**Date and Time:** Wednesday, February 3, 2021 1:25:00 PM EST

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1. Results list for:{Headnote: HN6 - Murdock v. Pennsylvania, 319 U.S. 105}

   **Client/Matter:** -None-

   **Headnote:**HN6 - Murdock v. Pennsylvania, 319 U.S. 105

   [HN6 - A state may not impose a charge for the enjoyment of a right granted by the federal constitution.]

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**Results for:** **HN6 - Murdock v. Pennsylvania, 319 U.S. 105**

## Cases

1. Murdock v. Pennsylvania

Supreme Court of the United States | May 03, 1943 | 319 U.S. 105

**Overview:** Jehovah's witnesses' door-to-door religious canvassing was not subject to a municipal ordinance that required solicitors to have a license and pay a license tax because the exercise of religious freedom could not be conditioned on payment of a tax.

**HN6 -** A state may not **impose a charge** for the **enjoyment** of a **right granted** by the federal constitution.

**HN5 -** The power to tax the exercise of a privilege is the power to control or suppress its **enjoyment**.

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2. Black Hawk v. Pennsylvania

United States District Court for the Middle District of Pennsylvania | Sep 25, 2002 | 225 F. Supp. 2d 465

**Overview:** A Native American holy man was entitled to a religious exemption for a permit fee to keep two black bears used in spiritual ceremonies where the state game code contained individualized exemptions for secular purposes, such as zoos and circuses.

**HN17 -** A state may not **impose a charge** for the **enjoyment** of a **right granted** by the federal constitution.

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3. Stajkowski v. Carbon County Bd. of Assessment & Revision of Taxes

Supreme Court of Pennsylvania | May 20, 1988 | 518 Pa. 150

**Overview:** Priest's constitutional right to freely exercise religion was violated by the county's occupational tax because the state erred in imposing a charge for the enjoyment of a right granted by the federal consitution.

**HN3 -** A state may not **impose a charge** for the **enjoyment** of a **right granted** by the federal constitution.

4. United States v. Texas

United States District Court for the Western District of Texas, Austin Division | Feb 09, 1966 | 252 F. Supp. 234

**Overview:** The poll tax as a prerequisite to voting in the State of Texas infringed on the concept of liberty as protected by the Due Process Clause and constituted an invalid charge on the exercise of one of the most precious rights - the right to vote.

**HN22 -** A state may not **impose a charge** for the **enjoyment** of a **right granted** by the federal constitution.

5. Proprietors of Charles River Bridge v. Proprietors of Warren Bridge

Supreme Court of Massachusetts, Suffolk and Nantucket | Mar 01, 1829 | 24 Mass. 344

**Overview:** Proprietors of first bridge's bill for injunction to restrain proprietors of second bridge from building it was dismissed; proprietors of first bridge had license to build bridge and right to take tolls from users during grant period.

**HN34 -** Although no distinct thing or right will pass by implication, the words used should be understood in their most natural and obvious sense, and that whatever is essential to the **enjoyment** of the thing granted, will be necessarily implied in the grant.

6. Century Federal, Inc. v. Palo Alto

United States District Court for the Northern District of California | Oct 12, 1988 | 710 F. Supp. 1559

**Overview:** Plaintiff was entitled to summary judgment as to the financial requirement of defendants because defendants did not show any justification for the franchise fee.

**HN1 -** First, it is of course true that government may not tax or otherwise charge a speaker simply for exercising its constitutional right to speak. As the Supreme Court found in striking a municipality's ordinance requiring the licensing of door to door solicitors. A state may not **impose a charge** for the **enjoyment** of a **right granted** by the Federal Constitution. The power to impose a license tax on the exercise of first amendment freedoms is indeed as potent as the power of censorship which the court has repeatedly struck down.

7. Gannett Satellite Information Network, Inc. v. Metropolitan Transp. Authority

United States District Court for the Southern District of New York | Jan 24, 1984 | 579 F. Supp. 90

**Overview:** It was improper for a transportation authority to interfere with the distribution of newspapers in its station where its licensing scheme violated constitutional free speech protections and where new fee and licensing schemes were required.

**HN14 -** While a state may impose a fee to cover expenses incidental to the administration of an activity to be licensed, it may not otherwise **impose a charge** for the **enjoyment** of a **right granted** by the United States Constitution.

**HN12 -** Any law conditioning the exercise of First Amendment freedoms upon the issuance of a license must contain narrow, objective, and definite standards to guide the licensing authority. Any procedure which makes the peaceful **enjoyment** of freedoms which the United States Constitution guarantees contingent upon the uncontrolled will of an official, by requiring a permit or license which may be granted or withheld in the discretion of such official, is an unconstitutional censorship or prior restraint upon the **enjoyment** of those freedoms. Laws or rules granting an official or agency such unbridled discretion are inherently inconsistent with valid time, place, or manner regulation, because they have the potential for becoming a means of suppressing a particular point of view.

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8. Gasparo v. City of New York

United States District Court for the Eastern District of New York | May 28, 1998 | 16 F. Supp. 2d 198

**Overview:** The operation of a newsstand was protected under the First Amendment under the logical extension that newsracks were protected. The fact that speech was sold and the fact that a variety of speech was offered did not detract from protected status.

**HN29 -** A state may not **impose a charge** for the **enjoyment** of a **right granted** by the United States Constitution. This is not to say that the state is barred from levying a fee or tax on all expressive activities. The state can impose a reasonable fee on certain kinds of expressive activities, as long as the charge imposed does not exceed the administrative costs of regulating the protected activity.

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9. Scherr v. Handgun Permit Review Bd.

Court of Special Appeals of Maryland | Jul 11, 2005 | 163 Md. App. 417

**Overview:** The denial of the attorney's application for a permit to carry a handgun was upheld because there was no evidence that the attorney had been threatened or faced a level of danger that was higher than the average person and the Second Amendment and the Md. Const. Decl. Rights art. 28 entitled the militia, not the state's citizens, to bear arms.

**HN10 -** The right of the people to keep and bear arms is not a **right granted** by the constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second Amendment declares that it shall not be infringed, but this, as has been seen, means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the national

government, leaving the people to look for their protection against any violation by their fellow-citizens of the rights it recognizes to what is called the powers which relate to merely municipal legislation, or what was perhaps more properly called internal police, not surrendered or restrained by the constitution of the United States.

**HN18 -** The right of the people to bear arms is not a **right granted** by the Constitution.

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10. Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona

United States District Court for the Southern District of New York | Dec 07, 2017 | 280 F. Supp. 3d 426

**Overview:** Plaintiffs, who sought to build a rabbinical college, successfully challenged zoning and environmental ordinances as unconstitutional and in violation of the RLUIPA and the FHA where, inter alia, the challenged laws substantially burdened plaintiffs' religious exercise and defendants offered no compelling governmental interest justifying the laws.

**HN55 -** The Fair Housing Act (FHA), 42 U.S.C.S. § 3601 et seq., makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or **enjoyment** of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or **enjoyment** of, any **right granted** or protected by the FHA. 42 U.S.C.S. § 3617. The implementing regulations interpret § 3617 to cover threatening, intimidating or interfering with persons in their **enjoyment** of a dwelling because of the race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons. 24 C.F.R. § 100.400(c)(2). To establish a 42 U.S.C.S. § 3617 claim, plaintiffs must demonstrate (1) that they aided or encouraged members of a protected class in the exercise or **enjoyment** of their FHA rights, and (2) that as a result of their actions, they suffered coercion, intimidation, threats, interference or retaliation.

**HN56 -** The New York State Constitution provides that the free exercise and **enjoyment** of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all humankind. N.Y. Const. art I, § 3. The New York Court of Appeals has held, in analyzing a state free exercise claim, that when the state imposes an incidental burden on the right to free exercise of religion, the courts are to consider the interest advanced by the legislation that imposes the burden, and then the respective interests must be balanced to determine whether the incidental burdening is justified. Where the burden imposed on plaintiffs' religious exercise is substantial, defendants interests must be equally substantial.

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11. State v. Hipp

Supreme Court of Ohio | Jan 01, 1882 | 38 Ohio St. 199

**Overview:** A statute requiring traffickers of liquor to enter a bond in order to carry out their business was unlawful because it effectively created a licensing system for alcohol sales in violation of the state constitution.

**HN7 -** The power to license certain classes of business, **impose a charge** therefor in the form of a tax, and enforce the payment of the tax as a condition precedent to the lawful prosecution of the business, is well settled. This relates only to employments which, in one form or another, impose burdens upon the public. Such tax cannot be imposed merely for general revenue, for the only mode of raising such revenue, whether for state, county, township, or municipal corporation purposes, is found in Ohio Const. art. 12. It could not be employed as a mode of taxing property, without reference to the uniformity and equality required in Ohio Const. art. 12, § 2. That eminent judge also made this remark with reference to the license under consideration in that case, indicating the nature of and limit to such taxation: The burden thus devolved on public officials, requiring, perhaps, an increase in their number and compensation, for the benefit of exhibitors of shows or performances, may justly authorize a charge beyond the mere expense of filling up a blank license. With respect to the traffic in liquors, however, the power to license is, as we have seen, in terms denied; but in relation to such traffic, express power is granted to provide against evils resulting therefrom.

**HN8 -** In a general sense, a license is permission granted by some competent authority to do an act which, without such permission, would be illegal. There is a clear distinction recognized between a license granted or required as a condition precedent before a certain thing can be done, and a tax assessed on the business which that license may authorize one to engage in. A license is a **right granted** by some competent authority to do an act which, without such license, would be illegal. A tax is a rate or sum of money assessed on the person, property, &c. of the citizen. A license is issued under the police power of the authority which grants it. If the fee required for the license is intended for revenue, its exaction is an exercise of the power of taxation.

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12. Minot v. Central Ave. News

Supreme Court of North Dakota | Jul 17, 1981 | 308 N.W.2d 851

**Overview:** A city that sought injunctive relief against an adult entertainment center could use the state's nuisance laws to determine and enjoin the distribution of specific sexually explicit material.

**HN14 -** The First Amendment to the Federal Constitution provides: Congress shall make no law abridging the freedom of speech, or of the press. The fundamental right of free speech, which is protected from Federal action by the First Amendment, is afforded the same protection from state action through application of the Due Process Clause of the Fourteenth Amendment. A state may not **impose a charge** for the **enjoyment** of a **right granted** by the United States Constitution. However, a governmental authority is not strictly forbidden from imposing some financial burden incidental to the exercise of First Amendment rights. Licensing fees levied on practices or businesses the nature of which revolves around the exercise of First Amendment rights will withstand a constitutional attack only if they are nominal and imposed only as a regulatory measure to defray the expenses of policing the activities in question.

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13. State v. Smoky Mountain Secrets

Court of Appeals of Tennessee, Western Section, At Jackson | May 03, 1995 | 1995 Tenn. App. LEXIS 284

**Overview:** The Tennessee Charitable Solicitations Act was violative of equal protection to the extent that professional solicitors and in-house solicitors were treated differently. The Act was narrowly tailored to withstand First Amendment scrutiny.

**HN13 -** A state may not **impose a charge** for the **enjoyment** of a **right granted** by the federal constitution. Thus, any license tax required as a prerequisite to engaging in activities guaranteed by the First Amendment is constitutionally invalid unless it is imposed as a regulatory measure to defray the expenses of policing the activities in question. The size of the registration fee is irrelevant as long as the fee is related to a legitimate state interest.

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14. Broussard v. South Central Bell

United States District Court for the Eastern District of Louisiana | Apr 29, 1992 | 1992 U.S. Dist. LEXIS 6137

**Overview:** City officials were not entitled to pursue a claim against the local telephone company because the city was bound by its act of consent in 1905 and it had benefitted in its development from 87 years of telephone service.

**HN11 -** After granting a telephone company authority to construct and to maintain its lines, without limitation as to time, and with no other consideration than the furnishing of certain free telephonic facilities to the city, after the telephone company has, at great expense, established its plant and constructed its lines, and when it has fully complied with all the conditions imposed, the city cannot now exact the large additional consideration for the continued **enjoyment** of privileges already granted. If the city can do this now, she could have done it the very day after the telephone company had completed its lines, when it had incurred all the expense, and before it had reaped a particle of return.

**HN12 -** If a city can grant authority to a telephone company to construct and maintain its lines, and then **impose a charge** of five dollars per pole by passing an ordinance after the fact, she can, with equal power, impose one of one thousand dollars, and, for that matter, she could arbitrarily revoke the grant at her pleasure. Either she is bound, according to the terms of her proposition accepted and acted on by the telephone company, or she is not bound at all. Obviously, upon the clearest considerations of law and justice, the grant of authority to the telephone company, when accepted and acted upon, became an irrevocable contract, and the city is powerless to set it aside or to interpolate new or more onerous considerations.

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15. Pitsenbarger v. Northern Natural Gas Co.

United States District Court for the Southern District of Iowa, Central Division | Sep 29, 1961 | 198 F. Supp. 665

**Overview:** There was no merit to the grantors' claim for damages for the alleged decrease in the fair market value of their land because of the grantee's exercise of its easement. Because of laches, the grantors were not entitled to rescind the contract.

**HN4 -** The question of what conduct constitutes a nuisance generally resolves itself to a question of fact and involves a determination of whether there is an unreasonable interference with the interest and the use and **enjoyment** of the complainant's property. In answering this question, the reasonableness of the interference is determined by weighing the gravity of the harm to the plaintiff against the utility of the defendant's conduct. While the Iowa legislature has outlined certain conduct as constituting a nuisance, it is not a modification of the common law rule applicable to nuisances. Iowa Code § 657 (1958). A license to carry on a particular trade or business does not give the licensee permission to carry it on in such a manner as to constitute nuisance.

**HN5 -** Dust conditions are clearly incidental to the rights granted to a natural gas company under an easement. Regarding the rights of a grantee under a pipeline easement, the grantee of the easement is entitled to do what is reasonably necessary for full and proper **enjoyment** of the rights granted him under the easement. The purposes for which an easement is granted have great bearing upon what rights the easement holder possesses and to what uses he may subject the property. The extent of an easement created by a conveyance is fixed by the conveyance. If the details of an easement are obscure, a "reasonably convenient" use is intended.

**HN7 -** The blowing off of gas wells comes within the concept of doing what is reasonably necessary for the full and proper **enjoyment** of the rights granted to a natural gas company under an easement.

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16. Ricks v. State Contrs. Bd.

Court of Appeals of Idaho | Dec 03, 2018 | 164 Idaho 689

**Overview:** Operation of the Free Exercise of Religion Protected Act (FERPA) impeded 42 U.S.C.S. § 666(a)(13)'s objective of improving child support enforcement by exempting individuals from the requirement under Idaho Code Ann. §§ 73-122, 54-5210 of providing social security numbers on license applications; the federal statute preempted FERPA in this context.

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17. Wintz v. Girardey

Supreme Court of Louisiana, New Orleans | Apr 01, 1879 | 31 La. Ann. 381

**Overview:** A duty imposed on sales conducted by a licensed auctioneer was not prohibited by the Louisiana Constitution or by limitations on Louisiana's taxing power because it was voluntary and was not a property tax, so its enforcement was improperly enjoined.

**HN4 -** The State of Louisiana may place such restrictions and impose such conditions as it pleases upon the auction mode of selling, and even forbid it altogether. It may, therefore, **impose a charge** or duty on goods so sold, to be paid by the vendors availing themselves of the manifest advantages of that mode of sale which the State has organized and, in some sort, guaranteed through the bonds and oaths which it exacts for the security of the public.

**HN5 -** Selling at auction through a licensed auctioneer is a privilege which the State of Louisiana may grant or withhold, and for the exercise of which, and as equivalent for the advantages of which, it may exact

a "duty" or **impose a charge**, either in the form of a commission paid to the auctioneer, or to itself directly, just as it might impose a duty or toll on goods transported over a turnpike or bridge established by the State for the safety and convenience of the public. There is no prohibition in the Louisiana Constitution, express or implied, against this exercise of power; and not being forbidden, under a well-recognized rule of interpretation as to the powers of the States, it is permitted.

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18. Ass'n of Wash. Spirits & Wine Distribs. v. Wash. State Liquor Control Bd.

Supreme Court of Washington | Jan 08, 2015 | 182 Wn.2d 342

**Overview:** Wash. Admin. Code § 314-23-025, which requires only spirits distributors, and not self-distributing distillers, to make up any shortfall in licensing revenue under Wash. Rev. Code § 66.24.055(3)(c), was upheld because the authorizing legislation allowed for the entire shortfall to be imposed solely on spirits distributors.

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19. Janes v. Graves

Court of Common Pleas of Franklin County, Ohio | Nov 11, 1913 | 24 Ohio Dec. 55

**Overview:** The Ohio Secretary of State's demurrer to a taxpayer's action for a temporary restraining order to prevent the collection of any tax, license, or fee under the motor vehicle registration law was denied because the fee was a tax and unconstitutional.

**HN13 -** The power to license certain classes of business, **impose a charge** in the form of a tax, and enforce the payment of the tax as a condition to the lawful prosecution of the business.

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20. Flores v. City of Boerne

United States Court of Appeals for the Fifth Circuit | Jan 23, 1996 | 73 F.3d 1352

**Overview:** Religious Freedom Restoration Act of 1993 was held constitutional because Congress was deemed to have been granted the power to enact such legislation and because it did not violate any provisions of the constitution.

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21. Commonwealth v. Papsone

Superior Court of Pennsylvania | Oct 10, 1910 | 44 Pa. Super. 128

**Overview:** Defendant was properly convicted of violating an act that made it unlawful for an unnaturalized foreign-born resident to hunt and, to that end, to possess a shotgun or rifle because the act did not violate the Fourteenth Amendment.

**HN20 -** It is not a reasonable construction to hold that the treaty between the kingdom of Italy and the United States was intended to clothe unnaturalized foreign-born residents with the same rights, immunities and advantages as are conferred solely as a privilege on citizens. The terms of the treaty provide for the protection and security of their persons and property, and in this respect, to such protection and security, the **enjoyment** of the same rights and privileges as are or shall be granted to the natives on their submitting themselves to the conditions imposed on the natives.

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22. In re Initiative Petition No. 315, etc.

Supreme Court of Oklahoma | May 20, 1982 | 649 P.2d 545

**Overview:** Constitutional provisions imposing restrictions and limitations on taxes contemplated property taxes; whereas tax imposed by initiative petition was license tax, occupation tax, or privilege tax, and thus not subject to restrictions and limitations.

**HN5 -** Whether the "tax" imposed by the terms of an initiative petition is given the cognomen of a "license tax," "occupation tax," or "privilege tax," its operational effect clearly distinguishes it from a "property tax" contemplated by Okla. Const. art. X, § 7, Okla. Const. art. X, § 9, Okla. Const. art. X, §10, Okla. Const. art. X, § 20, Okla. Const. art. X, § 26, and Okla. Const. art. X, § 35, and those provisions do not apply. Thus the Supreme Court of Oklahoma has held that the statute imposing a "franchise or excise tax" against every corporation or other business organization of $ 1.25 for each $ 1,000 of capital used and declaring that the "tax" imposed for the **right granted** by state law to exist, is an "excise tax" and not a "property tax"; that a tax upon municipal swimming pool receipts is an "excise tax" and not a "property tax"; and that "special assessments" levied against particular property to enforce payment for benefits thereon are not "general taxes"; and because of the nature and operational effect of such levies, are removed from the restrictions and limitations of the cited constitutional provisions.

