

Justiciability in State Courts

- Standing
- Advisory Opinions

Standing

Gregory v. Shurtleff

299 P.3d 1098 (Utah 2013)

Public-interest standing

Appropriate party questions:

- Does party have interest necessary to assist court in reviewing legal and factual questions?
- Are the issues unlikely to be raised if party is denied standing?
- Is the issue better resolved by other political branches?

“The judicial power of the state shall be vested in a Supreme Court, in a trial court of general jurisdiction known as the district court, and in such other courts as the Legislature by statute may establish.”
Utah Const. Art. VIII, § 1 [Judicial powers -- Courts.]

Advisory Opinions

State of Kansas ex rel. Morrison v. Sebelius
179 P.3d 366 (Kan. 2008)

Request for an Opinion of the Justices
274 A.3d 269 (Del. 2022)

You are a drafter at the Loyola state constitutional convention tasked with addressing the issues of standing and advisory opinions. What rules should this state constitution adopt?

Environmental Rights

Example Provision

“The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment.”

Robinson Township, Washington County v. Commonwealth

83 A.3d 901 (Pa. 2013)

“The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.” Penn. Const. Art. I, § 27.

Unconstitutionality of government action related to positive rights

Can be framed as:

- a violation of a duty
- an infringement of rights

Penn. Env. Def. Found. v. Commonwealth

161 A.3d 911 (Pa. 2017)

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Jeffersonian “dead hand” idea

No generation has the right to bind another, and that all constitutions, laws, and debts should die with the generation that created them, calculated as about 19 years.

Held v. State

560 P.3d 1235 (Mont. 2024)

“(1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.”

Art. IX, § 1, Mont. Const.

Montana Environmental Policy Act states that, except for narrowly defined exceptions, “an environmental review conducted pursuant to this Act may not include an evaluation of greenhouse gas emissions and corresponding impacts to the climate in the state or beyond the state’s borders.”

Should a violation of a right alone confer standing?

In Re Hawai'i Electric Light Co.

526 P.3d 329 (Haw. 2023)

