

# RUTGERS LAW JOURNAL

---

VOLUME 38

SUMMER 2007

NUMBER 4

---

## INTRODUCTION

*Robert F. Williams\**

This is our nineteenth Annual Issue on State Constitutional Law. This present issue is one more step in our long-range project of developing an interdisciplinary body of literature in this field.

The Foreword, by Dr. John Dinan,<sup>1</sup> examines the very interesting phenomenon, unique to state constitutional law, of constitutional amendments overturning judicial interpretations of the state constitution.<sup>2</sup> This is something that happens only in extremely rare circumstances under the Federal Constitution, but is an ever-present possibility in state constitutional law.

The article by Professor Gregory Sisk, concerning the issue of free speech on private property, which has been protected under a number of state constitutions, brings a series of new arguments to the topic.<sup>3</sup> This article provides an important contrary perspective, in response to the generally

---

\* Distinguished Professor of Law, Rutgers University School of Law, Camden; Associate Director, Center for State Constitutional Studies, <http://www.camlaw.rutgers.edu/statecon/>.

1. Dr. Dinan has published a very important new book. *See generally* JOHN J. DINAN, *THE AMERICAN STATE CONSTITUTIONAL TRADITION* (2006).

2. *See* John Dinan, *Court-constraining Amendments and the State Constitutional Tradition*, 38 RUTGERS L.J. 983 (2007).

3. *See* Gregory C. Sisk, *Uprooting the Pruneyard*, 38 RUTGERS L.J. 1145 (2007).

favorable academic literature about state constitutional guarantees of free speech and assembly on private property such as shopping malls.

The area of right to bear arms under state constitutions has been the focus of a substantial amount of state constitutional historical scholarship. The article by Dr. Nathan Kozuskanich advances that ongoing discussion by introducing a new approach to the historical debates.<sup>4</sup> This controversial area of state constitutional law will continue to be warmly contested, and as Dr. Kozuskanich points out, these debates can have a real impact on the similar discussions of the meaning of the Second Amendment to the Federal Constitution, now pending before the United States Supreme Court.<sup>5</sup>

One of the most misunderstood areas of state constitutional law is the relationship between federal constitutional equal protection doctrine and state constitutional equality guarantees.<sup>6</sup> The article by Professor Lawrence Friedman argues, in the Wisconsin context in reply to a former Wisconsin Supreme Court justice,<sup>7</sup> in favor of an independent “rational basis” analysis under state constitutions.<sup>8</sup> This article provides an important step forward in the dialogue about this important area of state constitutional law.

School finance litigation has formed one of the most important and extensive areas of litigation under state constitutions. The litigation under New Jersey’s “thorough and efficient” education clause has been among the most long-running and complex examples of this state constitutional litigation.<sup>9</sup> This clause in New Jersey’s constitution was adopted in 1875, and there has been little historical examination of its origin. Peter Mazzei’s article provides an exhaustive analysis of the consideration of this provision by both the 1873 Constitutional Commission and by the 1874 and 1875 legislative sessions, as it was developed to be proposed to the voters.<sup>10</sup>

---

4. See Nathan Kozuskanich, *Defending Themselves: The Original Understanding of the Right to Bear Arms*, 38 RUTGERS L.J. 1041 (2007).

5. See *Parker v. District of Columbia*, 478 F.3d 370 (2007), cert. granted sub nom. *District of Columbia v. Heller*, No. 07-290, 2007 WL 2508615 (U.S. Nov. 20, 2007); see generally John Gibeaut, *A Shot at the Second Amendment*, ABA J., Nov. 2007, at 50.

6. See, e.g., Jeffrey M. Shaman, *The Evolution of Equality in State Constitutional Law*, 34 RUTGERS L.J. 1013 (2003); Robert F. Williams, *Equality Guarantees in State Constitutional Law*, 63 TEX. L. REV. 1195 (1985).

7. See Diane S. Sykes, *Reflections on the Wisconsin Supreme Court*, 89 MARQ. L. REV. 723 (2006).

8. See Lawrence Friedman, *Reconsidering Rational Basis Equal Protection Review Under the Wisconsin Constitution*, 38 RUTGERS L.J. 1071 (2007).

9. See, e.g., Paul L. Tractenberg, *The Evolution and Implementation of Educational Rights Under the New Jersey Constitution of 1947*, 29 RUTGERS L.J. 827, 892-936 (1998).

10. See Peter J. Mazzei, *New Light on New Jersey’s “Thorough and Efficient” Education Clause*, 38 RUTGERS L.J. 1087 (2007).

This Issue also includes a number of excellent student comments on some of the most important state constitutional cases decided in the past year. These Comments reflect the wide range of issues that arise in state constitutional law, together with the variety of interpretation techniques utilized by state courts. Less detailed coverage of other cases is included online.<sup>11</sup>

The area of state constitutional law continues to grow in importance in the United States and abroad. Dr. Christian Fritz's new book on early state constitutional thought has just been published by Cambridge University Press.<sup>12</sup> The International Association of Constitutional Law ("IACL") has recently recognized the field of "subnational" constitutional law as an integral part of constitutional law itself. The Center for State Constitutional Studies sponsored a well-attended workshop at the IACL Congress in Athens, Greece, this past summer.<sup>13</sup> This new area of comparative subnational constitutional law continues its rise in importance.<sup>14</sup> There is a new International Association of Subnational Constitutional Law.<sup>15</sup>

We expect to continue in our collaborative role here at *Rutgers Law Journal* in the important area of state constitutional law within New Jersey, the United States, and in those federal countries that employ subnational constitutions for their component units.

---

11. These "State Constitutional Law Case Summaries" can be accessed directly on the *Rutgers Law Journal* website. See RUTGERS LAW JOURNAL, Journal Summaries, <http://camlaw.rutgers.edu/summaries/> (last visited Nov. 17, 2007).

12. See CHRISTIAN G. FRITZ, AMERICAN SOVEREIGNS: THE PEOPLE AND AMERICA'S CONSTITUTIONAL TRADITION BEFORE THE CIVIL WAR (2008).

13. See Rutgers-Camden Center for State Constitutional Studies, <http://www.camlaw.rutgers.edu/statecon/> (last visited Nov. 17, 2007) (compiling papers from this conference).

14. See, e.g., FEDERALISM, SUBNATIONAL CONSTITUTIONS, AND MINORITY RIGHTS (G. Alan Tarr, Robert F. Williams and Josef Marko, eds., 2004); Robert F. Williams, *Comparative Subnational Constitutional Law: South Africa's Provincial Constitutional Experiments*, 40 S. TEX. L. REV. 625 (1999).

15. See International Association of Subnational Constitutional Law, <http://iascl.camden.rutgers.edu/index.html> (last visited Nov. 17, 2007).