

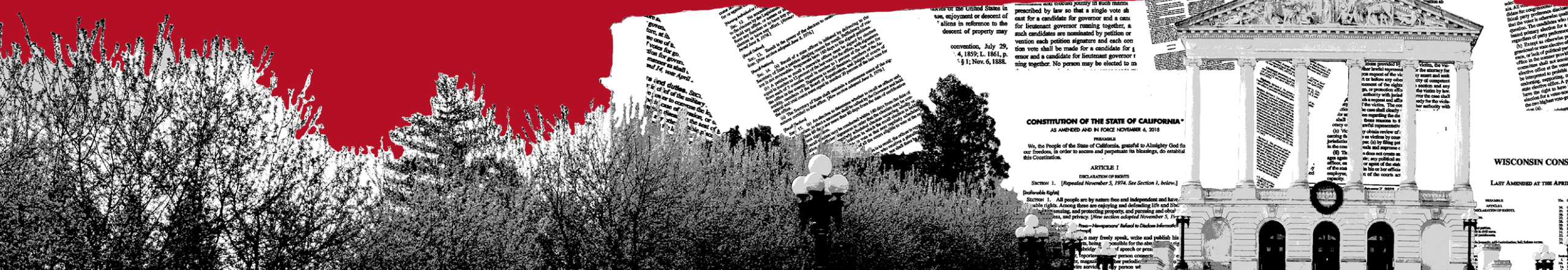


State Democracy  
Research Initiative  
UNIVERSITY OF WISCONSIN LAW SCHOOL

Minnesota CLE  
Oct. 21, 2025

# State Courts and State Constitutions

Professor Miriam Seifter  
University of Wisconsin Law School



# AGENDA



1

**Background and  
Introduction**



2

**State Constitutions:  
An Overview**

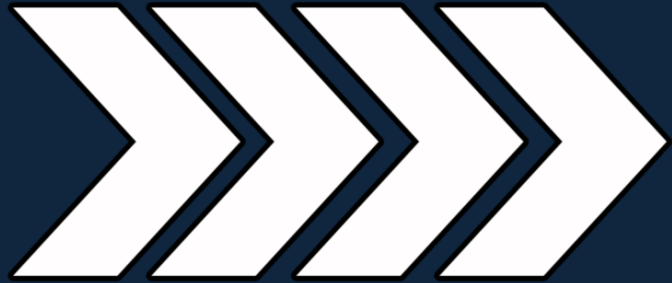


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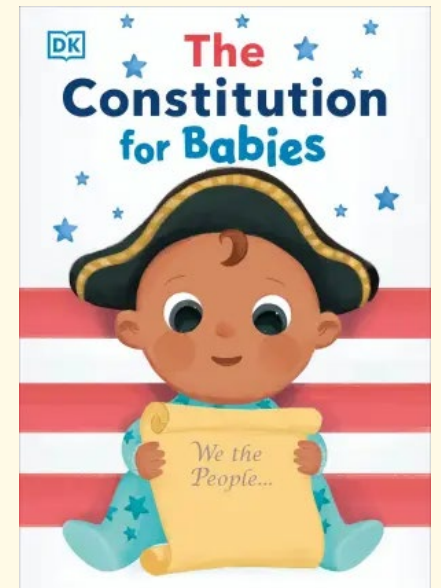
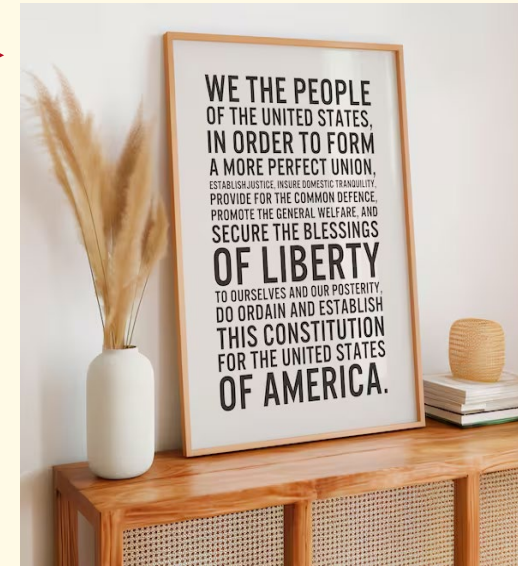
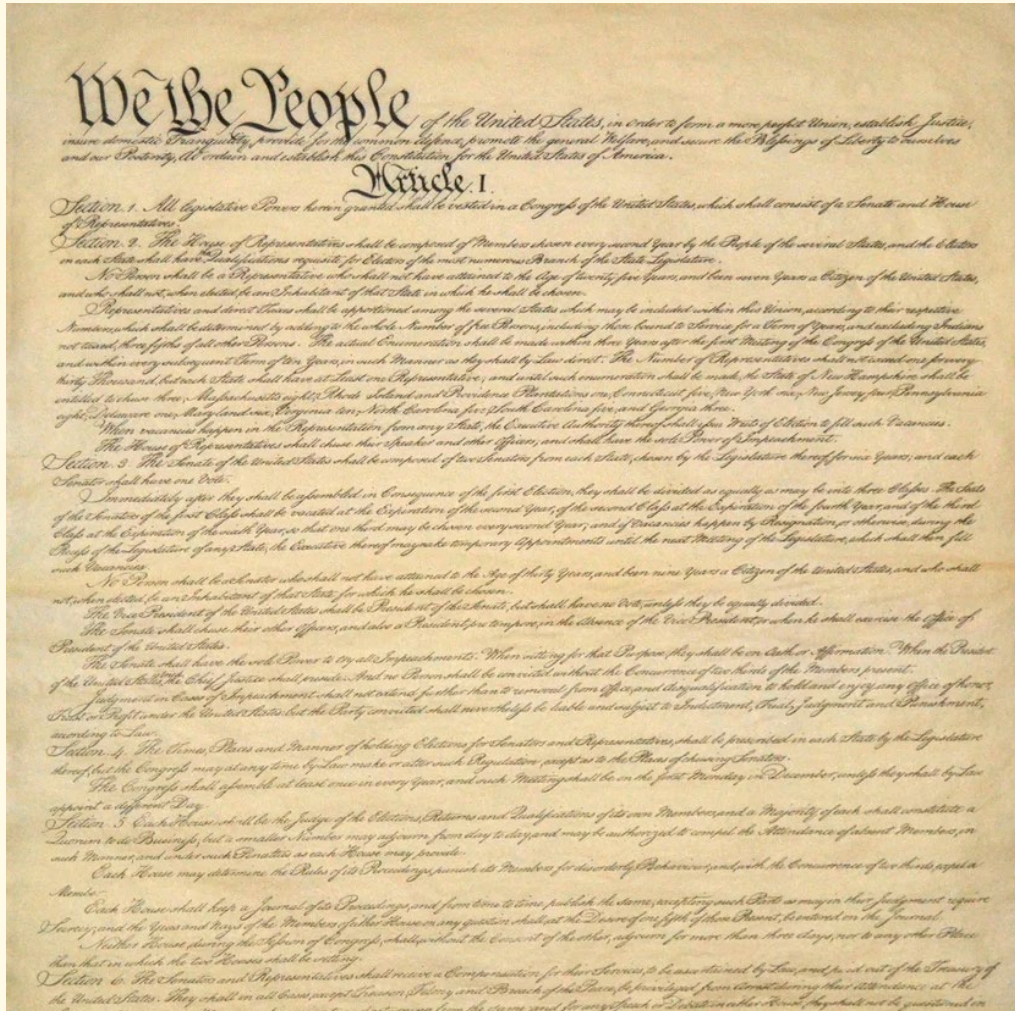
**Emerging Issues:  
Justiciability**

