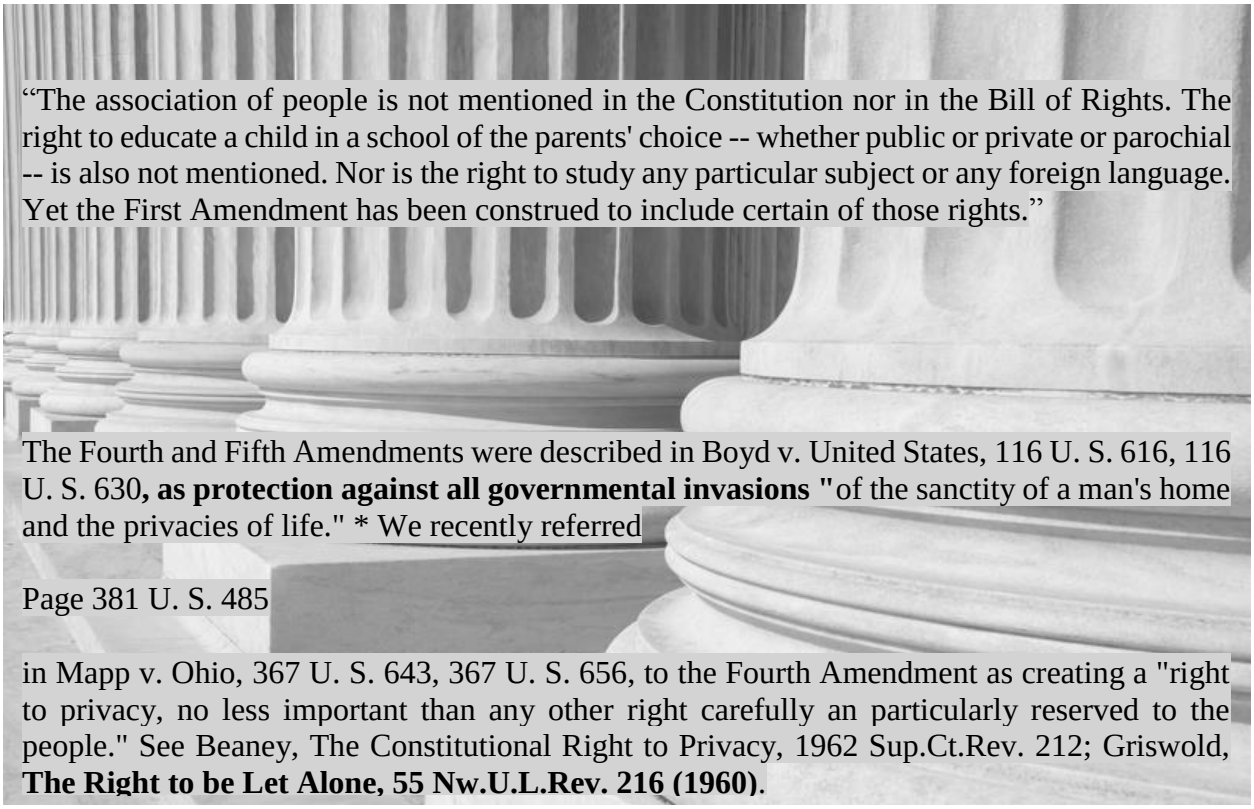
CONTROLLING CONSTITUTIONAL PRINCIPLES, PURPOSES & PRACTICES
A U. S. Supreme Court Decision for the Foundational Pillars of a Nation
Griswold v. Connecticut, 381 U.S. 479 (1965)



"The association of people is not mentioned in the Constitution nor in the Bill of Rights. The right to educate a child in a school of the parents' choice -- whether public or private or parochial -- is also not mentioned. Nor is the right to study any particular subject or any foreign language. Yet the First Amendment has been construed to include certain of those rights."

The Fourth and Fifth Amendments were described in Boyd v. United States, 116 U. S. 616, 116 U. S. 630**, as protection against all governmental invasions "**of the sanctity of a man's home and the privacies of life." * We recently referred

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in Mapp v. Ohio, 367 U. S. 643, 367 U. S. 656, to the Fourth Amendment as creating a "right to privacy, no less important than any other right carefully an particularly reserved to the people." See Beaney, The Constitutional Right to Privacy, 1962 Sup.Ct.Rev. 212; Griswold, **The Right to be Let Alone, 55 Nw.U.L.Rev. 216 (1960)**.

MR. JUSTICE GOLDBERG, whom THE CHIEF JUSTICE and MR. JUSTICE BRENNAN join, concurring.

The language and history of the Ninth Amendment reveal that the Framers of the Constitution believed that there are additional fundamental rights, protected from governmental infringement, which exist alongside those fundamental rights specifically mentioned in the first eight constitutional amendments. 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 Amendment is almost entirely the work of James Madison. It was introduced in Congress by him, and passed the House and Senate with little or no debate and virtually no change in language. It was proffered to quiet expressed fears that a bill of specifically enumerated rights [Footnote 3] could not be sufficiently broad to cover all essential

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rights, and that the specific mention of certain rights would be interpreted as a denial that others were protected. [Footnote 4]

In presenting the proposed Amendment, Madison said:

"It has been objected also against a bill of rights that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration, and it might follow, by implication, that those rights which were not singled out were intended to be

assigned into the hands of the General Government, and were consequently insecure. This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system, but I conceive that it may be guarded against. I have attempted it, as gentlemen may see by turning to the

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last clause of the fourth resolution [the Ninth Amendment]."