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23. Intermountain Fair Hous. Council v. Boise Rescue Mission Ministries

United States District Court for the District of Idaho | May 12, 2010 | 717 F. Supp. 2d 1101

**Overview:** Where plaintiffs filed suit claiming defendant required homeless persons who lived in its shelter to participate in religious activities, the court determined that the homeless shelter component of defendant's facility was not a "dwelling" for purposes of 42 U.S.C.S. § 3602(b); thus, it was not subject to the requirements of the Fair Housing Act.

**HN25 -** Under the FHA's "interference" or "retaliation" provision, it is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or **enjoyment** of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or **enjoyment** of, any **right granted** or protected by the FHA. 42 U.S.C.S. § 3617. The language interfere with has been broadly applied to reach all practices which have the effect of interfering with the exercise of rights' under the federal fair housing laws.

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24. Mt. Dora v. Jj's Mobile Homes

Court of Appeal of Florida, Fifth District | Apr 25, 1991 | 579 So. 2d 219

**Overview:** After appellee had received a certificate to provide water and sewer service, a municipality was prevented from providing the service on its own to a newly annexed area of land without the consent of appellee.

**HN11 -** The statutory scheme of Fl. Stat. ch. 367, as well as the concept of a public utility, envisions that the **right granted** by the Public Service Commission to a private utility company is exclusive to the extent that such company has the ability to promptly provide service to the public within its franchised territory.

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25. Bloch v. Frischholz

United States Court of Appeals for the Seventh Circuit | Nov 13, 2009 | 587 F.3d 771

**Overview:** Summary judgment was reversed because condominium owners offered enough evidence to allow a trier of fact to decide whether they suffered intentional religious discrimination at the hands of a condominium association and its president by the repeated removal of the owners' mezuzah in violation of 42 U.S.C.S. §§ 3604(b), 3617, and 1982.

**HN11 -** 42 U.S.C.S. § 3617 makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or **enjoyment** of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or **enjoyment** of, any **right granted** or protected by 42 U.S.C.S. §§ 3603, 3604, 3605, or 3606.

**HN12 -** 24 C.F.R. § 100.400(c)(2) prohibits threatening, intimidating or interfering with persons in their **enjoyment** of a dwelling because of the race or religion of such persons, or of visitors or associates of such persons. Interference with the **enjoyment** of a dwelling could only occur post-sale.

**HN16 -** To prevail on a 42 U.S.C.S. § 3617 claim, a plaintiff must show that (1) she is a protected individual under the Fair Housing Act (FHA), 42 U.S.C.S. § 3601 et seq., (2) she was engaged in the exercise or **enjoyment** of her fair housing rights, (3) the defendants coerced, threatened, intimidated, or interfered with the plaintiff on account of her protected activity under the FHA, and (4) the defendants were motivated by an intent to discriminate. "Interference" is more than a quarrel among neighbors or an isolated act of discrimination, but rather is a pattern of harassment, invidiously motivated.

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26. Detroit Citizens' Street R. Co. v. Detroit

Circuit Court of Appeals, Sixth Circuit | Oct 02, 1894 | 64 F. 628

**Overview:** A street railway company was entitled to relief from an order enjoining it from running its streetcars and directing it to remove its tracks from a city's streets because the company's predecessor's

franchise was not limited to the term of the predecessor's corporate life and the franchise's operativeness was not dependent on the city's consent.

**HN1 -** The duration of any estate that a corporation may take must depend upon the language of the grant and the power of the grantor to make it. It was an incident at common law to every corporation to have a capacity to purchase and alien lands and chattels, unless they were especially restrained by their charter or statute. Corporations have a fee simple for the purpose of alienation, but they have only a determinable fee for the purposes of **enjoyment**. On the dissolution of the corporation, the reverter is to the original grantor or his heirs; but the grantor will be excluded by the alienation in fee, and in that way the corporation may defeat the possibility of a reverter. If real or personal property or negotiable contracts are conveyed to a corporation, subject to no condition, the company has the right to transfer the same absolutely, and in such case the title of the purchaser will not be affected by a subsequent dissolution of the corporation.

**HN2 -** Consents obtained by a corporation are the muniments of title to the **enjoyment** of the rights acquired thereunder by the corporation and constitute a property interest that is not destroyed by the repeal of the corporation's charter. There is no limitation upon either the power of a city to grant an easement in perpetuity extending beyond the prescribed life of the corporation, nor does such limitation operate to limit the power of the corporation to receive such grant.

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27. Denver D. Darling, Inc. v. Controlled Environments Construction, Inc.

Court of Appeal of California, Second Appellate District, Division Four | Jun 13, 2001 | 89 Cal. App. 4th 1221

**Overview:** In a breach of contract matter, a subcontractor was entitled to recover retention proceeds notwithstanding subcontractor's failure to secure a Class B general building contractors' license prior to performing the project.

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28. Alford v. City of Cannon Beach

United States District Court for the District of Oregon | Jan 17, 2000 | 2000 U.S. Dist. LEXIS 20730

**Overview:** In disability discrimination action against businesses and city regarding architectural barriers and reasonable accommodation, summary judgment determinations were made as to state law discrimination, ADA, and Rehabilitation Act claims.

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29. State v. Anderson

Supreme Court of Tennessee, Knoxville | Sep 01, 1921 | 144 Tenn. 564

**Overview:** An Act providing for the collection of licensing fees from dog owners was constitutionally valid because it was a legitimate exercise of a State's police power to protect the safety of the people and of property.

**HN5 -** There is a marked distinction between taxation for revenue, as authorized and limited by Tenn. Const. art. 2, § 28 and the imposition of license fees for the purpose of regulation in the exercise of the police power of the State. There are some cases in which levies are made and collected under the general designation of taxes, or under some term employed in revenue laws to indicate a particular class of taxes, where the imposition of the burden may fairly be referred to some other authority than to that branch of the sovereign power of the State under which the public revenues are apportioned and collected. The reason is that the imposition has not for its object the raising of revenue, but looks rather to the regulation of relative rights, privileges, and duties as between individuals, to the conservation of order in the political society, to the encouragement of industry, and the discouragement of pernicious employments. Legislation for these purposes is made in the exercise of that authority which is inherent in every sovereignty, to make all such rules and regulations as are needful to secure and preserve the public order, and to protect each individual in the **enjoyment** of his own rights and privileges by requiring the observance of rules of order, fairness, and good neighborhood by all around him. This manifestation of the sovereign authority is its police power.

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30. Kemp v. Workers' Compensation Dep't

Court of Appeals of Oregon | Nov 23, 1983 | 65 Ore. App. 659

**Overview:** Rule made by a worker's compensation department allowing persons of well-recognized religions the right to refuse treatments unconstitutionally violated freedom of religion where department failed to show necessity for drawing suspect distinction.

**HN7 -** Or. Const. art. I, § 2 states: All men shall be secure in the natural right, to worship Almighty God according to the dictates of their own consciences. Or. Const. art. I, § 3 states: No law shall in any case whatever control the free exercise, and **enjoyment** of religious opinions, or interfere with the rights of conscience. The rights granted under these provisions of the Oregon Constitution are identical in meaning" with the guarantee of religious freedom contained in the First Amendment to the federal Constitution. U.S. Const. amend. I.

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31. LeBlanc-Sternberg v. Fletcher

United States Court of Appeals for the Second Circuit | Sep 21, 1995 | 67 F.3d 412

**Overview:** Village which adopted zoning ordinance to limit use of Orthodox rabbis' homes for prayer services was found in violation of private plaintiffs' rights under Fair Housing Act and First Amendment, and plaintiffs could obtain injunctive relief.

**HN21 -** The maxim that equity will not enjoin a crime does not hold where Congress has explicitly authorized injunctive relief. The Fair Housing Act (FHA), 42 U.S.C.S. § 3601 et seq., of Title VIII of the Civil Rights Act of 1968 expressly grants district courts the authority to enter such injunctive relief in a suit by the government against a party who has violated the FHA as is necessary to assure the full **enjoyment** of the rights granted by the FHA. 42 U.S.C.S. § 3614(d)(1)(A).

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32. Kaiser Land & Fruit Co. v. Curry

Supreme Court of California | Jun 15, 1909 | 155 Cal. 638

**Overview:** The California license-tax statute allowed the secretary of state to refuse to issue corporate certification where the requesting corporation failed to pay the tax.

33. Rice v. Rehner

Supreme Court of the United States | Jul 01, 1983 | 463 U.S. 713

**Overview:** Federal law did not pre-empt, but did authorize, state regulation over Indian transactions. California could require a federally licensed Indian trader to obtain a state license in order to sell liquor for off-premises consumption.

**HN3 -** Even on reservations, state laws may be applied unless such application would interfere with reservation self-government or would impair a **right granted** or reserved by federal law.

**HN9 -** The presumption of pre-emption derives from the rule against construing legislation to repeal by implication some aspect of tribal self-government. Because there is no aspect of exclusive tribal self-government that requires the deference reflected in our requirement that Congress expressly provide for the application of state law, a court has only to determine whether application of the state licensing laws would impair a **right granted** or reserved by federal law.

**HN12 -** 18 U.S.C.S. § 1161 was intended to remove federal discrimination that resulted from the imposition of liquor prohibition on Native Americans. Congress intended to delegate a portion of its authority to the tribes as well as to the states, so as to fill the void that would be created by the absence of the discriminatory federal prohibition. Application of a state licensing scheme does not impair a **right granted** or reserved by federal law. On the contrary, such application of state law is specifically authorized by Congress and does not interfere with federal policies concerning the reservations.

34. Ex parte Littlefield

Supreme Court of South Carolina | Nov 06, 2000 | 343 S.C. 212

**Overview:** Petitioner crime victims were not entitled to writ of mandamus to re-open case, under Victims' Bill of Rights, where prosecutor made a valid decision not to prosecute white-collar criminal for the specific crimes against petitioners.

35. Barnes v. Armour

United States District Court for the Eastern District of Tennessee, Northeastern Division | Dec 13, 1974 | 392 F. Supp. 1240

**Overview:** Court clerk's negligence in failing to notify Department of Safety that motorist was not convicted of driving under influence of intoxicant, for which he was arrest, and which resulted in suspension of his driver's license, presented no denial of equal protection cognizable under § 1983 because it was no more than isolated incident of negligence.

**HN6 -** The statutes regulating the granting of licenses to drivers of automobiles is placed by the Tennessee Legislature under the Department of Safety. This Department has the duty, right and privilege to grant licenses to those who drive within this State. Under the statutes which give the Department the right to grant licenses, the statutes also gives the Department the right for the suspension of the license. The revocation of a grant to operate a motor vehicle upon the highways deprives the holder of no guaranteed civil right. Of course, the right to grant is a valuable one and yet it is no more or less than a **right granted** by the State and its use and **enjoyment** depends always, and it should, upon the compliance by the holder of said license with conditions prescribed in granting such a license. Among the other conditions contained in the statute, it is said if the operator of a motor vehicle operates it while under the influence of an intoxicant the Department may revoke the license. This revocation is for the general safety of the people of the State.

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36. In re Application of Union Ferry Co.

Court of Appeals of New York | Feb 03, 1885 | 98 N.Y. 139

**Overview:** An act that provided that lessees of a ferry could acquire title to a ferry slip did not violate a provision of the New York Constitution that forbade the legislature from granting to any private corporation an exclusive privilege or franchise.

**HN2 -** The constitutional prohibition against granting to a private corporation, association or individual a grant of an exclusive privilege, immunity or franchise is aimed at monopolies. It is aimed at granting to corporations or individuals not merely privileges and franchises not possessed by others, but the right to exclude others from the exercise or **enjoyment** of like privileges or franchises.

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37. People v. Wiggins

Appellate Court of Illinois, First District, Fourth Division | Dec 08, 2016 | 2016 IL App (1st) 153163

**Overview:** Defendant's convictions for aggravated unlawful use of a weapon were proper because a non-Illinois resident, whose home state allowed him to possess a firearm without requiring him to first obtain a license, was not deemed licensed in that other state for the purposes of the Illinois Firearm Owner's Identification card exemption.

**HN7 -** In the context of the Firearm Owner's Identification (FOID) Card Act, the only reasonable interpretation of the word "licensed" is the one commonly understood in the regulatory context, a **right granted** formally by the government to engage in an activity that otherwise would be illegal under that government's law. The reference to nonresidents currently licensed to possess a firearm in their state can only refer to nonresidents who have complied with a required governmental process and received an official license from their home state to possess a firearm, 430 ILCS 65/2(b)(10) (2012).

38. Hanover Fire Ins. Co. v. Harding

Supreme Court of the United States | Nov 23, 1926 | 272 U.S. 494

**Overview:** Injunction was granted against enforcement of licensing statute upon foreign insurers where statute was a means to generate revenue; statute violated equal protection where it treated foreign insurers differently from similarly situated insurers.

39. State ex rel. Hance v. Ariz. Bd. of Pardons & Paroles

Court of Appeals of Arizona, Division One, Department A | Oct 26, 1993 | 178 Ariz. 591

**Overview:** Pardon board's failure to notify rape victim of hearing violated her constitutional rights to notice and to participate in post-conviction release proceedings of rapist, thus, pardon board's order releasing rapist to house arrest was vacated.

40. United States v. Incorporated Village of Island Park

United States District Court for the Eastern District of New York | May 17, 1995 | 888 F. Supp. 419

**Overview:** Developers of a federally subsidized housing project fraudulently pre-selected homeowners in violation of the False Claims Act and with an intent to discriminate against potential black applicants in violation of the Fair Housing Act.

**HN27 -** Declaratory judgment is a form of relief sanctioned by 42 U.S.C.S. § 3614(d)(1)(a). The statute provides for the award of such preventive relief, including a permanent or temporary injunction, restraining order, or other order against the person responsible for a violation as is necessary to assure the full **enjoyment** of the rights granted by this subchapter. 42 U.S.C.S. § 3614(d)(1)(a).

41. People v. Rinehart

Court of Appeal of California, Third Appellate District | Sep 23, 2014 | 230 Cal. App. 4th 419

**Overview:** Remand was required where issue of whether provisions of Fish & G. Code, §§ 5653, 5653.1, as applied, were preempted by federal law because they stood as obstacle to accomplishment and execution of full purposes and objectives of Congress could not be determined by court of appeal, as there was no evidence in the record relevant to the issue.

**HN4 -** Under the federal Mining Act of 1872, 30 U.S.C. § 22 et seq., a private citizen may enter federal lands to explore for mineral deposits. If a person locates a valuable mineral deposit on federal land, and perfects the claim by properly staking it and complying with other statutory requirements, the claimant shall have the exclusive right of possession and **enjoyment** of all the surface included within the lines of their locations, although the United States retains title to the land. The holder of a perfected mining claim may

secure a patent to the land by complying with the requirements of the Mining Act and regulations promulgated thereunder and, upon issuance of the patent, legal title to the land passes to the patent holder. The intent of Congress in passing the mining laws was to reward and encourage the discovery of minerals that are valuable in an economic sense.

42. White v. Lee

United States Court of Appeals for the Ninth Circuit | Sep 27, 2000 | 227 F.3d 1214

**Overview:** Government officials were denied qualified immunity as a result of their fair housing investigation because their conduct was excessive and violated the clearly established constitutional right to freedom of speech.

**HN13 -** The Fair Housing Act (FHA), 42 U.S.C.S. §§ 3601-3631, prohibits owners and landlords from refusing to sell or rent housing because of race, color, religion, sex, handicap, familial status, or national origin. 42 U.S.C.S. § 3604. The FHA also makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or **enjoyment** of any **right granted** or protected by 42 U.S.C.S. §§ 3603, 3604, 3605, or 3606. 42 U.S.C.S. §§ 3617, 3602(f). A violation of this provision is considered a discriminatory housing practice for which an aggrieved person may file an administrative complaint with the United States Department of Housing and Urban Development (HUD). 42 U.S.C.S. § 3610(a)(1)(A)(i). If this occurs, HUD must serve notices upon the complainant and the respondents and make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint unless it is impracticable to do so. 42 U.S.C.S. § 3610(a)(1)(B)(iv).

43. Maziar v. Dep't of Corr.

Court of Appeals of Washington, Division One | Mar 24, 2014 | 180 Wn. App. 209

**Overview:** In a maritime action under 28 U.S.C.S. § 1333(1), although the right to a jury trial under Wash. Const. art. I, § 21 was available in state court, Wash. Const. art. I did not grant jury trial rights to the State, and it did not have such a right under Wash. Rev. Code § 4.40.060 and Wash. Rev. Code § 4.44.090 either.

44. Belville Mining Co. v. United States

United States District Court for the Southern District of Ohio, Western Division | Apr 30, 1991 | 763 F. Supp. 1411

**Overview:** Where a mining company held clear title to the mineral rights of properties within a national forest, the court found that the mining company was entitled to strip mine the lands.

**HN11 -** The right to strip mine is not incident to ownership of a mineral estate. Because strip mining is totally incompatible with the **enjoyment** of a surface estate, a heavy burden rests upon the party seeking to demonstrate that such a right exists. This is especially true when the deed relied upon was executed prior to the time strip mining techniques became widely employed.

45. Abraham, Inc. v. City of Hammond

United States District Court for the Northern District of Indiana, Hammond Division | Feb 14, 2003 | 2003 U.S. Dist. LEXIS 25554

**Overview:** The court permanently enjoined enforcement of an "adult business" licensing ordinance in its entirety, for failing to provide for appropriate judicial review and for failing to comply with the mandates of Freedman.

**HN46 -** As a basic legal premise, a state may not **impose a charge** upon the exercise of a constitutional right. Accordingly, licensing fees levied upon expression-related businesses must be nominal and imposed only as a regulatory measure to defray the expenses of policing such activities. The rational for this rule is that the power to impose a license tax on the exercise of First Amendment freedoms is as potent as the power of censorship. The burden of proving that the fees are necessary to cover the reasonable costs of the licensing system lies with the licensing authority. Accordingly, the state has the ability to **impose a charge** on First Amendment activities, but only to the extent that those fees are commensurate with the costs of a licensing system.

46. State ex rel. Fullerton v. Des Moines C. R. Co.

Supreme Court of Iowa, Des Moines | Oct 01, 1907 | 135 Iowa 694

**Overview:** Relators, taxpayers of a city, had the authority to initiate an action to challenge a railway company's use of the streets. Subsequent prosecution of the action by the county attorney was not a ground for the relators' compulsory dismissal.

**HN5 -** Proceedings in the nature of quo warranto lie for an alleged failure of a corporation to observe the terms and conditions of the **right granted** to it by the city to occupy the streets with its railway.