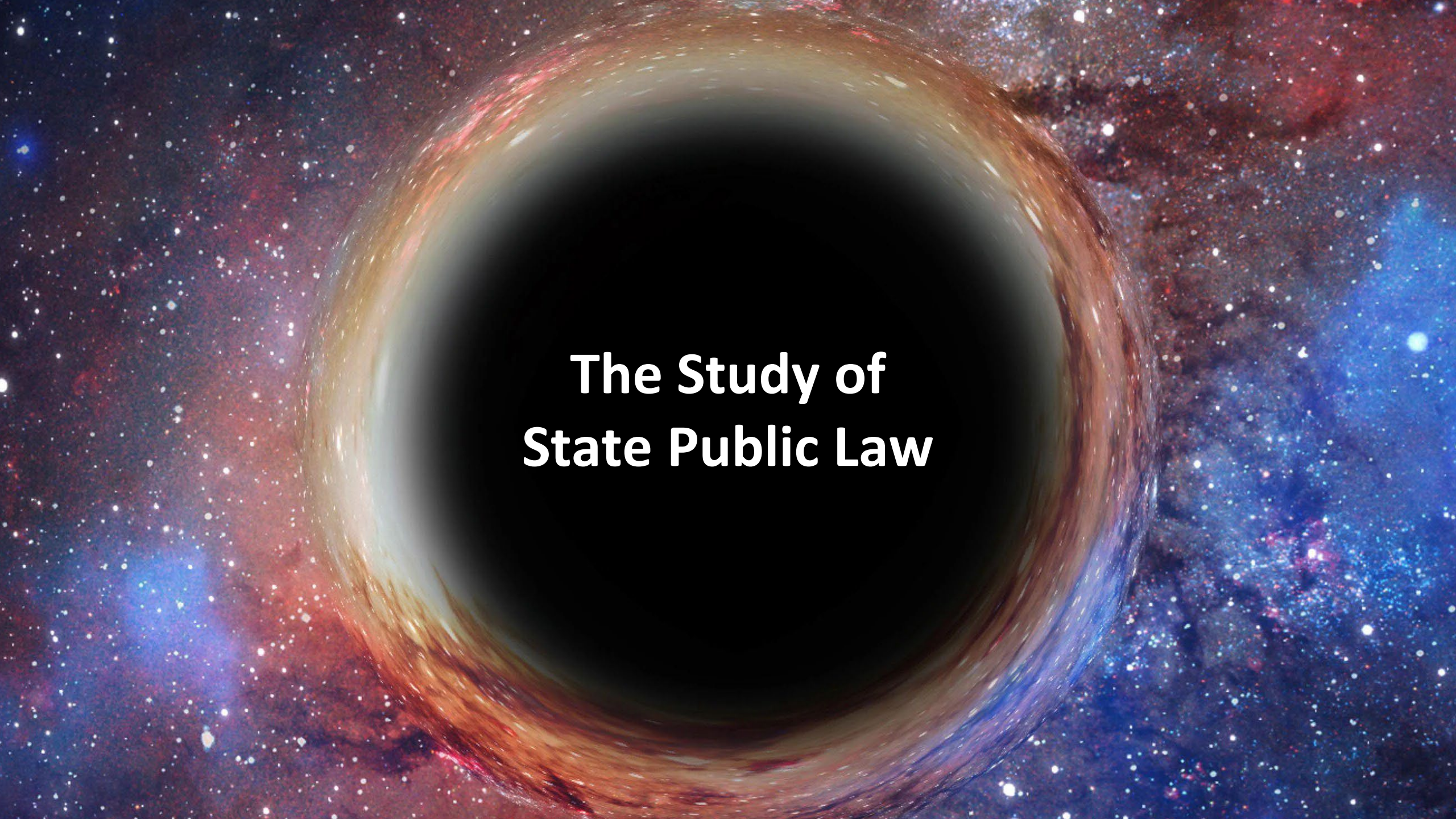
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# Background and Introduction



# FEDERAL CONSTITUTION





# **The Study of State Public Law**

# OUR NEGLECTED STATE LAWS AND INSTITUTIONS

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HUB 

 JOHNS HOPKINS  
UNIVERSITY

## Americans don't know much about state government, survey finds

*Most Americans are not aware of how their state government operates or who represents them, researchers say*

Jill Rosen /  Dec 14, 2018

- More than half didn't know if their state had a constitution

# OUR MISSION

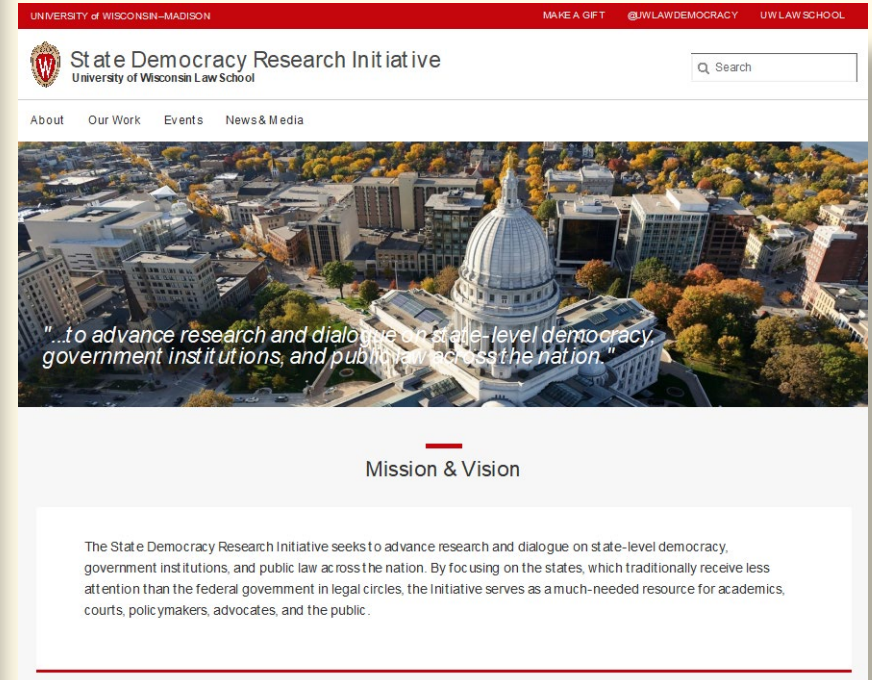
The **State Democracy Research Initiative** seeks to advance research and dialogue on state-level democracy, government institutions, and public law across the nation.

By **focusing on the states**, which traditionally receive less attention than the federal government in legal circles, the Initiative serves as a much-needed resource for academics, courts, policymakers, advocates, and the public.



