today, courts ask whether a modern lawsuit is more like an old suit at law or an old suit in equity, and whether the relief asked for is money damages.

"Value in controversy" is the amount being fought over. The twenty-dollar line has never been changed or adjusted for inflation. In practice it doesn't matter much, because federal courts usually only hear

ordinary lawsuits between people from different states when more than $75,000 is at stake. That limit comes from a federal law, not from this amendment.

"Preserved" means the amendment keeps the jury right as it existed in 1791. It did not create a new right.

> and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

This is called the Reexamination Clause. Once a jury decides the facts of the case, such as who was at fault or how much harm was done, a judge or a higher court can't simply throw out that finding and substitute its own view. A judge can still set aside a verdict in limited ways the common law allowed, such as ordering a new trial when the verdict goes against the clear weight of the evidence or the award is grossly excessive.

Key Supreme Court Cases

Minneapolis and St. Louis Railroad Co. v. Bombolis, 241 U.S. 211 (1916)

The Court ruled that the Seventh Amendment applies only to federal courts, not state courts. That is still the law. The right to a civil jury in your state court comes from your state's own constitution and laws, not from the Seventh Amendment.

Curtis v. Loether, 415 U.S. 189 (1974)

A Black woman sued a landlord under the federal Fair Housing Act, claiming he refused to rent to her because of her race, and she asked for money damages. The landlord wanted a jury. The Court ruled he was entitled to one. When Congress creates a new kind of lawsuit for money damages, that suit is like a traditional suit at common law, and the Seventh Amendment jury right applies.

Securities and Exchange Commission v. Jarkesy, 603 U.S. 109 (2024)

The SEC, the federal agency that polices the stock market, charged an investment adviser with fraud. It tried the case before its own in-house judge, with no jury, and imposed a civil penalty. The Court ruled 6 to 3 that when the SEC seeks civil penalties for securities fraud, the defendant has a right to a jury trial in court. The dissent warned that the decision threatens the power of many agencies to enforce the law through their own hearings.

Where People Disagree

One debate is about arbitration. Many contracts, for jobs, phones, credit cards, and online services, contain a clause saying any dispute must go to private arbitration instead of court. By agreeing, you usually give up your right to a jury. The Federal Arbitration Act of 1925 makes most of these clauses enforceable. Supporters say arbitration is faster and cheaper for everyone. Critics say most people never read the fine print and lose their day in court without really choosing to.

After Jarkesy, there is also an open debate about how many other federal agencies can still impose penalties through their own judges without a jury.

What It Means for You

If you end up in a federal lawsuit over money, you or the other side can usually ask for a jury, and you must ask on time under the court's rules or you may lose the right. In state court, look to your state constitution, which almost always gives you a similar right.

Before you sign a contract, look for an arbitration clause. If it's there, you may be agreeing to give up a jury.

Review Questions

1. What is the difference between a civil case and a criminal case?
2. Why were the colonists upset about vice-admiralty courts?
3. What is a "suit at common law," and why does that phrase matter today?
4. Does the Seventh Amendment apply in state courts?
5. How can an arbitration clause affect your right to a jury?

Amendment 8: Bail, Fines, and Punishment

In a Nutshell

The government can't set bail higher than needed, can't impose fines far out of proportion to the offense, and can't inflict cruel and unusual punishments. The Supreme Court has used this amendment to limit the death penalty and harsh prison sentences.

The Text

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Why It Was Written

This amendment is borrowed almost word for word from the English Bill of Rights of 1689. Parliament wrote it after King James II was driven from the throne. Under his rule, judges had set impossible bail to keep people in jail, imposed crushing fines on the King's enemies, and handed out brutal punishments. One example often cited is Titus Oates, whose lies about a Catholic plot led to innocent men being executed. In 1685, soon after James II took the throne, Oates was convicted of perjury and sentenced to life in prison, to be whipped through the streets of London, and to stand in the pillory every year. After 1689, members of Parliament attacked the sentence as cruel and against the law, and the House of Commons passed a bill to cancel it.