47. Chesapeake & O. Ry. v. Public Serv. Comm'n

Supreme Court of Appeals of West Virginia | Dec 18, 1953 | 139 W. Va. 161

**Overview:** As to railroad's application for authority to transport, by motor truck, within defined area, freight in less than carload quantities, part of order of state public service commission denying certificate of convenience was reversed as question of inadequacy of services rendered by other carriers was not material in determining railroad's right.

**HN7 -** The policy of West Virginia as evidenced by the statutes relating to the West Virginia public service commission, its powers and duties, is not to invite or encourage ruinous competition between public carriers; on the contrary its policy is to protect such public servants in the **enjoyment** of their rights, so that the public may be served most efficiently and economically, and by the best equipment reasonably

necessary therein. If the State is to protect such public servants in the **enjoyment** of their rights, so that the public may be served most efficiently and economically, it should not assist in the economic strangulation of one of the public servants by refusing to permit improvement in methods of performing the very business it was authorized to do.

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48. United States v. Morris

District Court, E.d. Arkansas, E.d. | Oct 09, 1903 | 125 F. 322

**Overview:** Statutes forbidding individuals from conspiring to injure, oppress, and intimidate Negro citizens of the United States in the free exercise or enjoyment of certain rights by virtue of their race was constitutional under the Thirteenth Amendment.

**HN13 -** Congress has the power, under the provisions of U.S. Const. amend. XIII, to protect citizens of the United States in the **enjoyment** of those rights which are fundamental and belong to every citizen, if the deprivation of these privileges is solely on account of his race or color, as a denial of such privileges is an element of servitude within the meaning of that amendment.

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49. S. Jersey Catholic Sch. Teachers Ass'n v. St. Teresa of the Infant Jesus Church Elem. Sch.

Superior Court of New Jersey, Appellate Division | May 16, 1996 | 290 N.J. Super. 359

**Overview:** Compelling governmental interest expressed in grant of fundamental right to organize and bargain collectively by New Jersey state constitution prevailed over claimed unconstitutional burden on catholic elementary schools' free exercise of religion.

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50. Bach v. Pataki

United States Court of Appeals for the Second Circuit | May 06, 2005 | 408 F.3d 75

**Overview:** A nonresident's Privileges and Immunities Clause challenge to N.Y. Penal Law art. 400, 265's, handgun licensing scheme failed; the court rejected an argument that nonresidents were no more difficult to monitor and that the state had not shown it could not obtain the same quality information from other states as it did under its monitoring system.

**HN12 -** The right of the people to keep and bear arms is not a **right granted** by the United States Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second Amendment declares that it shall not be infringed, but this, as has been seen, means no more than that it shall not be infringed by Congress.

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51. Nourse v. Russellville

Court of Appeals of Kentucky | Jan 29, 1935 | 257 Ky. 525

**Overview:** A city ordinance declaring cesspools, privy vaults, and surface toilets nuisances, requiring all property owners to connect into the city's sewerage systems or septic tanks, and enforcing penalties, was a valid exercise of the state's police power.

**HN5 -** A city government has the general power to regulate the use and **enjoyment** of private property in the city as to prevent its proving pernicious to the citizens generally. It may, when the use to which an owner devotes his property becomes a nuisance, compel him to cease so to use it, and punish him for refusing to obey its ordinances or regulations concerning such use. These powers to interfere with the citizen in the use and **enjoyment** of his property are indispensable to government. Without them the public would be at the mercy of every man who chose to disregard the safety or comfort of his neighbors. A city may enact laws to preserve and promote the health, morals, security, and general welfare of the citizens as a unit, and has a broad discretion in determining for itself what is harmful and inimical. It is sufficient if the municipal legislation has a real, substantial relation to the object to be accomplished, and its operation tends in some degree to prevent or suppress an offense, condition, or evil detrimental to public good or reasonably necessary to secure public safety and welfare.

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52. S. Kan. Ry. v. Oklahoma City

Supreme Court of Oklahoma | Jul 18, 1902 | 1902 OK 63

**Overview:** Under a federal statute, a railroad took its lands subject to those conditions that the Congress imposed upon the grant. The railroad was not entitled to reimbursement of the costs that it expended in building statutorily mandated crossings.

**HN12 -** Nor is it material whether property taken or appropriated is real estate held in fee, or an easement or lien upon real estate, or personal property. The word "property" as used in the Due Process Clause should have such a liberal construction as to include every valuable interest which can be enjoyed as property and recognized as such. Nor is it material whether the property is removed from the possession of the owner, or in any respect changes hands; if it is of such a character and so situated that the exercise of the public use of it, as warranted by the legislature, does, in its necessary natural consequences, affect the property by taking it from the owner or depriving him of the possession of some beneficial **enjoyment** of it, then it is "appropriated" to public use by competent authority, and the owner is entitled to compensation.

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53. Puglisi v. Underhill Park Taxpayer Assoc.

United States District Court for the Southern District of New York | Nov 12, 1996 | 947 F. Supp. 673

**Overview:** White landlord had a personal stake in the controversy's outcome due to his economic and non-economic injuries in trying to vindicate the rights of his minority tenants and thus had standing although his complaint was dismissed for lack of evidence.

**HN23 -** Although 42 U.S.C.S. § 3617 refers to rights granted and protected by 42 U.S.C.S. §§ 3603-3606, § 3617 may still be violated absent a violation of §§ 3603, 3604, 3605, 3606. The three distinct instances in which a plaintiff may bring a § 3617 claim are: (1) in the exercise or **enjoyment** of any right protected by §§ 3603-3606; (2) on account of the person's having exercised or enjoyed such a right; and (3) on account of his having aided or encouraged any other person in the exercise or **enjoyment** of such a right.

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54. Pinette v. Capitol Square Review & Advisory Bd.

United States District Court for the Southern District of Ohio, Eastern Division | Jan 04, 1994 | 874 F. Supp. 791

**Overview:** An organization was not required to pay for costs involved in protecting them from crowds that took offense at their message in a public rally. Such a restriction on expression was not content neutral and violated the First Amendment.

**HN2 -** A permit scheme that imposes on the speaker costs, which are associated with the listeners' reaction to the speech, is not content neutral. Speech cannot be financially burdened any more than it can be punished or banned, simply because it might offend a hostile mob. A state may not **impose a charge** for the **enjoyment** of a right guaranteed by the federal Constitution.

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55. Application of Wolstenholme

Superior Court of Delaware, New Castle | Aug 20, 1992 | 1992 Del. Super. LEXIS 341

**Overview:** Delaware court had authority to impose restrictions on licenses it granted allowing applicants to carry concealed weapons; its authority was reasonably related to legitimate state interest. There was no fundamental right to carry a concealed weapon.

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56. State v. Chicago & N. W. R. Co.

Supreme Court of Wisconsin | Jun 21, 1906 | 128 Wis. 449

**Overview:** Forfeiture provision in statutes requiring railroad companies to report gross earnings to state and pay license fee was construed as not applying in situations where railroad companies honestly misreported their gross earnings by a reasonable amount.

**HN10 -** When a legislature grants a charter of incorporation, it confers upon the grantees of the charter the right or privilege of forming a corporate association, and of acting, within certain limits, in a corporate capacity, and this right or privilege is called the corporate franchise. The legislative authority in making a grant of such franchise can prescribe such terms and such conditions for its acceptance and for its **enjoyment** as to it shall seem best. It is true that such grants are said to be in the nature of a contract. But if the right to amend or to alter or to repeal the grant be reserved the terms and conditions originally annexed to the grant, although accepted, do not become irrepealable contracts, but may be altered at the will of the grantor.

57. Blackrock Copper Mining & Mill Co. v. Tingey

Supreme Court of Utah | Nov 07, 1908 | 34 Utah 369

**Overview:** A tax imposed by Compiled Laws of Utah of 1907 as §§ 456x6 to 456x10, inclusive, upon a corporate franchise was a license tax because it was upon the right to exist as a corporation and, thus, not upon property, and the method of imposing the tax was within legislative discretion; thus, the corporation's action for taxes paid was dismissed.

58. R&G Props, Inc. v. Column Fin., Inc.

Supreme Court of Vermont | Aug 22, 2008 | 2008 VT 113

**Overview:** A lender had not breached its implied covenant of good faith and fair dealing by beginning foreclosure proceedings against a borrower for commencing litigation on the loan agreement. The borrower had presented no evidence to show that the foreclosure was anything more than standard procedure in a case of mortgagor default.

59. R.A.M. of S. Fla., Inc. v. WCI Cmtys., Inc.

Court of Appeal of Florida, Second District | Mar 26, 2004 | 869 So. 2d 1210

**Overview:** Subcontractor's contract and lien claims against a property owner were properly barred by a statutory provision prohibiting the enforcement of illegal construction contracts because the subcontractor had no vested right to cure its unlicensed status.

**HN10 -** A vested right has been defined as an immediate, fixed right of present or future **enjoyment** and also as an immediate right of present **enjoyment**, or a present, fixed right of future **enjoyment**. To be vested, a right must be more than a mere expectation based on an anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand.

**HN11 -** Rights are vested, in contradistinction to being expectant or contingent. They are vested when the right to **enjoyment**, present or prospective, has become the property of some particular person or persons, as a present interest. They are expectant when they depend upon the continued existence of the present condition of things until the happening of some future event. They are contingent when they are only to come into existence on an event or condition which may not happen or be performed until some other event may prevent their vesting.

60. Baylor v. Centre County Bd. of Assessment & Revision of Taxes

Commonwealth Court of Pennsylvania | Mar 18, 1993 | 154 Pa. Commw. 266

**Overview:** The court reversed a decision finding that religious school administrator was not entitled to an exemption from and refund on an occupational assessment tax, because religious education is religious activity and a tax on such was unconstitutional.

61. All Purpose Vending v. City of Phila.

Common Pleas Court of Philadelphia County, Pennsylvania | Dec 03, 1987 | 16 Phila. 622

**Overview:** Promoters of "peep shows" were not entitled to a declaration that the Mechanical Amusement Device Tax Ordinance, Philadelphia, Pa. Code, ch. 19-900 et seq., was unconstitutional. Because the Ordinance applied uniformly to all coin-operated entertainment devices, it was a constitutionally-permissible, non-discriminatory, content-neutral charge.

62. Application of Rosewell

Appellate Court of Illinois, First District, Second Division | Mar 06, 1979 | 69 Ill. App. 3d 996

**Overview:** Agreements between a city and parking lot operators did not constitute leases, but rather granted the operators licenses to operate the facilities for the public's benefit. Therefore, the lots were not subject to property taxation under state law.

**HN6 -** Rent is compensation for the use of land, and what the tenant pays rent for is quiet possession or beneficial **enjoyment**.

63. Goats v. State

Supreme Court of Tennessee, At Nashville | Feb 07, 1963 | 211 Tenn. 249

**Overview:** In challenging a conviction for driving while license suspended, where the license was properly suspended pursuant to a statute, the conviction was a proper exercise of the trial judge's authority.

**HN1 -** The statutes regulating the granting of licenses to drivers of automobiles is governed by Tenn. Code Ann. § 59-7, and subsequent sections therein and is placed by the Legislature under the Department of Safety. This Department has the duty, right and privilege to grant licenses to those who drive within this State. Under the statutes which give them the right to grant the licenses, it also gives them the right for the revocation or the suspension of the license. The revocation of the grant to operate a motor vehicle upon the highways deprives the holder of no guaranteed civil right. The right to grant is a valuable one and yet it is no more or less than a **right granted** by the State and its use and **enjoyment** depends always, and it should, upon the compliance by the holder of said license with conditions prescribed in granting such a license. Among the other conditions contained in the statute, it is said if the operator of a motor vehicle operates it while under the influence of an intoxicant the Department may revoke the license, as well as for a number of other reasons. This grant or revocation is not a penalty or a part of the judgment for doing what the motorist agrees not to do when he is granted this license, but is for the general safety of the people of the State.

64. Schutt v. MacDuff

Supreme Court of New York, Special Term, Orange County | Jan 02, 1954 | 205 Misc. 43

**Overview:** A statute authorizing the revocation of a driver's license was unconstitutional because there was no provision entitling a driver to an ultimate hearing upon an adequate record before the final taking away of his license.

**HN8 -** The essence of the right to equal protection of the laws is that all persons similarly situated be treated alike. N.Y. Veh. & Traf. Law § 71-a (1953) does affect alike all persons similarly situated, i.e., persons licensed to operate motor vehicles upon the highways of California. The fact that it does not apply with equal force to unlicensed operators is immaterial from the constitutional standpoint. The Constitution does not require that a vehicle and traffic law shall apply equally in all respects to licensed and unlicensed operators of vehicles. The licensed operator possesses a qualified **right granted** by the State. He stands in a class different from an unlicensed operator of a vehicle and is subject to legislation specially applying to those persons in his class.

**HN9 -** The due process clauses of the California Constitution and the Fourteenth Amendment of the Federal Constitution stand for protection against the arbitrary exercise of the powers of government. By virtue thereof, a resident here is assured of the full **enjoyment** of the rights of a free person. No matter how laudable the purpose of a statute, it is the duty of the court to strike it down if it provides for summary and substantial infringement upon a prerogative of a free person at the hands of administrative officers without affording him an opportunity of a hearing.

65. State v. Lake City Bowlers' Club

Supreme Court of Washington, Department Two | Oct 28, 1946 | 26 Wn.2d 292

**Overview:** Members of a private bowling club who possessed and consumed their personally-owned alcohol on the premises violated the Washington State Liquor Act because the club did not obtain a license from the Washington State Liquor Control Board.

**HN8 -** The term "license" is generally defined as a **right granted** by some authority to do an act, which, without such license, would be unlawful.

66. St. Louis S. R. Co. v. Stratton

Supreme Court of Illinois | Oct 21, 1933 | 353 Ill. 273

**Overview:** A railroad was entitled to recover part of its annual franchise tax from the secretary of state because the franchise tax placed a direct burden on interstate commerce and violated the Commerce and Due Process Clauses of the federal constitution.

**HN9 -** If a foreign corporation is engaged only in interstate commerce, no excise tax can be constitutionally imposed upon it by the state. The protection against imposition of burdens upon interstate commerce is practical and substantial and extends to whatever is necessary to the complete **enjoyment** of the right protected. The tax imposed cannot be treated as if it were a consideration paid in exchange for a privilege, whether exercised or not, but rather as an excise, which must be reasonable in amount when considered in relation to the extent of the privilege when exercised.

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67. Dantzler v. Callison

Supreme Court of South Carolina | Aug 20, 1956 | 230 S.C. 75

**Overview:** In action against Attorney General, association of naturopathic physicians and its president were not entitled to grant of a declaratory ruling that new law regulating and licensing such physicians was unconstitutional because under its police power, the State had the authority to replace former laws and impose new licensing requirements.

**HN9 -** There is no reasonable doubt that the rights of those who have been duly licensed to practice medicine or other professions are property rights of value which are entitled to protection and that the right of a person to practice his profession for which he has prepared himself is property of the very highest quality. However, it may be observed that no person has a natural or absolute right to practice medicine, surgery, naturopathy or any of the various healing arts. It is a **right granted** upon condition.

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68. Green v. Connally

United States District Court for the District of Columbia | Jun 30, 1971 | 330 F. Supp. 1150

**Overview:** The Internal Revenue Code required a denial of tax exempt status and deductibility of contributions to private schools that practiced racial discrimination.

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69. Grillet-Matamoros v. INS

United States Court of Appeals for the Tenth Circuit | Jun 01, 1994 | 1994 U.S. App. LEXIS 12676

**Overview:** The requirement of extreme hardship was not shown to suspend deportation where the alien was to return to Venezuela, a Catholic country, and the alien was a charismatic evangelical Christian.

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70. Trailways, Inc. v. Atlantic City

Superior Court of New Jersey, Law Division, Atlantic County | Dec 03, 1980 | 179 N.J. Super. 258

**Overview:** City ordinances that imposed fees on buses were invalid because the fees constituted a franchise tax, which the city was prohibited by statute from imposing, and the city could not charge parking fees for buses that did not use the city's terminal.

71. Samaritan Inns v. District of Columbia

United States District Court for the District of Columbia | Jun 30, 1995 | 1995 U.S. Dist. LEXIS 9294

**Overview:** Issuance of stop work order that suspended building permit for housing project for handicapped persons violated FHA where reason for order was to appease local political and community pressure due to perceived undesirability of handicapped status.

**HN22 -** 42 U.S.C.S. § 3617 of the Fair Housing Act provides: It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or **enjoyment** of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or **enjoyment** of, any **right granted** or protected by 42 U.S.C.S. § 3604.

72. State ex rel. Dyer v. Sims

Supreme Court of Appeals of West Virginia | Apr 04, 1950 | 134 W. Va. 278

**Overview:** In adopting compact with other states that created water sanitation commission to restore Ohio River and its tributaries, legislature impermissibly delegated substantial part of its police power, so far as that power related to control of streams.

**HN12 -** The police of a state, in a comprehensive sense, embraces its whole system of internal regulation, by which the state seeks not only to preserve the public order and to prevent offenses against the state, but also to establish for the intercourse of citizens with citizens those rules of good manners and good neighborhood that are calculated to prevent a conflict of rights, and to insure to each the uninterrupted **enjoyment** of his own so far as is reasonably consistent with a like **enjoyment** of rights by others.

73. State v. Butler

Supreme Court of Tennessee, Knoxville | Sep 01, 1879 | 71 Tenn. 222

**Overview:** In a proceeding by distress warrant to enforce a state license or privilege tax on the sale of a patent right by a patentee, the tax violated the exclusive right of the federal government to regulate taxes.

**HN3 -** In the case of sale of a right to make or manufacture a patented article, it seems clear a Tennessee statute requiring a license in order to the sale of the patent must be held void and in violation of the Constitution of the United States and laws made in pursuance thereof. If the state can forbid the use and **enjoyment** of the **right granted** except on terms of paying for the privilege the sum of $ 10, she may as well exact $ 1,000 or forbid it entirely. In this way the privilege granted may be rendered valueless and the right purchased from the United States be entirely destroyed for all practicable purposes. This cannot be done, and the right of the patentee to sell or assign his privilege granted to him by the United States for the period fixed in his letters patent is beyond state control or regulation.

**HN2 -** The power under U.S. Const. art. I, § 8, has been exercised by the enactment of patent laws. Congress has not only fixed the manner in which a patent may be obtained, but has prescribed the manner in which it may be sold and has imposed penalties for the infringement thereof. The national government has, therefore, made the patent right property. The patentee has paid the government for the monopoly, and it is bound to protect him and his assignee in the use and **enjoyment** of it. Any interference whatever by a state that will impair the right to make, use, or vend any patent, or the right to assign the patent or any part of it, is forbidden by the highest organic law.

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74. Ellwest Stereo Theater, Inc. v. Boner

United States District Court for the Middle District of Tennessee, Nashville Division | Jul 14, 1989 | 718 F. Supp. 1553

**Overview:** Although an ordinance governing the licensing of adult-orientated establishments furthered an important government interest, because the burden on the restriction of First Amendment freedoms was greater than incidental to the furtherance of such interest, city officials were prohibited from enforcing the ordinance against theater operators.