State Democracy  
Research Initiative

UNIVERSITY OF WISCONSIN LAW SCHOOL



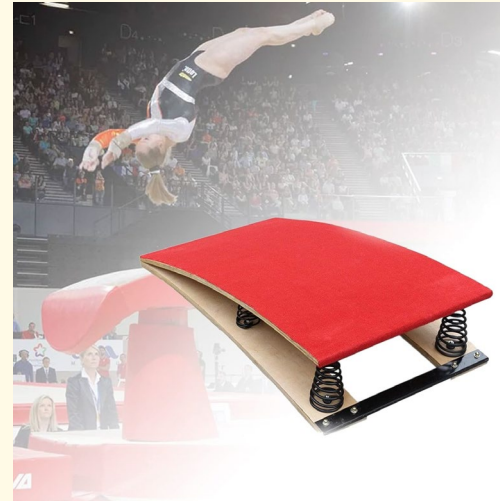
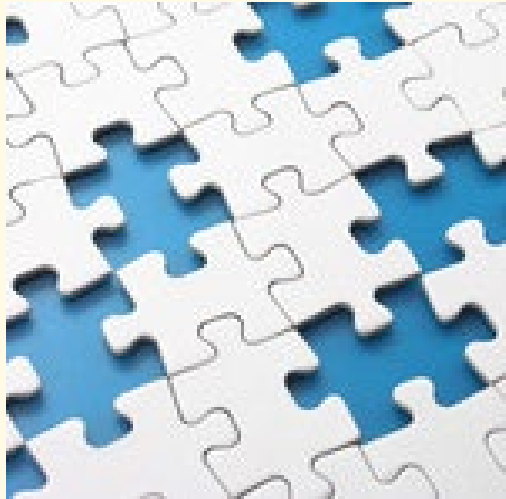
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# State Constitutions: An Overview

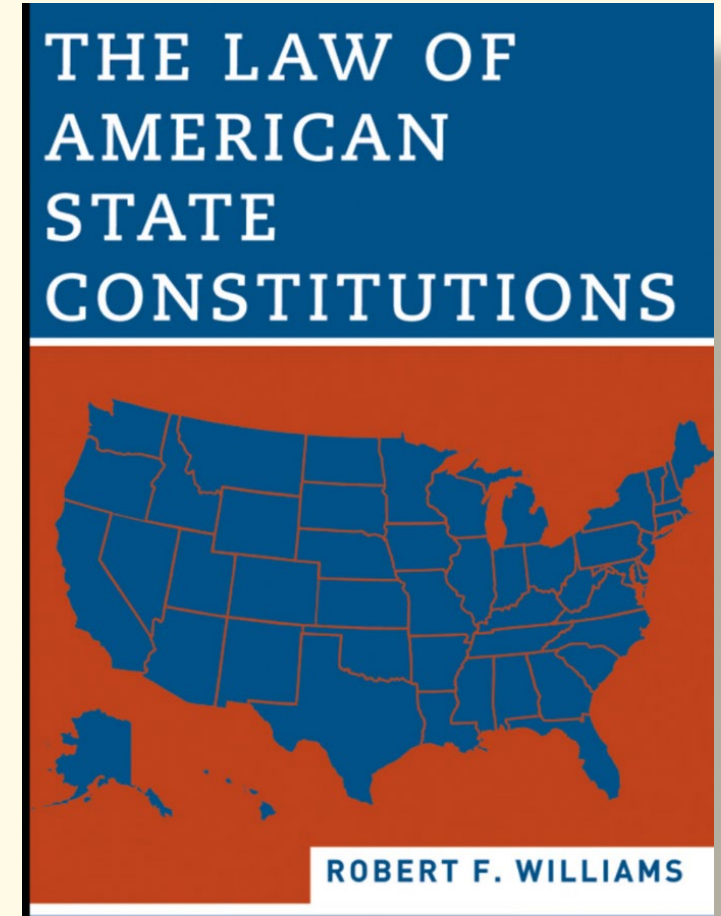
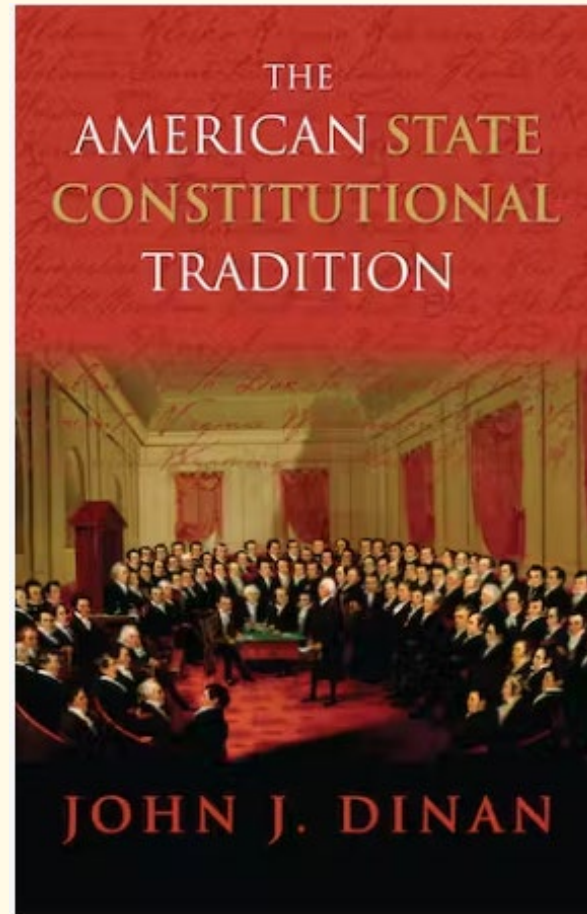
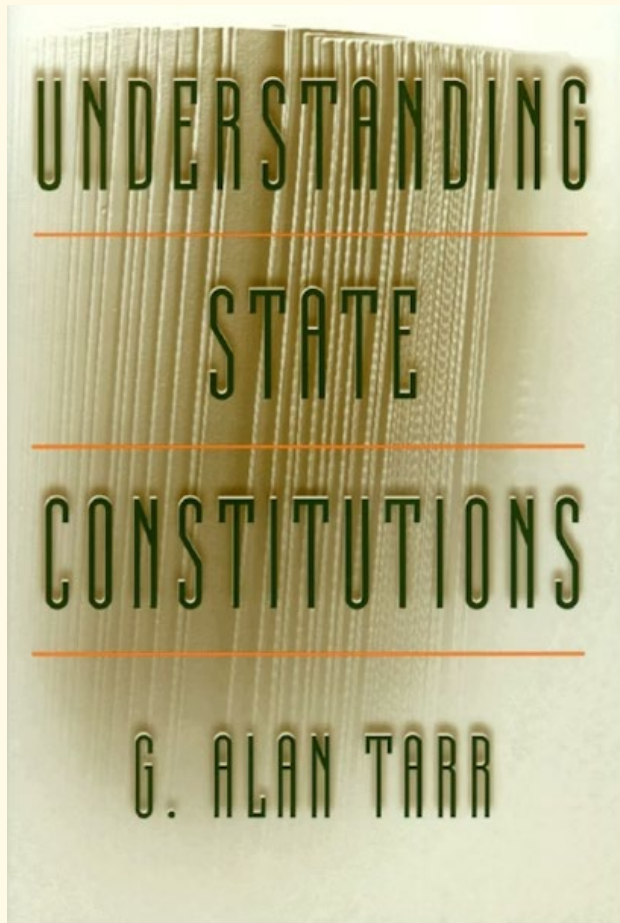
# STATE CONSTITUTIONS IN A FEDERAL SYSTEM

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# STATE CONSTITUTIONS, PLURAL

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# FEATURES OF STATE CONSTITUTIONS

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**Amendment**

**Length & Content**

**Distinctive Rights & Structure**

# STATE CONSTITUTIONAL RIGHTS

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**Rights, rights, rights**

**Community-regarding rights**

**Positive rights**

**Democratic rights**

# THE DEMOCRACY PRINCIPLE

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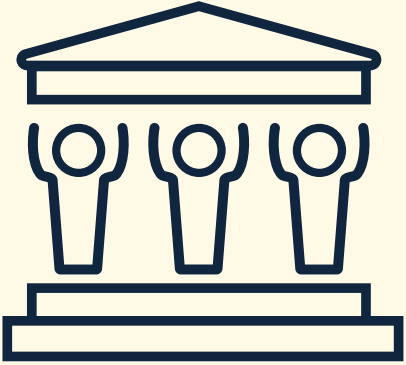
State constitutions “provide a stronger foundation for protecting democracy than their federal counterpart. In text, history, and structure alike, they privilege ‘rule by the people,’ and especially rule by popular majorities.”



