

NORTH CAROLINA'S COPY OF THE BILL OF RIGHTS, COURTESY OF THE STATE ARCHIVES OF NORTH CAROLINA

Congress of the United States,

begin and held at the City of New York, on

Wednesday the first of September one thousand seven hundred and ninety nine.

The Conventions of delegates of the States, at the time of their adoption of the Constitution, respectively authorized and directed their respective legislatures to send to the Congress of the United States, a copy of their articles, when not previously sent to the Convention, and to propose amendments to the said Constitution.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the following articles, amendments to the Constitution of the United States, and a copy of their articles, when not previously sent to the Convention, and to propose amendments to the said Constitution, be transmitted to the States, in order to be ratified or rejected by the legislatures, conventions, or assemblies of the States, in conformity with the said Constitution.

- Article the First. After the first enumeration required by the first article of the Constitution, there shall be a new enumeration made, within three years after the first meeting of the Congress, and thereafter every tenth year, by which the addition or subtraction of Representatives may be determined, but no increase shall exceed one Representative for every thirty thousand persons.
- Article the Second. The House of Representatives shall be composed of Members chosen every second year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.
- Article the Third. Congress shall, within the next Session, after the first meeting, provide for the choice of the first meeting of the House of Representatives, and the first meeting of the Senate, and the first meeting of the President of the United States.
- Article the Fourth. 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.
- Article the Fifth. 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 when the State makes no provision therefor; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall a person be compelled in any criminal case to be a witness against himself, nor shall a person be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
- Article the Sixth. In all criminal prosecutions, the accused shall enjoy the right of a speedy and public trial, by an impartial jury of the State and district where 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 witnesses, and to have the assistance of counsel for his defence.
- Article the Seventh. In suits at law where the value in controversy shall exceed five 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 as to matters of law.
- Article the Eighth. Excessive bail shall not be required, excessive fines imposed, nor cruel and unusual punishments inflicted.
- Article the Ninth. This enumeration in the Constitution, shall not be construed to deny or disparage those retained by the People.
- Article the Tenth. All powers not delegated to the United States, nor prohibited to the States, are reserved to the States respectively, or to the People.

Bringing Home the Bill of Rights

BY PAUL M. NEWBY

I am honored to be the 30th chief justice of the state of North Carolina and to have served on my state's highest court since 2004. I've also practiced law, taught law school courses, written a book, and received numerous awards. But the professional experience I most enjoy recounting is the story of the return of North Carolina's original copy of the Bill of Rights to its rightful owner. ▶

*The undercover
FBI agent again
reached inside
his coat pocket.
But instead of
pulling out the
check, he handed
the attorney the
seizure warrant.*

It's 1865. Imagine you're a Union soldier. Your assignment has been to guard the state capitol in Raleigh, N.C. The war is over, and you're told your troop is heading home. You search the capitol for a souvenir of your time in the war. Somehow you come upon North Carolina's original copy of the federal Bill of Rights. You recognize some signatures, maybe that of Vice President John Adams, on a particularly official-looking parchment. So you roll it up, stick it in your backpack, and carry it home to Tippecanoe, Ohio — where you sell it to an Indiana businessman named Charles Shotwell for a five-dollar gold piece. Thus begins the document's 138-year saga.

Eventually, during the turmoil of Reconstruction, officials in North Carolina learned that a businessman in Indiana had the state's original copy of the Bill of Rights, and they wanted it back. North Carolinians have a particular fondness for the Bill of Rights. In 1788, the state held its convention considering ratification of the federal constitution — and rejected it. North Carolina would not support ratification unless it contained amendments protecting fundamental individual rights and freedoms.

To win this support, James Madison drafted — and Congress approved — the Bill of Rights. There were 14 original copies, one each for the federal government, the 11 states, and the two holdouts — North Carolina and Rhode Island. President George

Washington sent a letter with an original copy of the proposed amendments to each. Upon receipt, North Carolina held a second convention where, on November 21, 1789, the delegates ratified the Constitution, making North Carolina the 12th state.

So when North Carolina officials heard their copy of the Bill of Rights was in Indiana, they wanted it back. North Carolina's secretary of state wrote to Indiana's secretary of state to ask for help, but the effort was fruitless.

Time passed. On behalf of the then-unidentified Shotwell, a third party wrote to North Carolina officials about the return of the document for a finder's fee. In reply, the officials noted that the document was considered stolen and that tax dollars couldn't be used to purchase stolen property. Shotwell willed the document to his

son, who then passed it to his two daughters. More time passed.

In the 1990s, the daughters attempted to have the document sold by Sotheby's, which declined because of North Carolina's claim.¹ Ultimately, the daughters sold the document for \$200,000 to an antique dealer, who hired a lawyer to find a buyer.

