

# Unique State Rights

# Slight reading assignment change

Added section on judicial power related to standing and advisory opinions:

Pgs. 957-960, 978-988

# Unique State Rights

- Privacy
- Free speech
- Crime victims' rights
- Right to hunt and fish
- Natural or inalienable rights

# *Free Speech*

# **Fashion Valley Mall v. NLRB**

172 P.3d 742 (Cal. 2007)

# Compare

“Congress shall make no law ... abridging the freedom of speech, or of the press...” U.S. Const. Am. 1.

“Every person may freely speak, write and publish his or her statements on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.”  
Cal. Const., Art. I, § 2.

Rule is viewpoint neutral but not content neutral.

What's the difference?

# Justify the difference under *Fashion Valley*

Protestors want to crowd out the entrance to a store, intimidating people from shopping there and costing the store \$10,000 in revenue. It is constitutional for Fashion Valley to force the protestors to protest elsewhere.

Protestors want to distribute leaflets near the store, discouraging people from shopping there and costing the store \$10,000 in revenue. It is unconstitutional for Fashion Valley to force the protestors to protest elsewhere.

# State v. Stummer

194 P.3d 1043 (Ariz. 2008)

“Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.” Ariz. Const. Art. II, § 6.

What is “secondary effects” regulation of free speech?

## *State v. Stummer* test for constitutionality of content-based secondary effects regulation

Phase One: Does intermediate scrutiny apply?

1. Challenger demonstrates that provision interferes with free speech.
2. To qualify for intermediate scrutiny, State must demonstrate regulation directed at secondary effects, not speech suppression.

Phase Two: To survive intermediate scrutiny, state must show regulation does not sweep too broadly. Court must examine

1. the importance of the government interest
2. whether regulation furthers that interest
3. whether the regulation unduly burdens speech

# *Crime Victims' Rights*

Common goals:

- restitution for victims
- ensure legal system is sensitive to victim's distress and privacy
- protect victims from intimidation
- encourage and include victims' participation in prosecution

# State v. Strom

921 N.W.2d 660 (N.D. 2019)

“[T]he court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay...” Section 12.1-32-08(1), N.D.C.C.

A crime victim has the “right to full and timely restitution in every case and from each offender for all losses suffered by the victim as a result of the criminal or delinquent conduct.” Art. I, § 25(1)(n)  
North Dakota Const.

# State v. Damato-Kushel

173 A.3d 357 (Conn. 2017)

“[I]n all criminal prosecutions, a victim shall have the right to attend the trial and all other court proceedings the accused has the right to attend, unless such person is to testify and the court determines that such person’s testimony would be materially affected if such person hears other testimony.” Am. XXIX(b), Conn. Const.

# *Right to Hunt and Fish*

# Cabot v. Thomas

514 A.2d 1034 (Vt. 1986)

“The inhabitants of this State shall have liberty in seasonable times, to hunt and fowl on the lands they hold, and on other lands not enclosed, and in like manner to fish in all boatable and other waters (not private property) under proper regulations, to be made and provided by the General Assembly.” Ch. II, § 39, Vermont Const.