MICHIGAN LAW REVIEW

## The Democracy Principle in State Constitutions

Jessica Bulman-Pozen\* & Miriam Seifter\*\*



# POPULAR SOVEREIGNTY

Forty-nine state constitutions—all but New York’s—declare that **political power is vested in the people.**

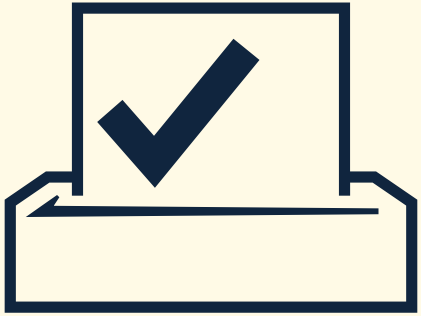
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## PENNSYLVANIA CONSTITUTION

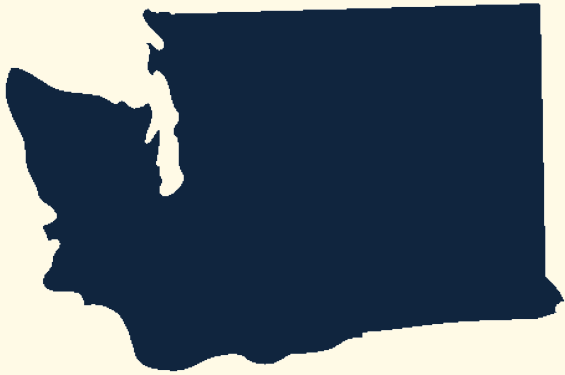
### ARTICLE I, SECTION 2

*“All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.”*



# SUFFRAGE

Every state constitution confers **the right to vote**. Most also require elections to be “free” and limit interference with the franchise.



## WASHINGTON CONSTITUTION

### ARTICLE VI, SECTION 1

*“All persons of the age of eighteen years or over who are citizens of the United States and who have lived in the state, county, and precinct thirty days immediately preceding the election at which they offer to vote, except those [convicted of certain crimes or judicially declared mentally incompetent], shall be entitled to vote at all elections.”*

### ARTICLE I, SECTION 19

*“All Elections shall be **free and equal**, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”*



# GOVERNMENT INSTITUTIONS

State constitutions provide for governors and other executive officers to be chosen through **statewide popular majority vote**. Most also provide for judicial elections.



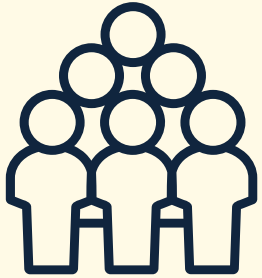
## WISCONSIN CONSTITUTION

### ARTICLE V, SECTION 3

*“The **governor and lieutenant governor** shall be elected by the qualified electors of the state . . . . The persons respectively having the highest number of votes cast jointly for them for governor and lieutenant governor shall be elected . . . .”*

### ARTICLE VII, SECTION 4

*“The **supreme court** shall have 7 members who shall be known as justices of the supreme court. Justices shall be elected for 10-year terms of office commencing with the August 1 next succeeding the election. Only one justice may be elected in any year.”*



# DIRECT DEMOCRACY

Approximately half of the states provide for direct democracy through the **initiative, referendum, and/or recall**.



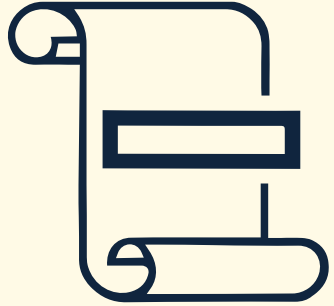
## ARIZONA CONSTITUTION

### ARTICLE IV, SECTION 1

*“The legislative authority of the state shall be vested in the legislature, . . . but the **people reserve the power to propose laws and amendments to the constitution** and to enact or reject such laws and amendments **at the polls**, independently of the legislature; and they also reserve, for use at their own option, the power to approve or reject at the polls any act, or item, section, or part of any act, of the legislature.”*

### ARTICLE VII, SECTION 1

*“Every public officer in the state of Arizona, holding an elective office, either by election or appointment, is **subject to recall** from such office by the qualified electors of the electoral district from which candidates are elected to such office.”*



# AMENDMENT

State constitutions generally provide for **multiple paths to amendment** that are not as onerous as the federal process.



## OHIO CONSTITUTION

### ARTICLE II, SECTION 1

*“[T]he people reserve to themselves the power to propose to the General Assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided....”*

### ARTICLE XVI, SECTION 1

*Provides for **legislatively referred constitutional amendments**, to be approved “if the majority of the electors voting on the same shall adopt such amendments.”*

### ARTICLE XVI, SECTION 2

*Provides for **constitutional amendment by legislatively proposed constitutional convention**, to be called if a majority of voters approve, with convention members selected on a separate ballot.*

### ARTICLE XVI, SECTION 3

*Provides for **referendum at 20-year intervals** on whether to call a **constitutional convention**.*

# Resource: 50Constitutions.org



[More About the Project](#)

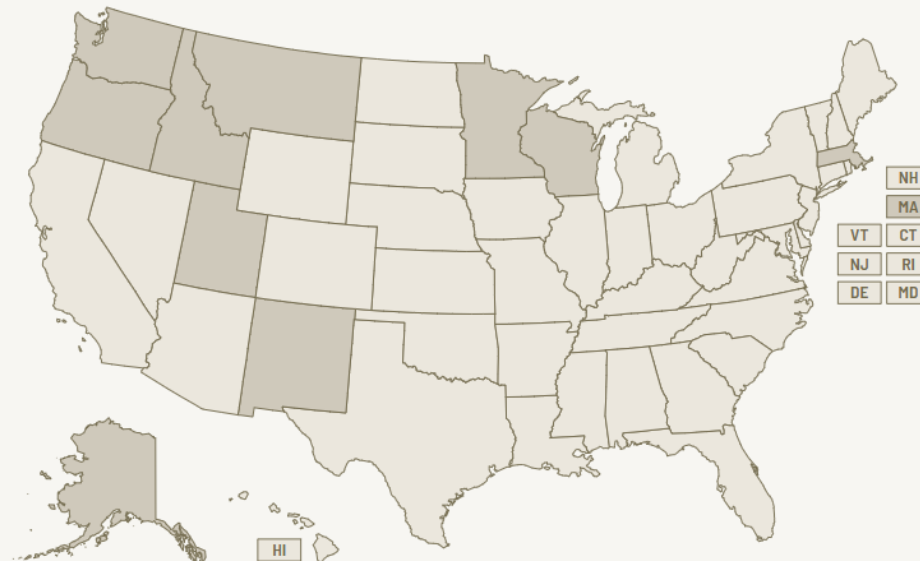
## Explore State Constitutions

State constitutions are distinctive documents—in the rights they confer, the governmental structures they establish, and the ways they change over time. They are not miniature federal constitutions, and they should be studied on their own terms. 50 Constitutions aims to make state constitutions more accessible.

