

## INTRODUCTION

*Robert F. Williams\**

This is the thirty-third Annual Issue on State Constitutional Law. The year 2022 was the seventy-fifth anniversary of the New Jersey State Constitution and 2023 is the same anniversary of the Judiciary Article of that constitution. The *New Jersey Lawyer* published a commemorative issue in October 2022 to celebrate the 1947 New Jersey Constitution and offer commentary on matters relating to it.<sup>1</sup>

This year's Foreword is by Dr. Nicholas Cole of Pembroke College, Oxford University.<sup>2</sup> Dr. Cole is an expert on classical political thought and its influence on the American founding period. He has developed new ways of presenting the steps toward the development of negotiated texts by large groups and has supervised its application to American constitutions, federal and state.<sup>3</sup> This is called the Quill Project<sup>4</sup> and it has the potential to make constitutional convention records much clearer and easier to use.

My Article describes the variety of arguments available under state constitutions to advocate for a positive outcome in state courts even after the Supreme Court has rejected an identical or similar claim under the Federal Constitution.<sup>5</sup> I use the pending New Jersey litigation challenging the statutory ban on "fusion voting" (in which I am involved as co-author of an amicus brief) to illustrate this range of arguments.<sup>6</sup> Fusion voting permits candidates to be cross-nominated by more than one political party, allowing voters to avoid wasted or "spoiler" votes.<sup>7</sup>

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1. *The New Jersey Constitution: 75th Anniversary Edition*, NEW JERSEY LAWYER, Oct. 2022.

2. Nicholas P. S. Cole, *Writing America's Constitutions: Understanding the Drafting and Re-Drafting of America's Foundational Texts*, 75 RUTGERS U. L. REV. 1069 (2023).

3. *Id.* at 1090.

4. QUILLPROJECT, Quillproject.net (last visited July 24, 2023).

5. Robert F. Williams, *State Constitutional Fusion Voting Claims: Textbook New Judicial Federalism in New Jersey*, 75 RUTGERS U. L. REV. 1093 (2023).

6. *Id.* at 1094.

7. *Id.*

My book on the New Jersey Constitution was first published in 1990.<sup>8</sup> It was the first in what has become a fifty-state series, now including a volume on Puerto Rico.<sup>9</sup> My colleague Ronald Chen and I have recently published, with Oxford University Press, a third edition.<sup>10</sup> Former New Jersey Superior Court Judge Peter Buchsbaum's review of the new edition, first published in the *New Jersey Lawyer* issue mentioned above, is reprinted here.<sup>11</sup> In 2009 I published, with Oxford University Press, *The Law of American State Constitutions*. This year, with co-author Lawrence Friedman, we published a new edition.<sup>12</sup>

We are embarking on a new post-*Rucho*<sup>13</sup> and post-*Dobbs*<sup>14</sup> chapter of the new judicial federalism.<sup>15</sup> After the Supreme Court took a "hands off" approach to gerrymandering and abortion, interest in state constitutional law skyrocketed. The American Civil Liberties Union has established a State Constitutional Law Initiative in its national office, staffed with lawyers who are experienced in the field.<sup>16</sup> The Brennan Center has begun to publish its *State Court Report*, which comments on legal trends in state constitutional law.<sup>17</sup> The Proteus Fund created the State Law Research Initiative, which aims to facilitate and make available research on the legislative history of certain state constitutional clauses and state supreme courts'

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8. ROBERT F. WILLIAMS, *THE NEW JERSEY STATE CONSTITUTION: A REFERENCE GUIDE* (1990).

9. RAFAEL COX ALOMAR, *THE PUERTO RICO CONSTITUTION* (2022).

10. ROBERT F. WILLIAMS & RONALD K. CHEN, *THE NEW JERSEY STATE CONSTITUTION* (3d ed. 2023).

11. Hon. Peter A. Buchsbaum, *Book Review—The New Jersey Constitution: An Origin Story, Evolution, and Analysis*, *NEW JERSEY LAWYER*, Oct. 2022, at 66.

12. ROBERT F. WILLIAMS & LAWRENCE FRIEDMAN, *THE LAW OF AMERICAN STATE CONSTITUTIONS* (2d ed. 2023).

13. *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

14. *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022).

15. See SUSAN P. FINO, *THE ROLE OF STATE SUPREME COURTS IN THE NEW JUDICIAL FEDERALISM* 35 (1987) (explaining that "[t]he new judicial federalism requires state supreme courts to take on increased responsibility in constitutional interpretation in general and the development of a tradition of state constitutional interpretation in particular").

16. Press Release, ACLU, *ACLU Launches New State Supreme Court Initiative to Advance Rights at the State Level* (May 2, 2023), <https://www.aclu.org/press-releases/aclu-launches-new-state-supreme-court-initiative-to-advance-rights-at-the-state-level#:~:text=Through%20this%20initiative%2C%20the%20ACLU,defend%20the%20right%20of%20individuals>.

17. *State Court Report*, BRENNAN CENTER FOR JUSTICE, <https://www.brennancenter.org/series/state-court-report> (last visited July 24, 2023).

interpretations of those clauses.<sup>18</sup> The University of Wisconsin Law School has established the State Democracy Research Initiative.<sup>19</sup>

Next year's Annual State Constitutional Law Lecture will be by Miriam Seifter of the University of Wisconsin Law School. She is Director of the State Democracy Research Initiative<sup>20</sup> and one of the most prolific and thoughtful young scholars of state constitutional law.

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18. *Behind the Bench State Supreme Court Newsletter*, STATE LAW RESEARCH INITIATIVE, <https://behindthestatebench.com/newsletter-blog/> (last visited July 24, 2023).

19. STATE DEMOCRACY RESEARCH INITIATIVE, [statedemocracy.law.wisc.edu](http://statedemocracy.law.wisc.edu) (last visited July 24, 2023).

20. *Id.*

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