

The State Constitution

Introduction: Need for Interpretation

The people of New Jersey have, in fact, two constitutions that provide for their governance and protect their rights. First, is the more familiar United States Constitution. Like the people in all fifty states, however, New Jerseyans also have their own *state* constitution that provides additional constitutional rules applicable only in their state. New Jersey has had its own state constitution since 1776, and with numerous changes, modifications, and additions over the years, this has led to our current New Jersey state constitution. The New Jersey Supreme Court has the final say on the meaning and application of our state constitution.

When a contested court case raises a question regarding an interpretation of a provision of the state constitution, or how it applies to the facts of the case, the court must apply or interpret the constitution in order to decide the case. Such judicial decisions not only decide the specific case before the court but also serve as precedents to be applied to future questions regarding the meaning of that state constitutional provision. These judge-made interpretations, together with the text of the constitution itself, constitute the state constitutional law of our state. While these constitutional precedents are not written in stone, at times albeit highly unlikely, they can be overturned by future courts. Finally, it is in the area of constitutional law that courts are often called upon to protect a fundamental right of a citizen that has yet to be addressed by the legislature. When elected officials are unable to act, the courts are the only recourse available to the public.

Prominent Decisions Interpreting Our State Constitution

Here are examples of some of the leading decisions by the New Jersey Supreme Court concerning the meaning and application of our state constitution. These cases recognize rights under the New Jersey Constitution that are more

protective than rights in the federal Constitution as interpreted by the United States Supreme court.

Peper v. Princeton University, 77 N.J. 55, 389 A. 2d 465 (1978): The equality provision in the New Jersey State Constitution was held to apply even to a private university such as Princeton, and this provision was recognized to provide equal rights to women. Under the federal Constitution there is no equal rights amendment and that constitution only limits government action and not private entities.

In re Quinlan, 70 N.J. 10, 355 A. 2d 647 (1976): This case concerned a young woman who, after a bad automobile accident, was in a “persistent vegetative state,” and whose parents wished for her to be able to die with dignity. The Court held that individuals’ expressed preference not to be kept “alive” with modern medical devices must be honored and they must be permitted to die. There is no similar right under the federal Constitution.

Planned Parenthood of Central New Jersey v. Farmer, 165 N.J. 609, 762 A. 2d 620 (2000): This case involved a law passed by the New Jersey Legislature that required minor women to notify their parents before they obtain an abortion. The Court held that this law unconstitutionally infringed the woman’s right to make her own medical decisions, even if she was a minor. The Court had earlier ruled that a law stating that abortion would not be covered under the state’s medical assistance program for the poor was unconstitutional as a violation of the state constitution’s equality guarantee (*Right to Choose v. Byrne*, 91 N.J. 287, 450 A.2d 925 (1982)). In both of these instances the United States Supreme Court had upheld similar laws under the federal Constitution.

Lewis v. Harris, 188 N.J. 415, 908 A. 2d 196 (2006): This case challenged the state’s law limiting marriage to a man and a woman, based on the state constitution’s equality guarantee. The Court held that this law was unconstitutional, but permitted the Legislature to decide whether it would cure the problem by allowing for civil

union or full marriage. It was only a number of years later that the United States Supreme Court recognized the right of same-sex couples to marry under the federal Constitution.

State v. Schmid, 423 A.2d 615, 84 N.J. 535 (1980): In this case Mr. Schmid was arrested for handing out protest literature on the Princeton University campus. The Court ruled that, under the state constitution, his rights to free speech and assembly had been violated, and the Court recognized the right to reasonable free speech and assembly even on private property that was open to the public. The United States Supreme Court does not recognize this right under the federal Constitution. This case provided the precedent for the 1994 decision that comes next in this list.

New Jersey Coalition Against the War in the Middle East v. J.M.B. Realty Corp., 138 N.J. 326, 650 A. 2d 757 (1994): This case concerned people who wanted, in shopping malls, to hand out leaflets and discuss their opposition to the war in the Middle East that grew out of Iraq's invasion of Kuwait. The Court held that even though regional shopping malls were privately owned, the state constitution's free speech and assembly provisions would be enforced to permit reasonable free speech and assembly on these privately-owned premises. The United States Supreme court rejected this argument under the federal Constitution.

