

CHAPTER TWO: CONSTITUTIONAL LIMITATIONS

INTRODUCTION

In the American democratic system, various constitutional provisions limit the power of the federal and state governments to enact criminal statutes. Illinois, just as the federal government, adopted its governing document in 1970. The Illinois Constitution outlines the freedoms and rights of citizens of the state of Illinois.

The following section will begin by outlining the first two articles of the Illinois Constitution. I will then discuss some of the limitations such as due process and equal protection, freedom of speech, and the right to privacy. I conclude this section by describing some of the Illinois statutes that were deemed unconstitutional by the U.S. government.

ILLINOIS CONSTITUTION

The Illinois Constitution is the governing document of the state of Illinois. The current version was adopted in 1970. The initial state constitution was adopted in 1818 and replaced in 1848 and 1870.

Illinois Constitution of 1970

Preamble

We, the People of the State of Illinois - grateful to Almighty God for the civil, political and religious liberty which He has permitted us to enjoy and seeking His blessing upon our endeavors - in order to provide for the health, safety and welfare of the people; maintain a representative and orderly government; eliminate poverty and inequality; assure legal, social and economic justice; provide opportunity for the fullest development of the individual; insure domestic tranquility; provide for the common defense; and secure the blessings of freedom and liberty to ourselves and our posterity - do ordain and establish this Constitution for the State of Illinois.

Article One: Bill of Rights

SECTION 1. INHERENT AND INALIENABLE RIGHTS

All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed.

SECTION 2. DUE PROCESS AND EQUAL PROTECTION

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

SECTION 3. RELIGIOUS FREEDOM

The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed, and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

SECTION 4. FREEDOM OF SPEECH

All persons may speak, write and publish freely, being responsible for the abuse of that liberty. In trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense.

SECTION 5. RIGHT TO ASSEMBLE AND PETITION

The people have the right to assemble in a peaceable manner, to consult for the common good, to make known their opinions to their representatives and to apply for redress of grievances.

SECTION 6. SEARCHES, SEIZURES, PRIVACY AND INTERCEPTIONS

The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

SECTION 7. INDICTMENT AND PRELIMINARY HEARING

No person shall be held to answer for a criminal offense unless on indictment of a grand jury, except in cases in which the punishment is by fine or by imprisonment other than in the penitentiary, in cases of impeachment, and in cases arising in the militia when in actual service in time of war or public danger. The General Assembly by law may abolish the grand jury or further limit its use.

No person shall be held to answer for a crime punishable by death or by imprisonment in the penitentiary unless either the initial charge has been brought by indictment of a grand jury or the person has been given a prompt preliminary hearing to establish probable cause.

SECTION 8. RIGHTS AFTER INDICTMENT

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 and have a copy thereof; to be confronted with the witnesses against him or her and to have process to compel the attendance of witnesses in his or her behalf; and to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.

(Source: Amendment adopted at general election November 8, 1994.)

SECTION 8.1. CRIME VICTIM'S RIGHTS.

(a) Crime victims, as defined by law, shall have the following rights as provided by law:

- (1) The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.
- (2) The right to notification of court proceedings.
- (3) The right to communicate with the prosecution.
- (4) The right to make a statement to the court at sentencing.
- (5) The right to information about the conviction, sentence, imprisonment, and release of the accused.
- (6) The right to timely disposition of the case following the arrest of the accused.

(7) The right to be reasonably protected from the accused throughout the criminal justice process.

(8) The right to be present at the trial and all other court proceedings on the same basis as the accused, unless the victim is to testify and the court determines that the victim's testimony would be materially affected if the victim hears other testimony at the trial.

(9) The right to have present at all court proceedings, subject to the rules of evidence, an advocate or other support person of the victim's choice.

(10) The right to restitution.

(b) The General Assembly may provide by law for the enforcement of this Section.

(c) The General Assembly may provide for an assessment against convicted defendants to pay for crime victims' rights.

(d) Nothing in this Section or in any law enacted under this Section shall be construed as creating a basis for vacating a conviction or a ground for appellate relief in any criminal case.

(Source: Amendment adopted at general election November 3, 1992.)

