EXPLORING THE ORIGINAL MEANING OF ARTICLE I, SECTION 6 OF THE IOWA CONSTITUTION

Edward M. Mansfield & Conner L. Wasson***

ABSTRACT

Article I, section 6 of the Iowa constitution provides: "All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens." Through the last hundred years, the Iowa Supreme Court's interpretation of this provision has evolved so that it now serves as a state counterpart to the federal Equal Protection Clause. This Article seeks to develop an original understanding of article I, section 6 by exploring the mid-nineteenth-century historical record, contemporary case law, and similar constitutional provisions enacted by other states in the same time period.

TABLE OF CONTENTS

* Justice, Iowa Supreme Court; J.D., Yale University, 1982; B.A., Harvard University, 1978.

** Associate Attorney, Ahlers & Cooney, P.C.; J.D., Drake University Law School, 2014; B.S., Northern Illinois University, 2010. The Authors would like to thank Drake University Law School's Supreme Court Scholar program, which gave them the opportunity to work together on the project that led to this Article.

I. INTRODUCTION

"All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens."[1] So reads article I, section 6 of the Iowa constitution. The Iowa Supreme Court has characterized this provision as a state counterpart to the federal Equal Protection Clause.[2] Article I, section 6, however, predates the Equal Protection Clause. It was enacted as part of Iowa's 1857 constitution, and remains in that constitution today.[3]

Article I, section 6 is an amalgam. The first clause of article I, section 6—"[a]ll laws of a general nature shall have a uniform operation"—speaks

1. IOWA CONST. art. I, § 6.

2. *See, e.g.*, Nguyen v. State, 878 N.W.2d 744, 758 (Iowa 2016) (discussing "the equal protection clause of the Iowa Constitution" and "the clause's federal counterpart"); Qwest Corp. v. Iowa State Bd. of Tax Review, 829 N.W.2d 550, 557 n.4, 558 (Iowa 2013) (referring to article I, section 6 as "our equal protection clause" and to the Equal Protection clause of the Fourteenth Amendment as "its federal counterpart"); NextEra Energy Res. v. Iowa Utils. Bd., 815 N.W.2d 30, 45 (Iowa 2012) (describing article I, section 6 as "[t]he Iowa Constitution's counterpart to the federal [Equal Protection] clause"); Sherman v. Pella Corp., 576 N.W.2d 312, 317 (Iowa 1998) (referring to article I, section 6 as "the counterpart to the federal Equal Protection Clause").

3. IOWA CONST. art. I, § 6. Iowa is currently governed by an 1857 constitution and subsequent amendments thereto. That constitution was preceded by an 1844 constitution that did not achieve ratification, and an 1846 constitution that was in effect for 11 years. *See infra* Part II.

to uniformity of action.[4] The second clause—"the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens"—appears to thwart certain preferences for particular citizens or groups of citizens.[5] Throughout this Article, we will use the terms "uniformity clause" and "privileges and immunities clause" to refer to these clauses respectively.

This Article explores how article I, section 6 would have been understood at the time of its enactment in 1857. The Article will try to arrive at this contemporaneous meaning in several ways. Part II will discuss how the text of article I, section 6 took on its current form, tracing how it became part of the Iowa constitution and examining the relevant constitutional debates.

Part II will also consider two relevant and related constitutional provisions—article III, section 30 and article VIII, section 12. We conclude, based on text and legislative history, that the two clauses in article I, section 6 may have been intended to serve different roles. The uniformity clause was aimed at geographical discrimination, the privileges and immunities clause at special legislative franchises or monopolies.[6]

Part III then discusses mid-nineteenth-century Iowa Supreme Court cases applying article I, section 6, based on the premise that early judicial interpretations of article I, section 6 may reflect contemporary understandings of its meaning. We conclude that the first wave of court decisions, from the 1850s through the 1870s, generally supports the view that the uniformity clause targeted differences in the law based on location whereas the privileges and immunities clause sought to prevent unwarranted government grants of special economic status or protection.[7]

Part IV further analyzes article I, section 6 in a broader, national context by examining the use of similar language in other state constitutions at the time. Of the three states that adopted similar uniformity clauses in the 1840s or 1850s, two of them (Ohio and Kansas) seem to have viewed the provision as a directive against geographic discrimination, and the third (California) seems to have viewed the provision as having little practical effect. Less illuminating is the experience of the two states that adopted

4. *See* IOWA CONST. art I, § 6.
5. *Infra* Part II.
6. *Infra* Part II.
7. *Infra* Part III.

similar privileges and immunities clauses around that time (Indiana and Oregon). Nonetheless, the constitutional debates in one of those states (Indiana) strongly suggest the clause was seen as a way to prevent government monopolies, at least where citizens could not bid for those monopolies on an equal basis.[8]

Part V will cover some of the justly famous Iowa civil rights cases of the mid-nineteenth century, pointing out that none of them actually relied on or even mentioned article I, section 6.[9] This is consistent with this Article's thesis that the section was not originally viewed as an equal rights guarantee.

Finally, Part VI details several later phases in the interpretation of article I, section 6 that have shifted away from the original mid-nineteenth-century interpretation.[10]

II. THE GENESIS OF ARTICLE I, SECTION 6

Iowa became a territory in 1838 when Congress enacted legislation splitting it off from the Territory of Wisconsin.[11] It has been said that territorial Iowans held a sympathetic attitude toward equality.[12] It seems frontier conditions "made men really democratic and in matters political led to the three-fold ideal of Equality which constitutes the essence of American Democracy in the 19th century, namely: Equality before the Law, Equality in the Law, Equality in making the Law."[13]

The Organic Act of 1838 functioned as Iowa's territorial constitution.[14] Among other things, it provided that "the inhabitants of the [Iowa] Territory

8. *Infra* Part IV.

9. *Infra* Part V.

10. *Infra* Part VI.

