

A Guide to the Bill of Rights

First Amendment Rights

James Madison combined five basic freedoms into the First Amendment. These are the freedoms of religion, speech, the press, and assembly and the right to petition the government. Many people consider these basic freedoms to be the most important part of the Bill of Rights.



These First Amendment rights would have been meaningless, however, without some way to protect them. When a person believes that the government has violated these rights, he or she may challenge the government's action in court. The same is true of all other rights protected in the Constitution.

If the case reaches the Supreme Court, the nine Supreme Court justices decide how the Constitution applies to the situation. After hearing both sides, the justices vote on the case. One of the justices from the majority side then writes a majority opinion. This document explains how the Court interpreted the Constitution to reach its decision. Any justices who disagree with the majority decision may write minority opinions explaining their reasoning. As you read about First Amendment rights, you will see how the Supreme Court has applied these rights to real-life situations.

The Right to Worship Freely

The First Amendment has two guarantees of religious freedom. The first says, "Congress shall make no law respecting an establishment of religion." This means that Congress cannot make any faith the official religion of the United States. Nor can it make laws that favor any religion over another. As Thomas Jefferson explained in a letter to a friend, the amendment builds "a wall of separation between church and state."

How high should that wall be? The founders of the American republic disagreed about the answer to this question. For example, lawmakers in Virginia proposed using state taxes to help pay for teachers of religion. George Washington was among those who supported this idea as long as no particular church was favored. Opponents of the proposal, like Madison, argued that government and religion should be completely separate.

In a 1971 case known as *Lemon v. Kurtzman*, the Supreme Court sided with Madison's view. This case challenged a Pennsylvania law that used public tax money to pay for books and teachers' salaries at private religious schools. The Court held that the law was unconstitutional because it allowed too close a connection between government and religion.

The second religious guarantee in the First Amendment says, "Congress shall make no law . . . prohibiting the free exercise" of religion. This means that people can hold any religious beliefs, without fear of punishment. However, they cannot necessarily do whatever they want in the name of religious freedom.

For instance, the Supreme Court has held that parents are not free to deny their children medical treatment or vaccinations because of their religious beliefs.

The Right to Free Speech and Press

The First Amendment protects freedom of speech and freedom of the press. The Supreme Court often treats these rights together as the right of free expression.

Freedom of the press is important because of the vital roles that the press plays in a democratic society. Newspapers, magazines, and other media such as books and television act as watchdogs on the government. They also allow for the free flow of ideas, which citizens need to stay informed and to make up their own minds about important issues. Without a free press, democratic self-government would be impossible.

Americans had learned in colonial days that a free press was their best protection against abuse of government power. In 1735, John Peter Zenger was arrested for printing reports that the governor of New York had taken bribes. The prosecutors said that it was illegal to damage the governor's good name, even if Zenger had published the truth. Zenger's lawyer argued that no one should be jailed for "exposing and opposing arbitrary power by speaking and writing truth." The jury agreed, and Zenger was freed.

Freedom of the press also brings responsibilities, such as taking care not to spread false accusations or publish information that would be helpful to an enemy in wartime. Freedom of speech brings responsibilities as well. Although the First Amendment protects the right to speak freely in public places, like streets and parks, that right is not unlimited. The Supreme Court has allowed limits on some kinds of speech, such as speech that endangers public safety. As one justice said, "The most stringent [strongest] protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic."

The Supreme Court has held that speech means more than just words. Free expression includes symbolic speech, or actions people take to express their opinions.

Protection of symbolic speech was an issue in the case of *Texas v. Johnson* (1989). This case involved a man who had been convicted in Texas of burning an American flag as a form of protest. When he appealed his case to the Supreme Court, the justices overturned his conviction. No form of expression can be banned, the Court held, just because "society finds the idea itself offensive or disagreeable."

The Right to Assemble and Petition

The final two rights protected in the First Amendment are the right to peaceably assemble (meet together with others) and to petition (appeal to) the government. The right to assembly means that citizens can use public property for meetings and demonstrations. Parades, protest marches, and political rallies are all forms of peaceful assembly protected by the First Amendment.

While the First Amendment protects peaceful meetings, it does not give people the right to close streets or buildings or to protest violently. Police can arrest a speaker who urges listeners to riot or to break the law.

