

§ 29. Provisions of Bill of Rights excepted from powers of government; to forever remain inviolate

Sec. 29. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

INTERPRETIVE COMMENTARY

This section, in excepting everything in the bill of rights out of the general powers of government and stating such rights included therein are to remain inviolate, places these rights beyond the power of the state government to usurp: it reserves these rights to the people.

As such, the basic underlying theory of bills of rights is set out, to the effect that certain rights are inalienable, that man is not capable of divesting himself or his posterity of them even by consent.

Article I of the Texas Constitution enumerates these inalienable rights and Section 29 demonstrates that they are not delegated by the people to their government, and, furthermore, any infringement by the government thereof is void.

Historical Notes

Earlier Constitutions:

Const.1845, Art. 1, § 21.
Const.1861, Art. 1, § 21.

Const.1866, Art. 1, § 21.
Const.1869, Art. 1, § 23.

Law Review and Journal Commentaries

Framing a Texas bill of rights argument.
James C. Harrington, 24 St.Mary's L.J. 399 (1993).

Library References

Constitutional Law ¶5, 82(2).
Westlaw Topic No. 92.

C.J.S. Constitutional Law §§ 6, 444 to 445, 460, 619 to 648.

Research References

Encyclopedias

TX Jur. 3d Constitutional Law § 59, Express Restraints on State Power.
TX Jur. 3d Constitutional Law § 139, Scope of Constitutional Protection.
TX Jur. 3d Constitutional Law § 140, Who is Entitled to Constitutional Protection.

TX Jur. 3d Constitutional Law § 202, Expression on Private Property.

Treatises and Practice Aids

Dix and Dawson, 43 Tex. Prac. Series § 31.197, Variances Caused by Proof that Crime was Committed by Another for Whose Conduct Accused is Responsible.

Notes of Decisions

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1. In general

This section is so plain that construction thereof is unnecessary. *Faulk v. Buena Vista Burial Park Ass'n* (Civ.App. 1941) 152 S.W.2d 891.

Municipality is not empowered through doctrine of sovereign immunity to engage in transgressions and usurpations which violate Texas Bill of Rights. *City of Beaumont v. Bouillion* (App. 9 Dist. 1993) 873 S.W.2d 425, writ granted, reversed 896 S.W.2d 143, rehearing overruled. *Municipal Corporations* ⇨ 723

Texas Constitution did not impose liability upon city for damages caused by false arrest, search, and incarceration of arrestees, where arrests were based upon incorrect information from undercover narcotics agent who was not employee of city but who was paid by city police department. *Tutt v. City of Abilene* (App. 11 Dist. 1994) 877 S.W.2d 86, rehearing denied, writ denied. *False Imprisonment* ⇨ 15(1)

Texas Bill of Rights generally applies only against the government. *Republican Party of Texas v. Dietz* (Sup. 1997) 940 S.W.2d 86. *Constitutional Law* ⇨ 82(5)

Constitution is compact between government and the people in which the people delegate powers to government and in which powers of government are prescribed. *Republican Party of Texas v. Dietz* (Sup. 1997) 940 S.W.2d 86. *Constitutional Law* ⇨ 25.1

2. Presumptions and burden of proof

When constitutionality of statute is challenged, court begins its review with presumption of validity, and burden is on party attacking statute to establish its unconstitutionality. *Andrews v. Wilson* (App. 7 Dist. 1998) 959 S.W.2d 686, rehearing overruled, review granted, reversed 10 S.W.3d 663. *Constitutional Law* ⇨ 48(1)

