

Roe v. Wade / Is Privacy Protected in the Constitution?

Part I Instructions:

1. Read the text of the **Bill of Rights**, the first 10 Amendments to the U.S. Constitution, below. Highlight or circle examples of rights that could be seen as privacy-related rights.
 2. Answer the **Questions to Consider**.
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The Bill of Rights

Amendment 1: 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.

Amendment 2: 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.

Amendment 3: 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.

Amendment 4: 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.

Amendment 5: 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.

Amendment 6: 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.

Amendment 7: 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.

Amendment 8: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment 9: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment 10: 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.

Questions to Consider

1. Is the word “privacy” found in the Bill of Rights?
2. Which amendments might imply a right to privacy?

Part 2 Instructions:

1. Read the excerpts of the majority opinions in *Roe v. Wade* (1973) and *Dobbs v. Jackson Women’s Health* (2022) below.
2. Answer the **Questions to Consider**.

Excerpt A:

“The Constitution does not explicitly mention any right of privacy . . . [however] a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution . . . This right of privacy, whether it be founded in the 14th Amendment’s concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment’s reservation of rights to the people, is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”

– Majority Opinion, *Roe v. Wade* (1973), Justice Blackmun writing for the majority

Excerpt B:

“The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of *Roe* and *Casey* now chiefly rely—the Due Process Clause of the Fourteenth Amendment. That provision has been held to guarantee some rights that are not mentioned in the Constitution, but any such right must be ‘deeply rooted in this Nation’s history and tradition’ and ‘implicit in the concept of ordered liberty.’ *Washington v. Glucksberg*, 521 U. S. 702, 721 (1997) (internal quotation marks omitted). The right to abortion does not fall within this category.”

–Majority Opinion, *Dobbs v. Jackson Women’s Health Organization* (2022), Justice Alito writing for the majority

Questions to Consider

1. What does each excerpt say about the 14th Amendment in relation to the right to privacy?

Excerpt A:

Excerpt B:

2. Which excerpt do you find most compelling? Why?

3. Do you believe a right to privacy is protected in the Constitution?