



What “Incorporation” truly means is contained in the Bill of Rights

The Bill of Rights is the first 10 Amendments to the Constitution. It spells out **Americans’** rights in relation to their government. It guarantees civil rights and liberties to the individual, e.g., freedom of speech, press, and religion. It sets rules for due process of law and reserves all powers not delegated to the Federal Government to **the people** or **the states**. And it specifies that “the enumeration in the Constitution of the United States, of certain rights, shall not be construed to deny or disparage others retained by the people.”

Although Madison's proposed amendments included a provision to extend the protection of some of the Bill of Rights to the states, the amendments that were finally submitted for ratification applied only to the federal government. The door for their application upon state governments was opened in the 1860s, following ratification of the Fourteenth Amendment.

Since the early 20th century both federal and state courts have used the Fourteenth Amendment to apply portions of the Bill of Rights to state and local governments. **The process of “incorporating” the Bill of Rights, is what is known as incorporation.**

Many of the provisions of the First Amendment were applied to the States in the 1930s and 1940s, but most of the procedural protections provided to criminal defendants were not enforced against the States until the Earl Warren Court of the 1960s, famous for its concern for the rights of those accused of crimes, brought state standards in line with federal requirements. The following list enumerates, by amendment and individual clause, the Supreme Court cases that have incorporated the rights contained in the Bill of Rights.

The Ninth Amendment is not listed; its wording indicates that it "is not a source of rights as such; it is simply a rule about how to read the Constitution."

The Tenth Amendment is also not listed; by its wording, it is a reservation of powers to the states and to the people.

Amendment I

The Establishment Clause - Guarantee against establishment of religion

- This provision **has been incorporated** against the states. See *Everson v. Board of Education*, 330 U.S. [1](#) (1947).

The Free Exercise Clause - Guarantee of free exercise of religion

- This provision **has been incorporated** against the states. See *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

Guarantee of freedom of speech



- This provision **has been incorporated** against the states. See *Gitlow v. New York*, 268 U.S. 652 (1925) and *Stromberg v. California*, 283 U.S. 359 (1931).

Guarantee of freedom of the press

- This provision **has been incorporated** against the states. See *Gitlow v. New York*, 268 U.S. 652 (1925) Near *v. Minnesota*, 283 U.S. 697 (1931).

Guarantee of freedom of assembly

- This provision **has been incorporated** against the states. See *De Jonge v. Oregon*, 299 U.S. 353 (1937).

Guarantee of the right to petition for redress of grievances

- This provision **has been incorporated** against the states. See *Edwards v. South Carolina*, 372 U.S. 229 (1963).

Guarantee of freedom of expressive association

- This right, though not in the words of the first amendment, was first mentioned in the case *NAACP v. Alabama*, 357 U.S. 449 (1958) and was at that time applied to the states. See also *Roberts v. United States Jaycees*, 468 U.S. 609 (1984), where the U.S. Supreme Court held that "implicit in the right to engage in activities protected by the First Amendment" is "a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends."

Amendment II

Right to keep and bear arms

- This right **has been incorporated** against the states. Described as a fundamental and individual right that will necessarily be subject to strict scrutiny by the courts, see *McDonald v. City of Chicago* (2010). Self Defense is described as "the central component" of the Second Amendment in McDonald, supra., and upheld *District of Columbia v. Heller* 554 U.S (2008) concluding the Fourteenth Amendment incorporates the Second Amendment right, recognized in Heller, to keep and bear arms for the purpose of self-defense. The 14th Amendment makes the 2nd Amendment right to keep and bear arms fully applicable to the States, see, McDonald vs. City of Chicago (2010). "The right to keep and bear arms must be regarded as a substantive guarantee, not a prohibition that could be ignored as long as the States legislated in an evenhanded manner," McDonald, supra..

Amendment III

Freedom from quartering of soldiers



- This provision **has been incorporated** against the states within the jurisdiction of the United States Court of Appeals for the Second Circuit, (**The City of New York**), but **has not been incorporated** against the U.S. states elsewhere.

In 1982, the Second Circuit (**The City of New York / UN**) applied the Third Amendment to the states in *Engblom v. Carey*. This is a binding authority over the federal courts in **Connecticut, New York, and Vermont**, but is only a persuasive authority over the other courts in the United States.

