

# CELEBRATE FREEDOM, CELEBRATE CIVICS

SECOND EDITION



 **Herald-Tribune**  
**in EDUCATION**

IN CONGRESS, JULY 4, 1776.

Unanimous Declaration of the thirteen united States of America,



SENATOR NANCY C. DETERT  
23rd District

**THE FLORIDA SENATE**

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
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Reapportionment

October 14, 2011

Dear Teachers and Students:

For our society to have an educated and engaged citizenry, today's students need to be taught civics education in our schools. We found that 71% of our students unfortunately could not pass a basics civics test, so we knew we were obviously doing something wrong in our schools. For instance, students should know who their Governor is, they need to understand the three branches of government, and why we have the separation of powers. They should understand how our democracy works now so that they can be informed citizens later. They need to understand that this is *their* government and how and why they should be a participant in it. As U.S. Judge Robert H. Jackson said: "It is not the function of our government to keep the citizen from falling into error; it is the function of the citizen to keep the government from falling into error."

I am encouraged by studies that consistently show that civics education inspires students to get involved, it enhances their knowledge of the democratic process, and it changes their attitudes. We decided to add an end-of-course exam to our state law requiring civics education in our schools because we found that what is not tested is not taught. We wanted to see some accountability and some progress in our schools with regard to civics education. Our investment in requiring the teaching and testing of civics education will pay off later by having a better-informed voting public.

Representative McBurney and I named this law after Justice Sandra Day O'Connor after she came to Tallahassee to talk to us about the importance of civics education in our schools. It is Justice O'Connor's passion for our youth to understand and participate in their government. She has created a very educational and interesting website and I'd encourage people to check it out at <http://www.icivics.org/>.

Sincerely,

Nancy C. Detert

ON JULY 4, 1776, the United States declared its independence from the British Empire with the signing of the Declaration of Independence. The American Constitution laid the framework for the organization of the national government as well as the relationship with its people and state governments. Although the American Constitution is paramount to the government we have today, some of the Founding Fathers felt that the rights of the people needed to be established or else be forgotten. The Bill of Rights, ratified on December 15, 1791, was the solution to this problem.

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# First AMENDMENT

The original Bill of Rights ratified by the states included 10 amendments to the United States Constitution. Each of these amendments has its own significance in American law, but the first amendment is one of the most litigated and well known to the American public. The first amendment states:

**Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.**

There are essentially 5 basic rights that are protected by the first amendment. An easy way to remember them is the acronym **S.P.A.R.P.** Each of these rights established by the first amendment have been interpreted many times by the United States Supreme Court.



BY DJ FREDERICKS, ESQ.

## SPEECH OR EXPRESSION

The right to free speech or expression is a cherished right that all Americans have. One of the reasons for this right was to freely speak our minds without censorship or limitations placed by the government. This right has evolved into many different mediums such as newspapers, magazines, television, rallies, and now the internet. **Can we really say just what we think? Can we express ourselves and how we feel without ANY limitations? Is hate speech protected? How about words that would incite riots? What about material that could be considered obscene and inappropriate to the general population?** These are all questions that the United States Supreme Court has answered.

For example, in *R.A.V. v. City of St. Paul*, the Court ruled that the law prohibiting the display of a symbol which "arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender" was held unconstitutional. This statute was ruled an unconstitutional restriction on the freedom of speech and expression because the state did not have a compelling enough reason to restrict the fundamental right of free speech. But what about fighting words? In *Chaplinsky v. New Hampshire*, the Court stated that fighting words that do not convey any ideas but are just intended to inflict injury and constitute and unambiguous invite to brawl or tend to incite an immediate breach of the peace are not protected speech.

A recent case that has been brought before the Supreme Court is *Snyder v. Phelps*. The issue before the Court is does the First Amendment protect picketers that display signs at the funeral of a deceased Marine that read "Thank God for dead soldiers" and "Fag troops." How would you decide?



## PETITION AND ASSEMBLY



The fundamental rights to petition and freely assemble are important rights that

helped with many social movements and governmental changes. For example, in *Brown v. Louisiana*, the Court ruled that actions restricting an orderly and peaceful sit-in at a library to protest segregation is unconstitutional. Even actions that would be considered highly insensitive are protected by the right to freely assemble. In a controversial decision by the Supreme Court, the Court ruled in *National Socialist Party v. Skokie* that the First Amendment protected the rights of the American Nazi Party to peaceably demonstrate in a peaceably Jewish community. Although there was staunch opposition, the right to peaceably assemble was held to allow the Nazi demonstration.

## RELIGION

The first aspect of the freedom of religion is that the government shall make no law establishing a religion. Why is this important? The original idea stemmed from America's idea of freedom. The Colonists wished to practice whichever religion they wanted without fear of persecution. An example of how this right has evolved is the Court's decision in *McCree County v. ACLU*. The Court ruled that displays of the Ten Commandments in public schools violated this right. The Court stated that an observer could conclude that the display of the Ten Commandments in the public schools was an endorsement of a religion.

The second aspect of the freedom of religion is that the government shall make no law prohibiting the free exercise of religion. Does that mean Americans can do whatever they want so long as it's a religious belief? Not so fast. In *Employment Division v. Smith* the Court ruled that the use of illegal drugs for religious purposes is not a protected right. Although we can all believe whatever beliefs we want, not all actions are protected under the veil of the freedom to exercise those beliefs.



## PRESS

Recently, this freedom has been broadened more than the Founding Fathers could have ever imagined. Although it is almost hand in hand with the freedom of speech, the liberty of press allows us to express ideas through different forms such as facebook, television or even twitter. However, this fundamental right doesn't always allow complete freedom of the press. In *Hazelwood School District v. Kuhlmeier* the Court ruled that a restriction placed on school newspapers and the edits done by the principal were not violations of the First Amendment because the school newspaper was not a public forum. If the forum used to express ideas is a public forum, a higher standard is used.

The First Amendment establishes liberties that are fundamental to those living in the United States. These liberties were at the heart of the Revolution and have continued to be essential to the United States and its citizens. Technological and social changes such as the internet and television are far beyond what anyone could have imagined over 200 years ago when the Bill of Rights was first ratified.



# Second AMENDMENT

The Constitution of the United States of America is the very foundation upon which our government was established. The first 10 amendments to the U.S. Constitution are called the Bill of Rights. These amendments provide for our fundamental freedom and rights as citizens of the United States.

**There are few, if any, amendments that are as controversial as the Second Amendment to the U.S. Constitution, which states that; "a well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."**



BY JACKSON KRACHT, ESQ.

