

1992

# Utah v. Robinson : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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DOCKET NO. 920754  
THE STATE OF UTAH,

Plaintiff/Appellee,

v.

TODD ROBINSON,

Defendant/Appellant.

:

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:

:

Case No. 920754-CA

Priority No. 2

:

REPLY BRIEF OF APPELLANT

Appeal from a portion of a sentence imposed after a plea of guilty to improper lane change, a class C misdemeanor, and failure to remain at the scene of an injury accident, a class A misdemeanor, in violation of Utah Code Ann. §41-6-61(1) and §41-6-29, in the Third Judicial Circuit Court in and for Salt Lake County, State of Utah, the Honorable Sheila K. McCleve, Judge, presiding.

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JUL 2 1993

*Me*  
V. M. J. F.  
Clerk of

IN THE UTAH COURT OF APPEALS

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THE STATE OF UTAH, :  
Plaintiff/Appellee, :  
v. :  
TODD ROBINSON, : Case No. 920754-CA  
Defendant/Appellant. : Priority No. 2

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IN THE UTAH COURT OF APPEALS

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|----------------------|---|--------------------|
| THE STATE OF UTAH,   | : |                    |
| Plaintiff/Appellee,  | : |                    |
| v.                   | : |                    |
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| Defendant/Appellant. | : | Priority No. 2     |

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**CONSTITUTIONAL AND STATUTORY PROVISIONS**

Appendix I to this reply brief contains the full text of the following controlling constitution and statutory provisions:

Article I, § 7, Constitution of Utah (1992 Repl. Vol.)

Article I, § 12, Constitution of Utah (1992 Repl. Vol.)

Amendment VI, U.S. Constitution (1992 Repl. Vol.)

Amendment XIV, U.S. Constitution (1992 Repl. Vol.).

Utah Code Ann. § 76-3-201(3)(c) (1992 Repl. Vol.)

Utah Code Ann. § 76-3-201(4)(b) (1992 Repl. Vol.)

Utah Code Ann. § 76-3-201.2(1) (1192 Repl. Vol.)

**SUMMARY OF ARGUMENT**

The sentencing judge may only impose as criminal restitution those special damages which could be recovered in a civil action Utah Code Ann. §76-3-201(4)(b). Therefore, the trial judge may not impose full requested restitution when the amount of restitution is disputed until civil defenses to recovery which are asserted by the criminal defendant are fully litigated, either civilly or in a restitution hearing. The sentencing judge's

imposition of full restitution and refusal to consider Mr. Robinson's civil defense to recovery of damages was error.

The sentencing judge did not adequately consider the statutory criterion for imposition of restitution Utah Code Ann. §76-3-201(4)(b) (1992 as amended). The sentencing judge must state clearly the facts she relies upon to conclude Mr. Robinson has the future ability to pay both the full amount of \$13,567.87 and that Mr. Robinson has the ability to pay that amount at a rate of \$20.00 per month.

POINT I: The trial Judge must consider civil issues if it orders full restitution and the restitution amount is disputed.

The state misconstrues Appellant's argument in it's brief. Appellant is not arguing that trial judges must always litigate all civil claims before it is able to impose restitution; rather, the trial Judge may not impose full restitution when the amount of restitution is in dispute until civil defenses to recovery asserted by the defendant are fully litigated. In Mr. Robinson's case, the trial Judge refused to consider the civil defense to recovery of the release of liability and yet the trial court imposed full restitution despite the existence of the release. There is no indication that the legislature intended for criminal restitution to be imposed when civil recovery would be barred.

In it's brief the state attempts to distinguish the words "could recover", as used in the restitution statutes, Utah Code Ann. §76-3-201(4)(b), from the words "should recover". The state

argues that if the legislature had meant for civil claims to be fully litigated in restitution, it would have said "would" and not "could". However, this is a distinction without substance. There is no basis to support the assertion that the legislature consciously chose one word over another.

The position appellant advocates is that the trial court impose only that restitution which is both easily measurable and that clearly could be recoverable in a civil action; for example, when no civil defense is presented, and leave the remaining amount in dispute to full civil litigation and collection in accordance with that outcome.

Any other procedure would result in automatic imposition of the highest possible amount of restitution and the defendant must then sue in civil court. If the defendant receives a favorable result in civil court then he goes back to the trial Judge and attempts to have criminal restitution altered accordingly.