11. An Act to Divide the Territory of Wisconsin and to Establish the Territorial Government of Iowa, ch. 96, 5 Stat. 235, 235 (1838).

12. BENJAMIN F. SHAMBAUGH, HISTORY OF THE CONSTITUTIONS OF IOWA 28 (1902) [hereinafter SHAMBAUGH, HISTORY OF THE CONSTITUTIONS].

13. *Id.* at 28–29.

14. Steven C. Cross, *History and the Constitution: The Drafting of Iowa's Constitution*, ST. LIBR. IOWA, http://www.publications.iowa.gov/135/1/history/7-6.html (last visited Nov. 18, 2017); *see also* Mark S. Cady, *A Pioneer's Constitution: How Iowa's Constitutional History Uniquely Shapes Our Pioneering Tradition in Recognizing Civil Rights and Civil Liberties*, 60 DRAKE L. REV. 1133, 1135 n.10 (2012) (discussing An Act to Divide the Territory of Wisconsin and to Establish the Territorial Government of Iowa as the "Organic Act of 1838").

shall be entitled to all the rights, privileges and immunities heretofore granted and secured to the Territory of Wisconsin and to its inhabitants."[15] Notably, this language conferred on Iowa residents not only "privileges and immunities"—a topic later encompassed within article I, section 6—but certain "rights" as well.[16] We will explore in this Article whether Iowa's inhabitants believed there to be a difference between the two. Elsewhere in the Act, Iowans were given "all . . . the rights, privileges, and advantages, granted and secured to the people of the Territory of the United States northwest of the river Ohio" by the 1787 Northwest Ordinance, while remaining "subject to all the conditions and restrictions and prohibitions in said articles of compact imposed upon the people of the said Territory."[17] Thus, territorial Iowans received from the beginning certain local rights and privileges, particularly those guaranteed in the 1787 Northwest Ordinance.[18]

Territorial status was understood to be temporary, and with a steady growth in population and prosperity, the gears of statehood began to grind in Iowa.[19] The first version of an Iowa constitution was drafted within 26 days in 1844.[20] This proposed constitution would never be ratified because of disputes relating to the boundaries of the new state.[21] However, it serves as

15. § 12, 5 Stat. at 239.

16. *See id.*; IOWA CONST. art. I, § 6.

17. An Act Establishing the Territorial Government of Wisconsin, ch. 54, § 12, 5 Stat. 10, 15 (1836).

18. *See* An Ordinance for the Government of the Territory of the United States North-west of the River Ohio, art. 2, 1 Stat. 51 (1787), *reenacted as* Act of Aug. 7, 1789, ch. 8, 1 Stat. 50 (including rights of habeas corpus, judicial proceedings according to the common law, and the right not to be deprived of liberty or property without the judgment of one's peers).

19. SHAMBAUGH, HISTORY OF THE CONSTITUTIONS, *supra* note 12, at 145–47.

20. *Id.* at 227.

21. *Id.* at 235. Every set of proposed boundaries for Iowa included the Mississippi River on the east and the Missouri border on the south. *Id.* at 236–41. The open question was what the northern and western boundaries would be. *Id.* The original 1844 constitution contained what are commonly known as the Lucas boundaries (named after Iowa's Territorial Governor Robert Lucas). *Id.* at 235. These would have excluded some of present-day northwest Iowa but included much of present-day southeast Minnesota. *Id.* at 236. Congress rejected these boundaries in favor of the so-called Nicollet boundaries. *Id.* at 255. The Nicollet boundaries would have made Iowa longer but narrower than it is today, with a straight-line northern boundary extending well into present-day Minnesota perpendicular to a straight-line western boundary excluding approximately 32 of Iowa's present-day western counties. *See id.* at 246–47. Many Iowans believed the Nicollet boundaries would fragment the natural economic boundaries of the state. *Id.* at 257. For this reason, Iowans voted down the 1844 constitution (as revised

a starting point for tracing the development of present day article I, section 6.

A. *Origins of the Uniformity Clause*

We tend not to read the uniformity clause and the privileges and immunities clause separately today. But they may have had distinct meanings at the time they were written into Iowa's constitution. One piece of evidence supporting that conclusion is that the two clauses entered Iowa's constitution at different times.

The 1844 precursor to the present-day article I, section 6 of the Iowa constitution simply stated, "All laws of a general nature shall have a uniform operation."[22] Thus, it contained only the uniformity clause. The 1844 constitution had no equivalent to the second clause of article I, section 6 respecting privileges and immunities.[23] Unfortunately, the framers of the 1844 constitution left behind few historical records to help explain what the uniformity clause meant to them.[24] "Fragments" of the debates have survived, but they are more in the nature of a journal or minutes than a verbatim transcript.[25] They reflect some discussion on the bill of rights,[26] but none on what would become the uniformity clause.[27] Furthermore, while several later constitutions in other states contained versions of the uniformity clause,[28] the Authors of this Article have been unable to find any example of such a clause prior to the 1844 Iowa constitution.[29]

Parsing the uniformity clause today, it appears to be an enigma. A nonlawyer might even regard the clause as stating a tautology. If the law is

by Congress to include the Nicollet boundaries). *Id.* at 265–67.

22. IOWA CONST. art. II, § 5 (1844).

23. *Compare* IOWA CONST. art. I, § 6, *with* IOWA CONST. art. II, § 5 (1844).

24. *See* BENJAMIN F. SHAMBAUGH, FRAGMENTS OF THE CONSTITUTIONAL DEBATES OF 1844 AND 1846, at iii (1900).

25. *See id. passim*.

26. *See id*. at 34–43, 159–62 (summarizing discussions at the 1844 convention concerning the bill of rights).

27. *See id. passim* (lacking discussion of the uniformity clause).

28. *See infra* Part IV.A.

29. Notably, the U.S. Constitution conferred on Congress the power "[t]o establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States." U.S. CONST. art. I, § 8. The word "uniform" in this context seems to mean geographically uniform. *See* THE FEDERALIST NO. 42 (James Madison) (explaining that this clause was intended to eliminate state-by-state differences in naturalization and bankruptcy laws).

general, it must have a uniform operation. But if it is not general, it need not. Yet how does one define a general law? Isn't it simply a law that has a uniform operation?

After the 1844 constitution failed to achieve ratification despite submission (and even resubmission) to the voters, a second convention was held and a new constitution was born.[30] The 1846 constitution delineated Iowa's present-day boundaries while adhering to the same overall structure and content as the 1844 constitution.[31] Once again, the uniformity clause found its home in the bill of rights, without any substantive alteration from 1844.[32] As before, there was no privileges and immunities clause.[33] Voters ratified the 1846 constitution, and Iowa became a state that year.[34]

Yet some citizens were dissatisfied with the 1846 constitution.[35] The chief concern related to the constitution's severe restrictions on banking.[36] Another constitutional convention was held, from January through March 1857, and a third constitution emerged.[37] The 1857 version of the Iowa constitution retained an organization similar to that of the 1844 and 1846

30. IOWA CONST. (1846); SHAMBAUGH, HISTORY OF THE CONSTITUTIONS, *supra* note 12, at 299.

31. *Compare* IOWA CONST. art. I (1846), *with* IOWA CONST. art. I (1844); *see also* SHAMBAUGH, HISTORY OF THE CONSTITUTIONS, *supra* note 12, at 299–300.

32. *Compare* IOWA CONST. art. II, § 6 (1846), *with* IOWA CONST. art. II, § 5 (1844).

33. *Compare* IOWA CONST. art. II, § 6 (1846), *with* IOWA CONST. art. II, § 5 (1844).

34. SHAMBAUGH, HISTORY OF THE CONSTITUTIONS, *supra* note 12, at 324–27.

35. *Id.* at 330.

36. *Id.* at 331–35. Article IX, section 1 of the 1846 Iowa constitution provided, "The General Assembly of this State shall prohibit, by law, any person or persons, association, company or corporation, from exercising the privileges of banking . . . ." Article IX, section 2 expressly prohibited the creation of "corporations with banking privileges." IOWA CONST. art. IX, § 1 (1846).
These provisions elicited a negative response from those who felt they impeded the growth of commerce.

> I cannot avoid a feeling of deep concern at the opinion expressed by some portion of our fellow citizens in favor of amending the Constitution of our State in such a manner as to authorize the establishment of Banks—of special acts of incorporation for pecuniary profit, and of contracting State debts without limitations of the General Assembly.

Stephen Hempstead, *First Biennial Message: December 7, 1852*, *in* MESSAGES AND PROCLAMATIONS OF THE GOVERNORS OF IOWA 429, 444 (Benjamin F. Shambaugh ed., 1903).

37. SHAMBAUGH, HISTORY OF THE CONSTITUTIONS, *supra* note 12, at 335–36.

versions.[38] The bill of rights came near the beginning, after the preamble and an identification of the state's boundaries.[39] Fortunately for historians, we have a full transcript of the 39 days of convention debates on the 1857 constitution.[40]

One might downplay the importance of what the delegates said in those debates, because ultimately the new constitution had to be approved by popular vote.[41] The Authors of this Article would disagree. The new constitution required approval *both* by the convention *and* by the people.[42] Thus, to the extent the underlying text is ambiguous, statements made in the course of either event should be relevant. Moreover, if the ultimate goal is to determine the likely meaning of language in 1857, any contemporaneous statement regarding that language has potential value.

The constitution's proposed bill of rights was first reported from committee on the 10th day of the 1857 convention.[43] At that time, article I,

38. *Id.* at 347.

39. IOWA CONST. pmbl., art. I.

40. 1 THE DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF IOWA, ASSEMBLED AT IOWA CITY, MONDAY, JANUARY 19, 1857 *passim* (1857) [hereinafter 1 THE DEBATES]; 2 THE DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF IOWA, ASSEMBLED AT IOWA CITY, MONDAY, JANUARY 19, 1857 *passim* (1857) [hereinafter 2 THE DEBATES]. The Iowa Supreme Court has relied on passages from those debates in interpreting the Iowa constitution. *See, e.g.*, Gansen v. Gansen, 874 N.W.2d 617, 624 (Iowa 2016); State v. Senn, 882 N.W.2d 1, 12–16 (Iowa 2016); King v. State, 818 N.W.2d 1, 15–16 (Iowa 2012); Redmond v. Ray, 268 N.W.2d 849, 853 (Iowa 1978). In fact, such reliance took place as early as 1863. *See* Morrison v. Springer, 15 Iowa 304, 325–26 (1863).

41. For example, concerning the nearly contemporaneous Oregon constitution, two scholars have said,

> Arguably, the intent of the delegates is of relatively little importance; it is the text of the constitution, as it was presented to the voters in November 1857 that is determinative. First, if there is any intent to be investigated, it is the intent of the voters, not the intent of the delegates, that matters, since it was their affirmative vote that was required for the adoption of the constitution. Further, determining intent with respect to a particular provision is problematic when an entire constitution, with a large number of disparate provisions, is presented as a single document.

Claudia Burton & Andrew Grade, *A Legislative History of the Oregon Constitution of 1857—Part I (Articles I & II)*, 37 WILLAMETTE L. REV. 469, 474–75 (2001) (footnotes omitted).

