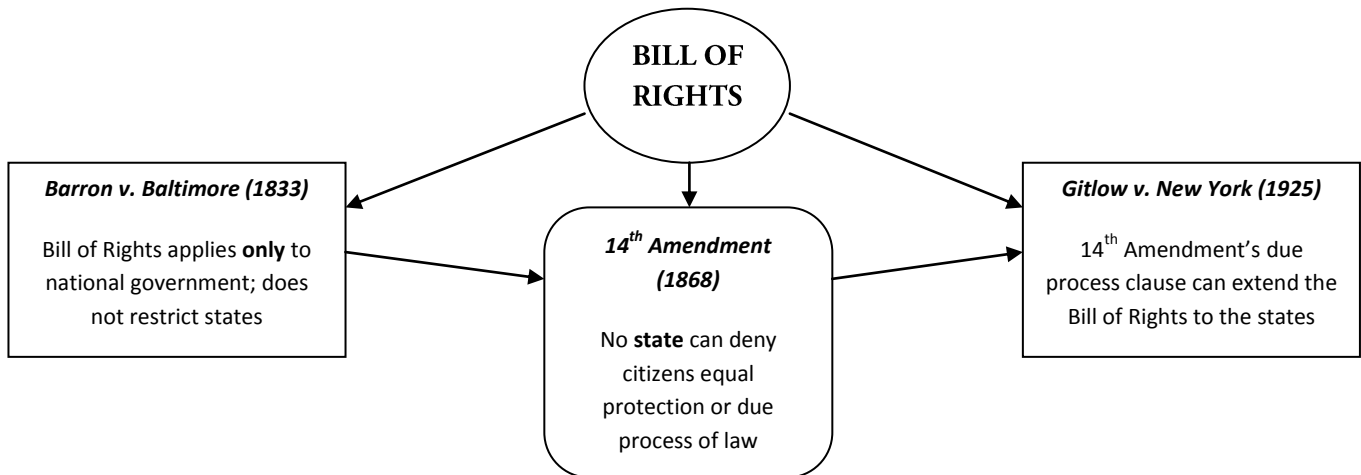


The Incorporation Doctrine

Extending the Bill of Rights to the States



Directions: Using the Supreme Court decisions given to you, determine whether the state in the fictitious scenario is in violation of the incorporation doctrine (i.e. the portions of the Bill of Rights applied to the states), and if so, what Court decision can be applied to the situation?

Scenario	Violation?	Supporting Case/Explanation
Delaware passes a law allowing for random searches of people's home computers.		
The Pennsylvania National Guard is mobilized by the governor and some troops are required to reside in citizens' homes.		
California begins requiring all defendants in criminal cases to take the stand in court.		
Texas begins holding murder suspects in detention without access to a lawyer.		
New York arrests leaders of a group for selling anti-governor t-shirts in front of the state capitol.		

Scenario	Violation?	Supporting Case/Explanation
Mississippi passes legislation requiring all citizens of the state to report all Web sites visited each month.		
The state of Oregon re-prosecutes a man already tried and acquitted of murder because they did not like the original verdict.		
Maine bans the sale, purchase, and ownership of all firearms.		
Oklahoma prevents anyone accused of sexual assault from knowing who their accuser is in order to protect the victim.		
Alaska forbids the practice of Islam, Hinduism, or Buddhism in public places.		
A woman is charged with shoplifting in Arizona. She is found guilty and fined \$10 million.		
Virginia passes a law requiring any woman seeking an abortion to undergo an invasive examination without her consent.		
A man is arrested in Ohio for burglary in October 2005. His case is not scheduled to go to trial until sometime in 2014.		
Idaho decides to forego a grand jury indictment process and move straight to arrest based on evidence gathered by investigators.		

Incorporation Doctrine

Supreme Court Cases

Everson v. Board of Education (1947)

Applied the First Amendment's Establishment Clause to the states by ruling that the 14th Amendment's Due Process Clause prohibits tax-funded public schools from using tax dollars to reimburse families for transportation used to send their children to private religious schools. Such a program was deemed a violation of the separation of church and state.

Cantwell v. Connecticut (1940)

Applied the First Amendment's Free Exercise Clause to the states by ruling that the 14th Amendment's Due Process Clause prohibits the states from requiring any religious organization or charitable group soliciting for donations or other purposes to obtain a permit from the state. Additionally prohibited was deeming any such activity, even if it's in general of offensive nature to some, a breach of the peace.

*****Gitlow v. New York (1926)*****

Applied the First Amendment's free speech and free press protection to the states through the 14th Amendment's Due Process Clause. While a state can limit speech based on whether the speech or publication is of "dangerous tendency," that is, if it presents a tendency toward action dangerous to public safety. But any speech falling short of the "dangerous tendency" test cannot be limited by the states.