Click on any state of the map below to access the full current text of any state constitution. Or use the search tool to perform full-text searches across all 50 state constitutions. For shaded states, the website provides access to full constitutional histories, allowing users to explore additional features that highlight how each state's constitution has evolved over time. These additional features will be added for additional states on a rolling basis.

Search Constitutional Text

EXPLORE BY STATE:



# Did you know?

## Intro\*

2024

2016

2008

2006

## The Minnesota Constitution & Its Amendments

Minnesotans voted to approve the state constitution on October 13, 1857. The constitution was the result of a tumultuous, [politically divided convention](#) that spanned seven weeks. This bitter political conflict continued even after delegates reached a compromise on the constitutional language. Delegates refused to sign a document bearing the signatures of delegates from the other political party, necessitating the creation of two copies of the constitution to gather signatures. Although these two copies of the constitution were meant to be identical, [the copies were created overnight by lamplight](#), a process that resulted in [over 300 differences](#) between the two copies of the constitution approved by the delegates. [Both copies were before Congress](#) when Minnesota was admitted into the Union. As there has been no legal challenge based on a difference between the two versions, there has been no determination as to which copy serves as the definitive version of the original Minnesota Constitution. Consequently, it can be said that Minnesota is "[the only state with two official \[original\] constitutions](#)." Subsequent amendments and a

121

AMENDMENTS  
SINCE 1858

3



# Emerging Issues: Justiciability

# STANDING DOCTRINE: STATE AND FEDERAL

## FEDERAL LEVEL

**Doctrine:** Article III establishes 3-part test:  
“(1) injury in fact; (2) fairly traceable to challenged conduct of defendant; (3) likely to be redressed by favorable decision.”

Over Time:



## STATE EXAMPLES

Virtually every state has recognized an exception to standing doctrine for cases of “public importance”

Some states specifically recognize democracy-affecting cases as warranting standing.



*State ex rel. LWV of N.M. v. Advisory Comm. to the N.M. Compilation Comm’n*

NEW MEXICO SUPREME COURT

2017



*Gentges v. Okla. State Election Bd.*

OKLAHOMA SUPREME COURT

2014

# Montenegro v. Fontes

SUPREME COURT OF ARIZONA

2025



## MAJORITY

- “Our Constitution differs from the United States Constitution in significant ways....The consequence of not having a case or controversy requirement in our Constitution is that in Arizona, standing is a prudential consideration [and can be waived]...”
- But here, legislative leaders allege sufficient institutional injury for standing by claiming the voter initiative violates nondelegation.

## DISSENT

- “[G]ranting standing here upsets the constitutional balance between the Legislature and the People, who share coequal lawmaking power.”
- “Although standing and ripeness are prudential doctrines, we should rigorously apply them in challenges by the Legislature against laws enacted by the People.”



### WHY VOTERS NEED A RIGHT TO KNOW



# RECENT (PARTIAL) LIMITS

## MVA V. HUNT (MN. 2024)



### MAJORITY

- “Today, we clarify that taxpayer standing does not exist when a taxpayer simply seeks to generally restrain ‘illegal action[s] on the part of public officials.’”
- “Instead, we recognize taxpayer standing only when the central dispute involves alleged unlawful disbursements of public funds.”

## BROWN V. WEC (WI. 2025)



### MAJORITY

- “[T]he bar is low” for establishing an injury sufficient for standing.
- But under a state statute authorizing suit by a person “aggrieved” by actions of Wisconsin Election Commission, a person does not establish injury where he “did not allege that the WEC’s decision injured him personally in any way”; not enough to allege that WEC acted unlawfully or that WEC ruled against them.
- Court does not rule on potential vote dilution theory, which was not raised.

### DISSENT

- The statute gives any voter to challenge an election official’s action or inaction in the voter’s jurisdiction.

# Thank you!



State Democracy  
Research Initiative  
UNIVERSITY OF WISCONSIN LAW SCHOOL

[www.statedemocracy.law.wisc.edu](http://www.statedemocracy.law.wisc.edu)

Professor Miriam Seifter  
[miriam.seifter@wisc.edu](mailto:miriam.seifter@wisc.edu)

# The Democracy Principle

A project of the [State Democracy Research Initiative](#)



State constitutions reflect a powerful commitment to democracy. Through extensive text, including provisions with no federal analogue, state constitutions have been drafted and amended to prioritize popular sovereignty, majority rule, and political equality.



## Explore State Constitutions

State constitutions are distinctive documents—in the rights they confer, the governmental structures they establish, and the ways they change over time. They are not miniature federal constitutions, and they should be studied on their own terms. 50 Constitutions aims to make state constitutions more accessible.

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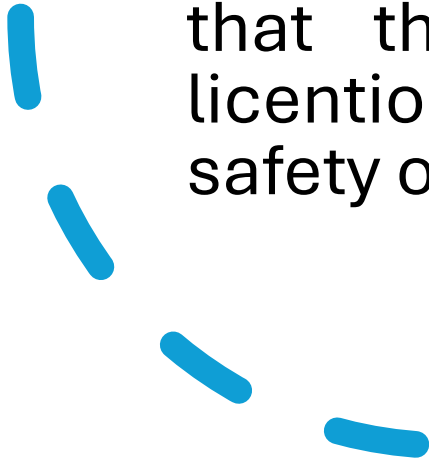
# Criminal Law

## Some things are different:

- Bail: Article I, § 5 provides that “Excessive bail shall not be required,” and Article I, § 7 provides that “All persons before conviction shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great.” The federal Eighth Amendment says only that “Excessive bail shall not be required.”
- *Punishment.* Article I, § 5 forbids “cruel or unusual punishments.” Compare the federal Eighth Amendment: “cruel and unusual ... .”



*Religion and Conscience.* Article I, § 16 provides that the “enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people,” and preserves the right to “worship God according to the dictates of his own conscience,” and that no person may be “compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry,” and prohibits “any control of or interference with the rights of conscience” or any preference to any “religious establishment or mode of worship.” It provides that the liberty of conscience will not excuse “acts of licentiousness or justify practices inconsistent with the peace or safety of the state.”



Some things  
are the  
same:

There are no substantive differences in many of the hot areas of criminal law, including due process, double jeopardy, self-incrimination, search and seizure, ex post facto laws, speedy trial, etc.