I Annals of Congress 439 (Gales and Seaton ed. 1834). Mr. Justice Story wrote of this argument against a bill of rights and the meaning of the Ninth Amendment:

"In regard to . . . [a] suggestion, that the affirmance of certain rights might disparage others, or might lead to argumentative implications in favor of other powers, it might be sufficient to say that such a course of reasoning could never be sustained upon any solid basis. . . . But a conclusive answer is that such an attempt may be interdicted (as it has been) by a positive declaration in such a bill of rights that the enumeration of certain rights shall not be construed to deny or disparage others retained by the people."

II Story, Commentaries on the Constitution of the United States 626-627 (5th ed. 1891). He further stated, referring to the Ninth Amendment:

"This clause was manifestly introduced to prevent any perverse or ingenious misapplication of the well known maxim that an affirmation in particular cases implies a negation in all others, and, e converso, that a negation in particular cases implies an affirmation in all others."

Id. at 651. These statements of Madison and Story make clear that the Framers did not intend that the first eight amendments be construed to exhaust the basic and fundamental rights which the Constitution guaranteed to the people. [Footnote 5]

While this Court has had little occasion to interpret the Ninth Amendment, [Footnote 6] "[i]t cannot be presumed that any

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clause in the constitution is intended to be without effect." Marbury v. Madison, 1 Cranch 137, 5 U. S. 174. In interpreting the Constitution, "real effect should be given to all the words it uses." Myers v. United States, 272 U. S. 52, 272 U. S. 151. The Ninth Amendment to the Constitution may be regarded by some as a recent discovery, and may be forgotten by others, but, since 1791, it has been a basic part of the Constitution which we are sworn to uphold. To hold that a right so basic and fundamental and so deep-rooted in our society as the right of privacy in marriage may be infringed because that right is not guaranteed in so many words by the first eight amendments to the Constitution is to ignore the Ninth Amendment, and to give it no effect whatsoever. Moreover, a judicial construction that this fundamental right is not protected by the Constitution because it is not mentioned in explicit terms by one of the first eight amendments or elsewhere in the Constitution would violate the Ninth Amendment, which specifically states that

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"[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." (Emphasis added.)

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By Pierce v. Society of Sisters, supra, the right to educate one's children as one chooses is made applicable to the States by the force of the First and Fourteenth Amendments. By Meyer v. Nebraska, supra, the same dignity is given the right to study the German language in a private school. In other words, the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read (Martin v. Struthers, 319 U. S. 141, 319 U. S. 143) and freedom of inquiry, freedom of thought, and freedom to teach (see Wiemann v. Updegraff, 344 U. S. 183, 344 U. S. 195) -- indeed, the freedom of the entire university community. Sweezy v. New Hampshire, 354 U. S. 234, 354 U. S. 249-250, 354 U. S. 261-263; Barenblatt v. United States, 360 U. S. 109, 360 U. S. 112; Baggett v. Bullitt, 377 U. S. 360, 377 U. S. 369. Without

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those peripheral rights, the specific rights would be less secure. And so we reaffirm the principle of the Pierce and the Meyer cases.

In NAACP v. Alabama, 357 U. S. 449, 357 U. S. 462 we protected the "freedom to associate and privacy in one's associations," noting that freedom of association was a peripheral First Amendment right. Disclosure of membership lists of a constitutionally valid association, we held, was invalid

"as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom of association."

Ibid. In other words, the First Amendment has a penumbra where privacy is protected from governmental intrusion. In like context, we have protected forms of "association" that are not political in the customary sense, but pertain to the social, legal, and economic benefit of the members. NAACP v. Button, 371 U. S. 415, 371 U. S. 430-431. In Schware v. Board of Bar Examiners, 353 U. S. 232, we held it not permissible to bar a lawyer from practice because he had once been a member of the Communist Party. The man's "association with that Party" was not shown to be "anything more than a political faith in a political party" (id. at 353 U. S. 244), and was not action of a kind proving bad moral character. Id. at 353 U. S. 245-246.

Those cases involved more than the "right of assembly" -- a right that extends to all, irrespective of their race or ideology. De Jonge v. Oregon, 299 U. S. 353. The right of "association," like the right of belief (Board of Education v. Barnette, 319 U. S. 624), is more than the right to attend a meeting; it includes the right to express one's attitudes or philosophies by membership in a group or by affiliation with it or by other lawful means. Association in that context is a form of expression

of opinion, and, while it is not expressly included in the First Amendment, its existence is necessary in making the express guarantees fully meaningful.

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The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. See Poe v. Ullman, 367 U. S. 497, 367 U. S. 516-522 (dissenting opinion). Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment, in its prohibition against the quartering of soldiers "in any house" in time of peace without the consent of the owner, is another facet of that privacy. The Fourth Amendment explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The Fifth Amendment, in its Self-Incrimination Clause, enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

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We have had many controversies over these penumbral rights of "privacy and repose." See, e.g., Breard v. Alexandria, 341 U. S. 622, 341 U. S. 626, 341 U. S. 644; Public Utilities Comm'n v. Pollak, 343 U. S. 451; Monroe v. Pape, 365 U. S. 167; Lanza v. New York, 370 U. S. 139; Frank v. Maryland, 359 U. S. 360; Skinner v. Oklahoma, 316 U. S. 535, 316 U. S. 541. These cases bear witness that the right of privacy which presses for recognition here is a legitimate one.

Umbra, penumbra, and antumbra formed through windows and shutters. Jurists have used the term "penumbra" as a metaphor for rights implied in the constitution