Three major problems exist with this procedure. First, it requires a defendant to litigate civilly, including incurring costs of filing fees and hiring of counsel, in order to get an accurate restitution amount in line with what would be imposed in civil court. This requirement forced on a criminal defendant would violate due process as well as right to counsel since counsel would not be appointed for civil litigation if Mr. Robinson could not afford to hire counsel. See United States Constitution, Amendment XIV, and Utah Constitution, Article I, Section 7, as well as Utah



Constitution, Article I, Section 12, and United States Constitution, Amendment VI. Furthermore, the legislature did not intend this result. In Utah Code Ann. §76-3-201(3)(c) it states "if the defendant objects to the imposition, amount, or distribution of restitution, the court shall, at the time of the sentencing, allow him a full hearing on the issue". The legislature has created an opportunity for a defendant to be fully heard on restitution or at least show the trial judge civil issues exist which should limit criminal restitution.

Second, as a practical matter a defendant like Mr. Robinson cannot initiate a civil suit himself. Assuming that Mr. Robinson brought a breach of contract action against the Thompsons, it appears he could not introduce crucial evidence with respect to the contract (the release) and the resulting damages. Utah Code Ann. §76-3-201.2(1) states that evidence that a defendant has been ordered to pay restitution is not admissible in a civil action "arising out of the facts or events which were the basis of the restitution." At the very least, Mr. Robinson's amount of damages would be inadmissible in his civil action.

When the Thompsons breached the contract by seeking an amount over what the parties agreed in the release satisfied all claims, the resulting damage is the restitution Mr. Robinson was ordered to pay. Therefore, both the fact that the Thompsons sought an amount over \$400.00 in the restitution hearing as well as the amount Mr. Robinson was ordered to pay are crucial to Mr. Robinson's civil claim. The inadmissibility of such evidence

renders any civil action useless to Mr. Robinson. Moreover, the civil courts do not have jurisdiction to affect criminal restitution amounts. So if Mr. Robinson could as a practical matter sued in civil court and prevailed in civil court he would have to take that civil order back to the criminal trial Judge and attempt to get restitution altered, however, the civil court cannot force the criminal court to comply.

Third, because of the potential inadmissibility of evidence, the only realistic way for Mr. Robinson to be heard on his defense is to hope that the Thompsons initiate suit against him and he can assert the breach of contract in response. However, it is unlikely the Thompsons will invest the money and effort in a civil action against Mr. Robinson when they are promised \$13,567.87 in restitution with a jail term inevitable if Mr. Robinson wilfully fails to pay. Furthermore, since criminal restitution obligations are not releasable by bankruptcy, the Thompsons benefit by collecting criminally.

POINT II: The sentencing Judge must do more than recite the restitution statute in court, she must state on the record the facts which support her finding that Mr. Robinson has the ability to pay restitution requested by the State.

The state in it's brief indicates that the trial judge read in open court the restitution statute and, therefore, the court applied and considered the proper criteria in it's decision to impose restitution.

Appellant's position is that the court never made specific findings that Mr. Robinson has the ability to pay

\$13,567.87. The court did not state on the record what information it relied on in determining that Mr. Robinson was able to pay. The trial judge has a responsibility to support her findings to enable this court to fully review the basis of her ruling. The trial judge found that Mr. Robinson could pay \$20.00 a month toward that figure but she did not record the information which supported that finding. The trial judge also did not provide the factual basis which supported her determination that Mr. Robinson had the ability to pay, into the future, the total amount of \$13,567.87 as ordered. Therefore, the record does not demonstrate that the trial judge actually applied the statutory standard to the facts presented at the hearing.

#### **CONCLUSION**

This Court should reverse the trial court's restitution order.

DATED this 2<sup>nd</sup> day of July, 1993.

  
\_\_\_\_\_  
SUSAN M. DENHARDT  
Attorney for Defendant/Appellant

CERTIFICATE OF MAILING

I, SUSAN M. DENHARDT, hereby certify that I have caused to be served eight copies of the foregoing to the Utah Court of Appeals and four copies of the foregoing to the South Valley County Attorney's Office, 2001 South State Street, Suite S3700, Salt Lake City, Utah 84111 this 2<sup>nd</sup> day of July, 1993.

*Susan M. Denhardt*

DELIVERED this \_\_\_\_\_ day of July, 1993.