Comite Organizador de Trabajadores Agricolas (COTA) v. Molinelli, 114 N.J. 87, 552 A. 2d 1003 (1999): This case involved a group of legal migrant farmworkers who wanted to form a union to negotiate a contract with the owner of the farm where they worked. The Court held that the right to collective bargaining provision in the state constitution would be enforced to protect their right to bargain collectively, and prohibit them from being penalized because of their union activity. There is no right to collective bargaining in the federal Constitution.

Southern Burlington County NAACP v. Township of Mt. Laurel, 67 N.J. 151, 336 A.2d 713 (1975): This case concerned Mt. Laurel's zoning ordinance that worked to exclude low income people from home ownership because it required homes to be on large lots that were unaffordable to the poor. The Court held that local zoning had to benefit the "general welfare" of the people in the local area, and that therefore this form of "exclusionary zoning" was unconstitutional. This case has led to litigation that is still going on concerning each local government's "fair share" of affordable housing within its boundaries. There is no such limit on exclusionary zoning in the federal Constitution.

State v. Muhammad, 145 N.J. 23, 678 A. 2d 164 (1996): This case concerned the right of families of murder victims to appear in court during the defendant's penalty trial to testify as to the personal loss they had experienced because of the murder of their family member. The Court held that the "Victims' Rights" amendment to the state constitution must be interpreted to protect the right to give "victim impact statements." There are no victims' rights provisions in the federal Constitution.

Winberry v. Salisbury, 5 N.J. 240, 74 A. 2d 406 (1950): This early decision concerned the question of whether the New Jersey Supreme Court, rather than the Legislature, had the power to govern the "practice and procedure" in the courts of the state. The Court held that the provision in the state constitution authorizing the Supreme Court to enact rules of practice and procedure should be interpreted to prohibit the Legislature from enacting laws that purported to govern practice and procedure in the courts. There is no similar provision in the federal Constitution.

Gallenthin Realty Development, Inc. v. Paulsboro, 191 N.J. 344, 924 A.2d 447 (2007): This case involved a piece of largely vacant wetlands that the local government declared "in need of development" because it was "not fully productive." Therefore, the local government sought to take the property through

eminent domain, to be developed. The Court held that just because property is not "fully productive" does not justify the use of eminent domain, because the state constitutional provision limits the use of that power to property that is "blighted," not merely unproductive. The federal Constitution does not have a similar limitation.

State v. Gilmore, 103 N.J. 508, 511 A.2d 1150 (1986): In this case it appeared that the prosecutors had used their peremptory challenges (where lawyers exclude potential jurors without having to give reasons) to exclude African-Americans from the jury. The Court held that this practice, if there were no valid reasons (bias, relationship to the parties to the case, etc.) violated the state constitutional right to an impartial jury in criminal cases. The United States Supreme Court had reached a similar conclusion under the federal Constitution, but based on the right to equal protection of the laws, not the right to an impartial jury.

Robinson v. Cahill, 303 A.2d 273, 62 N.J. 473 (1973): This case challenged the use of property tax funding for public schools, which operated to give students in low-income school districts much less funding for their education than was provided to students in higher-income districts. The claim was brought under both the state constitution's equality guarantee and the provision requiring the state to provide a "Thorough and Efficient" education. The Court decided not to base its decision on the equality guarantee, but rather found that the Thorough and Efficient clause required not only roughly equal funding for school districts, but further required additional funding for deprived students who were at an educational disadvantage. The United States Supreme Court has not recognized any similar right under the federal Constitution.

Abbott v. Burke, 495 A.2d 376, 100 N.J. 269 (1985): This case began the second round of the still existing litigation over adequacy of funding for the public schools under the Thorough and Efficient provision of the state constitution. The argument was made here that the improvements to educational funding required by

Robinson v. Cahill had not been sufficient to meet the constitutional requirements. The Court remanded the matter to an administrative law judge and this set in motion litigation that has led to over two dozen decisions by the New Jersey Supreme Court mandating various funding measures for the public schools. Again, the United States Supreme Court has not recognized any similar right under the federal Constitution.

There are a number of other important decisions under the New Jersey Constitution that are covered under the headings of Criminal Procedure and Education.