

CIVIL LIBERTIES AND CIVIL RIGHTS GUARANTEED IN THE NORTH CAROLINA CONSTITUTION

PART 1: CIVIL LIBERTIES IN THE 1776 NORTH CAROLINA DECLARATION OF RIGHTS

North Carolinians have expressed support for individual rights and limited government since before the United States was founded as an independent country. North Carolina's original state constitution, which was created in December 1776 — just months after the United States declared its independence — begins with a section titled "A Declaration of Rights made by the representatives of the Freemen of the State of North Carolina." (Often the name of the document is called the North Carolina Declaration of Rights.)

Throughout its history as a U.S. state, North Carolina has operated under three constitutions: the original North Carolina constitution of 1776, the constitution of 1868, and the state's current constitution, which has been in effect since 1971. All three constitutions have included a declaration of rights, although as time has passed, the rights guaranteed to North Carolinians have been expanded. North Carolina's 1776 constitution guaranteed a set of individual rights that are often called "civil liberties." The state's current constitution continues to guarantee civil liberties but also guarantees another type of rights called "civil rights."

CIVIL LIBERTIES AND CIVIL RIGHTS: WHAT'S THE DIFFERENCE?

Merriam-Webster's dictionary defines a right as a "power or privilege to which one is justly entitled."¹ In a legal and political context, a right is a claim for some freedom or benefit that an individual is entitled to demand from a government. All legal rights involve government. Both civil rights and civil liberties are essentially just rights. In fact, sometimes the same right (such as the right to vote) can be called a civil right or a civil liberty depending on the situation.

The difference between a civil right and a civil liberty is a matter of emphasis. As mentioned above, all rights involve government. But some rights tend to restrict government action while other rights tend to require the government to act. Generally, when you call a right a "civil liberty," you are emphasizing the fact that the right restricts the government in order to guarantee people the freedom to do something. On the other hand, when you call a right a "civil right," you are emphasizing the fact that the right requires the government to act to guarantee people the freedom from some kind of harm.

For example, the right to freedom of speech is often called a "civil liberty" because it prevents the government from punishing someone for speech. To guarantee the right to freedom of speech, the government must simply refrain from punishing people for how they express themselves. On the other hand, the right to freedom from race-based discrimination is considered a "civil right." In order to guarantee that people are free from race-based discrimination, the government may need to pass laws making discrimination illegal and then enforce those laws.

As mentioned above, the same right can be considered both a "civil liberty" and a "civil right." For example, to guarantee the right to vote, the government is restricted from passing laws that make it difficult for people to vote, such as poll taxes (taxes on voting) or literacy tests (the requirement that a prospective voter prove that he or she knows how to read). Since the government is restricted from interfering with eligible voters' freedom to cast a vote, the right to vote can be called a civil liberty. However, in order

1 See definition of "Right," Merriam-Webster, retrieved online at: <https://www.merriam-webster.com/dictionary/right>.

for people to be able to exercise their right to vote, the government must act to set up polling stations, provide information to the public about where to vote, accurately count the votes cast, and guarantee that there is no discrimination in voters' access to the polls. Because guaranteeing the right requires so much government action, the right to vote is also often called a civil right.

The Declaration of Rights in North Carolina's original 1776 constitution focused on guaranteeing civil liberties to the free population of the state.² (In later constitutions, these same rights are guaranteed to all people.) The document is mostly a list of things the North Carolina government can't do. Many of the civil liberties guaranteed in the North Carolina Declaration of Rights are also guaranteed in the U.S. Bill of Rights.³ The U.S. Constitution was not ratified until around 12 years after the North Carolina constitution, and the Bill of Rights was not added to the U.S. Constitution until December 1791. The U.S. Bill of Rights was inspired by the earlier lists of civil liberties in the state constitutions of North Carolina, Virginia, and other original U.S. states.

THE 1776 NORTH CAROLINA DECLARATION OF RIGHTS AND THE U.S. BILL OF RIGHTS

Following is a list of some of the most important civil liberties in the (1791) U.S. Bill of Rights — all had been guaranteed to North Carolinians in the Declaration of Rights since 1776!