The Bills of Rights, which included the Second Amendment, was ratified by Congress on December 15, 1791. The portion of the Second Amendment which creates the most controversy is the later portion which states "the right of the people to keep and bear arms shall not be infringed." The controversy surrounding this portion of the Second Amendment really did not come into play until the later half of the 20th Century. Historically speaking, the United States was a very different place in 1791. The clamor to control firearms and to control distribution of firearms in United States originates mostly out of the rise in violent and/or gun related crimes during the later half of the 20th Century. With the increase of gun violence came a groundswell of popular support for the idea that unregulated firearm ownership and the right to bear arms should be limited and, of course, be regulated.

There are two basic positions with regard to rights contained under the Second Amendment. The first position is that the Second Amendment clearly provides for a citizen's right to own a firearm. The second position is that the right of the people to keep and bear arms is tied to a well regulated militia, and therefore it is not a fundamental right to every citizen within the United States. Therefore, the government has a right to determine how firearms are to be regulated.

Gun rights advocates have strongly held to the premise that the Second Amendment to the Constitution provides that every citizen of the United States has a fundamental right to own a firearm. Gun advocates zealously fight any type of firearm regulation and believe that any type of regulation infringes on citizen's rights under the Constitution.

The historical perspective of the Second Amendment is important to keep in mind when evaluating the position of both sides of the gun control debate. At the time that the Second Amendment was drafted and ratified into the Constitution's Bill of Rights, America was a very different place. Standing armies or active duty militaries were considered a threat by the population because the army could be used to oppress its populous. One position held by gun control supporters is that the Second Amendment was intended to be for self defense of the country and the populous and not for the self defense of an individual person. This rationale is also tied to the first part of the Second Amendment which provides for a militia. This fundamental right as drafted in 1791 which is now the source of many arguments, provides little help in determining the intent of our founding fathers. It would have been impossible for our founding fathers to envision the American society that has developed 220 years after the Second Amendment was ratified.

Recent current events have again thrust the gun control issue to the forefront of the American consciousness. The massacre in Arizona during the assassination attempt against Gabrielle Giffords has again brought scrutiny on the accessibility of firearms in our society. Even though there are significant firearm regulations in place, those safeguards appear to be insignificant in protecting a free society from the tragedy of gun violence. The issues regarding the Second Amendment right to bear arms goes beyond the simple premise of whether or not it's a constitutional fundamental right. To the extent that firearms are regulated by the government, those regulations need to be evaluated and enforced.



RECENTLY, the United States Supreme Court addressed the issues involved regarding the Second Amendment in the *District Of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008). In that case, the United States Supreme Court stated that: "[t]here seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms. Of course the right was not unlimited, just as the First Amendment's right of free speech was not, see, e.g., *United States v. Williams*, 553 U.S. 285, 128 S.Ct. 1830, 170 L.Ed.2d 650 (2008). Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for any sort of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for any purpose. Before turning to limitations upon the individual right, however, we must determine whether the prefatory clause of the Second Amendment comports with our interpretation of the operative clause."

**“No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.”**



# Third AMENDMENT

**T**he Third Amendment is intended to protect citizens’ rights to the ownership and use of their property without intrusion by the government. The drafters of the Constitution, like many other colonists, were resentful of laws, in place before the Revolutionary War that allowed British soldiers to take over private homes for their own use. Thus, the amendment bars the government from forcing individuals to provide lodging to soldiers in their homes, except during war when the interest of national security may override an individual’s right of private property.

Rarely discussed in detail in Supreme Court decisions, the Third Amendment has more commonly been held up as evidence that the framers meant the Constitution to protect individuals from government intrusion into their homes, family lives and personal affairs, most notably opinions arguing that there is a constitutional right to privacy, such as the Supreme Court’s decision in *Griswold v. Connecticut*, 381 U.S. 479, 484 (1965).

The Third Amendment has proved to be one of the least-litigated sections of the Constitution. The Supreme Court has never directly reviewed the meaning of the amendment. Indeed, only one court has ever confronted the meaning of the amendment, in a case decided nearly 200 years after it was ratified: *Engblom v. Carey*, 677 F. 2d 957 (2d Cir. 1982).

*Engblom* grew out of a “statewide strike of correction officers, when they were evicted from their facility-residences ... and members of the National Guard were housed in their residences without their consent.” The district court initially grant-

ed summary judgment for the defendants in a suit brought by the officers claiming a deprivation of their rights under the Third Amendment. The Second Circuit Court of Appeals, however, reversed on the ground that it could not “say that as a matter of law appellants were not entitled to the protection of the Third Amendment.” 677F.2d at 964. On remand, however, the District Court held that because the officers’ Third Amendment rights had not been clearly established at the time of the strike, the defendants were protected from suit by a qualified immunity, and this decision was upheld by the Second Circuit.



BY CYNTHIA A. RIDDELL, ESQ.

## DEBRIEF //

To better understand the colonists’ desire to have their basic rights protected, conduct research to find out what it was like to live in a monarchy — the form of government under which many of them lived before coming to America. What conclusions can you draw? Following discussion, pair up with a classmate and role-play an interview between a newspaper reporter and a person who lives in a monarchy.

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.

# Fourth AMENDMENT

NOT CROSS

POLICE LINE DO NOT CROSS



BY RICHARD COLE III, ESQ. le

**T**HE FOURTH AMENDMENT is part of the Bill of Rights, and was adopted by early Americans who resented the searches of persons and seizures of property carried out by Colonial law enforcement before the Revolution. The Fourth says that persons and property that fall within the scope of the Constitution are protected from searches and seizures that are “unreasonable” and that persons and property can only be searched with “probable cause.” Over time, the Supreme Court has determined that the Fourth applies to actions taken by both Federal and state law enforcement officers, and therefore both Federal and state courts consider the Amendment in their decision making process.

The Supreme Court says that a search happens only when someone believes something to be private, and they believe the privacy in that something to be “reasonable.” This is our “reasonable expectation of privacy.” So, if you could not have reasonably believed your action or possession to be private, than there can be no search, and there is no violation of the Amendment when you are apprehended. However, if you did the act or held the possession outside of public view and it was private, than there is a search, and your Fourth Amendment rights are “implicated,” meaning there is a search and a potential Fourth Amendment issue, but it might not be a breach of your constitutional rights. So, if there is a search, your rights may or may not be violated,

it depends on whether the search was “reasonable” or not.

Whether or not a search is “reasonable” determines if it has violated the Fourth Amendment. Here is one real life example from *Miami-Dade County, J.L. v. State*. Three boys were sitting at a bus stop. A police officer, who received an anonymous tip about a boy in a plaid shirt from a telephone hotline, approached one of the minors, J.L., and without questioning him or otherwise introducing himself, frisked J.L. and produced a hidden weapon, a firearm.