The Tenth Circuit has suggested that the right is incorporated because the Bill of Rights explicitly codifies the "**fee (simple or absolute) ownership system developed in English law**" through the Third, Fourth, and Fifth Amendments, and the Fourteenth Amendment likewise forbids the states from depriving citizens of their property without due process of law. *See United States v. Nichols*, 841 F.2d 1485, 1510 n.1 (10th Cir. 1988).

Amendment IV

Unreasonable search and seizure

- This right **has been incorporated** against the states by the Supreme Court's decision in *Mapp v. Ohio*, 367 U.S. 643 (1961), although there is *dicta* (precedent) in *Wolf v. Colorado*, 338 U.S. 25 (1949), saying the "core" of the Fourth Amendment applied to the States.
- The remedy of exclusion of unlawfully seized evidence, the exclusionary rule (*a legal rule, based on constitutional law, that prevents evidence collected or analyzed in violation of the defendant's constitutional rights from being used in a court of law*), **has been incorporated** against the states. *See Mapp v. Ohio*. In *Mapp*, the Court overruled *Wolf v. Colorado* in which the Court had ruled that the exclusionary rule did not apply to the states.

Warrant requirements

- The various warrant requirements **have been incorporated** against the states. *See Aguilar v. Texas*, 378 U.S. 108 (1964).
- The standards for judging whether a search or seizure undertaken without a warrant was "unreasonable" also **have been incorporated** against the states. *See Ker v. California*, 374 U.S. 23 (1963).

Amendment V

Right to indictment by a grand jury

- This right has been **held not to be incorporated** against the states. *See Hurtado v. California*, 110 U.S. 516 (1884).

Protection against double jeopardy

- This right **has been incorporated** against the states. *See Benton v. Maryland*, 395 U.S. 784 (1969).



Constitutional privilege against self-incrimination

- This right **has been incorporated** against the states.
 0. Self Incrimination in Court *See Griffin v. California*, 380 U.S. 609 (1965), *Malloy v. Hogan*, 378 U.S. 1 (1964).
 1. *Miranda* *See Miranda v. Arizona*, 384 U.S. 436 (1966).
- A note about the *Miranda* warnings: The text of the Fifth Amendment does not require that the police, before interrogating a suspect whom they have in custody, give him or her the now-famous *Miranda* warnings. Nevertheless, the Court has held that these warnings are a necessary prophylactic device, and thus required by the Fifth Amendment by police who interrogate any criminal suspect in custody, regardless of whether he or she is ultimately prosecuted in state or federal court.

Protection against taking of private property without just compensation

- This right **has been incorporated** against the states. *See Chicago, Burlington & Quincy Railroad Co. v. City of Chicago*, 166 U.S. 226 (1897).

Amendment VI

Right to a speedy trial

- This right **has been incorporated** against the states. *See Klopfer v. North Carolina*, 386 U.S. 213 (1967).

Right to a public trial

- This right **has been incorporated** against the states. *See In re Oliver*, 333 U.S. 257 (1948).

Right to trial by impartial jury

- This right **has been incorporated** against the states. *See Duncan v. Louisiana*, 391 U.S. 145 (1968), which guarantees the right to a jury trial in non-petty cases. *See also Parker v. Gladden*, 385 U.S. 363 (1966), where the Supreme Court ruled "that the statements of the bailiff to the jurors are controlled by the command of the Sixth Amendment, made applicable to the States through the Due Process Clause of the Fourteenth Amendment. It guarantees that 'the accused shall enjoy the right to a **trial, by an impartial jury**'" However, the size of the jury vary between federal and state courts. Even so, the Supreme Court has ruled that a jury in a criminal case may have as few as six members. *Williams v. Florida*, 399 U.S. 78 (1970). If there are twelve, only nine jurors need agree on a verdict (before *Ramos v. Louisiana* was decided). Furthermore, there is no right to a jury trial in juvenile delinquency proceedings held in state court. *See McKeiver v. Pennsylvania*, 403 U.S. 528 (1971). The Supreme Court ruled in *Ramos v. Louisiana* (2020) that a unanimous jury vote requirement for criminal convictions is further incorporated against the states, overturning the prior *Apodaca v. Oregon* (1972) which had allowed states to make this determination on its own.

Right to a jury selected from residents of the state and district where the crime occurred



- This right **has not been incorporated** against the states. See *Caudill v. Scott*, 857 F.2d 344 (6th Cir. 1988); *Cook v. Morrill*, 783 F.2d 593 (5th Cir. 1986); *Zicarelli v. Dietz*, 633 F.2d 312 (3d Cir. 1980).

