

The Rebirth of State Constitutionalism Continues

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One of the most interesting trends in the Law Court's jurisprudence (at least in the mind of this blogger) is the continued renaissance of the Court's primacy doctrine – an issue addressed before on this blog. As explained in two prior blog posts ([here](#) and [here](#)), the primacy doctrine, generally speaking, directs state courts to resolve state constitutional issues prior to and independently of any federal constitutional issues.

The doctrine gained traction in the 1980s, but was largely neglected until [two decisions](#) in 2020; Justice Connors invoked it in her concurrence in [State v. Chan](#), and the Court applied it in [State v. Fleming](#). This revival does not appear to simply be a flash in the pan.

In a recent [opinion](#) authored by Justice Connors in *State v. Reeves*, the Court again applied the primacy approach to “first examine the defendant’s claim under the Maine Constitution” and to “interpret the Maine Constitution independently of the federal Constitution.” The case involved a claim that the trial court had violated a criminal defendant’s right to self-representation under both Maine and the U.S. Constitutions. The State apparently made no particular effort to develop any argument specific to the Maine Constitution, arguing, “with little elaboration,” that the relevant provisions were “coextensive.” The Court was not so dismissive, observing that the relevant “language in the Maine Constitution differs from the language in the federal Constitution” and that the Court had “never addressed whether *this particular right* as applied *in this context* is coextensive under both constitutions” (emphasis added). Adhering to the primacy approach, the Court therefore first looked to the language of the Maine Constitution, and considered pertinent federal precedent for its persuasive value only. Significantly, although the Court ultimately found federal precedent persuasive, the Court’s holding delineated the scope of the Maine Constitution – not the U.S. Constitution.

The *Reeves* opinion is noteworthy for at least two reasons. First, it cabins the scope of the Court’s pronouncements regarding the coextensive nature of certain constitutional provisions – *Reeves* suggests that a statement by the Court that a provision of the Maine Constitution is coextensive with the parallel federal provision is context-specific. Simply because the meaning of a state constitutional provision may be consistent with the federal constitution in one respect may not mean that it is coextensive for all purposes in all contexts. Second, by deciding the case as a matter of state law, the Court has demonstrated one of the most significant practical benefits of the primacy doctrine – it has ensured that state constitutional law regarding the right to self-representation will not necessarily turn on the vagaries of federal law and the potential for change in federal jurisprudence.

In short, *Reeves* ensures the stability of state constitutional law by committing the interpretation of the Maine Constitution to the state judiciary rather than to federal courts.

The revival of the primacy doctrine appears to have staying power. The significance of this development should not be overlooked.

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