

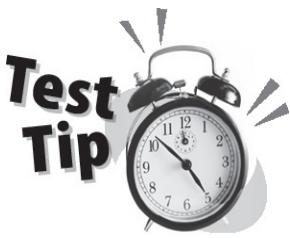
Civil Liberties 民权

I. 我。 THE BILL OF RIGHTS 权利法案

A. WHY A BILL OF RIGHTS?

A. 为什么需要权利法案？

1. The Framers did not include a list of specific individual rights in the original Constitution for two primary reasons, discussed by Hamilton in "Federalist No. 84."
1. 制宪者没有在最初的宪法中列出具体的个人权利，主要有两个原因，汉密尔顿在《联邦党人文集》第 84 篇中对此进行了讨论。
 - a. The proposed system of government offered the best protection for individual rights.
 - a. 所提议的政府体制为个人权利提供了最佳保护。
 - b. No list of rights could be drafted to cover all rights held by individuals. Any suggested list, therefore, could be used to deprive individuals of rights that were omitted from the list.
b. 任何权利清单都无法涵盖个人拥有的所有权利。因此，任何建议的权利清单都可能被用来剥夺清单中遗漏的个人权利。
 2. The lack of a specific and extensive list protecting individual rights became a primary driver of Anti-Federalist opposition to the Constitution. Ultimately, this argument did not defeat the Constitution, but resulted in the adoption of the Bill of Rights shortly after ratification.
2. 由于缺乏具体而全面的个人权利保护条款，反联邦主义者开始反对宪法。最终，这一论点并未导致宪法被否决，反而促成了权利法案在宪法批准后不久获得通过。
 3. The Bill of Rights is composed of the first 10 amendments to the Constitution. It protects numerous individual liberties, including rights to free speech and religion, privacy, and rights of those accused of crimes.
3. 《权利法案》由宪法的前十条修正案组成。它保护了许多个人自由，包括言论自由、宗教自由、隐私权以及被控犯罪者的权利。



You may be asked to analyze how debates over the extent and application of the rights included in the Constitution illustrate the tension in our society between individual liberties/freedoms and the need for social order and safety. Should speech be protected if it poses a threat to order? How does protecting the rights of accused criminals impact public safety? How should one individual's right to privacy be balanced against another person's right to protection? Consider how the Court has balanced these conflicting interests as you read the cases in this chapter.

你可能会被要求分析围绕宪法所载权利的范围和适用性的辩论，这些辩论如何体现了我们社会中个人自由与社会秩序和安全需求之间的张力。如果言论对社会秩序构成威胁，它是否应该受到保护？保护被指控犯罪者的权利会对公共安全产生什么影响？一个人的隐私权应该如何与另一个人的安全权相平衡？在阅读本章案例时，请思考法院是如何平衡这些相互冲突的利益的。

B. CIVIL LIBERTIES VS. CIVIL RIGHTS

B. 公民自由与公民权利

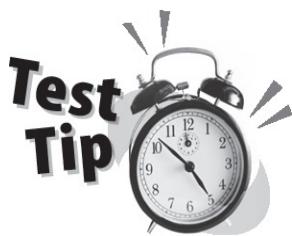
1. Most of what we think of as “rights,” such as the right to free speech and the right to bear arms, are actually *civil liberties*, those personal rights and freedoms with which the government is not allowed to arbitrarily interfere.
1. 我们认为的大多数“权利”，如言论自由权和持枪权，实际上是公民自由，即政府不得任意干涉的个人权利和自由。
2. It is important to understand that civil liberties are not absolute; they all have important limits and exceptions. The government may limit specific civil liberties in many circumstances, such as limiting free speech when it poses a serious and immediate danger to the public.
2. 必须认识到，公民自由并非绝对，它们都存在重要的限制和例外。在许多情况下，政府可以限制某些公民自由，例如，当言论自由对公众构成严重且迫在眉睫的危险时，政府可以限制言论自由。
3. The term *civil rights* refers to the rights of minority group members to be protected by the government against discrimination. The right to government protection is not related to the Bill of Rights, but is found in the Equal Protection Clause of the Fourteenth Amendment. (Civil rights are covered in [Chapter 10](#).)
3. “公民权利”一词指的是少数群体成员受政府保护免受歧视的权利。这项受政府保护的权利与《权利法案》无关，而是源于第十四修正案的平等保护条款。（公民权利的相关内容将在[第十章](#)中介绍。）
4. The terms *civil liberties* and *civil rights* may be confusing. This confusion is made worse by the fact that civil liberties are listed in the Bill of Rights. (It might help to think of the Bill of Rights as the Bill of Liberties.)
4. “公民自由”和“公民权利”这两个术语可能会令人混淆。由于公民自由被列入《权利法案》，这种混淆就更加严重了。（或许可以将《权利法案》理解为《自由法案》。）

- a. Civil liberties are extended to apply to the states through the Fourteenth Amendment's Due Process Clause.
 - a. 通过第十四修正案的正当程序条款，公民自由扩展到各州。
- b. Civil rights are protected by the Fourteenth Amendment's Equal Protection Clause.
 - b. 公民权利受第十四修正案平等保护条款的保护。
- c. It may be helpful to remember that civil liberties prohibit government action. For example, the government may not restrict free speech or search your home without a warrant. Civil rights require the government to act. For example, the government must enforce legislation prohibiting discrimination in housing or education.
- c. 值得注意的是，公民自由禁止政府采取行动。例如，政府不得限制言论自由或在没有搜查令的情况下搜查您的住所。公民权利则要求政府采取行动。例如，政府必须执行禁止住房或教育领域歧视的法律。

C. SELECTIVE INCORPORATION

C. 选择性掺入

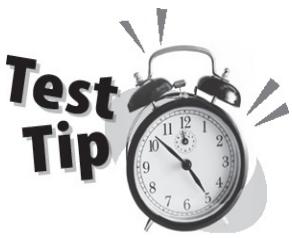
1. *Due process* is the legal principle requiring that the government follow standardized rules and procedures and respect the rights of all persons.
 - 1. 正当程序是一项法律原则，要求政府遵循标准化的规则和程序，并尊重所有人的权利。
2. *Selective incorporation* is the name for the legal doctrine by which the Supreme Court has interpreted most individual liberties stated in the Bill of Rights to protect citizens against state actions using the Due Process Clause of the Fourteenth Amendment. (Note that the Due Process Clause of the Fifth Amendment guarantees due process on the part of the federal government.)
 - 2. “选择性适用” 是最高法院用来解释《权利法案》中大多数个人自由的法律原则，旨在利用第十四修正案的正当程序条款保护公民免受州政府行为的侵害。（需要注意的是，第五修正案的正当程序条款保障联邦政府的正当程序。）



The Bill of Rights included a due process requirement in the Fifth Amendment, which was intended to restrain the federal government. State governments, however, were not held to this standard. Following the Civil War, the Fourteenth Amendment was enacted to protect individuals against state government due process infringements. Be sure to understand the difference between these clauses. Questions on court cases about due process will almost always relate to the Due Process Clause of the Fourteenth Amendment.

《权利法案》第五修正案包含了正当程序的要求，旨在限制联邦政府的权力。然而，州政府并不受此标准的约束。内战结束后，第十四修正案颁布，以保护个人免受州政府正当程序侵犯。务必理解这些条款之间的区别。有关正当程序的法庭案件问题几乎都与第十四修正案的正当程序条款相关。

3. The Bill of Rights was adopted as a means of preventing the federal government from interfering with personal liberties. Later Supreme Court decisions reinforced the idea that the Bill of Rights did not place restrictions on the actions of state governments. States' actions frequently did not comply with guarantees of individual freedoms made in the federal Constitution.
3. 《权利法案》的制定旨在防止联邦政府干涉个人自由。后来的最高法院判决强化了这样一种观点，即《权利法案》并未对州政府的行为施加限制。各州的行为常常与联邦宪法中对个人自由的保障相悖。
4. Following the Civil War, Congress proposed and the states ratified the Fourteenth Amendment, which made several guarantees to United States citizens, including Due Process and Equal Protection.
4. 内战结束后，国会提出并由各州批准了第十四修正案，该修正案对美国公民作出了多项保证，包括正当程序和平等保护。
5. The Due Process Clause of the Fourteenth Amendment has come to be interpreted as guaranteeing that most state actions are restricted by the Bill of Rights to the same extent as federal actions.
5. 第十四修正案的正当程序条款已被解释为保证大多数州的行为与联邦行为一样受到权利法案的限制。
6. The application of the Bill of Rights to the states did not happen in a single case, but piecemeal, one right at a time (selectively).
6. 将权利法案应用于各州并不是一次性完成的，而是逐步进行的，一次只应用一项权利（有选择地）。
7. In *Gitlow v. New York* (1925), the Court formally extended the First Amendment's free speech protection to the states, ruling that the Fourteenth Amendment's Due Process Clause restricted state governments as well as the federal government.
7. 在吉特洛诉纽约州案（1925年）中，法院正式将第一修正案的言论自由保护扩展到各州，裁定第十四修正案的正当程序条款限制了州政府以及联邦政府。
8. Following *Gitlow*, the Court went on, over the next several decades, to apply most of the Bill of Rights to the states through selective incorporation. Many of the cases in this unit are incorporation cases.
8. 继吉特洛案之后，在接下来的几十年里，最高法院通过选择性适用的方式，将《权利法案》的大部分内容适用于各州。本单元中的许多案例都属于适用案例。
9. The term *selective incorporation* refers to the process of applying the Bill of Rights piecemeal (one at a time) to the states, rather than applying these rights completely to the states all at once. The term *total incorporation* refers to the idea that *all* of the protections of the Bill of Rights apply to the states, but this doctrine has never been accepted by the Court and only appears in dissenting opinions.
9. “选择性适用”指的是将《权利法案》逐条（一次一条）适用于各州，而不是一次性地将所有权利全部适用于各州。“全面适用”指的是《权利法案》的所有保护条款都适用于各州，但这一原则从未被最高法院接受，仅出现在反对意见中。



It is important for you to be able to explain how the Supreme Court has used selective incorporation to extend the civil liberties in the Bill of Rights to apply to state and local government through the Due Process Clause of the Fourteenth Amendment. While many of the civil liberties in the Bill of Rights have been incorporated, some still do not apply to the states.

