

**Theories for Construing State Constitutions
Similarly Worded Provisions**

But first... a wrap-up on

Federal and State Power

Spending Power, Briefly

NFIB v. Sebelius

567 U.S. 519 (2012)

Anti-commandeering principle

Printz v. United States

521 U.S. 898 (1997)

Other important cases:

New York v. United States (1992)

Murphy v. NCAA (2018)

Federal Limitations on State Power

Excerpt from Article VI:

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution

Federal Limitations on State Power

U.S. Term Limits Inc. v. Thornton

514 U.S. 779 (1995)

Article I. §2 cl. 2 of U.S. Constitution

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Article I. §3 cl. 3 of U.S. Constitution

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

Amendment 73 to Arkansas State Constitution

(a) Any person having been elected to three or more terms as a member of the United States House of Representatives from Arkansas shall not be certified as a candidate and shall not be eligible to have his/her name placed on the ballot for election to the United States House of Representatives from Arkansas.

(b) Any person having been elected to two or more terms as a member of the United States Senate from Arkansas shall not be certified as a candidate and shall not be eligible to have his/her name placed on the ballot for election to the United States Senate from Arkansas.

10th Amendment U.S. Constitution

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Federal Limitations on State Power

Gregory v. Ashcroft

501 U.S. 452 (1991)

Age Discrimination in Employment Act (Federal Law)

Makes it unlawful for an “employer” “to discharge any individual” who is at least 40 years old “because of such individual’s age.” The term “employer” is defined to include “a State or political subdivision of a State,” but exempts as “employees” persons appointed “at the policymaking level.”

Theories for Construing State Constitutions Similarly Worded Provisions

Federal Provision

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.

State Provision

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.

What are some reasons to follow the U.S. Supreme Court's interpretation of a similarly worded provision?

- Clear rules & uniformity
- Judicial efficiency (respect for ruling, research, interpretation)
- Federal level has broader or deeper consideration
- If we've been deferring, don't rock the boat
- Authority and primatur of THE Constitution (difficult to change)
- Federal rule already is the rule and you can see what the effect is
- Theoretically greatest legal minds, certainly have high-powered litigants and lots of attention

What are some reasons *not* to follow the U.S. Supreme Court's interpretation of a similarly worded provision?

- State provision origins and history are different
- Different roles of state vs. federal (smaller group vs. larger group w/ more in-group differences)
- Structural reasons, relationship to other clauses
- Genuine differences of interpretation - Supreme Court just got it wrong?
- Flexibility for states, states as laboratories of democracy
- Federal right might be stagnant b/c do they even have any cases?
- Independent sovereigns

Four related cases

Sitz v. Department of State Police

506 N.W.2d 209 (Mich. 1993)

State v. Hempele

576 A.2d 793 (N.J. 1990)

State v. Wright

961 N.W.2d 396 (Iowa 2021)

Blum v. Merrell Dow Pharmaceuticals Inc.

626 A.2d 537 (Penn. 1993)

Sitz v. Department of State Police

506 N.W.2d 209 (Mich. 1993)

U.S. Constitution, Fourth Amendment

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.

Michigan Constitution, Article 1, § 11

The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation. The provisions of this section shall not be construed to bar from evidence in any criminal proceeding any narcotic drug, firearm, bomb, explosive or any other dangerous weapon, seized by a peace officer outside the curtilage of any dwelling house in this state.

U.S. Supreme Court Analysis

In sum, the balance of the State's interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon individual motorists who are briefly stopped, weighs in favor of the state program. We therefore hold that it is consistent with the Fourth Amendment.

State v. Hempele

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New Jersey Constitution, Article I, Paragraph 4

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 warrant shall issue except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the papers and things to be seized.

State v. Wright

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Iowa Constitution, Article I, § 8

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

Blum v. Merrell Dow Pharmaceuticals Inc.

626 A.2d 537 (Penn. 1993)

U.S. Constitution, Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein 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 obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Pennsylvania Constitution, Article I, §6

Trial by jury shall be as heretofore, and the right thereof remain inviolate. The General Assembly may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case. Furthermore, in criminal cases the Commonwealth shall have the same right to trial by jury as does the accused.

Four-Part Test

- 1) text of the Pennsylvania Constitutional provision;
- 2) history of the provision, including Pennsylvania case law;
- 3) related case law from other states;
- 4) policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence.