

Can Your Phone Testify Against You?

Our phones collect data about us that police can use to solve crimes. When does that violate our constitutional right to privacy? BY BROOKE ROSS

TIMOTHY CARPENTER'S own cell phone gave law enforcement officials all the evidence they needed to send him to prison for 116 years.

According to federal authorities, Carpenter carried out a string of armed robberies of electronic stores in Michigan and Ohio between 2010 and 2011. How do they know? They accessed his cell phone's location records. Those records show where you are whenever your phone is with you.

The police obtained the location records from Carpenter's cellular service provider. But his lawyers objected. They said getting the records without Carpenter's permission violated his right to privacy. The right to privacy is based on the Fourth Amendment. (See box, p. 7.)

Carpenter's lawyers argue that the police should have had a

warrant, a court document giving them the right to perform a search.

But lawyers for the federal government say Americans give up their privacy rights when they share personal data with outside companies, such as cellular service providers like Verizon and AT&T.

“This is a case that affects everyone who has a cell phone.”

Now the case—*Carpenter v. United States*—has made it to the U.S. Supreme Court. As the nation’s highest court reconvenes this month, it will decide whether authorities need a warrant to obtain someone’s cell phone location records.

How the Court rules could have huge implications for our privacy rights in the digital age. We increasingly rely on high-tech gadgets that collect and store information about us—everything from smartphones and fitness trackers to personal digital assistants like Amazon’s Alexa. But should this data be private? And

THE FOURTH AMENDMENT

The Fourth Amendment is one of the first 10 amendments to the U.S. Constitution, which are known as the Bill of Rights. (See “5-Minute Guide to the Bill of Rights,” p. 9.) The Fourth Amendment protects people against “unreasonable searches and seizures.”

When the Founders wrote the Fourth Amendment in the late 1700s, they were thinking of British soldiers, who, before the Revolutionary War (1775-1783), could enter colonists’ homes to search and seize their belongings without their permission.

Today, if the police ask to physically search something—whether it’s your house or your car—you have the right to say no. If you agree to a search, you’re effectively giving up your Fourth Amendment rights. Any evidence found can be used against you in court.

If you refuse, police need a warrant to do a search. To get a warrant, police must convince a judge that there’s “probable cause”—a reason to suspect a law has been broken.

to what extent can police use it against us?

“This is a case that affects everyone who has a cell phone,” says Andrew Crocker of the Electronic Frontier Foundation. “Where you go with your devices, whether that’s to a friend’s house, to a doctor for a specific condition, or to a place of

worship, can reveal a lot of private information about your life.”

Privacy vs. Tech

Figuring out how to apply Fourth Amendment privacy rights in the 21st century is not so simple—especially when you consider high-tech devices the Founders could →

MEET THE SUPREMES

The Supreme Court has the final say on whether laws are constitutional. The justices serve for life, and their decisions affect all Americans.

1. ELENA KAGAN Associate Justice
2. SAMUEL A. ALITO JR. Associate Justice
3. SONIA SOTOMAYOR Associate Justice
4. NEIL M. GORSUCH Associate Justice
5. RUTH BADER GINSBURG Associate Justice
6. ANTHONY M. KENNEDY Associate Justice
7. JOHN G. ROBERTS JR. Chief Justice
8. CLARENCE THOMAS Associate Justice
9. STEPHEN G. BREYER Associate Justice



PAGE 6: ILLUSTRATION BY EDDIE GUY; PAGE 7: J. SCOTT APPLEWHITE/AP PHOTO (SUPREME COURT JUSTICES)

never have imagined. It's a challenge often left to the nine justices of the Supreme Court. (See "Meet the Supremes," p. 7.)

In 2012, the Supreme Court ruled that police need warrants to attach GPS devices to suspects' cars. And in a 2014 decision, the justices ruled that police officers must have warrants to search people's cell phones.

A Digital Data Debate

However, when it comes to the data that our devices collect about us—including our location history on smartphones and what Alexa or Apple's Siri hear us say—police can obtain the records without a warrant in most cases.

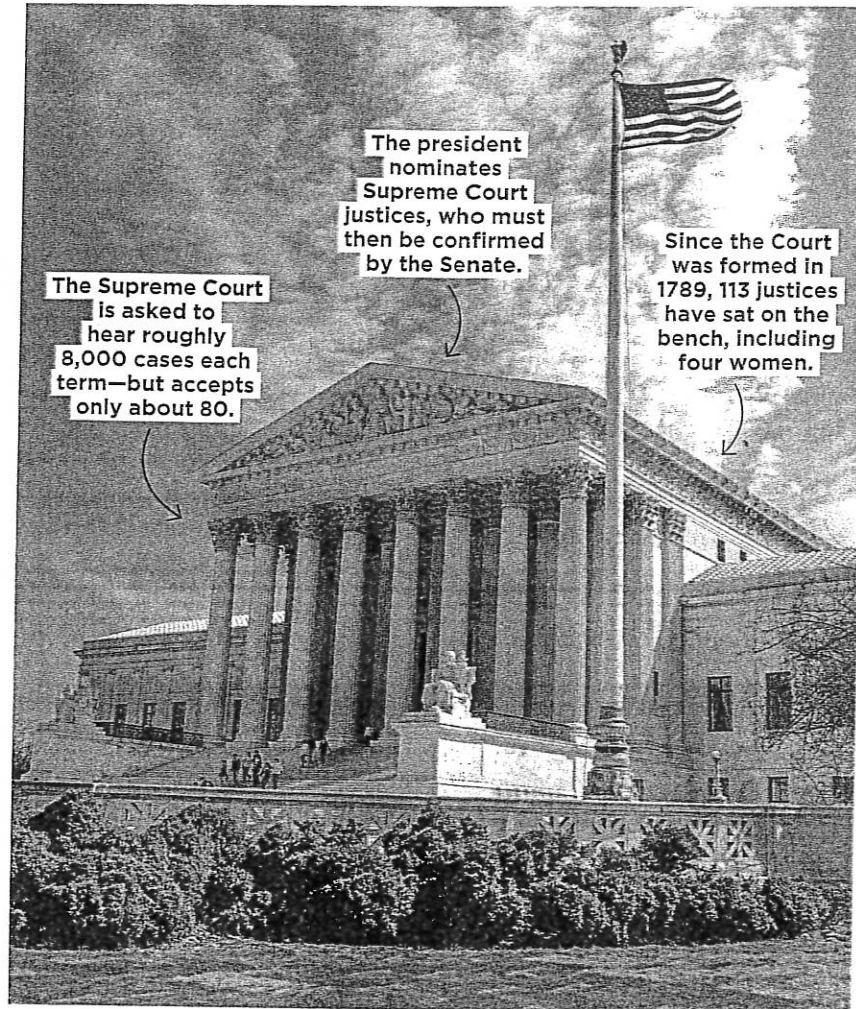
Why? It dates back to a 1979 Supreme Court case in which the justices ruled that people give up their privacy protections when they voluntarily share their information with outside companies. At the time, this meant that if you were to dial a phone number, for example, that

Do police need a warrant to access the info on our devices?

information—who you called—would belong to the phone company. It could share that information with the police or anyone else.

As technology has advanced, this has come to mean that if you do a search on Google or post a photo to Snapchat, that information belongs to your internet service provider.

Law enforcement officials point to the 1979 case as the reason for not needing a warrant to access location records. They say the data is critical for quickly arresting criminal



The president nominates Supreme Court justices, who must then be confirmed by the Senate.

The Supreme Court is asked to hear roughly 8,000 cases each term—but accepts only about 80.

Since the Court was formed in 1789, 113 justices have sat on the bench, including four women.

suspects and clearing the innocent.

Still, privacy advocates are deeply concerned about how much unprotected data our devices collect about us today. After all, they say, a lot has changed since the 1979 ruling. Back then, no one had social media accounts or smartphones.

That's why many people say it's time for the Court to re-examine whether the Fourth Amendment protects those kinds of records.

Protecting Privacy

The justices may use the Carpenter case as an opportunity to clarify the Fourth Amendment's meaning in today's digital age.

"The fact that they agreed to hear the case does point to them doing something interesting," Crocker

says. "The Court has demonstrated a willingness to rethink [privacy protections] as they apply to digital devices and digital data."

But regardless of how the Court rules, privacy experts say it's up to each one of us to be mindful

of how we use our tech gadgets, because our devices are always tracking us.

"Today," explains Joel Reidenberg, a professor at Fordham University in New York, "it's

more or less naive to expect privacy when communicating on any of these devices." ♦

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CORE QUESTION How do you think the Supreme Court should rule in this case? Cite evidence from the text.