你必须能够解释最高法院如何运用选择性适用原则，通过第十四修正案的正当程序条款，将《权利法案》中的公民自由扩展至州和地方政府。虽然《权利法案》中的许多公民自由已被纳入州法律，但仍有一些不适用于各州。

Selective Incorporation 选择性掺入

Incorporated Rights 已纳入的权利	
First Amendment 第一修正案 <ul style="list-style-type: none"> – Establishment Clause ——政教分离条款 – Free Exercise Clause 自由行使条款 – Free speech 言论自由 – Press freedom 新闻自由 – Right to Assemble 集会权 – Right to Petition 请愿权 	Fifth Amendment 第五修正案 <ul style="list-style-type: none"> – Right against double jeopardy ——反对双重危险的权利 – Right against self-incrimination ——反对自证其罪的权利 – Right to compensation for property taken by the government (<i>eminent domain</i>) 政府征用财产后获得补偿的权利 (征用权)
Second Amendment 第二修正案 <ul style="list-style-type: none"> – Right to keep and bear arms 持有和携带武器的权利 	Sixth Amendment 第六修正案 <ul style="list-style-type: none"> – Right to a speedy and public trial 获得迅速公开审判的权利 – Right to jury trial 陪审团审判权 – Right to confront witnesses 与证人对质的权利 – Right to compel witnesses to testify ——强制证人作证的权利 – Right to counsel (an attorney) 获得律师协助的权利
Fourth Amendment 第四修正案 <ul style="list-style-type: none"> – Freedom from unreasonable searches and seizures 免受无理搜查和扣押的权利 – Warrant requirement – 授权要求 	Eighth Amendment 第八修正案 <ul style="list-style-type: none"> – Right against cruel and unusual punishment ——反对残酷和非常规惩罚的权利 – Right against excessive fines ——反对过度罚款的权利
Rights Not Yet Incorporated 尚未纳入法典的权利	
Third Amendment 第三修正案 <ul style="list-style-type: none"> – Right against quartering of troops in homes ——反对在民宅中驻扎军队 	Seventh Amendment 第七修正案 <ul style="list-style-type: none"> – Right to jury trial in civil cases 民事案件中的陪审团审判权
Fifth Amendment 第五修正案 <ul style="list-style-type: none"> – Right to indictment by grand jury 获得大陪审团起诉的权利 	Eighth Amendment 第八修正案 <ul style="list-style-type: none"> – Right against excessive bail. ——反对过高保释金的权利。



The AP® exam may ask you to differentiate between the issues of due process and equal protection. According to the Fourteenth Amendment, a state may not “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

AP®考试可能会要求你区分正当程序和平等保护这两个问题。根据美国宪法第十四修正案，一个州不得“未经正当法律程序剥夺任何人的生命、自由或财产；也不得拒绝在其管辖范围内任何人享有法律的平等保护”。

- *The Due Process Clause of the Fourteenth Amendment requires that state governments may not act arbitrarily, but must follow fair and standardized procedures, and respect individual rights. This is the basis for the selective incorporation doctrine; it is used to protect civil liberties.*
- 第十四修正案的正当程序条款要求州政府不得任意行事，而必须遵循公平、标准化的程序，并尊重个人权利。这是选择性适用原则的基础；该原则旨在保护公民自由。
- *The Equal Protection Clause of the Fourteenth Amendment requires that the law protect all people equally, and is the basis for the Brown v. Board of Education and subsequent civil rights rulings.*
- 第十四修正案的平等保护条款要求法律平等地保护所有人，这是布朗诉教育委员会案及后续民权裁决的基础。

D. OTHER INDIVIDUAL RIGHTS IN THE CONSTITUTION

D. 宪法中的其他个人权利

1. The Framers were well aware of the danger of government interference in individual rights, and did include specific protections in the body of the Constitution. Article I prohibits the use of ex post facto laws and bills of attainder, and protects the right of habeas corpus.
1. 制宪者们深知政府干预个人权利的危险，因此在宪法正文中纳入了具体的保护措施。第一条禁止使用溯及既往的法律和剥夺公民权利的法案，并保护人身保护令的权利。
2. *Ex post facto* (Latin for “after the fact”) laws are laws passed by Congress making conduct criminal after it has taken place. Individuals cannot be charged with crimes that did not exist in law at the time the actions were committed.
2. 事后法（拉丁语为“*ex post facto*”，意为“事后”）是指国会在行为发生后通过的法律，将某种行为定为犯罪。个人不能因行为发生时法律中不存在的罪行而被起诉。
3. Bills of attainder are laws passed to declare a person or group guilty of a crime and impose punishment. People may not be declared guilty of crimes by legislative acts.
3. 剥夺公民权利法案是指通过法律宣布个人或团体犯有罪行并施加惩罚。立法行为本身并不构成犯罪。
4. A *writ of habeas corpus* (Latin for “produce the body”) protects the right of a detained person to be brought before a judge and defend himself or herself. A writ of *habeas corpus* is issued by a judge to bring a prisoner to court for a hearing.
4. 人身保护令（拉丁语意为“出示人身”）保障被拘留者被带到法官面前为自己辩护的权利。人身保护令由法官签发，用于将囚犯带到法庭接受审理。

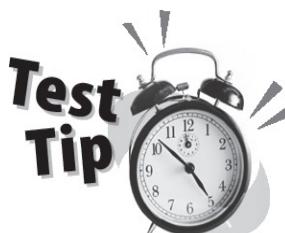
THE FIRST AMENDMENT 第一修正案

II. 二、

A. RIGHTS PROTECTED

A. 受保护的权利

1. Amendment I: "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."
1. 第一修正案：“国会不得制定关于下列事项的法律：确立国教或禁止宗教自由；剥夺言论自由或出版自由；或剥夺人民和平集会和向政府请愿伸冤的权利。”
2. The First Amendment protects five specific rights:
2. 第一修正案保护五项具体权利：
 - a. **Freedom of religion** is addressed in two parts: a prohibition of government support for or affiliation (establishment clause) with religion and a guarantee of protection of religious practice (free exercise clause).
 - a. **宗教自由**分为两部分：禁止政府支持或隶属于宗教（政教分离条款）和保障宗教活动自由（宗教自由行使条款）。
 - b. **Freedom of speech** is broadly understood to include a wide range of expression, including symbolic speech.
 - b. **言论自由**被广泛理解为包括广泛的表达方式，包括象征性言论。
 - c. **Freedom of the press** is preserved and has been broadly applied, guaranteeing extensive protections to the press.
 - c. **新闻自由**得到维护和广泛应用，保障了新闻界的广泛保护。
 - d. **Freedom to assemble** guarantees the right of people to meet and gather in groups to peacefully protest government policies.
 - d. **集会自由**保障人民有权集会和聚集，以和平方式抗议政府政策。
 - e. **Freedom to petition** the government for a redress of grievances allows individuals to make complaints to or seek the assistance of their government without threat of punishment.
 - e. **向政府请愿以寻求纠正冤屈的自由**允许个人向政府提出申诉或寻求帮助，而不受惩罚的威胁。



The First Amendment's protection of religious freedom includes two distinct clauses: the Establishment Clause and the Free Exercise Clause. You may be required to distinguish

between these clauses.

美国宪法第一修正案对宗教自由的保护包含两个不同的条款：政教分离条款和宗教自由行使条款。你可能需要区分这两个条款。

B. ESTABLISHMENT CLAUSE

B. 设立条款

1. The Establishment Clause states: "Congress shall make no law respecting an establishment of religion." The term *separation of church and state* means that the government may not adopt or support an official religion. It has been broadly interpreted by the Court to mean that the government may not support or associate with any religion except in the most limited and necessary ways.
 1. "政教分离" 条款规定：“国会不得制定任何有关设立国教的法律。”政教分离是指政府不得采纳或支持任何官方宗教。法院对此的解释较为宽泛，认为政府除在最有限且必要的范围内外，不得支持或与任何宗教有任何关联。
2. ***Engel v. Vitale* (1962)**
 2. ***Engel 诉 Vitale* 案 (1962 年)**
 - a. **Facts of the Case:** A public school district adopted a policy of leading a daily prayer. The prayer was non-denominational (not connected with any particular religion or denomination), and non-compulsory (no student was required to participate in the prayer).
 - a. **案件事实：**某公立学区采取了一项政策，即每天带领学生进行祈祷。该祈祷不属于任何教派（与任何特定宗教或教派无关），且非强制性（不要求任何学生参加祈祷）。
 - b. **Constitutional Issue(s):** Does the classroom reading of a nondenominational, non-compulsory prayer in a public school violate the Establishment Clause of the First Amendment?
 - b. **宪法问题：**在公立学校课堂上朗读非教派、非强制性的祈祷文是否违反了第一修正案的政教分离条款？
 - c. **Holding(s):** Yes, the Establishment Clause prohibits the classroom reading of a non-denominational, non-compulsory prayer in public school.
 - c. **裁决：**是的，政教分离条款禁止在公立学校课堂上朗读非教派、非强制性的祈祷文。
 - d. **Reasoning:** The Establishment Clause requires the separation of church and state. It does not allow the government to encourage or promote religion, even if students are not required to participate. The fact that the prayer was nondenominational was not significant, as it still promoted a particular type of religious thought. The Establishment Clause prohibits the government from endorsing or promoting religious activities.
 - d. **理由：**政教分离条款要求政教分离。它不允许政府鼓励或推广宗教，即使学生并非必须参与。祈祷活动不属于任何教派这一事实并不重要，因为它仍然宣扬了一种特定的宗教思想。政教分离条款禁止政府认可或推广宗教活动。
 3. Not all interpretations of the Establishment Clause have been quite so clear-cut.
 3. 并非所有对政教分离条款的解释都如此明确。

