



## Teaching about State Constitutions

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State constitutions have long played an important role in American government, yet they are often neglected in K-12 classrooms. Recent U.S. Supreme Court decisions (e.g., *Dobbs v. Jackson Women's Health Organization* (2022) and *Rucho v. Common Cause* (2019)), as well as state disputes over equitable school funding, have cast new light on the importance of state constitutions. How do state constitutions compare to the U.S. Constitution and to each other? What roles do state constitutions play in citizens' lives? Why are state constitutions important in the education of citizens? This Digest helps students and teachers address these and other important questions about state constitutions.

I begin by providing an overview of the 50 state constitutions and their purposes, showing that in some respects they serve similar purposes as the U.S. Constitution, while in other respects they serve very different purposes. I also discuss the roles played by state constitutions in anchoring debates about abortion, gerrymandering, and school finance.

### STATE CONSTITUTIONS: AN OVERVIEW

Each of the 50 states has its own constitution. Some states have had only one constitution. This includes Massachusetts, whose 1780 constitution has been amended 121 times but never replaced, making it the world's oldest continuously operating constitution. Some states have had multiple constitutions. Louisiana tops the chart with eleven constitutions since entering the union in 1812. Its most recent constitution was adopted in 1974.

There is a crucial difference between state constitutions and the U.S. Constitution. In a state constitution, the people of the state limit the inherent plenary powers of their state government. In the U.S. Constitution, the people, who are also citizens of a state, delegate powers to the U.S. (i.e., federal) government. Thus, a state government can

do anything that is not *prohibited* by the state constitution (or the U.S. Constitution). In contrast, the federal government can only do what the U.S. Constitution permits.

State constitutions are amended regularly. The U.S. Constitution has been amended 27 times. The 50 state constitutions vary in how often they are amended, but all are amended more often than the U.S. Constitution. On average, each state constitution has been amended about 150 times. The California, Texas, and South Carolina constitutions have been amended more than 500 times.

State constitutions are longer and more detailed than the 7,500-word U.S. Constitution. The 8,500-word Vermont Constitution, the briefest state constitution, is only slightly longer than the U.S. document. Many state constitutions are significantly longer. The Alabama, Arkansas, Louisiana, Texas, Oklahoma, Missouri, and Colorado constitutions are each more than ten times as long as the U.S. Constitution.

One reason state constitutions are longer is because people seek to limit state powers. In 2019, for example, Texas voters approved a state constitutional amendment prohibiting the legislature from enacting a personal income tax. Another reason is that states have more responsibilities than the federal government, such as providing for education, establishing local governments, and chartering corporations. Lengths also differ partly because people disagree on what belongs in a constitution.

### PURPOSES OF STATE CONSTITUTIONS

State constitutions serve various purposes. One is to outline the structure of governing institutions. How are members of the executive, legislature, and judiciary selected? How long can these officials serve? What powers can they exercise? State constitutions answer these questions while



The Virginia Constitutional Convention, 1830, by George Catlin

addressing other offices, such as state boards of education, that don't exist in the U.S. Constitution.

Another purpose is to specify which policies can and cannot be adopted. The U.S. Constitution is almost completely free of policy provisions, but state constitutions are full of them. Some provisions prohibit officials from adopting certain policies, such as preventing states from running an imbalanced budget or disallowing certain forms of gambling. Other provisions authorize or enact certain policies, such as establishing a minimum wage or legalizing and regulating marijuana.

State constitutions also protect individual rights. State constitutions cannot provide less rights protection than the U.S. Constitution guarantees, but they can guarantee greater protection. For instance, state supreme courts have issued rulings interpreting state religious establishment guarantees to impose greater limits on public support of religious schools than the U.S. Constitution requires. Most state constitutions also contain rights not found in the U.S. Constitution, such as equal rights for women, privacy, rights of crime victims, a right to education, and the right to a clean environment.

## ABORTION

The U.S. Supreme Court, in *Dobbs v. Jackson Women's Health Organization* (2022), reversed *Roe v. Wade* (1973) and declared that the U.S. Constitution does not protect abortion rights. After *Dobbs*, battles over abortion policy are taking place in the states. Many of those battles focus on the meaning of state constitutions. Abortion-rights supporters have filed several state-court lawsuits claiming that restrictions on abortion access violate privacy provisions, due process, and equal protection clauses in state constitutions.

