

## United States of America



### United States Constitution

This document was created in 1787 and ratified in 1788 (DPC (1788)). It is the second oldest constitution in the World still in use.

#### The Fourth Amendment – Search and 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."*

There are already numerous concerns about privacy issues related to Smart Metering in the USA – Refer also to section on 'Data provision & privacy/security issues' and Appendix 7.

Below are extracts of transcripts from the Supreme Court of the United States related to the Fourth Amendment and privacy that may be brought into play related to privacy claims brought against Smart Meters:

*"The makers of our Constitution undertook ... to protect Americans in their beliefs, their thoughts, their emotions, and their sensations. They conferred, as against the Government, the right to be let alone - the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment." O v US (1928).*

*"[A] Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable," Judge Harlan (K v US 2001).*

*"The Fourth Amendment's protection of the home has never been tied to measurement of the quality or quantity of information obtained. ... In the home, our cases show, all details are intimate details, because the entire area is held safe from prying government eyes," (K v US 2001).*

*"At the very core" of the Fourth Amendment "stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion" (S v US 1961).*

*"The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens" C v US (1925).*

*"... it is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon," B v US (1927).*

### **Right To Privacy**

The US Constitution does not expressly state the right to privacy (Walenta 2011). However, US Supreme Court decisions have determined that the right to privacy is a basic Human Right, and as a result of this it is protected by virtue of the 9th Amendment: *"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."*

*"... most justices do believe that the Ninth Amendment has binding authority, and they use it to protect implicit rights hinted at but not explicated elsewhere in the Constitution. Implicit rights include ... the right to privacy ..."* Head (2011).

*"... In addition, it is said that a right to privacy is inherent in many of the amendments in the Bill of Rights, such as the 3rd, the 4th's search and seizure limits, and the 5th's self-incrimination limit," (Walenta 2011).*

*"I believe that data mining is inherently dangerous to one's privacy and potentially dangerous to one's liberty on many levels depending on the intentions of the third party obtaining the information.*

*The smart meter applications and mesh networking systems penetration into one's privacy goes beyond the uses and misuse of data and defiling the sacredness of the home, ... it compromises the exact status of one's life the minute it is turned on and alters the physical destiny of that person forever." Aders (2010).*

## The Fourteenth Amendment – Citizenship Rights

### Section 1.

*“... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”*

#### a) Life

The IARC now classify RF/microwave radiation as a Class 2B carcinogen (WHO/IARC 2011), indicating to many that increased exposures (as may be caused by some Smart Metering regimes) may risk increasing individuals' chances of dying from cancer, thereby threatening their right to life and length of life.

The detrimental health conditions that may be exacerbated or induced by some types of Smart Metering regimes (EMFSN 2011, KCRA 2011, Milham 2011) might also be claimed to harm individuals' right to life.

Additional claims about individuals' right to life being compromised might be brought as a result of increased exposure to some RF/microwave regimes appearing to increase risk of miscarriage, damage to human offspring and infertility (Cherry 2000).

#### b) Liberty

The physical liberty of those who react adversely to exposures from some types of Smart metering regimes may be inadvertently compromised if such regimes inhibit/prevent them going where they wish outdoors and indoors, even within their own homes (EMFSN 2011), without the risk of becoming unwell and/or having their health compromised.

Insights into individuals' living patterns and relationships gained by third parties (*if Smart Meter and related technology data are not suitably anonymised*) may impinge on individuals' freedom of liberty to do as they please within their own homes (Aders 2010, Anderson & Fuloria 2010, metering.com 2009).

#### c) Property

There is the possibility that Individuals may claim that the installation of RF/microwave emitting Smart Meters and/or related smart technology abridges their privileges, as the radiation from them may interfere with their right to peacefully enjoy their possessions.

Individuals may be deprived of their right to enjoy their property (or parts of their property) in the manner to which they have become accustomed, due to RF/microwave emissions from such equipment (EMFSN 2011). It is suggested that it is not in society's interest to subordinate such use and enjoyment.

Additionally, claims may be made that the unwarranted introduction of such pollution from smart grid technologies may reduce the capital value of individuals' homes/property (some individuals are already being forced to relocate in an attempt to escape exposures and others may be less likely to want to move in thereby potentially reducing property value).

Some Smart Meter regimes may cause individuals to be deprived of other property that they own. This may include animals, insects (such as bees) and plants (including plant crops – that may be either directly or indirectly effected such as by loss of insect pollinators) – Refer to section on '*Environmental Concerns*'.

The effects on individuals' livelihoods of proposed metering schemes should also be seriously taken into consideration so that optimum solutions can be obtained for the good of all.

### References

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## SMART METERS - SMARTER PRACTICES

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## Constitutions in individual States

The individual states in the USA, and elsewhere, can also have their own constitutional guidelines that may provide further levels of protection.

As an example:

### California Constitution

#### Article 1: Declaration of Rights

##### Section 1.

*“All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.”*

Commentary on this constitution as related to Smart Meters can be found in (Koehle 2010).

## References

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