- a. In *Lemon v. Kurtzman* (1970), the Court held that some forms of taxpayer support for private religious schools might be permissible, so long as (1) it is done for a secular (nonreligious) legislative purpose; (2) it does not advance or inhibit religion; and (3) it does not create excessive government involvement with religion. These three requirements are referred to as the Lemon test.
 - a. 在莱蒙诉库兹曼案（1970年）中，最高法院裁定，只要满足以下条件，某些形式的纳税人资助私立宗教学校可能是允许的：（1）其目的是为了世俗（非宗教）立法；（2）不促进或抑制宗教；（3）不造成政府过度干预宗教。这三项要求被称为“莱蒙检验标准”。
 - b. Schools may offer moments of silence, during which students may pray, but prayer may not be encouraged.
 - b. 学校可以提供默哀时间，学生可以在段时间内祈祷，但不能鼓励祈祷。

C. FREE EXERCISE CLAUSE

C. 自由行使条款

1. The Free Exercise Clause means that the government cannot interfere with citizens practicing their chosen religions. Citizens are allowed to pray and worship as they choose and to engage in religious rituals and practices without restriction by the government. The free exercise of religion, however, may be limited when the government has a legitimate interest in restricting it.
 1. 宗教自由条款意味着政府不得干涉公民信奉其选择的宗教。公民可以按照自己的意愿祈祷和敬拜，并参与宗教仪式和活动，不受政府限制。然而，当政府有正当理由限制宗教自由时，这种自由行使宗教信仰的权利可能会受到限制。

2. *Wisconsin v. Yoder* (1972)

2. 威斯康星州诉约德案（1972年）

- a. **Facts of the Case:** Several Amish families challenged a Wisconsin state law requiring that children attend school until the age of 16. The Amish argued that education beyond the early teen years was a violation of their religious beliefs. Their right to religious practice required that children stop receiving formal education and learn the skills and values they would need within their community.
- a. **案件事实：**威斯康星州一项法律规定儿童必须上学至 16 岁，多个阿米什家庭对此提出质疑。阿米什人认为，青少年早期之后的教育违背了他们的宗教信仰。他们认为，为了维护宗教信仰，儿童必须停止接受正规教育，转而学习在社区中所需的技能和价值观。
- b. **Constitutional Issue(s):** Do laws that require school attendance violate the Free Exercise Clause of the First Amendment?
 - b. **宪法问题：**要求学生上学的法律是否违反了第一修正案的自由行使条款？
- c. **Holding(s):** Laws that require school attendance violate the Free Exercise Clause where the state cannot show an interest of “the highest order,” which could not be achieved in another way.
- c. **判决：**如果州政府不能证明其利益具有“最高层次”且无法通过其他方式实现，则要求学生上学的法律违反了自由行使条款。
- d. **Reasoning:** The Court balanced the interest of the state in ensuring that all citizens be reasonably well-educated against the interest of the Amish to freely practice

their religion. Although the state has a legitimate interest in educated citizens, the Court concluded that the state's interest was outweighed by the need of the Amish to learn the skills and values to prepare them for life in their community. The fact that Amish children would receive two fewer years of education would not cause harm to society.

- d. **理由**：法院权衡了州政府确保所有公民接受良好教育的利益与阿米什人自由信奉其宗教的利益。尽管州政府对公民受教育程度有正当的利益，但法院认为，阿米什人学习技能和价值观以适应社区生活的需求超过了州政府的利益。阿米什儿童少接受两年教育并不会给社会造成损害。

3. Other interpretations of the Free Exercise Clause.

3. 对自由行使条款的其他解释。

- a. In *Reynolds v. United States* (1878), the Court upheld Reynolds' conviction for bigamy (the crime of having multiple spouses/ polygamy), even though his religion required it. The Court ruled that the Free Exercise Clause protects beliefs, not necessarily conduct. Conduct may be restricted when it interferes with the rights of others or society.

a. 在雷诺兹诉美国案（1878年）中，法院维持了对雷诺兹重婚罪（即拥有多个配偶/一夫多妻制）的定罪，即使他的宗教信仰要求他这样做。法院裁定，自由行使条款保护的是信仰，而非行为。当某种行为侵犯他人或社会的权利时，该行为可能会受到限制。

- b. Claims made under the Free Exercise Clause must be based on legitimate practices of a recognized religion. People can't invent religious reasons to justify otherwise unlawful conduct.

b. 根据宗教自由条款提出的主张必须基于公认宗教的合法习俗。人们不能捏造宗教理由来为其他非法行为辩护。

- c. Laws that are intended to interfere with religious practice are strictly scrutinized to ensure that restrictions are narrowly drawn and address a compelling government interest. Laws that are not intended to interfere with religious practice, but which do so inadvertently, are generally acceptable.

c. 旨在干涉宗教活动的法律会受到严格审查，以确保限制范围狭窄且符合政府的迫切利益。并非旨在干涉宗教活动但无意中造成干涉的法律，通常是可以接受的。

► For example, while Native Americans are allowed to use peyote in their religious ceremonies, drug use may still be used to deny unemployment benefits, according to *Employment Division v. Smith* (1990).

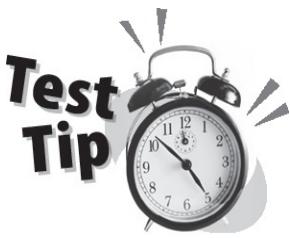
例如，根据就业部门诉史密斯案（1990年），虽然允许美洲原住民在宗教仪式中使用佩奥特仙人掌，但吸毒仍可能被用来拒绝发放失业救济金。

► Similarly, laws compelling vaccinations have been upheld against people who claim that their religion forbids vaccinations.

► 同样，强制接种疫苗的法律也得到了维护，反对那些声称自己的宗教禁止接种疫苗的人。

- d. Religious practice may be restricted where it causes harm to others.

d. 如果宗教活动对他人造成伤害，则可以限制宗教活动。



It may be helpful to understand how courts evaluate claims involving civil liberties, as well as those involving civil rights. Under the doctrine of strict scrutiny, government actions that infringe on a fundamental liberty or affect a “suspect classification” of people—one based on a protected status, such as race or gender—must meet three tests.

了解法院如何评估涉及公民自由和公民权利的诉讼请求可能有所帮助。根据严格审查原则，侵犯基本自由或影响“可疑类别”（例如基于种族或性别等受保护身份的类别）人群的政府行为必须符合三项标准。

- *First, the government action must be based on a compelling government interest.*
- 首先，政府行为必须基于令人信服的政府利益。
- *Second, the government action must be narrowly constructed to achieve that interest.*
- 第二，政府行为必须经过精心设计，以实现该利益。
- *Finally, the government action must be the least restrictive method by which to protect the government’s interest.*
- 最后，政府采取的行动必须是保护政府利益的限制性最小的方法。

A law that does not meet all three requirements will be found to be unconstitutional.

不符合这三项要求的法律将被认定为违宪。

D. FREEDOM OF SPEECH

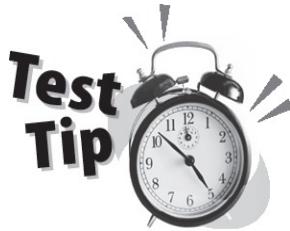
D. 言论自由

1. *Schenck v. United States (1919)*

1. 申克诉美国案（1919年）

- a. **Facts of the Case:** Charles Schenck and Elizabeth Baer produced and distributed more than 15,000 fliers urging draft-age men to refuse conscription during World War I. Both were convicted of violating the Espionage Act of 1917. The defendants argued that their activities were protected by the First Amendment’s free speech guarantee.
- a. **案件事实：**查尔斯·申克和伊丽莎白·贝尔制作并散发了超过 15000 份传单，敦促适龄征兵男子在第一次世界大战期间拒绝服兵役。两人都被判违反 1917 年《间谍法》。被告辩称，他们的行为受美国宪法第一修正案言论自由保障的保护。
- b. **Constitutional Issue(s):** Is the publication and distribution of literature urging resistance to a military draft protected speech under the First Amendment?
- b. **宪法问题：**出版和传播呼吁抵制兵役的文献是否受第一修正案保护的言论自由？
- c. **Holding(s):** The First Amendment does not protect speech promoting resistance to the draft.

