The Bill of Rights

Introduction

The Bill of Rights is the first ten amendments to the Constitution. It establishes the basic civil liberties that the federal government cannot violate.

When the Constitution was drafted some were fearful that a federal government would usurp the rights and powers of the states and the people. Critics were fearful that the federal government would exceed its enumerated powers—a fear that in hindsight seems most reasonable. The Bill of Rights was designed to address those apprehensions. The states ratified the Bill of Rights in 1791, three years after the Constitution was ratified.

In this article we are going to provide a brief look at the ten amendments that comprise the Bill of Rights.

First Amendment

> *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.*

The First Amendment begins by preventing Congress from establishing religion or prohibiting the free exercise of religion. Originally the religion clause of the First Amendment was intended to prevent the federal government from establishing a national church. Some New England states maintained established state-churches until the 1830s.

In the last century, the Supreme Court has extended the First

Amendment to any religious activity by any governmental body. The establishment clause originally prohibited the establishment of a national church by Congress, but now has been broadened to prohibit anything that appears like a government endorsement of religious practice. The free exercise clause supposedly prohibits government from placing any burden on religious practice.

The second part of the First Amendment provides freedom of political participation. This includes freedom of speech, freedom of the press, and freedom of assembly with the right to petition the government for a redress of grievances. This quartet of freedoms allows citizens to be actively involved in electing representatives and influencing legislation.

Second Amendment

> *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.*

The Second Amendment gives Americans the right to keep and bear arms. Although the amendment clearly provides such rights, proponents of limiting a citizen’s right to arms attempt to argue that the amendment only applies to a militia like the National Guard.

Before the drafting of the Constitution, citizen-militias existed to guarantee order and domestic security. The framers envisioned an armed citizenry that was separate from a federal military that could be controlled by government authorities. They were well aware of the abuses that came when a King or Prime Minister could control a standing army. Armed citizens provided an important check and balance of power. The framers well understood the threat to freedom when gun ownership was a government monopoly.

Third Amendment

> *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.*

The Third Amendment guarantees that no soldier may be quartered in any house without the consent of the owner. At its face, this would seem to be an obsolete amendment since the federal government has never placed soldiers in private homes.

Unfortunately this amendment has been used to make the case for a right to privacy in the U.S. Constitution. The Supreme Court cited this amendment in 1965 in the case of *Griswold v. Connecticut* involving the issue of contraceptives. This case provided the foundation for the infamous abortion case of *Roe v. Wade* in 1973.

Many legal scholars question whether the Constitution has an implicit right to privacy. Obviously the Third Amendment provides homeowners with protection against unreasonable military intrusion. But it is quite a stretch to manipulate this amendment into a justification for a right to privacy with regard to contraception or abortion.

Fourth Amendment

> *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.*

The Fourth Amendment requires that a specific warrant be obtained before a search is made of a person, their house,

their papers, or personal effects. The framers wanted to ban the British practice of obtaining a general warrant which allowed the seizure of anything in the suspect's home. A search requires a specific warrant issued by a neutral magistrate.

In the last century, the Supreme Court has refined the amendment through what is called "the exclusionary rule." Evidence obtained outside the specific requirements of the warrant is inadmissible in a court of law. Cases in court often swing on whether evidence was obtained legally and whether the law enforcement officer acted in "good faith" in the securing of that evidence.

Fifth Amendment

> *No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.*

The Fifth Amendment is best known for guaranteeing a citizen's right to refrain from answering a question that might be incriminating. Actually there is more to this amendment than "taking the fifth." The amendment also provides for due process, a grand jury, and freedom from double jeopardy.

Many citizens believe that the amendment guarantees your right to remain silent. Actually the amendment states that no person should be compelled to be a witness against himself. The right to remain silent comes from the so-called Miranda warnings

read by a police officer before questioning. The Supreme Court mandated these phrases in an attempt to further protect the rights of the accused.

Sixth Amendment

> *In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.*

The Sixth Amendment provides additional rights in a criminal trial. These include the right to an attorney, the right to a trial by jury, and the right to confront one's accusers.

The right to an attorney implies the right to "competent" counsel. Appeal courts have had to decide what constitutes competent or incompetent counsel. Usually a guilty verdict is allowed to stand if it seems that an attorney's actions did not significantly affect the judicial outcome.

The right to confront your accusers was a deliberate attempt to prevent the possibility of the U.S. some day having a Star Chamber as occurred previously in England. Witnesses must testify in open court and thus are available for cross-examination. The only cases where this is not done are in child abuse cases where child-victim testimony is allowed by videotape.

Seventh Amendment

> *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.*

The Seventh Amendment addresses civil cases. It provides for a jury trial (in cases involving more than $20) that involves suits at common law. Although this seems like a logical right that would already be assumed, it reflects the concerns of the framers that a federal judiciary would set aside jury verdicts and perhaps even eliminate juries altogether.

Eighth Amendment

> *Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*

The Eighth Amendment protects citizens against excessive actions. These include excessive bail, excessive fines, and cruel and unusual punishment. These were all provisions found in English law used to restrict the excesses of the English kings.

The Supreme Court on many occasions has been called upon to consider whether a particular punishment was proportional to the crime. This has also included a number of controversial rulings over the last few decades about whether long prison terms or capital punishment constitutes cruel and unusual punishment.

Ninth Amendment

> *The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.*

The Ninth Amendment prevents the courts from thinking that the rights listed in the first eight amendments are exclusive and

exhaustive. In other words, just because the Constitution does not specifically list a right does not mean that right is not retained by the people.

Judicial activists have used this amendment to justify their expansion of additional rights. The Supreme Court reasoned in this way concerning the so-called right to privacy. The Court argued that the First, Third, Fourth, and Fifth Amendments all protect privacy in some way. Therefore, they argued that the right to privacy does exist and should be protected by the Constitution.

Tenth Amendment

> *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.*

The Tenth Amendment protects the structure of federalism. Those powers not specifically delegated to the federal government are reserved to the States or the people. The framers intended that the people and the states would decide how power was to be delegated to the other levels of government (cities, towns, counties, etc.).

The Tenth Amendment was written to provide additional protection for federalism since many citizens were concerned with giving a national government too much power. Although the Tenth Amendment did provide some protection, its impact was undercut by the Fourteenth Amendment that effectively made the federal government the ultimate protector of states rights and has lessened its importance. **For Further Reading**

David M. Wagner, *Freedom Forum: A Commentary on the Bill of Rights*, Washington, DC: Family Research Council, 2000.

©2001 Probe Ministries.