SECTION 9. BAIL AND HABEAS CORPUS

All persons shall be bailable by sufficient sureties, except for the following offenses where the proof is evident or the presumption great: capital offenses; offenses for which a sentence of life imprisonment may be imposed as a consequence of conviction; and felony offenses for which a sentence of imprisonment, without conditional and revocable release, shall be imposed by law as a consequence of conviction, when the court, after a hearing, determines that release of the offender would pose a real and present threat to the physical safety of any person. The privilege of the writ of habeas corpus shall not be suspended except in cases of rebellion or invasion when the public safety may require it.

Any costs accruing to a unit of local government as a result of the denial of bail pursuant to the 1986 Amendment to this Section shall be reimbursed by the State to the unit of local government.

(Source: Amendment adopted at general election November 4, 1986.)

SECTION 10. SELF-INCRIMINATION AND DOUBLE JEOPARDY

No person shall be compelled in a criminal case to give evidence against himself nor be twice put in jeopardy for the same offense.

SECTION 11. LIMITATION OF PENALTIES AFTER CONVICTION

All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. No conviction shall work corruption of blood or forfeiture of estate. No person shall be transported out of the State for an offense committed within the State.

SECTION 12. RIGHT TO REMEDY AND JUSTICE

Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly.

SECTION 13. TRIAL BY JURY

The right of trial by jury as heretofore enjoyed shall remain inviolate.

SECTION 14. IMPRISONMENT FOR DEBT

No person shall be imprisoned for debt unless he refuses to deliver up his estate for the benefit of his creditors as provided by law or unless there is a strong presumption of fraud. No person shall be imprisoned for failure to pay a fine in a criminal case unless he has been afforded adequate time to make payment, in installments if necessary, and has willfully failed to make payment.

SECTION 15. RIGHT OF EMINENT DOMAIN

Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.

SECTION 16. EX POST FACTO LAWS AND IMPAIRING CONTRACTS

No ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed.

SECTION 17. NO DISCRIMINATION IN EMPLOYMENT AND THE SALE OR RENTAL OF PROPERTY

All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry and sex in the hiring and promotion practices of any employer or in the sale or rental of property.

These rights are enforceable without action by the General Assembly, but the General Assembly by law may establish reasonable exemptions relating to these rights and provide additional remedies for their violation.

SECTION 18. NO DISCRIMINATION ON THE BASIS OF SEX

The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts.

SECTION 19. NO DISCRIMINATION AGAINST THE HANDICAPPED

All persons with a physical or mental handicap shall be free from discrimination in the sale or rental of property and shall be free from discrimination unrelated to ability in the hiring and promotion practices of any employer.

SECTION 20. INDIVIDUAL DIGNITY

To promote individual dignity, communications that portray criminality, depravity or lack of virtue in, or that incite violence, hatred, abuse or hostility toward, a person or group of persons by reason of or by reference to religious, racial, ethnic, national or regional affiliation are condemned.

SECTION 21. QUARTERING OF SOLDIERS

No soldier in time of peace shall be quartered in a house without the consent of the owner; nor in time of war except as provided by law.

SECTION 22. RIGHT TO ARMS

Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.

SECTION 23. FUNDAMENTAL PRINCIPLES

A frequent recurrence to the fundamental principles of civil government is necessary to preserve the blessings of liberty. These blessings cannot endure unless the people recognize their corresponding individual obligations and responsibilities.

SECTION 24. RIGHTS RETAINED

The enumeration in this Constitution of certain rights shall not be construed to deny or disparage others retained by the individual citizens of the State.

Article Two: The Powers of the State

SECTION 1. SEPARATION OF POWERS

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.

SECTION 2. POWERS OF GOVERNMENT

The enumeration in this Constitution of specified powers and functions shall not be construed as a limitation of powers of state government.

(To continue reading the Illinois Constitution, go to:www.ilga.gov/commission/lrb/conmain.htm)

DUE PROCESS AND EQUAL PROTECTION

The Fifth and Fourteenth Amendments of the U.S. Constitution prohibit depriving individuals of “life, liberty or property without due process of law.” Due process requires that criminal statutes should be drafted in a clear and understandable fashion. Section 2 of the Illinois Constitution is consistent with the U.S. Constitution in that it states: “No person shall be deprived of life, liberty, or property without the due process of the law nor be denied equal protection of the laws.”