\_\_\_\_\_

## APPENDIX I

## CHAPTER 3

## PUNISHMENTS

| <b>Part 2</b>     |  | Section     |   |
|-------------------|--|-------------|---|
| <b>Sentencing</b> |  | 76-3-206.   | Capital felony — Penalties.   |
|                   |  | 76-3-207.   | Capital felony — Sentencing proceeding.   |
| Section           |  | 76-3-207.5. | Applicability — Effect on sentencing — Options of offenders.  |
| 76-3-201.         | Sentences or combination of sentences allowed — Civil penalties — Restitution — Definitions — Resentencing — Aggravation or mitigation of crimes with mandatory sentences. |             |   |
| 76-3-201.2.       | Civil action by victim for damages.  | 76-3-301.   | <b>Part 3</b><br><b>Fines and Special Sanctions</b><br>Fines of persons.                              |
| 76-3-203.1.       | Offenses committed by three or more persons — Enhanced penalties.  |             | <b>Part 4</b><br><b>Limitations and Special Provisions on Sentences</b>                               |
| 76-3-203.2.       | Definitions — Use of firearm in offenses committed on or about school premises — Enhanced penalties.   | 76-3-402.   | Conviction of lower degree of offense.  |
| 76-3-203.3.       | Penalty for hate crimes — Civil rights violation.  | 76-3-404.   | Presentence investigation and diagnostic evaluation — Commitment of defendant — Sentencing procedure. |

## PART 2

## SENTENCING

### 76-3-201. Sentences or combination of sentences allowed — Civil penalties — Restitution — Definitions — Resentencing — Aggravation or mitigation of crimes with mandatory sentences.

(1) Within the limits prescribed by this chapter, a court may sentence a person adjudged guilty of an offense to any one of the following sentences or combination of them:

- (a) to pay a fine;
- (b) to removal from or disqualification of public or private office;
- (c) to probation unless otherwise specifically provided by law;
- (d) to imprisonment;
- (e) to life imprisonment;
- (f) on or after April 27, 1992, to life in prison without parole; or
- (g) to death.

(2) This chapter does not deprive a court of authority conferred by law to forfeit property, dissolve a corporation, suspend or cancel a license, or permit removal of a person from office, cite for contempt, or impose any other civil penalty. A civil penalty may be included in a sentence.

(3) (a) (i) When a person is adjudged guilty of criminal activity which has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitu-

tion up to double the amount of pecuniary damages to the victim or victims of the offense of which the defendant has pleaded guilty, is convicted, or to the victim of any other criminal conduct admitted by the defendant to the sentencing court unless the court in applying the criteria in Subsection (3)(b) finds that restitution is inappropriate. Whether the court determines that restitution is appropriate or inappropriate, the court shall make the reasons for the decision a part of the court record.

(ii) When a defendant has been extradited to this state under Title 77, Chapter 30, or has been transported at governmental expense from one county to another within the state for the purpose of resolving pending criminal charges and is adjudged guilty of criminal activity in the county to which he has been returned, the court may, in addition to any other sentence it may impose, order that the defendant make restitution for costs expended by any governmental entity for the extradition or transportation. In determining whether restitution is appropriate, the court shall consider the criteria in Subsection (3)(b). If the court determines that restitution is appropriate or inappropriate, the court shall make the reasons for the decision a part of the court record. The court shall send a copy of its order of restitution to the Division of Finance.

(b) In determining whether or not to order restitution, or restitution which is complete, partial, or nominal, the court shall take into account:

(i) the financial resources of the defendant and the burden that payment of restitution will impose, with regard to the other obligations of the defendant;

(ii) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;

(iii) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and

(iv) other circumstances which the court determines make restitution inappropriate.

(c) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall at the time of sentencing allow him a full hearing on the issue.

(4) As used in Subsection (3):

(a) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(b) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes, but is not limited to, the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses such as earnings and medical expenses.

(c) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, including insured damages.

(d) (i) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

into consideration the sentencing guidelines established under this section by the Commission on Criminal and Juvenile Justice" for "comply with the sentencing rules of the Judicial Council" in the second sentence in Subsection (6)(a); and made stylistic and punctuation changes.

The 1992 amendment, effective April 27,

1992, added Subsections (1)(e) and (f) and redesignated former Subsection (1)(e) as (1)(g); subdivided Subsection (4)(d); substituted "takes precedence over" for "supersedes" in Subsection (6)(c); and made stylistic changes throughout the section.

**Cross-References.** — Commission on Criminal and Juvenile Justice, § 63-25-1 et seq.

#### NOTES TO DECISIONS

##### ANALYSIS

Aggravating factors.

—Severity of offense.

Restitution.

—Findings.

Review.