- c. **判决：**第一修正案不保护宣扬抵制征兵的言论。
- d. **Reasoning:** Speech may be restricted when it poses a clear and present danger that it will cause substantial harm that the government has a right to prevent. The Court noted that the defendants' activities had been interpreted in the context of a war. During peacetime, their activities might be found to be protected.
- d. **理由：**当言论构成明显且迫在眉睫的危险，可能造成政府有权阻止的重大损害时，言论可以受到限制。法院指出，被告的行为是在战争背景下进行解读的。在和平时期，他们的行为可能被认定为受到保护。



The Schenck opinion is notable for creating the clear and present danger test and has been widely criticized for its potential to have a chilling effect on free speech. The opinion is also famous for the analogy, drawn by Supreme Court Justice Oliver Wendell Holmes, Jr., who wrote that the protection of free speech did not extend to a man "falsely shouting fire in a theatre." Such speech was unprotected, he wrote, because it would create a dangerous situation (panic) likely to result in harm to people. Today's modern analogy might be the prohibition against falsely yelling "bomb" on an airplane. The Court's decision in Brandenburg v. Ohio (1969) limited Schenck and created greater protections for political speech.

申克案的判决意见因确立了“明显且即刻的危险”检验标准而备受瞩目，但也因其可能对言论自由产生寒蝉效应而受到广泛批评。该判决意见还因最高法院大法官小奥利弗·温德尔·霍姆斯提出的类比而闻名。霍姆斯大法官写道，言论自由的保护并不适用于“在剧院里谎称着火”的人。他认为，这种言论不受保护，因为它会造成危险局面（恐慌），很可能对他人造成伤害。如今，我们可以用禁止在飞机上谎称“炸弹”来类比申克案。最高法院在勃兰登堡诉俄亥俄州案（1969年）中的判决限制了申克案的适用范围，并为政治言论提供了更强有力的保护。

2. ***Tinker v. Des Moines Independent Community School District (1969)***

2. ***Tinker 诉得梅因独立社区学区案（1969年）***

- a. **Facts of the Case:** Several students wore black armbands to school to protest the Vietnam War. The students did not make any verbal statements about the war or cause any disruption. After the students were sent home for wearing the armbands, their parents filed suit, claiming a violation of the students' free speech rights.
- a. **案件事实：**几名学生佩戴黑色臂章到校，以抗议越南战争。这些学生没有就战争发表任何言论，也没有扰乱课堂秩序。学生因佩戴臂章被勒令回家后，他们的家长提起诉讼，声称学校侵犯了学生的言论自由权。
- b. **Constitutional Issue(s):**
- b. **宪法问题：**
- Do freedom of speech protections apply to students in public schools?
 - 言论自由保护是否适用于公立学校的学生？

- Is the wearing of black armbands considered “speech” within the meaning of the First Amendment?
- 佩戴黑臂章是否属于第一修正案意义上的“言论”？

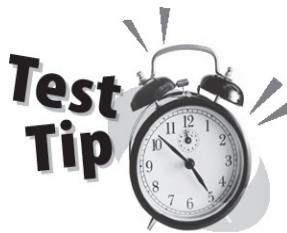
c. **Holding(s):**

c. **持股：**

- The First Amendment protects student speech.
- 美国宪法第一修正案保护学生的言论自由。
- Wearing armbands is a form of speech.
- 佩戴臂章是一种表达方式。

d. **Reasoning:** Free speech rights apply to public schools, and students have a right to free expression, so long as it does not substantially interfere with school discipline. The armbands were symbolic speech, protected by the First Amendment.

d. **理由：**言论自由权适用于公立学校，学生享有言论自由权，只要这种自由不实质性地干扰学校纪律。臂章属于象征性言论，受美国宪法第一修正案保护。



The Tinker case recognized that wearing black armbands in protest was a form of speech. Symbolic speech is expression that is intended to convey a particular message to its viewers and is likely to be understood. Another important symbolic speech case is Texas v. Johnson (1989), in which the Court ruled that burning the United States flag in protest of the government is protected speech.

廷克案认定，佩戴黑臂章进行抗议是一种言论形式。象征性言论是指旨在向受众传达特定信息且易于理解的表达方式。另一个重要的象征性言论案例是德克萨斯州诉约翰逊案（1989年），在该案中，法院裁定焚烧美国国旗以抗议政府属于受保护的言论。

3. There are many limitations on the First Amendment's free speech guarantee.

3. 第一修正案对言论自由的保障存在诸多限制。

- a. In *West Virginia State Board of Education v. Barnette* (1943), the Court found that students have a right to refuse to salute the flag and to refuse to participate in the Pledge of Allegiance. Although the refusal of the students in this case was based on religious beliefs, the Court found the right to refuse to salute or pledge to be based on free speech grounds, and applicable regardless of religious beliefs.
 - a. 在西弗吉尼亚州教育委员会诉巴内特案（1943年）中，法院裁定学生有权拒绝向国旗敬礼和拒绝参与效忠宣誓。尽管本案中学生的拒绝是基于宗教信仰，但法院认为拒绝敬礼或宣誓的权利属于言论自由的范畴，且与宗教信仰无关。
 - b. The right of schools to limit student speech was upheld in *Morse v. Frederick* (2007). As the Olympic torch was carried through their city, several students held up a sign at the school-sponsored event that read “BONG HITS 4 JESUS” and were

suspended for promoting illegal drug use. The Court held that schools may restrict student speech that substantially interferes with the school's educational mission.

- b. 在莫尔斯诉弗雷德里克案（2007年）中，学校限制学生言论的权利得到了维护。在奥运火炬传递期间，几名学生在学校组织的活动中举起写有“为耶稣吸大麻”的标语，并因宣扬非法吸毒而被停学。法院裁定，如果学生的言论严重干扰了学校的教育使命，学校可以限制这些言论。
- c. Defamation—falsely injuring the reputation of another—is not protected under the First Amendment freedom of speech. Defamation can take the form of libel or slander.
 - *Libel* is harm caused to the reputation of another in written form.
 - 诽谤是指以书面形式损害他人名誉的行为。
 - *Slander* is verbally harming the reputation of another.
 - 诽谤是指用言语损害他人名誉。
 - Public officials have less protection than private citizens concerning defamation. To prove libel or slander against himself or herself, a public official must prove that false claims were made maliciously (with evil intent), rather than simply prove that they were false. *New York Times v. Sullivan* (1964)
 - 公职人员在诽谤方面受到的保护比普通公民少。要证明自己遭受诽谤或诋毁，公职人员必须证明虚假陈述是出于恶意（怀有不良意图），而不仅仅是证明陈述本身是虚假的。
《纽约时报诉沙利文案》（1964年）
- d. Obscenity (pornography) may be restricted. Historically, the problem for the Court has hinged on the definition of obscenity. What makes a thing “obscene”? Justice Potter Stewart noted this difficulty when he wrote that obscenity might be impossible to define, but “I know it when I see it.” In *Miller v. California* (1973), the Court created a three-part test to determine whether material is obscene (the obscenity test). In order to determine that the work in question is obscene, it must be determined that it meets all three criteria.
- d. 淫秽作品（色情作品）可能受到限制。历史上，法院面临的问题在于如何定义淫秽作品。究竟是什么使一件东西“淫秽”？波特·斯图尔特大法官曾指出这一难题，他写道，淫秽作品或许无法定义，但“我一眼就能认出来”。在米勒诉加利福尼亚州案（1973年）中，法院制定了一项三步检验标准来判断作品是否淫秽（淫秽检验标准）。要认定某作品淫秽，必须确定它符合所有三项标准。
 - Would an average person, applying contemporary community standards, find that the work appeals to the prurient (generating lustful thoughts) interest?
 - 一个普通人，按照当代社会标准来看，会认为这部作品迎合了淫秽（产生色情想法）的兴趣吗？
 - Does the work depict or describe sexual conduct?
 - 该作品是否描绘或描述了性行为？
 - Does the work lack serious literary, artistic, political, or scientific value?
 - 该作品是否缺乏严肃的文学、艺术、政治或科学价值？

Note: Child pornography has no constitutional protection.

注意：儿童色情制品不受宪法保护。

- e. Attempts have been made to regulate hate speech, speech intended to offend or threaten a person or group on the basis of race, religion, sex, or another characteristic. The Court's rulings on hate speech laws have been mixed.
 - e. 人们曾尝试规范仇恨言论，即基于种族、宗教、性别或其他特征而意图冒犯或威胁个人或群体的言论。法院对仇恨言论法的裁决褒贬不一。
 - Ordinances (local laws) that criminalize certain forms of hate speech, such as swastikas or cross-burnings have been found to be unconstitutional because they criminalize speech based on content. *R.A.V. v. City of St. Paul* (1992)
 - 将某些形式的仇恨言论（例如纳粹标志或焚烧十字架）定为犯罪的地方性法规已被认定违宪，因为它们基于内容将言论定为犯罪。参见 *RAV 诉圣保罗市案* (1992)。
 - Penalty enhancement laws, which create increased penalties for ordinary crimes motivated by hate, have been upheld as constitutional. *Wisconsin v. Mitchell* (1993)
 - 加重刑罚的法律，即对出于仇恨动机的普通犯罪加重处罚，已被裁定为合宪。威斯康星州诉米切尔案（1993 年）
 - Many colleges and universities have rules against hate speech on campus. The Supreme Court has not ruled on this type of speech restriction.
- f. Although attempts have been made to regulate Internet speech, the Court has found that online speech is entitled to full First Amendment protection. The Court struck down the Communications Decency Act, a law which attempted to regulate certain types of Internet speech, because it was too vague in its definition of obscenity. *Reno v. ACLU* (1997)
 - f. 尽管曾有人试图规范网络言论，但法院认定网络言论享有宪法第一修正案的全面保护。法院驳回了《通信规范法》，该法试图规范某些类型的网络言论，因为其对淫秽的定义过于模糊。参见 *雷诺诉美国公民自由联盟案* (1997)。

E. FREEDOM OF THE PRESS

E. 新闻自由

1. *New York Times Co. v. United States (1971)*

1. 《纽约时报》诉美国案（1971 年）

- a. **Facts of the Case:** The *New York Times* and the *Washington Post* newspapers obtained extensive content of a classified government report (the Pentagon Papers) detailing U.S. involvement in the Vietnam War. The *Times* began publishing a series of articles based on the classified report. The government obtained a restraining order from a federal district court requiring the *Times* to stop publishing the classified information. The case focused on the issue of prior restraint, the ability of

the government to censor information before it is published.