The lawyer asked North Carolina's secretary of cultural resources whether the state would pay the \$10 million asking price. The lawyer's letter threatened that if an attempt were made to discover who had the document or where it was located, it would be destroyed or taken overseas. Eventually the secretary responded, again saying that the state considered the document to be stolen property and that tax dollars could not be used to purchase stolen property.

In March 2003, then-Gov. Ed Rendell of Pennsylvania called then-North Carolina Gov. Mike Easley to tell him that the new National Constitution Center in Philadelphia was seeking a centerpiece and had been given the opportunity to buy an original copy of the Bill of Rights for \$5 million. The problem was that the offered copy appeared to be North Carolina's. Gov. Rendell proposed a deal to give North Carolina limited access with the document residing in the National Constitution Center — but, again, North Carolina wasn't buying.

But Gov. Easley also wasn't giving up. He sent representatives from his

staff, the state attorney general's office, and the state archives to the United States attorney's office for the Eastern District of North Carolina. Then-U.S. Attorney Frank Whitney asked me, a then-assistant United States attorney, to meet with the state officials. The officials wondered if there were a way to get the document back home to North Carolina. We hatched a plan.

The document was taken without authority and transported across state lines — in other words, an interstate transportation of stolen property. I would prepare an affidavit setting out what we knew of the document's history and seek a seizure warrant. At that time, we did not know the identity of the Shotwells or the antique dealer, but we knew the attorney negotiating the sale to the museum was the same attorney who had written the threatening letter to the secretary of cultural resources in the 1990s. It was clear the document would be in jeopardy if North Carolina's involvement were discovered.

Gov. Rendell sought and obtained the participation of the National Constitution Center officials. They agreed that the museum would appear to proceed with the purchase. An FBI agent was introduced into the negotiations, posing as a philanthropist who would fund the purchase. The agent negotiated the price down to \$4 million and set the closing to occur in five days.

On the day of the closing, the seller's attorney arrived and demanded to see

the \$4 million bank check. The undercover FBI agent reached into his pocket and handed it to the attorney. Once satisfied with the check's authenticity, the attorney returned it to the agent and called his courier to deliver the document. The courier arrived with a large box containing the framed parchment. Now it was our turn to authenticate.

First, our experts determined it was an original copy of the Bill of Rights. But was it North Carolina's? At the time, three other states were also missing their original copies of the Bill of Rights — New York, Georgia, and Pennsylvania. But we knew that North Carolina's copy was uniquely marked: When it was received in 1789 by the General Assembly, the docketing clerk made notations on the back edge. The experts removed a portion of the frame's backing and saw the notation.

"This is it," they said. The undercover FBI agent again reached inside his coat pocket. But instead of pulling out the check, he handed the attorney the seizure warrant.

Of course, a court battle over ownership ensued.² But by 2008, an order was entered ending all outstanding claims and declaring North Carolina the exclusive owner of its original copy of the Bill of Rights. I still enjoy visiting our state archives to see it — now restored and kept safely in a vault. It reminds me of our state's longstanding commitment to individual liberties — and of my own humble role in a sting operation for the history books.



PAUL M. NEWBY is chief justice of the Supreme Court of North Carolina. He first was elected to the Supreme Court as associate justice in 2004 and was elevated to chief justice in the 2020 election. He teaches courses on state constitutional law and appellate practice at Campbell University School of Law and is a member of the Bolch Judicial Institute Advisory Board.

This rendition of the story is from the author's recollection from his own involvement. For further information or for other accounts of this story, please see the additional resources below.³

¹ See *State v. West*, 293 N.C. 18, 32 (1977) (holding that absent an authorized transfer, state property continues to belong to the state).

² See generally *In re Matthews*, 395 F.3d 477 (4th Cir. 2005).

³ Hayley Fowler, *How NC Pried Its Long-Lost Bill of Rights from 'Antiques Roadshow' Dealer 18 Years Ago*, NEWS & OBSERVER (Mar. 19, 2021), <https://www.newsobserver.com/news/state/north-carolina/article250028079.html>; Troy L. Kickler, *Ratification Debates*, N.C. HISTORY PROJECT (last visited: Mar. 28, 2024), <https://northcarolinahistory.org/encyclopedia/ratification-debates/>; Allen G. Breed, *A More Perfect Reunion: Stolen Bill of Rights Returned to N.C.*, WASH. POST (Aug. 13, 2005), <https://www.washingtonpost.com/archive/lifestyle/2005/08/14/a-more-perfect-reunion-stolen-bill-of-rights-returned-to-nc/5d59a7c7-6262-4a2f-a20e-87f9e277aa18/>.