

Ninth & Tenth Amendments



(1791)

WHAT IT SAYS

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

[Tenth Amendment] 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.

IS THERE A CONSTITUTIONAL RIGHT TO PRIVACY?

In November 1961, the executive director of the Planned Parenthood League of Connecticut, Estelle Griswold, was arrested along with a doctor from the one of the league's clinics for giving medical advice about contraceptives to married couples. They were charged under a Connecticut law that made it a crime to help someone to use contraceptives or to use contraceptives oneself. They did not deny their guilt and were convicted and fined \$100. But they appealed their convictions on the ground that the law violated the constitutional rights of the married couples whom they counseled. Griswold argued that married couples' right to "liberty" under the Fourteenth Amendment's due process clause should include the right to decide whether to use contraceptives to prevent pregnancy until they were ready to have children. In *Griswold v. Connecticut* (1965), the U.S. Supreme Court found that there was a "right to privacy" within the Constitution, and that the ban on contraceptives for married couples violated that right. Yet, nowhere in the Bill of Rights or any other amendments does the word "privacy" appear. Instead, the Court looked at the rights that were listed in the First, Third, and Fourth Amendments and concluded that privacy was a common theme running through many of them. The Supreme Court agreed that the right of marital privacy fell within the "penumbra," or zone, of the guarantees that are included in the Bill of Rights collectively. The Court added that the Ninth Amendment specified that the Constitution's mention of specific rights did not "deny or disparage others retained by the people." In a concurring opinion, Justice Arthur Goldberg noted that the Ninth Amendment served as a reminder to the justices that they could not limit Americans' rights to only those explicitly listed in the Constitution. "The fact that no particular provision of the Constitution explicitly forbids the State from disrupting the traditional relation of the family—a relation as old and as fundamental as our entire civilization—surely does not show that the Government was meant to have the power to do so," wrote Justice Goldberg. "Rather, as the Ninth Amendment expressly recognizes, there are fundamental personal rights such as this one, which are protected from abridgment by the Government though not specifically mentioned in the Constitution."

WHAT IT MEANS

The Ninth Amendment offers a constitutional safety net, intended to make it clear that Americans have other fundamental rights beyond those listed in the Bill of Rights. The amendment was added out of concern that it would be impossible to mention every fundamental right, and dangerous to list just some of them for fear of suggesting that the list was complete. Because the rights protected by the amendment are not specified, they are referred to as “unenumerated” rights, as opposed to those enumerated in the Constitution. It is up to the courts to interpret through their decisions exactly what rights the amendment does and does not protect. The Tenth Amendment was included in the Bill of Rights to preserve the balance of power between the federal government and the states. The amendment limits the federal government’s power to just what is written in the Constitution. Those powers not listed are left to each of the states. The Tenth Amendment does not specify what those “powers” are, however, leaving room for dispute between the federal and state government and need for interpretation by the courts. At different times in American history the courts have been more or less restrictive in deciding what the federal government can do and what responsibilities fall to the states.

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“This right of privacy, whether it is founded in the Fourteenth Amendment’s concept of personal liberty and restrictions upon state action, as we feel it is, or... 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.”

—Justice Harry A. Blackmun,
Roe v. Wade (1973)

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Ninth & Tenth Amendments

State resolutions seek to void federal laws

→ 1798

Congressional passage of the Alien and Sedition Acts in 1798 dramatically increases the federal government’s authority. In protest, Thomas Jefferson writes the Kentucky Resolutions, which are adopted by the Kentucky State Legislature. These resolutions argue that the states have the right to void federal legislation that they consider to go beyond the scope of Congress’s constitutional authority. In 1799, the Virginia legislature enacts similar resolutions, known as the Virginia Resolutions, that were authored by James Madison.

The Supreme Court interprets federal powers broadly

→ 1819

Under the leadership of Chief Justice John Marshall, the Supreme Court rules, in *McCulloch v. Maryland*, that Congress has the authority to charter a national bank, even though no such “power” is specifically delegated in the Constitution. With this broad interpretation of the federal government’s authority, the Supreme Court sharply restricts the rights that were reserved to the states by the Tenth Amendment.

