

# **Pillow Talk with Myself: Protecting Our Thoughts Against Government Intrusion under the First Amendment**

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## ABSTRACT

*In First Amendment theory, it is well-established that privacy protections conflict with First Amendment principles. If the First Amendment promotes the free flow of information, then according to some theorists, the concept of privacy does not align with the right to be informed. However, as technology advances and new forms of data are created and stored, it is becoming more evident that the First Amendment actually promotes privacy.*

*Traditionally, scholars have considered the Fourth Amendment to serve as the source of privacy protections against government intrusion. Over the last decade, courts have extended Fourth Amendment protections to informational privacy in cases such as *Carpenter v. United States* and *Riley v. California*. This Article does not argue otherwise, but it does argue that the First Amendment should serve as robust source of privacy protections in addition to the Fourth Amendment. Further, it explores the new frontier of privacy risks and how the First Amendment serves as the shield against such risks.*

*This Article proposes the Privacy Theory of the First Amendment. It argues that the First Amendment actually provides the strongest protections against government intrusion with respect to newer categories of personal data. The Article illustrates the Privacy Theory using neurodata—an emerging category of data, currently in its infancy, that is a collection of substantive thoughts as storable and processable data. More specifically, it argues that government intrusion of neurodata violate clearly established principles of the First Amendment, such as speech and belief compulsion.*

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