FREEDOM OF SPEECH

The First Amendment of the U.S. Constitution states that “[c]ongress 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.” In a similar respect, sections 3, 4, and 4 of the Illinois Constitution provide that citizens of Illinois have the freedoms of religion, speech, and the right to assemble and petition.

Interesting, in Illinois, it is a felony for anyone "publicly mutilates, defaces, defiles, tramples, or intentionally displays on the ground or floor" or if they use an American or Illinois flag for advertising. Illinois is unusual in that it makes a felony if you mutilate, deface, or defile an American flag — most states merely make it a misdemeanor, though usually a serious one. Like most states, the crime here only occurs if the act is done publicly — which means that the crime only occurs if others see it.

CRIMINAL OFFENSES

(720 ILCS 620/) Flag Desecration Act.

(720 ILCS 620/0.01) (from Ch. 1, par. 3350)

Sec. 0.01. Short title. This Act may be cited as the Flag Desecration Act.
(Source: P.A. 86-1324.)

(720 ILCS 620/1) (from Ch. 1, par. 3351)

Sec. 1. Any person who (a) for exhibition or display, places or causes to be placed any word, figure, mark, picture, design, drawing, or any advertisement of any nature, upon any flag, standard, color or ensign of the United States or State flag of this State or ensign, (b) exposes or causes to be exposed to public view any such flag, standard, color or ensign, upon which has been printed, painted or otherwise placed, or to which has been attached, appended, affixed, or annexed, any word, figure, mark, picture, design or drawing or any advertisement of any nature, or (c) exposes to public view, manufactures, sells, exposes for sale, gives away, or has in possession for sale or to give away or for use for any purpose, any article or substance, being an article of merchandise, or a receptacle of merchandise or article or thing for carrying or transporting merchandise upon which has been printed, painted, attached, or otherwise placed a representation of any such flag, standard, color, or ensign, to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed, shall be guilty of a Class C misdemeanor.

Any person who publicly mutilates, defaces, defiles, tramples, or intentionally displays on the ground or floor any such flag, standard, color or ensign shall be guilty of a Class 4 felony.

(Source: P.A. 86-942.)

(720 ILCS 620/2) (from Ch. 1, par. 3352)

Sec. 2. The words flag, standard, color or ensign, as used in this act, shall include any flag, standard, color, ensign or any picture or representation of either thereof, made of any substance or represented on any substance and of any size evidently purporting to be either of said flag, standard, color or ensign of the United States of America, or a picture or a representation of either thereof, upon which shall be shown the colors, the stars, and the stripes, in any number of either thereof, of the flag, colors, standard, or ensign of the United States of America.

(Source: Laws 1907, p. 351.)

(720 ILCS 620/4) (from Ch. 1, par. 3354)

Sec. 4. All prosecutions under this Act shall be brought by any person in the name of the People of the State of Illinois, against any person or persons violating any of the provisions of this Act, before any circuit court. The State's Attorneys shall see that this Act is enforced in their respective counties, and shall prosecute all offenders on receiving information of the violation of this Act. Sheriffs, deputy sheriffs, and police officers shall inform against and prosecute all persons whom there is probable cause to believe are guilty of violating this Act. One-half of the amount recovered in any penal action under this Act shall be paid to the person making and filing the complaint in such action, and the remaining 1/2 to the school fund of the county in which the conviction is obtained.

(Source: Laws 1968, p. 173.)

(720 ILCS 620/5) (from Ch. 1, par. 3355)

Sec. 5. All prosecutions under this act shall be commenced within six months from the time such offense was committed, and not afterwards.

(Source: Laws 1907, p. 351.)

CASE STUDY

***People v. Sutherland* 292 N.E.2d 746** The defendants, Linda Marie Sutherland, Roxana Margurite Schultz, and Tonia Sue Papke, were charged in a joint indictment with the crime of publicly mutilating a flag of the United States in violation of the second paragraph of section 1 of the Illinois Flag Act. (Ill. Rev. Stat. 1969, ch. 56 1/4, sec. 6, par. 2.) The defendants were all found guilty by a jury, each of them was sentenced by the Circuit Court of Rock Island County to pay a fine of \$100 plus costs of suit, and each was placed on probation for one year. All the defendants have appealed.