3. Legislative authority

When Legislature has clearly and directly done something contrary to Bill of Rights, judiciary must declare such enactment void. *Murphy v. Phillips* (Civ.App.1933) 63 S.W.2d 404, appeal dismissed 123 Tex. 409, 73 S.W.2d 92, answer conformed to, Civ.App., 73 S.W.2d 1047, followed in *Martindale Mortg. Co. v. Nichols*, Civ.App., 63 S.W.2d 1118; *Carr v. Baldwin* (Civ.App.1934) 64 S.W.2d 1116; *Christian v. Jones* (Civ.App.1934) 64 S.W.2d 1117, appeal dismissed 123 Tex. 409, 73 S.W.2d 92, answer to certified question conformed to 73 S.W.2d 1047; *Dallas Joint Stock Land Bank v. Sutherland* (Civ.App.1934) 64 S.W.2d 1117, vacated on other grounds 124 Tex. 114, 73 S.W.2d

54; *Jefferson Standard Life Ins. Co. v. Adrean* (Civ.App.1934) 64 S.W.2d 1118, appeal dismissed 123 Tex. 410, 73 S.W.2d 92, answer conformed to, Civ.App., 73 S.W.2d 1047; *Rabel v. Cowen* (Civ.App.1934) 64 S.W.2d 1118, appeal dismissed 123 Tex. 410, 73 S.W.2d 92, answer conformed to *Guardian Trust Co. v. Turner*, Civ.App., 73 S.W.2d 1047; *Rabel v. Orive* (Civ.App.1934) 64 S.W.2d 1118, appeal dismissed 123 Tex. 410, 73 S.W.2d 92, answer to certified question conformed to 73 S.W.2d 1047; *Rogers v. Jones* (Civ.App.1934) 64 S.W.2d 1119, appeal dismissed 123 Tex. 409, 73 S.W.2d 92, answer to certified question conformed to 73 S.W.2d 1047.

A law will be recognized as valid if, by reasonably fair construction, it appears that the Legislature was empowered to enact it. *St. Louis Southwestern Ry. Co. v. Griffin* (Sup. 1914) 106 Tex. 477, 171 S.W. 703.

Unless it appears beyond a reasonable doubt that the Legislature has exceeded its constitutional grant of authority, its act must be held constitutional. *Ball v. Merriman* (Civ.App. 1922) 245 S.W. 1012, error granted, reversed 116 Tex. 527, 296 S.W. 1085. *Constitutional Law* ⇨ 48

The Legislature will not be presumed to have ignored constitutional limitations in passage of laws; and, where laws may be reasonably interpreted as being within legislative grant, they should be so construed and upheld. *Trimmier v. Carlton* (Civ.App. 1924) 264 S.W. 253, error granted, affirmed 116 Tex. 572, 296 S.W. 1070. *Constitutional Law* ⇨ 48

4. Police power

The "police power" of the state may be exercised to regulate the use of property, and, where appropriate or necessary, to prohibit the use of property for certain purposes, in aid of public health, morals, safety, and general welfare. *Faulk v. Buena Vista Burial Park Ass'n* (Civ. App. 1941) 152 S.W.2d 891. *Constitutional Law* ⇨ 81

In the exercise of the "police power," a state may enact legislation reasonably tending to promote the health, comfort, or welfare of the public, but the extent of the power is limited and must be exercised in conformity to the limitations prescribed by the Constitution. *Faulk v. Buena Vista Burial Park Ass'n* (Civ. App. 1941) 152 S.W.2d 891. *Constitutional Law* ⇨ 81

Though the state police power is broad and comprehensive, the Constitution forbids its exercise when the result would be the destruction of rights, guarantees, privileges and restraints excepted from the powers of government by the Bill of Rights. *Fazekas v. University of Houston* (Civ.App. 1978) 565 S.W.2d 299, ref. n.r.e., ap-

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peal dismissed 99 S.Ct. 1487, 440 U.S. 952, 59 L.Ed.2d 765. Constitutional Law ⇨ 81

5. State action

Although in some cases disputed facts regarding extent of government's involvement in challenged action must be resolved by trier of fact, ultimate determination of whether facts are sufficient to constitute state action subject to bill of rights is a question of law. *Republican Party of Texas v. Dietz* (Sup. 1997) 940 S.W.2d 86. Constitutional Law ⇨ 45

