

State Constitutional Law

22 - Unique State Rights

Justiciability in State Courts

Agenda

- Makeup classes options
 - Thursday, April 25th 1:10pm - 3:10pm, Courtroom of the 90s.
 - Friday, April 26th 1:10pm - 3:10pm, Courtroom of the 90s.
- Unique state rights
- Justiciability in state courts

Unique State Rights

- Privacy
- Free speech
- Civil jury trial
- Environmental rights
- Crime victims' rights
- Right to hunt and fish

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.

Justiciability in State Courts

- Standing
- Mootness
- Political Questions
- Advisory Opinions

Standing

Gregory v. Shurtleff

299 P.3d 1098 (Utah 2013)

Benson v. McKee

273 A.3d 121 (R.I.)

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?

Mootness

Couey v. Atkins

355 P.3d 866 (Or. 2015)

In re Guardianship of Tschumy

853 N.W.2d 728 (Minn. 2014)

Political Questions

Berry v. Crawford

990 N.E.2d 410 (Ind. 2013)

In re Abbott

628 S.W.3d 288 (Tex. 2021)

Burt v. Speaker of the House of Representatives

243 A.3d 609 (N.H. 2020)

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)

Questions for Delaware Supreme Court

1. May “reasonable cause” include an indictment?
2. Does the authority to remove a public official implicitly include the authority to take a lesser action, such as suspension of that public official? If so, must the General Assembly address the Governor on the lesser action?
3. Does the process require a hearing prior to a vote?
4. Does the 10-day notice requirements apply for only the first House or are separate notices required for each House? May those notices be issued concurrently?
5. Is there a mechanism for an appeal?