The second paragraph of section 1 of the Illinois Flag Act reads as follows: "Any person who publicly mutilates, defaces, defiles or defies, tramples or casts contempt upon, whether by words or act, any such flag, standard, color or ensign [of the United States or this State] shall be punished by a fine of not less than \$1,000 nor more than \$5,000 or by imprisonment in the penitentiary from one to 5 years or both."

The defendants contend that this statute violates their right to freedom of speech guaranteed by the Federal and Illinois constitutions. They argue that its function is to punish disrespectful thought expressed by conduct, and that Illinois has no sufficient interest to justify a statute of this kind. They say also that the statute is void for vagueness or for overbreadth, and that errors were committed in the course of the trial.

The evidence established that the defendants had planted an American flag in the lawn adjacent to the Federal Building in Rock Island, Illinois, had said prayers over it, and had then set it on fire to protest against the invasion of Cambodia and the death of the four students at Kent State. An F.B.I. agent who had happened to be present had advised them not to set fire to the flag and had warned them that they would be committing a felony. After the fire had been started, a passing motorist had stopped his car in the street, double-parked, had run to the scene, and had stamped on the flag to put the fire out.

After the defendants were indicted, they commenced an action in a Federal district court to have this paragraph of the Illinois Flag Act declared void for abridging free speech or for overbreadth, and to have the Rock Island County State's Attorney enjoined from prosecuting them under this statute. In that case, *Sutherland v. Dewulf*, 323 F.supp. 740, the three-judge court, speaking through Mr. Justice Morgan, answered the arguments of these defendants, upheld the Illinois statute, and denied their request for an injunction. The same free speech and overbreadth arguments are presented to us now.

1 What the statute proscribes is not pure speech but conduct which may in some cases amount to symbolic speech. The United States Supreme Court was held, in *United States v. O'Brien*, 391 U.S. 367, that "when 'speech' and 'nonspeech' elements are combined in the same course of conduct," a governmental regulation of the nonspeech element which has the incidental effect of limiting First Amendment freedoms is justified "if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." It appears to us that the tests laid down in *O'Brien* for statutes which may restrict symbolic speech are met here.

It is not disputed that the Illinois legislature has a constitutional source of power to enact a statute on the misuse of flags. This has been clear since 1907. (*Halter v. Nebraska*, 205 U.S. 34 (use of the flag for advertising prohibited).) No question as to the scope of a granted or delegated power is raised by a State statute (see *Sutherland v. DeWulf*, 323 F.Supp. 740, 744 n.2), and the Federal government has not pre-empted State flag-burning statutes. *Street v. New York*, 394 U.S. 576, 598 (dissenting opinion).

The Illinois statute was enacted, the Illinois Supreme Court has stated, for the prevention of breaches of the peace and preservation of public order. (*People v. Lindsay*, 51 Ill.2d 399; *People v. Von Rosen*, 13 Ill.2d 68.) This is plainly an important and substantial governmental interest.

The State's interest in preventing breaches of the peace is unrelated to the suppression of free expression, we believe, because the maintenance of public order does not call for inhibiting communication except incidentally and minimally. The challenged statute through which this governmental interest is effectuated, though it may restrict many other avenues of communicating dissent and dissatisfaction remain. (*Sutherland v. DeWulf*, 323 F.Supp. 740, 745-46.) Analogously, the State's interest in maintaining order permits curtailing even "pure speech" incidentally and minimally, by prohibiting the use of language which is inherently likely to provoke immediate and violent reaction. *Chaplinsky v. New Hampshire*, 315 U.S. 538; cf. *Cohen v. California*, 403 U.S. 15.

The incidental restriction on alleged First Amendment freedoms does not appear to us to be any greater than is essential to prevent breaches of the peace. Communication in one narrow way, by public desecration of the flag, is forbidden because a breach of the peace is considered likely to follow. Obviously, prohibiting flag burning restricts First Amendment freedoms no more than prohibiting draft-card burning as in *O'Brien*.

2. It appears that the four *O'Brien* tests are met, and that the statute accordingly does not violate constitutional rights of freedom of expression, but is validated by the State's fundamental interest in securing public order.