What if an assembly is peaceful, but the people watching it are not? This question came up in the case of *Gregory v. Chicago* (1969). The case began when comedian Dick Gregory led a protest march to the

home of Chicago's mayor. Residents in the neighborhood began throwing eggs and shouting insults at the marchers. Fearful of a riot, police asked the marchers to leave. When the marchers refused, the police arrested them.

The marchers challenged their arrests in court, claiming that their protest was protected under the First Amendment's right of assembly. The Supreme Court agreed that the marchers had assembled peacefully. If anyone should have been arrested, it was the mayor's neighbors.

Citizen Protections

The next three amendments protect citizens from various kinds of government abuse. All three reflect the experience of American colonists under British rule.

Second Amendment: The Right to Bear Arms

During colonial times, Great Britain had used a standing, or permanent, army to keep order in the colonies. After winning their independence, Americans were suspicious of standing armies. They preferred to rely on volunteer state militias to protect the new nation. The Second Amendment states that "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 [limited]."

The meaning of this amendment has been much debated. Some people argue that it protects the right of people to own guns only if they are part of an organized militia. An example of such a militia is today's National Guard. Others believe that the Second Amendment protects the right of individuals to own weapons for their own self-defense. In 2008, the Supreme Court supported this view in the case of *District of Columbia v. Heller*. The Court held that the Second Amendment protects an individual's right to own a gun for personal use, including self-defense inside the home.

Third Amendment: Quartering Troops in Homes

Before the American Revolution, Great Britain had forced colonists to house British soldiers. The Third Amendment gave Americans the right to refuse such requests.

Today, soldiers are not quartered in homes. The Third Amendment remains important, however, as a warning to the government to respect the privacy of people's homes. As Supreme Court justice Joseph Story said, "A man's house shall be his own castle, privileged against all civil and military intrusion."

Fourth Amendment: Searches and Seizures

The Fourth Amendment protects people and their belongings from "unreasonable searches and seizures." A seizure is the act of forcibly taking control of a person or property. Before arresting a person or searching someone's home, police must show a judge that there is good reason for such action. The judge then issues a warrant that says exactly who will be arrested or what will be searched.

Nowhere in the Fourth Amendment, however, does it say that a warrant is required for every government search. Many Supreme Court cases have held that warrants are not always necessary. But there must be probable cause, or a strong reason for the search.

The Fourth Amendment also does not define “unreasonable search.” The Supreme Court provided a definition in 1967 when it held that the search must respect an individual’s right to privacy.

Legal Rights and Protections

The next four amendments lay out the rights and protections that apply to people who are accused of crimes or are involved in other legal disputes.

Fifth Amendment: Legal Rights

The Fifth Amendment is the longest amendment in the Bill of Rights. It lists five important rights of citizens involved with the justice system.

First, this amendment gives people who are accused of serious crimes the right to a grand jury hearing. A grand jury is a group of citizens who hear the government’s evidence and decide whether a trial is justified. If so, the grand jury issues an indictment, or formal charge. If not, the accused person is released.

Second, the amendment protects citizens from double jeopardy. Jeopardy means risk. This protection ensures that a person who is tried for a crime and found not guilty cannot be tried again for that same crime.

Third, the amendment prohibits self-incrimination. This means that police cannot force people to say things that might be used against them in a trial.

Today, police are required to remind people of their right to remain silent before they start to question them. They must also warn people that anything they do say can be used against them at a trial. This reminder is known as the “Miranda warning,” after the case in which the Supreme Court defined this requirement.

The protection against self-incrimination also applies to a defendant testifying in court. Defendants may refuse to answer questions that might damage their case. This refusal is called “taking the Fifth.”

Next, the Fifth Amendment says that a person cannot be deprived of “life, liberty, or property, without due process of law.” The government must follow clear rules and act reasonably as it carries out the law. This concept is known as due process. For example, the Supreme Court has held that every person should be presumed innocent until proven guilty. In addition, the government must prove its case against a defendant “beyond a reasonable doubt.”

Finally, the Fifth Amendment says that the government cannot take someone’s private property for public use “without just compensation.” Just compensation means that the government must pay a fair price when it takes over a person’s property for purposes such as building roads or parks.

Sixth Amendment: Criminal Trial Rights

The Sixth Amendment lists a number of rights that are designed to provide accused persons with fair trials. It begins with the right to “a speedy and public trial, by an impartial jury.”

