As North Carolinians suffer the psychological and economic consequences of COVID-19 and various state and local government issued shut down orders, more people are beginning to ask questions about their constitutional rights. Most of those questions have centered around religious, speech and assembly rights. But those aren’t the only rights North Carolinians should reflect on.

Consider Article I, section 1 of the North Carolina Constitution:

We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness. (Emphasis added)

This section of the North Carolina Constitution did not appear in our first state constitution in 1776. It was added in 1868 when North Carolina adopted a new constitution in the wake of the Civil War. This section closely follows the wording of the Declaration of Independence, but it goes further by affirming the people’s right to “the enjoyment of the fruits of their own labor.”

This addition was probably intended to further underscore the prohibition on slavery found at Article I, section 17.

Most rights listed in Article I, section 1 have prompted little to no litigation. The fruits of their labor clause is the exception. Indeed, several constitutional challenges have addressed the scope and import of the right to the fruits of their labor. The bulk of these cases were challenges to occupational licensing. See, e.g., State v. Balance, 229 N.C. 764, 772 (1949) (licensure requirement for photographers “violates the constitutional guaranties securing to all men the right to ‘liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness’ and
providing that no person is to be deprived of ‘liberty or property, but by the law of the land.’”)

The North Carolina Supreme Court wrote of the people’s right to “the enjoyment of the fruits of their own labor”:

The basic constitutional principle of personal liberty and freedom embraces the right of the individual to be free to enjoy the faculties with which he has been endowed by his Creator, to live and work where he will, to earn his livelihood by any lawful calling, and to pursue any legitimate business, trade or vocation. This precept emphasizes the dignity, integrity and liberty of the individual, the primary concern of our democracy. It is the antithesis of the totalitarian concept of government.


The North Carolina Supreme Court described the Fruits of Their Labor Clause as a “right to earn a livelihood.” In *D & W, Inc. v. Charlotte*, 268 N.C. 577 (1966), restaurant owners challenged certain laws related to alcohol sales. The Supreme Court upheld the challenged law but in doing so implicitly recognized a constitutional right to earn a living from operating a restaurant. The Court could have held plaintiffs did not have a constitutional right to do so, but it didn’t. Instead, the Court wrote, “plaintiffs’ constitutional right to earn a livelihood by engaging in the restaurant business is not infringed by either the Turlington Act or the ABC Act.” *Id.* at 584.

Another (and more salacious) case comes from the North Carolina Court of Appeals. In *Treants Enterprises, Inc. v. Onslow County*, 83 N.C. App. 345 (1986), the Court of Appeals considered a challenge to an Onslow County ordinance regulating businesses which provided companionship services. Plaintiff operated “Movie Mates,” which offered male or female companions to view videos in private rooms for a fee. The challenged ordinance imposed strict licensure and record keeping requirements. After detailing the county’s justifications for the ordinance, the Court summarized its purpose as “discouraging the practice of prostitution.” *Id.* at 355.

At the outset of its analysis, the Court of Appeals explained:

> It has become axiomatic that "[a] State cannot under the guise of protecting the public arbitrarily interfere with private businesses or prohibit lawful occupations or impose unreasonable and unnecessary restrictions on them." *Hartford Accident & Indemnity Co. v. Ingram, Com'r of Insurance*, 290 N.C. 457, 471, 226 S.E. 2d 498, 507 (1976); *Roller v. Allen*, 245 N.C. 516, 525, 96 S.E. 2d 851, 859 (1957). *See also In re Aston Park Hospital*, 282 N.C. at 550-51, 193 S.E. 2d at 735. Article I, Section 1 of our state constitution declares that among the inalienable rights of the people are life, liberty, the enjoyment of the fruits of their
own labor, and the pursuit of happiness. This provision creates a right to conduct a lawful business or to earn a livelihood that is "fundamental" for purposes of state constitutional analysis.

Id. at 354.

Although recognizing that preventing prostitution is a valid local government interest, the Court nevertheless invalidated the ordinance explaining:

However, while regulation of businesses known to be associated with prostitution may reasonably be expected to deter that activity, the breadth of the "companionship" ordinance goes far beyond what is necessary to accomplish that objective.

83 N.C. at 355 (emphasis added).

Treats relied on the overbreadth of the ordinance at issue, which interfered with not only the plaintiff’s business but unquestionably legitimate businesses like companions for the elderly or sick. Still, Treats is significant for at least two reason. First, Treats recognized that Article I, sec. 1 “creates a right to conduct a lawful business or to earn a livelihood that is ‘fundamental’ for purposes of state constitutional analysis. Id. at 354. Second, Treats reinforces the long standing principal that, no matter how valid a government objective is, limitations on fundamental rights cannot “go[] beyond what is necessary to accomplish that objective.” Id. at 355.

Today we see executive orders and county proclamations closing or severely restricting various businesses. These undoubtedly infringe on North Carolinians’ right to earn a livelihood. Some of these restrictions would probably pass muster in a constitutional challenge. Some might not. No right, not even the inalienable right to enjoy the fruits of one’s labor, is absolute. But, our rights aren’t written in disappearing ink, vanishing at the issuance of a government order.

If we as a State don’t start discussing and debating the constitutional limitations on government’s power, we will never know how far is too far. If we do not remember the Constitution’s emphasis on “the dignity, integrity and liberty of the individual” as “the antithesis of the totalitarian concept of government,” we risk liberty itself.

About the Author

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