42. SHAMBAUGH, HISTORY OF THE CONSTITUTIONS, *supra* note 12, at 351–52.

43. 1 THE DEBATES, *supra* note 40, at 99–100.

section 6 contained only the uniformity clause, just as in the 1844 and 1846 constitutions.[44] We have no record of any debate or discussion that took place in 1857 regarding the uniformity clause.[45]

B. *Origins of the Privileges and Immunities Clause*

On the 13th day of the 1857 convention Mr. Edwards offered the privileges and immunities clause as an amendment to article I, section 6.[46] Upon the approval of Mr. Edwards's amendment, language providing that "the general assembly shall not grant to any citizen, or class of citizen, privileges or immunities, which, upon the same terms shall not equally belong to all citizens" was tacked onto the preexisting uniformity clause. Thus was formed the article I, section 6 that endures to the present day.[47]

Unlike the Organic Act of 1838, the privileges and immunities clause refers only to equality of privileges and immunities, not to equality of rights.[48] Privileges and immunities in this context are things "grant[ed]" by the legislature.[49] From examining this portion of the text, one might conclude that the privileges and immunities clause is directed at forms of special status that are bestowed by the government to which a person would not otherwise be entitled—not matters arising out of nature.

The legislative history seemingly supports this interpretation. After Mr. Edwards rose to offer his amendment, Mr. Johnston interceded, "Will the gentleman be kind enough to explain the object of his amendment?"[50] Mr. Edwards responded:

> Certainly; its object is contained in a nut shell, and is merely this: It is to prevent the General Assembly from granting any pri[vi]leges or immunities to any citizen or class of citizens, that it would not be willing to grant to any other citizen or class of citizens upon the same terms. It is to prevent the Legislature from granting exclusive privileges to any

44. *Id.* at 99.

45. *See id. passim*; 2 THE DEBATES, *supra* note 40, *passim* (lacking any discussion of the uniformity clause).

46. 1 THE DEBATES, *supra* note 40, at 200.

47. *Id.* at 200–01; *see* IOWA CONST. art I, § 6.

48. *Compare* IOWA CONST. art I, § 6, *with* An Act to Divide the Territory of Wisconsin and to Establish the Territorial Government of Iowa, ch. 96, § 12, 5 Stat. 235, 239 (1838).

49. *See* IOWA CONST. art I, § 6.

50. 1 THE DEBATES, *supra* note 40, at 200.

class of citizens.[51]

At this point, the convention agreed to the amendment. [52]

As legislative history goes, this is reasonably informative. The sponsor of the amendment was asked what its purpose was, he answered, and immediately thereafter the amendment was agreed to.[53] The key words in Mr. Edwards's explanation are, perhaps, the final ones: "[T]o prevent the Legislature from granting exclusive privileges to any class of citizens."[54]

One other kernel of legislative history concerning the privileges and immunities clause surfaced earlier in the debates when a proposed amendment was reported by the Bill of Rights Committee.[55] This amendment would have added to article I, section 2 (not article I, section 6) a prohibition on the granting of privileges and immunities that could not be subsequently removed by the General Assembly.[56] It stated, "And no privileges or immunities shall ever be granted that may not be altered, revoked or repealed, by the General Assembly."[57] In support of this amendment, Mr. Ells, chairman of the committee, remarked, "These words, 'privileges and immunities' are very broad in their signification. I hold that they cover all subjects of legislation that confer power upon any man, or any set of men."[58] He went on to add, "Taking this view of the subject, it necessarily follows, that the General Assembly have the *right* to repeal all *grants* of power, (whether provided for in the Constitution or not) . . . ."[59] Although Ells thus indicated that privileges and immunities by definition could be repealed, he continued, "Notwithstanding this, I desire to have the power of repeal distinctly expressed in the Constitution."[60]

Helpfully, "[f]or the benefit of the members of the Convention," Mr. Ells offered the following definition of "privilege" from a contemporary edition of Webster's Dictionary:

51. *Id.* at 200–01.
52. *Id.* at 201.
53. *Id.* at 200–01.
54. *Id.* at 201.
55. *Id.* at 100–01.
56. *Id.* at 101.
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.*

> A particular and peculiar benefit or advantage enjoyed by a person, company or society, beyond the common advantages of other citizens. A privilege may be a particular right granted by law or held by custom, or it may be an exemption from some burden to which others are subject. The nobles of Great Britain have the privilege of being triable by their peers only. Members of Parliament and of our Legislature have the privilege of exemption from arrests in certain cases. The powers of a banking company are privileges granted by the Legislature.[61]

The committee's amendment did not pass.[62] This may have been because of Mr. Ells's lackluster salesmanship. At the same time Mr. Ells offered the amendment, he was also telling his fellow delegates it was, in effect, superfluous.[63]

In any event, these passages from the debates suggest Iowa's constitutional framers may have understood "privileges and immunities" as referring to a special status given by the grace of the legislature (or perhaps by tradition) to a relatively small group of citizens, in contrast with "rights" that were part and parcel of citizenship itself.[64] So viewed, the privileges and immunities clause of article I, section 6 would have served a majoritarian or populist end, rather than a goal of protecting minorities. The clause would have been intended to prevent the powerful from getting special treatment rather than to prevent the disfavored from being trampled on.

A further clue to the original meaning of the privileges and immunities clause may be the simple fact it was offered as an amendment to the previous version of article I, section 6 that contained only the uniformity clause. One can logically infer the delegates thought they were adding something new to the Constitution; otherwise, Why bother?[65]

61. *Id.* at 104 (quoting Webster's Dictionary).

62. *Id.* at 114.

63. *See id.* at 104.

64. *See id.*

65. *See* Shirt v. Hazeltine, 700 N.W.2d 746, 753 n.5 (S.D. 2005) (citation omitted) (noting a frequent presumption that a constitutional amendment changed the law, while acknowledging an amendment may simply clarify the law). Further, although it is hazardous to draw inferences from failed amendments, it may be significant that the Bill of Rights Committee (based on a motion by Mr. Clarke of Henry County) had been "requested" by the delegates to report language which would have stated the following, or its equivalent: "[N]o sect, class, or party of men, shall, as such sect, class, or party, be cut off, or debarred from the enjoyment of all the political and legal rights and privileges to which the citizens of the State are entitled." 1 THE DEBATES, *supra* note 40, at 80. Clarke's resolution was agreed to, which might allow the conclusion that the delegates—

C. *The Uniformity Provision in Article III*

In addition to appending the privileges and immunities clause to the prior uniformity clause, the delegates to the 1857 convention also wrote a separate uniformity provision into the third article of the constitution relating to the legislative department.[66] As we have noted, article I, section 6 seemingly applies only to "general" laws.[67] If a law is of a general nature, article I, section 6 requires it to apply uniformly. But if the law is of a special nature, article I, section 6 would not affect it.

