

TBI & CONSTITUTIONAL AMENDMENT ISSUES

1st Amendment:

“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.”

The right to exercise your Religious Practice Freedom. You have the right to abstain from Medical Treatment if it conflicts with your Religious Beliefs. See *Cantwell*.

5th Amendment:

“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 offense 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.”

The Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures. Violations of Institutionalization: Personal Liberty (falsely incarcerated in a Mental Institution); Freedom of Movement Involuntary commitment); Independent Living, the right to live in the community rather than isolation and institutionalization.

9th Amendment:

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

The 9th Amendment was James Madison’s attempt to ensure that the Bill of Rights was not seen as granting to the people of the United States only the specific rights it addresses. The Amendment includes the “Right” to be free from DISCRIMINATION, as well as the “Right” to Medical Care

14th Amendment:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The Right to EQUAL PROTECTION under the Law.

- Color of Law – 18 U.S.C Code §242 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States. For the purpose of Section 242, acts under "color of law" include acts not only done by federal, state, or local officials within their lawful authority, but also acts done beyond the bounds of that official's lawful authority, if the acts are done while the official is purporting to or pretending to act in the performance of his/her official duties. Persons acting under color of law within the meaning of this statute include police officers, prisons guards and other law enforcement officials, as well as judges, care providers in public health facilities, and others who are acting as public officials.

- **Protected Disability - *Americans with Disabilities Act 1990 Section 12101 (Section 2)***
Traumatic Brain Injury is a protected disability as “Intellectual Disability”. (Intellectual Disability was formerly mental retardation).
Several types of brain damage can lead to an intellectual disability These are: 1) Traumatic Brain Injury (TBI), 2) congenital brain damage, and 3) progressive brain damage. Traumatic Brain Injuries (TBI) are injuries to the brain that occur after birth). Many brain injuries are preventable. These injuries may be caused by an auto accident, a blow to the head, or a fall.
- **Right to Refuse Mental Illness Care**
“Adults in Virginia, including those in state hospitals, are generally assumed to be competent to make their own decisions such as whether to take medication. This means that as a competent adult, you can refuse to take medications even in the state hospital.” (VA Disability Law Center)
- **Right to Access TBI Medical Care:**
Medical Necessity -defines “medically necessary services” as those services that are covered under the State Plan, and are reasonable and necessary for the diagnosis or treatment of an illness or injury, or to improve the functioning of a malformed body member.

A TBI is a ripping, tearing, and shearing of brain tissue. It is a physical disability with neurological consequences in information processing, memory loss, concentration, speech, and motor control. Psychiatry is not a treatment for the loss of neural network or neurons. Special Neurological Treatment is required to speed rehabilitation.

Americans with Disabilities Act of 1990 “Intellectual Disability” Rights

“(a) Findings. - The Congress finds that-

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;”