


## The Right to Privacy: Definition & Examples

### Lesson Transcript

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Cite this lesson 

In this lesson, we will learn about the right of privacy. We will take a closer look at the right, what it includes and what it means to society today.

### The Right of Privacy

The **right of privacy** is defined as an individual's legal right, not explicitly provided in the United States Constitution, to be left alone and live life free from unwarranted publicity. It was important for the early settlers that their homes and persons be protected from unwarranted governmental intrusion (the basis of the Fourth Amendment), the right to be one's own person (the basis of the First Amendment) and the right against self-incrimination (the Fifth Amendment.) All of these specifically mentioned rights have the undertone of a person's right to privacy. Therefore, the Ninth Amendment and Fourteenth Amendment specifically note that rights not mentioned in the Constitution should not be taken to mean that the people don't have them. And the courts have followed that logic.

Privacy rights are considered fundamental rights. Certain fundamental rights are protected under the Constitution. Therefore, if they are given to some people but not to others, then it's a violation of the Constitution. When courts are looking to see if someone's privacy rights were violated by the government, they look to see if the government's action was necessary to protect a compelling interest.

### Marriage

The right to get married and divorced is a fundamental right. If the government were to make a law prohibiting marriages, they would have to show that it was necessary to protect a compelling interest. For example, if the State of Illinois were to make a law that said that black males and white females could not get married - would this law stand? Can you think of any reason that would be necessary and what interests those would be protecting? There is no reason that would be compelling enough to justify such a law. Therefore, the law would be stricken.

However, what if the State of Illinois instead were to create a law preventing death row inmates from getting married while incarcerated? Can you think of a justification of why this law would be necessary to protect a compelling interest? There are many penological interests that are at stake with a violent criminal getting married to another inmate or an average citizen while incarcerated. This would create safety issues related to a variety of things, like spousal visits to the prison and how would the wedding ceremony occur. Therefore, it is likely that such a law such as this would be allowed to stand.

## Abortion

There are many reasons why states create laws that prevent women from terminating pregnancies. Some of the reasons may be outdated, some may be religious, some may be political and some may be medical. Regardless of the reason, the courts have found that the right of privacy includes a woman being able to terminate her pregnancy, with a few exceptions, without the interference of the government. The 'necessary to achieve a compelling interest' test is not useful in this situation because of the issues of fetus rights versus the woman's privacy rights. Therefore, the privacy right with regards to abortion has been divided up into a few different areas.

If the woman is in a stage of pregnancy before a fetus is viable, or able to live, outside of her body, then the state may only adopt regulations regarding abortion that do not impose an 'undue burden' on her ability to obtain an abortion. An example of a law that would be able to stand up in the courts would be one requiring doctors performing abortions to be licensed physicians. Can you think of why this law would be able to stand up in court? It would be because there is no undue burden on the woman obtaining the abortion in simply requiring her to go to a licensed medical doctor to obtain it.

However, what do we think about a law that would require a woman to obtain spousal consent before obtaining an abortion? Would this create an undue burden on the woman? The courts have ruled that it would. Requiring a woman to obtain spousal consent - especially in cases of divorcing or divorced parties and domestic violence situations - would create an undue burden on the woman obtaining the abortion. Courts have stricken laws such as this.

Alternatively, if the woman is in a state of pregnancy after a fetus is viable outside of her body, then the state's interest in the fetus's life can override the woman's right to choose an abortion only if her health is not at risk. Why do we think this is different? This is because the fetus is its own individual at that point as it can live outside of the woman's body on its own. Therefore, the state has an interest in protecting it because it cannot protect itself. However, in cases where the woman's life or health is at risk, then the woman's rights prevail.

## Rights of Family

In addition to the regulations of marriage and abortion mentioned above, there are also a few other right of privacy actions of note that are protected. Courts have ruled that parents have a fundamental right to make decisions about the care, custody and control of their children. Parents have a privacy right to determine how their children are educated, private schools or public schools and in what language their children are taught.

Additionally, parents have the right to determine how their children will spend their time. Law forcing parents to allow visitation with grandparents have been stricken. Courts have struck down these laws under the premise that parents have the inherent right to choose whom their children visit and also that if it is in the child's best interest to visit with another party, then a fit parent will do what's in a child's best interests.

Lastly, the right to privacy extends to the right of family members to live together. State laws that have created zoning regulations that would prevent extended family members from living in one house have been found to be unconstitutional. Why? This is because to break up families and how they choose to live could demolish cultures and history.

## Importance

The privacy rights of Americans continue to be interpreted by courts across the United States every day. The fact that it continues to be a hot topic in the media and in the courts is a testament to the importance of these rights to the public today, as well as at the time of their initial creation.

## Lesson Summary

The right to privacy is mentioned nowhere in the United States Constitution. However, these rights have been interpreted to be fundamental constitutional rights by court rulings throughout the decades. These rights include the right to marry, terminate a pregnancy, live with what family members you choose, and to raise your children by your own wishes.

## Learning Outcome

After watching this lesson, you should be able to interpret the right to privacy and what it means in modern society.

## Worksheet: The Right to Privacy: Definition & Examples

<https://study.com/academy/lesson/the-right-to-privacy-definition-lesson-quiz.html>

### 1. Which of the following is true about the right to privacy?

- It is constantly changing.
- It is an outdated law.
- It is not applicable anymore.
- It has never been interpreted by the courts.

### 2. The privacy right of housing protects \_\_\_\_.

- the right of an extended family to live together
- the right of the state to regulate where people live
- the rights of divorced parents
- the right of children to live apart from their parents

### 3. Privacy rights are specifically mentioned in the \_\_\_\_.

- First Amendment
- Second Amendment
- Nowhere in the Constitution
- Fourth Amendment

### 4. The privacy right of abortion protects \_\_\_\_.

- the woman only
- the woman and the fetus at different times
- the fetus only
- the woman and the fetus at the same time

### 5. The privacy right of marriage would not necessarily protect \_\_\_\_.

- white couples
- men
- women
- incarcerated criminals