Actions of political party in denying booth and program advertising space at state convention to group attempting to change party's internal platform was not "state action" subject to bill of rights. *Republican Party of Texas v. Dietz* (Sup. 1997) 940 S.W.2d 86. Constitutional Law ⇨ 82(5)

Fact that political party agreed to abide by State Constitution when "applicable" did not make its denial of program advertising and booth space to group at state convention "state action" subject to bill of rights. *Republican Party of Texas v. Dietz* (Sup. 1997) 940 S.W.2d 86. Constitutional Law ⇨ 82(5)

6. Private conduct

Bills of rights are often included as part of Constitution and are intended to protect citizens from governmental transgressions of certain fundamental rights, but are not designed to protect from the invasion of such rights by individuals. *Republican Party of Texas v. Dietz* (Sup. 1997) 940 S.W.2d 86. Constitutional Law ⇨ 82(2); Constitutional Law ⇨ 82(5)

Generally, state action subject to bill of rights is only present for otherwise private conduct when conduct can be fairly attributed to government. *Republican Party of Texas v. Dietz* (Sup. 1997) 940 S.W.2d 86. Constitutional Law ⇨ 82(5)

7. Public lands

Acts 1889, p. 48, § 1, relating to preference right to purchase unappropriated public lands added to and imposed conditions upon the constitutional rights of heads of families to acquire a homestead upon unappropriated public land, and was violative of this section. *Yoacham v. McCurdy* (Civ.App. 1901) 27 Tex.Civ.App. 183, 65 S.W. 213, error dismissed 95 Tex. 336, 67 S.W. 316.

8. Privacy rights

While Texas Constitution contains no express guarantee of right of privacy, it contains several

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provisions similar to those in the United States Constitution that have been recognized as implicitly creating protected "zones of privacy"; these protected zones impose restraints on unwarranted governmental interference in individual autonomy rights, that is, freedom to determine for one's self whether to undergo certain experiences or to perform certain acts. *Penick v. Christensen* (App. 14 Dist. 1995) 912 S.W.2d 276, rehearing overruled, writ denied, rehearing of writ of error overruled. Constitutional Law ⇨ 82(7)

Right to privacy under Texas Constitution should yield only when government can demonstrate intrusion is reasonably warranted for achievement of compelling governmental objective that can be achieved by no less intrusive, more reasonable means. *Penick v. Christensen* (App. 14 Dist. 1995) 912 S.W.2d 276, rehearing overruled, writ denied, rehearing of writ of error overruled. Constitutional Law ⇨ 82(7)

9. Remedies and procedure

Plaintiff was not entitled to injunction against one criminal and four civil proceedings against her in Texas courts based on claim that judge and jury in pending proceedings were required to "acknowledge the existence of a Supreme Being" pursuant to § 4 of this Article and that this requirement denied plaintiff due process of law, since, despite argument that this section denied all jurisdictions to Texas courts to remedy any constitutional defects inherent in questioned provision, no definitive state interpretation was available, and therefore, plaintiff failed to demonstrate absence of adequate state remedy at law. *O'Hair v. Hill*, C.A.5 (Tex.)1981, 641 F.2d 307, rehearing granted 652 F.2d 423, on rehearing 675 F.2d 680, on remand. Injunction ⇨ 32; Injunction ⇨ 105(1)

Under this section and § 19 of this Article, if a police officer deprives a citizen of his liberty in any way except by due course of law of the land, he is amenable to such citizen in an action for false imprisonment. *Gold v. Campbell* (Civ. App. 1909) 54 Tex.Civ.App. 269, 117 S.W. 463.

Under § 1 of this Article and this section, declaring that everything in the Bill of Rights shall remain forever inviolate, the discretion of the court in refusing an amended motion for a new trial on alleged discovery that the original indictment, after service on defendant in jail, had been amended by writing in the words "by the", was improperly exercised. *Alvarado v. State* (Cr.App. 1918) 83 Tex.Crim. 181, 202 S.W. 322.

§ 30. Rights of crime victims

Sec. 30. (a) A crime victim has the following rights: