

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

Federal and State Power Recap

Federal power - limited and enumerated

State power - open ended (but can be preempted by federal law)

Major powers of federal government?

Exclusive state powers?

Anti-commandeering

Federal limits on state power

Similarly Worded Provisions

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

Sitz v. Department of State Police

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

State v. Hempele

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

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.

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

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

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.

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.

Cases - Similarly Worded Provisions

Sitz v. Department of State Police

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Cases - Differently Worded Provisions

Racing Association of Central Iowa v. Fitzgerald

675 N.W.2d 1 (Iowa 2004)

State v. Brown

930 N.W.2d 840 (Iowa 2019)

Racing Association of Central Iowa v. Fitzgerald

675 N.W.2d 1 (Iowa 2004)

U.S. Constitution, Fourteenth Amendment

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 ... deny to any person within its jurisdiction the equal protection of the laws.

Iowa Constitution, Article 1, § 6

All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not apply equally to all citizens.

State v. Brown

930 N.W.2d 840 (Iowa 2019)

**State court rulings that address
both federal and state bases for
decision**

Ohio v. Robinette

653 N.E.2d 695 (Ohio 1995)

519 U.S. 33 (1996)

685 N.E.2d 762 (Ohio 1997)

Important Precedent:

Michigan v. Long

463 U.S. 1032 (1982)

Compare & Contrast

Racing Association of Central Iowa v. Fitzgerald

675 N.W.2d 1 (Iowa 2004)

Ohio v. Robinette

685 N.E.2d 762 (Ohio 1997)

Sequencing

In what order should a state court resolve state and federal constitutional claims?

1. “Primacy” approach
2. “Dual sovereignty” approach
3. “Interstitial” or “Secondary” approach

1. How are students using GAI in our classrooms?
2. How else might (or even should) they be using it? How should professors respond?
3. What are the implications for legal education and what are the best policies to regulate it?