The delegates may have put some starch into the uniformity requirement through the addition of article III, section 30 to the 1857 constitution. This section was reported by the Committee on the Legislative Department on the 25th day[68] and provides:

> The General Assembly shall not pass local or special laws in the following cases:
>
> For the assessment and collection of taxes for state, county, or road purposes;
> For laying out, opening, and working roads or highways;
> For changing the names of persons;
> For the incorporation of cities and towns;
> For vacating roads, town plats, streets, alleys, or public squares;
> For locating or changing county seats.
>
> In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the state; and no law changing the boundary lines of any county shall have effect until upon being submitted to the people of the counties affected by the change, at a general election, it shall be approved by a majority of the votes in each county, cast for and against it.[69]

at least at that point—did not believe his language was duplicative. *See id.* As it turned out, the Committee did not subsequently report any such provision. *See id.* at 98–103. Conceivably, this could reflect a conscious decision not to incorporate the principle of equal political and legal rights in the bill of rights. Alternatively, it may simply mean that the committee after deliberation felt the principle was covered elsewhere in the constitution.

66. *See* IOWA CONST. art. III, § 30.

67. IOWA CONST. art. I, § 6; *supra* Part II.A.

68. 1 THE DEBATES, *supra* note 40, at 531.

69. IOWA CONST. art. III, § 30. The language in article III, section 30 relating to

Thus, article III, section 30 identifies certain subject areas where special laws are impermissible and also disallows special laws whenever a general law "can be made applicable."[70] Although it appears to sharpen the uniformity requirement, article III, section 30—like the uniformity clause itself—presents obvious problems of interpretation. For example, under what circumstances is it possible for a general law to apply? And who gets to decide? The wording of article III, section 30 (e.g., "can") suggests there must be some instances when a special law would be appropriate to achieve a particular legislative goal because a general law would not work, but the section provides no further guidance.[71]

The text of article III, section 30 may support the view that uniformity means geographic uniformity.[72] Here, the key phrase is "uniform operation *throughout the state*."[73] This language makes it sound as if the framers were concerned about discrimination based on location—laws treating one part of the state different from another.[74] Furthermore, given the language similarities between article III, section 30 and article I, section 6, one can infer that the same concerns drove both uniformity provisions.[75] Geographic discrimination remains an issue in Iowa today; presumably, it was even more salient in 1857.[76]

Reinforcing this focus on geography is article III, section 30's list detailing where local or special laws are specifically prohibited.[77] The list consists mostly of geographical entities or features—roads, highways, cities, towns, and county seats.[78]

The convention debates on this provision add another twist—one of legislative deference. At one point, Mr. Edwards attempted to remove the language from article III, section 30 specifically requiring a general law to be

county seats and county boundaries was not part of the section as originally reported by the committee, but was added through floor amendments. 1 THE DEBATES, *supra* note 40, at 539, 556.

70. IOWA CONST. art. III, § 30.
71. *See id.*
72. *See id.*
73. *Id.* (emphasis added).
74. *See id.*
75. *Compare* IOWA CONST. art. III, § 30, *with* IOWA CONST. art I, § 6.
76. *See* Geebrick v. State, 5 Iowa 491, 496–97 (1858).
77. IOWA CONST. art. III, § 30.
78. *Id.*

used wherever one could be made applicable.[79] He urged that "the section as it now stands is ambiguous, and will bring on a direct conflict between the legislative, executive and judicial departments of the State."[80] He elaborated, "I think all cases of special or local legislation should be enumerated and set forth in the Constitution. And in doing that, we should not leave such an ambiguous provision as the sentence I have proposed to strike out . . . ."[81]

However, another delegate promptly countered that the language should remain as is in order to clarify that it is "the duty of the Legislature to pass general laws, so far as they can."[82] Following this brief interchange, the proposed amendment was defeated.[83]

But this did not end the discussion. Yet another delegate, Mr. Clarke of Johnson County, objected, stating the clause would "leave to the general assembly to decide whether or not a general law can be made applicable."[84] Still another delegate acknowledged, likewise, that the General Assembly might be "at liberty to exercise their discretion."[85] The next day, Mr. Clarke proposed to rewrite the section so it would continue to impose an outright ban on special laws in certain cases, while striking the clause requiring general laws "in all other cases where a general law can be made applicable."[86] He expressed concern that the clause gave the legislature "a discretionary power" to determine whether a general law can be made applicable, "and that will be the construction put upon it, in my opinion, by the Court."[87] The amendment was defeated, although no one challenged the widely expressed view that whether a general law "can be made applicable" would be largely up to the legislature to decide.[88]

D. *The Exclusive Privilege Clause in Article VIII*

Just as article I, section 6 does not exhaust the subject of uniformity in the 1857 constitution, it also does not exhaust privileges and immunities.[89]

79. 1 THE DEBATES, *supra* note 40, at 531 (statement of Mr. Edwards).
80. *Id.*
81. *Id.*
82. *Id.* at 532 (statement of Mr. Palmer).
83. *Id.*
84. *Id.* (statement of Mr. Clarke).
85. *Id.* (statement of Mr. Parvin).
86. *Id.* at 575 (statement of Mr. Clarke).
87. *Id.* (statement of Mr. Clarke).
88. *See id.*
89. IOWA CONST. art. I, § 6.