# Reticence

1979

O'Connor v. Johnson, 287 N.W.2d 400 (Minn. 1979)

- No real attempt to distinguish between state and federal constitutions concerning on search and seizure issue

1985

State v. Fuller, 374 N.W.2d 722 (Minn. 1985)

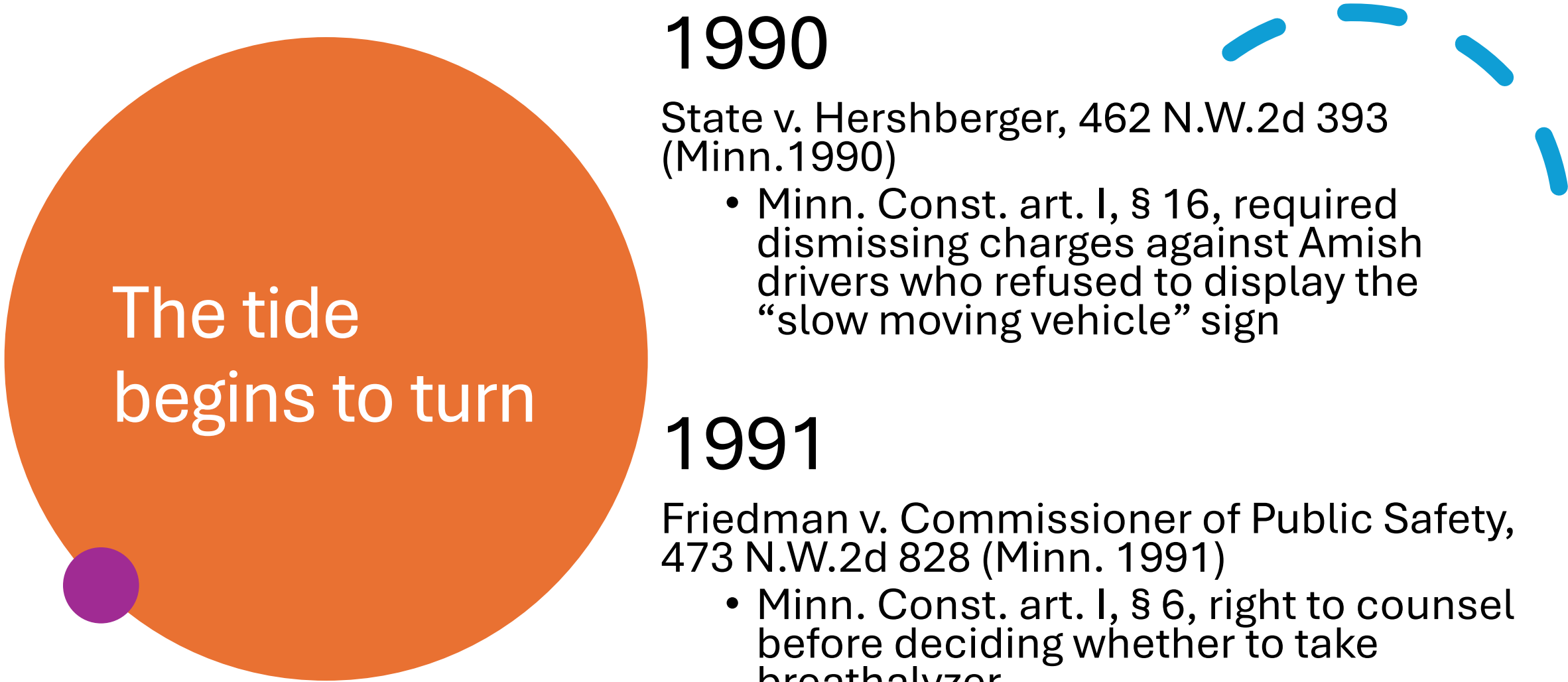
- No greater double jeopardy protections

# 1987

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State v. Gray, 413 N.W.2d 107 (Minn. 1987)

- No fundamental right under MN constitution to engage in sodomy
- “We emphasize that nothing in the court's opinion, either expressly or impliedly, expands the individual’s right of privacy under the Minnesota Constitution beyond the parameters established for that right by the United States Supreme Court under our Federal Constitution.”



The tide  
begins to turn

## 1990

State v. Hershberger, 462 N.W.2d 393 (Minn.1990)

- Minn. Const. art. I, § 16, required dismissing charges against Amish drivers who refused to display the “slow moving vehicle” sign

## 1991

Friedman v. Commissioner of Public Safety, 473 N.W.2d 828 (Minn. 1991)

- Minn. Const. art. I, § 6, right to counsel before deciding whether to take breathalyzer

# 1993

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In re Welfare of E.D.J., 502 N.W.2d 779 (Minn. 1993)

- A seizure occurs when a reasonable person would not feel free to leave. Article I, Section 10 provides greater protection than the Fourth Amendment in determining the moment at which a seizure occurs.

# 1994

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Ascher v. Comm'r of Pub. Safety, 519 N.W.2d 183 (Minn. 1994)

- Article I, Section 10 provides greater protection than the Fourth Amendment in searches at sobriety checkpoints
- Law enforcement may not engage in suspicionless traffic stops “in the hope of discovering evidence of alcohol-impaired driving”).

1998

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State v. Mitchell, 577 N.W.2d 481  
(Minn.1998)

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Minn. Const. art. I, § 5 provides that no  
“cruel *or* unusual punishments be inflicted”

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Mandatory life sentence for 15-year-old is  
neither cruel nor unusual under Minnesota  
constitution

# 1999

---

State v. Harris, 590 N.W.2d 90 (Minn. 1999)

- Minn. Const. art. I, § 10 does not provide greater protection for bus passengers
- A passenger is not seized when police board the bus and announce search, nor when they ask passenger for permission to search his body and bag

2002

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State v. Wiegand, 645 N.W.2d 125 (Minn. 2002)

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Dog sniff around exterior of car in public place is not a “search” requiring probable cause under Minn. Const. art. I, § 10

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However, under both federal constitution and Minn. Const. art. I, § 10, expansion of a routine stop requires reasonable, articulable suspicion

# 2003

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In re Welfare of B.R.K., 658 N.W.2d 565 (Minn. 2003)

- Short-term social guests have a reasonable expectation of privacy in a home under Minn. Const. art. I, § 10, but not under the Fourth Amendment

2004

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State v. Askerooth, 681 N.W.2d 353 (Minn. 2004)

---

Minn. Const. art. I, § 10 provides greater protection than the Fourth Amendment in the confinement of an individual in a squad car.

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Invokes Minn. Const. art. I, § 10 to adopt *Terry* framework for evaluating the reasonableness of seizures during traffic stops even when a minor law has been violated.



# 2005

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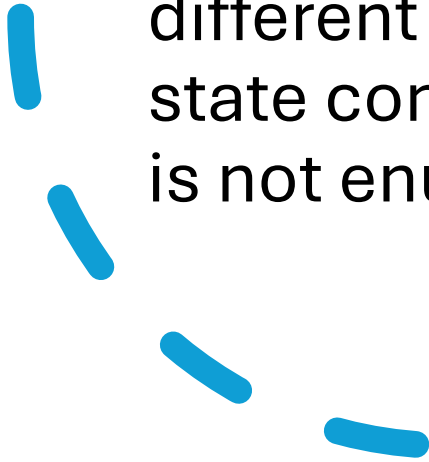
State v. Carter, 697 N.W.2d 199 (Minn. 2005)

- Drug-detection dog sniff outside storage unit was not a search under the United States Constitution, but was a search under Minn. Const. art. I, § 10
- Search required reasonable, articulable suspicion



# 2005

Kahn v. Griffin, 701 N.W.2d 815 (Minn. 2005)

- Held that that the Minnesota Constitution did not provide greater protection to the right to vote
  - Court is “most inclined to look to the Minnesota Constitution when we determine that our state constitution's language is different from the language used in the U.S. Constitution or that state constitutional language guarantees a fundamental right that is not enumerated in the U.S. Constitution.”
- 



“We take a more restrained approach when both constitutions use identical or substantially similar language. But we will look to the Minnesota Constitution when we conclude that the United States Supreme Court has made a sharp or radical departure from its previous decisions or approach to the law and when we discern no persuasive reason to follow such a departure...We also will apply the state constitution if we determine that the Supreme Court has retrenched on Bill of Rights issues, or if we determine that federal precedent does not adequately protect our citizens' basic rights and liberties.”