- ♦ **The Right to the Free Exercise of Religion** (in the **First Amendment** of the U.S. Bill of Rights): This is the right to choose and peacefully practice a religion (or not to practice any religion) freely without government interference.
- ♦ **The Right to the Freedom of the Press** (in the **First Amendment** of the U.S. Bill of Rights): This is the right of newspapers, magazines, and other publications to express ideas freely without being punished or restricted by the government.
- ♦ **The Right to the Freedom of Assembly** (in the **First Amendment** of the U.S. Bill of Rights): This is the right of people to meet in groups for any reason, including social, economic, religious, or political reasons.
- ♦ **The Right to Petition the Government for a "Redress of Grievances"** (in the **First Amendment** of the U.S. Bill of Rights): This is the right of individuals or groups of people to criticize the government and ask for change. The government is not required to say "yes" to every request, but the government cannot punish people for asking for change.
- ♦ **The Right to Bear Arms** (in the **Second Amendment** of the U.S. Bill of Rights): This is the right to own firearms (guns).
- ♦ **The Right to be Free from Unreasonable Searches and Seizures** (in the **Fourth Amendment** of the U.S. Bill of Rights): This is the right to be free from being searched or arrested by the police unless a judge decides that the search or arrest is appropriate and issues a "warrant" (a legal document authorizing the police to conduct the search or the arrest).
- ♦ **The Right to be Free from Self-Incrimination** (in the **Fifth Amendment** of the U.S. Bill of Rights): This is the right of someone accused of a crime not to be called as a witness in his or her own trial. Here is the reason. It is illegal for a witness to lie in court (the crime of lying in court is called perjury).

2 Constitution of North Carolina: December 18, 1776, Lillian Goldman Law Library, Yale University, https://avalon.law.yale.edu/18th_century/nc07.asp.

3 The U.S. Bill of Rights, The U.S. National Archives and Records Administration, <https://www.archives.gov/founding-docs/bill-of-rights-transcript>.

Hypothetically, if a person were called as a witness in his or her own trial and claimed that he or she did not commit the crime and then, afterwards, was found guilty of the crime, that person could also be found guilty of perjury. So, to avoid the possibility that someone would be punished for proclaiming innocence in court, a person accused of a crime cannot be required to be a witness in his or her own trial.

- ♦ **The Right to Confront Accusers and Witnesses in a Criminal Trial** (in the **Fifth Amendment** of the U.S. Bill of Rights): A person accused of a crime (or the lawyer representing that person) has the right to question anyone who accuses him or her (including the police officers who investigated the crime) and also has the right to question anyone called as a witness during the trial. Witnesses in a criminal trial cannot testify in secret and the jury will not be allowed to hear a witness's testimony unless the witness can be questioned by the lawyer representing the accused person.
- ♦ **The Right to a Trial by Jury in Criminal Cases** (in the **Sixth Amendment** of the U.S. Bill of Rights): When a person is accused of a crime, the final decision about whether or not the person is guilty is not made by a police officer or a judge. Twelve ordinary citizens are randomly chosen to act as the jury in a criminal trial. The members of the jury listen to all the evidence presented in the trial and then have the opportunity to discuss the evidence in private and vote to decide whether or not the representatives of the government have proven that the person is guilty of the crime.
- ♦ **The Right to Notice of Accusation** (in the **Sixth Amendment** of the U.S. Bill of Rights): A person accused of a crime has the right to be informed of the details of the accusation that has been made against him or her. When the government accuses someone of a crime, it cannot keep the reason for the trial secret.
- ♦ **The Right to a Trial by Jury in Civil Cases (lawsuits)** (in the **Seventh Amendment** of the U.S. Bill of Rights): This is the right to have a jury trial in a lawsuit. There are two types of trials: a criminal trial, when someone is accused of doing something that is illegal, and a civil trial, which is usually called a lawsuit. A lawsuit is a dispute between two individuals or groups that is brought before a court (by one of the individuals or groups) for a resolution.
- ♦ **The Right to be Free from Excessive Bail and Fines** (in the **Eighth Amendment** of the U.S. Bill of Rights): Bail is when a person who has been arrested for a crime is allowed to pay a certain amount of money to stay out of jail until the date of the trial. If the person shows up for the trial, the money is returned (whether or not the person is found guilty). If the person does not show up for the trial, the government keeps the money, and the police are sent out to find and rearrest the accused person. A fine is when someone is required to pay a certain amount of money as punishment for a crime. This right guarantees that bail must be reasonable based on the crime the person has been accused of and the likelihood that the person might not show up for court on the day of the trial. It also requires that a fine imposed as punishment for a crime be reasonable considering the seriousness of the crime.
- ♦ **The Right to be Free from Cruel and Unusual Punishment** (in the **Eighth Amendment** of the U.S. Bill of Rights): This right guarantees that significant physical pain cannot be inflicted on a person who has been suspected, accused, or found guilty of a crime. The government cannot torture a person who is suspected, accused, or convicted of a crime. Also, the government cannot intentionally cause someone extreme emotional distress as punishment or inflict any other punishment that a court determines to be as bad as torture.

