

Beyond the Mirror

The Unique Protections of the Pennsylvania Constitution

By Joshua D. Hill

This article highlights often-overlooked Pennsylvania constitutional provisions that practitioners can leverage to advance more robust arguments on matters of significant consequence to their clients. The Pennsylvania Constitution stands apart from its federal counterpart, not only in age but in scope. Running from July 15, 1776, just days following the signing of the Declaration of Independence, through Sept. 26, 1776, the Pennsylvania Constitutional Convention, chaired by Benjamin Franklin, also took place at Independence Hall in Philadelphia. Significantly, the Pennsylvania Constitution was adopted on Sept. 28, 1776, a full decade before the ratification of the U.S. Constitution in 1788. At the time, the Pennsylvania Constitution was considered the most radically democratic of all the early state constitutions. Its Declaration of Rights was embedded within the original document, unlike the U.S. Bill of Rights, which was appended after ratification in 1791. This historical distinction underscores Pennsylvania's early and enduring commitment to the protection of individual liberties for its citizens and the limitation of governmental power.

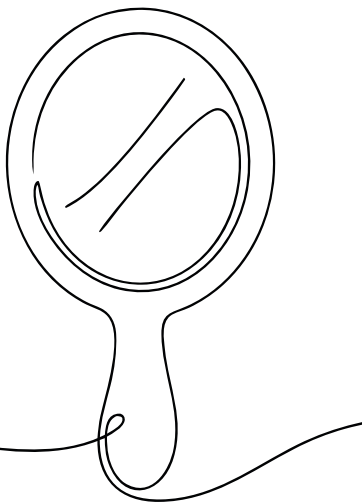
As Chief Justice Thomas Saylor observed in the foreword to *The Pennsylvania Constitution: A Treatise On Right and Liberties* (Gormley), “some of the core rights set forth in the amendatory provisions to the United States Constitution known as the Bill of Rights ... are couched as restraints on legislative power ... [but] the analogue provisions of the Pennsylvania Constitution ... directly proclaim affirmative rights for individuals.”

Interestingly, many of the framers of the Pennsylvania Constitution were also influential in shaping the U.S. Constitution. Benjamin Franklin, James Wilson (associate justice of the U.S. Supreme Court from 1789 to 1798), George Clymer (who represented Pennsylvania in the first session of the U.S. House of Representatives), Robert Morris (George Washington's first choice for treasury secretary over Alexander Hamilton and one of Pennsylvania's first U.S. senators), Thomas Fitzsimons (also represented Pennsylvania in the first session of the U.S. House of Representatives) and Jared Ingersoll (Pennsylvania attorney general from 1791 to 1800) all served as delegates to both the 1776 Pennsylvania Constitutional Convention and



Independence Hall, Philadelphia

Article I of the Pennsylvania Constitution remains a significant source of unique protections.



the 1787 U.S. Constitutional Convention. The rights articulated in Pennsylvania's Declaration of Rights (Article I) thus helped inform the broader structure of American constitutional liberty. Over time, the Pennsylvania Supreme Court has consistently affirmed that the commonwealth's constitution operates as an independent source of rights, often broader than those guaranteed under the U.S. Constitution, though this distinction remains largely unrecognized by many Pennsylvanians.

Notably, in *Commonwealth v. Edmunds*, 526 Pa. 374 (1991), the Pennsylvania Supreme Court established a framework for determining when the Pennsylvania Constitution affords greater protection for its citizens than the U.S. Constitution. In those circumstances, Pennsylvania courts must look at four factors:

- (1) text of the Pennsylvania constitutional provision;
- (2) history of its adoption;
- (3) related case law from other states; and
- (4) policy considerations unique to Pennsylvania.

Article I of the Pennsylvania Constitution, the commonwealth's Declaration of Rights, affirms that all citizens "have certain inherent and inalienable rights." This concept defines the commonwealth's two-part social contract: One part establishes government, while another limits its powers. Among the most distinctive features of the Pennsylvania Constitution are several enumerated rights that have no precise federal equivalent. The following sections highlight some of these uniquely Pennsylvania protections.



Reputation as a Fundamental Right (Article I, Section 1)

All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

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The Pennsylvania Supreme Court has recognized that the commonwealth's constitution places reputation on the same level as life, liberty and property. This is significant as citizens therefore possess a fundamental right to protect their reputations, which cannot be infringed upon by the government without due process.

Significant Decision: In *re Fortieth Statewide Investigating Grand Jury*, 647 Pa. 489 (2018), the court held that individuals named and criticized, but not charged, in a statewide grand jury report have a constitutional right to protect their reputations under Article I, Section 1, requiring a meaningful opportunity to be heard before any reputational harm occurs.



Free and Equal Elections (Article I, Section 5)

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.

Article I, Section 5, ensures that every citizen has an equal opportunity to translate votes into representation. Elections are deemed free and equal when each qualified elector has the same right as every other voter to cast a ballot and have it honestly counted.

Significant Decision: *League of Women Voters v. Commonwealth*, 645 Pa. 1 (2018). The Pennsylvania Supreme Court held that the Legislature's 2011 congressional redistricting plan violated Article I, Section 5, as it unfairly diluted certain votes for partisan advantage.



The Right to Education (Article III, Section 14)

The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.

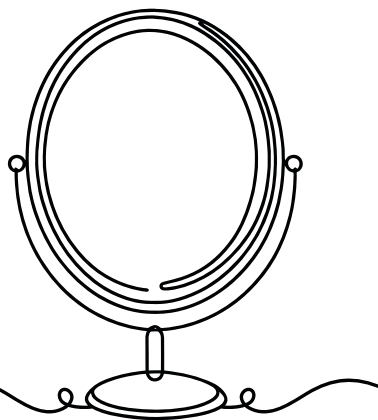
Although not found in Article I, the Right to Education occupies a distinctive place in Pennsylvania's constitutional structure. Unlike the fundamental rights set forth in the Declaration of Rights, the Education Clause appears in Article III, within the framework regulating the General Assembly and functions primarily as a structural command imposed on the Legislature rather than as an individual right inherent to the people.

Significant Decision: *William Penn School District v. Pennsylvania Department of Education*, 642 Pa. 236 (2017). In *William Penn*, school districts, parents and civil rights organizations alleged that Pennsylvania's school-funding system violated the Education Clause. The petitioners



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argued that the Legislature had defined what adequate education entails through academic standards assessments yet failed to allocate resources in a manner remotely capable of enabling students in low-wealth districts to meet those standards.

While the court declined to decide whether education is a fundamental right under Pennsylvania law, it held open the possibility that the Pennsylvania Constitution may ultimately be interpreted to confer some form of enforceable individual right to education.



Environmental Rights (Article I, Section 27)

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

Although not part of the original Declaration of Rights, the "Environmental Rights Amendment," adopted in 1971, recognizes three interrelated principles: 1) a personal right to a clean and healthy environment, 2) common ownership of the commonwealth's natural resources and 3) the designation of the state as trustee of those resources. Together, these principles create a constitutional public trust doctrine unique among the states.

Significant Decision: *Robinson Twp. v. Commonwealth*, 623 Pa. 564, 83 A.3d 901 (2013). The court invalidated portions of Act 13, which allowed statewide zoning of oil and gas operations, holding that the law violated the Environmental Rights Amendment. The decision reaffirmed that the commonwealth cannot override local laws in ways that disregard its citizens' constitutional environmental rights.



Equal Rights/Sex Equality (Article I, Section 28)

Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.

Also not part of the original Declaration of Rights, Pennsylvania's Equal Rights Amendment (ERA), adopted in 1971, provides broader protection than the federal Equal Protection Clause, specifically prohibiting any state or local discrimination based on sex and often requiring strict scrutiny for such classifications. Despite having achieved the necessary 38 state ratifications, the Equal Rights Amendment has not been officially added to the U.S. Constitution due to disputes over missed deadlines and other legal challenges.