- a. **案件事实：**《纽约时报》和《华盛顿邮报》获取了大量政府机密报告（五角大楼文件）的内容，该报告详细记录了美国参与越南战争的情况。《纽约时报》开始刊登一系列基于该机密报告的文章。政府随后向联邦地区法院申请了限制令，要求《纽约时报》停止刊登这些机密信息。此案的焦点在于事先审查权问题，即政府在信息发布前对其进行审查的权力。
- b. **Constitutional Issue(s):** May the government prevent the publication of information that may cause harm to the government, the United States, or its people?
- b. **宪法问题：**政府是否可以阻止发布可能对政府、美国或其人民造成伤害的信息？
- c. **Holding(s):** The government is not entitled to prevent newspapers from publishing classified information that may be embarrassing or cause harm to the government.
- c. **判决：**政府无权阻止报纸刊登可能令政府难堪或造成政府损害的机密信息。
- d. **Reasoning:** By a 6–3 vote, the Court held for the newspapers in a *per curiam* opinion (an opinion with no specific author). In the opinion, the Court noted that the party seeking to restrain the press from publishing information has a heavy burden. Each of the nine justices wrote separate opinions regarding the issue. Most of the opinions agreed that the press generally has the right to publish information in its possession, even if it may cause some degree of harm to the government.
- d. **理由：**最高法院以 6 比 3 的投票结果，以全体法官一致同意（*per curiam*）的方式，支持报社的诉求。该意见指出，试图阻止媒体发布信息的一方负有沉重的举证责任。九位大法官各自就此问题撰写了意见。大多数意见都认为，媒体通常有权发布其掌握的信息，即使这些信息可能对政府造成一定程度的损害。

2. Other considerations surrounding freedom of speech.

2. 关于言论自由的其他考虑因素。

- a. Although the Framers included press freedom in the First Amendment as a specific right, freedom of the press is closely related to freedom of speech and has generally been interpreted as such. No case has recognized the press as having rights distinct from free speech.
- a. 虽然宪法制定者将新闻自由作为一项具体权利写入第一修正案，但新闻自由与言论自由密切相关，并且通常被解释为与言论自由密切相关。没有任何案例承认新闻自由拥有独立于言论自由之外的权利。
- b. The government may not restrict publication of information critical of government officials. Officials who are criticized may, however, sue for libel. *Near v. Minnesota* (1931)
- b. 政府不得限制发布批评政府官员的信息。但是，受到批评的官员可以提起诽谤诉讼。参见 *Near 诉 Minnesota* 案(1931)。

III. 三、SECOND AMENDMENT 第二修正案

A. THE RIGHT TO KEEP AND BEAR ARMS

A. 持有和携带武器的权利

1. The Second Amendment reads: "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."
1. 第二修正案规定：“一支训练有素的民兵对于一个自由州的安全是必要的，人民持有和携带武器的权利不得侵犯。”
2. Because the Second Amendment refers to a "well regulated militia," it was historically interpreted as applying to militias—or, as we understand this term in modern times, the National Guard—and not to private citizens.
2. 因为第二修正案指的是“组织良好的民兵”，所以历史上它被解释为适用于民兵——或者，正如我们在现代所理解的，国民警卫队——而不是适用于私人公民。

B. INCORPORATION OF THE SECOND AMENDMENT

B. 第二修正案的纳入

1. It was not until 2008, in *District of Columbia v. Heller*, that the Court held the Second Amendment to grant a right to keep weapons to private citizens generally. Because the District of Columbia is a federal territory and not a state, however, the *Heller* decision was limited to federal law.
1. 直到 2008 年，在“哥伦比亚特区诉海勒案”中，最高法院才裁定第二修正案赋予公民普遍持有武器的权利。然而，由于哥伦比亚特区是联邦领地而非州，因此“海勒案”的判决仅限于联邦法律。
2. *McDonald v. Chicago* (2010)
2. 麦克唐纳诉芝加哥 (2010)
 - a. **Facts of the Case:** A Chicago ordinance banned the ownership of handguns. Otis McDonald, a city resident who lived in a dangerous neighborhood and had been the victim of crime in his home on several occasions, sued the city for violating his right to keep and bear arms.
 - a. **案件事实：**芝加哥一项法令禁止拥有手枪。奥蒂斯·麦克唐纳是芝加哥居民，他住在治安较差的街区，曾多次在家中成为犯罪的受害者。他起诉市政府，指控其侵犯了他持有和携带武器的权利。
 - b. **Constitutional Issue(s):** Does the Second Amendment's guarantee of the right to keep and bear arms apply against infringement by state and local governments?
 - b. **宪法问题：**第二修正案保障的持有和携带武器的权利是否适用于州和地方政府的侵犯？
 - c. **Holding(s):** The Second Amendment guarantees the right to keep and bear arms against infringement by state and local governments.
 - c. **判决：**第二修正案保障公民持有和携带武器的权利不受州和地方政府的侵犯。
 - d. **Reasoning:** The right to keep and bear arms is a fundamental constitutional guarantee, and must, therefore, be incorporated into the Due Process Clause of the Fourteenth Amendment. The right to keep and bear arms has been extended to the

states under the doctrine of selective incorporation.

- d. **理由：**持有和携带武器的权利是一项基本的宪法保障，因此必须纳入第十四修正案的正当程序条款。根据选择性纳入原则，持有和携带武器的权利已扩展至各州。

IV. 四、 RIGHTS OF THE ACCUSED 被告人的权利

A. SPECIFIC RIGHTS GUARANTEED TO THE ACCUSED BY THE CONSTITUTION

A. 宪法保障被告人享有的特定权利

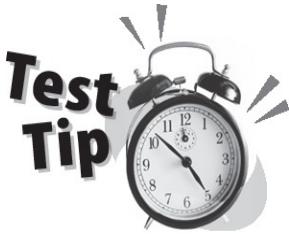
- One important function of the government is to protect citizens from criminals, and to charge and punish those who commit crimes. The Framers recognized, however, that the vast power of the government could be used to harass and punish citizens for political reasons. It was critical to ensure that government must follow the rule of law, and that it was restrained from acting arbitrarily or serving the will of those in power. In order to protect individuals against the awesome power of the government, the Bill of Rights includes several guarantees of specific rights held by those accused or suspected of crimes.
- 政府的一项重要职能是保护公民免受犯罪分子侵害，并对犯罪者提起诉讼并予以惩罚。然而，制宪者们也认识到，政府的巨大权力可能被用于出于政治目的骚扰和惩罚公民。因此，确保政府必须遵守法治，并受到约束，不得任意行事或为当权者的意志服务，这一点至关重要。为了保护个人免受政府强大权力的侵害，《权利法案》包含了多项保障条款，旨在保护被指控或涉嫌犯罪者的特定权利。

The Rights of the Accused

被告人的权利

Fourth Amendment 第四修正案	Fifth Amendment 第五修正案	Sixth Amendment 第六修正案	Eighth Amendment 第八修正案
<ul style="list-style-type: none">- prohibits unreasonable searches and seizures 禁止无理搜查和扣押- requires warrant based on probable cause 需要基于合理理由的搜查令	<ul style="list-style-type: none">- right to grand jury indictment for serious crimes 对严重犯罪行为有权向大陪审团提起公诉- prohibits double jeopardy 禁止双重追究- right against self-incrimination 反对自证其罪的权利- right to due process 正当程序权- prohibits taking of private property by government without reasonable compensation 禁止政府在未给予合理补偿的情况下征用私人财产。	<ul style="list-style-type: none">- right to speedy and public trial ——获得迅速公开审判的权利- right to jury trial ——获得陪审团审判的权利- right to be informed of charges 知情权- right to confront hostile witnesses ——有权与敌对证人对质- right to compel witnesses to testify	<ul style="list-style-type: none">- prohibits excessive bail 禁止过高的保释金- prohibits excessive fines 禁止过度罚款- prohibits cruel and unusual punishment 禁止残酷和非常规惩罚

——强制证人作证的权利
— right to counsel
获得律师协助的权利



The only required case related to the rights of the accused is Gideon v. Wainwright (1963). However, the Miranda and Mapp precedents created important rules that you are required to understand.

唯一与被告权利相关的必读案例是吉迪恩诉温赖特案（1963年）。然而，米兰达警告和马普案的判例确立了一些重要的规则，你必须理解这些规则。

2. **Miranda v. Arizona (1962)**

2. 米兰达诉亚利桑那州案（1962年）

Note: Although the *Miranda* case is not required by the AP® course, it is important that you are familiar with the facts and holdings of this case.