At his trial for having the concealed weapon, J.L. wanted to have the evidence of the weapon suppressed – meaning hidden from the jury and disregarded by the judge – because he argued that the search had violated his Fourth Amendment rights as it was “unreasonable” and “without probable cause.” The Florida Supreme Court, which heard the case on appeal, decided that the anonymous tip did not withstand Fourth Amendment scrutiny. It found that the anonymous tip called in on J.L. did not provide the police officer with sufficient “probable cause” to frisk J.L., even though the police officer did in fact find that J.L. was violating the law by having a concealed weapon. In other words, the tip did not have an indicia of reliability and was not verified by independent police investigation (it only described J.L.’s clothes and loca-

tion), and therefore could not give rise to a “reasonable” suspicion that J.L. was in fact violating the law before searching him.

However, the same policy and laws cited by the Florida court are not found in other states. In some states, when a firearm is involved, the evidence found in J.L.’s case would not be suppressed at trial even if the search was carried out with just an anonymous tip. That is because some states view the nature of a firearm to require more severe treatment. And even in Florida different facts can change J.L.’s outcome – if J.L. was on school property the evidence would be used against him at trial because schools have some parental authority over their students called in loco parentis. Indeed, even if the anonymous tip in J.L.’s case had been more detailed and believable, it may have tipped the balance.

What the contrast between different state court interpretations shows is the breadth of the Fourth Amendment – it allows the same search to be reasonable in a state that views firearms severely, and unreasonable in a state that has a liberal policy; or reasonable on school property, but unreasonable on a public street. The flexibility of the Amendment allows different divisions of government to treat local crime in different ways,

still maintaining a minimum standard of privacy throughout the nation.

In an age of terror, questions about the extent to which government searches are reasonable are more relevant than ever. Corrupt abuses of surveillance and seizure powers drove early Americans to adopt the Fourth Amendment. But today, with increased technology, the issue is again being reviewed of how to determine where constitutional privacy begins. How detailed and certain must an anonymous tip be to enable police to search a suspected terrorist? Would constant and secret video, email, and telephone surveillance, based on nothing more than an anonymous tip, and lasting for years, be tantamount to a search? And, if so, what level of intrusion would actually violate the Fourth Amendment? How does the wording of the Fourth Amendment, when read in isolation, extend itself to protect emails or text messages from government searches? Indeed, how will the Fourth Amendment respond to the dueling concerns of public safety and personal privacy in an age of technology and terror? These and others will be critical questions in your time.

# RIGHTS IN ACTION

Examine each of these fictional cases and decide which Bill of Rights amendment is most closely concerned. Write your answers in the spaces provided, then discuss your thoughts with the rest of the class.

**1.** The government learns that a newspaper has obtained information on covert U.S. operations in an unstable nation. The paper is planning to print an article on the efforts of undercover U.S. agents to remove the leader of that nation, including the names of the agents. The government tries to prevent publication of the article.

AMENDMENT NO. \_\_\_\_\_

**2.** The Wobblers, members of a religious sect that believes in hard work, piety, and isolation from the world, have built a small, self-sustaining community a few miles from Libertyville. Although they have virtually no contact with outsiders, their neighbors are complaining. In particular, the neighbors object to the group's teaching on the purity of the body, which prohibits them from wearing clothes. The neighbors have never actually seen a Wobbler, but they think the authorities should force them to get dressed.

AMENDMENT NO. \_\_\_\_\_

**3.** You have joined an organization, the Student Alliance for Environmental Change. SAFEC has earned many enemies in your town because of its campaign against the local chemical plant, the largest employer in town. Some people say SAFEC has ties to anarchist and other subversive groups, although no one has any evidence of this. One day, the sheriff appears at your front door without a warrant to search your house for unspecified evidence of subversive activity.

AMENDMENT NO. \_\_\_\_\_

**4.** A man has been accused of murdering his wife. During his trial, evidence indicates he had beaten his wife for years prior to her death. The man is found guilty of murder and sentenced to prison. He later appeals his conviction, saying that three of the women jurors were in the process of divorcing their husbands during the time of the trial.

AMENDMENT NO. \_\_\_\_\_

**5.** A town manages to come to terms with an international computer firm that wants to build a factory. The factory will bring in badly needed jobs. The firm wants to build its plant on a site at the edge of town that includes land currently belonging to several small farms; a new road will cut through the farms. The farmers are unwilling to leave. They say that no amount of money the town or firm is willing to offer them can make up for the loss of their land.

AMENDMENT NO. \_\_\_\_\_

[ANSWERS ON PAGE 16](#)





### PETITION // DEAR CONGRESS

- » Read through the different articles in the Herald-Tribune and find one topic that you have an opposing position on or that you don't agree with that is happening in your community, your town or your city, in the United States or internationally.
- » Look on page 2 of this tab for the address for your Florida State Senator, Nancy Detert. Think about writing a letter to her to her about an issue that you are concerned about, and ask for her assistance. This is an example of exercising your right to petition.



### RELIGION // VOICE OF THE PEOPLE

- » Read the Letters to the Editor in the editorial portion of the A section of the Herald-Tribune.
- » Pay attention to the way the letters are written; they are the opinions of the people who wrote them.
- » Think of a topic or school issue related to freedom of religion, such as sports events on religious days (Friday) or praying during school, on which you have an opinion, and write your Letter to the Editor.
- » Use facts from this lesson to support your opinion in the letter.
- » Sign your name like the letters you read.
- » Share your letter with another student.



### SPEECH // THE COMICS

- » Read the comics in the Herald-Tribune.
- » Pick one comic strip and write new dialogue based on what you learned about the First Amendment.

