

Theories for Construing State Constitutions

04 - Similarly Worded Provisions

But first... a wrap-up on

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.”

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?

- Uniformity
- Deference
 - Don't rock the boat
 - Superior knowledge? Or just better litigation? Better litigants? Better amicus briefs?
 - A court that has a lot more time and hears fewer cases and only hears cases that they want to hear
 - Supreme Court is probably right?
- Efficiency

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

- You want to interpret the constitutional provision according to the values of the state / community you're in
- Different constitutions with different histories of adoption deserve different interpretations
- Laboratories of experimentation and democracy
- Local needs / conditions
 - Management of rights
- Disagreement with the U.S. Supreme Court
 - Indeterminacy of difficult constitutional provisions

Today's 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

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

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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.