# 2020

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State v. Leonard, 943 N.W.2d 149 (Minn. 2020)

- Police examination of hotel guest registry is a search under Minn. Const. art. I, § 10, and requires reasonable, articulable suspicion

# 2021

---

State v. Sargent, 968 N.W.2d 32 (Minn. 2021)

- Police can't expand the scope of a stop to investigate violation of pretrial release condition without reasonable, articulable suspicion, under Minn. Const. art. I, § 10.

2022

State v. Hassan, 977 N.W.2d 633  
(Minn. 2022)

- A mandatory sentence of life without the possibility of release is not unconstitutionally cruel under Article I, Section 5, of the Minnesota Constitution when imposed on a 21-year-old defendant.



# 2023

State v. Barrow, 989 N.W.2d 682 (Minn. 2023)

- Affirmed drug conviction for passenger who was ordered to leave her bag in the car to be searched
  - Defense raised both state and federal constitutional arguments
  - Dissent criticized defense counsel for not raising state constitutional arguments: “the outcome may have been different had appellant...raised an independent state constitutional claim.”
- 

# 2025

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*State v. Gaul*, 16 N.W.3d 845 (Minn. App. 2025), *review granted* (May 13, 2025), currently stayed

- Issue involves application of *Leonard* to privacy rights of emails



The Office of the  
**Minnesota Attorney General**  
helping people afford their lives and live with dignity, safety, and respect

# State Constitutional Litigation

**Solicitor General Liz Kramer**

*October 21, 2025*

# The Quorum Wars: Civil Constitutional Fight

- “[a] majority of each house constitutes a quorum to transact business.”  
Minn. Const. art. IV, §13
- Jan. 2025 Issue: Are vacant seats counted in denominator?
- No Minn court had interpreted “majority of each house” or “quorum”
- No definitions within the text
- Very few decisions from other state courts interpreting same language (but agree that vacant seats count)
- Interpretation of U.S. Constitution (of nearly identical language) said opposite

# The Quorum Wars: Civil Constitutional Fight

How we successfully argued vacant seats should count:

- “House” has statutory definition. (This was what SupreMNeS relied on.)
  - “[t]he number of members who compose the senate and house of representatives shall be prescribed by law.” Minn. Const., art. IV, § 2.
  - House of Representatives is composed of 134 members. Minn. Stat. § 2.021.
- Other uses of “House” in constitution don’t make sense if not all members.
  - “The governor shall call elections to fill vacancies in either house of the legislature.” Minn. Const., art. IV, § 4.
- Analogize to 2/3 requirement for veto, where denominator all seats:
  - *See State ex rel. Eastland v. Gould*, 17 N.W. 276, 277 (Minn. 1883) (explaining that a constitutional provision requiring the “legislature” to provide a “two-thirds vote” meant such a vote from “all of the members thereof” and not the “vote of two-thirds of the members present.”).

# The Quorum Wars: Civil Constitutional Fight

How we successfully argued vacant seats should count (cont'd):

- Persuasive publications: *Mason's Legislative Manual*, § 501, and previous publications by House's own non-partisan staff
- Other state high courts that considered "a majority of each house" found it meant all potential members, irrespective of vacancies. (Florida, Kansas, Delaware)

# The Quorum Wars: Civil Constitutional Fight

What the other side relied upon (cont'd):

- Focus on phrase in other parts of constitution “members elected to each house”, and say that is exclusive and consistent way document refers to all potential members
- Back up with Minn. cases interpreting city charters (or similar) providing “majority of all members” excludes vacancies, but majority of “members elected” requires majority of all potential seats.
- Rules of U.S. House interpret same language as excluding vacancies.
- Language from Minn. Constitutional convention (debating alternate: “majority of members elected”)

# The Quorum Wars: Lessons Learned

- Lessons:
  - Simple, plain text argument usually best.
    - “Notably, respondents offer no meaningful argument as to what the phrase ‘each house’ as used in the quorum clause affirmatively means.”
  - Contrary federal interpretation can be overcome
  - Many arguments will be based on same/similar language in other parts of constitution and logic. Avoiding inconsistency, especially within same Article. (Article IV, § 23 uses “each house” and “members elected” interchangeably.)
  - Debate in convention often has little utility

# Notes from other cases

- Follows usual interpretation pattern: is text clear? If ambiguous, use more tools.
- Constitutional provision does not have to provide final answer.
  - Felons can't vote "unless restored to civil rights," meaning it takes an act of government to restore (Governor or legislature). *Schroeder v. Simon*, 985 N.W.2d 529 (Minn. 2023),
- Context is key. Historical understanding of power/rights, contemporaneous statutes. (*Schroeder*)
- Does intent to violate matter? *Cruz-Guzman v. State*, 998 N.W.2d 262 (Minn. 2023)
- Must the defendant have caused the claimed result?
  - "The State suggests that the Legislature is not responsible for—and therefore not required to remedy—an inadequate education caused by policies adopted at the local, school district, as opposed to the state, level. We disagree." *Id.* at 275. "The parents must prove that the racial imbalances are a substantial factor in causing an inadequate education."

# Ever-present issues

- Standing of petitioner
- Political-question doctrine/ separation of powers
- Where bring claim? Writ of quo warranto
- Institutional tension – retain role as interpreter of constitution, but also stay away from politics

# Other Emerging Issues

**1. “No law shall embrace more than one subject, which shall be expressed in its title.” Minnesota Constitution, Article IV, Section 17**

Two challenges to 2024 Omnibus bill, seeking to strike down provisions relating to health care contracts and gun regulations, because part of law with more than one subject. Opposite rulings in Ramsey County District Court.

Modern reality of legislating? Appropriate remedy?

**2. “non-delegation clause” – alleging actions cannot be delegated to Governor, because are pure lawmaking.**

For example, COVID-19 challenges to Minnesota Emergency Management Act (which authorized executive orders by Gov).

Minn. finds Act survives. *Snell v. Walz*, 6 N.W.3d 458 (Minn. 2024)

Mich. struck down similar act. *In re Certified Questions from U.S. Dist. Ct.*, 958 N.W.2d 1, 24 (Mich. 2020)

**3. Private/implied rights of action.**

Repeated attempts to intervene, when government not making this argument. *Schroeder v. Simon*, 950 N.W.2d 70 (Minn. App. 2020)

Iowa Supreme Court says no private cause of action for money damages (unless otherwise authorized). *Burnett v. Smith*, 990 N.W.2d 289 (Iowa 2023)



# INTERPRETING THE MINNESOTA CONSTITUTION: THE JUDICIAL PERSPECTIVE

"WE THE PEOPLE OF THE STATE OF MINNESOTA . . ."

