

**RAISING THE BAR**

**A DECATO LAW OFFICE NEWSLETTER**

ISSUED September 10, 2009 (this issue written by Peter Decato)

Published the second week of each month

Issue #2009-9

**“THE BILL OF RIGHTS UNDER THE NEW HAMPSHIRE CONSTITUTION”**

When people hear about the “Bill of Rights”, they generally think about the first ten (10) amendments to the United States Constitution. But for the uninitiated, there is another “Bill of Rights” and this one is contained in the New Hampshire Constitution. It governs life within our state. There are times when the rights afforded us as citizens are greater under the State Constitution than under the Federal Constitution. We are generally accorded the “greater” of the rights that are afforded whether it be under Federal law or under State law.


Article 1 of the New Hampshire Constitution speaks of the most fundamental right of all - the right of equality. The words are poetic: “All men are born equally free and independent. Therefore, all government, of right, originates from the people, is founded in consent, and instituted for the general good.” This provision lashes out against laws that are arbitrary and directed at particular groups and it requires that all laws that discriminate be based on some degree of understandable logic.

The second Article of the New Hampshire Constitution continues this theme of equality: “All men have certain natural, essential, and inherent rights - among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting property; and, in a word, of seeking and obtaining happiness. Equality of rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin.” I’ve always found the language “in a word” to be a bit peculiar because it is followed by five words, not one. Oh, well.

Then there is Article 2-a. This deals with the right to keep and bear arms. This article gives us the right to defend ourselves, our families, our property and our state. This is an important right and the limits of this right are often tested. For example: do we have the right to have a machine gun in our home? “No”, you say.

The third Article is more a statement than it is a pronouncement of rights: “When men (we can include women in this statement) enter into a state of society, they surrender up some of their natural rights to that society, in order to ensure the protection of others; and, without such an equivalent, the surrender is void.” What a wonderful expression - all of us, as Citizens of this state have entered into a contract with each other to protect one another. I like that concept.

The fourth Article deals with exceptions to the third Article. It seems that our contract has



---

---

a footnote: “Among the natural rights, some are, in their very nature unalienable, because no equivalent can be given or received them. Of this kind are the Rights of Conscience.” We are free to believe what we want to believe. Our contract with our fellow citizens does not deprive us of that right. That is a comfort.

The fifth Article is a blessed one. We are given the right to worship God according to the dictates of our own conscience. It states: “...no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience...” Rock on, brother.

For you teachers out there, you will enjoy the sixth Article. It includes the following language: “But no person shall ever be compelled to pay towards the support of the schools of any sect or denomination.” It seems that public money should only be used for public schools. That makes sense, don’t you think?

The seventh Article deals with sovereignty. It states poetically that we, you and me, are the sovereign powers because we have reserved to ourselves the sole and exclusive right of governing ourselves. I like that too, except it doesn’t always feel like our representatives are representing our collective interests - but that’s a political comment and I don’t want to stray too far.

The eighth Article is another favorite of mine. It says that because all power is vested with the people, then all magistrates and officers of the government are accountable to each of us. “Government, therefore, should be open, accessible, accountable and responsive.” Let’s keep it that way!

The ninth Article states the obvious: no one is entitled to public office simply by virtue of heredity. That is also a comforting thought.

Finally, the tenth Article (this is my all time favorite). Only in New Hampshire, the home of the free and the brave, will you have in the Constitution the “Right of Revolution.” If you ever wonder why the citizens of the great State of New Hampshire are feisty, consider our heritage - we have reserved the right to revolt. I will leave you with these beautiful words written over 200 years ago:

“Government being instituted for the common benefit, protection, and security, of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought to reform the old, or establish a new government. The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.”

As citizens of this state, we know or should know that “we are in charge.” There is never room for apathy. Our state belongs to us. Our Constitution says as much. So now what do we do?