George Mason put the same language into the Virginia Declaration of Rights in 1776, and Madison carried it into the Bill of Rights.

Line by Line

> Excessive bail shall not be required, nor excessive fines imposed

"Bail" is money or property you put up to get out of jail while you wait for trial, as a promise that you will come back to court. If you show up, you get it back. "Excessive" means more than is reasonably needed to make sure you return to court, and, under later law, to protect the public. The amendment does not promise everyone bail. Courts can hold some people without bail, such as people judged dangerous or likely to flee, after a proper hearing.

A "fine" is a money penalty paid to the government. "Excessive" fines are those grossly out of proportion to how serious the offense is. The Court has ruled this also covers civil forfeiture, where the government takes property tied to a crime, when the taking is partly meant as punishment.

> nor cruel and unusual punishments inflicted.

"Cruel and unusual" is the most debated phrase in this amendment. At a minimum, it banned the torturous punishments of the past, like burning at the stake, drawing and quartering, or breaking on the wheel.

Over time, the Court has read it to do more. It has said the phrase draws its meaning from "the evolving standards of decency that mark the progress of a maturing society." Using that idea, the Court has ruled that some punishments are cruel and unusual for certain crimes or certain people, even if they were allowed in 1791. It has also ruled that the punishment must be proportionate, or fit, the crime, though outside of the death penalty and juvenile cases the Court rarely strikes down a prison term as too long.

Key Supreme Court Cases

Furman v. Georgia, 408 U.S. 238 (1972)

The Court ruled 5 to 4 that the death penalty, as states were applying it at the time, was cruel and unusual, because juries had almost no guidance and the sentence was handed out in an arbitrary way. Each of the nine justices wrote a separate opinion. The ruling effectively stopped executions across the country for several years.

Gregg v. Georgia, 428 U.S. 153 (1976)

After Furman, many states rewrote their death penalty laws to guide juries more carefully, with separate phases for guilt and sentencing and automatic appeals. In Gregg, the Court ruled that the death penalty itself is not always cruel and unusual, and approved Georgia's new system. Executions resumed in 1977.

Roper v. Simmons, 543 U.S. 551 (2005)

The Court ruled 5 to 4 that executing someone for a crime committed before age 18 is cruel and unusual. It built on Atkins v. Virginia, 536 U.S. 304 (2002), which banned executing people with intellectual disabilities. Later, in Kennedy v. Louisiana, 554 U.S. 407 (2008), the Court ruled the death penalty can't be used for the rape of a child when the victim did not die.

Timbs v. Indiana, 586 U.S. 146 (2019)

Tyson Timbs pleaded guilty to dealing drugs and was sentenced to home detention and probation. The State of Indiana also took his Land Rover, which he had bought for about $42,000 with money from his father's life insurance. The maximum fine for his crime was $10,000. The Court ruled unanimously that the Excessive Fines Clause applies to the states, and sent the case back to decide whether taking the car was excessive.

Where People Disagree

The death penalty is the biggest debate. Supporters argue it is a just punishment for the worst murders, that the Constitution itself mentions taking life with due process, and that the people of each state should decide whether to use it. Opponents argue it risks executing innocent people, is applied unequally by race and by how much money the defendant had for a lawyer, and that the country's standards have moved past it. A number of states have ended the death penalty, while others continue to use it.

There is also a debate about how to read "cruel and unusual" at all. One side, often called originalist, argues the words should mean what they meant in 1791, and changes in punishment should come from voters and legislatures. The other side argues the Founders chose broad words on purpose, so that the meaning could grow with the country's sense of decency.

What It Means for You

If you are arrested and a judge sets bail, your lawyer can argue it is higher than needed. Many states have changed their bail systems in recent years, so the rules depend on where you live.

If the government tries to take your car, cash, or home in a forfeiture case, the Excessive Fines Clause may protect you if the taking is far out of proportion to what you did.