Near v. Minnesota (1931)

Specifically applied the First Amendment's free press protection to the states by ruling that the 14th Amendment's Due Process Clause prohibits states from preventing publication of material in advance (**prior restraint**) even though the communication itself may be punishable after publication.

DeJonge v. Oregon (1937)

Applied the First Amendment's freedom of assembly provision to the states by ruling that the 14th Amendment's Due Process Clause prohibits states from outlawing or preventing the assembly or association of people in a particular organization or group (in this case, the Communist Party). This established the implied right of **freedom of association** in the First Amendment.

Edwards v. South Carolina (1963)

Applied the First Amendment's right to petition provision to the states by ruling that the 14th Amendment's Due Process Clause prohibits states from banning the organization and peaceful participation in marches on state institutions of government.

McDonald v. Chicago (2010)

Applied the Second Amendment to the states by ruling that the 14th Amendment's Due Process Clause prohibits states from instituting bans on handguns.

Mapp v. Ohio (1961)

Applied the Fourth Amendment's **prohibition against illegal search and seizures** to the states by ruling that the 14th Amendment's Due Process Clause prohibits states from using in a state court evidence gathered illegally without probable cause and/or without a search warrant. The exclusionary rule – such evidence must be excluded from the trial – applies to the states as it does to the federal government.

Benton v. Maryland (1969)

Applied the Fifth Amendment's protection against **double jeopardy** to the states by ruling that the 14th Amendment's Due Process Clause prohibits states from trying an individual for the same crime twice.

Malloy v. Hogan (1964)

Applied the Fifth Amendment's protection against **self-incrimination** to the states by ruling that the 14th Amendment's Due Process Clause prohibits states from compelling a witness to testify against himself or in a way that might implicate himself in criminal conduct. (This is also the first right mentioned in the so-called Miranda Warnings, read by police to anyone being arrested, as mandated by ***Miranda v. Arizona*** in 1966.)

Chicago, Burlington, and Quincy Railroad v. City of Chicago (1896)

Applied the Fifth Amendment's requirement for **fair compensation** in exchange for the taking of private property to the states by ruling that the 14th Amendment's Due Process Clause prohibits states or local governments from confiscating land from corporations or businesses without just compensation.

Klopfer v. North Carolina (1967)

Applied the Sixth Amendment's requirement for a **speedy trial** by ruling that the 14th Amendment's Due Process Clause prohibited North Carolina from indefinitely delaying a trial for prosecution by announcing that the state's attorney will not pursue prosecution "at this time," over the objection of an accused person.

In re Oliver (1948)

Applied the Sixth Amendment's requirement for a **public trial** by ruling that the 14th Amendment's Due Process Clause prohibits states from convicting and sentencing an individual of a crime in a secret proceeding (in this case, a grand jury proceeding). The decision also applied the Sixth Amendment's **right of notice** to the accused, meaning that (s)he has the right to be informed of the charges against her or him.

Duncan v. Louisiana (1967)

Applied the Sixth Amendment's requirement for a **impartial jury trial** by ruling that the 14th Amendment's Due Process Clause applies such a right to the states. The Court stated in a 7-2 vote that a jury trial in criminal cases is "fundamental to the American scheme of justice."

Pointer v. Texas (1965)

Applied the Sixth Amendment's requirement for the accused to **confront witnesses** by ruling that the 14th Amendment's Due Process Clause prohibits states from taking testimony from witnesses against the accused and using such testimony in court without the accused being able to question those witnesses.

Washington v. Texas (1967)

Applied the Sixth Amendment's requirement for the accused to **obtain witnesses** on her or his behalf by ruling that the 14th Amendment's Due Process Clause prohibits states from preventing a co-participant in the same crime to testify for the accused.

*****Gideon v. Wainwright (1963)*****

Applied the Sixth Amendment's requirement for the accused to **obtain counsel for defense** by ruling that the 14th Amendment's Due Process Clause prohibits states from denying any defendant the right to a lawyer, regardless of the nature of the crime committed. States must appoint counsel to a defendant if (s)he is unable to obtain it on her or his own.

Robinson v. California (1962)

Applied the Eighth Amendment's prohibition against **cruel and unusual punishment** by ruling that California violated the 14th Amendment's Due Process Clause through its application of a law that addiction to narcotics was illegal and punishable by at least 90-days in jail. The Court ruled that drug addiction amounted to an illness and thus could not be subject to and punishable under criminal law.

**** = KNOW THIS CASE!**

According to the information above, which Constitutional amendments or amendment provisions have NOT been incorporated?