**HN11 -** A state may not **impose a charge** upon the exercise of a constitutional right. Licensing fees levied upon expression-related businesses must be nominal and imposed only as a regulatory measure to defray the expenses of policing such activities. The power to impose a license tax on the exercise of First Amendment freedoms is as potent as the power of censorship. The burden of proving that the fees are necessary to cover the reasonable costs of the licensing system lies with the licensing authority. Where protected speech is singled out for regulation, a heavy burden of justification is placed upon the licensing agency because differential treatment suggests that the goal of the regulation is not unrelated to suppression of expression and such a goal is presumptively unconstitutional.

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75. N & N Catering Co., Inc. v. City of Chicago

United States District Court for the Northern District of Illinois, Eastern Division | Feb 17, 1999 | 37 F. Supp. 2d 1056

**Overview:** A single address local option referenda that vested control over prohibition with residents of city precincts did not violate due process rights of plaintiffs who held liquor licenses.

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76. Apollo Estates v. Dep't of Real Estate

Court of Appeal of California, Second Appellate District, Division Seven | Nov 19, 1985 | 174 Cal. App. 3d 625

**Overview:** Real estate brokers could have their restricted licenses revoked because they did not have a vested right in such licenses, their violations of law were willful, and the severity of their violations justified revocation.

77. Knall Beverage Co. v. Taylor

Court of Appeals of Ohio, Tenth Appellate District, Franklin County | Jul 14, 1941 | 68 Ohio App. 263

**Overview:** Under the Ohio Liquor Control Act, the state legislature impliedly delegated to the state department of liquor control the power to pass a reasonable regulation that forbade beer distributors from selling beer in seven-ounce glass bottles.

**HN8 -** The court does not find that the **right granted** to the Ohio Liquor Control Board to control the prescribed capacity of packages is a delegation of legislative authority or that the Board's regulation No. 5, wherein the Board exercises the power, is unreasonable or discriminatory. The court must realize that the Board is given power to manage and control a great industry involving many persons manufacturing and trafficking in intoxicating liquors and in selling the same at retail. It is impossible for the Ohio Legislature to prescribe definite rules controlling every detail of this traffic, and discretion must be given to the Board. The Ohio Legislature has conferred upon the Board power to adopt and promulgate, to repeal, rescind and amend rules "including the following." The use of the phrase "including the following" indicates that the legislative intent is to grant to the Board powers beyond those specifically designated in that section, which are numerous.

78. Northern Plains Res. Council, Inc. v. Mont. Bd. of Land Comm'rs

Supreme Court of Montana | Oct 23, 2012 | 2012 MT 234

**Overview:** State's leases of mineral interests to a coal company without environmental studies, as allowed by Mont. Code Ann. § 77-1-121(2), did not violate Mont. Const. art. II, § 3 or Mont. Const. art. IX, §§ 1, 2, or 3 because the leases did not remove any action by the coal company from any environmental review or regulation provided by Montana law.

79. Van Tassel Real Estate & Livestock Co. v. Cheyenne

Supreme Court of Wyoming | Feb 18, 1936 | 49 Wyo. 333

**Overview:** Where the city had an abundant supply of water with an inadequate or inconvenient means of distributing the same, it could lawfully extend its system of water works and provide reservoir facilities to increase its water supply.

**HN7 -** The full **enjoyment** of the water attempted to be appropriated does not commence until the works are finally completed and capable of conducting all of the water; but against all others, subsequently attempting an appropriation of the waters of the same stream, the right of the first appropriator to the use of the water dates or relates back, by what is known as the doctrine of relation.

80. Douglass v. State

Court of Appeals of Arizona, Division One, Department A | Apr 10, 2008 | 219 Ariz. 152

**Overview:** In a case where defendant was charged with interfering with judicial proceedings under Ariz. Rev. Stat. § 13-2810, his wife was not required to submit to a deposition under Ariz. R. Crim. P. 15.3(a)(2) because she was a crime victim entitled to the protection under Ariz. Const. art. 2, § 2.1(A)(5).

81. Town of N. Kingstown v. Local 473, Int'l Bhd. of Police Officers, N.A.G.E.

Supreme Court of Rhode Island | Apr 04, 2003 | 819 A.2d 1274

**Overview:** Where the Law Enforcement Officers' Bill of Rights superceded a state labor relations act and did not provide for union representation during an interrogation for a police officer's misconduct, a town was entitled to summary judgment.

82. Mallinckrodt, Inc. v. Director of Revenue

Supreme Court of Missouri | Apr 09, 1991 | 806 S.W.2d 412

**Overview:** A domestication fee imposed on a Delaware subsidiary of a Missouri corporation was a fee, not a tax, and did not violate equal protection because Missouri was free to impose conditions on a foreign corporation's entry into the state to do business.

83. Proprietors of Piscataqua Bridge v. New-Hampshire Bridge

Superior Court of Judicature of New Hampshire | Dec 01, 1834 | 7 N.H. 35

**Overview:** Injunctive relief was proper because defendants' charter did not purport to give them any right to interfere with the property of the bridge proprietors.

84. Ceniceros by & Through Risser v. Board of Trustees

United States Court of Appeals for the Ninth Circuit | Feb 06, 1997 | 106 F.3d 878

**Overview:** Under the Equal Access Act a public school that had established the lunch hour as noninstructional time with a limited open forum for student groups could not discriminate against a student religious group.

85. Prince v. Jacoby

United States Court of Appeals for the Ninth Circuit | Sep 09, 2002 | 303 F.3d 1074

**Overview:** A school district had violated the Equal Access Act and First Amendment by treating a student religious club differently than other student clubs and denying it equal access to the benefits enjoyed by other student clubs.

86. Seidenberg v. McSorleys' Old Ale House, Inc.

United States District Court for the Southern District of New York | Jun 25, 1970 | 317 F. Supp. 593

**Overview:** Two ladies brought a § 1983 suit challenging a bar's 115-year practice of serving men only. The effect of the pervasive regulatory scheme in the licensing of the bar showed that there was state action. Their summary judgment motion was granted.

**HN4 -** Section 201(a) of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000a(a), guaranteeing to all persons the full and equal **enjoyment** of public accommodations without discrimination on account of race, color, religion or national origin, applies neither to discrimination on the basis of sex, nor to discrimination in a bar or tavern whose principal business is the sale of alcoholic beverages rather than food.

87. Summerchase Ltd. Pshp. I v. City of Gonzales

United States District Court for the Middle District of Louisiana | Jun 17, 1997 | 970 F. Supp. 522

**Overview:** When city officials revoked a building permit for the construction of low income housing and the revocation was done with the intent to discriminate against minorities and had a discriminatory effect on minorities, it violated the Fair Housing Act.

**HN14 -** 42 U.S.C.S. § 3617 states as follows: It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or **enjoyment** of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or **enjoyment** of, any **right granted** or protected by 42 U.S.C.S. §§ 3603, 3604, 3605, or 3606.

88. Commonwealth v. Gryctko

Common Pleas Court of Centre County, Pennsylvania | Feb 23, 1935 | 1935 Pa. Dist. & Cnty. Dec. LEXIS 245

**Overview:** Where defendant was charged with, but acquitted of, reckless driving, the action of the Commonwealth in overruling the court and administratively suspending his license deprived defendant of due process of the law.

**HN2 -** The liberty mentioned in U.S. Const. Amend XIV means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the **enjoyment** of all his faculties, to be free to use them in all lawful ways, to live and work where he will, to earn his livelihood by any lawful calling, to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned.

**HN7 -** "Liberty" is sometimes used as synonymous with "franchise," "license," "privilege," or "right." In a legal sense "franchise" and "liberty" are used as synonymous terms. A "franchise" is a particular privilege or **right granted** by a prince or sovereign to an individual or to a number of persons.

89. Evans v. Dugan

Supreme Court of Louisiana | Mar 13, 1944 | 205 La. 398

**Overview:** A riparian owner did not have the right to enjoin the operation of a commercial fishing camp on State property in front of the owner's lot as the operator had a permit and the general public had full and free access to the premises at all times.

**HN3 -** Unless manifestly abused, the discretion of the Lake Bistineau State Game and Fish Commission and Department of Conservation in determining what are suitable and needed facilities to promote the public use and **enjoyment** of the area embraced within the Lake Bistineau State Game and Fish Preserve is not a proper subject for judicial control or interference. The authority of the Commission and the Department of Conservation in this respect is not restricted by La. C.C. art. 455, which declares that the use of the banks of navigable rivers or streams is public, and that accordingly everyone has a right freely to bring his vessels to land there. This general right must yield to the specific **right granted** the Lake Bistineau State Game and Fish Commission and the Department of Conservation to control and supervise the territory embraced within the Lake Bistineau State Game and Fish Preserve as established by 1930 La. Acts 43 and 1942 La. Acts 64. Whatever incidental damage may result to proprietors of lands bordering on the shore of the lake within the Preserve from the exercise by the designated agencies of their right to control and supervise the Preserve is damnum absque injuria.

90. State v. Van Daalan

Supreme Court of South Dakota | Oct 30, 1943 | 69 S.D. 466

91. Central Delta Water Agency v. State Water Resources Control Bd.

Court of Appeal of California, Third Appellate District | Nov 19, 2004 | 124 Cal. App. 4th 245

**Overview:** Permits to appropriate water for reservoirs were set aside because they were issued without specifying actual uses, amounts, and places of use of the impounded water and without evaluating environmental impact or defining a specific beneficial use.

92. Carroll v. Cal. Horse Racing Bd.

Court of Appeal of California, Third District | Aug 25, 1939 | 93 P.2d 266

93. Motl v. Boyd

Supreme Court of Texas | Jun 26, 1926 | 116 Tex. 82

**Overview:** Defendants, as riparians, would have been entitled to the prior use of the riparian waters of a creek, but for the fact that their predecessors in title had conveyed such waters to those under whom the plaintiffs, the adjacent landowners, held.

**HN6 -** In determining the **right granted** riparians when the land grants were made, the court must consider the correlative rights of other riparians and those of the public generally to have their property and lives protected from overflows and floods, for that, too, is a **right granted** or accorded them when their lands were patented, or when they became citizens. It is absurd to say that a riparian owner has a vested right in the flood waters, or waters which in the ordinary and usual course may become flood waters, carrying destruction in their wake. In the nature of things, one cannot, under Texas' form of government, be accorded a vested right in a natural agency which is destructive of the property and rights of others. Flood waters are to be treated as a common enemy, the control and suppression of which is a public right and duty.

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94. Redevelopment Authority of Philadelphia v. Lieberman

Supreme Court of Pennsylvania | Mar 18, 1975 | 461 Pa. 208

**Overview:** A condemnee in an eminent domain proceeding, whose retail liquor license lost value as a result of the condemnation of the premises for which the license was issued, was entitled to have such loss considered in the award of just compensation.

**HN4 -** The physical object, subject of property, is, when coupled with possession, merely the visible manifestation of invisible rights. "Property" is then composed of the rights of use, **enjoyment**, and disposition of such an object to the exclusion of all others. It consists not of unrestricted dominion, but of an aggregate of qualified privileges.

**HN6 -** Property in land must be considered, for many purposes, not as an absolute, unrestricted dominion, but as an aggregation of qualified privileges, the limits of which are prescribed by the equality of rights, and the correlation of rights and obligations necessary for the highest **enjoyment** of land by the entire community of proprietors. Property is taken when any one of those proprietary rights is taken, of which property consists.

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95. Atlantic Refining Co. v. Commonwealth

Supreme Court of Virginia | Jan 16, 1936 | 165 Va. 492

**Overview:** A non-resident commercial corporation was properly denied relief from the assessment of an entrance fee. The provision of the Virginia Tax Code prescribing the fee was not unconstitutional, it did not impose a direct burden upon interstate commerce.

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96. Kafka v. Mont. Dep't of Fish, Wildlife & Parks

Supreme Court of Montana | Dec 31, 2008 | 2008 MT 460

**Overview:** Initiative Measure No. 143, which prohibited livestock game farm owners from charging a fee to shoot alternative livestock, under Mont. Code Ann. § 87-4-414(2), did not amount to a taking under Mont. Const. art. II, § 29, or U.S. Const. amend. V, because the owners' licenses were not compensable property interests.

**HN10 -** Generally speaking, a license is simply a right or privilege granted by a sovereign authority to engage in certain activity. A fishing license is merely a representation by the government that it will not interfere with the licensee's efforts to catch fish. A license is a **right granted** by some competent authority to do an act which, without such license, would be illegal. A license is a grant by a government authority or agency of the right to engage in conduct that would be improper without such a grant. The conferment of a license is merely a privilege.

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97. Willcott v. Murphy

Supreme Court of Kansas | Mar 07, 1970 | 204 Kan. 640

**Overview:** The right of the dealer to sell any beer falling under the statutory definition was improperly impaired by the director when he issued a memorandum prohibiting the sale of certain beer because it required refrigeration.

**HN10 -** The director is clothed with broad discretionary powers to govern all phases of the traffic in alcoholic liquor and is authorized to adopt and promulgate such rules and regulations as shall be necessary to carry out the intent and purposes of the Liquor Control Act. The power, however, must stem from the intent and purposes of the Act and does not include authority to take away by administrative regulation the **right granted** to a licensee to sell any legally packaged beer falling within the statutory definition thereof. The power to regulate, though declared to be broad, nevertheless, falls short of the power to legislate.

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98. Slavich v. State

Court of Appeal of Louisiana, First Circuit | Aug 21, 2008 | 2007 1149 (La.App. 1 Cir. 08/21/08);

**Overview:** Trial court erroneously found that the lessees' vested rights in their cause of action were disturbed by retroactive application of La. Rev. Stat. Ann. §§ 49:214.5 and 56:427.1 in violation of the state and federal due process clauses because the property rights of an oyster lessee were exclusively defined in La. Rev. Stat. Ann. § 56:423.

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99. Trimble v. Topeka

Supreme Court of Kansas | Jan 01, 1938 | 147 Kan. 111

**Overview:** A city ordinance purporting to govern the practice of barbering was in conflict with the several state statutes governing the same profession, and a barber licensed by the state was entitled to have enforcement of the ordinance enjoined.

100. Antonio v. Sec. Servs. of Am., LLC

United States District Court for the District of Maryland, Southern Division | Mar 31, 2010 | 701 F. Supp. 2d 749

**Overview:** In a civil suit brought by homeowners alleging a racially motivated arson conspiracy to burn their homes in a new development, a security guard company's motion for summary judgment was denied as to the homeowners' claims for negligent hiring, training, and supervision and negligence since additional discovery was needed to develop those claims.

**HN21 -** The Fair Housing Act (FHA), 42 U.S.C.S. § 3601 et seq., 42 U.S.C.S. § 1982, and 42 U.S.C.S. § 1985(3), guarantee persons basic rights to be free from discrimination in connection with their **enjoyment** of property. The FHA creates a policy of fair housing in the United States, makes it unlawful to make unavailable a dwelling to any person because of race, pursuant to 42 U.S.C.S. § 3604, and prohibits intimidation, coercion or interference with a person in connection with his or her **enjoyment** of property. 42 U.S.C.S. § 3617. 42 U.S.C.S. § 1982 provides that all citizens, regardless of race, shall enjoy the same right to inherit, purchase, lease, sell, hold, and convey real and personal property. 42 U.S.C.S. § 1985(3) creates a cause of action for people who have been deprived of rights or privileges by two or more persons acting in a conspiracy with a class-based animus.

101. Wiseman v. Armstrong

Supreme Court of Connecticut | Jun 29, 2004 | 269 Conn. 802

**Overview:** Based on plain language and legislative history of the governing statute, trial court improperly concluded that a correctional institution was a "facility" subject to the provisions of a patients' bill of rights.

102. GEORGIA-PACIFIC CORP. v. UNITED STATES

United States Court of Claims | Nov 06, 1980 | 1980 U.S. Ct. Cl. LEXIS 1216

**Overview:** Because the government's agreement with a landowner was only a license to conduct certain activities on the land, the government's actions in preventing coal mining on the land amounted to a taking.

**HN11 -** Under West Virginia Law, the owner of the mineral underlying land possesses, as incident to this ownership, the right to use the surface in such manner and with such means as would be fairly necessary for the **enjoyment** of the mineral estate.

**HN18 -** While the mere threat of condemnation is not enough to constitute a taking, such a threat when combined with affirmative action by government officials to restrict the use and **enjoyment** of the property can result in a taking for which just compensation is required.

**HN19 -** Property is legally taken when the taking directly interferes with or substantially disturbs the owner's use and **enjoyment** of the property. Property is deemed taken when the government substantially disturbs the owner's use and possession of the subject property.

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103. Regents of University of Maryland v. Williams

Court of Appeals of Maryland | Jun 01, 1838 | 9 G. & J. 365

**Overview:** An act of 1825 that purported to disestablish the Regents of the University of Maryland and replace them with a board of trustees unconstitutionally impaired a contract and violated Maryland principles of due process and separation of powers.

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104. Cyrus Investors, Inc. v. Hoffman

Court of Appeals of Ohio, Tenth Appellate District, Franklin County | Nov 26, 1991 | 1991 Ohio App. LEXIS 5681

**Overview:** A genuine issue of material fact precluding summary judgment existed as to whether an illegal sewer pipe connection constituted a quasi easement.

**HN13 -** An implied easement is based upon the theory that whenever one conveys property he includes in the conveyance whatever is necessary for its beneficial use and **enjoyment** and retains whatever is necessary for the use and **enjoyment** of the land retained. Easements may be implied in several ways - from an existing use at the time of the severance of ownership in land, from a conveyance describing the premises bounded upon a way, from a conveyance with reference to a plat or map or from necessity alone, as in the case of ways of necessity.

**HN14 -** While implied grants of easements are not favored, being in derogation of the rule that written instruments shall speak for themselves, the same may arise when the following elements appear: (1) A severance of the unity of ownership in an estate; (2) that before the separation takes place, the use which gives rise to the easement shall have been so long continued and obvious or manifest as to show that it was meant to be permanent; (3) that the easement shall be reasonably necessary to the beneficial **enjoyment** of the land granted or retained; (4) that the servitude shall be continuous as distinguished from a temporary or occasional use only.

**HN15 -** Where an owner of two parcels of land subjects one of them to an easement in favor of the other and where such owner sells the dominant parcel without providing for that easement in his grant and where the **enjoyment** of such easement is reasonably necessary to the beneficial **enjoyment** of the parcel granted, the grant of such an easement may be implied. The implication of such a grant is based upon the equitable right of the grantee of the dominant parcel to reform the grant to provide for such easement. Such an equitable right is not enforceable against a bona fide purchaser for value who has no actual or constructive notice of such easement.

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105. Princeton Power Co. v. Calloway

Supreme Court of Appeals of West Virginia, Charleston | May 12, 1925 | 99 W. Va. 157

**Overview:** Taxicab operators that had not obtained certificates of authority to operate motor buses between points served by a railway-system operator nor otherwise qualified to serve the public served by a railway operator could be enjoined from running the buses on the basis of equity as the railway operator's property rights were especially affected.

**HN1 -** The policy of the State as evidenced by the road law and the statutes relating to the powers and duties of the West Virginia Public Service Commission is not to invite or encourage ruinous competition between public carriers; on the contrary, its policy is to protect such public servants in the **enjoyment** of their rights, so that the public may be served most efficiently and economically and by the best equipment reasonably necessary therein.

106. Rock v. Philadelphia

Superior Court of Pennsylvania | Apr 23, 1937 | 127 Pa. Super. 143

**Overview:** License fee assessed by city against master plumber was not unreasonably proportionate to cost of regulating and supervising plumbing business in city and, therefore, statute (Pennsylvania) authorizing imposition of license fee was constitutional.

107. American Cancer Soc., Inc. v. Dayton

Court of Appeals of Ohio, Second Appellate District, Montgomery County | Dec 16, 1952 | 94 Ohio App. 131

**Overview:** A city ordinance that left discretion with a city manager on whether a charity could or could not solicit funds, and allowed the manager to allow a charity while denying an equally qualified charity the right to solicit, was unconstitutional.

108. Dent v. Oregon City

Supreme Court of Oregon | Jan 02, 1923 | 106 Ore. 122

**Overview:** A city ordinance that regulated which common carriers could use public highways was illegal because it conflicted with state statutes and was not reasonable or applied impartially.

**HN1 -** A highway is a public way for the use of the public in general, for passage and traffic, without distinction. The restrictions upon its use are only such as are calculated to secure to the general public the largest practicable benefit from the **enjoyment** of the easement, and the inconveniences must be submitted to when they are only such as are incident to a reasonable use under impartial regulations.

109. Martin v. District of Columbia

United States District Court for the District of Columbia | Sep 16, 2013 | 968 F. Supp. 2d 159

**Overview:** Other than receiving an email from an employee, a board chairman was not alleged to have taken any action, and the email did not state that she was being retaliated against for her EEO complaint; therefore, there was no basis to find that the chairman aided or abetted any retaliation in violation of D.C. Code § 2-1402.62 or D.C. Code § 1-615.53.

**HN6 -** The retaliation provision of the D.C. Human Rights Act (DCHRA) makes it unlawful for an employer to coerce, threaten, retaliate against, or interfere with any person in the exercise or **enjoyment** of any **right granted** or protected under the DCHRA. D.C. Code § 2-1402.61(a) (2001).

110. Nale v. Carroll

Court of Civil Appeals of Texas, Texarkana | Jan 21, 1954 | 266 S.W.2d 519

**Overview:** Where a grantor sold an oil lease, divided the property, sold one parcel to a grantee, and dedicated land but not mineral rights for a road, and an oil well was erected on another parcel, neither the grantee or the grantor were entitled to royalties.

**HN2 -** The migratory character of oil is recognized by Texas. The so-called rule or law of capture has been definitely adopted in Texas and is recognized as a law of property. It is a necessary corollary to the rule that recognizes fee ownership with all of its incidents, including possession, use and **enjoyment**, as settled law of Texas, and at the same time harmonizes it with the natural law found in the fugitive character of oil and gas. This migratory character of oil and gas has given rise to the so-called rule or law of capture. That rule simply is that the owner of a tract of land acquires title to the oil or gas which he produces from wells on his land, though part of the oil or gas may have migrated from adjoining lands. He may thus appropriate the oil and gas that have flowed from adjacent lands without the consent of the owner of those lands, and without incurring liability to him for drainage. The non-liability is based upon the theory that after the drainage the title or property interest of the former owner is gone. This rule, at first blush, would seem to conflict with the view of absolute ownership of the minerals in place, but it is otherwise.

**HN3 -** In Texas, oil well drilling permits are granted by the Texas Railroad Commission in the administration of conservation laws. When a permit is granted it is restricted to a specific location and none other may be substituted without approval of the Commission. Its only function, and the only **right granted**, is to drill a well at the particular location, and in compliance with rules of the Commission. It carries no restrictions against assignment or transfer of the right to drill, nor against assignment or conveyance of the land in whole or in part. The area included in the application and in the Commission's order and the general location of the land are material only insofar as they inform the Commission of facts to enable it to act under spacing Tex. R.R. Comm'r R. 37. The order of the Commission granting a permit is in the nature of a license, and does not vest any interest in any person to the oil or gas in place or which may be produced. These rights last named rest upon muniments of title. A drilling permit is not a muniment of title. The property rights of owners or lessees between each other are unaffected by the valid rules and regulations of the Commission respecting the development of an oil field.

111. Fox v. Skagit County

Court of Appeals of Washington, Division One | Apr 11, 2016 | 193 Wn. App. 254

**Overview:** Property owners were not entitled to a building permit because the well on their property, despite being exempt from the requirement of a water permit under Wash. Rev. Code § 90.44.050, was not an adequate water supply because the well was subject to a senior water right prior appropriation--the 2001 instream flow requirement for the Skagit River.

**HN46 -** The Washington Department of Ecology's interpretation of its instream flow rule does not violate the due process rights of the owner of a permit-exempt well by repealing a statutory right by implication. The permit-exempt **right granted** under Wash. Rev. Code § 90.44.050 does not exist outside of the prior appropriation doctrine. The right to withdraw water via a permit-exempt well under § 90.44.050 is like any other water right. That right is subject to senior rights, such as an instream flow rule. The Department's instream flow rule interpretation does not vitiate a statutory right by silence. The statutory right includes only an exemption from the permit process and does not include a right to "jump to the head of the line" of priority.

112. Bittle v. Bahe

Supreme Court of Oklahoma | Feb 05, 2008 | 2008 OK 10

**Overview:** Tort action against an Indian tribe was improperly dismissed because 18 U.S.C.S. § 1161 authorized states and Indian tribes to regulate alcoholic beverages, and there was no tribal immunity in this area. Therefore, the tribe was required to answer charges that it violated Okla. Stat. tit. 37, § 537(A)(2) by serving a noticeably intoxicated patron.

**HN12 -** 18 U.S.C.S. § 1161 was intended to remove federal discrimination that resulted from the imposition of liquor prohibition on Native Americans. Congress was well aware that the Indians never enjoyed a tradition of tribal self-government insofar as liquor transactions were concerned. Congress is also aware that the states exercised concurrent authority insofar as prohibiting liquor transactions was concerned. By enacting § 1161, Congress intended to delegate a portion of its authority to the tribes as well as to the States, so as to fill the void that would be created by the absence of the discriminatory federal prohibition. Congress did not intend to make tribal members "super citizens" who could trade in a traditionally regulated substance free from all but self-imposed regulations. Rather, in enacting § 1161, Congress intended to recognize that Native Americans are not weak and defenseless, and are capable of making personal decisions about alcohol consumption without special assistance from the federal government. Application of the state licensing scheme does not impair a **right granted** or reserved by federal law. On the contrary, such application of state law is specifically authorized by Congress and does not interfere with federal policies concerning the reservations.

113. Palm Harbor Special Fire Control Dist. v. Kelly

Supreme Court of Florida | Dec 03, 1987 | 516 So. 2d 249

**Overview:** A statute that prevented noncitizen from obtaining a license to act as business agent for a firefighters' union on the basis of alienage was unconstitutional because it did not advance a compelling state interest by the least restrictive means.

114. Sierota v. Scott

Supreme Court of Colorado, In Department | May 31, 1960 | 143 Colo. 248

**Overview:** Where state statute legalized the issuance of licenses to sell liquor, city improperly attempted to limit such license where it required a liquor seller, upon the expiration of a state license, to chose whether to sell liquor by the glass or package.

115. Absentee Shawnee Tribe of Okla. v. Combs

United States District Court for the Western District of Oklahoma | Jun 18, 2009 | 2009 U.S. Dist. LEXIS 54900

**Overview:** Federal court dismissed plaintiff Tribe's action seeking an injunction prohibiting further proceedings in state court with respect to a negligence case filed against the Tribe. State supreme court's ruling that the state court had jurisdiction over the negligence case was a final decision, and reviewable only by the U.S. Supreme Court.

**HN3 -** The U.S. Supreme Court's decision in Rice states that there is no tradition of sovereign immunity with respect to the tribes' regulation of alcoholic beverages. Rice finds that application of state alcoholic beverage licensing laws to the tribes does not impair a **right granted** or reserved by federal law to the tribes.

**HN14 -** Rice states that application of the state licensing scheme does not impair a **right granted** or reserved by federal law. Tribes do not have a tradition of immunity with respect to the regulation of alcoholic beverages and state interests predominate.

116. Wine Country Gift Baskets.com v. Steen

United States Court of Appeals for the Fifth Circuit | Jul 22, 2010 | 612 F.3d 809

**Overview:** Texas requirement that only retailers with a physical presence within the State could receive retailer permits or deliver to in-state consumers did not transgress the dormant Commerce Clause, so appellate court reinstated Tex. Alco. Bev. Code Ann. §§ 22.03, 24.03, 54.12, and 107.07(f).

117. iMatter Utah v. Njord

United States Court of Appeals for the Tenth Circuit | Dec 22, 2014 | 774 F.3d 1258

**Overview:** Insurance and indemnification requirements to obtain a parade permit under Utah Admin. Code r. 920-4-5 were facially invalid under the First Amendment because the requirements were not narrowly tailored to serve Utah's interest in protecting itself from liability for injuries associated with use of its property.

118. Binkley v. City of Long Beach

Court of Appeal of California, Second Appellate District, Division Two | Jul 08, 1993 | 16 Cal. App. 4th 1795

**Overview:** Because the sole purpose of an administrative appeal procedure was to afford a discharged government employee an opportunity to clear his name, he was not denied his right to due process by not be able to cross-examine witnesses.

119. Ramos v. Lamm

United States Court of Appeals for the Tenth Circuit | Sep 25, 1980 | 639 F.2d 559

**Overview:** District court's remedial order for State to close maximum security unit based on serious violations of inmates' constitutional rights was vacated and remanded for consideration of a new remedy in light of the construction of new prison facilities.

**HN7 -** It is the duty of federal courts to guard, enforce, and protect every **right granted** or secured by the Constitution of the United States. Whenever the federal courts sit, human rights, under the Constitution are always a proper subject for adjudication, and federal courts do not have the right to decline the exercise of that jurisdiction simply because the rights asserted may be adjudicated in some other forum.

120. Life Teen, Inc. v. Yavapai County

United States District Court for the District of Arizona | Mar 26, 2003 | 2003 U.S. Dist. LEXIS 24363

**Overview:** A youth camp's complaint to the Arizona Corporation Commission concerning a water company's alleged discrimination in not providing services only initiated the administrative process, it did not exhaust it.

121. Waters-Pierce Oil Co. v. State

Court of Civil Appeals of Texas, Austin | Mar 09, 1898 | 19 Tex. Civ. App. 1

**Overview:** Missouri oil company was prohibited from doing business in Texas after oil company violated Texas antitrust law by engaging in prohibited conduct after effective date of law prohibiting conduct. Interstate commerce activities were not prohibited.

**HN10 -** All property is held subject to the power of the State to regulate or control its use, to secure the general safety and the public welfare. Every holder of property, however absolute and unqualified may be

his title, holds it under the implied liability that his use shall not be injurious to the equal **enjoyment** of others having an equal right to the **enjoyment** of their property, nor injurious to the rights of the community. All property is held subject to those general regulations which are necessary to the common good and general welfare. By the general police power of the State, persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the State; of the perfect right of the Legislature to do which, no question ever was, or upon acknowledged general principles can be made. The police power, so called, inheres in every sovereignty, and is essential to the maintenance of public order and the preservation of mutual rights from disturbing conflicts.

**HN21 -** The general welfare of the people is no more important to be observed in restraining and controlling railways in their relation to the commerce of the country than is the public interest to be subserved by laws which restrain and prevent trusts and combinations concerning such commerce, and which seek to prevent conspiracies entered into for the purpose of affecting the prices of commodities which are useful and necessary to the **enjoyment** of life. In each case the interest of mankind requires that the selfishness of human nature, which seeks alone to advance its individual interests, shall, in the use of property and in conduct, be so far restrained, as may be compatible with individual right and liberty, as will prevent harm and injury to the public.

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122. McDonald v. City of Chicago

Supreme Court of the United States | Jun 28, 2010 | 561 U.S. 742

**Overview:** With regard to whether municipalities could ban possession of handguns, the Second Amendment was fully applicable to the states and protected the right to keep and bear arms -- including handguns -- for the purpose of self-defense. The framers of the Fourteenth Amendment considered the right to keep and bear arms to be fundamental.

**HN16 -** The Civil Rights Act of 1866, 14 Stat. 27, which was considered at the same time as the Freedmen's Bureau Act of 1866, 14 Stat. 176, sought to protect the right of all citizens to keep and bear arms. Section 1 of the Civil Rights Act guaranteed the full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens. This language was virtually identical to language in the Freedmen's Bureau Act § 14, 14 Stat. 176-177 (the right to have full and equal benefit of all laws and proceedings concerning personal liberty, personal security, and the acquisition, **enjoyment**, and disposition of estate, real and personal). And the latter provision went on to explain that one of the laws and proceedings concerning personal liberty, personal security, and the acquisition, **enjoyment**, and disposition of estate, real and personal was the constitutional right to bear arms. Freedmen's Bureau Act § 14. The unavoidable conclusion is that the Civil Rights Act, like the Freedmen's Bureau Act, aimed to protect the constitutional right to bear arms and not simply to prohibit discrimination.

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123. Fireman's Fund Ins. Co. v. Allstate Ins. Co.

Court of Appeal of California, Third Appellate District | Sep 30, 1991 | 234 Cal. App. 3d 1154

**Overview:** Insurer was required to give notice of cancellation to public utilities commission to effectuate policy termination; where cancellation was not proper, insurer was liable for full policy limits.

124. Altoona City v. Koch

Superior Court of Pennsylvania | Feb 27, 1913 | 52 Pa. Super. 431

**Overview:** A city was not entitled to recover on a sureties' bond where the commissions retained by its treasurer in collecting license taxes were authorized under a 1901 statute allowing him compensation for the discharge of his duties.

**HN4 -** In a case in which the power of the city to **impose a charge** is involved, the name by which the charge may be in the statute or ordinance called is not important. The question in such a case is one of power and the limitations of that power. If the authority to impose the charge is found only in the police power, it matters not whether the charge be called a tax or a license fee, it cannot be made the cloak for an exaction for purposes of general revenue. But when the city imposes a charge, sustainable only under the police power, in the form of a tax and requires the treasurer to collect it as a tax, the purpose for which the city may impose the tax and the use to which it may devote its proceeds become unimportant.

125. Benton Harbor v. Michigan Fuel & Light Co.

Supreme Court of Michigan | Jun 02, 1930 | 250 Mich. 614

**Overview:** A city was not entitled to an injunction restraining a gas company from using the city's streets for gas distribution because the original 30-year franchise term had been renewed and the company was operating under a valid existing franchise.

126. Frost & Frost Trucking Co. v. Railroad Com. of California

Supreme Court of the United States | Jun 07, 1926 | 271 U.S. 583

**Overview:** The Auto Stage and Truck Transportation Act of California was unconstitutional insofar as the California Railroad Commission applied it to impose common carrier permitting requirements upon private carriers.

127. Windsor v. Bozman

Court of Special Appeals of Maryland | Jul 08, 1986 | 68 Md. App. 223

**Overview:** A former deputy was not entitled to lost salary from a sheriff on his cause of action for wrongful termination because the deputy served at the sheriff's pleasure and did not allege actionable violation of Law Enforcement Officers' Bill of Rights.

128. Mayor of Detroit v. Arms Tech., Inc.

Court of Appeals of Michigan | Aug 07, 2003 | 258 Mich. App. 48

**Overview:** Gun control law enacted soon after a trial court rendered summary disposition in a case against firearm manufacturers, distributors, and retailers did not violate separation of powers principles because the judgments at issue were not final.

129. Medias v. Indianapolis

Supreme Court of Indiana | Nov 28, 1939 | 216 Ind. 155

**Overview:** A city's ordinance that regulated pawnbrokers had conditions that were reasonably calculated to accomplish the detection of crime and the apprehension of criminals, and it was not improper to require that pawnbrokers have state and city licenses.

130. State ex rel. Polin v. Hill

Supreme Court of Tennessee | Mar 14, 1977 | 547 S.W.2d 916

**Overview:** In mandamus action, a city was required to issue licenses to business under State Business Tax Act regardless of whether businesses were in compliance with a municipal zoning ordinance, as right to license was independent of duties under ordinance.

131. Tulsa v. Southwestern Bell Tel. Co.

Circuit Court of Appeals, Tenth Circuit | Jan 26, 1935 | 75 F.2d 343

**Overview:** Statute granting federal government exclusive authority to grant right of way on city land to phone company was not in violation of state constitution because specific grant was exempted from constitution and city was compensated for property use.

132. Utah Light & Traction Co. v. Psc

Supreme Court of Utah | Nov 07, 1941 | 101 Utah 99

**Overview:** Commission's findings of fact, although not set out in detail, sufficiently supported the commission's decision to grant certificate of convenience and necessity to corporation to render common carrier service in similar areas as a protestor served.

133. People v. Monterey Fish Products Co.

Supreme Court of California | Mar 04, 1925 | 195 Cal. 548

**Overview:** A state was entitled to enjoin a manufacturer's use of fish fit for human consumption in the production of fish meal. The statutory violation was also a wrong against the property right of the state for which there was no adequate remedy at law.

134. White v. Clements

Supreme Court of Georgia | Jun 01, 1869 | 39 Ga. 232

**Overview:** Where statutes provided that any citizen had the right to hold office, and there was no exclusion providing that black people could not hold office, the trial court erred in holding that a man who was elected could not hold office based on his color.

**HN3 -** Ga. Const. art. I, § 2, states: All persons born or naturalized in the United States, and resident in this State, are hereby declared citizens of this state, and no laws shall be made or enforced, which shall abridge the privileges and immunities of citizens of the United States, or of this state, or deny to any person within its jurisdiction the equal protection of its laws. And it shall be the duty of the General Assembly, by appropriate legislation, to protect every person in the due **enjoyment** of the rights, privileges and immunities guaranteed in this section.

**HN4 -** Ga. Code § 1648 enacts: Among the rights of citizens are the **enjoyment** of personal security, of personal liberty, of private property, and the disposition thereof, the elective franchise, the right to hold office, to appeal to the courts, to testify as a witness, to perform any civil function, and to keep and bear arms. And § 1849 enacts: All citizens are entitled to exercise all their rights as such, unless specifically prohibited by law.

135. Lincoln Interagency Narcotics Team v. Kitzhaber

Court of Appeals of Oregon | Jan 27, 2003 | 188 Ore. App. 526

**Overview:** Because sections of a ballot measure concerning civil forfeitures did not strictly comply with the separate-vote requirement for adopting a proposed constitutional amendment, the measure was void in its entirety.

136. Cmty. Legal Aid Soc'Y v. Meconi

Court of Chancery of Delaware, New Castle | Jun 25, 2002 | 2002 Del. Ch. LEXIS 76

**Overview:** The legal aid society stated a claim under the Delaware Mental Health Patients' Bill of Rights by alleging that understaffing at a hospital caused two patients' deaths, placed current patients at risk of injury, and violated patients' rights.