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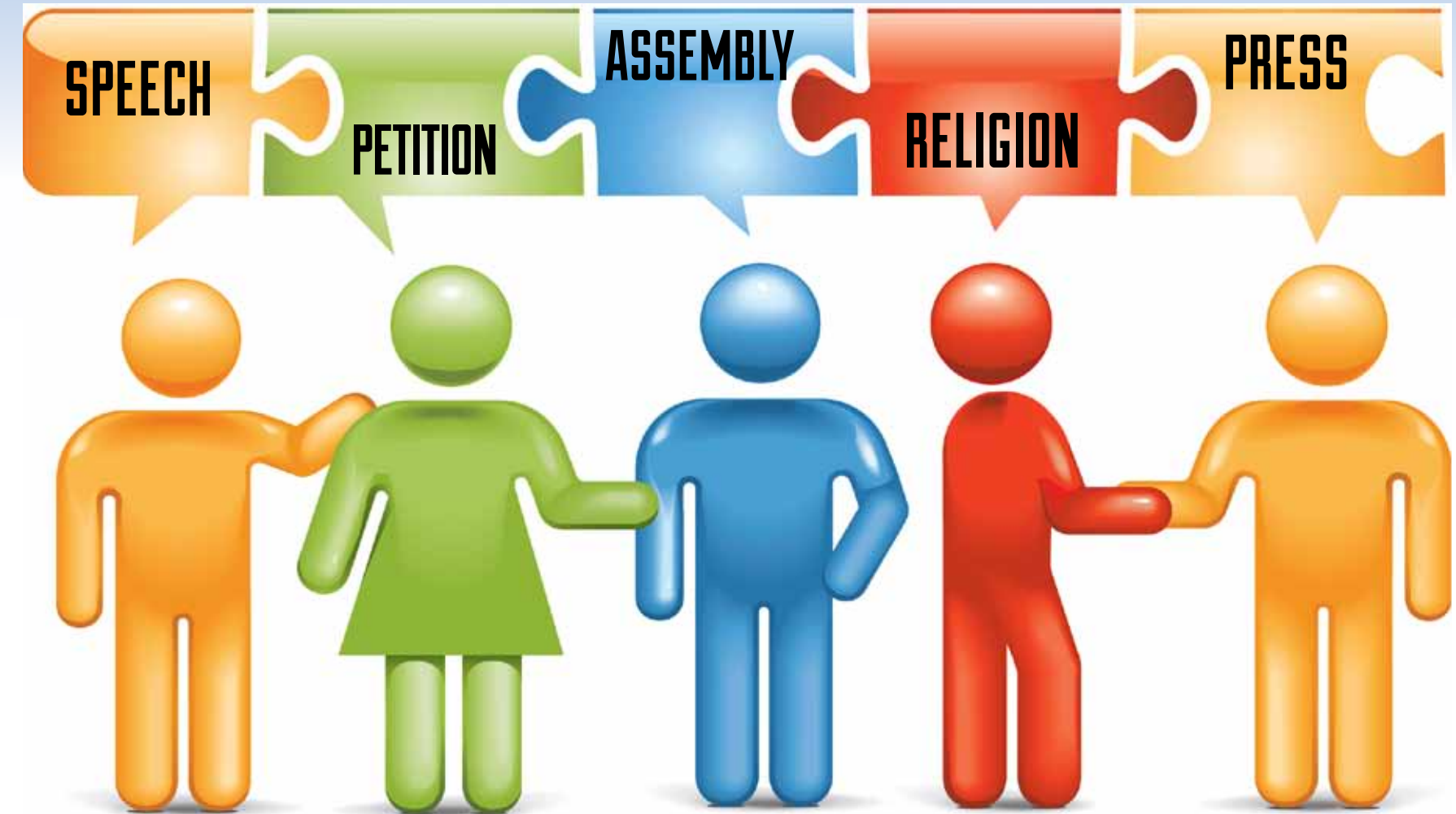


### PRESS // CENSORED!

- » Imagine that the government decided to censor what was written in the newspaper. Determine what would be censored, e.g., criticism about the President.
- » Read articles and ads in all the sections of the newspaper and list the titles of articles or ads that you think might be controversial and that the government might censor and not let the paper print.
- » Next to each title you list, write why you think the government would censor it.
- » Finally, write why you think censoring the article or ad could be a problem.



# The Newspaper and your FIRST AMENDMENT FREEDOMS



### EXTRA, EXTRA, READ ALL ABOUT IT!

- » Go to the E-edition of today's Herald-Tribune, click on the front page article above the fold (half page mark). Make sure you are reading it in graphic mode so that the photograph will appear on the right side of your reading pane along with the whole article.
- » Pretend that you are a newspaper reporter and have been assigned to write the main story of the front page for tomorrow's edition. Imagine the date tomorrow is December 16, 1791 and the Bill of Rights, which includes the First Amendment, was just adopted.
- » Write your story about the First Amendment. Remember to include key facts that you learned in this tab. Make sure to include a headline for your story. As an option, sketch a picture to go with the story.

SOURCE: CHICAGO TRIBUNE, "OUR FIRST AMENDMENT FREEDOMS" TEACHER GUIDE

# Fifth AMENDMENT

**T**HE FIFTH AMENDMENT is one of the amendments that is most frequently portrayed in television and movies. Hollywood loves to show criminal defendants stating that they “plead the fifth” and then refusing to speak with police. It also shows police warning people who are arrested that they “have the right to remain silent.” But what does that mean? The text of the fifth amendment states that no person “shall be compelled in any criminal case to be a witness against himself.” It protects a person from self-incrimination, or providing evidence to police that could be used to help convict him. The reason that portion of the Fifth Amendment was enacted was that in the past many confessions were obtained through torture or abuse of prisoners. The Founding Fathers decided that the best way to prevent those practices was to give every person the right to remain quiet, and not help the prosecution to build a case against them. The protection against self-incrimination only applies when a person faces fines, imprisonment, or forfeiture of property. So if a teacher asks whether you’ve cheated on a test, you probably can’t plead the fifth.

The Fifth Amendment does a lot more than just protect people from self-incrimination. Another important part of the Amendment protects people from being “twice put in jeopardy of life and limb” for the same offense. That means that once a person has been charged with a crime, and they have been acquitted of that crime, the State is not permitted to try to convict them again for the same crime. That is true even if new evidence is later discovered that shows the person to be guilty, or even if the person admits to the crime after being acquitted by a jury! However, a person who is acquitted of a crime by a state court can later be tried by a federal court if the crime was also a federal offense.

Another important provision of the Fifth Amendment is called the “takings clause”, which states that “private property [shall not] be taken for public use, without just compensation.” That clause limits the instances in which the government can take property owned by a private individual and use it for a governmental purpose. It also requires that the government pay a fair price to any person who does have property taken by the government for a public use. That government power is called “eminent domain.” Usually, the government is only allowed to take property if the property is being taken to benefit the community as a whole, rather than only one person or a small group of people. So taking a person’s house to build a road over it is permissible because it would help everyone in the community, but taking a person’s house so that a business can expand its building probably is not.



BY DANIEL C. GUARNIERI, ESQ.

**Q.** A classic double jeopardy case revolved around Wild Bill Hickock – a legendary gun-fighter and lawman in the Old West. He was shot in Deadwood (a town in Indian territory) in 1876 while playing poker. His murderer, Jack McCall was tried in Deadwood, and was acquitted. Later, it was learned that McCall had lied at his first trial, and he was arrested again. He was brought to the state capital and re-tried for Hickock’s murder. Did the Fifth Amendment protection against double jeopardy protect him?



**A.** **No.** Because the first case was tried outside of the United States – in Indian territory – the protection against double jeopardy did not apply to McCall. He was found guilty at his second trial, and was hanged.



## Pleading 'The Fifth'

A relatively recent example of “pleading the fifth” occurred during the Iran-Contra hearings during the 1980s. The Iran-Contra scandal involved the sale of weapons by the US government to Iranians in exchange for money, and the release of hostages. The money that was collected was used to arm anti-communist groups in South America. Oliver North was an American Lt. Colonel who was a central figure in planning and executing the arms sales. When the scandal broke, the US Congress began to hold hearings. When Oliver North was called to testify regarding the destruction of documents relating to the scandal, he pled the fifth in response to countless questions, claiming to be worried that he would be indicted for obstruction of justice.