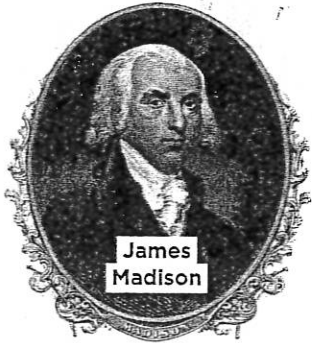
5-MINUTE GUIDE TO

The Bill of Rights

THE RIGHT TO PRIVACY is just one of many constitutional protections addressed in the Bill of Rights. Those are the first 10 amendments to the U.S. Constitution. They outline the basic rights and freedoms

of Americans, such as freedom of speech, the right to bear arms, and the right to a trial by an impartial jury.

Read on for a quick overview of the Bill of Rights, how it was created, and how it works.



James Madison

How Our Rights Were Established

1 Some states (including New York and Virginia) agreed to ratify the Constitution only if a list of our individual rights was added.

2 In response, James Madison, known as the Father of the Constitution, went through the document and made suggested amendments, or changes.

3 Madison drafted nearly 20 amendments. Ten were eventually approved by the states, and the Bill of Rights was ratified on December 15, 1791.

12 Number of original copies of the Bill of Rights in existence today

HOW AMENDMENTS ARE RATIFIED

Amending the Constitution is difficult. Here's how it's usually done.

STEP 1

Proposal

Two-thirds of Congress (the House of Representatives and the Senate) must agree to propose an amendment.

STEP 2

Vote

Each state legislature votes on whether to pass the amendment.

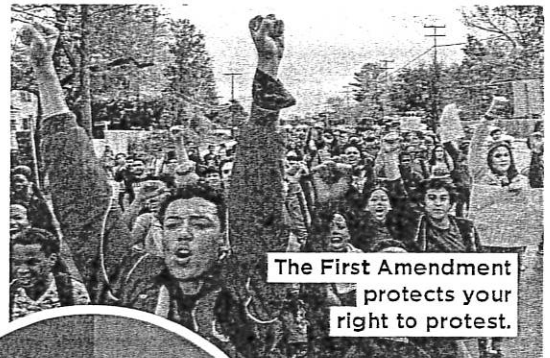
STEP 3

Ratification

The amendment becomes part of the Constitution if three-quarters of the states (38 out of 50) vote to ratify it.

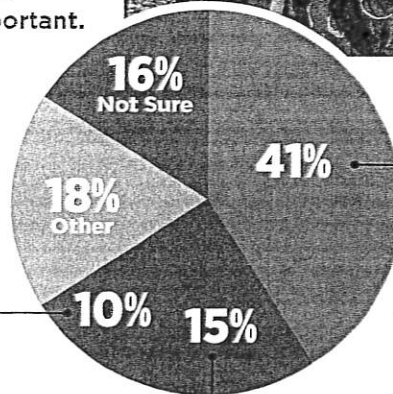
Which Rights Do We Value the Most?

Americans were asked in a recent poll which amendment they think is the most important.



The First Amendment protects your right to protest.

Ninth Amendment: recognizes that Americans have additional rights that are not listed in the Constitution.



First Amendment: guarantees freedom of speech, religion, and the press. It also protects the right to participate in protests and to petition the government.

Second Amendment: gives Americans the right to bear arms (own guns). However, people still debate whether the Founders intended that right to be for individuals or for militia members. (A *militia* is a citizen army.)

SOURCE: yougov.com

For a description of all 10 AMENDMENTS, go to junior.scholastic.com.

NAME: _____

KEY STANDARD

W.6-8.1

Developing an Argument

Fourth Amendment Arguments



PDF is available at
junior.scholastic.com

In “Can Your Phone Testify Against You?” (pp. 6-9), you read about how police are using the data that devices collect about their users to solve crimes and the debate about whether that violates Fourth Amendment privacy rights. Using information from the article, complete the table below to develop your own argument on the issue.

**Should the Fourth Amendment protect people’s digital data, such as cell phone location records?
Cite two reasons for each side of the argument.**

YES	NO
Reason 1: _____ _____ _____	Reason 1: _____ _____ _____
Reason 2: _____ _____ _____	Reason 2: _____ _____ _____

Putting It All Together In your view, should the Fourth Amendment protect people’s digital data? Using your work above, write a paragraph summarizing your opinion.

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