

Main Idea

A key purpose of the Bill of Rights is to protect individuals from government abuses. Several amendments limit the government's power and protect individual rights against government actions.

Reading Focus

1. What are the purposes of and limits on the right to keep and bear arms?
2. How does the Bill of Rights guarantee the security of home and person?
3. How has the right to privacy developed?
4. How and why does the Constitution guarantee due process of law?

Key Terms

probable cause
 search warrant
 exclusionary rule
 police power
 procedural due process
 substantive due process

The Right to Keep and Bear Arms (p. 296)

The Second Amendment says 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 [violated].” The purpose of the amendment was to protect the right of the states to form militias. It was also supposed to ease the fears of those who worried about the power of a standing army controlled by the federal government.

Some people believe the Second Amendment gives them the right to own all kinds of firearms. Others think that it was written only to allow the states to form militias and that government can limit gun ownership. The Supreme Court has issued only one major ruling on the Second Amendment. In *Miller v. United States* (1939), the Court ruled that the Second Amendment was not meant to protect the right to have all types of weapons. In *District of Columbia v. Heller*, the Court was expected to rule in June 2008 on a case

involving a Washington, D.C., law banning almost all ownership of handguns and rifles.

Reading Check Summarizing What is the controversy over the Second Amendment?

Security of Home and Person

(pp. 297–300)

Much of the Bill of Rights reflects Americans' desire to avoid the abuses of their rights experienced under British rule. The Third and Fourth Amendments help protect Americans' rights to be secure in both home and person.

The Third Amendment This amendment prevents the military from taking over a person's home for no reason or without due process. It was written in reaction to the British government's policy of quartering, or housing, soldiers in colonists' homes.

The Fourth Amendment The Fourth Amendment was written in reaction to the British practice of using writs of assistance. A writ was a legal document that gave

British authorities wide power to search private homes and businesses. British officials could search without first showing **probable cause**, or the strong likelihood that they would find evidence of a crime. To show probable cause, authorities must explain what evidence they are looking for and why they believe they will find it in that location.

Search and Seizure The Fourth Amendment forbids “unreasonable searches and seizures.” It also sets terms for issuing a **search warrant**, a document that gives police legal authority to search private property. Government can issue a search warrant only after authorities have proved to a judge that there is probable cause for a search. When searching, authorities must follow strict rules and only search for evidence in the crime they are investigating. They may also take other evidence that is in “plain view.” The “plain view” rule comes from the Supreme Court case *Arizona v. Hicks* (1987) and prevents authorities from using evidence that is obtained illegally without a search warrant.

Keeping evidence obtained illegally from being used against a person in court is known as the **exclusionary rule**. The exclusionary rule was established in *Weeks v. United States* (1914). It was expanded to state actions in *Mapp v. Ohio* (1961).

The Fourth Amendment does not apply to the outdoors. For example, someone’s outdoor trashcan can be searched.

Pedestrians and Cars If police stop a person on the street, it is considered a “seizure.” A person can be stopped if police have reasonable suspicion—if the person is acting oddly, for example. If stopped, the person may be frisked, or searched, if there is concern for the officer’s or other people’s safety. To arrest a person, the police must be able to show probable cause.

Cars may also be stopped and searched, in some cases without the driver breaking traffic laws. Evidence may be seized if it is in plain view. Officers may search any place that is within reach of the vehicle’s occupants. In some cases the trunk may also be searched.

Electronic Communications The Fourth Amendment also protects a person’s “papers.” As electronic media have developed, the courts have had to include them in this protection as well.

Initially, the Supreme Court ruled that wiretapping, or using a concealed listening device to monitor telephone calls, was not an illegal search. It reversed this decision in *Katz v. United States* (1967). Wiretapping usually requires a warrant based on probable cause.

The security of electronic communications became an issue after Congress passed the USA PATRIOT Act as a result of the September 11, 2001, terrorist attacks. This act gave officials more freedom to search such things as email communications. Part of the act was struck down in 2007 by a federal judge who said it gave authorities too much power without court oversight. Another program heavily debated was a secret one run by the National Security Agency (NSA). It allowed electronic communications from other countries by people with suspected terrorist links to people in the United States to be monitored without a warrant.

Testing for Drugs Another modern-day Fourth Amendment question involves testing people for the use of illegal drugs. Courts have generally given private employers wide ability to do so but have limited governments’ testing of employees. Governments may test employees whose jobs affect public safety, such as bus and truck drivers.

Protections for Students The Supreme Court has ruled that public school students have fewer Fourth Amendment protections than does the general population. A school’s need to ensure a safe learning environment can override privacy concerns. In *New Jersey v. T.L.O.* (1985) the Court permitted an official’s search of a student’s purse without probable cause. Rulings supporting the use of drug testing in certain circumstances include *Vernonia School District v. Acton* (1995) and *Board of Education of Pottawatomie County v. Earls* (2002).

Reading Check Summarizing How do the Third and Fourth Amendments protect Americans’ security?

The Right to Privacy (pp. 300–301) The Constitution does not clearly express a right to privacy. Some people who believe in a right to privacy say that the Fourth Amendment implies that privacy should not be violated by unreasonable searches. Others argue that the right to privacy is guaranteed by the due process clauses of the Fifth and Fourteenth Amendments.

Cases that have supported a right to privacy include *Griswold v. Connecticut* (1965), in which the Court ruled that several constitutional amendments created “zones of privacy.” In the most controversial privacy case, *Roe v. Wade* (1973), the Court said that the right to privacy meant that a state could not deny a woman the right to end a pregnancy by abortion during the first three months. In *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) the Court upheld some parts of a law allowing an abortion only after a woman met several requirements.

Reading Check Drawing

Conclusions From where does the right to privacy come?

Due Process of Law (pp. 301–302)

The Fifth Amendment forbids the federal government from depriving people of “life, liberty, or property, without due process of law.” The Fourteenth Amendment gives the same protections against state governments.

Due process requires that government act in accordance with the law. Due process limits the government’s **police power**, or its ability to regulate behavior for the common good. There are two different components of due process: procedural due process and substantive due process.

Procedural Due Process As the term suggests, **procedural due process** requires that government follow certain procedures before punishing a person. Procedural due process can be limited when government has a strong reason to do so. For example, in *Mackey v. Montrym* (1979) the Supreme Court ruled that a state does not have to follow a process to take away a driver’s license if he or she refused to take tests to show if he or she had been drinking alcohol.

Substantive Due Process **Substantive due process** concerns whether the laws themselves are fair and just. It is based on the idea that people have certain inalienable rights that cannot be taken away from them, even by laws that have been passed properly. An example is laws enforcing racial segregation. The Supreme Court addressed substantive due process in the Slaughterhouse Cases (1873). The dissenting opinions in these cases later became the basis for Supreme Court cases further defining substantive due process.

Reading Check Contrasting What is the different between procedural and substantive due process?

SECTION 3 ASSESSMENT

1. **Identify** What right does the Second Amendment protect?
2. **Define** Define the terms **probable cause**, **search warrant**, and **exclusionary rule**?
3. **Recall** How does the Fourth Amendment imply a right to privacy?
4. **Define** What are **procedural due process** and **substantive due process**?