### MIRANDA V. ARIZONA

The most famous case involving the fifth amendment is *Miranda v Arizona*. In that case, Ernesto Miranda was arrested for a minor theft. However, after a two hour interrogation he admitted to kidnapping and raping a woman, and on the basis of that admission he received a 20 year prison sentence. His attorney objected that he was never advised of his right to an attorney or his right to remain silent, and that accordingly, his confession should be excluded. The U.S. Supreme Court agreed. They ruled that a person who is arrested must be warned of their right to remain silent, their right to an attorney (even if they can’t afford to pay for one) and that anything they say can be used as evidence against them.

### KELO V. CITY OF NEW LONDON

In this case the City of New London, Conn., sought to condemn several privately owned homes, and to transfer ownership of the property that homes were built on to a private land developer. The developer claimed that he wanted to use the land for economic development that would benefit the public at large. The property owners sued the city, claiming that it did not have the ability to take their land and transfer it to another private party. Eventually, the case made it to the U.S. Supreme Court who ruled that it is a permissible “public use” to transfer property from one private person to another if it will promote economic development. Many people were furious with the ruling in *Kelo*, believing that it invades their private property rights. Following the decision, that majority of U.S. states have enacted legislation to limit the government’s power of eminent domain.

# THE RIGHT TO A SPEEDY TRIAL



BY ADAM B. PORTNOW, ESQ.

What does this clause mean in plain english? “Speedy trial” doesn’t mean that the trial must be quick and only last a few hours. What this clause means by “speedy trial,” is that the state can not make the accused sit in jail for years, waiting in a cell for his trial to begin. That would be unfair to anyone who might be innocent. (Remember—the accused is always presumed to be innocent until proven guilty.) What “speedy trial” means is that the accused person’s trial must be held within a reasonable amount of time after being arrested. Also, the Sixth Amendment states that trial must take place in a public court, and not held in secret. Having the trial open to the public guarantees impartiality, fairness, and that the rights of the accused are upheld.

The United States Supreme Court has stated that this provision is “an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibility that long delay will impair the ability of an accused to defend himself.” *United States v. Ewell*, 383 U.S. 116, 120 (1966). As more time passes, witnesses and evidence may be lost which would help the defense of the accused. Witnesses may die, or their memories can blur over time.

Society also has an interest in a speedy trial. A large lapse of time also has a negative effect on society’s interest in prosecuting crimes. Public tax dollars provide the means for the prison system to operate, and keeping people in jail costs a lot of money. So keeping people in jail for a long period can cause a lot of monetary waste. Also, people allowed to go free in the community on bail while awaiting trial may commit other crimes or may be tempted to flee. The purpose of criminal law is to deter crime and to rehabilitate people from potential

future criminal behavior. Any delay in the criminal prosecution can have a negative impact on the effectiveness of these goals.

A recent example of the use of the right to speedy trial is in the case of Doctor Conrad Murray in California. Murray was formally charged in February 2010 with involuntary manslaughter in the death of his patient, pop music icon Michael Jackson. But Murray’s first appearance in court wasn’t until eleven months later, on January 25, 2011. During those 11 months, Murray was out of jail on bond and free among society, but could not use his California medical license to practice medicine.

Eleven months is a long time to have to wait to tell his side of the story, and is also a long time not to be able to work and earn a living. At his first appearance in court on January 25, 2011, Murray invoked his right to speedy trial. When any accused person demands speedy trial in court, the prosecution is required to be ready with all their evidence and witnesses and be ready to go within 60 days. In this case, the judge set a trial in 60 days time, with jury selection set to begin on March 28, 2011.

Murray’s lawyer told reporters that “Dr. Murray is looking forward for the opportunity to finally tell his part of the story” and that Murray has been waiting “for the opportunity to do this ... This is the first chance that we have to force the issue and hopefully we can get to trial during that period of time.”

Source: [www.cnn.com/2011/CRIME/01/25/california.conrad.murray.hearing/index.html](http://www.cnn.com/2011/CRIME/01/25/california.conrad.murray.hearing/index.html)

## Sixth AMENDMENT

### DEBRIEF //

Watch your newspaper for articles, letters to the editor, and editorials about Bill of Rights issues (e.g., death penalty, gun control). For each example, identify the Bill of Rights amendment involved and the different views taken. Discuss one example with your class.

**T**HE SIXTH AMENDMENT bestows many significant rights on the accused party in criminal prosecutions. The first clause of the Sixth Amendment bestows the right to a speedy and public trial. The amendment reads: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial ...” This right can be traced back to the Magna Carta, and has often been exercised with great frequency by defendants in criminal prosecutions throughout its existence.

# Seventh AMENDMENT

**T**HE SEVENTH AMENDMENT to the United States Constitution codifies the right to a jury trial to resolve certain civil disputes when the amount in controversy exceeds \$20. While perhaps not as well known as other Amendments, the Seventh Amendment still has a huge impact on how civil controversies are resolved in the United States.

To understand the Seventh Amendment it is first important to recognize it does not apply to criminal cases where someone has been charged with a crime. Instead it only affects civil cases where one party is claiming damages against another party.

Nearly everyone has seen a courtroom TV show or movie where two lawyers make arguments for and against awarding damages to a jury. While this may seem commonplace today it has not always been the case. In England, before the Glorious Revolution of 1688, civil cases were often decided by judges appointed by and retained at the pleasure of the King. The obvious problem was that these judges were

often biased in favor of the Crown and did not always make rulings in an impartial manner. Trial by jury helped eliminate this problem by letting a group of independent jurors make the final determinations of fact based on the evidence presented at trial.

So why is this important to you? Let's just say, for example, you let your best friend borrow your iPod. The next day she returns it to you with a cracked screen. Worse yet it won't turn on! When you ask her to buy you a new one she refuses and insists it was broken when you gave it to her. Under the Seventh Amendment this civil dispute may ultimately be resolved by a jury trial.

Assuming you and your now ex-best friend can't work out a resolution and the case goes to trial, the dispute would be presented to a jury of peers with no stake in the outcome. Any person who might be biased in favor of one side or the other (such as your new best friend

who is already asking to borrow the replacement iPod when you win at trial) would not be allowed to serve on the jury.

Once the jury panel is selected you, or better yet your attorney, would present evidence and witness testimony to support your position. For example, you may call a witness who saw your ex-best friend drop the iPod and then attempt to superglue it back together. This could be powerful evidence supporting your case. Then your ex-best friend would present her defense. Perhaps she has a witness that will testify you were complaining about the iPod being broken a week before you loaned it out. The Judge's responsibilities would be limited to overseeing the trial and making findings of law.