Right to notice of accusations

- This right **has been incorporated** against the states. See *In re Oliver*, 333 U.S. 257 (1948). See also *Rabe v. Washington*, 405 U.S. 313 (1972).

Right to confront adverse witnesses

- This right **has been incorporated** against the states. See *Pointer v. Texas*, 380 U.S. 400 (1965).

Right to compulsory process (subpoenas) to obtain witness testimony

- This right **has been incorporated** against the states. See *Washington v. Texas*, 388 U.S. 14 (1967).

Right to assistance of counsel

- This right **has been incorporated** against the states. See *Powell v. Alabama* 287 U.S. 45 (1932), for capital cases, see *Gideon v. Wainwright*, 372 U.S. 335 (1963) for all felony cases, and see *Argersinger v. Hamlin*, 407 U.S. 25 (1972) for imprisonable misdemeanors. In subsequent decisions, the Court extended the right to counsel to any case in which a jail sentence is imposed.

Amendment VII

Right to jury trial in civil cases

- This right **has not been incorporated** against the states. See *Minneapolis & St. Louis R. Co. v. Bombolis*, 241 U.S. 211 (1916) and *Pearson v. Yewdall*, 95 U.S. 294 (1877)

Re-Examination Clause

- This right **has not been incorporated** against the states. See *Minneapolis & St. Louis R. Co. v. Bombolis*, 241 U.S. 211 (1916)

Amendment VIII

Protection against excessive bail

- This right **may have been incorporated** against the states. In *Schilb v. Kuebel*, 404 U.S. 357 (1971), the Court stated in dicta: "Bail, of course, is basic to our system of law, and the Eighth Amendment's proscription of excessive bail has been assumed to have application to the States through the Fourteenth Amendment." In



Murphy v. Hunt, 455 U.S. 478 (1982), the Court did not reach the issue because the case was dismissed as moot. Bail was included in the list of incorporated rights in *McDonald* footnote 12, citing *Schilb*.

Protection against excessive fines

- This right **has been incorporated** against the states. See *Timbs v. Indiana* (2019), in which Justice Ruth Bader Ginsburg wrote for the majority "For good reason, the protection against excessive fines has been a constant shield throughout Anglo-American history: Exorbitant tolls undermine other constitutional liberties."

Protection against cruel and unusual punishments

- This right **has been incorporated** against the states. See *Robinson v. California*, 370 U.S. 660 (1962). This holding has led the Court to suggest, in dicta, that the excessive bail and excessive fines protections have also been incorporated. See *Baze v. Rees*, 128 S. Ct. 1520, 1529 (2008).

PRIVATE MEMBERSHIP ASSOCIATIONS (*dba's*) BILL OF RIGHTS

Approval of the Bill of Rights in Congress and the States			
Seventeen Articles Approved by the House August 24, 1789	Twelve Articles Approved by the Senate September 9, 1789	Twelve Articles Approved by Congress September 25, 1789	Ratification Status
<p>First Article: After the first enumeration, required by the first Article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which</p>	<p>First Article: After the first enumeration, required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred; to which</p>	<p>First Article: After the first enumeration required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which</p>	<p>Pending: <u>Congressional Apportionment Amendment</u></p>



<p>the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred, after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor less than one Representative for every fifty thousand persons.</p>	<p>number one Representative shall be added for every subsequent increase of forty thousand, until the Representatives shall amount to two hundred, to which number one Representative shall be added for every subsequent increase of sixty thousand persons.</p>	<p>the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.</p>	
<p>Second Article: No law varying the compensation to the members of Congress, shall take effect, until an election of Representatives shall have intervened.</p>	<p>Second Article: No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.</p>	<p>Second Article: No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.</p>	<p>Later ratified: May 5, 1992 <u>Twenty-seventh Amendment</u></p>
<p>Third Article: Congress shall make no law establishing religion or prohibiting</p>	<p>Third Article: Congress shall make no law establishing articles of faith, or a</p>	<p>Third Article: Congress shall make no law respecting an establishment of</p>	<p>Ratified: December 15, 1791 <u>First Amendment</u></p>