Some state courts have rejected these arguments, concluding that their state constitution provides no more protection for abortion rights than the U.S. Constitution. Other state courts, including in Montana and Kansas, decided that their state constitutions protect abortion rights and issued rulings preventing enforcement of various abortion regulations.

Groups seeking to shape abortion policy have not relied solely on litigation. The flexibility of state amendment processes opens an alternative route for groups seeking to protect or limit abortion access. In the decade before

*Dobbs*, abortion opponents secured ratification of constitutional amendments in Tennessee, Louisiana, Alabama, and West Virginia declaring that these constitutions do not protect abortion rights. The purpose of these amendments is to prevent state courts from invoking state constitutions to protect abortion access.

Since *Dobbs*, abortion rights supporters have been active in passing constitutional amendments to guarantee abortion rights. Vermont voters were among the first to approve such an amendment in 2022, adding a provision declaring “an individual’s right to personal reproductive autonomy is central to the liberty and dignity to determine one’s own life course.” Between 2022 and 2024, voters in eleven states approved constitutional amendments protecting abortion rights.

## REDISTRICTING

For several decades before the U.S. Supreme Court’s ruling in *Rucho v. Common Cause* (2019), litigants tried, without success, to persuade the court to interpret the U.S. Constitution to limit partisan gerrymandering of U.S. House and state legislative districts. In *Rucho*, the Supreme Court declared that the U.S. Constitution does not speak to partisan gerrymandering and that federal courts should not entertain federal constitutional complaints that one party has been disadvantaged in redistricting. However, the justices made clear that groups could make their case in state courts, drawing on state constitutional provisions.

The Pennsylvania and North Carolina supreme courts responded to *Rucho* by invoking “free and fair elections” clauses and other state constitutional provisions to overturn congressional district maps that unduly benefited one party. In other states, legislators and/or voters have enacted constitutional amendments that limit partisan gerrymandering. Most of these amendments take primary responsibility for map-making from legislators and give it to independent commissions, as in Virginia, Michigan, Colorado, Arizona, and California. Amendments in other states, as in Florida, take a different approach. They leave redistricting to the legislature but explicitly bar partisan considerations when drawing legislative maps.

## SCHOOL FINANCE

Many people are concerned about disparities in per-pupil funding across school districts. Nearly all states fund K-12 schools primarily through local and state revenues (on average, 40 – 50% local, 40 – 50% state, 8 – 10% federal). Because some localities are wealthier than others, per-pupil spending can vary dramatically from one district to another. The U.S. Supreme Court was asked in *San Antonio Independent School District v. Rodriguez* (1973)

to recognize a federal constitutional right to inter-district equity in per-pupil funding. However, by a 5-4 vote, the court rejected this argument, leaving battles about school financing to the states.

Litigants have successfully persuaded some state courts to rely on state education and equal-protection clauses to prohibit substantial disparities in per-pupil funding. These state court “equity” rulings have affected how schools are funded. States have had to rely more on state money and less on local money in funding public schools and sometimes to target money specifically to students in impoverished districts, as in New Jersey. A later wave of state court “adequacy” lawsuits has taken a different approach and persuaded state courts to deem existing school funding levels inadequate to comply with state constitutional guarantees of a “thorough and efficient education.” These state court rulings have led to an infusion of resources to fund K-12 schools, as occurred in Kansas from 2014 – 2024 (see *Gannon* cases).

How states provide for education funding raises many interesting questions about the relationships between local governments (i.e., local school boards) and the state. Should citizens in local school districts be empowered to raise and spend more money per pupil than citizens in other districts within the same state? Should state funding be distributed according to demographic factors (e.g., the number of low-income students), equalized across local districts to ensure everyone achieves a minimum funding level, be provided in the form of categorical grants, or some combination of formulas?

## CONCLUSION

Abortion, gerrymandering, and school finance are examples of how state constitutions provide an alternative means of guaranteeing rights when protection is not available under the U.S. Constitution. Often, state courts take the lead in interpreting state constitutional provisions and extending rights protections. In some cases, legislators and voters pass state constitutional amendments to define rights or make changes in the structure of government and public policy.

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## ABOUT THE AUTHOR



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