Review Questions

1. What old English document did this amendment come from?
2. What is bail, and what makes it "excessive"?
3. What did Furman v. Georgia and Gregg v. Georgia each decide?
4. Why did the Court rule for Tyson Timbs?
5. What are the two main ways people read "cruel and unusual"?

Amendment 9: Rights Not Listed Are Still Rights

In a Nutshell

Just because a right isn't written in the Constitution doesn't mean the people don't have it. The list in the Bill of Rights is not the complete list of your rights.

The Text

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Why It Was Written

Opponents of a bill of rights raised another worry, besides the one Alexander Hamilton made in the introduction. If you write down a list of rights, people might later argue that any right not on the list doesn't exist, and that the government can do whatever it wants in those areas.

James Madison took that worry seriously. When he proposed the amendments in June 1789, he told the House it was "one of the most plausible arguments" he had ever heard against a bill of rights, but that it could be guarded against, and this amendment was his answer. It works like a note at the bottom of the list that says, "This list is not complete."

Line by Line

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

"Enumeration" means listing or counting. "Certain rights" means the specific rights written down. To "deny or disparage" means to reject or belittle. "Retained by the people" means kept by the people.

In plain words: the fact that some rights are listed in the Constitution must not be used to deny or shrink other rights the people keep.

Notice what the amendment does not do. It does not name any of those other rights. That leaves a hard question that Americans still argue about: who decides what those unlisted rights are?

Key Supreme Court Cases

The Supreme Court has almost never decided a case based on the Ninth Amendment alone. It comes up mainly as support for reading other parts of the Constitution.

Griswold v. Connecticut, 381 U.S. 479 (1965)

You met this case in the Third Amendment chapter. Connecticut banned the use of birth control, even by married couples. The Court struck the law down, finding a right of marital privacy. Justice Arthur Goldberg wrote a concurring opinion, joined by two other justices, that relied heavily on the Ninth Amendment. He argued it shows the Founders believed there were basic rights beyond those listed, and that courts may protect them. Justice Hugo Black dissented. He argued that judges have no power to strike down laws based on rights not written in the Constitution, and that doing so lets judges substitute their own views for those of elected lawmakers.

Washington v. Glucksberg, 521 U.S. 702 (1997)

Doctors and patients challenged Washington State's ban on assisted suicide. The Court unanimously upheld the ban. It said that for a right not listed in the Constitution to be protected by the courts under the Due Process Clause, it must be "deeply rooted in this Nation's history and tradition," and carefully described. The Court used that test again in Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022), when it overruled Roe v. Wade and returned the question of abortion to the people and their elected representatives.

Where People Disagree

Everyone agrees the Ninth Amendment says the people have more rights than the ones listed. The disagreement is about what that means in court.

One view holds that judges should protect unlisted rights that are basic to liberty, the way they protect listed ones. Supporters of this view say otherwise the Ninth Amendment means nothing, and that the Founders believed in natural rights that no government grants or takes away.

Another view holds that the Ninth Amendment is a rule about how to read the Constitution, not a source of new rights judges can enforce. Supporters of this view say that letting judges decide which unlisted rights exist would give them too much power, and that unlisted rights should be protected mainly by voters, Congress, and state laws and constitutions.

Many of the biggest Supreme Court fights of the last sixty years, about privacy, marriage, family life, and abortion, come back to this same question, though usually argued under the Due Process Clause of the 14th Amendment rather than the Ninth.

What It Means for You

The Ninth Amendment is a reminder that your rights don't come from a government list. Your rights to travel from state to state and to raise your children are examples of rights the Court has protected even though the words aren't in the Bill of Rights. Many state constitutions also protect rights the federal Constitution doesn't mention.

Review Questions

1. What problem was the Ninth Amendment meant to solve?
2. What do "enumeration" and "disparage" mean?

3. How did Justice Goldberg and Justice Black disagree in Griswold?
4. What test did Glucksberg set for unlisted rights?
5. Name one right the Court has protected that is not written in the Bill of Rights.

