



MINNESOTA and the BILL OF RIGHTS

Marshall H. Tanick

Minnesota joined the rest of the nation in 1991 in commemorating the bicentennial of the Bill of Rights, the first ten amendments to the United States Constitution.

When ratified in 1787, the Constitution created a nation. But not until four years later did citizens of the new country receive their most precious rights and liberties. Over the years, the Bill of Rights has been lauded as the cornerstone of freedom in America.

Minnesota was not even a concept, let alone a state, when the Bill of Rights was enacted. More than half a century passed before the land was designated a territory in 1849. But Minnesota has played a special role in the development of the Bill of Rights. The 1931 U.S. Supreme Court ruling in *Near v. Minnesota* brought the first ten amendments closer to all Americans and changed the course of the Constitution. This case marked its 60th anniversary during the Bill of Rights bicentennial year.

Until the *Near* ruling, the ten provisions—ranging from the fundamental freedom against government interference with religious activities to the more ambiguous concepts forbidding cruel and unusual punishment and guaranteeing the right of privacy—were considered applicable only to actions by the federal government. The vast workings of state and local governments



were immune from the fundamental protections that the Bill of Rights accorded.

The *Near* case, which is ably chronicled in Fred Friendly's book, *Minnesota Rag*, started out as a seemingly insignificant dispute between a community pariah and Twin Cities power brokers. It concerned a 1925 Minnesota statute that characterized "malicious, scandalous, and defamatory" newspapers and other periodicals as "public nuisances" and authorized each county attorney or any "reputable citizen" to seek an injunction to close them down. The legislation was used most forcefully against the *Saturday Press*, the Minneapolis newspaper of Jay M. Near, an unabashed bigot. The *Press* gleefully attacked and often slandered elected public figures, the media, organized-crime figures, racial and religious minorities, and other individuals and social institutions.¹

In 1927 Hennepin County Attorney Floyd B. Olson secured an injunction from district court under the public nuisance statute on grounds that the *Saturday Press* was malicious, scandalous, and defamatory. Two years later the Minnesota Supreme Court upheld the injunction against the publication.

The *Near* case wound its way up to the U.S. Supreme Court in 1930.² On June 1, 1931, the Court ruled that the Minnesota statute authorizing injunctions against offensive publications violated the First

¹Fred Friendly, *Minnesota Rag: The Dramatic Story of the Landmark Supreme Court Case that Gave New Meaning to Freedom of the Press* (New York: Random House, 1981); Minnesota, *Session Laws*, 1925, p. 358-60.

²*J. M. Near v. State of Minnesota*, 283 U.S. 697 (1931).

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the members of the "Japanese gang" that I joined. And each week, I was given a list of paper to each member of the Gang. Every 1 month, there was a meeting.

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Minnesota Cases that Helped Shape the Constitution

Minnesota has contributed substantially to the development and evolution of personal rights and privileges under the U.S. Constitution. Here are ten other important Minnesota cases involving the Bill of Rights.

MINNEAPOLIS & ST. PAUL Ry. CO. v. BOMBOLIS (1916): The U.S. Supreme Court rules that the Seventh Amendment's requirement of a unanimous jury verdict in civil trials applies only to federal court cases, not to state court litigation.

HEFFRON v. INTERNATIONAL SOCIETY OF KRISHNA CONSCIOUSNESS, INC. (1981): The U.S. Supreme Court upholds restrictions limiting distribution of written circulars about commercial, political, and religious issues at the Minnesota State Fair.

MUELLER v. EVANS (1983): The U.S. Supreme Court upholds the Minnesota parochial-aid law allowing tax deduction for payments for school tuition, textbooks, and transportation.

MINNEAPOLIS STAR & TRIBUNE v. MINNESOTA COMMISSIONER OF REVENUE (1983): Minnesota's special "use tax," imposed on the state's largest newspaper, is struck down by the Supreme Court as a violation of freedom of the press.

STANLEY v. MCGRATH (1983): A measure restricting financing of the *Minnesota Daily*, the University of Minnesota student newspaper, because of a controversial humor edition is stricken by the Eighth Circuit Court of Appeals as a violation of the First Amendment.

MINNESOTA v. MURPHY (1984): The Supreme Court allows statements made by a criminal defendant to a probation officer to be used as evi-

dence against the individual in a subsequent criminal proceeding for an offense unrelated to the reason for probation.

ANDERSON v. CREIGHTON (1987): The U.S. Supreme Court entitles a St. Paul family to claim damages from the FBI for conducting an improper, warrantless search of their home in violation of the Fourth Amendment.

MINNESOTA v. OLSON (1990): The U.S. Supreme Court reverses the murder conviction of a Minneapolis man because of a violation of the Fourth Amendment right against unreasonable search and seizure, resulting from arrest while the suspect was hiding in a friend's northeast Minneapolis apartment.

HODGSON v. STATE (1990): The Minnesota law requiring both parents to be notified for a minor to obtain an abortion is stricken by the Supreme Court, but a statutory provision is upheld requiring judicial approval in the absence of parental notification and consent.

STATE v. HERSHBERGER (1990): The Minnesota Supreme Court upholds Amish farmers' refusal on religious grounds to post state-prescribed warning signs on slow-moving wagons using public roads. This ruling construes the freedom of the press provision of the state constitution more broadly than that of the federal Constitution.

Nonetheless, *Near* ranks high in the pantheon of landmark legal decisions in the history of this country. Without it, many of the substantial advances made in human and civil rights over the past six decades would not have occurred. Because of it, the principal rights and freedoms of Americans do not differ across state or local boundary lines. *Near* gave new and significant

meaning to the phrase "making a federal case" out of a legal dispute. It is fitting and proper to note its 60th anniversary as Minnesota unites with the rest of the nation in marking the bicentennial of the Bill of Rights.

The illustration on p. 324 is from the MHS collections.



Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be

deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.



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