In a separate article on corporations, the delegates to the 1857 convention inserted the following provision:

> Subject to the provisions of this article, the general assembly shall have power to amend or repeal all laws for the organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two thirds of each branch of the general assembly; and no exclusive privileges, except as in this article provided, shall ever be granted.[90]

Taken literally, the foregoing language seems to indicate that the legislature *can* grant special or exclusive privileges or immunities, since it provides a mechanism for repealing them.[91] Nonetheless, it does limit exclusive privileges to those "in this article provided."[92] What does this language mean, and how does it dovetail with the privileges and immunities clause?

Article VIII, section 12 is part of the article on corporations, and was reported by the Committee on Incorporations.[93] The debates strongly suggest that privileges and immunities in this context meant commercial privileges and immunities conferred by the legislature, such as the right to "form a partnership to do business under a common name."[94] Still, this leaves open the question of how one should reconcile the privileges and immunities clause—which requires privileges and immunities to belong equally to all citizens—with article VIII, section 12—which seemingly allows for *special* privileges and immunities (although also enabling them to be revoked).[95] One possible way to harmonize the two clauses is to read the privileges and immunities clause as permitting the legislature to authorize franchises that are insulated from competition, so long as all qualified comers can vie for the opportunity.[96] Alternatively, one might read article VIII, section 12 as devoted to privileges and immunities in the fields of banking and corporations, and article I, section 6 as relating to privileges and immunities more generally.[97]

90. IOWA CONST. art. VIII, § 12.
91. *See id.*
92. *Id.*
93. 1 THE DEBATES, *supra* note 40, at 289, 407.
94. *Id.* at 408.
95. *Compare* IOWA CONST. art. I, § 6, *with* IOWA CONST. art VIII, § 12.
96. *See* IOWA CONST. art. I, § 6.
97. *See* IOWA CONST. art. VIII, § 12. In *Des Moines Street Railway Co. v. Des*

E. *The Kinds of Government Actions to Which Article I, Section 6 Applies*

One other point should be made about the text and origins of article I, section 6. The uniformity clause, by its terms, applies to "all laws," while the privileges and immunities clause applies to "the General Assembly."[98] This raises the question whether article I, section 6 would have any bearing on local ordinances or administrative actions.[99] Article III, section 30 likewise refers only to "laws" and to "the General Assembly."[100] So, too, does article VIII, section 12.[101]

To the extent the uniformity clause was viewed at the time as a bulwark against geographic discrimination, it may have made sense that its terms applied only to the legislature. Usually, it takes an entity with statewide authority to discriminate among parts of a state.[102] Likewise, the legislature

Moines Broad-Gauge Street Railway Co., the court later said that article VIII, section 12 did not apply to an exclusive street-railway franchise obtained by an individual and later assigned to a corporation. 33 N.W. 610, 615 (Iowa 1887). The court said, "The article limits, to some extent, the powers and rights which a body of men might claim as a corporation. We do not think that it was intended to limit the powers and rights of individuals, except in their relation to a corporation." *Id.* at 615. Then, in *Iowa Telephone Co. v. City of Keokuk*, a federal district court clarified this somewhat vague statement to mean that article VIII, section 12 only applies to exclusive privileges in a corporate charter, not those otherwise granted to a corporation. 226 F. 82, 92–94 (S.D. Iowa 1915). The Iowa Supreme Court accepted this clarification in *Northwestern Bell Telephone Co. v. Iowa Utilities Bd.*, 477 N.W.2d 678, 686 (Iowa 1991).

98. *Compare* IOWA CONST. art. I, § 6, *with* IOWA CONST. art VIII, § 12.

99. *See* IOWA CONST. art. I, § 6.

100. IOWA CONST. art. III, § 30.

101. IOWA CONST. art. VIII, § 12.

102. An early case may have implicitly recognized this point. Phul v. Hammer, 29 Iowa 222, 223–24 (1870). In *Phul v. Hammer*, the Iowa Supreme Court considered a challenge under article III, section 30 to legislation that allowed cities to amend their charters, thus resulting in a divergence of those charters from city to city. *Id.* at 223. The challenger's argument was "a stream cannot rise higher than its source," and if the legislature could not pass a special law for the incorporation of a given city, nor could it give that city the authority to customize its charter. *Id.* The court rejected this contention:

> The legislature does possess the power to amend the charters, but it can only exercise it by the enactment of general laws equally applicable to all cities.
>
> It is quite true, however, that by the enactment of that section, which is a general law of uniform operation, there may result a consequence, to wit, a want of uniformity of city charters, which was one of the evils that the particular clause of the constitution under consideration was designed to remedy. But the

would probably have been in the best position to grant special privileges, as defined to the delegates by Mr. Ells.[103]

The 1857 constitution was narrowly approved in a popular vote, 40,311 to 38,681, in August of that year.[104] It has governed Iowa for over 150 years since. Amendments have occurred periodically, but the text of article I, section 6—and for that matter, the texts of article III, section 3 and article VIII, section 12—remain today in their 1857 form.[105]

III. INITIAL INTERPRETATIONS OF ARTICLE I, SECTION 6 BY IOWA COURTS

Early judicial interpretations provide another window into the original understanding of article I, section 6. To discern what the section meant to most people in 1857, we can examine what contemporary courts thought of it.[106]

A. *Early Interpretations of the Uniformity Clause*

Although the uniformity clause has always been part of Iowa's constitution, dating back to the grant of statehood in 1846,[107] the clause was discussed only once in a reported opinion before 1857.[108] The case in question, *Trimble v. State* (1850), arose out of Iowa's longstanding practice

> clause itself is not, nor can it by any fair construction be made to be, so farreaching as to prevent such consequences.

Id. at 223–24; *but see* Town of Pacific Junction v. Dyar, 19 N.W. 862, 863 (Iowa 1884) ("A law of Iowa discriminating in favor of resident merchants of Pacific Junction, and against other resident merchants of Iowa, would be in conflict with article 1, § 6, of the constitution of Iowa, which provides that laws of a general nature shall have a uniform operation. The town council of Pacific Junction derives power from the legislature of the state, and cannot do what the legislature could not do."); Grant v. City of Davenport, 36 Iowa 396, 404 (1873), discussed in *infra* Part III.

