

# A RATIONAL BASIS FOR RATIONAL BASIS REVIEW UNDER ARTICLE I, SECTION 20 OF THE OREGON CONSTITUTION?

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## I. INTRODUCTION

Recent Oregon Supreme Court opinions have emphasized originalism in interpreting Oregon state constitutional provisions. They demand that judges, counsel, and presumably officials interpret and apply constitutional provisions by attempting to discover what the framers believed that clause to mean. The Oregon Supreme Court, in its 1992 decision *Priest v. Pearce*, set forth an originalist method for interpreting original provisions of the Oregon Constitution.<sup>1</sup> The *Priest* court declared that a constitutional provision must be interpreted in light of (1) its specific wording, “text and context,” (2) prior case law, and (3) the historical circumstances of its creation.<sup>2</sup> This signaled to many practitioners an attempt by the Oregon courts to fashion a coherent approach to constitutional construction, focusing on discovering the framers’ intent in drafting the particular clause in question as evidence of that clause’s meaning.<sup>3</sup> Subsequent application of the *Priest* formulation was sporadic.<sup>4</sup> However, in *Stranahan v. Fred Meyer*, the court expressly noted that “it long has been the practice of this court ‘to ascertain and give effect to the intent of the framers of the provision at issue and of the people who adopted it.’”<sup>5</sup> *Stranahan* referenced the three-part inquiry in *Priest v. Pearce* as the appropriate methodology to ascertain the framers’ intent.<sup>6</sup> Moreover, the court invited arguments in favor of new understandings of constitutional provisions.

[W]e remain willing to reconsider a previous ruling under the Oregon Constitution whenever a party presents to us a principled argument suggesting that, in an earlier decision, this court wrongly considered or wrongly decided an issue in question. We will give particular attention to arguments that either present new information as to the meaning of the constitutional provision at issue or that demonstrate some failure on the part of this court at the time of the earlier decision to follow its usual paradigm for considering and construing the meaning of the provision in question.<sup>7</sup>

Despite *Stranahan*’s invitation, article I, section 20 of the Oregon Constitution has never been interpreted utilizing the *Priest v. Pearce* originalist approach. Article I, section 20 provides: “No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens.”<sup>8</sup> For decades, Oregon courts have struggled to give this clause meaning and fashion an appropriate legal analysis. In early decisions addressing the clause, Oregon courts interpreted article I, section 20 as providing the same protections as the Federal Equal Protection Clause.<sup>9</sup>

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1. 840 P.2d 65, 67-69 (Or. 1992).

2. *Id.* at 67.

3. Jack L. Landau, *The Unfinished Revolution: Interpreting the Oregon Constitution*, 62 OR. STATE BAR BULL. 9, 12 (2001).

4. *Id.*

5. 11 P.3d 228, 237 (Or. 1999) (citing *Jones v. Hoss*, 285 P. 205 (1930); *Oregonian Publ’g Co. v. O’Leary*, 736 P.2d 173 (1987)).

6. *Id.*

7. *Id.*

8. OR. CONST. art. I, § 20.

9. *See, e.g.*, *Sch. Dist. No. 12 v. Wasco County*, 529 P.2d 386, 389 (Or. 1974); *Plummer v. Donald M. Drake Co.*, 320 P.2d 245, 248 (Or. 1958); David Schuman, *The Right to “Equal Privileges and Immunities”: A State’s Version of “Equal Protection,”* 13 VT. L. REV. 221, 227-28 (1986).

However, beginning in 1981 with *State v. Clark*<sup>10</sup> and *State v. Edmonson*,<sup>11</sup> Oregon courts recognized the independent nature of the various clauses provided in the Oregon Constitution and commenced independently interpreting and applying those provisions. Commentators, as well as the Oregon Supreme Court itself, dubbed this event a “revolution” in state constitutional law.<sup>12</sup> Instead of relying on federal constitutional provisions, the courts recognized new rights granted by state constitutions. This recognition resulted in reexaminations of several Oregon constitutional clauses, including article I, section 20.



based on the clause's text and the earliest Oregon decision interpreting the clause.

Part II of this Comment addresses current understandings of article I, section 20 based on existing Oregon case law, examining the constituent parts of the provision. Part III considers Oregon Supreme Court cases applying the *Priest v. Pearce* method of constitutional interpretation to other provisions, and attempts to utilize this method in interpreting article I, section 20. Finally, Part IV of this Comment argues that there is no rational basis for rational basis review of statutory classifications and suggests a new paradigm for interpreting article I, section 20.