

Bill of Attainder Targeting Josiah Phillips

After the Declaration of Independence and departure of Lord Dunmore, Virginia's last royal colonial governor, the situation in Princess Anne County normalized. Orders to evacuate Norfolk and Princess Anne Counties proved unnecessary and citizens remained in place in those areas. Patriot militia patrolled the coasts, Kemp's Landing had permanent defenses, and, for the most part, Patriots and remaining Loyalists lived in relative peace.

In 1777, Josiah Phillips, characterized as a Tory laborer from Lynnhaven Parish in Princess Anne County, began a series of terror raids across southeastern Virginia against known Patriots. Phillips and his band of ruffians managed to avoid capture by law enforcement for many months. A Bill of Attainder was written by Thomas Jefferson, approved by the General Assembly, and issued by Governor Patrick Henry in June 1778. The Bill of Attainder stated, "It shall be lawful for any person with or without orders, to pursue and slay the said Josiah Philips." A Bill of Attainder (also known as an act of attainder, writ of attainder, or bill of pains and penalties) is an act of a legislature declaring a person or group of people guilty of some crime and providing a punishment, often without a trial.

Phillips was soon captured by Princess Anne County militia Captain Amos Weeks. Phillips and some accomplices were sent to Williamsburg under "strong and sufficient guard." Phillips was tried for robbery, which at that time was a capital offense. He was found guilty, and sentenced to be hanged. The *Virginia Gazette* reported Phillips' execution as taking place on December 4, 1778. Phillips was tried for robbery even though the Bill of Attainder called for his immediate execution upon capture. The trial was probably driven by a reluctance to enact what was seen as a violation of the rule of law. The lack of fair legal practices was a key point in the Declaration of Independence. Execution for a conviction for a regular offense was more palatable.

A decade later, at the Constitutional Convention, Virginia Governor Edmund Randolph commented on the Phillips case as "horrid" and pleaded for the Convention to not "passively permit a repetition of it." Ultimately the Convention included in the Constitution the prohibition of such legislative acts. Article 1, Section 9, Clause 3 states: "*No Bill of Attainder or ex post facto Law shall be passed.*" This clause prohibits Congress from passing legislation that inflicts punishment on a named individual or a clearly identifiable group without a judicial trial. Thus, an important legal right guaranteed to all Americans had its origin in Princess Anne County.