
RUTGERS UNIVERSITY LAW REVIEW

VOLUME 70

SUMMER 2018

ISSUE 4

INTRODUCTION

*Robert F. Williams**

This is our Twenty-Ninth Annual Issue on State Constitutional Law.¹ We believe we have, again, added to the knowledge about, and understanding of, American State Constitutions, as well *subnational* constitutions in other federal countries.² This year's invited Foreword is by Judge Jeffrey Sutton of the United States Court of Appeals for the Sixth Circuit.³ Judge Sutton, despite sitting as a *federal* judge, has taught state constitutional law at Ohio State University College of Law for many years, and has written widely about this topic.⁴ He is even the coauthor of a law school casebook on state constitutional law.⁵ Judge Sutton's Foreword builds on a chapter in his new book, *51 Imperfect Solutions: States and the Making of American Constitutional Law*, concerning the federal and state constitutional responses to the eugenics movement.⁶ His Foreword and the new book both provide a unique perspective on the importance of state constitutions in comparison to the

* Distinguished Professor of Law, Rutgers Law School; Director, Center for State Constitutional Studies.

1. See Robert F. Williams & G. Alan Tarr, *Rutgers Law Journal: Twenty-Five Years of State Constitutionalism*, 44 RUTGERS L.J. 547 (2014).

2. *Id.* at 549 n.8.

3. Jeffrey S. Sutton, *Foreword: The Enduring Salience of State Constitutional Law*, 70 RUTGERS U. L. REV. 791 (2018) [hereinafter Sutton, *Enduring Salience*].

4. See, e.g., Jeffrey S. Sutton, *San Antonio Independent School District v. Rodriguez and its Aftermath*, 94 VA. L. REV. 1963 (2008); Jeffrey S. Sutton, *Why Teach—And Why Study—State Constitutional Law*, 34 OKLA. CITY U. L. REV. 165 (2009); Jeffrey S. Sutton, *What Does—and Does Not—Ail State Constitutional Law*, 59 U. KAN. L. REV. 687 (2011).

5. RANDY J. HOLLAND, STEPHEN R. MCALLISTER, JEFFREY M. SHAMAN & JEFFREY S. SUTTON, *STATE CONSTITUTIONAL LAW: THE MODERN EXPERIENCE* (2010).

6. See JEFFREY S. SUTTON, *51 IMPERFECT SOLUTIONS: STATES AND THE MAKING OF AMERICAN CONSTITUTIONAL LAW* 84–132 (2018) [hereinafter, SUTTON, *51 IMPERFECT SOLUTIONS*].

Federal Constitution in dealing with such issues.⁷ Importantly, the New Jersey judiciary provided early resistance to this pernicious movement.⁸

Professor Justin Long and I were invited to speak at the Pound Civil Justice Institute's 2018 Forum for State Appellate Judges in Denver on the topic of state constitutional protections for civil litigation. We have revised our papers⁹ and they are included here.¹⁰ I review individual rights protections in civil litigation and Professor Long applies separation-of-powers and government structure principles to the same topic. Judge David Schuman of Oregon presented insightful commentary on my paper,¹¹ as did Professor Jonathan Marshfield on Professor Long's.¹²

Professor John Dernbach and his coauthors, Professors Kenneth Kristl and James May, the leading experts on Pennsylvania's important state constitutional environmental rights provision,¹³ have contributed further analysis of the continuing, groundbreaking judicial enforcement of this clause.¹⁴

Anthony Sanders builds on his earlier analysis of state constitutional "Baby" Ninth Amendments¹⁵ here by analyzing the origins and potential

7. Sarah Hawkins Warren, *Introduction to Jeffrey S. Sutton, Change Agents: Looking to State Constitutions for Rights Innovations*, JUDICATURE, Summer 2018, at 26.

8. SUTTON, 51 IMPERFECT SOLUTIONS, *supra* note 6, at 96–101; Sutton, *Enduring Salience*, *supra* note 3, at 801; *see also* Smith v. Bd. of Exam'rs of Feeble-Minded, 88 A. 963 (N.J. 1913).

9. Robert F. Williams, *State Constitutional Protection Of Civil Litigation*, POUND CIV. JUSTICE INST. (Jul. 7, 2018), <http://poundinstitute.org/sites/default/files/docs/2017%20Forum/2018%20Pound%20Forum%20Paper%20-%20Robert%20Williams.pdf>; Justin R. Long, *State Constitutional Structures Affect Access to Civil Justice*, POUND CIV. JUSTICE INST. (Jul. 7, 2018), <http://poundinstitute.org/sites/default/files/docs/2017%20Forum/2018%20Pound%20Forum%20Paper%20-%20Justin%20Long.pdf>.

10. Robert F. Williams, *State Constitutional Protection of Civil Litigation*, 70 RUTGERS U. L. REV. 905 (2018); Justin R. Long, *State Court Protection of Individual Constitutional Rights: State Constitutional Structures Affect Access to Civil Justice*, 70 RUTGERS U. L. REV. 937 (2018).