Significant Decision: *Allegheny Reprod. Health Ctr. v. Pennsylvania Dep't of Human Servs.*, 309 A.3d 808 (Pa. 2024). The Pennsylvania Supreme Court ruled that restrictions on Medicaid funding for abortion implicate the ERA, requiring heightened scrutiny. The case reaffirmed that laws denying benefits on the basis of sex violate

the commonwealth's constitutional guarantee of equality.



Right to Privacy and Search and Seizure (Article I, Section 8)

The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed to by the affiant.

While containing similar language, Pennsylvania's privacy protections predate the Fourth Amendment by more than a decade and have evolved to provide broader privacy rights than federal law. The original version of Section 8 was reworded in 1790 but has remained essentially untouched for 200 years. Beginning in the early 1970s, the Pennsylvania Supreme Court, recognizing an implicit right to privacy in the commonwealth, began considering whether Section 8 contained additional protections not provided by the Fourth Amendment. The protection provided by Section 8 applies to those areas where one has a reasonable expectation of privacy. For example, Section 8 protects an individual's possessions regardless of the physical presence of the owner, so long as a person seeks to preserve his effects as private, even if they are accessible to others. As the U.S Supreme Court began to focus less on the right to privacy and more on the deterrence of police misconduct, the Pennsylvania Supreme Court has held

fast in interpreting Section 8 to embody "a strong notion of privacy."

Significant Decisions: Pennsylvania's privacy jurisprudence under Article I, Section 8, has evolved through a consistent line of cases emphasizing the commonwealth's independent and more protective approach to critical search and seizure issues. In *Commonwealth v. DeJohn*, 486 Pa. 32 (1979), the court held that individuals possess a reasonable expectation of privacy in their bank records, rejecting *United States v. Miller* (individuals have no reasonable expectation of privacy in financial records held by a bank) and establishing that such financial information may only be obtained through a warrant based on probable cause.

In *Commonwealth v. Sell*, 504 Pa. 46 (1983), the court preserved the doctrine of automatic standing, allowing defendants charged with possessory offenses to challenge the legality of a search without first proving a proprietary interest in the seized property. *Commonwealth v. Melilli*, 521 Pa. 405 (1989), further expanded state protections by holding that the use of a pen register requires a warrant supported by probable cause and by rejecting the federal "good faith" exception to the exclusionary rule. In *Commonwealth v. Edmunds*, 526 Pa. 374 (1991), the court reaffirmed that Pennsylvania's exclusionary rule is grounded in privacy rather than deterrence, expressly declining to adopt *United States v. Leon*'s good-faith exception. Finally, in *Commonwealth v. Alexander*, 243 A.3d 177 (Pa. 2020), the court declined to follow the federal automobile exception, holding that warrantless vehicle searches require both probable cause and exigent circumstances under the Pennsylvania Constitution.

Together, these cases reflect Pennsylvania's steadfast refusal to weaken constitutional privacy protections, maintaining a distinct

and more protective interpretation of search and seizure law for all its citizens.

Conclusion

As young state court public defenders, my colleagues and I routinely invoked Article I, Section 8, of the Pennsylvania Constitution in support of our suppression motions. At the time, we did not fully appreciate that Pennsylvania's Constitution and interpretive case law make clear that the federal Constitution sets only a minimum baseline for individual rights. Rooted in revolutionary ideals and refined through modern precedent, Article I of the Pennsylvania Constitution remains a significant source of unique protections. For defense attorneys practicing in the commonwealth, these enhanced rights are more than theoretical, they are tactical. The *Edmunds* framework provides a ready path to assert broader privacy, due process and equality protections under state law. Counsel can and should raise issues grounded in the Pennsylvania Constitution whenever its language, history or policy diverges from federal doctrine. By invoking state constitutional authority, attorneys can secure more robust advantages for clients than would be available under the federal Constitution alone. In short, the Pennsylvania Constitution should not be treated as a mirror of federal law but should be a key consideration when representing clients across the commonwealth. ☞



Joshua D. Hill is a partner at Pietragallo Gordon Alfano Bosick & Raspanti LLP in the firm's Philadelphia office and is a member of the Government Enforcement, Compliance and White-Collar Litigation Group.

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