Amendment 10: Powers Kept by the States and the People

In a Nutshell

The national government has only the powers the Constitution gives it. Any power not given to the national government, and not forbidden to the states, belongs to the states or to the people.

The Text

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Why It Was Written

Before the Constitution, the states were joined under the Articles of Confederation. Article II of the Articles said each state kept every power not "expressly delegated" to the United States. The Articles left the national government so weak it could not pay its debts or raise an army without begging the states, and that weakness was a big reason for writing the Constitution.

But many Americans still feared the new national government would grow too strong and swallow up the states. The Tenth Amendment was written to reassure them. It states plainly that the national government is one of limited, listed powers.

Line by Line

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

"Delegated" means handed over or given. The powers "delegated to the United States by the Constitution" are the ones the Constitution gives the national government, such as the powers to tax, coin money, regulate trade between the states, declare war, and run a post office. Most are listed in Article I, Section 8.

"Prohibited by it to the States" means things the Constitution forbids the states to do, such as print their own money or make treaties with other countries. Those are in Article I, Section 10.

"Reserved" means kept back. Everything else is kept by the states, or by the people.

This is the basis of "federalism," the system where power is divided between the national government and the state governments. The general power to pass laws for health, safety, and welfare, which lawyers call the "police power," belongs to the states. That is why most criminal law, family law, schools, and traffic laws are state matters.

Notice one word that is missing. The Articles said "expressly delegated." The Tenth Amendment just says "delegated." Congress voted down an attempt to add "expressly." In McCulloch v. Maryland in 1819, Chief Justice John Marshall pointed to that missing word to argue that the national government also has powers that are implied by the ones it was given, like creating a national bank to help it collect taxes and borrow money.

Key Supreme Court Cases

United States v. Darby, 312 U.S. 100 (1941)

The Court upheld a federal law setting a minimum wage and maximum hours for workers making goods shipped across state lines. It described the Tenth Amendment as stating "but a truism," meaning it only repeats that the states keep what was not given away. For about fifty years after that, the Court rarely used the Tenth Amendment to limit Congress.

New York v. United States, 505 U.S. 144 (1992)

A federal law told states to either make arrangements to dispose of their low-level radioactive waste or take ownership of it. The Court ruled that Congress can encourage states with money and incentives, but it can't simply order a state legislature to pass a law or carry out a federal program. This is called the anti-commandeering rule. To "commandeer" means to take control of something for your own use.

Printz v. United States, 521 U.S. 898 (1997)

A federal gun law, the Brady Act, temporarily required local sheriffs to run background checks on handgun buyers. Two sheriffs, from Montana and Arizona, challenged it. The Court ruled 5 to 4 that Congress cannot order state and local officers to carry out a federal program.

Murphy v. National Collegiate Athletic Association, 584 U.S. 453 (2018)

A 1992 federal law made it unlawful for most states to authorize sports betting. New Jersey wanted to allow it. The Court ruled the law violated the anti-commandeering rule, because it told state legislatures what laws they could and could not pass. States were free to decide for themselves, and many legalized sports betting afterward.

Where People Disagree

Americans have argued about the balance between federal and state power since 1789. The fight is mostly about how broadly to read Congress's listed powers, especially the power to regulate commerce among the states and the power to tax and spend.

One view holds that Congress's powers should be read broadly, so the national government can deal with national problems like economic crises, civil rights, and the environment. Supporters say a strong national government protects people when states fail them.

Another view holds that Congress's powers should be read narrowly, leaving most decisions to the states. Supporters say states are closer to the people, can try different ideas, and act as a check against too much power in Washington.

The same person may favor states' rights on one issue and national power on another, depending on which way the policy goes. That is worth noticing when you hear the argument.

What It Means for You

Most laws that touch your daily life, like speed limits, marriage, schools, property, and most crimes, are state laws. That is the Tenth Amendment at work. If you want to change one of those laws, your state legislature or local government is often the place to start.