103. *See* 1 THE DEBATES, *supra* note 40, at 104.

104. HISTORICAL TABLES OF THE IOWA LEGISLATURE: 1857 IOWA CONSTITUTIONAL CONVENTION MEMBERS 1 (1857), https://www.legis.iowa.gov/docs/publications/BHT/860936.pdf.

105. *See* IOWA CONST. art. I, § 6; *id.* art. III, § 3; *id.* art. VIII, § 12.

106. *See* King v. State, 818 N.W.2d 1, 14 (Iowa 2012) (using as an interpretive tool High Sch. of Clayton v. Cty. of Clayton, 9 Iowa 175, 177 (1859), a case decided "at a time when the 1857 constitution was quite fresh in people's minds").

107. IOWA CONST. art. II, § 6 (1846).

108. *See* Trimble v. State, 2 Greene 404, 419–20 (Iowa 1850) (Kinney, J., dissenting).

of dividing Lee County in two for purposes of judicial administration.[109] The defendant, who had been tried and convicted in southern Lee County, challenged his conviction on several grounds, including the fact that his jury had been drawn only from half the county.[110] A majority of the court upheld this method of jury selection but invalidated the defendant's conviction on other grounds.[111] In partial dissent, Justice John Kinney raised the uniformity clause and indicated that he would have found that the method of jury selection in Lee County violated that clause.[112] He wrote,

> The *subject matter* of the law is general and universal, and should be made so in its application. A law by which the citizen is to be tried for crime should be general, bringing within its corrective influence all the citizens of the state alike, and not partial and limited in its operations. Justice should be dispensed from all portions of the state from the same pure fountain. The individual who is indicted and tried in Lee county, ought to be indicted and tried by the same general law as the one in Dubuque county, and entitled to the same privilege and protection. All this is impossible under the law in question. While the citizens in all the other counties of the state, before they can be made to answer to a criminal charge, must be indicted by a grand jury selected from the *body* of the *county,* those of Lee are compelled to submit to a prosecution upon an indictment found by a grand jury taken from three townships of the county. While the venire for the petit jury to try those charges is co-extensive with the county in every other county of the state, in Lee it is absolutely confined to the geographical limits of certain designated townships.
>
> Hence law and justice are administered in Lee county in one way, and in the other counties composing the same judicial district in another way entirely dissimilar.
>
> Section 6 of the bill of rights provides that "all laws of a general nature shall have a uniform operation." The act passed by the legislature is of a general nature. It provides for the selection of grand and petit jurors, by which persons are to be tried for the highest crimes known to our laws. Instead of being uniform and universal in its operation upon all the citizens of the state, it is made local and partial, confined to the

109. *Id.* at 405–06 (majority opinion).
110. *Id.*
111. *Id.* at 409, 414–15.
112. *Id.* at 419–20 (Kinney, J., dissenting).

townships of a particular county.[113]

Of course, the rest of the court did not discuss the uniformity clause, so one should not attribute too much weight to Justice Kinney's dissent.[114]

Yet soon after 1857, *majority* opinions discussing the uniformity clause emerged from the court, and they too focused on alleged geographic discrimination. In *Geebrick v. State* (1858), the supreme court struck down a liquor-licensing law that gave counties a local option on liquor sales.[115] In particular, the law provided a county judge could issue a license for the sale of liquor in a particular county, but only if the people of that county had voted to repeal the prior intemperance act.[116] In addition to finding the law to be an unconstitutional delegation of legislative authority, the court determined that it violated article I, section 6.[117] The court explained:

> The majority of the court, however, are of opinion, that while the act must without doubt be deemed to be a law of a general nature, it is liable to objection, as prescribing no uniform rule of civil conduct to the people of the state, and as not providing of itself, for its uniform operation. The legislative power must command. It must not leave to the people, the choice to obey, or not to obey, its requirements. It is not a law enacted according to the requirements of the constitution, if there is left to the action and choice of the people upon whom it is to operate, the determination of a question which may result in a want of uniformity in the operation of a law of a general nature.[118]

The opt-in provision, the court reasoned, would produce a non-uniform "practical working and effect" because there would be a patchwork of counties where the liquor licensing provisions took effect.[119]

A dissenting judge, Chief Justice George Wright, disagreed.[120] He

113. *Id.*
114. *See id. passim* (majority opinion).
115. Geebrick v. State, 5 Iowa 491, 499 (1858).
116. *Id.* at 493.
117. *Id.* at 497–98.
118. *Id.*
119. *Id.* at 496.
120. *Id.* at 503 (Wright, C.J., dissenting). Chief Justice George Wright took office in 1855 and served continuously on the Iowa Supreme Court until 1870, except for a span of about six months in 1860. *Wright, George Grover (March 24, 1820–January 11, 1896)*, U. IOWA, http://uipress.lib.uiowa.edu/bdi/DetailsPage.aspx?id=419 (last visited Nov. 18, 2017). After completing his judicial service in 1870, Chief Justice Wright served a full

indicated that one should only look at the "four corners" of a statute to determine if its operation was non-uniform.[121] As long as the legislation placed every county under the same ground rules, it was constitutional.[122] After all, even if county judges were authorized to issue licenses in every county, there might be differences in their exercise of discretion as to whether or not to issue a license.[123] Moreover, under the majority's approach, one would not know whether the practical effect of the law was uniform until the people of the various counties voted.[124]

Just five months later, the Iowa Supreme Court ruled in *McMillen v. Lee County Judge* (1858) that a statute legalizing the issuance of bonds in two counties, but not the remaining Iowa counties, did not violate article I, section 6.[125] As the court put it rather pithily, "It will not be claimed, certainly that this law is of a general nature."[126] Notably, this decision was authored by the same jurist, Chief Justice Wright, who had dissented in *Geebrick*.[127]

Later the same month, in *Ex Parte Pritz* (1858), the Iowa Supreme Court considered the constitutionality of legislation that abolished the office of police magistrate in Davenport by amending a previous act incorporating that city.[128] The court, through Chief Justice Wright, found a clear violation of article III, section 30's prohibition on special laws regarding the incorporation of cities and towns.[129] It also found a separate violation of article III, section 30's bar on special laws "where a general law can be made applicable."[130] In doing so, the court rejected the contention "that the legislature is the sole judge whether a general law can be made applicable," since this would mean the last clause of section 30 "has no vitality."[131]

The *Pritz* court also raised the possibility (without deciding the issue)

six-year term in the U.S. Senate. *Id.* He was also one of the founders of the Iowa Law School at Des Moines. *Id.* (modernly known as the University of Iowa Law School).