When both sides have finished, the jury is instructed to consider and weigh all evidence and make the final findings of fact that will resolve the dispute. Maybe you win. Maybe you don't. Either



BY STEPHEN FERNANDEZ, ESQ.

way you have had your day in court, with the opportunity to have your case heard by an impartial jury of your peers.

At times you may hear people complain about the civil jury system. Some don't like the hassle of being summoned for jury duty. Others cite to specific cases where they feel a jury awarded too much or too little for a certain case. Regardless of these complaints, the jury system remains the most fair and unbiased system we have to resolve disputes. Its importance to the founding fathers and to our system of justice is memorialized in The Seventh Amendment to the U.S. Constitution.

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

**T**HE EIGHTH AMENDMENT reads “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” Thus, the Amendment contains three limitations summarized as prohibiting:

1. excessive bail
2. excessive fines, and
3. imposing cruel and unusual punishment

The first limitation prohibits a judge from imposing an excessive bail. Bail is money that a person who is accused of a crime must give to the court in exchange for release from jail prior to the criminal trial. Bail creates a financial incentive for the accused to return to the court for their criminal trial. If the accused does not return for their trial, then the bail is forfeited. Excessive bail means an amount that is more than necessary to assure that the accused will make their court appearances. In other words, bail must be set at the lowest dollar amount that will provide the incentive for the accused to return for trial. At issue is the delicate balance between ensuring that the accused will attend their court appearances while not imposing an amount for bail that will potentially keep an innocent person in jail awaiting trial.

The “excessive fines” clause prohibits a fine used as punishment from being grossly disproportional to the crime. For example, the Supreme Court ruled that forfeiting \$357,144 for a relatively minor rule infraction resulted in an excessive

fine. There, the criminal defendant, Hosep Bajakajian, plead guilty to breaking a law requiring anyone who is leaving the United States with over \$10,000 cash in their possession to notify the U.S. Customs department of their departure. Punishment for the crime requires the forfeiture of all the money being carried. Bajakajian attempted to leave the United States with \$357,144 and when caught, should have been required to forfeit the entire amount. The cash was not otherwise involved in any other crime. The Supreme Court of the United States ruled that requiring Bajakajian to forfeit the entire amount would have resulted in an “excessive fine.” As a result, Bajakajian received a fine totaling \$20,000.

The “cruel and unusual punishment” clause is the most widely recognized limitation found in the Eighth Amendment. The prohibition against cruel and unusual punishment was inspired in part by the English case of Titus Oates. In 1681, Oates was tried and convicted of several counts of perjury. As punishment, the Court sentenced Oates to life in prison accompanied by an annual punishment of two days in the pillory, sometimes called the “shipping post,” followed by one day of whipping. The Court intended to cause Oates great public humiliation and additional physical abuse through the use of the whippings. After three years of the abuse, Oates was pardoned, partly as a result of the “cruel and unusual punishment” inflicted upon him.

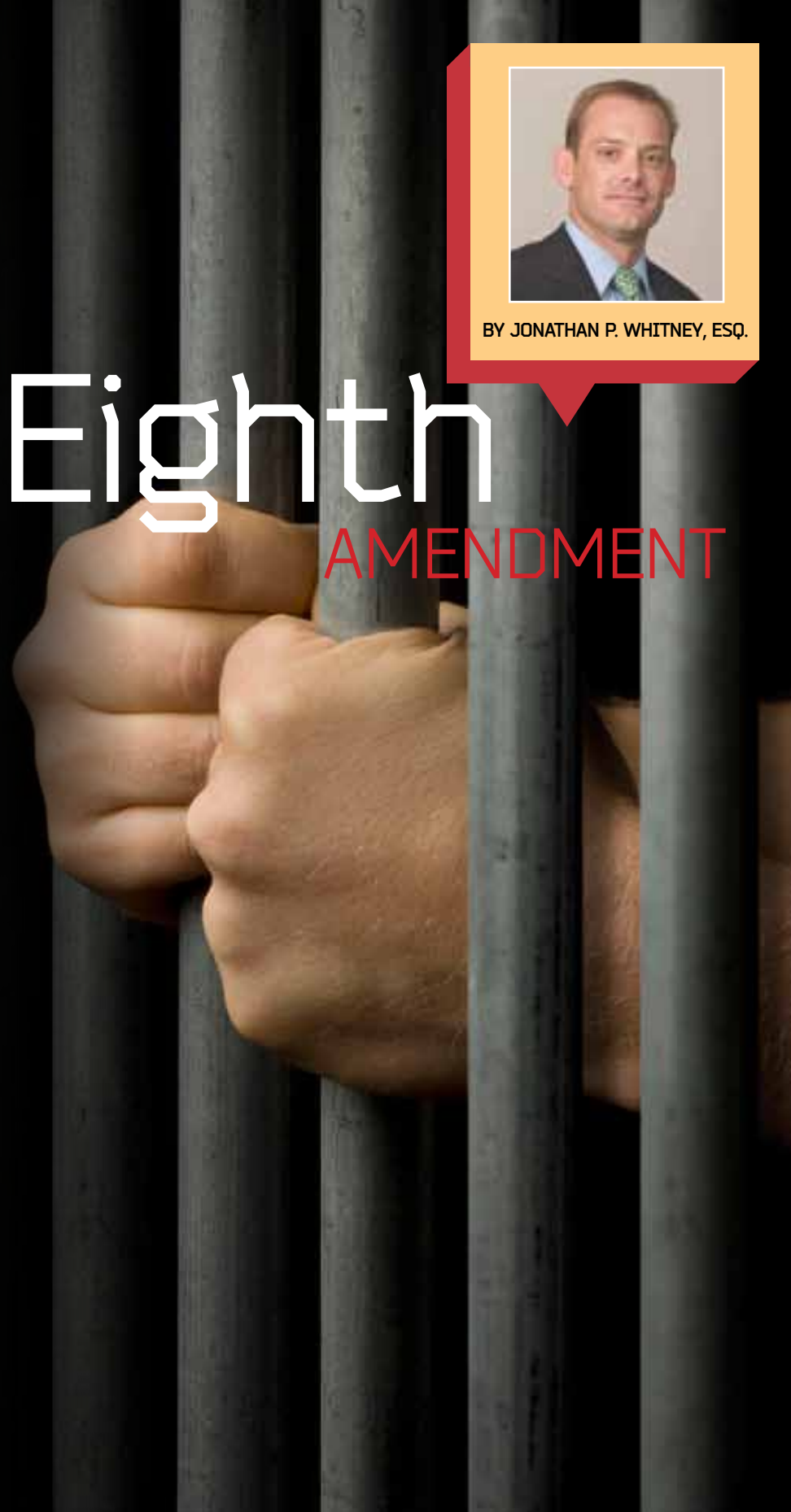
A punishment offends the Eighth Amendment if:

1. it degrades human dignity due to its severity
2. it is inflicted in an arbitrary fashion
3. society has clearly and totally rejected the punishment, and
4. it is patently unnecessary.