Statement of reasons for sentence.

**Aggravating factors.**

—Severity of offense.

When the trial judge considered the severity of the offenses "together with" additional aggravating factors, any error in citing the severity of the offenses as an aggravating factor was harmless. *State v. Russell*, 791 P.2d 188 (Utah 1990).

**Restitution.**

—Findings.

Case was remanded for supplementary find-

ings on the questions of restitution and responsibility for attorney fees, together with such additional proceedings as might be necessary to permit the making of adequate findings, where there was no record to demonstrate compliance with Subsection (3)(b). *State v. Haston*, 811 P.2d 929 (Utah 1991).

**Review.**

A sentence will not be overturned on appeal unless the trial court has abused its discretion. *State v. Elm*, 808 P.2d 1097 (Utah 1991).

**Statement of reasons for sentence.**

Trial court fully complied with the procedures required by this section when it identified the mitigating and aggravating circumstances prior to sentencing, and made clear the reason for the sentence of middle severity: the aggravating circumstances did not outweigh the mitigating circumstances. *State v. Elm*, 808 P.2d 1097 (Utah 1991).

#### COLLATERAL REFERENCES

**Utah Law Review.** — Binding Sentencing Guidelines: A Means of Controlling Utah's Prison Population, 1990 Utah L. Rev. 309.

### 76-3-201.2. Civil action by victim for damages.

(1) Provisions in this part concerning restitution do not limit or impair the right of a person injured by a defendant's criminal activities to sue and recover damages from the defendant in a civil action. Evidence that the defendant has paid or been ordered to pay restitution under this part or Section 77-18-1, may not be introduced in any civil action arising out of the facts or events which were the basis for the restitution. However, the court shall credit any restitution paid by the defendant to a victim against any judgment in favor of the victim in the civil action.

(2) If conviction in a criminal trial necessarily decides the issue of a defendant's liability for pecuniary damages of a victim, that issue is conclusively determined as to the defendant if it is involved in a subsequent civil action.

**History:** C. 1953, 76-3-201.2, enacted by L. 1979, ch. 69, § 3; 1989, ch. 187, § 4; 1990, ch. 163, §§ 4, 5.

**Amendment Notes.** — The 1990 amend-

ment, amending this section as amended by L. 1989, ch. 187, effective July 1, 1990, substituted "Section 77-18-1" for "Rule 17, Utah



COLLATERAL REFERENCES

**Utah Law Review.** — The Mootness Question in Habeas Corpus Proceedings Where Petitioner Is Released Prior to Final Adjudication, 1969 Utah L. Rev. 265.  
**Habeas Corpus and the In-Service Conscientious Objector**, 1969 Utah L. Rev. 328.  
**Post-Conviction Procedure Act: Limitation on Habeas Corpus?**, 1969 Utah L. Rev. 595.  
**Am. Jur. 2d.** — 39 Am. Jur. 2d Habeas Corpus §§ 5 to 7.

**C.J.S.** — 16A C.J.S. Constitutional Law § 472 et seq.; 39 C.J.S. Habeas Corpus § 5.  
**A.L.R.** — Anticipatory relief in federal courts against state criminal prosecutions growing out of civil rights activities, 8 A.L.R.3d 301.  
**Key Numbers.** — Constitutional Law ⇐ 83(1), 121 to 123.

**Sec. 6. [Right to bear arms.]**

The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms.

**History:** Const. 1896; L. 1984 (2nd S.S.), S.J.R. 3.  
**Compiler's Notes.** — Laws 1983, Senate

Joint Resolution No. 2, proposing to amend this section, was repealed by Senate Joint Resolution No. 3, Laws 1984 (2nd S.S.), § 2.

NOTES TO DECISIONS

ANALYSIS

Prospective application.  
 Regulation of right to bear arms.

**Prospective application.**

The amendment to this provision by Laws 1984 (2nd S.S.), Senate Joint Resolution No. 3 is to be given prospective application only. *State v. Wacek*, 703 P.2d 296 (Utah 1985).

**Regulation of right to bear arms.**

This section gives sufficient authority for the legislature to forbid the possession of dangerous weapons by those who are not citizens, or who have been convicted of crimes, or who are addicted to drugs, or who are mentally incompetent. *State v. Beorchia*, 530 P.2d 813 (Utah 1974).