注意：虽然AP®课程不要求学习米兰达案，但熟悉该案的事实和判决结果非常重要。

- a. **Facts of the Case:** Ernesto Miranda was arrested on suspicion of rape and kidnapping, and interrogated for two hours. He confessed to the crime, and his confession was admitted as evidence at trial, where he was convicted. Miranda argued on appeal that he did not know and was not informed that he had a right to remain silent or a right to counsel (an attorney). His confession was, therefore, coerced, and could not be used against him.
- a. **案件事实：**埃内斯托·米兰达因涉嫌强奸和绑架被捕，并接受了两个小时的审讯。他承认了犯罪事实，其供述在审判中被采纳为证据，他最终被判有罪。米兰达在上诉中辩称，他不知道自己有权保持沉默，也未被告知自己有权获得律师帮助。因此，他的供述是被迫作出的，不能作为指控他的证据。
- b. **Constitutional Issue(s):** Must the government guarantee that suspects in custody and subject to interrogation are aware of their constitutional rights?
- b. **宪法问题：**政府是否必须保证被拘留和接受讯问的嫌疑人了解其宪法权利？
- c. **Holding(s):** The government must ensure that suspects in custody are aware of their rights before questioning in what has become known as the *Miranda rule*.
- c. **规定：**政府必须确保被拘留的嫌疑人在接受讯问前了解自己的权利，这被称为米兰达规则。
- d. **Reasoning:** The Court found that, when an individual is in police custody, there is a significant danger that the right against self-incrimination may be violated. Based on the Fifth and Sixth Amendments, police must ensure that information is given voluntarily. Specifically, the government must ensure that a suspect is aware that he

or she has the following rights:

- d. **理由**：法院认为，当个人被警方拘留时，其免于自证其罪的权利存在被侵犯的重大风险。根据第五修正案和第六修正案，警方必须确保信息系自愿提供。具体而言，政府必须确保嫌疑人知晓其享有以下权利：
- the right to remain silent
 - 保持沉默的权利
 - anything said by the suspect may be used against him or her in a court of law
 - 嫌疑人所说的任何话都可能在法庭上被用作对其不利的证据。
 - the right to assistance of an attorney
 - 获得律师协助的权利
 - if the suspect cannot afford an attorney, one will be appointed to assist him or her by the court
 - 如果嫌疑人无力聘请律师，法院将为其指定一名律师协助其辩护。

3. The Miranda requirement is based on the custodial nature of the situation. Whether a suspect is “in custody” is dependent on circumstances. If not, the warning is not required.
3. 米兰达警告的要求取决于案件的羁押性质。嫌疑人是否“被羁押”取决于具体情况。如果不是，则无需进行警告。
4. The Court has recognized a public safety exception to the Miranda requirement. Police officers may question suspects in custody if there is a serious threat to public safety and the need for information outweighs the need for the Miranda warning. For example, police may interrogate a suspect without a Miranda warning in the case of an armed fugitive or about the location of a loaded weapon in a public place.
4. 法院已确认米兰达警告存在公共安全例外。如果公共安全受到严重威胁，且获取信息的必要性超过米兰达警告的必要性，则警官可以讯问被拘留的嫌疑人。例如，在涉及持械逃犯或公共场所藏有已上膛武器的情况下，警方可以不经米兰达警告而讯问嫌疑人。

B. RIGHT TO COUNSEL

B. 获得律师协助的权利

1. *Gideon v. Wainwright (1963)*

1. 吉迪恩诉温赖特案（1963年）

- a. **Facts of the Case:** Clarence Earl Gideon was charged with stealing a bottle of wine and money from a cash register in a pool hall in Panama City, Florida. He was too poor to hire an attorney, but requested that an attorney be appointed to represent him. Under Florida law, defendants were not entitled to have an attorney paid for by the state unless charged with a capital (death penalty) offense. Gideon was convicted of robbery and appealed his conviction on the basis that he was denied counsel in violation of the Sixth Amendment right “to have the assistance of

counsel for his defense."

- a. **案情：** 克拉伦斯·厄尔·吉迪恩被控在佛罗里达州巴拿马城一家台球厅的收银机里偷窃一瓶葡萄酒和一些现金。他穷得请不起律师，但请求法院为其指派律师。根据佛罗里达州法律，除非被告被控犯有死刑罪，否则无权由州政府支付律师费用。吉迪恩被判抢劫罪，并以被剥夺辩护权为由提起上诉，认为其“获得辩护律师协助”的权利违反了美国宪法第六修正案。

b. **Constitutional Issue(s):**

b. **宪法问题：**

- Does the Sixth Amendment right to counsel (lawyer) apply in all cases, even those not involving severe penalties?
- 第六修正案赋予的获得律师帮助的权利是否适用于所有案件，即使是不涉及严重处罚的案件？
- Does the Sixth Amendment right to counsel apply to the states?
- 第六修正案规定的获得律师协助的权利是否适用于各州？

c. **Holding(s):**

c. **持股：**

- The Sixth Amendment right to counsel applies in all felony cases.
- 第六修正案赋予的获得律师协助的权利适用于所有重罪案件。
- The Sixth Amendment applies to the states under the Due Process Clause of the Fourteenth Amendment.
- 根据第十四修正案的正当程序条款，第六修正案适用于各州。

- d. **Reasoning:** The right to counsel is a fundamental right, essential to a fair trial and to due process of law. All defendants in felony cases are entitled to an attorney, regardless of ability to pay. States must provide appointed (government funded) attorneys for indigent (poor) defendants. This right had previously existed under federal law and was applied to the states in *Gideon*.

- d. **理由：** 获得律师协助的权利是一项基本权利，是公平审判和正当法律程序的必要条件。所有重罪案件的被告人都有权获得律师协助，无论其支付能力如何。各州必须为贫困被告人提供指定的（政府资助的）律师。这项权利此前已存在于联邦法律中，并在吉迪恩案中适用于各州。

2. Additional requirements relating to the right to counsel.

2. 与获得律师帮助的权利相关的其他要求。

- a. The right to counsel has been extended to include misdemeanor (less serious crime) cases. *Argersinger v. Hamlin* (1972)
 - a. 获得律师协助的权利已扩展至轻罪（较轻的犯罪）案件。阿格辛格诉哈姆林案（1972年）
 - b. The right to counsel applies at any critical stage of a critical proceeding, such as questioning by police, in addition to trial.
 - b. 除了审判之外，在关键诉讼的任何关键阶段，例如警察讯问，都适用获得律师协助的权利。

- c. Counsel must be effective. That is, a defendant's attorney must be competent and helpful to their legal situation.
- c. 律师必须有效。也就是说，被告的律师必须称职，并且能够帮助被告应对法律困境。
- d. A defendant may waive (give up) his or her right to counsel, but only if he or she does so voluntarily and with a full understanding of his or her rights.
- d. 被告可以放弃（放弃）获得律师的权利，但前提是她/他必须自愿放弃，并且完全了解自己的权利。

C. SEARCH AND SEIZURE

C. 搜查和扣押

1. The Fourth Amendment reads: "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."
1. 第四修正案规定：“人民的人身、住宅、文件和财产不受无理搜查和扣押的权利不得侵犯；除有合理理由，并经宣誓或代誓宣言支持，且详细说明要搜查的地点和要扣押的人或物外，不得签发搜查令。”

2. ***Mapp v. Ohio (1962)***
2. 马普诉俄亥俄州案（1962年）

Note: Although the *Mapp* case is not required by the AP® course, it is important that you are familiar with the facts and holdings of this case.

注意：虽然AP®课程不要求学习*Mapp*案例，但熟悉此案的事实和判决结果非常重要。

- a. **Facts of the Case:** Police went to the home of Dollree Mapp, believing that she might be hiding a fugitive. When they knocked on the door and asked to search the home, Ms. Mapp asked if they had a warrant. They did not and later returned, claiming to have a warrant, which they did not have. The police forced their way in and searched the home. They did not find the suspect, but did find some obscene materials (pornographic magazines). The evidence was used against Mapp at trial, even though it had been obtained through a warrantless search. Mapp was convicted of possession of obscene materials in violation of Ohio state law. She appealed her conviction, arguing that the evidence should not have been admitted against her at trial, since it had been obtained in violation of her Fourth Amendment rights.
- a. **案件事实：**警方前往多莉·马普 (Dollree Mapp) 的住所，怀疑她可能窝藏一名逃犯。当警方敲门并要求搜查房屋时，马普女士询问他们是否有搜查令。警方表示没有，之后又返回，声称持有搜查令，但实际上并没有。警方强行破门而入并搜查了房屋。他们没有找到嫌疑人，但发现了一些淫秽物品（色情杂志）。尽管这些证据是通过无搜查令搜查获得的，但最终还是在审判中被用作对马普不利的证据。马普被判犯有持有淫秽物品罪，违反了俄亥俄州法律。她对判决提出上诉，认为这些证据不应在审判中被采纳为对她不利的证据，因为这些证据的获取侵犯了她受美国宪法第四修正案保护的权利。