3, 4. The defendants argue that the statute is void for vagueness or overbreadth. We think the statute gives reasonable notice to persons of ordinary intelligence of the kind of conduct that is prohibited. (*Grayned v. City of Rockford*, 92 S.Ct. 2294, 2298-99, 33 L.Ed.2d 222, 227; *United States v. Harriss*, 347 U.S. 612, 617; *City of Chicago v. Lawrence*, 42 Ill.2d 461, 464.) We think also that the statute goes no further than a State may go (see *Grayned v. City of Rockford*, 92 S.Ct. 2294, 2305, 33 L.Ed.2d 222, 234), its reach having been restricted by the Illinois Supreme Court to situations where there is an immediate threat to public order (*People v. Lindsay*, 51 Ill.2d 399, 406), and the *O'Brien* tests having been met. It therefore is not void on either of these two grounds.

5 The defendants also argue that the likelihood of a breach of the peace was not established. We disagree. It appears to us that the desecration of the flag by burning it in a public place is highly likely to cause a breach of the peace. (See *Sutherland v. DeWulf*, 323 F.Supp. 740, 745.) It was long ago observed by the United States Supreme Court, in *Halter v. Nebraska*, 205 U.S. 34, 41, that indignities put upon a flag have sometimes been punished on the spot. Violence might have resulted in the case before us if the defendants had not been girls.

6-9 The defendants complain that proof of the substance of the prayers to show their intent was excluded. However, their intent was shown by other testimony which was admitted, so the exclusion was harmless. (*Braswell v. New York, C. & St. L. R.R.*, 60 Ill.App.2d 120, 132.) They

complain of the trial court's refusal to instruct on the Federal Flag Etiquette Statute, but we consider it inapplicable. The record leaves no doubt that the defendants' purpose was to protest against current events, not to dispose of a flag in poor condition in accordance with prescribed etiquette. They also complain that no instruction with respect to breach of the peace was given, but they did not tender any such instruction and so cannot be heard to complain of the omission now. [***8] *Bridges v. Ford Motor Co.*, 104 Ill.App.2d 26, 36-37.

PRIVACY

A constitutional right to privacy was first recognized in *Griswold v. Connecticut* in 1965. The U.S. Supreme Court proclaimed that although privacy was not explicitly mentioned in the U.S. Constitution, it was implicitly incorporated into the text. The right to privacy is explicitly mentioned in the Illinois Constitution under Section 6, which provides:

The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

CASE STUDY

Does the Sex Offender Registration Act violate the right to privacy?

***People v. Cornelius* 821 N.E.2d 288** The Sex Offender Registration Act and the Sex Offender and Child Murderer Notification Law operate in tandem, providing a comprehensive scheme for the registration of Illinois sex offenders and the dissemination of information about these offenders to the public. *People v. Malchow*, 193 Ill. 2d 413, 416, 739 N.E.2d 433, 250 Ill. Dec. 670 (2000).

The Registration Act requires that all sex offenders, as defined in section 2 of that act (730 ILCS 150/2 (West 2002)), shall register in person with municipal or county law enforcement officials within 10 days of establishing a residence in that municipality or county. 730 ILCS 150/3(a)(1), (a)(2), (b) (West 2002). Pursuant to the Registration Act, an offender must provide a written, signed statement which includes the registrant's current address and current place of employment. In addition, the offender must submit a photograph. The Registration Act further provides that the registry information may also include the offender's fingerprints. 730 ILCS 150/3(c)(6), 8 (West 2002). Finally, the registration information must also include whether the person is a sex offender as [***3] defined in section 105 (730 ILCS 152/105 (West 2002)) of the Notification Law. 730 ILCS 150/8 (West 2002). The registering law enforcement agency shall enter the information into the Law Enforcement Agencies Data System (LEADS). 730 ILCS 150/8 (West 2002).

The Registration Act further requires that, in making this registration, the offender must provide "positive identification and documentation that substantiates proof of residence at the registering address." 730 ILCS 150/3(c)(5) (West 2002). A registrant who changes his address must inform the law enforcement agency with which he last registered within 10 days of the change, and he must register anew with the appropriate local law enforcement agency having jurisdiction over his new residence, also within a 10-day period. 730 ILCS 150/6 (West 2002). Failure to comply with the registration requirements of this act is a Class 4 felony. 730 ILCS 150/10 (West 2002).