137. Gray v. City of Gustine

Court of Appeal of California, Fifth Appellate District | Oct 05, 1990 | 224 Cal. App. 3d 621

**Overview:** Denial of police chief's administrative appeal by city was improper where the Public Safety Officers Procedural Bill of Rights Act was applicable to all public safety officers, including police chiefs.

138. United States v. Jenks

United States Court of Appeals for the Tenth Circuit | Apr 26, 1994 | 22 F.3d 1513

**Overview:** A homesteader was properly required to apply for special use permit to cross national forest land to access his inholdings, but his patent and common law easement rights were required to be determined in the permit application process.

**HN9 -** Under the permit system, landowners seeking access to their inholdings must apply for a special use permit from the Forest Service. 36 C.F.R. § 251.112(a). Special use permits issued by the Forest Service must secure to the landowner the reasonable use and **enjoyment** of his property. See 36 C.F.R. § 251.110(c).

139. Garnett v. Renton Sch. Dist. No. 403

United States Court of Appeals for the Ninth Circuit | Mar 08, 1993 | 987 F.2d 641

**Overview:** Under the Equal Access Act, a student religious group could not be denied permission to meet on school grounds so long as the school permitted other non-curriculum groups to meet at the school and the group was not otherwise unlawful.

140. State v. Otkins-Victor

Court of Appeal of Louisiana, Fifth Circuit | May 26, 2016 | 193 So. 3d 479

**Overview:** Evidence was sufficient to sustain defendant's manslaughter conviction under La. Rev. Stat. Ann. § 14:31 because, despite her son's dire condition, defendant only remained at the hospital for two minutes, witnesses testified that defendant's husband beat the child with a belt over the span of two days, and defendant stood by, refusing to intervene.

**HN22 -** There are two separate and distinct bases for a defendant's right to a speedy trial: a statutory **right granted** by La. Code Crim. Proc. Ann. art. 701, and a constitutional right embodied in the Sixth Amendment, U.S. Const. amend. VI, and La. Const. art. I, § 16. The two are not equivalent.

141. Gant v. Okla. City

Supreme Court of Oklahoma | May 12, 1931 | 1931 OK 241

**Overview:** City ordinance requiring those seeking to drill oil or gas wells to post a good and sufficient bond and to be executed by some bonding or indemnity company authorized to do business in Oklahoma was not unreasonable.

142. Brookpark Entertainment, Inc. v. Taft

United States Court of Appeals for the Sixth Circuit | Dec 16, 1991 | 951 F.2d 710

**Overview:** A nightclub whose liquor license was the subject of a referendum under Ohio's "particular premises" local option law was entitled to relief where such law was facially unconstitutional under the due process clause of the Fourteenth Amendment.

**HN1 -** The due process clause only protects those interests to which one has a legitimate claim of entitlement. This includes any significant property interests, including statutory entitlements. Government licenses are a form of property insofar as they constitute an entitlement to engage in a valuable activity. An individual having present **enjoyment** of the benefit and a claim of entitlement to its continuation under state law has a property interest that is protected by the due process clause.

143. Gramiger v. County of Pitkin

Court of Appeals of Colorado, Division Four | Dec 21, 1989 | 794 P.2d 1045

**Overview:** The county's initial refusal to issue a foundation permit to the landowner did not estop it from applying a new zoning resolution to the landowner's property which forbade his planned restaurant.

144. Brotherhood of Railroad Trainmen v. Virginia

Supreme Court of the United States | Apr 20, 1964 | 377 U.S. 1

**Overview:** The brotherhood had the right under the First and Fourteenth Amendments to advise injured members and their dependents to obtain legal advice settling claims and to recommend particular attorneys to handle such claims.

145. Storer Cable Communications v. City of Montgomery

United States District Court for the Middle District of Alabama, Northern Division | Oct 09, 1992 | 806 F. Supp. 1518

**Overview:** Ordinances regulating the cable industry and promoting competition were held not preempted by copyright, trademark, antitrust, and cable statutes; further, alleged violation of freedoms was groundless as the regulations were content-neutral.

146. Batte-Holmgren v. Comm'r of Pub. Health

Supreme Court of Connecticut | Feb 13, 2007 | 281 Conn. 277

**Overview:** Conn. Gen. Stat. § 19a-342, banning smoking in restaurants and cafes, did not violate equal protection. In exempting private clubs, the legislature reasonably might have been trying to protect their members' investment and expectations, and uncertainties concerning the power to regulate tribes provided a rational basis for the casino exemption.

**HN35 -** Connecticut casinos are located on Indian reservations and are operated by the Mashan-tucket Pequot and Mohegan tribes pursuant to gaming compacts between the state and the tribes. 56 Fed. Reg. 24,996 (May 31, 1991). The tribes possess sovereignty rights over activities on tribal lands, and the state's power to regulate such activities is limited by federal law and, in the case of casino operations, the terms of the gaming compacts. Conn. Gen. Stat. § 47-59a. The state's ability to enforce a regulatory law that affects a casino on a reservation may be limited by the terms of the relevant compact or may be preempted by federal law. When considering whether a state law concerning liquor regulation may be applied on a reservation, the United States Supreme Court has indicated that it considers whether such application would interfere with reservation self-government or would impair a **right granted** or reserved by federal law. Moreover, the Court made this determination with due consideration of the particular notions of sovereignty that have developed from historical traditions of tribal independence.

147. F. E. Nugent Funeral Home, Inc. v. Beamish

Supreme Court of Pennsylvania | May 21, 1934 | 315 Pa. 345

**Overview:** An undertaking was not unconstitutionally prohibited from doing business within the Commonwealth because no federal law was violated by the Commonwealth's conditions on the business by its statute.

**HN3 -** A state may impose any conditions it sees fit on the privilege of a foreign corporation to do business, provided the conditions do not invade rights created or guaranteed by the federal Constitution. A foreign corporation can claim a right to do business in another state, to any extent, only subject to the conditions imposed by its laws. Having no absolute right of recognition in other states, but depending for such recognition upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those states may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts as in their judgment will best promote the public interest. The whole matter rests in their discretion. The **right granted** by the parent state, of a corporation to do business anywhere, is not a property right which will be protected by the Constitution of the United States.

148. K N Energy, Inc. v. Casper

Supreme Court of Wyoming | May 11, 1988 | 755 P.2d 207

**Overview:** Ordinance regulating utility companies was void because utility regulation was exclusively reversed for state commission, it exceeded city's specifically granted powers, and city's power to franchise gas companies was not synonymous with licensing.

149. Okla. Alcoholic Bev. Control Bd. v. Burris

Supreme Court of Oklahoma | Apr 15, 1980 | 1980 OK 58

**Overview:** A state alcoholic beverage control board's rule, which prohibited signs that called the attention of the public to a liquor store, was within the board's statutory power and was not unconstitutionally vague or overbroad.

150. State ex rel. Dep't of Public Works v. Inland Forwarding Corp.

Supreme Court of Washington, Department One | Sep 10, 1931 | 164 Wash. 412

**Overview:** Statute regulating granting of certificates to auto transportation companies to operate in certain territories in the state was not violative of constitutional prohibitions against monopolies or the equal protection clause.

151. Baton Rouge v. Sanchez

Supreme Court of Louisiana | May 03, 1926 | 161 La. 320

**Overview:** Fees imposed by a city ordinance on each animal placed in a private meat market without reference to inspection were so far in excess of amount necessary to meet expense, the city went beyond its police power of regulation.

**HN3 -** There is a marked and well-recognized distinction between the power conferred on a municipal corporation to levy a tax or license for revenue, and the power to **impose a charge** or fee to meet the cost and expense of regulation and inspection of a local public utility. In the one case, the municipality exercises the delegated power of taxation and in the other its police power. There is a recognized distinction between the taxing power and the police power, conferred on corporations; licenses or taxes may be imposed on certain branches as a regulation under the exercise of the latter power, but it must plainly appear that they are imposed strictly in aid of such power, and not for the purposes of revenue." But whenever it is manifest that the amount of such tax imposed in the exercise of police power is substantially in excess of the reasonable expense of issuing a license and of regulating the occupation to which it pertains, or is virtually prohibitive, the act or ordinance imposing the tax is invalid.

152. Commer v. District Council 37, Local 375

United States District Court for the Southern District of New York | Jan 13, 1998 | 990 F. Supp. 311

**Overview:** Because an individual claimed that the local union had no grounds to refuse to certify his election as president of the local union, the individual's claims were cognizable under the LMRDA and the court had no subject matter jurisdiction.

153. In re Link

Court of Appeals of Texas, Twelfth District, Tyler | Oct 06, 2000 | 45 S.W.3d 149

**Overview:** Commissioners court could not refuse to act on statutorily authorized petition to increase minimum salary of law enforcement officers which was properly submitted. They were required to hold an election on the petition submitted.

**HN8 -** The fact that a petition under Tex. Loc. Gov't Code Ann. § 152.072 (Vernon 1999) to increase the minimum salary of law enforcement officers may also petition for other than minimum increases does not give the local governing body the right to ignore it. The power of initiative and referendum is the exercise by the people of a power reserved to them, and not the exercise of a **right granted**.

**HN9 -** The initiative process affords direct popular participation in lawmaking. The system has its historical roots in the people's dissatisfaction with officialdom's refusal to enact laws. It is an implementation of the basic principle of Tex. Const. art. I, § 2: "All political power is inherent in the people" The power of initiative and referendum is the exercise by the people of a power reserved to them, and not the exercise of a **right granted**, and in order to protect the people in the exercise of this reserved legislative power, such provisions should be liberally construed in favor of the power reserved.

154. Louisville v. Cumberland Tel. & Tel. Co.

Supreme Court of the United States | May 13, 1912 | 224 U.S. 649

**Overview:** Telephone company was entitled to permanently enjoin city from repealing the ordinance under which city gave its consent to company's power to maintain a telephone system. Because company was authorized to do business by a grant from the state, city was not permitted to nullify such grant by any ordinance.

155. Titan Sports, Inc. v. State Athletic Control Bd.

Tax Court of New Jersey | Aug 17, 1990 | 11 N.J. Tax 259

**Overview:** Summary judgment was denied in a tax case where there were issues of fact as to whether a media rights tax was narrowly tailored, and thus constitutionally valid, and whether the tax was fairly apportioned.

156. Roberto v. Commissioners of Dep't of Public Utilities

Supreme Judicial Court of Massachusetts | Mar 02, 1928 | 262 Mass. 583

**Overview:** The Massachusetts department of public utilities was authorized to grant licenses to common carriers of public transportation, to restrict licensees to certain routes and locations, and to revoke the licenses for failure to abide by the restrictions.

157. Snidow v. Board of Sup'rs

Supreme Court of Virginia | Sep 19, 1918 | 123 Va. 578

**Overview:** When a county's board of supervisors and road commission acted under legislative authority in locating and establishing a bridge near a ferry, the loss in public travel on the ferry did not constitute a taking under the Virginia Constitution.

158. Tilton v. Utica

Supreme Court of New York, Oneida County | Feb 02, 1946 | 60 N.Y.S.2d 249

**Overview:** The court declared invalid a city's ordinance because the ordinance interfered with the licensee's pre-existing contractual rights and had the effect of impairing those vested property rights without the licensee's consent and without due process.

**HN4 -** A special franchise is the **right granted** by the public, to use public property for a public use, but with private profit, such as the right to build and operate a railroad in the streets of a city. Such a franchise, when acted upon, becomes property and cannot be repealed, unless power to do so is reserved in the grant, although it may be condemned upon making compensation.

159. Tenpas v. Department of Natural Resources

Supreme Court of Wisconsin | Mar 01, 1989 | 148 Wis. 2d 579

**Overview:** Where Wisconsin's specific laws governing cranberry growers conflicted with the Department of Natural Resources' general statutory authority to regulate dams, cranberry dams were excepted from the financial responsibility requirements of dams.

160. William Goldman Theatres, Inc. v. Dana

the Supreme Court of Pennsylvania | Jul 26, 1961 | 405 Pa. 83

**Overview:** Pennsylvania's Motion Picture Control Act violated the constitutional guarantee of a jury trial, the constitutional prohibition against prior restraint on communication, and procedural due process.

161. Blondell v. Baltimore City Police Dep't

Court of Appeals of Maryland | Mar 08, 1996 | 341 Md. 680

**Overview:** Where officer rejected summary punishment offer for fabricating sexual harassment complaint charge, police chief could choose to form a one-member or more hearing board, or three-member hearing board and proceed with no cap on permissible punishment.

162. Cole v. State

Court of Criminal Appeals of Oklahoma | Jul 23, 1926 | 1926 OK CR 297

**Overview:** Defendant was improperly convicted of having mutilated a gravestone. Although a defendant could waive her right to be present at her trial, such a waiver had to be personally made by defendant and could not be made by her counsel.

163. Di Grazia v. County Executive for Montgomery County

Court of Appeals of Maryland | Sep 08, 1980 | 288 Md. 437

**Overview:** Summary judgment was improper, as whether public employee was removed from his position as a punitive measure for exercising his right of free speech was a mixed question of law and fact.

164. Glasser v. United States

Supreme Court of the United States | Jan 19, 1942 | 315 U.S. 60

**Overview:** The right to effective assistance of counsel granted by the Sixth Amendment was violated where a trial court ordered a defense attorney to represent two co-defendants, because evidence presented in defense of one tended to incriminate the other.

**HN5 -** The guarantees of the Bill of Rights to the United States Constitution are the protecting bulwarks against the reach of arbitrary power. Among those guarantees is the **right granted** by U.S. Const. amend. VI to an accused in a criminal proceeding in a federal court to have the assistance of counsel for his defense. This is one of the safeguards deemed necessary to insure fundamental human rights of life and liberty, and a federal court cannot constitutionally deprive an accused, whose life or liberty is at stake, of the assistance of counsel.

165. Jernigan v. Crane

United States District Court for the Eastern District of Arkansas, Western Division | Nov 25, 2014 | 64 F. Supp. 3d 1260

**Overview:** Ark. Const. amend. 83 and Ark. Code Ann. §§ 9-11-107, 9-11-109, and 9-11-208 violated the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. because they unconstitutionally denied consenting adult same-sex couples their fundamental right to marry.

166. Lynn v. Reinstein

Supreme Court of Arizona | May 19, 2003 | 205 Ariz. 186

**Overview:** Supreme Court of Arizona held that Eighth Amendment prohibited victim from making sentencing recommendation to jury in capital case, but statements relevant to harm caused by defendant's criminal acts were allowed under Victims' Bill of Rights.

167. People v. Kerfoot

Court of Appeal of California, Second Appellate District, Division One | Sep 16, 1960 | 184 Cal. App. 2d 622

**Overview:** The appointment of one attorney for two defendants, in spite of a request for separate counsel, violated defendant's Sixth Amendment rights and the conviction was reversed; it was irrelevant whether defendant suffered any prejudice.

**HN4 -** The guarantees of the Bill of Rights are the protecting bulwarks against the reach of arbitrary power. Among those guarantees is the **right granted** by the Sixth Amendment to an accused in a criminal proceeding in a federal court to have the assistance of counsel for his defense. This is one of the safeguards deemed necessary to insure fundamental human rights of life and liberty and a federal court cannot constitutionally deprive an accused whose life or liberty is at stake of the assistance of counsel. Even as the right to the assistance of counsel is so fundamental that the denial by a state court of a reasonable time to allow the selection of counsel of one's own choosing, and the failure of that court to make an effective appointment of counsel may so offend our concept of the basic requirements of a fair hearing as to amount to a denial of due process of law contrary to the Fourteenth Amendment, so the assistance of counsel guaranteed by the Sixth Amendment contemplates that such assistance be untrammeled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests.

168. Fernandes v. Limmer

United States District Court for the Northern District of Texas, Dallas Division | Jan 30, 1979 | 465 F. Supp. 493

**Overview:** The part of the airport that was not leased to others was a public forum, and the ordinance/resolution that prohibited solicitation of donation for non-profit religious society within the terminal buildings was facially unconstitutional as overbroad.

169. Cal. Trout v. State Water Res. Control Bd.

Court of Appeal of California, Third Appellate District | Jan 26, 1989 | 207 Cal. App. 3d 585

**Overview:** Environmental groups petition for writs of mandate were approved because State Water Resources Control Board had no authority to disregard the rule concerning appropriation of water by diversion from dams.

170. Fanelli v. City of Trenton

Supreme Court of New Jersey | Jun 07, 1994 | 135 N.J. 582

**Overview:** Ordinance prohibiting plaintiff food vendor from operating in special districts was rational means of achieving valid objective of revitalizing shopping district and survived due process and equal protection challenges.

**HN7 -** The Special Improvement District (SID) statute, N.J. Stat. Ann. § 40:56-65 to -89, specifically authorizes municipal control and regulation of concessionaires, vendors and others within a Special Improvement District. That authorization is a specific limitation on the general **right granted** in the veteran-vendor statute, N.J. Stat. Ann. § 45:24-9. To the extent that a conflict exists between the two statutes, there is no doubt that the legislature intended that the SID statute would prevail.

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171. Colonial Pipeline Co. v. State Board of Equalization & Assessment

Supreme Court of New York, Special Term, Kings County | Mar 25, 1975 | 81 Misc. 2d 696

**Overview:** The special franchise tax assessments were proper because the company was bound by its agreement, in that it accepted the city's consent without reservation and used such consent to obtain easement rights.

**HN6 -** The maintenance of a bridge by a public service corporation across navigable waters, involves the **enjoyment** of a special franchise subject to taxation, though the bed is in private ownership. A bridge, however it is placed across a navigable stream, is a potential interference with navigation as to preclude its construction by force of common right or without the license or approval of the appropriate agencies of government. Interference with navigation can come from obstacles. There may be dangers from above. Navigation is impeded if objects falling from a bridge cause damage to the craft below, or expose a traveler to peril. The state has a right to say to what extent such perils, even though slight, shall be permitted.

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172. DiLaura v. Ann Arbor Charter Twp.

United States Court of Appeals for the Sixth Circuit | Feb 25, 2002 | 30 Fed. Appx. 501

**Overview:** Case was not moot because property could still be used as a retreat house if injunction against enforcement of zoning ordinance was granted and contingent agreement to donate property to religious organization was sufficient to confer standing.

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173. Heckmann v. Cemeteries Asso. of Greater Chicago

Appellate Court of Illinois, First District, First Division | Sep 17, 1984 | 127 Ill. App. 3d 451

**Overview:** Cemeteries association and its director were entitled to summary judgment in union representatives' action to declare Act to permit burials on Sundays and legal holidays unconstitutional because it did not foster excessive entanglement with religion.

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174. Hill v. City of Chester

United States District Court for the Eastern District of Pennsylvania | Aug 26, 1994 | 1994 U.S. Dist. LEXIS 11951

**Overview:** Ex-felon, who had rehabilitated himself, failed to establish any violations of his constitutional rights when the city council eliminated his salary after they learned of his criminal record.

