

5-1-1992

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### Recommended Citation

James D. Gordon III, *An Unofficial Guide to the Bill of Rights*, 1992 BYU L. Rev. 371 (1992).

Available at: <https://digitalcommons.law.byu.edu/lawreview/vol1992/iss2/7>

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# An Unofficial Guide to the Bill of Rights

*James D. Gordon III\**

One of the cornerstones of freedom in America is the Bill of Rights. Actually, the official name is the "William of Rights," but we have affectionately come to call it "Bill" for short. It should not be confused with the "Morty of Rights" or the "Louise of Rights," which are different things altogether.<sup>1</sup>

The Bill of Rights consists of ten amendments:

The First Amendment has several clauses. The establishment clause prohibits religious displays by the government, unless they are accompanied by Rudolph the Red-nosed Reindeer.<sup>2</sup> Apparently, Rudolph's nose talismanically wards off both good and evil spirits.

The free exercise clause, according to a recent Supreme Court case,<sup>3</sup> generously permits you to have whatever religious beliefs you want. You just can't "exercise" them. It is comforting to know that the protection of religious liberty in America is now just as broad as it is in NORTH KOREA.

Whereas the free exercise clause specifically mentions conduct but does not protect it, the free speech clause does not mention conduct but does protect it. However, the Court's decisions protecting the conduct of flag burning<sup>4</sup> have been

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1. Rimshot. The news media usually refer to the fundamental liberties in the Bill of Rights as "technicalities."

2. You don't believe me? *Compare* County of Allegheny v. ACLU, 492 U.S. 573 (1989) (county's display of crèche surrounded by floral decorations was unconstitutional) with Lynch v. Donnelly, 465 U.S. 668 (1984) (city's display of crèche along with reindeer, Santa Claus, and other items representing winter holiday traditions was constitutional).

3. Employment Div. v. Smith, 494 U.S. 872 (1990) (free exercise clause does not create exemptions from general criminal laws regulating conduct).

4. See, e.g., United States v. Eichman, 496 U.S. 310 (1990) (flag burning as a mode of expression is protected by the First Amendment); Texas v. Johnson, 491 U.S. 397 (1989) (flag burning during protest rally was expressive conduct protected by the First Amendment).

extremely unpopular. Fortunately for the Court, it has yet to hold that the First Amendment protects the burning of SUPREME COURT JUSTICES in effigy.

The Second Amendment does NOT guarantee the right to bear arms—unless you are a militia, like the KKK or the Mafia. When those militias come around, the rest of us are limited to protecting ourselves with rubber bands and peashooters.

Conservatives, however, argue that the Second Amendment's reference to a well regulated militia was REALLY intended to protect the use of automatic weapons to defend against the local deer population. After all, you never know when you'll be walking down the street and run into a left wing fawn ("Bambo") armed with a BAZOOKA.<sup>5</sup>

The Third Amendment protects soldiers from being drawn and quartered in private homes. We have boot camps for that.

The Fourth Amendment guarantees criminals the right to be secure in their persons, houses, and effects. Consequently, none of the rest of us are.

The Fifth Amendment has several clauses. The double jeopardy clause protects a person from being put in jeopardy of life or limb twice. To Justices Brennan and Marshall, this means that nobody can be put in jeopardy of life or limb EVEN ONCE. These Justices plausibly explain that even though the Constitution specifically mentions "capital" crimes, it means crimes committed in state capitals.

The self-incrimination clause protects criminals from the unspeakable cruelty, presently banished in all civilized societies, of having to tell the truth in the presence of a judge.

The "due process" clause entitles a person to "due substance." In the first part of this century conservatives claimed that the substance included economic liberties, pointing out that the Constitution specifically mentions economic rights. However, liberals ridiculed that method of interpretation as simply politics. To return some neutrality and legitimacy to the process, liberals replaced that method with a MUCH less political method that permits them to find rights not mentioned ANYWHERE in the Constitution.

The just compensation clause means that you have the

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5. Conservatives believe that the Second Amendment is the ONLY amendment that applies to the states, under a doctrine called "bull's-eye incorporation."

right to become rich if you own a patch of worthless desert in the path of an interstate freeway. However, if the state legislature puts your coal mine out of business, your only option is to convert it into a summer resort for vampires and their lawyers.<sup>6</sup> (Wait a minute; that phrase may be redundant.)

The Sixth Amendment guarantees several things. It guarantees defendants the right to a speedy and public trial, even though most of them protest loudly. It guarantees the right to be tried by a bright and intelligent jury of people who never read newspapers or watch television. And the right to counsel pretty much guarantees full employment for lawyers for the duration of the Republic.

The Seventh Amendment preserves the right to a jury trial when the amount in controversy exceeds twenty dollars. I think that the dollar amount should be linked to the Consumer Price Index. In 1791, twenty dollars could buy a carriage and a team of fine horses. Today it will buy two hamsters and an exercise wheel.

The Eighth Amendment prohibits cruel and unusual punishments, which have been held to include most of the punishments the Framers liked best. Regrettably, it does not include the worst punishment of all: being forced to spend an entire evening in a locked room with an enthusiastic Amway representative.

The Ninth Amendment states that enumerating certain rights in the Constitution does not deny other rights retained by the people. If you can figure out what those other rights are, you are a genius. Or a liberal.

Finally, the Tenth Amendment provides that the powers not delegated to the United States are reserved to the states or to the people. For example, if by some freak accident Congress actually balances the federal budget some day, you will still have the right to go into bankruptcy yourself. This amendment means that members of Congress are not the only people entitled to make fools of themselves.

The Bill of Rights was originally intended to apply only to the federal government, but the Court has applied some

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6. See *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470 (1987) (Pennsylvania regulation requiring that 50% of coal beneath certain structures be kept in place does not constitute a taking).

amendments to the states, under the doctrine of incorporation. This doctrine has been defined as a magic sleight-of-hand in which a nine-person prestidigitator chooses a number between one and ten and changes it into a fourteen.<sup>7</sup>

But then again, it's not the only time that the Court has dabbled in magic. And with all this judicial magic, what I want to know is this: Where is Rudolph's nose when we REALLY need it?

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7. Robert J. Morris, Comment, *The New (Legal) Devil's Dictionary*, 6 J. CONTEMP. L. 231, 233 (1979).