<p>the free exercise thereof, nor shall the rights of Conscience be infringed.</p>	<p>mode of worship, or prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition to the government for a redress of grievances.</p>	<p>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.</p>	
<p>Fourth Article: The Freedom of Speech, and of the Press, and the right of the People peaceably to assemble, and consult for their common good, and to apply to the Government for a redress of grievances, shall not be infringed.</p>	<p><i>(see Third Article above)</i></p>		
<p>Fifth Article: A well regulated militia, composed of the body of the People, being the best security of a free State, the right of the People to keep and bear arms, shall not be infringed, but no one religiously scrupulous of bearing arms, shall be compelled to render</p>	<p>Fourth Article: 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.</p>	<p>Fourth Article: 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.</p>	<p>Ratified: December 15, 1791 Second Amendment</p>



<p>military service in person.</p> <p>Sixth Article: No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.</p>	<p>Fifth Article: No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.</p>	<p>Fifth Article: No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.</p>	<p>Ratified: December 15, 1791 Third Amendment</p>
<p>Seventh Article: 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.</p>	<p>Sixth Article: 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.</p>	<p>Sixth Article: 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.</p>	<p>Ratified: December 15, 1791 Fourth Amendment</p>
<p>Eighth Article: No person shall be subject, except in case of impeachment, to more than one trial, or</p>	<p>Seventh Article: No person shall be held to answer for a capital, or otherwise infamous crime, unless</p>	<p>Seventh Article: No person shall be held to answer for a capital, or otherwise infamous crime, unless</p>	<p>Ratified: December 15, 1791 Fifth Amendment</p>



<p>one punishment for the same offense, nor shall be compelled in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.</p>	<p>on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case, to be a witnesses against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.</p>	<p>on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.</p>	
<p>Ninth Article: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.</p>	<p>Eighth Article: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence.</p>	<p>Eighth Article: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the</p>	<p>Ratified: December 15, 1791 Sixth Amendment</p>



		<p>witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.</p>	
<p>Tenth Article: The trial of all crimes (except in cases of impeachment, and in cases arising in the land or naval forces, or in the militia when in actual service in time of War or public danger) shall be by an Impartial Jury of the Vicinage, with the requisite of unanimity for conviction, the right of challenge, and other accustomed [sic] requisites; and no person shall be held to answer for a capital, or otherways [sic] infamous crime, unless on a presentment or indictment by a Grand Jury; but if a crime be committed in a place in the possession of an enemy, or in which an insurrection may prevail, the indictment and trial may by law be authorised in some other place within the same State.</p>	<p><i>(see Seventh Article above)</i></p>		



<p>Eleventh Article: No appeal to the Supreme Court of the United States, shall be allowed, where the value in controversy shall not amount to one thousand dollars, nor shall any fact, triable by a Jury according to the course of the common law, be otherwise re-examinable, than according to the rules of common law.</p>	<p>Ninth Article: In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by Jury shall be preserved, and no fact, tried by a Jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.</p>	<p>Ninth Article: In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by Jury shall be preserved, and no fact, tried by a Jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.</p>	<p>Ratified: December 15, 1791 Seventh Amendment</p>
<p>Twelfth Article: In suits at common law, the right of trial by Jury shall be preserved.</p>	<p><i>(see Ninth Article above)</i></p>		
<p>Thirteenth Article: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.</p>	<p>Tenth Article: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.</p>	<p>Tenth Article: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.</p>	<p>Ratified: December 15, 1791 Eighth Amendment</p>
<p>Fourteenth Article: No State shall infringe the right of trial by Jury in criminal cases, nor the rights of</p>	<p><i>(see Third and Ninth Articles above)</i></p>		



<p>conscience, nor the freedom of speech, or of the press.</p> <p>Fifteenth Article: The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.</p>	<p>Eleventh Article: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.</p>	<p>Eleventh Article: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.</p>	<p>Ratified: December 15, 1791 Ninth Amendment</p>
<p>Sixteenth Article: The powers delegated by the Constitution to the government of the United States, shall be exercised as therein appropriated, so that the Legislative shall never exercise the powers vested in the Executive or Judicial; nor the Executive the powers vested in the Legislative or Judicial; nor the Judicial the powers vested in the Legislative or Executive.</p>			
<p>Seventeenth Article: The powers not delegated by the Constitution, nor prohibited by it, to the</p>	<p>Twelfth Article: The powers not delegated to the United States by the Constitution, nor prohibited by it to the</p>	<p>Twelfth Article: The powers not delegated to the United States by the Constitution, nor prohibited by it to the</p>	<p>Ratified: December 15, 1791 Tenth Amendment</p>



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