

A decorative graphic consisting of a thin gold circle on the left side, partially overlapping a horizontal bar. The bar has a gold-to-white gradient and is enclosed by large black and gold brackets. The text is centered within the bar.

Privacy Protections
in the Commonwealth
of Virginia

— JCOTS —

Sources of Privacy Protection

- Fundamental Right
- 4th Amendment Search/Seizure
- Tort Law (Statutory/Common Law)

Sources of Privacy Protection

■ Fundamental Right

- Travel, Association, Privacy, Voting, First Amendment guarantees

Actor: State/Federal Government

Standard: Highest (strict scrutiny) – The government may not encroach upon specific privacy protections unless the encroachment is “necessary to advance a compelling government interest.”

Specific Privacy Protections:

- Contraceptives (*Griswold v. Connecticut*; *Carey v. Population Svc's Intern'l*)
- Abortion (*Roe v. Wade*)
- Marriage (*Loving v. Virginia*)
- Obscene Reading Material (*Stanley v. Georgia*; *Osborne v. Ohio*)
- Family Relationship (*Moore v. City of East Cleveland*)
- Parenting (*Troxel v. Granville*)
- Intimate Sexual Conduct (*Lawrence v. Texas*)

Sources of Privacy Protection

■ 4th Amendment Search/Seizure

- “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.”

Actor: State/Federal Law Enforcement (Not Private Persons)

Standard: *Reasonableness* – To have a 4th Amendment claim, a person must first have a “reasonable expectation of privacy” in the item being seized or the area being searched.

Sources of Privacy Protection

■ 4th Amendment Search/Seizure

Specific Areas with Legitimate Expectation of Privacy:

- One's home/property
- Overnight guest of a home/property owner

No Expectation of Privacy (Things Held Out Publicly):

- Sound of one's voice
- Handwriting
- Paint on the outside of one's car
- Smell of one's luggage or car
- Account records held by a bank
- Administrative searches (airline security, international border, etc.)
- Fly-over/open fields
- Automobile movement on public roads

Sources of Privacy Protection

■ 4th Amendment Search/Seizure

Automobile Movement on Public Roads (*United States v. Knotts*)

- A person “traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another.”

United States v. Jones:

- Scheduled for oral argument before the Supreme Court on November 8, 2011
- Questions Presented:
 1. Whether the warrantless use of a tracking device on a vehicle to monitor its movements on public streets violated the Fourth Amendment;
 2. Whether the government violated the Fourth Amendment by installing a GPS tracking device on a vehicle without a valid warrant and without consent.
- Specific Issue: aggregation of information through uninterrupted observation

Sources of Privacy Protection

■ Tort Law

Common Law:

1. Intrusion upon a person's affairs or seclusion
2. Publication of facts placing a person in a false light
3. Public disclosure of private facts
4. *Appropriation of a person's picture/name for commercial advantage*

Evans v. Sturgill: “No general right of privacy exists in the law of Virginia, except for the limited right conferred by [statute].”

Statutory:

§ 8.01-40. Unauthorized use of name or picture of any person; exemplary damages; statute of limitations.

Sources of Privacy Protection

In Virginia:

- Fundamental Right
- 4th Amendment Search/Seizure
- § 8.01-40