The right to a speedy trial means that people cannot be kept in jail for long periods before being judged at a trial. Speedy trials also ensure that witnesses testify while their memories of events are still fresh.

“Public” means that trials may not be held in secret. Citizens have a right to attend trials to make sure that justice is being done.

An accused person also has the right to be judged by a jury of people who live in his or her area. The jury must be impartial, which means that jurors are not prejudiced (influenced) against the defendant. Courts have also said that prosecutors cannot exclude potential jurors based on their race or gender.

Before a trial, the prosecutor must tell the accused person not only the charge, but also the time and place of the supposed crime. This information is essential to the accused person’s preparation of his or her defense.

A defendant also has the right to hear and question all witnesses who testify at the trial. In addition, the defendant can ask the court to order reluctant (unwilling) witnesses to testify against their wishes.

Lastly, a defendant has the right to an attorney to assist in his or her defense. The Supreme Court has called this the most important of all the rights of accused persons. Without legal help, an innocent person may all too easily be convicted of a crime. In the past, only people with money to hire lawyers enjoyed this important right. Today, people accused of crimes are provided with a lawyer if they cannot afford to pay for one.

Seventh Amendment: Civil Trial Rights

Not all trials involve criminal actions. Some trials decide civil cases, or disputes between people or businesses. Civil cases typically involve money, property, or family matters, such as divorce. The Seventh Amendment says that, in all but the most minor cases, people involved in a civil case have a right to a jury trial.

The Seventh Amendment also says that “no fact tried by a jury shall be otherwise reexamined.” This means that after a jury decides the facts of a case, no judge can overrule the jury’s decision.

Eighth Amendment: Bail and Punishments

The Eighth Amendment protects an accused person’s rights both before and after trial. Before a trial, it forbids a judge from demanding “excessive” bail. Bail is money or property given to the court to hold until an accused person shows up at trial. If a defendant cannot pay bail, he or she stays in jail until trial. The Eighth Amendment prevents judges from using unreasonably high bail to keep someone in jail before his or her day in court.

After a trial, if the person is found guilty, the Eighth Amendment forbids “excessive fines” and “cruel and unusual punishments.” It does not say what such punishments are. In 1791, physical punishments like whipping and branding were common. Today, they are considered cruel. As Supreme Court justice Thurgood Marshall has written, “A penalty that was permissible at one time in our Nation’s history is not necessarily permissible today.”

The Supreme Court has interpreted this amendment to mean that punishments must be “proportionate” to the crime. Judges cannot, for example, impose long prison terms on people convicted of minor crimes. The Court has also held that this amendment prohibits inhumane prison conditions, such as depriving prisoners of food.

Today, Americans continue to debate whether the death penalty should be banned under the Eighth Amendment. Opponents of the death penalty have argued that executing anyone is a cruel and unusual punishment, no matter how horrible the crime. The Supreme Court has disagreed. In the 1976 case of *Gregg v. Georgia*, the Court’s decision stated that “the punishment of death for the crime of murder does not, under all circumstances, violate the Eighth” Amendment.

Other Rights and Powers

The last two amendments were included to help keep a proper balance of rights and power among the federal government, the people, and the states.

Ninth Amendment: Rights Retained by the People

One argument raised against putting a bill of rights in the Constitution was that no such list could be complete. If some rights were listed and others were not, did this mean that people had only the listed rights?

The Ninth Amendment provides the answer. It says that even though “certain rights” are listed in the Constitution, other rights and liberties not listed there are also “retained [kept] by the people.” The rights protected under the Constitution are not the only rights people have. An example of this is the right to privacy.

Tenth Amendment: Powers Reserved to the States

The Tenth Amendment was included to protect the states from excessive federal power. It says that powers not given to the national government by the Constitution are “reserved to the states . . . or to the people.”

This amendment is known as the reserved powers clause. Reserved powers are those that the Constitution does not specifically give to the national government or specifically prohibit the states from having.

So what are reserved powers? The examples are numerous, and they affect many areas of everyday life. States use their reserved powers to pass laws regulating speed limits for drivers. Reserved powers allow the states to determine how many days students attend public schools. States have the power to run elections, to regulate businesses inside their borders, and to set up local governments. Do you get your hair cut in a salon or barber shop? Do you visit the doctor when you are sick? The Tenth Amendment gives your state the power to issue business licenses to hair salons and the power to make sure your doctor is licensed to practice medicine in your state.