An offender who is subject to Registration Law is, in turn, also subject to the provisions of the Notification Law. The Notification Law provides that at the time a sex offender registers under section 3 of the Registration Act, or reports a change of address under section 6 of that Act, "the offender shall notify the law enforcement agency having jurisdiction with whom the offender registers or reports a change of address *** that the offender is a sex offender." 730 ILCS 152/110 (West 2002). The Notification Law requires the Illinois State Police to maintain a Statewide Sex Offender Database "for the purpose of identifying sex offenders and making that information available" to those individuals specified in the Notification Law. 730 ILCS 152/115(a) (West 2002). The information contained in this database-which includes the name, address, date of birth, place of employment, school attended and offense or adjudication of all sex offenders required to register under section 3 of the Registration Act-must be disclosed to entities such as school boards, school principals, and child care facilities in the county where the offender is required to register, resides, is employed, or is attending an institution of higher education. 730 ILCS 152/120 (West 2002). The State Police, in its discretion, may also disclose this information to any person "likely to encounter a sex offender." 730 ILCS 152/120(b) (West 2002). Local law enforcement authorities must make the registry information available and "open to inspection by the public" in accordance with procedures set forth in the Notification Law. 730 ILCS 152/120(c) (West 2002).

On July 1, 2000, section 115 of the Notification Law was amended by adding a new subsection (b), which requires that the Illinois State Police make the information contained in the Statewide Sex Offender Database accessible to the general public by means of the Internet. 730 ILCS 152/115(b) (West 2002). Specifically, section 115(b) provides:

"(b) The Department of State Police must make the information contained in the Statewide Sex Offender Database accessible on the Internet by means of a hyperlink labeled 'Sex Offender Information' on the Department's World Wide Web home page. The Department of State Police must update that information as it deems necessary."

It is against this background that defendant was arrested on April 18, 2002. At the time of his arrest, defendant lived in an apartment building in the City of Champaign and had resided at that location since July 2001. The landlord of the building called police after several female tenants complained that defendant had engaged in peculiar and disturbing behavior, including roaming the hallways at night while moaning, peeping at them from his windows, and making strange noises.

When the police responded, they ran defendant's name through the LEADS system. LEADS indicated that defendant had been convicted in 1992 for aggravated criminal sexual abuse. Accordingly, because a conviction for aggravated criminal sexual abuse classified defendant as a "sex offender" pursuant to section 2 of the Registration Act (730 ILCS 150/2(B)(1) (West 2002)), defendant was required to comply with the Act's registration requirements. At the time of his 1992 conviction, defendant was registered at an address in Rantoul, Illinois. However, the Champaign officers discovered that, at the time of his arrest, defendant was not in compliance with the provisions of the Registration Act, as he had failed to notify the authorities that he had moved to Champaign.

Defendant was subsequently indicted by a Champaign County grand jury for unlawful failure to

register as a sex offender, in violation of section 3 of the Registration Act. The provision under which defendant was charged specifically provides as follows:

"Any sex offender, regardless of any initial, prior or other registration, shall, within 10 days of establishing a residence, place of employment, or temporary domicile for more than 10 days in any county, register in person as set forth in subsection (a)(1), (a)(2) or (a-5)." 730 ILCS 150/3(b) (West 2000).

In addition to the registration requirements set forth in section 3 of the Registration Act, defendant was also subject to the similar registration requirement found in section 110 of the Notification Law (730 ILCS 152/110 (West 2002)), as well as the provision requiring that his sex offender registry information be available on the State Police Internet site pursuant to section 115(b) of the Notification Law. 730 ILCS 152/115(b) (West 2002).

On July 31, 2002, defendant moved to dismiss the charge. According to defendant's motion to dismiss, "the Illinois Sex Offender Registration Act (730 ILCS 150/1 *et seq.* (West 2002)) and its companion Sex Offender and Child Murderer Community Notification Law (730 ILCS 152/101 *et seq.* (West 2002)) are in violation of the United States and Illinois Constitutions as they violate the defendant's Due Process rights and constitute unconstitutional punishment in violation of the Ex Post Facto clause of the United States and Illinois Constitutions and are in violation of the right to privacy guaranteed by the Illinois constitution." Defendant further asserted in his dismissal motion that both the Registration Act and the Notification Law were unconstitutional because they violated the prohibition against double jeopardy in the Illinois and United States constitutions; they violated the equal protection provisions in the Illinois and United States constitutions; and they violated the right to privacy implied in the United States Constitution.