BY JONATHAN P. WHITNEY, ESQ.

# Eighth AMENDMENT



# Ninth AMENDMENT

**T**HE NINTH AMENDMENT of the United States Constitution protects all of the rights of the people which are not mentioned specifically elsewhere in the Constitution. The rights protected are referred to as “unenumerated” rights, and include those inferred by other legal rights. The Ninth Amendment combines with the tenth to protect the rights and situations not provided for in the previous eight amendments that make up the Bill of Rights.

One of the most significant Supreme Court Decisions that involved the interpretation of the Ninth Amendment was *Griswold v. Connecticut* (1965). This decision and written opinion first used the word “penumbra” to best describe how the Ninth Amendment works in conjunction with the other enumerated rights found in the Constitution.

In the *Griswold* case, a state law in Connecticut prohibited the use of drugs or instruments to prevent conception, and the giving of assistance or counsel in their use. The laws in question had been enacted in 1879 and carried with them a fine and a provision for imprisonment.

The Executive Director of the Planned Parenthood League of Connecticut and its medical director, a licensed physician, were convicted as accessories for giving married persons information and medical advice on how to prevent conception and, following examination, prescribing a contraceptive device or material for the wife’s use.

The Supreme Court ruled that the “statute forbidding use of contraceptives violates the right of marital privacy which is within the penumbra of specific guarantees of the Bill of Rights.”

According to Justice Douglas, who wrote the majority opinion, the rights people have are more than what can be read in the literal language of the Constitutional text. Citing a number of earlier cases, he emphasized how the Court had established a justified precedent for protecting the marital and family relationships from government interference without strong justification.

In this case, the Court failed to find any justification for this kind of interference in such relationships. The State failed to demonstrate that couples did not possess a right to

make private decisions as to when and how many children they would have. This law, however, operates directly on an intimate relation of husband and wife and their physician’s role in one aspect of that relation. The association of people is not mentioned in the Constitution nor in the Bill of Rights. The right to educate a child in a school of the parents’ choice - whether public or private or parochial - is also not mentioned. Nor is the right to study any particular subject or any foreign language. Yet the First Amendment has been construed to include certain of those rights.

Therefore the Ninth Amendment suggests that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance and these penumbras are essentially create zones of privacy found within the specific enumerated rights in the first eight amendments. The Ninth Amendment provides: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

Do you think that people have a



BY CYNTHIA A. RIDDELL, ESQ.

‘right to privacy’ which includes a right to use contraception to determine how many children a married couple may have and when?

Do but people have a right to use contraception based on something other than a nonexistent specific enumerated right to privacy in the U.S. Constitution? How does the Specific Right to Privacy enumerated in the Florida constitution change the analysis?

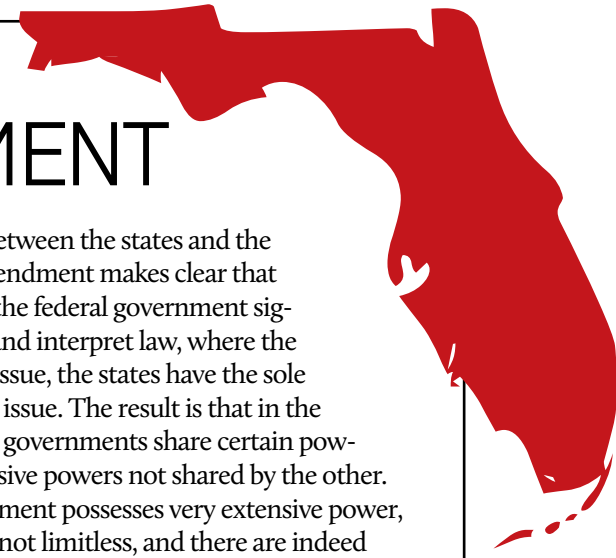
The significance of this decision went a long way to establishing a basic sphere of personal privacy to which all people are entitled. If followed, it would place the burden on the government to demonstrate why it is justified in interfering with your life rather than requiring you to demonstrate that the text of the Constitution specifically and narrowly prohibits the government’s actions.



BY JESSE R. BUTLER, ESQ.

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

# Tenth AMENDMENT



**T**HE 10TH AMENDMENT to the United States Constitution was ratified on December 15, 1791. It was designed to replace a similar provision in the Articles of Confederation. The purpose of the 10th Amendment is to constitutionally establish a federalist form of government. Federalism is a political concept, referring to a government divided between a central governing authority and smaller individual governing units, such as states. In a federalist system, power to govern is shared between the central authority and the state governments, creating a “federation.”

In the United States, our federalist form of government consists of the governments of the 50 individual states, and a separate, federal govern-

ment. Power to govern is shared between the states and the federal government. The 10th Amendment makes clear that although the Constitution grants the federal government significant power to create, enforce, and interpret law, where the constitution is silent on a specific issue, the states have the sole authority to govern regarding that issue. The result is that in the United States the federal and state governments share certain powers, but each also has certain exclusive powers not shared by the other. Thus, although our federal government possesses very extensive power, the federal government’s power is not limitless, and there are indeed areas in which the federal government cannot legislate.

## Debate During the Constitutional Convention of 1791

Many of the framers felt that the 10th Amendment was not necessary. They argued that the federal government is created by the Constitution, therefore it is clear that the federal government possesses only those powers granted to it by the Constitution, making a specific declaration unnecessary and superfluous. Many of the States, however, petitioned to include an express limitation on the powers of the Federal government. Many people, having just successfully fought a war of independence to escape the control of a repressive British government, were fearful that a new tyrannical government would arise to repress the people. To prevent this, some felt that a specific Amendment, declaring that the federal government has only limited power, was necessary to assure that the federal government would not become a new tyrant.

**Thomas Jefferson. “Tabulation of State Votes on Amendments to the Constitution,” 1789–1791.** Manuscript document. *Thomas Jefferson Papers, Manuscript Division, Library of Congress, (85.02.00), [Digital ID# us0085\_01]*

James Madison successfully argued on behalf of the States, stating that although he agreed that the 10th Amendment was likely unnecessary, it should be adopted as a declaration to ease the anxiety of the fearful. It was ultimately agreed that such an Amendment should be included in the final Bill of Rights.