175. People ex rel. Abraham J. v. Sarkis

Supreme Court of New York, Kings County | Dec 10, 1997 | 175 Misc. 2d 433

**Overview:** Defendant not entitled to writ of habeas corpus on free exercise of religion grounds because, balancing his constitutional rights against the state's compelling interests, the restrictions on defendant were not unconstitutional.

176. Roberts v. Klein

United States District Court for the District of Nevada | Mar 22, 2011 | 770 F. Supp. 2d 1102

**Overview:** Defendants' motion to dismiss was denied as plaintiff adequately alleged a violation of RLUIPA; denying a kosher diet to those whose Jewish faith was not verified by an outside entity substantially burdened inmate's religious exercise and defendants did not show this was the least restrictive means of furthering a compelling government interest.

177. State v. Victor

Court of Appeal of Louisiana, Fifth Circuit | May 26, 2016 | 195 So. 3d 128

**Overview:** Evidence was sufficient to sustain defendant's conviction for second degree murder under La. Rev. Stat. Ann. 14:30.1 because defendant dropped off the unresponsive child at the emergency room, a doctor opined that the child had likely been dead for "a while," and defendant admitted to disciplining the child for stealing.

**HN23 -** There are two separate and distinct bases for a defendant's right to a speedy trial: a statutory **right granted** by La. Code Crim. Proc. Ann. art. 701, and a constitutional right embodied in the Sixth Amendment, U.S. Const. amend. VI, and La. Const. art. I, § 16. The two are not equivalent.

178. Carter v. Univ. of Wash.

Supreme Court of Washington | Jun 05, 1975 | 85 Wn.2d 391

**Overview:** Appellate court granted government employee's motion to proceed in forma pauperis on appeal from trial court's order upholding his termination because barring indigent who had claim with merit from court would have violated Washington Constitution.

179. Cox Cable of San Diego v. Bookspan

Court of Appeal of California, Fourth Appellate District, Division One | Sep 25, 1987 | 195 Cal. App. 3d 22

**Overview:** Trial court did not abuse its discretion when it denied temporary injunction requested by cable company because cable company did not have a constitutionally compelled right of access to tenants of the apartment complex.

180. De La Hoya v. Top Rank, Inc.

United States District Court for the Central District of California | Feb 06, 2001 | 2001 U.S. Dist. LEXIS 25816

**Overview:** A boxer and a television station were granted partial summary judgment declaring a contract invalid. The contract did not comply with laws for boxers and their managers and promoters, and it exceeded the time limit for personal service contracts.

181. Barnes v. White

United States District Court for the Northern District New York. | Jul 16, 1980 | 494 F. Supp. 194

**Overview:** Tribal members' complaint was dismissed because the Indian Civil Rights Act did not provide a private cause of action and they failed to show state action for their § 1983 claim.

182. Denver Bible Church v. Azar

United States District Court for the District of Colorado | Oct 15, 2020 | 2020 U.S. Dist. LEXIS 195607

183. Wooster v. Plymouth

Supreme Court of New Hampshire | Jun 01, 1882 | 62 N.H. 193

**Overview:** Where an action was brought against a town and the town claimed a constitutional right to trial by jury, the town was held to be a public corporation where reserved private rights of a jury trial were not constitutionally mandated.

184. St. Clair County Turnpike Co. v. People

Supreme Court of Illinois, Southern Grand Division | Jun 01, 1876 | 82 Ill. 174

**Overview:** The People of the State of Illinois were properly awarded judgment in a quo warranto proceeding to determine the right of a turnpike corporation to maintain a toll-gate because that right terminated when the State took control of the road.

185. Jurisich v. Jenkins

Supreme Court of Louisiana | Oct 19, 1999 | 749 So. 2d 597

**Overview:** The proposed clause was contrary to the legislative mandate that the Secretary for the Louisiana Department of Wildlife and Fisheries make clauses in oyster leases as necessary and proper to develop the oyster industry.

**HN15 -** La. Rev. Stat. Ann. § 56:6 (16) provides that the Wildlife and Fisheries Commission through its Secretary shall assist in protecting all lessees of private oyster bedding grounds in the **enjoyment** of their rights.

**HN21 -** As provided in La. Rev. Stat. Ann. § 56:425 the Secretary for the Louisiana Department of Wildlife and Fisheries is authorized to execute oyster leases and shall renew oyster leases as dictated in La. Rev. Stat. Ann. § 56:428 (A). Furthermore, pursuant to La. Rev. Stat. Ann. § 56:6 (16) the Secretary for the Louisiana Department of Wildlife and Fisheries is duty-bound to protect all lessees of private oyster bedding grounds in the **enjoyment** of their rights.

186. Fitzgerald v. Magic Valley Evangelical Free Church (In re Hodge)

United States Bankruptcy Court for the District of Idaho | Sep 26, 1996 | 200 B.R. 884

**Overview:** The court granted summary judgment to plaintiff where bankruptcy avoidance statutes were generally applicable and neutral laws, and did not have more than an incidental effect on the practice of religion.

187. United States v. Town of Colo. City

United States District Court for the District of Arizona | Apr 18, 2017 | 2017 U.S. Dist. LEXIS 59220

188. Brennan v. Titusville

Supreme Court of the United States | Apr 30, 1894 | 153 U.S. 289

**Overview:** A city's imposition of a license fee on solicitation within the city by a sales representative for an out-of-state manufacturer violated the Commerce Clause of the United States Constitution as a restraint on interstate commerce.

189. International Longshoremen's Asso. v. Waterfront Com. of New York Harbor

United States District Court for the Southern District of New York | Jun 25, 1980 | 495 F. Supp. 1101

**Overview:** State law threatening sanctions against waterfront unions concerning dues collection by union officers that had been convicted of certain crimes was unlawful because it was preempted by federal law and it violated freedom of association.

190. Merco Properties, Inc. v. Guggenheimer

United States District Court for the Southern District of New York | Jun 03, 1975 | 395 F. Supp. 1322

**Overview:** A city ordinance that required a license for catering or operating a cabaret did affect First Amendment rights, but it was not unconstitutionally vague or overbroad where it had a valid interest in defining the standard for granting the license.

**HN8 -** Where it cannot be fairly concluded that the challenged state statute or ordinance is susceptible of a constitutional interpretation, abstention would amount to shirking the solemn responsibility of the federal courts to guard, enforce, and protect every **right granted** or secured by the Constitution of the United States.

191. New York v. United States Postal Service

United States District Court for the Southern District of New York | Aug 01, 1988 | 690 F. Supp. 1346

**Overview:** Under the Randolph-Sheppard Act, blind vendors and state licensing agencies were required to exhaust their administrative remedies prior to commencing an action in federal court.

192. Pettit v. Penn

Court of Appeal of Louisiana, Second Circuit | Sep 20, 1965 | 180 So. 2d 66

**Overview:** Citizens had a right to oppose a demand for a liquor license, so a trial court had jurisdiction to review a grant of such a license by the Louisiana Board of Alcoholic Beverage Control; writs of certiorari, prohibition, and mandamus were recalled.

**HN4 -** The principle of due process of law, the constitutional provision with reference to which was designed to exclude oppression and arbitrary power from every branch of the government, with respect to judicial proceedings contemplates a course of proceedings according to rules and principles which have been established in the Louisiana system of jurisprudence for the conduct and enforcement of private rights. It means that no person shall be deprived of life, liberty, property, or of any **right granted** him by statute, unless the matter involved shall first have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings. It forbids condemnation without a hearing. The requirements of due process are satisfied where resort may be had to the courts to have the action of an administrative officer or body reviewed, except where no stay of the effect of the order appealed is provided, and where, meanwhile, irreparable injury will result. A statute vesting administrative officers with summary powers need not necessarily provide for notice and hearing prior to the exercise of such powers, but if it does not provide for notice and hearing and leaves no remedy whatever against unwarranted action in the exercise of such powers, it is unconstitutional as a denial of due process of law.

193. McDaniel v. Spencer

Supreme Court of Arkansas | Mar 05, 2015 | 2015 Ark. 94

**Overview:** 2013 Ark. Acts 1413, § 13, codified at Ark. Code Ann. § 7-9-111(a)(3), violated Ark. Const. art. V, § 1 because it acted as an unwarranted restriction on the right to circulate a petition.

194. Acme Fill Corp. v. San Francisco Bay Conservation Etc. Com

Court of Appeal of California, First Appellate District, Division Five | Dec 11, 1986 | 187 Cal. App. 3d 1056

**Overview:** Peremptory writ was improper because the activities outside the coastal zone were subject to consistency review by the Coastal Zone Management Act.

**HN4 -** The exhaustion of administrative remedies is a condition to the court's jurisdiction which must be addressed before seeking judicial relief. This rule has specifically been held applicable to anyone seeking to enforce a **right granted** under a federal statute. Administrative proceedings must not only be initiated, but must be pursued to their appropriate conclusion before seeking judicial intervention.

195. Amgen, Inc. v. Chugai Pharm. Co.

United States District Court for the District of Massachusetts | Dec 03, 1992 | 808 F. Supp. 894

**Overview:** Plaintiffs who were granted "exclusive" patent licenses lacked standing to sue for infringement of the patent. Licenses' exclusive field-of-use exceeded patent's scope by allowing use of patented products to make unpatented product for sale abroad.

**HN4 -** An exclusive licensee generally has standing to sue for patent infringement against anyone operating without the stated authority in the stated area of exclusivity. The exclusive licensee has the power to join the patent holder in a suit for infringement either as willing or unwilling plaintiff or defendant in order to enforce the **right granted** in the license. It is well settled, however, that a mere non-exclusive licensee has no standing to sue for infringement.

196. Campbell Sixty-Six Express, Inc. v. J. & G. Express, Inc.

Supreme Court of Mississippi | Jun 04, 1962 | 244 Miss. 427

**Overview:** The chancery court improperly sustained the competing carrier's demurrer to the complaint, as there was no administrative proceeding involved in the parties' case and the doctrine of exhaustion of administrative remedies did not apply.

**HN1 -** Injunction will lie, in a proper case, to prevent an unlawful invasion of, or interference with, the **enjoyment** of franchise rights. The grantee of a public utility franchise has such a property right as will entitle him to restrain by injunction any person or corporation attempting without authority to exercise such right in competition with him, although the franchise is not exclusive.A person may be enjoined from carrying on the business of transporting passengers or property for hire by motor vehicle without obtaining a license or certificate of convenience and necessity so to operate from the proper authorities, or without a license from the different municipalities through which the motor vehicles pass, or without filing a bond and obtaining a certificate and permit to conduct such business from the proper official or department or without otherwise complying with valid provisions of the governing statute or without complying with the conditions on which the license or certificate was granted.

197. Commonwealth v. Bradley

Common Pleas Court of Allegheny County, Pennsylvania | Sep 30, 1940 | 1940 Pa. Dist. & Cnty. Dec. LEXIS 53

**Overview:** A city ordinance imposed an annual license fee on each of defendant's vending machines. The ordinance was unconstitutional because it discriminated arbitrarily and unreasonably between sales using vending machines and sales made with other methods.

198. United States v. Town of Colo. City

United States District Court for the District of Arizona, Prescott Division | Jun 17, 2015 | 2015 U.S. Dist. LEXIS 78566

199. State v. Harden

Supreme Court of Appeals of West Virginia, Charleston | Jun 08, 1907 | 62 W. Va. 313

**Overview:** A liquor license issued by town council was valid, as the State legislature could and did delegate to local governments the power to issue such licenses; consequently, the sale of liquor by the holder of such a license was not a criminal violation.

200. Bright Lights v. City of Newport

United States District Court for the Eastern District of Kentucky, Covington Division | Aug 18, 1993 | 830 F. Supp. 378

**Overview:** Ordinances regulating the display of actual or simulated body parts at a nightclub where no alcohol was served were valid, but imposition of strict liability violated due process and a ban on conduct "obnoxious to the morals" was void for vagueness.

**HN9 -** Because the power to tax is as potent as the power of censorship, states generally may not **impose a charge** upon the exercise of a U.S. Const. amend. I right. Thus, any taxes or licensing fees that single out expressive activity must be necessary to achieve an overriding governmental interest. Moreover, such

fees must go to defraying the costs incurred in policing such activities, or their undesirable secondary effects. The burden of presenting convincing evidence to justify the fees lies with the municipality.

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201. ARKANSAS R.R. COMM'N v. CASTETTER

Supreme Court of Arkansas | Dec 01, 1929 | 180 Ark. 770

**Overview:** In regulatory agencies' action to prohibit ice companies from engaging in ice business in certain territories, certain sections of Arkansas act regulating sale and distribution of ice were unconstitutional because said sections created monopolies.

**HN2 -** A monopoly is said to be "an exclusive **right granted** to one person or class of persons of something which was before of common right." A monopoly is defined as "a grant by the sovereign power of the state, by commission or otherwise, by which the exclusive right of buying, selling, making, working or using anything is given." A monopoly exists when the sale or manufacture is restrained to one or to a certain number.

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202. Glasgow v. Terrell

Supreme Court of Texas | May 22, 1907 | 100 Tex. 581

**Overview:** The right to purchase school land given to lessees and their assignees during the existence of a lease was a private right and did not conflict with provisions of Texas Constitution providing that no man was entitled to exclusive public privileges.

**HN3 -** 1905 Tex. Gen. Laws p. 159 undertakes to give a lessee or an assignee of an entire lease (which is absolute) the right to purchase during the existence of the lease, a right which no one else may exercise. It is a private **right granted** a lessee of the school lands of the State, or to his assignee, by reason of the relation created by the contract between such lessee and the State. It is a matter of a private contract, unless it should be held that all contracts made by and on behalf of the State are public.

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203. Plyler v. Doe

Supreme Court of the United States | Jun 15, 1982 | 457 U.S. 202

**Overview:** Denial of a public education to undocumented school-aged children by Texas school districts violated Equal Protection Clause of Fourteenth Amendment because illegal aliens were not a suspect class, and denying education was an unreasonable obstacle.

**HN10 -** Public education is not a **right granted** to individuals by the Constitution.

204. State v. Bixman

Supreme Court of Missouri | Apr 15, 1901 | 162 Mo. 1

**Overview:** The Missouri Legislature's regulation of the manufacture and sale of beer was a valid exercise of its police power and not a tax.

205. Stewart v. Verde River Irrigation & Power Dist.

Supreme Court of Arizona | May 24, 1937 | 49 Ariz. 531

**Overview:** Arizona Water Commissioner acted within his authority in requiring irrigation district to pay statutorily mandated fee prior to issuance of appropriation permit because statute's graduated fee schedule reasonably reflected commissioner's costs.

206. Davis v. Kittle Mfg. Co.

Court of Appeal of California, Third Appellate District | Sep 21, 1933 | 134 Cal. App. 254

**Overview:** Because a manufacturer had bound and obligated itself not to manufacture or sell any other camp bed which could have in any way been considered a modification of the bed mentioned in a contract, it was liable for royalties due under the contract.

**HN2 -** The license may be given before issuance of patent. The inventor of an unpatented device may make a valid contract for its manufacture, use or sale. It is no objection to the validity of such a contract that any person may manufacture it until a patent is issued. If, therefore, the defendant contracts to pay a royalty before patent is issued, the plaintiff is entitled to recover.The exclusive **right granted** to a person other than the patentee to use and sell a patented device within a named district of country excludes the owner of the letters patent from selling the same or using the same in that region.

207. General Motors Acceptance Corp. v. McCallum

Supreme Court of Texas | Nov 21, 1928 | 118 Tex. 46

**Overview:** A foreign corporation that paid the maximum fee set forth in Texas business permit statutes when filing a series of amendments to its articles of incorporation was not required to tender fees to the State when submitting subsequent amendments.

208. Rios v. Lebron

United States District Court for the District of the Virgin Islands, Division of St. Thomas and St. John | Apr 12, 2001 | 2001 U.S. Dist. LEXIS 5538

**Overview:** Vendors who obtained memorandums of agreement (MOAs) with housing department to sell their wares from a particular location did not have a property interest in MOAs, where housing department had no actual authority to enter into MOAs.

209. Trio Algarvio, Inc. v. Comm'r of the Dep't of Envtl. Prot.

Supreme Judicial Court of Massachusetts | Sep 09, 2003 | 440 Mass. 94

**Overview:** Where the terms of an original wharfing statute permitted the assessment of tidewater displacement fees, but the assessment of occupation fees depended on the status of an owner's title, the matter had to be remanded for further proceedings.

210. AA Transp. Co. v. Comm'r of Revenue

Supreme Judicial Court of Massachusetts | Jun 12, 2009 | 454 Mass. 114

**Overview:** Because the taxpayer did not have a Mass. Gen. Laws ch. 159A, § 7 certificate of public convenience and necessity when it purchased buses in 1999, 2000, and 2001, it was ineligible for a sales tax exemption under Mass. Gen. Laws ch. 64H, § 6(aa); therefore, it was properly denied an abatement of sales tax for those years.

211. Bd. of Ed'n v. Bd. of Ed'n

Supreme Court of Appeals of West Virginia, Charleston | Nov 19, 1887 | 30 W. Va. 424

**Overview:** A decree awarding an old district the cost of constructing school buildings could not stand because a county court had not directed, in making a division of the old district pursuant to chapter 5, Acts 881, § 19, chapter 39, Warth's Code, § 19, that a new district should be liable for debts of the old district incurred prior to the division.

212. Beloit v. Lamborn

Supreme Court of Kansas | Jan 25, 1958 | 182 Kan. 288

**Overview:** Defendant was properly found guilty of violating a city ordinance by bringing milk into the city for distribution without a distributor's permit. The city ordinance was not void because it imposed stricter standards than state dairy laws.

213. Camden Interstate R. Co. v. Catlettsburg

Circuit Court, E.d. Kentucky | Apr 04, 1904 | 129 F. 421

**Overview:** A railroad company's motion to enjoin a City, its mayor, and its chief of police from prosecuting it in police court for violating an ordinance was denied because the federal court lacked jurisdiction to

enjoin proceedings already instituted and, as a court of equity, lacked jurisdiction to enjoin the institution of criminal proceedings.

214. Commonwealth v. Sizemore

Court of Appeals of Kentucky | Dec 15, 1972 | 488 S.W.2d 685

**Overview:** Because the statute charging defendants with operating a coal mine without a license was a petty offense, there was no right of trial by a jury of the vicinage as granted by the Kentucky constitution.

**HN2 -** One **right granted** by Ky. Const. § 11 to a defendant is to be tried by an impartial jury of the "vicinage."

215. Hale v. Water Res. Dep't

Court of Appeals of Oregon | Oct 02, 2002 | 184 Ore. App. 36

**Overview:** Oregon Water Resources Department correctly concluded that because petitioners failed to make any use of water described in the permit issued for certain lands for at least six years, they did not establish that they had perfected their water rights.

216. Ikemefuna Nkanginieme v. Ohio Dep't of Medicaid

Court of Appeals of Ohio, Tenth Appellate District, Franklin County | Feb 24, 2015 | 2015-Ohio-656

**Overview:** Judgment was affirmed as provider could not appeal suspension of his Medicaid provider agreement due to credible allegation of fraud under R.C. 119.12 as decision was not adjudication order under R.C. 5164.38(C), and appeal right under R.C. 5164.38(D) did not attach.

