

Individual Rights

While many people think of the United States Constitution, and particularly the first ten amendments that constitute the Bill of Rights, as the major source of legal protection of individual freedoms—such as free speech, freedom of religion, personal privacy rights and the right to due process of law—each state constitution is also an independent source of those rights. While the federal Constitution provides the basic guarantees that are enforced across the nation, each state is free in its own constitution to provide rights that exceed the minimum federal standard. New Jersey in particular has a long tradition of interpreting the New Jersey Constitution in ways that are in keeping with the particular history and traditions of this State, and that often exceed the federal constitutional standard. Following are some examples.

Free Speech

State v. Schmid, 84 N.J. 535 (1980), found that the New Jersey Constitution extended free speech protections beyond those provided by the federal Constitution, and applied those rights to the private property of Princeton University, after considering: (1) the nature, purposes, and primary use of such private property, generally, its "normal" use, (2) the extent and nature of the public's invitation to use that property, and (3) the purpose of the expressional activity undertaken upon such property in relation to both the private and public use of the property.

Mazdabrook Commons Homeowners' Association v. Khan, 210 N.J. 482 (2012), applying the three Schmid factors, found that the New Jersey Constitution does not permit a homeowners' association from prohibiting residents from posting political signs in the windows of their own homes.

Religious Liberty

Freedom from Religion Foundation V. Morris County Board Of Chosen Freeholders, 235 N.J. 385 (2018), applied the Religious Aid Clause of the New

Jersey Constitution, i.e. that "[n]o person shall . . . be obliged to pay . . . taxes . . . for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry," to prohibit the use of taxpayer funds to repair and restore churches, even if the funds are intended to promote historic preservation, and even though the Establishment Clause of the federal constitution permits such assistance in some cases.

Ran-Dav's County Kosher, Inc. v. State, 129 N.J. 141 (1992), held that the kosher regulations adopted by the Division of Consumer Affairs violate the Establishment Clauses of the federal and state constitution, since they impose substantive religious standards for the kosher-products industry and authorize civil enforcement of those religious standards with the assistance of clergy, thus directly and substantially entangling government in religious matters.

Elmora Hebrew Center v. Fishman, 125 N.J. 404 (1991), held that in contract disputes with religious employers, civil courts must to abstain from religious questions while at the same time discharge their duty to decide legal disputes, and such civil adjudications must always be circumscribed carefully to avoid courts' incursions into religious questions that would be impermissible under the first amendment.

Doctrine of Fairness and Rightness (Fundamental Fairness)

State v. Gregory, 66 N.J. 510 (1975), relying on the broad administrative and procedural powers vested in the Supreme Court by Art. VI, § II, par. 3 of the New Jersey State Constitution rather than the double jeopardy clause of the federal constitution, the Court prohibited successive prosecutions for single sale of a small amount of heroin and a later prosecution for possession with intent to distribute that arose out of the same event.

Rodriguez v. Rosenblatt, 58 N.J. 281 (1971), applying New Jersey doctrine of fundamental fairness without relying on express constitutional provisions, held that

an indigent defendant charged with a minor offense should be offered counsel at no cost whenever the nature of the charge is such that imprisonment or other consequence of magnitude is actually threatened or is a likelihood on conviction.

Reproductive Rights

Right to Choose v. Byrne, 91 N.J. 287 (1982), held that under the New Jersey State Constitution's version of equal protection, the State may not jeopardize the health and privacy of poor women by excluding medically necessary abortions from a system providing all other medically necessary care for the indigent.

Personal Privacy and Family Autonomy

In Re Quinlan, 70 N.J. 10 (1976), held that the right to privacy under both the United States and New Jersey Constitutions bestowed upon an individual (or guardians acting on the individual's behalf) a protectable interest against intrusion by the State, and established a patient's right to refuse life-sustaining medical treatments.

In re Baby M, 109 N.J. 396 (1988), held that no contract can alter the parental rights of a woman who bears a child as that child's mother, and thus restored the parental rights of the woman who acted as a traditional surrogate for an infertile couple. This holding was extended in New Jersey to gestational surrogates (in which the mother carries the baby to birth but is not genetically related to the baby).

V.C. v. M.J.B., 163 N.J. 200 (2000), held that a "psychological parent," who although not a biological or adoptive parent has provided care and nurture for a child at the invitation of the legal parent and developed emotional bonds that develop between family members as a result of shared daily life, has a right to seek visitation and maintain a relationship with the child.