PRIMARY SOURCE ANALYSIS ACTIVITY

Text from the 1776 North Carolina Declaration of Rights	Helpful Vocabulary	Civil Liberties Guaranteed	Where is the Right Guaranteed in the U.S. Bill of Rights? (Amendment # Only)
VII [7]. That, in all criminal prosecutions, every man has a right to be informed of the accusation against him, and to confront the accusers and witnesses with other testimony, and shall not be compelled to give evidence against himself. <i>(This right is guaranteed in Section 23 of the 1971 N.C. Constitution.)</i>	Criminal prosecutions: Criminal trials Compelled: Forced	♦ ♦ ♦	♦ ♦ ♦
IX [9]. That no freeman shall be convicted of any crime, but by the unanimous verdict of a jury of good and lawful men, in open court, as heretofore used. <i>(This right is guaranteed in Section 24 of the 1971 N.C. Constitution—the word “freeman” changed to “person.”)</i>	Freeman: A person who is not enslaved Convicted: found guilty Heretofore: In the past	♦	♦
X [10]. That excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted. <i>(This right is guaranteed in Section 27 of the 1971 N.C. Constitution.)</i>	Excessive: Extreme Cruel or unusual punishments: Torture (or punishments that are as bad as torture)	♦ ♦	♦ ♦
XI [11]. That general warrants – whereby an officer or messenger may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons, not named, whose offences are not particularly described, and supported by evidence – are dangerous to liberty, and ought not to be granted. <i>(This right is guaranteed in Section 20 of the 1971 N.C. Constitution.)</i>	Warrants: Documents from a judge allowing the police to conduct a search or to arrest someone Seize (in this context): Arrest Offenses: Crimes	♦	♦

XIV [14]. That in all controversies at law respecting property, the ancient mode of trial, by jury, is one of the best securities of the rights of the people, and ought to remain sacred and inviolable. <i>(This right is guaranteed in Section 25 of the 1971 N.C. Constitution.)</i>	Controversies at law respecting property (in this context): Lawsuits (particularly those involving ownership) Ought to: Should Inviolable: Something that must be respected	♦	♦
XV [15]. That the freedom of the press is one of the great bulwarks of liberty, and therefore ought never to be restrained. <i>(This right is guaranteed in Section 14 of the 1971 N.C. Constitution.)</i>	Press: The news media (newspapers, magazines, etc.) Bulwarks: Protections	♦	♦
XVII [17]. That the people have a right to bear arms, for the defense of the State; and, as standing armies, in time of peace, are dangerous to liberty, they ought not to be kept up... <i>(This right is guaranteed in Section 30 of the 1971 N.C. Constitution.)</i>	Bear arms: Own firearms (guns) Standing armies: Permanent armies of full-time soldiers	♦	♦
XVIII [18]. That the people have a right to assemble together, to consult for their common good, to instruct their Representatives, and to apply to the Legislature, for redress of grievances. <i>(This right is guaranteed in Section 12 of the 1971 N.C. Constitution.)</i>	Apply to (in this context): Communicate with someone to ask for something Legislature: The legislative branch (in this case, the North Carolina General Assembly) Redress of grievances: To fix something that is wrong	♦	♦
XIX [19]. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences. <i>(This right is guaranteed in Section 13 of the 1971 N.C. Constitution.)</i>	Unalienable: Cannot be taken away Dictates: Commands Consciences: People's natural sense of what is right and wrong	♦	♦