**HN7 -** Under the plain language of R.C. 5164.38(E), suspensions of provider agreements based on credible allegations of fraud do not issue as adjudication orders under R.C. 5164.38(C), and therefore the R.C. 119.12 appeal **right granted** by R.C. 5164.38(D) does not attach. A letter terminating a provider agreement, ordinarily an "adjudication" subject to an R.C. 119.12 appeal under formerly numbered R.C. 5164.38(C), does not constitute an "adjudication" where the reason for the termination falls among the exceptions listed in formerly numbered R.C. 5164.38(E).

217. In re Marriage of Hunt

Court of Appeals of Missouri, Southern District, Division One | Nov 18, 1996 | 933 S.W.2d 437

**Overview:** In a dissolution proceeding, marital property division was not disproportionate in view of a former husband's misconduct and a former wife's illness. A promissory note the husband signed after his stepmother paid a mortgage was his separate debt.

**HN10 -** A state court cannot, without approval of the Federal Communications Commission (FCC), order a transfer of a license or of any **right granted** thereunder. A state court does, nonetheless, have the power to adjudicate issues involving FCC licenses as long as the state court does not affirmatively interfere with the authority of the FCC to authorize the transfer, assignment or other disposition of licenses.

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218. In re Queen's Univ.

United States Court of Appeals for the Federal Circuit | Mar 07, 2016 | 820 F.3d 1287

**Overview:** Court found, consistent with Fed. R. Evid. 501, that a patent-agent privilege was justified in light of reason and experience. It therefore recognized a patent-agent privilege extending to communications with non-attorney patent agents when those agents are acting within agent's authorized practice of law before PTO. Mandamus relief was granted.

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219. Leavenworth Club Owners Asso. v. Atchison

Supreme Court of Kansas | Dec 11, 1971 | 208 Kan. 318

**Overview:** A city's ordinance that was more restrictive that the state statute relative to the times during which alcohol could be served in private clubs was a valid exercise of the city's police power and was not in conflict with the state statute.

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220. Louisiana State Board of Medical Examiners v. Fife

Supreme Court of Louisiana | Nov 29, 1926 | 162 La. 681

**Overview:** Although chiropractors did not prescribe medicine or perform surgery, the legislature had the power to regulate their practice by imposing reasonable regulations. Thus, chiropractors could be enjoined from practicing chiropractic without a license.

**HN6 -** No person has a natural or absolute right to practice medicine or surgery. It is a **right granted** upon condition.

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221. Newport N. & O. P. R. & E. Co. v. Hampton R. R. & E. Co.

Supreme Court of Virginia | Jun 16, 1904 | 102 Va. 795

**Overview:** A new railway obtained an injunction against an old railway's interference with it laying track because, when the old railway did not provide double-track service for 18 months, a town used its police power to grant a right to lay a double track.

**HN16 -** When a grant may be made to other railway companies, there is very much doubt whether a general grant which prevents the legislature or municipal authorities from granting privileges to other

companies would be valid in cases where the right to use the high way is left entirely to the licensee, for this, is a surrender of the police power which the constitution does not permit. The legislature cannot bind itself not to legislate for the welfare of the public, and it seems to follow that it cannot rightfully place itself in a position where it cannot make provision for the public necessities. If it cannot do this, then it cannot make a grant which leaves it entirely in the discretion of a private corporation to provide, or decline to provide, the facilities for travel upon the highways which are demanded by the public welfare. There is sufficient reason for affirming that the legislature must retain the power to provide for the necessities of the public, and that a general grant to occupy highways is only effective when something is done vesting the **right granted** and securing what the public requires. Until something is done vesting the granted privilege, it is within the legislative power to secure the welfare of the public by granting the necessary license to another company, although there may be a prior general grant.

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222. Ocasek v. Hegglund

United States District Court for the District of Wyoming | Jun 12, 1987 | 673 F. Supp. 1084

**Overview:** Defendant could not amend her answer to assert state licensing and business statutes against federal copyright infringement suit; defendant could not bring in ASCAP as necessary party because it was merely agent of plaintiff.

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223. Penobscot Nation v. Stilphen

Supreme Judicial Court of Maine | Jun 07, 1983 | 461 A.2d 478

**Overview:** In a Native American nation's action contesting a state law regulating beano games, judgment for the attorney general and public safety commissioner was proper where the operation of the game was not a tribal matter free from state regulation.

**HN9 -** Indians are regarded, in the eyes of the law, as a separate people, with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union or of the State within whose limits they resided. A tribe's inherent sovereignty did not render all activities conducted on a reservation immune from state regulation or action. Even on reservations, state laws may be applied unless such application would interfere with reservation self-government or would impair a **right granted** or reserved by federal law. The state can protect its interest up to the point where tribal self-government would be affected. However, an Indian tribe's inherent powers cannot be judged in a vacuum, but must be weighed against the interests of the state in applying its laws and regulations to the tribe.

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224. Pullman Southern Car Co. v. Nolan

Circuit Court, M.d. Tennessee | Oct 01, 1884 | 22 F. 276

**Overview:** The State of Tennessee and counties in Tennessee were prohibited from collecting a tax from a sleeping car company for cars used by railroads passing through the State, because the sleeping cars were engaged in interstate commerce and a State tax on the usage of the cars in Tennessee was null and void.

**HN4 -** There is a clear distinction recognized between a license granted or required as a condition precedent before a certain thing can be done and a tax assessed on the business which that license may authorize one to engage in. A license is a **right granted** by some competent authority to do an act which, without such authority, would be illegal. A tax is a rate or sum of money assessed upon the person, property, business, or occupation of the citizen.

225. Scott v. Kewaskum

United States Court of Appeals for the Seventh Circuit | Mar 21, 1986 | 786 F.2d 338

**Overview:** Due process was not violated by a village's denial of a new liquor license without a statement of reasons because the applicants did not have either a protected property interest or a liberty interest in the operation of a tavern.

226. Springfield v. Springfield S. R. Co.

Supreme Judicial Court of Massachusetts, Hampden | Feb 08, 1951 | 327 Mass. 4

**Overview:** A city could not restrain a motor vehicle carrier from operating bus line based on the carrier's failure to follow an ordinance because the carrier's operation was lawful under a license and certificate of convenience and necessity duly issued.

227. Payne v. Jackson City Lines, Inc.

Supreme Court of Mississippi | Feb 22, 1954 | 220 Miss. 180

**Overview:** Lower court properly overruled an unfranchised common carrier's demurrer to a franchised carrier's complaint to enjoin the unfranchised carrier's operations within a city because the statutes establishing conditions for the grant of franchises for public utilities required that a person have a municipal franchise before engaging in such operations.

228. Ex parte Owens

Court of Criminal Appeals of Oklahoma | Jul 05, 1927 | 1927 OK CR 171

**Overview:** The court had original jurisdiction to issue writs of habeas corpus and the Supreme Court did not have the authority to prohibit the court from hearing an application. When sheriff did not answer show cause order, facts in application deemed correct.

229. Fresno Rifle & Pistol Club, Inc. v. Van de Kamp

United States District Court for the Eastern District of California | Sep 06, 1990 | 746 F. Supp. 1415

**Overview:** California assault weapons law did not violate gun club's constitutional right to bear arms because the law did not violate the gun club's right to privacy or right to bear arms; statute was not bill of attainder and was not preempted by federal law.

**HN3 -** The right of the people to keep and bear arms is not a **right granted** by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second Amendment declares that it shall not be infringed, but this, as has been seen, means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the powers of the national government, leaving the people to look for their protection against any violation by their fellow-citizens of the rights it recognizes the powers which relate to merely municipal legislation, or what was perhaps more properly called internal police not surrendered or restrained by the Constitution of the United States.

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230. ## Sitz v. Department of State Police

Supreme Court of Michigan | Sep 14, 1993 | 443 Mich. 744

**Overview:** Because there was no support in Michigan's constitutional history for proposition that police could seize automobiles, without warrants or suspicion, to enforcing the criminal law, sobriety checkpoints were unconstitutional.

**HN11 -** When there is a clash of competing rights under the state and federal constitutions, the Supremacy Clause, U.S. Const. art. VI, cl. 2, dictates that the federal right prevails. Where a right is given to a citizen under federal law, it does not follow that the organic instrument of state government must be interpreted as conferring the identical right. Nor does it follow that where a right given by the federal constitution is not given by a state constitution, the state constitution offends the federal constitution. It is only where the organic instrument of government purports to deprive a citizen of a **right granted** by the federal constitution that the instrument can be said to violate the constitution.

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231. ## Ware v. State

Supreme Court of Kansas | Apr 08, 1967 | 198 Kan. 523

**Overview:** A motion for post-conviction relief was properly dismissed without an evidentiary hearing because the inmate's uncorroborated statement that he was not advised of his right to appeal did not deprive him of a fundamental constitutional right.

**HN1 -** In the State of Kansas, the right to appeal in a criminal case is a statutory **right granted** by the state through the legislature.

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232. ## Willow Lake Residential Ass'n v. Juliano

Court of Civil Appeals of Alabama | Aug 27, 2010 | 80 So. 3d 226

**Overview:** Trial court erred in granting homeowners' injunctive and other relief when it was undisputed that they built a set of steps in common area of a subdivision. A homeowners' association was incorporated and could enforce the restrictive covenants that they clearly violated. The association was entitled to recover reasonable costs and attorney's fees.

**HN11 -** In Alabama, where there is an agreement to pay an attorney fee and the agreement does not speak specifically to the reasonableness of the fee, a reasonable fee will be inferred. Restrictive covenants are agreements among various landowners regarding the use and **enjoyment** of their land and they should be construed like any other contract. Implying a reasonableness limitation in contracts assures that neither party can penalize the other by running up exorbitant attorney's fees with knowledge that the other side will have to pay those fees. That consideration exists equally in the context of a dispute over a violation of restrictive covenants.

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233. State ex rel. Texas Co. v. Koontz

Supreme Court of Nevada | Jan 29, 1952 | 69 Nev. 25

**Overview:** Although state could have denied entry to foreign corporation, once foreign corporation was admitted to and engaged in local business, state could not constitutionally require corporation to pay later-enacted fee for entering state to do business.

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234. Baker v. Tulsa Bldg. & Loan Ass'n

Supreme Court of Oklahoma | Oct 06, 1936 | 1936 OK 568

**Overview:** Where a stockholder in a building and loan association acquired a vested property right for his shares to be redeemed on his death according to a stated formula, the right could not be changed by subsequent legislative amendment.

**HN2 -** Rights are "vested" when the right of **enjoyment**, present or prospective, has become the property of some particular person or persons as a present interest. A "vested right" may be considered as the power to do certain actions or to possess certain things lawfully.

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235. Insurance Corp. v. Latino Americana de Reaseguros, S.A.

United States District Court for the Southern District of New York | Oct 07, 1994 | 868 F. Supp. 520

**Overview:** Trust funds were the property of the foreign insurers' policy holders and were not subject to attachment to satisfy attorney's liens. A foreign note's exclusive forum selection clause validly precluded enforcement of a judgment in the United States.

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236. State v. Laundy

Supreme Court of Oregon | Feb 28, 1922 | 103 Ore. 443

**Overview:** Defendant was improperly convicted of two counts of criminal syndicalism because the indictment charged only one count and the two counts were not sufficiently connected with each other to be joined in one indictment.

**HN8 -** Liberty does not import an absolute right to be free from all restraint. Liberty does not imply unrestricted license. The possession and **enjoyment** of all rights are subject to such reasonable conditions as the governing authority may deem essential to the safety, peace and welfare of the general public.

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237. Youngblood v. City of Bakersfield

United States District Court for the Eastern District of California | Apr 02, 2014 | 2014 U.S. Dist. LEXIS 46977

**Overview:** Plaintiff was subject to a seizure within the meaning of U.S. Const. amend. IV when the officer released the dog with the expectation that it would locate, and could bite and hold any person it encountered in the residence; the search warrant did not authorize the seizure of any person or indicate there was an expectation of finding anyone.

**HN15 -** The Bane Act, Cal. Civ. Code § 52.1, provides a cause of action in equity and statutory civil penalty for interference by threats, intimidation, or coercion or attempted interference, with the exercise or **enjoyment** by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of California. § 52.1(a). The action may be brought by the Attorney General or any District Attorney, § 52.1(a), or by the individual suffering the intimidation or coercion. § 52.1(b). Section 52.1 does not extend to all ordinary tort actions because its provisions are limited to threats, intimidation, or coercion that interferes with a constitutional or statutory right. The text of § 52.1 indicates that a cause of action under § 52.1 requires a predicate — the application of threat, intimidation or coercion — and an object — interference with a constitutional or statutory right.

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238. Beard v. City of Atlanta

Court of Appeals of Georgia | Jan 26, 1955 | 91 Ga. App. 584

**Overview:** A city did not have the power to regulate the trade of barbering through city ordinances because state statutes and the State Board of Barbering Examiners already regulated the trade.

**HN1 -** There is a clear distinction recognized between a license granted or required as a condition precedent before a certain thing can be done, and a tax assessed on a business which that license may authorize one to engage in. A license is a **right granted** by some competent authority to do an act which, without such license, would be illegal. A tax is a rate or sum of money assessed on the person, property, etc of the citizen. A license is issued under the police power of the authority which grants it. If the fee required for the license is intended for revenue, its exaction is an exercise of the power of taxation. Where a license is required as a condition precedent before a business or occupation can be carried on and a fee or tax is required in payment of such license, the tax imposed is a license tax, and not one upon occupation. A

tax assessed on the occupation or business in which such license authorizes one to engage is an occupation tax.

239. Oakland v. Key System

Court of Appeal of California, First Appellate District, Division One | May 22, 1944 | 64 Cal. App. 2d 427

**Overview:** Judgment that state public utility commission had exclusive control over use of disputed tidelands was reversed with directions that the commission be notified. Decision that grant of disputed land was invalid as ultra vires was affirmed.

240. Lewis v. Mandeville

Supreme Court of New York, Special Term, Westchester County | Oct 18, 1951 | 201 Misc. 120

**Overview:** A non-resident was not entitled to maintain a certain proceeding where he sought a prohibition or permanent injunction because such proceedings were not available to restrain or grant a permanent injunction.

**HN2 -** N.Y. Const. art. I, § 3 reads in part as follows: freedom of worship; religious liberty. The free exercise and **enjoyment** of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind.

241. State ex rel. Mitchell v. Thompson's School of Beauty Culture

Supreme Court of Iowa, Des Moines | Mar 01, 1939 | 226 Iowa 556

**Overview:** Chapter 124-B1, § 2585-b1, Code (Iowa), which covered the practice of cosmetology, did not require cosmetology school students to render services to the public gratuitously. Such a requirement would be an arbitrary interference with private business and the right to contract and would impose undue and unnecessary restrictions on lawful occupations.

242. Patapsco Guano Co. v. North Carolina Bd. of Agriculture

Supreme Court of the United States | May 31, 1898 | 171 U.S. 345

**Overview:** A state act providing for the inspection of fertilizing materials and the associated charge was not regulation of foreign commerce, for the Constitution expressly recognized the validity of state inspection laws.

243. Leis v. Flynt

Supreme Court of the United States | Jan 15, 1979 | 439 U.S. 438

**Overview:** Injunction delaying prosecution was improper, as Fourteenth Amendment did not obligate Ohio courts to give out-of-state lawyers procedural due process in passing on their application to appear pro hac vice before the client was prosecuted.

**HN4 -** The practice of courts in most states is to allow an out-of-state lawyer the privilege of appearing upon motion, especially when he is associated with a member of the local bar. In view of the high mobility of the bar, and also the trend toward specialization, perhaps this is a practice to be encouraged. But it is not a **right granted** either by statute or the Constitution. Since the founding of the Republic, the licensing and regulation of lawyers has been left exclusively to the states and the District of Columbia within their respective jurisdictions. The states prescribe the qualifications for admission to practice and the standards of professional conduct. They also are responsible for the discipline of lawyers.

244. Margola Assocs. v. Seattle

Supreme Court of Washington | Jun 10, 1993 | 121 Wn.2d 625

**Overview:** Because the classifications used in the registration and fee ordinances at issue were not purely arbitrary, the municipal ordinances were not violative of equal protection under the rational basis test.

**HN4 -** A license is defined as a **right granted** by some authority to do an act which, without such license, would be unlawful.

245. Oakland v. E. K. Wood Lumber Co.

Supreme Court of California | Nov 01, 1930 | 211 Cal. 16

**Overview:** A city ordinance that established a wharf fee for all vessels whether or not they used city-operated wharves and that had no proprietary or police power justification was a tax in violation of the constitutional prohibition on tonnage fees.

246. Organized Village of Kake v. Egan

Supreme Court of the United States | Mar 05, 1962 | 369 U.S. 60

**Overview:** State regulation of off-reservation fishing prohibiting the use of fish traps did not impinge on treaty-protected self-government and the native Alaskan communities did not have any fishing rights derived from federal law.

**HN15 -** Even on reservations state laws may be applied to Indians unless such application would interfere with reservation self-government or impair a **right granted** or reserved by federal law. Congress has gone even further with respect to Alaska reservations, 72 Stat. 545, 18 U.S.C.S § 1162, 28 U.S.C.S. § 1360. State authority over Indians is yet more extensive over activities not on any reservation. It has never been

doubted that States may punish crimes committed by Indians, even reservation Indians, outside of Indian country. Even where reserved by federal treaties, off-reservation hunting and fishing rights have been held subject to state regulation.

247. Louisiana Greyhound Club, Inc. v. Clancy

Supreme Court of Louisiana | Nov 26, 1928 | 167 La. 511

**Overview:** An act imposing a license tax on a corporation operating a dog racing track was not unconstitutional where it did not contain more than one object and was not so arbitrary an exercise of the police power as to infringe on the corporation's rights.

248. New Jersey Chiropractic Asso. v. State Bd. of Medical Examiners

United States District Court for the District of New Jersey | Aug 10, 1948 | 79 F. Supp. 327

**Overview:** Effort of a chiropractic medical association and practitioners to strike down a state regulatory and licensing statute was rejected, as the licensing statute was not unreasonable and such regulation was within the state's police powers.

249. Okla. Alcoholic Bev. Control Bd. v. Parkhill Rests., Inc.

Supreme Court of Oklahoma | Jul 05, 1983 | 1983 OK 77

**Overview:** Oklahoma Alcoholic Beverage Control Act did not deprive restaurant of due process. Important governmental interest outweighed temporary loss of lawfully possessed property, justifying seizure of alcoholic beverages from restaurant before a hearing.

250. Trappers Lake Lodge & Resort, LLC v. Colo. Dep't of Revenue

Court of Appeals of Colorado, Division Five | Jul 12, 2007 | 179 P.3d 198

**Overview:** Revocation of the liquor licenses was affirmed because the right to revoke a license existed at least as of the date of the alleged violation and the Colorado Liquor Code contained no corresponding language ending that authority, and the revocations were not mooted merely because the licenses would have otherwise expired.