Federal power to regulate interstate commerce is interpreted narrowly

→ 1918

A federal statute seeks to end child labor by prohibiting the interstate shipment of goods that child laborers had produced. In *Hammer v. Dagenhart*, known as the Child Labor Case, the U.S. Supreme Court rules that the statute goes beyond the powers the Constitution “delegated” to the federal government. The Court finds that under the Tenth Amendment, it is the right of the individual states to decide how to regulate the use of child labor in manufacturing.

Ninth Amendment supports a constitutional right to privacy

→ 1965

In *Griswold v. Connecticut*, the U.S. Supreme Court strikes down a Connecticut law forbidding the use of contraceptives because it restricts the right of marital privacy. Although the Bill of Rights does not actually mention privacy, the Court concludes that it is a natural extension of the rights mentioned in the First, Third, and Fourth Amendments. The Court points to the Ninth Amendment as further evidence that a right does not need to be spelled out in the Constitution to be considered fundamental.

Abortion is included within the constitutional right to privacy

→ 1973

In *Roe v. Wade*, the U.S. Supreme Court rejects a Texas law that outlaws abortion because it restricts the right to privacy. As in the *Griswold* case, the Court finds that even though the right to privacy is not specifically listed in the Bill of Rights, the Ninth Amendment allows “unenumerated” rights to be recognized as well.

The Ninth Amendment supports a right to attend criminal trials

→ 1980

In *Richmond Newspapers, Inc. v. Virginia*, the U.S. Supreme Court holds that the public’s right to attend criminal trials is guaranteed by the First and Fourteenth Amendments. Although that right is not specifically listed in the Constitution, the Court finds the history of the Bill of Rights makes its ruling proper.

TIMELINE

Key New Deal legislation ruled unconstitutional

→ 1935 →

To combat the Great Depression, Congress and the administration of Franklin D. Roosevelt establish the National Industrial Recovery Administration (known as the NRA). One of the New Deal's key programs, the NRA's provisions include requirements for minimum wages and maximum hours, and certain price controls. In *Schechter Corporation v. United States*, the U.S. Supreme Court rules that the NRA exceeds Congress's power to regulate interstate commerce and invades the states' rights to regulate manufacturing. Even an economic emergency such as the depression does not justify the federal government interference with the states' economic activities.

The Ninth Amendment does not limit government's rights

→ 1936 →

Private individuals challenge a contract between the federal government and a local power company for construction of a dam. In *Ashwander v. Tennessee Valley Authority*, the U.S. Supreme Court supports the contract as constitutional because the government has acted within the scope of its war and commerce powers under the Constitution. The Court holds that the Ninth Amendment does not give to the people rights that were specifically given to the government elsewhere in the Constitution.

Tenth Amendment is no barrier to enacting labor laws

→ 1941 →

In a switch from its earlier pro-states' rights rulings, particularly *Hammer v. Dagenhart*, the U.S. Supreme Court rules unanimously in *United States v. Darby* that the federal government acted within its authority in passing the Fair Labor Standards Act (FLSA). The Court finds that the law, which establishes numerous minimum wage and maximum labor standards nationwide, falls within Congress' authority to regulate interstate commerce.

Gun-Free School Zones Act is found unconstitutional

→ 1995 →

In *United States v. Lopez*, the U.S. Supreme Court grants the states more rights. It rules that Congress overstepped its authority under the commerce clause when it passed the 1990 Gun-Free School Zones Act. To uphold a law that determined the punishment for gun possession and gun use near schools, the Court rules, would convert the commerce clause authority into general police power held only by the states under the Tenth Amendment.

Mandatory background checks are invalidated

→ 1997 →

A federal gun control law, known as the Brady Law, imposes on local authorities the obligation to perform mandatory background checks of potential gun buyers. In *Printz v. United States*, the U.S. Supreme Court holds that the law violates the Tenth Amendment. The federal government cannot issue directives requiring the states to address particular problems, or command state officials to enforce a federal regulatory program. The Court reasons that such commands are "fundamentally incompatible with our constitutional system of dual sovereignty."

Violence against Women Act exceeds Congressional authority

→ 2000 →

Legislation about domestic violence and family law had traditionally been left to the states. In *United States v. Morrison*, the U.S. Supreme Court strikes down a provision in the federal Violence against Women Act because it exceeds Congress's authority under the commerce clause and impinges on state control. A provision that permits victims of genderbased violence to bring federal lawsuits against their attackers is found to invade states' police power.