



The Due Process Advocate

*"No Person shall be . . . deprived of life, liberty, or property without the due process of law"
- Fifth Amendment of the United States Constitution*

Edward H. Smith, Publisher

Commentaries by Robert B. Tobiasz

DUE PROCESS V. ARBITRARY RULE

The Due Process Advocate was originally created and published in response to due process abuses experienced by thousands of homeowners in the wake of the national housing crisis. However, due process abuses have been spreading like wild-fire in other areas as well; as the right to be heard and fair legal proceedings are rapidly being sacrificed for the advantage and benefit of a host of political agendas separate and apart from those related to the mass-foreclosures in the housing arena. Below are two educational commentaries, both written by Robert B. Tobiasz, that are continually published by The Due Process Advocate to inform readers of the critical confrontation between "due process v. arbitrary rule;" the resolution of which will dramatically effect the future well-being of all Americans. Bob Tobiasz is a graduate of both Boston College and the University of Chicago. He has an extensive background in business management and financial analysis; including several years as a high-level corporate executive, a real estate investor and manager, a venture capital consultant, and a private investor and entrepreneur. He is a life-long due process advocate.

EVERY AMERICAN SHOULD UNDERSTAND WHAT "DUE PROCESS OF LAW" MEANS FOR US

By Bob Tobiasz

As Americans, we are entitled to what is known as "due process of law." Specifically, the Fifth and Fourteenth Amendments to the U.S. Constitution guarantee "due process of law" to each of us.

What does "due process of law" actually mean to each of us? Simply put, "due process of law" means that we will be given notice of any legal proceedings, that we will be afforded the opportunity to present our case at such proceedings and that such proceedings will be fair before any government attempts to take away our life, liberty and/or property. Inherent in our "due process of law" constitutional guarantee is that any law, to which we are subject, shall not be unreasonable, arbitrary and/or capricious.

While many of us think of "due process of law" in the context of criminal proceedings (i.e. the various legal rights we have if we are charged with a crime), "due process of law" is also applicable to civil proceedings (collection actions, foreclosures, evictions, divorces, bankruptcies, etc.) wherein confiscation of our property (real estate, businesses, cash, stocks, bonds, etc.) is being threatened.

Why is "due process of law" more important today than ever? Firstly, because without a thorough understanding of our "due process of law" rights, we will be unable to properly defend ourselves in criminal and/or civil proceedings. Secondly, absent a swift and far-reaching restoration of fundamental due process rights at all levels of local, state and federal governments, America's middle class will disappear as the rich get richer and the poor get poorer.

In closing, I'd like to remind you of the June 15, 1215 words of the Magna Carta, Chapter 29, from which our "due process of law" rights were derived:

"No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land."

WE MUST FIGHT TO ELIMINATE "ARBITRARY RULE" OR WITNESS
THE DEMISE OF THE UNITED STATES OF AMERICA AS WE CURRENTLY KNOW IT

By Bob Tobiasz

Several months ago, I wrote an article for The Due Process Advocate entitled "Every American Should Understand What Due Process of Law Means for Us." In that article, I pointed out the following:

1. "due process of law means that we will be given notice of any legal proceedings, that we will be afforded the opportunity to present our case at such proceedings and that such proceedings will be fair before any government attempts to take away our life, liberty and/or property;" and
2. "inherent in our due process of law constitutional guarantee is that any law, to which we are subject, shall not be unreasonable, arbitrary and/or capricious."

This article will focus on the word(s) "arbitrary" (underscored above) or "arbitrary rule." What do these words mean? In simplest terms, they mean that any laws and/or rules to which we are subject must not be random, subjective, uninformed, illogical, haphazard, erratic, frivolous, inconsistent, irrational, irresponsible, unreasonable and/or unaccountable. Conversely, it means that any laws and/or rules to which we are subject must be consistent, dependable, logical, reasonable, rational, reasoned and/or supported.

When a decision is arbitrary, it means that the decision is not based on judgment or reason but instead on discretion without any regards to standards or rules. It implies a disregard of the evidence. In many circumstances, the term "arbitrary" implies an aspect of bad faith and it sometimes may be taken as despotic or tyrannical.

Why, as Americans, should we care about whether decisions by our federal and/or state courts and/or administrative agencies are "arbitrary?" Well, simply put, unless we care enough to dispute and fight to overturn "arbitrary decisions" by those courts and/or administrative agencies, we can expect the following to occur in the United States:

1. continued enrichment of the wealthy and politically well-connected individuals to the detriment of all others;
2. a complete elimination of the middle class way of life on which our country was built; and
3. an eventual complete loss of our "due process of law."

How do we, as Americans, fight to overturn "arbitrary" rules and/or decisions? I suggest that we consider the following steps:

1. In federal and/or state court proceedings, ask for "findings of fact" and "rulings of law." This is probably the best way to keep judges honest;
2. Also, in federal and/or state court and/or agency proceedings, make sure that, within financial reason, you appeal any decisions to higher courts and/or agencies. Learn the appeal process and use it to your advantage;
3. Since "arbitrary rule" flourishes well in environments which are void of practical checks and balances, you should support grass roots efforts to keep the system honest;
4. Do your homework! Support only those candidates at all levels of government who have demonstrated, by their actions, a true respect for "due process of law" for all people, not just the wealthy and/or politically well-connected.

At times, fighting to overcome "arbitrary rule" seems like an insurmountable obstacle. Nonetheless, the fight must continue if we want to maintain our way of life and, simultaneously, make the United States a positive example for the rest of the world.

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