FEDERAL/STATE CASES

The following are Illinois constitutional and statutory provisions that have been held unconstitutional or held to be preempted by federal law:

Oklahoma Gin Co. v. Oklahoma, 252 U.S. 339 (1920)

Illinois law denying Illinois courts jurisdiction in actions for wrongful death occurring in another State which was construed as barring jurisdiction of actions on a sister State judgment founded upon a like cause was, as so applied, violative of the full faith and credit clause

First Nat'l Bank v. United Air Lines, 342 U.S. 396 (1952)

Illinois law provided that "no action shall be brought or prosecuted in this state to recover damages for a death occurring outside of this state where a right of action for such death exists under the laws of the place where such death occurred and services of process in such suit may be held upon the defendant in such place." In a suit brought in a federal district court in Illinois on grounds of diversity of citizenship to recover under the Utah death statute for a death occurring in Utah, the Illinois statute was held to violate the full faith and credit clause

Griffin v. Illinois, 351 U.S. 12 (1956)

Illinois statutes provide that a writ of error may be prosecuted on a "mandatory record" kept by the court clerk and consisting of the indictment, arraignment, plea, verdict, and sentence. The "mandatory record" can be obtained free of charge by an indigent defendant. In such instances review is limited to errors on the face of the mandatory record, and there is not review of trial

errors such as an erroneous ruling on admission of evidence. No provision was made whereby a convicted person in a non-capital case can obtain a bill of exceptions or report of the trial proceedings, which by statute is furnished free only to indigent defendants sentenced to death. Griffin, an indigent defendant convicted of robbery, accordingly was refused a free certified copy of the entire record, including a stenographic transcript of the proceedings, and therefore was unable to perfect his appeal founded upon nonconstitutional errors of the trial court. Petitioner was held to have been denied due process of the law and the equal protection of the laws guaranteed by the Fourteenth Amendment.

Witherspoon v. Illinois, 391 U.S. 510 (1968)

An Illinois statute, itself no longer in code but held to be incorporated in the general juror challenge statute, which authorizes automatic challenge for cause of any potential juror scrupled against capital punishment in capital cases, is invalid

Williams v. Illinois, 339 U.S. 235 (1970)

An Illinois statute providing for the extension of jail sentences to work off unpaid fine at \$5 a day violates the equal protection clause as applied to an indigent convict unable to pay his fine

Carey v. Brown, 447 U.S. 455 (1980)

Illinois statute that prohibits picketing of residences or dwellings, but exempts peaceful picketing of such buildings that are places of employment in which there is a labor dispute, violates the equal protection clause of the Fourteenth Amendment

Hartigan v. Zbaraz, 484 U.S. 171 (1987)

Federal appeals court ruling holding unconstitutional is a provision of the Illinois Parental Notice Abortion Act requiring that minors wait 24 hours after informing parents before having an abortion is affirmed by equally divided vote

Peel v. Illinois Attorney Disciplinary Comm'n, 496 U.S. 91 (1990)

An Illinois rule of professional responsibility violates the First Amendment by completely prohibiting an attorney from holding himself out as a civil trial specialist certified by the National Board of Trial Advocacy

QUESTIONS FOR REVIEW

1. True or False? In the state of Illinois, flag burning is a misdemeanor offense.

Answer: False

2. Which section of the Illinois Constitution states: "No person shall be deprived of life, liberty, or property without the due process of the law nor be denied equal protection of the laws?"

- A. Section 4
- B. Section 6
- C. Section 2
- D. Section 14

Answer: C

3. True or False? The right to privacy is explicitly mentioned in the U.S. Constitution.

Answer: False

4. In the case *People v. Cornelius*, what right did the defendant argue was being violated?

- A. Privacy
- B. Speech
- C. Religion
- D. Press

Answer: A

5. Which section/sections of the Illinois Constitution recognize(s) the right to freedom of speech, religion, and to assemble and petition?

- A. Section 3
- B. Section 4
- C. Section 5
- D. All of the above

Answer: D

WEB RESOURCES

- <http://www.ilga.gov/commission/lrb/conmain.htm>
- <http://www.gpoaccess.gov/constitution/pdf2002/047.pdf>
- <http://web.lexis-nexis.com>
- <http://atheism.about.com/od/flagburningstatelaws/a/IllinoisFlag.htm>