

The Ninth Amendment

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The Ninth Amendment is probably the least known of the first ten adopted Amendments. As a matter of fact, because of its seemingly ambiguous language and intent, it was never used in Federal court for the first 170 years to influence a major decision and was seldom even referenced. As further elucidated in the accompanying articles by Ellis Washington and Walter Williams, that all changed in dramatic fashion beginning in 1965. Following the Griswold Decision, the most liberal Supreme Court to that time eventually misappropriated it to override the absolute unalienable right given to us by our Creator and acknowledged by the Declaration of Independence and explicitly protected by the Constitution the right to Life! Thus, a liberal Federal judge recently overturned a Texas state antiabortion law claiming the law violated a woman's constitutional right to privacy and thereby her constitutional right to choose life or death for her unborn infant based, as was Roe v. Wade, on the Ninth Amendment. There is no doubt this horrific interpretation was never the intent of our founding fathers, and I believe they would have never passed it if they had in any way foreseen such a dreadful abuse of not only the Constitution but life itself.

The online Legal-Dictionary had this to say about the Ninth Amendment:

The Ninth Amendment to the U.S. Constitution is somewhat of an enigma. It provides that the naming of certain rights in the Constitution does not take away from the people rights that are not named. Yet neither the language nor the history of the Ninth Amendment offers any hints as to the nature of the rights it was designed to protect.

Ratified in 1791, the Ninth Amendment is an outgrowth of a disagreement between the Federalists and the Anti-Federalists over the importance of attaching a [Bill of Rights](#) to the Constitution (as further expounded upon in the accompanying articles by Washington and Williams).

The Federalists contended that a Bill of Rights was unnecessary because in their view the federal government possessed only limited powers that were expressly delegated to it by the Constitution. They believed that all powers not constitutionally delegated to the federal government were inherently reserved to the people and the states. Nowhere in the Constitution, the Federalists pointed out, is the federal government given the power to trample on individual liberties. The Federalists feared that if the Constitution were to include a Bill of Rights that protected certain liberties from government

encroachment, an inference would be drawn that the federal government could exercise an implied power to regulate such liberties.

Anti-Federalists and others who supported a Bill of Rights attempted to mollify the Federalists' concerns with three counterarguments. First, the Anti-Federalists underscored the fact that the Constitution guarantees certain liberties even without a Bill of Rights. For example, Article I of the Constitution prohibits Congress from suspending the writ of [Habeas Corpus](#) and from passing bills of attainder and [Ex Post Facto Laws](#). If these liberties could be enumerated without endangering other unenumerated liberties, Anti-Federalists reasoned, additional liberties, such as freedom of the press and religion, could be safeguarded in a Bill of Rights.

Second, while acknowledging that it would be impossible to enumerate every human liberty imaginable, supporters of a Bill of Rights maintained that this obstacle should not impede the Framers from establishing constitutional protection for certain essential liberties. [Thomas Jefferson](#), responding to Madison's claim that no Bill of Rights could ever be exhaustive, commented that "[h]alf a loaf is better than no bread. If we cannot secure all of our rights, let us secure what we can."

Third, Anti-Federalists argued that if there was a genuine risk that naming certain liberties would imperil others, then an additional constitutional amendment should be drafted to offer protection for all liberties not mentioned in the Bill of Rights. Such an amendment, the Anti-Federalists argued, would protect those liberties that might fall through the cracks of written constitutional provisions. This idea became the Ninth Amendment.

Unlike every other provision contained in the Bill of Rights, the Ninth Amendment had no predecessor in [English Law](#). It stemmed solely from the genius of those who framed and ratified the Constitution. Ironically, Madison, who opposed a Bill of Rights in 1787, was the chief architect of the Ninth Amendment during the First Congress in 1789.

While I am not a constitutional lawyer and scholar like Bill Clinton or our current President, I do believe that our Constitution was not intended for constitutional scholars alone but for everyday folk like us. It seems to me that there is a natural link between the 9th and 10th Amendment (to be covered next month). Both addressed those rights and privileges not specifically given to the Federal Government by the Constitution, i.e. enumerated therein, which were thereby unequivocally reserved first to the people (Article 9) and then to the states (Article 10).

There is no doubt in my mind that the current absolute misuse of the Commerce Clause by the Congresses along with the overreaching regulations on states, businesses, and individuals by such out-of-control federal agencies from the IRS to the EPA, among many others, is a clear violation of the purpose and intent of the Ninth Amendment. As further noted by the online Legal-Dictionary:

After *Griswold* (in 1965), federal courts were flooded with novel claims based on unenumerated rights. Almost without exception, these novel Ninth Amendment claims were rejected.

For example, the Ninth Circuit Court of Appeals found no Ninth Amendment right to resist the draft (*United States v. Uhl*, 436 F.2d 773 [1970]). The Sixth Circuit Court ruled that there is no Ninth Amendment right to possess an unregistered submachine gun (*United States v. Warin*, 530 F.2d 103 [1976]). The Fourth Circuit Court held that the Ninth Amendment does not guarantee the right to produce, distribute, or experiment with mind-altering drugs such as marijuana (*United States v. Fry*, 787 F.2d 903 [1986]). The Eighth Circuit Court denied a claim asserting that the Ninth Amendment guaranteed Americans the right to a radiation-free environment (*Concerned Citizens of Nebraska v. U.S. Nuclear Regulatory Commission*, 970 F.2d 421 [1992]).

Although the above examples may have failed to gain traction in the courts, I have no doubt the Gay Rights movement has, is, and will, make effective use of this Amendment to further their cause the same as did the pro-abortion movement.

While the examples noted above, after *Griswold*, might have been stretching the point, and the pro-abortion and pro-gay movements continue to misappropriate this Amendment to blatantly advance their repulsive movements, there is no doubt that we (like the states) have lost our individual unalienable rights and liberties that were intended to be protected by the Constitution and the Bill of Rights, including and especially the Ninth Amendment. Our protected rights have been hijacked by an overreaching and menacing Federal bureaucracy that our founding fathers counseled us time and again to guard against while unequivocally warning us to be ever vigilant regarding such usurpations of our liberties and freedoms. We have failed them and there is no better example of this than our allowing the misappropriation of the 9th Amendment in *Roe v. Wade* while not insisting it be invoked appropriately to protect the many unalienable individual rights granted to us by a loving Creator and initially protected by our wise forefathers who gave us our founding documents, and who were no doubt given special wisdom for the task by our Creator. It seems that in this case, the Federalists may have ultimately been right in their assumptions concerning the further enumeration of our rights.