- b. **Constitutional Issue(s):** May evidence obtained in violation of a suspect's constitutional rights be admitted against him or her at trial?
- b. **宪法问题：**在审判中，违反嫌疑人宪法权利而获得的证据是否可以被采纳为对嫌疑人不利的证据？
- c. **Holding(s):** Illegally obtained evidence may not be admitted against a defendant at trial (the exclusionary rule).
- c. **判决：**非法取得的证据不得在审判中作为对被告不利的证据采纳（排除规则）。
- d. **Reasoning:** The Court noted that police would have little respect for the rights of suspects if any evidence they gathered would be admissible regardless of the circumstances under which it was obtained. The only way to ensure that the Fourth Amendment is meaningful is to prevent the use of evidence obtained in its violation. The exclusionary rule had been established in *Weeks v. United States* (1914) with regard to federal law. The *Mapp* decision incorporated the exclusionary rule and applied it to the states.
- d. **理由：**法院指出，如果警方收集的任何证据，无论其获取方式如何，均可被采纳，那么警方对嫌疑人的权利将缺乏尊重。确保第四修正案真正发挥作用的唯一途径，是禁止使用违反该修正案而获得的证据。排除规则最早在 1914 年的“威克斯诉美国案”（*Weeks v. United States*）中确立，适用于联邦法律。“马普案”（*Mapp*）的判决将该排除规则纳入联邦法律，并将其适用于各州。

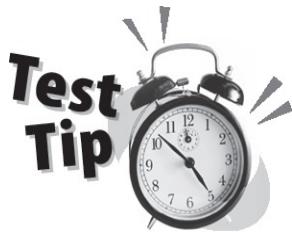
3. Other Fourth Amendment Search Issues

3. 其他第四修正案搜查问题

- a. The Fourth Amendment prohibits unreasonable searches, but not all searches. Police searches must be based on probable cause (a reasonable belief based on facts). A warrant (an order signed by a judge based on probable cause) is required for searches in certain instances, but not in all cases.
 - a. 第四修正案禁止无理搜查，但并非所有搜查都受其约束。警方搜查必须基于合理理由（即基于事实的合理信念）。在某些情况下，搜查需要搜查令（由法官基于合理理由签署的命令），但并非所有情况都需要。
 - b. An important exception to the warrant requirement is the exigent circumstances exception, which allows the police to act without a warrant where someone's life or safety is threatened, or evidence is about to be lost or destroyed.
 - b. 搜查令要求的一个重要例外是紧急情况例外，它允许警方在某人的生命或安全受到威胁，或者证据即将丢失或销毁时，无需搜查令即可采取行动。
 - c. The Court has ruled that cell phone data is entitled to Fourth Amendment protection; police need a warrant to search cell phones for data. *Riley v. California* (2014)
 - c. 法院裁定，手机数据受第四修正案保护；警方需要搜查令才能搜查手机数据。参见 *Riley v. California* (2014)
 - d. Following the 9/11 terror attacks on the United States, Congress passed the USA PATRIOT Act in 2001. The law significantly broadened the authority of federal law enforcement to monitor communications and collect metadata on U.S. citizens without warrants. (Metadata is electronic information about computer files and digital activities. It includes things such as phone numbers called by individuals, but

not the conversations themselves.) Because most service providers willingly shared user metadata, the government contended that it was not subject to Fourth Amendment protection. In other words, individual users did not have a privacy right in this type of data. In 2015 Congress passed the USA Freedom Act, which limits bulk collection of user data and requires warrants in some circumstances.

- d. 9/11 恐怖袭击事件发生后，美国国会于 2001 年通过了《美国爱国者法案》。该法案大幅扩大了联邦执法部门的权力，使其无需搜查令即可监控通信并收集美国公民的元数据。（元数据是指关于计算机文件和数字活动的电子信息，例如个人拨打的电话号码，但不包括通话内容本身。）由于大多数服务提供商都主动共享用户元数据，政府认为这些数据不受第四修正案的保护。换句话说，个人用户对这类数据不享有隐私权。2015 年，国会通过了《美国自由法案》，该法案限制了用户数据的批量收集，并在某些情况下要求必须持有搜查令。
- e. The Court has upheld mandatory drug testing of students participating in athletics and extracurricular activities. *Vernonia School District 47J v. Acton* (1995); *Pottawatomie v. Earls* (2002)
- e. 法院已裁定对参加体育运动和课外活动的学生进行强制性药物检测。参见 *Vernonia School District 47J v. Acton* (1995) ; *Pottawatomie v. Earls* (2002).



An ongoing theme in Fourth Amendment law is the constant need to adapt to changing technology. Is the use of a thermal imaging device to detect heat emanating from a house a “search” ? (Yes.) Is the use of a drug-sniffing dog to detect the odor of drugs emanating from a suitcase a “search” ? (No.) The law is still developing with regard to many areas of technology. For example, may police use cell phone location tracking data maintained by service providers? When applying the Fourth Amendment to a new situation, think about analogous (factually similar) cases that have already been decided.

第四修正案法律的一个永恒主题是需要不断适应不断变化的技术。使用热成像设备探测房屋散发的热量是否构成“搜查”？（是。）使用缉毒犬探测行李箱散发的毒品气味是否构成“搜查”？（否。）在许多技术领域，法律仍在不断发展。例如，警方是否可以使用服务提供商维护的手机定位追踪数据？在将第四修正案应用于新的情况时，请参考已判决的类似（事实相似）案例。

D. CRUEL AND UNUSUAL PUNISHMENT

D. 残酷和不寻常的惩罚

- 1. The Eighth Amendment reads: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”
- 1. 第八修正案规定：“不得要求过高的保释金，不得处以过高的罚款，不得施加残酷和不寻常的惩罚。”
- 2. The term *cruel and unusual punishment* is generally understood to be punishment that is torturous or barbaric, or any punishment that is excessively disproportionate to

the crime committed.

2. 残酷和非常规的惩罚通常被理解为酷刑或野蛮的惩罚，或者与所犯罪行严重不成比例的任何惩罚。
3. Although most countries in the world no longer allow capital punishment (the death penalty), the United States is one of a shrinking number that retains it. Most important Eighth Amendment cases relate to the death penalty and the circumstances under which it fails the test of cruel and unusual punishment.
 3. 虽然世界上大多数国家已废除死刑，但美国是少数几个仍然保留死刑的国家之一。第八修正案中最重要的案例都与死刑以及死刑在何种情况下不符合残酷和非常规惩罚的原则有关。
 - a. In *Furman v. Georgia* (1972), the Supreme Court struck down a Georgia statute because it failed to prescribe a logical and consistent basis for applying the death penalty. As a result, capital punishment was being applied in a disproportionate number of cases involving minority defendants.
 - a. 在弗曼诉佐治亚州案（1972年）中，最高法院推翻了佐治亚州的一项法令，因为该法令未能为适用死刑规定合乎逻辑且前后一致的依据。结果，在涉及少数族裔被告的案件中，死刑的适用比例过高。
 - b. Four years later, the Court upheld a newly designed Georgia death penalty statute in *Gregg v. Georgia* (1976). The new law specified factors to be considered and procedures to be followed in applying the death penalty, theoretically resolving the problems of arbitrary application and discrimination.
 - b. 四年后，最高法院在格雷格诉佐治亚州案（1976年）中维持了佐治亚州新制定的死刑法。新法明确规定了适用死刑时应考虑的因素和应遵循的程序，理论上解决了任意适用和歧视的问题。
 - c. The death penalty has been held to be cruel and unusual when applied to defendants younger than 18 years of age at the time the crime was committed. *Roper v. Simmons* (2005)
 - c. 对犯罪时未满18岁的被告人适用死刑，被认为是一种残酷且不寻常的刑罚。罗珀诉西蒙斯案（2005年）
 - d. The death penalty has been held to be cruel and unusual when applied to defendants with an intellectual disability. *Atkins v. Virginia* (2002)
 - d. 对智力障碍被告人适用死刑，已被认定为残酷且不寻常。阿特金斯诉弗吉尼亚州案（2002年）

V. 五、**PRIVACY 隐私**

A. SUBSTANTIVE DUE PROCESS

A. 实质性正当程序

1. The Fourteenth Amendment states that no state may “deprive any person of life, liberty, or property, without due process of law.”
 1. 第十四修正案规定，任何州都不得“未经正当法律程序剥夺任何人的生命、自由或财产”。

- a. The Due Process Clause was initially interpreted to apply only to the procedures followed by the government in regulating private activities. In other words, the Court would not evaluate the content, or substance, of a law, so long as the government followed appropriate procedures.
 - a. 正当程序条款最初被解释为仅适用于政府在监管私人活动时所遵循的程序。换言之，只要政府遵循了适当的程序，法院就不会对法律的内容或实质进行评判。
 - b. Later, the Court began to rely on the principle of “liberty” contained in the Fourteenth Amendment to strike down laws that, although they followed acceptable procedures, were unfair in their content.
 - b. 后来，法院开始依据第十四修正案中“自由”的原则，废除那些虽然遵循可接受的程序，但内容不公平的法律。
 - c. The term *substantive due process* refers to the idea that the law must be fair and reasonable in content and in application. This idea has been used by the Court to protect the fundamental rights of the individual against government interference.
 - c. “实质性正当程序”一词指的是法律在内容和适用上都必须公平合理。法院运用这一理念来保护个人基本权利免受政府干预。

2. *Griswold v. Connecticut (1965)*

2. 格里斯沃尔德诉康涅狄格州案（1965年）

Note: Although the *Griswold* case is not required by the AP® course, it is important that you are familiar with the facts and holdings of this case.