Review Questions

1. What does "delegated" mean, and where are most delegated powers listed?
2. What is federalism?
3. Why did John Marshall care that the word "expressly" was left out?
4. What is the anti-commandeering rule? Name one case that applied it.
5. Name three areas of law that are mostly handled by the states.

Appendix: The First Article Congress Proposed in 1789

As the introduction explains, Congress sent twelve amendments to the states in 1789. Articles three through twelve became the Bill of Rights. Article two became the 27th Amendment in 1992. Article one, printed here exactly as the National Archives transcribes it, was never ratified.

> After the first enumeration required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.

It would have set rules for how many people each member of the House represents. It fell short in the 1790s, and since Congress gave it no deadline, it is still technically pending. The Later Amendments in Plain English covers it, along with the other amendments that passed Congress but never became part of the Constitution.

The Bill of Rights at a Glance

Amendment	What it covers
Amendment 1	Religion, speech, press, assembly, and petition
Amendment 2	The right to keep and bear arms
Amendment 3	No soldiers housed in homes without consent
Amendment 4	No unreasonable searches and seizures; warrants need probable cause
Amendment 5	Grand juries, no double jeopardy, no forced self-incrimination, due process, pay for property taken
Amendment 6	Speedy and public jury trial, notice of charges, confronting witnesses, a lawyer
Amendment 7	Jury trials in federal civil cases
Amendment 8	No excessive bail or fines, no cruel and unusual punishment
Amendment 9	Rights not listed are still kept by the people
Amendment 10	Powers not given to the national government belong to the states or the people

Glossary

Abridge. To cut short or reduce.

Affirmation. A solemn promise to tell the truth, used in place of an oath.

Bail. Money or property put up to get out of jail before trial, as a promise to come back to court.

Capital crime. A crime that can be punished by death.

Civil case. A lawsuit between people, businesses, or a person and the government over money, property, or rights, as opposed to a criminal case.

Compulsory process. A court order, such as a subpoena, requiring a witness to appear.

Concurring opinion. An opinion by a justice who agrees with the result but gives different or added reasons.

Counsel. A lawyer.

Defamation. A false statement that damages a person's reputation.

Dissent. An opinion by a justice who disagrees with the Court's decision.

Double jeopardy. Being tried twice for the same crime.

Due process. Fair legal procedures the government must follow before taking a person's life, liberty, or property.

Eminent domain. The government's power to take private property for public use, with fair payment.

Establishment Clause. The part of the First Amendment that bars the government from setting up an official religion.

Exclusionary rule. The rule that evidence found in an illegal search usually can't be used in court.

Federalism. The division of power between the national government and the states.

Free Exercise Clause. The part of the First Amendment that protects practicing your religion.

Grand jury. A group of citizens who decide whether there is enough evidence to charge someone with a serious crime.

Incorporation. The process by which the Supreme Court applied most of the Bill of Rights to the states through the 14th Amendment.

Indictment. A formal criminal charge issued by a grand jury.

Militia. In the 1700s, the body of ordinary citizens expected to turn out with their own weapons to defend their community.

Probable cause. Enough facts to make a reasonable person believe a crime was committed and evidence will be found.

Quarter. To house soldiers.

Ratify. To formally approve.

Reasonable suspicion. Specific facts, less than probable cause, that justify a brief police stop.

Self-incrimination. Being forced to give testimony that helps convict yourself.

Warrant. A written order from a judge allowing a search or an arrest.

Sources and Further Reading

These are the main sources I used and checked while writing this book, in October 2026. Every fact, date and case citation was checked against one of them or another named public source. Web addresses change, so if one stops working, search the site for the title.

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About This Book

This book takes the first ten amendments to the Constitution one at a time. For each one you get the exact wording from the National Archives, a plain-English explanation line by line, the landmark court cases behind it, and questions to think about. Where Americans disagree about what an amendment means, the main sides are laid out fairly, and the choice is left to you.

At the back you will find the first article Congress proposed in 1789, the Bill of Rights at a glance, a glossary, and a list of sources.