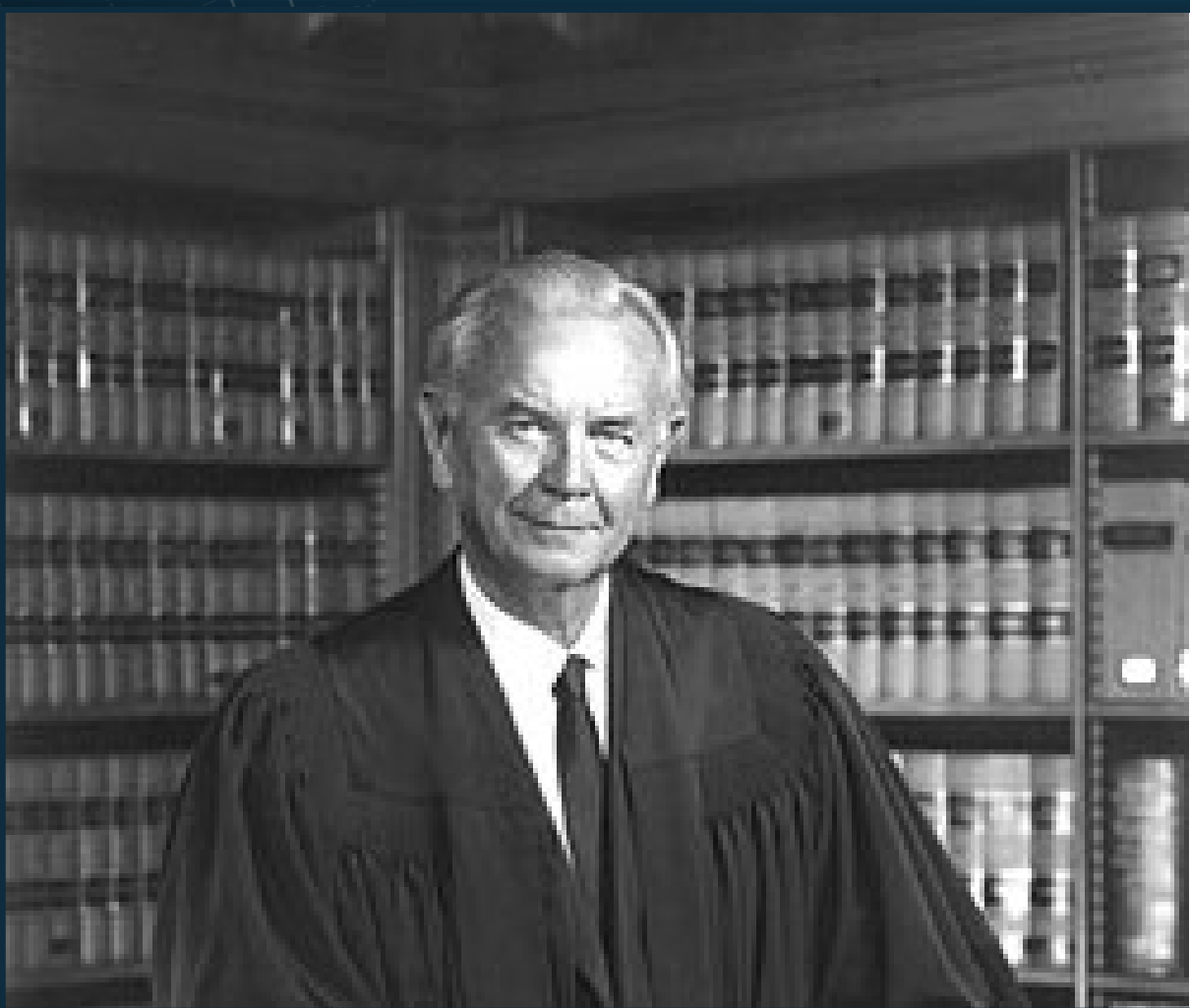
# OUR JUDICIAL PANEL

Associate Justice Karl Procaccini



Associate Justice Theodora Gaitas





## THE STATE CONSTITUTIONAL REVOLUTION

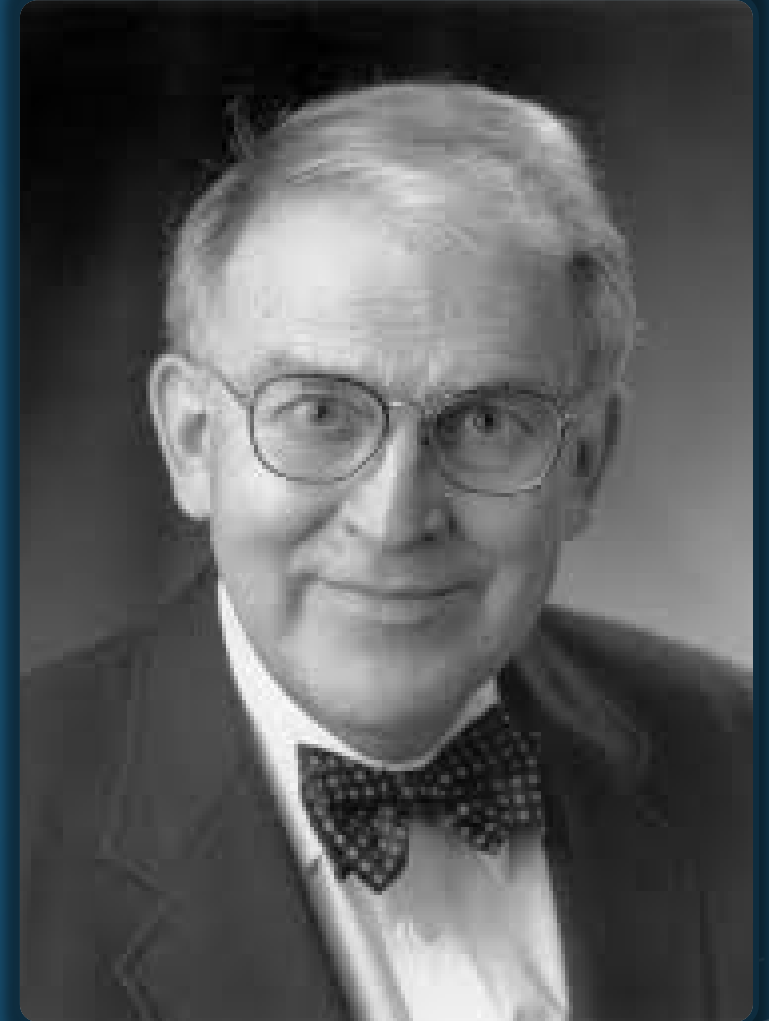
*But the point I want to stress here is that state courts cannot rest when they have afforded their citizens the full protections of the federal Constitution. State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law. The legal revolution which has brought federal law to the fore must not be allowed to inhibit the independent protective force of state law - for without it, the full realization of our liberties cannot be guaranteed.*

- William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489, 491 (1977)

# THE REVOLUTION TAKES ROOT . . . IN MINNESOTA

*In the last fifteen years, our state constitution has found itself the object of considerable attention. No longer the shy wallflower, by itself, alone at the edge of the dance floor, it now finds itself courted, never at a loss for admiring partners, dancing every dance.*

- John E. Simonett, *An Introduction to Essays on the Minnesota Constitution*, 20 Wm. Mitchell L. Rev. 227, 227 (1994)



MAYBE NOT CENTER STAGE, BUT DEFINITELY DANCING

From 2020 to 2025, the Minnesota Supreme Court addressed state constitutional claims in ~90 decisions (rough estimate).

# MAYBE NOT CENTER STAGE, BUT DEFINITELY DANCING

## Some familiar subjects:

- Search and Seizure (art. 1, § 10)
- Takings Clause (art. I, § 13)
- Due Process (art. I, § 7)
- Equal Protection (art. I, § 2)
- Speedy Trial (art. I, § 6)
- Double Jeopardy (art. I, § 7)

## Some less familiar subjects:

- Quorum Clause (art. IV, § 13)
- Speech or Debate Clause (art. IV, § 10)
- Legislative Eligibility (art. IV, § 6)
- Judicial Eligibility (art. VI, § 5)
- Uniform Taxation (art. X, § 1)
- Pardon Power (art. V, § 7)
- Education Clause (art. XIII, § 1)