注意：虽然AP®课程没有要求学习*Griswold*案，但了解该案的事实和判决结果非常重要。

- a. **Facts of the Case:** Estelle Griswold, the Executive Director of the Planned Parenthood League of Connecticut, and Dr. C. Lee Buxton, medical director of the League, opened a birth control clinic in violation of a Connecticut law that prohibited the use of any drug or device to prevent conception. (It outlawed birth control.) They were convicted of providing birth control information to married persons.
- a. **案件事实：**康涅狄格州计划生育联盟执行主任埃斯特尔·格里斯沃尔德和该联盟医疗主任C·李·巴克斯顿医生违反康涅狄格州一项禁止使用任何药物或器械预防怀孕的法律，开设了一家节育诊所。（该法律禁止节育。）他们被判犯有向已婚人士提供节育信息的罪行。
- b. **Constitutional Issue(s):** Does the Connecticut statute outlawing birth control use violate a fundamental right protected by the Constitution?
- b. **宪法问题：**康涅狄格州禁止使用避孕措施的法令是否违反了宪法保护的基本权利？
- c. **Holding(s):** The Connecticut law violated the right of marital privacy and was, therefore, unconstitutional.
- c. **判决：**康涅狄格州法律侵犯了婚姻隐私权，因此违宪。
- d. **Reasoning:** The Court faced a problem in the *Griswold* case: although a law invading the contraceptive practices of married couples was unreasonable and seemed outrageous to many, the state of Connecticut argued there was nothing in the Constitution to prevent it from enforcing the law. There is no “right to privacy” in the Bill of Rights. The Court disagreed. Although the Constitution does

not specifically list a right to privacy, the Ninth Amendment reads: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” The Framers made clear in the Ninth Amendment that the people held unspecified fundamental rights. The Court pointed to several rights, such as freedom of religion and speech, the right to be free from unreasonable searches and seizures, and the right to remain silent, to justify its finding of a right to privacy by calling these zones of privacy. When taken together, these rights include within their sphere a right to privacy in marriage. The Court applied the substantive due process doctrine to strike down the Connecticut law as violating marital privacy.

- d. **理由**：在格里斯沃尔德案中，法院面临一个难题：尽管一项侵犯已婚夫妇避孕行为的法律不合理，且在许多人看来令人愤慨，但康涅狄格州辩称，宪法中没有任何条款阻止其执行该法律。权利法案中并没有“隐私权”。法院对此持不同意见。虽然宪法没有明确列出隐私权，但第九修正案规定：“宪法中列举的某些权利，不得解释为否定或贬低人民保留的其他权利。”制宪者在第九修正案中明确指出，人民拥有未明确规定的基本权利。法院列举了多项权利，例如宗教自由和言论自由、免受无理搜查和扣押的权利以及保持沉默的权利，以此作为其认定存在隐私权的依据，并将这些权利称为隐私领域。综合来看，这些权利涵盖了婚姻中的隐私权。法院运用实质性正当程序原则，裁定康涅狄格州法律侵犯婚姻隐私权，予以废除。

B. EXTENDING PRIVACY RIGHTS

B. 扩展隐私权

1. *Roe v. Wade* (1973)

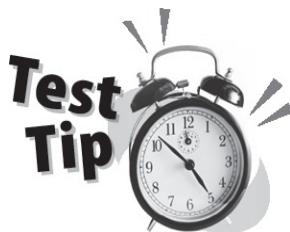
1. 罗诉韦德案（1973年）

- a. **Facts of the Case:** Norma McCorvey, a 21-year-old woman, challenged a Texas law prohibiting abortion. (McCorvey used the pseudonym Jane Roe to protect her identity.)
- a. **案件事实：**21岁的诺玛·麦考维对德克萨斯州一项禁止堕胎的法律提出质疑。（麦考维使用化名简·罗以保护其身份。）
- b. **Constitutional Issue(s):** Did the Texas law prohibiting abortion violate women's constitutional right to privacy?
- b. **宪法问题：**德克萨斯州禁止堕胎的法律是否侵犯了妇女的宪法隐私权？
- c. **Holding(s):** Under the Ninth and Fourteenth Amendments, the constitutional right to privacy protects a woman's right to an abortion but may be regulated or restricted by the government in the second and third trimesters.
- c. **判决：**根据第九修正案和第十四修正案，宪法赋予的隐私权保护妇女堕胎的权利，但在妊娠中期和晚期，政府可以对其进行监管或限制。
- d. **Reasoning:** *Roe* extended the right to privacy established in *Griswold* to include a woman's right to make reproductive decisions, including whether to continue or terminate a pregnancy. The Court, however, balanced the right of the woman in making reproductive decisions against the interest of society in protecting the health of both the mother and the fetus. The result was the trimester test, under

which:

d. **理由：**罗诉韦德案扩展了格里斯沃尔德案确立的隐私权，将女性的生育决定权（包括是否继续妊娠或终止妊娠）纳入其中。然而，法院权衡了女性的生育决定权与社会保护母婴健康的利益。最终形成了妊娠三阶段检验法，根据该检验法：

- abortion may not be restricted in the first trimester of pregnancy.
- 在怀孕的前三个月内，堕胎可能不会受到限制。
- beginning in the second trimester, abortion may be regulated to protect the health of the woman.
- 从妊娠中期开始，堕胎可能会受到管制，以保护妇女的健康。
- after the beginning of the third trimester, the state's interest becomes sufficient to restrict abortion to protect the developing fetus.
- 从妊娠第三阶段开始，国家利益足以限制堕胎以保护发育中的胎儿。



Many important cases involve the conflict of rights, situations in which the rights of an individual conflict with those of another individual or with society generally. In Roe, the Court balanced the privacy right of pregnant women against the interest of society in "potential life." There are many other examples of the Court balancing rights. Debates over the right to bear arms are frequently framed in terms of the individual's right to self-protection versus society's need to maintain order and public safety. Government surveillance cases consider the extent of the government's right to monitor and collect data on its citizens against the right of citizens to privacy in their data and communications.

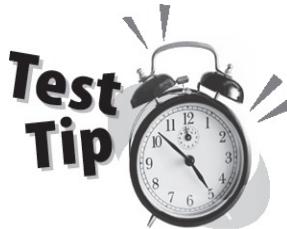
许多重要案件都涉及权利冲突，即个人权利与他人权利或社会普遍权利发生冲突的情况。在“罗诉韦德案”中，最高法院权衡了孕妇的隐私权与社会对“潜在生命”的利益。最高法院在权衡权利方面的例子不胜枚举。关于持枪权的辩论通常围绕个人自卫权与社会维护秩序和公共安全的需要展开。政府监控案件则探讨了政府监控和收集公民数据的权利与公民数据和通信隐私权之间的界限。

2. Post-Roe Cases

2. 罗诉韦德案后的案例

- a. The trend since *Roe v. Wade* has been for states to place increasing burdens on abortion access.
 - a. 自罗诉韦德案以来，各州对堕胎施加越来越大的负担，这已成为一种趋势。
 - b. *Planned Parenthood v. Casey* (1992) upheld a fundamental right to abortion from the *Roe v. Wade* decision but allowed states to regulate abortion at any point in pregnancy as it does not pose an "undue burden" on the woman. The Court has ruled that after the point of viability (the point at which a fetus can survive outside of the womb), the state may restrict or prohibit abortion. The *Casey* decision also

- struck down a husband-notification requirement for women seeking an abortion.
- b. 1992 年的 “计划生育联合会诉凯西案” 维护了 “罗诉韦德案” 判决中确立的堕胎基本权利，但允许各州在妊娠的任何阶段对堕胎进行监管，因为堕胎不会对妇女造成“不当负担”。法院裁定，在胎儿具备生存能力（即胎儿能够在子宫外存活）之后，各州可以限制或禁止堕胎。“凯西案”的判决还推翻了妇女寻求堕胎时必须通知丈夫的规定。
 - c. In recent years, the membership of the Supreme Court has changed. Recognizing the Court's changing ideological composition, some states have enacted increasingly restrictive abortion laws in anticipation of the Court possibly revisiting the issue. Other states, however, have enacted laws explicitly recognizing and protecting abortion rights. The Court may consider various state positions relating to the regulation of abortion in coming years.
 - c. 近年来，最高法院的成员构成发生了变化。一些州意识到最高法院意识形态构成的变化，因此制定了日益严格的堕胎法，以期最高法院重新审议该问题。然而，另一些州则制定了明确承认和保护堕胎权的法律。未来几年，最高法院可能会审议各州在堕胎监管方面的不同立场。
 - d. The right to die has also been argued in the context of a right to privacy. A competent person may have a protected interest in refusing life-sustaining medical procedures. (*Cruzan v. Missouri Department of Health* (1990)) There is, however, no constitutionally protected right to commit suicide, or to have others assist in suicide. (*Washington v. Glucksberg* (1997))
 - d. 死亡权也曾在隐私权的语境下被讨论过。有行为能力的人可能享有拒绝维持生命的医疗程序的受保护权益。（克鲁赞诉密苏里州卫生部案(1990)）然而，自杀或让他人协助自杀并不受宪法保护。（华盛顿诉格鲁克斯伯格案(1997)）



Although the term privacy is not directly mentioned in the Constitution, other rights such as those found in the First, Third, Fourth, and Fifth Amendments imply that people have a right to privacy. For example, the Third Amendment's right to not have soldiers quartered in the home and the Fourth Amendment's protection from unreasonable searches and seizures imply a right to privacy in the home.

虽然宪法中没有直接提及“隐私权”一词，但第一、第三、第四和第五修正案中规定的其他权利暗示着人们享有隐私权。例如，第三修正案规定公民不得在家中驻扎士兵，第四修正案规定公民免受无理搜查和扣押，这些都暗示着人们在家中享有隐私权。