When the language of 10th Amendment was proposed at the

Constitutional Convention, it was debated whether to insert the word “expressly”, so that the Amendment would read “the powers not expressly delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” This would have been a significant change. Many of the members of the Convention believed that the “Necessary and

Proper” clause contained in Article I, Section 8, of the Constitution, would provide the federal government with certain implied powers. The debate over whether to include the word “expressly” in the 10th Amendment involved the basic question of whether the federal government should be limited to only those powers which the Constitution set forth in specific terms, or whether the federal government would be able to govern based on powers which could be derived from the intent of the Constitution, but perhaps not stated in clear terms. In adopting the present version of the 10th Amendment, the framers of the Constitution made a purposeful decision to allow the federal government the ability to govern based on powers implied, but not clearly expressed, in the Constitution. For this reason, the Necessary and Proper clause became to be known as the “Elastic Clause” – it has been the source of the federal government’s ability to stretch its powers further than what is expressly stated in the Constitution.

# Interpretation

In 1931 in the case of *United States v. Sprague*, the Supreme Court of the United States decided that the 10th Amendment is, in fact, a truism that “added nothing to the [Constitution] as originally ratified.” This was the view taken by many of the founders – that the Constitution itself establishes a federalist system with limited powers granted to the federal government, and that such a system would exist even without the 10th Amendment.

Nonetheless, the 10th Amendment has continued to be a source relied upon by States that believe

the federal government is intruding into areas of power reserved exclusively to the States. For example, the Supreme Court has declared that the federal government cannot force any State to adopt a specific federal law or regulation. When the United States Congress passes a law which requires a State to adopt a specific law, this is referred to as “commandeering”, and it is prohibited by the Constitution. Likewise, the federal government cannot require State government agencies and employees to carry out federal laws. Thus, because of our system of federalism established by the Constitution, the federal govern-

ment can never obligate the States to take specific action.

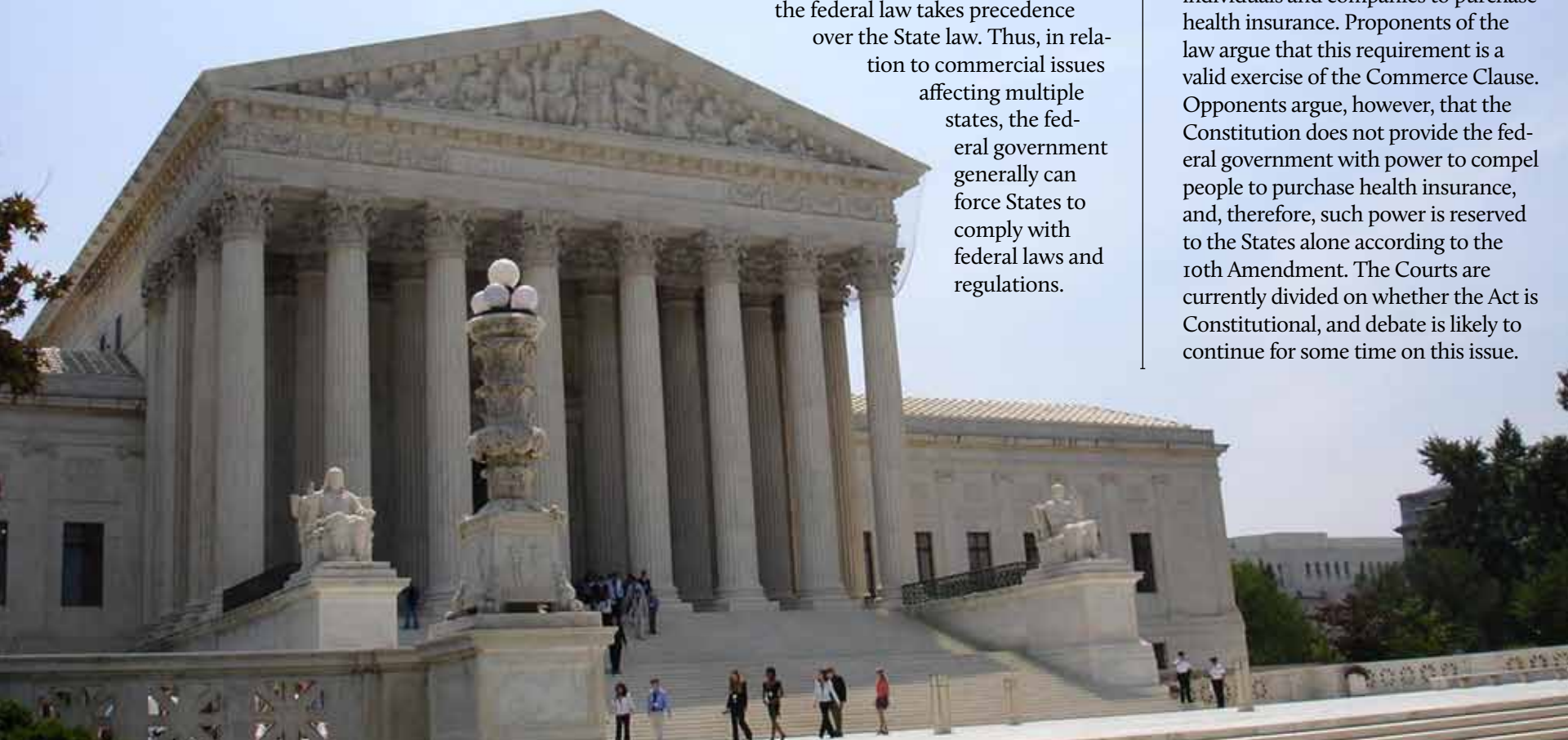
However, the federal government does have broad powers to encourage States to take certain actions, by providing incentives (such as extra funding or benefits) to States that voluntarily adopt federal regulations and laws. Likewise, the federal government can often preempt State law through the Commerce Clause (Article I, Section 8, Clause 3) and the Supremacy Clause (Article VI, Clause 2). The Commerce Clause gives broad power to the federal government to enact laws relating to interstate commerce, and the Supremacy Clause declares that where federal and state law conflict, the federal law takes precedence

over the State law. Thus, in relation to commercial issues affecting multiple states, the federal government generally can force States to comply with federal laws and regulations.

# National Healthcare Law Debate

In 2010, THE AFFORDABLE HEALTH CARE FOR AMERICA ACT was passed by Congress and signed into law by President Barack Obama. The law was intended to lower healthcare costs while allowing more individuals access to health insurance. Many people strongly believe that this law is a great tool for increasing affordable access to healthcare. However, many other people believe that the law is unconstitutional for violating Constitutional principles of federalism and the 10th Amendment.

The debate mainly involves provisions in the Act that require some individuals and companies to purchase health insurance. Proponents of the law argue that this requirement is a valid exercise of the Commerce Clause. Opponents argue, however, that the Constitution does not provide the federal government with power to compel people to purchase health insurance, and, therefore, such power is reserved to the States alone according to the 10th Amendment. The Courts are currently divided on whether the Act is Constitutional, and debate is likely to continue for some time on this issue.



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