Text from the 1776 North Carolina Declaration of Rights	Helpful Vocabulary	Civil Liberties Guaranteed	Where is the Right Guaranteed in the U.S. Bill of Rights? (Amendment # Only)
VII [7]. That, in all criminal prosecutions, every man has a right to be informed of the accusation against him, and to confront the accusers and witnesses with other testimony, and shall not be compelled to give evidence against himself. <i>(This right is guaranteed in Section 23 of the 1971 N.C. Constitution.)</i>	Criminal prosecutions: Criminal trials Compelled: Forced	♦ Right to notice of accusation ♦ Right to confront accusers and witnesses ♦ Right to be free from self-incrimination	♦ 6th ♦ 5th ♦ 5th
IX [9]. That no freeman shall be convicted of any crime, but by the unanimous verdict of a jury of good and lawful men, in open court, as heretofore used. <i>(This right is guaranteed in Section 24 of the 1971 N.C. Constitution—the word “freeman” changed to “person.”)</i>	Freeman: A person who is not enslaved Convicted: found guilty Heretofore: In the past	♦ Right to trial by jury in criminal cases	♦ 6th
X [10]. That excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted. <i>(This right is guaranteed in Section 27 of the 1971 N.C. Constitution.)</i>	Excessive: Extreme Cruel or unusual punishments: Torture (or punishments that are as bad as torture)	♦ Right to be free from excessive bail and fines ♦ Right to be free from cruel and unusual punishment	♦ 8th ♦ 8th
XI [11]. That general warrants – whereby an officer or messenger may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons, not named, whose offences are not particularly described, and supported by evidence – are dangerous to liberty, and ought not to be granted. <i>(This right is guaranteed in Section 20 of the 1971 N.C. Constitution.)</i>	Warrants: Documents from a judge allowing the police to conduct a search or to arrest someone Seize (in this context): Arrest Offenses: Crimes	♦ Right to be free from unreasonable searches and seizures	♦ 4th

XIV [14]. That in all controversies at law respecting property, the ancient mode of trial, by jury, is one of the best securities of the rights of the people, and ought to remain sacred and inviolable. <i>(This right is guaranteed in Section 25 of the 1971 N.C. Constitution.)</i>	Controversies at law respecting property (in this context): Lawsuits (particularly those involving ownership) Ought to: Should Inviolable: Something that must be respected	♦ Right to trial by jury in civil cases (lawsuits)	♦ 7th
XV [15]. That the freedom of the press is one of the great bulwarks of liberty, and therefore ought never to be restrained. <i>(This right is guaranteed in Section 14 of the 1971 N.C. Constitution.)</i>	Press: The news media (newspapers, magazines, etc.) Bulwarks: Protections	♦ Right to freedom of the press	♦ 1st
XVII [17]. That the people have a right to bear arms, for the defense of the State; and, as standing armies, in time of peace, are dangerous to liberty, they ought not to be kept up... <i>(This right is guaranteed in Section 30 of the 1971 N.C. Constitution.)</i>	Bear arms: Own firearms (guns) Standing armies: Permanent armies of full-time soldiers	♦ Right to bear arms	♦ 2nd
XVIII [18]. That the people have a right to assemble together, to consult for their common good, to instruct their Representatives, and to apply to the Legislature, for redress of grievances. <i>(This right is guaranteed in Section 12 of the 1971 N.C. Constitution.)</i>	Apply to (in this context): Communicate with someone to ask for something Legislature: The legislative branch (in this case, the North Carolina General Assembly) Redress of grievances: To fix something that is wrong	♦ Right to freedom of assembly ♦ Right to petition the government for a redress of grievance	♦ 1st ♦ 1st
XIX [19]. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences. <i>(This right is guaranteed in Section 13 of the 1971 N.C. Constitution.)</i>	Unalienable: Cannot be taken away Dictates: Commands Consciences: People's natural sense of what is right and wrong	♦ Right to free exercise of religion	♦ 1st