COLLATERAL REFERENCES

**Utah Law Review.** — The Individual Right to Bear Arms: An Illusory Public Pacifier?, 1986 Utah L. Rev. 751.

**Am. Jur. 2d.** — 79 Am. Jur. 2d Weapons and Firearms § 4.

**C.J.S.** — 16A C.J.S. Constitutional Law § 511; 94 C.J.S. Weapons § 2.

**A.L.R.** — Gun control laws, validity and construction of, 28 A.L.R.3d 845.

Validity of statute proscribing possession or carrying of knife, 47 A.L.R.4th 651.

**Key Numbers.** — Constitutional Law ⇐ 82; Weapons ⇐ 1, 3, 6 et seq.

**Sec. 7. [Due process of law.]**

No person shall be deprived of life, liberty or property, without due process of law.

**History:** Const. 1896.

**Cross-References.** — Eminent domain generally, § 78-34-1 et seq.

Workmen's Compensation Act is not invalid because it delegates to industrial commission the power to hear, consider and determine controversies between litigants as to ultimate liability, or their property rights. *Utah Fuel Co. v. Industrial Comm'n*, 57 Utah 246, 194 P. 122 (1920).

Dependents of employee killed by acts of third party, a stranger to employment, are not

limited to recovery under Workmen's Compensation Act exclusively, unless they have assigned their rights to insurance carrier. *Robinson v. Union Pac. R.R.*, 70 Utah 441, 261 P. 9 (1927).

Cited in *Wrolstad v. Industrial Comm'n*, 786 P.2d 243 (Utah Ct. App. 1990).

#### COLLATERAL REFERENCES

**Utah Law Review.** — No-Fault Automobile Insurance in Utah — State Constitutional Issues, 1970 Utah L. Rev. 248.

Comment, The Defense of Entrapment: Next Move — Due Process? 1971 Utah L. Rev. 266.

Comment, The Scope of Fourteenth Amendment Due Process: Counsel in Prison Disciplinary Proceedings, 1971 Utah L. Rev. 275.

Comment, The Utah Supreme Court and the Utah State Constitution, 1986 Utah L. Rev. 319.

Outdoor Sports and Torts: An Analysis of Utah's Recreational Use Act, 1988 Utah L. Rev. 47.

Recent Developments in Utah Law — Judicial Decisions — Constitutional Law, 1990 Utah L. Rev. 129.

**Am. Jur. 2d.** — 16A Am. Jur. 2d Constitutional Law §§ 613 to 617.

**C.J.S.** — 16D C.J.S. Constitutional Law §§ 1428 to 1437.

**A.L.R.** — Exclusion of public from state

criminal trial in order to preserve confidentiality of undercover witness, 54 A.L.R.4th 1156.

Exclusion of public from state criminal trial in order to prevent disturbance by spectators or defendant, 55 A.L.R.4th 1170.

Exclusion of public from state criminal trial in order to avoid intimidation of witness, 55 A.L.R.4th 1196.

False light invasion of privacy—defenses and remedies, 57 A.L.R.4th 244.

Imputation of criminal, abnormal, or otherwise offensive sexual attitude or behavior as defamation—post-New York Times cases, 57 A.L.R.4th 404.

Libel or slander: defamation by statement made in jest, 57 A.L.R.4th 520.

Defamation: designation as scab, 65 A.L.R.4th 1000.

Intentional spoliation of evidence, interfering with prospective civil action, as actionable, 70 A.L.R.4th 984.

**Key Numbers.** — Constitutional Law ⇐ 322, 324, 327, 328.

### Sec. 12. [Rights of accused persons.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

**History:** Const. 1896.

**Cross-References.** — Rights of defendants, statutory provisions, § 77-1-6.

**AMENDMENT V****[Criminal actions — Provisions concerning — Due process of law and just compensation clauses.]**

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.

**AMENDMENT VI****[Rights of accused.]**

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 defence.

**AMENDMENT VII****[Trial by jury in civil cases.]**

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.

**AMENDMENT VIII****[Bail — Punishment.]**

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

**AMENDMENT XIV****Section**

1. [Citizenship — Due process of law — Equal protection.]
2. [Representatives — Power to reduce appointment.]
3. [Disqualification to hold office.]

**Section**

4. [Public debt not to be questioned — Debts of the Confederacy and claims not to be paid.]
5. [Power to enforce amendment.]

**Section 1. [Citizenship — Due process of law — Equal protection.]**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

**Sec. 2. [Representatives — Power to reduce appointment.]**

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial Officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

**Sec. 3. [Disqualification to hold office.]**

No person shall be a Senator or Representative in Congress, or Elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.