11. Hon. David Schuman, *Comments on Robert Williams's State Constitutional Protection of Civil Litigation*, 70 RUTGERS U. L. REV. 975 (2018).

12. Jonathan L. Marshfield, *State Structuralism—A Reply to Professor Long*, 70 RUTGERS U. L. REV. 979 (2018).

13. *See, e.g.*, John C. Dernbach, Kenneth T. Kristl & James R. May, *Robinson Township v. Commonwealth of Pennsylvania: Examination and Implications*, 67 RUTGERS U. L. REV. 1169 (2015).

14. John C. Dernbach, Kenneth T. Kristl & James R. May, *Pennsylvania Environmental Defense Foundation v. Commonwealth of Pennsylvania: Recognition of Environmental Rights for Pennsylvania Citizens*, 70 RUTGERS U. L. REV. 803 (2018).

15. Anthony B. Sanders, *Baby Ninth Amendments and Unenumerated Individual Rights in State Constitutions Before the Civil War*, 68 MERCER L. REV. 389 (2017).

of these underrecognized provisions and their judicial enforcement.¹⁶

As always, this Issue contains incisive student-written case comments on some of the most noteworthy state supreme court interpretations of the past year.¹⁷ Over the years, these comments have provided a very useful body of scholarship on state constitutional law.

This year Dr. John Dinan published an important new book on state constitutional amendments.¹⁸ He examines the state constitutional amendment processes from a number of important angles. We will have a review/essay on the book in next year's Issue.

The origins of Florida's modern 1968 state constitution are analyzed in detail by Professor Mary Adkins in her 2016 book.¹⁹ This state constitution created Florida's unique and successful Constitution Revision Commission, appointed every twenty years to review the constitution and empowered to place its recommendations directly on the ballot without legislative review.²⁰ I will review her book in next year's Issue.

Christophe Van der Beken's new book on the little-known Ethiopian state constitutions²¹ builds on his article published earlier in our Annual Issue.²² In the very next issue of the *Law Review*, we will publish a major analysis of the Pennsylvania Supreme Court's interpretation of its state

16. Anthony B. Sanders, *Baby Ninth Amendments Since 1860: The Unenumerated Rights Americans Repeatedly Want* (and Judges Often Don't), 70 RUTGERS U. L. REV. 857 (2018).

17. Francisco F. Guzman Andrade, Comment, *Tort Reform—How the Phrase “As Heretofore Enjoyed” Subjected Wrongful Death Plaintiffs to Noneconomic Damages Caps in Missouri*, Dodson v. Ferrara, 491 S.W.3d 542 (Mo. 2016) (en banc), 70 RUTGERS U. L. REV. 983 (2018); Amy E. Pearl, Comment, *State Constitutional Law—Due Process—New Mexico Supreme Court Upholds Criminal Assisted Suicide Statute, Declines to Find Fundamental Right to Physician Aid in Dying*, Morris v. Brandenburg, 2016-NMSC-027, 376 P.3d 836, 70 RUTGERS U. L. REV. 1015 (2018); Jason M. Russell, Comment, *State Constitutional Law—Due Process—Florida Supreme Court Protects Workers' Compensation Claimants by Striking Down the Legislature's Restrictive Attorney's Fee Schedule*, Castellanos v. Next Door Co., 192 So. 3d 431 (Fla. 2016), 70 RUTGERS U. L. REV. 1035 (2018); Zachary Sisco, Comment, *May a Stream Become a Torrent: Alaska Creates a Roadmap for the Reform of Eyewitness Identification Due Process Law*, Young v. State, 374 P.3d 395 (Alaska 2016), 70 RUTGERS U. L. REV. 1061 (2018).

18. JOHN DINAN, STATE CONSTITUTIONAL POLITICS: GOVERNING BY AMENDMENT IN THE AMERICAN STATES (2018).

19. MARY E. ADKINS, MAKING MODERN FLORIDA: HOW THE SPIRIT OF REFORM SHAPED A NEW STATE CONSTITUTION (2016).

20. FLA. CONST. art. XI, § 2; Robert F. Williams, *Foreword: Is Constitutional Revision Success Worth Its Popular Sovereignty Price?*, 52 FLA. L. REV. 249 (2000).

21. CHRISTOPHE VAN DER BEKEN, COMPLETING THE CONSTITUTIONAL ARCHITECTURE: A COMPARATIVE ANALYSIS OF SUB-NATIONAL CONSTITUTIONS IN ETHIOPIA (2017).

22. Christophe Van der Beken, *Subnational Constitutional Autonomy and the Accommodation of Diversity in Ethiopia*, 68 RUTGERS U. L. REV. 1535 (2016).

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constitution by Professor Seth Kreimer.²³

As we enter our thirtieth year of covering state constitutional law, we remain confident that we continue to add value to the body of scholarship on this increasingly important body of law.

23. Seth F. Kreimer, *Still Living After Fifty Years: A Census of Judicial Review Under the Pennsylvania Constitution of 1968*, 71 RUTGERS U. L. REV. (forthcoming Feb. 2019).