121. *Geebrick*, 5 Iowa at 500.
122. *Id.* at 500–01.
123. *Id.* at 502.
124. *Id.* at 501.
125. McMillen v. Lee Cty. Judge, 6 Iowa 391, 392–93 (1858).
126. *Id.* at 394.
127. *See id.* at 392; *Geebrick*, 5 Iowa at 499–503.
128. *Ex parte* Pritz, 9 Iowa 30, 38 (1858).
129. *Id.* at 32–33.
130. *Id.* at 35–36.
131. *Id.* at 36.

that the law might violate article I, section 6.[132] Interestingly, this part of the court's discussion cited the second clause of article I, Section 6—the privileges and immunities clause.[133] As the court put it, "[W]e suggest the query, whether, if this species of legislation may be tolerated, then may not the legislature grant to the citizens of one city or town, privileges and immunities, which, upon the same terms, do not belong to all the citizens of other cities or towns."[134] The court also reasoned the legislature could have achieved its objective of eliminating the office of police magistrate in Davenport—without violating the Iowa constitution—by giving all cities the authority to amend their own charters.[135]

The *Pritz* court went on to elaborate that article VIII, section 12 could not justify the legislation in question because:

> [T]he power to amend given by sec. 12, relates to laws for the creation of the corporations therein contemplated, and not to municipal corporations or those for other purposes than pecuniary profit. This article was intended to prescribe and limit the power of the General Assembly in relation to banking institutions and other corporations for pecuniary profit, and the whole subject of special or local legislation as to municipal corporations is withdrawn from the law-making power, by the other provisions of the constitution.[136]

The court's textual analysis of this section focused on the introductory phrase "subject to the provisions of this article" and emphasized that article VIII related to banks and other for-profit corporations.[137]

In *Whiting v. City of Mt. Pleasant*, the court indicated that a law authorizing residents to petition to have their property severed from the city limits would violate the uniformity clause if it exempted previously incorporated cities.[138] The court noted that under such an interpretation, "The inhabitants of fifty cities incorporated under acts of the legislature prior to this, might be denied the same remedy in our courts of justice that is granted to the inhabitants of fifty cities organized under this act."[139] The

132. *Id.* at 35.
133. *Id.*
134. *Id.*
135. *Id.* at 34–35.
136. *Id.* at 37–38.
137. *Id.*
138. Whiting v. City of Mt. Pleasant, 11 Iowa 482, 485 (1861).
139. *Id.*

court believed that outcome would be unconstitutional.[140] Therefore, in finding that the statute did not grandfather previously incorporated cities from having to comply with its requirements, the court relied on the familiar rule that statutes are construed to avoid unconstitutional results where possible.[141]

Then, a year later, in *Dalby v. Wolf*, the court concluded that a law giving counties the option of prohibiting swine and sheep from running at large did not violate the uniformity clause.[142] The court justified its ruling on the ground that "[t]he same rule—the same law—was given to all the people of the State, to all parts of it."[143] Seemingly, *Dalby* conflicted with *Geebrick*.[144] The author of the court's opinion, then-Justice Wright, while noting he had dissented in *Geebrick*, reconciled the two cases by urging that the *Geebrick* majority's views on the uniformity clause were not necessary to the decision.[145]

Of course, the mere fact that the earliest uniformity clause cases dealt with claims of geographic disparity does not necessarily mean this was the *entire* scope of the clause. During the Civil War, the Iowa Supreme Court decided its first case under the uniformity clause that did not involve discrimination based on location—*McCormick v. Rusch* (1863).[146] Once again, Justice Wright wrote the majority opinion.[147] The law at issue allowed any defendant to obtain a court continuance who was serving on active duty in the military (i.e., fighting for the North in the Civil War).[148] The plaintiff argued that the law violated the uniformity clause.[149] Therefore, the plaintiff insisted, the defendant–soldier's motion for continuance should not have been granted, and the plaintiff should have been granted a default judgment due to defendant's failure to answer.[150] Needless to say, the defendant had a compelling case on the equities, and the court gave "but little weight" to the

140. *Id.*
141. *Id.* at 485–86.
142. Dalby v. Wolf, 14 Iowa 228, 230 (1862).
143. *Id.* at 231.
144. *Compare id.* at 230, *with* Geebrick v. State, 5 Iowa 491, 497–98 (1858).
145. *Dalby*, 14 Iowa at 231.
146. *See* McCormick v. Rusch, 15 Iowa 127, 129 (1863).
147. *Id.* at 128.
148. *Id.* at 128–29.
149. *Id.*
150. *Id.*

plaintiff's constitutional challenge.[151] It found the law per se uniform because it applied equally to all persons who came within its scope.[152] Specifically, the court said:

> To the suggestion that it conflicts with § 6, art. 1, of our State Constitution, which provides that "All laws of a general nature shall have a uniform operation," we give but little weight. The provision was not intended to cover or reach any such case. In the first place, it may be doubted whether it is a law of a "general nature" within the meaning of the Constitution. This conceded, however, why is not its operation uniform? It gives the same rule to all persons placed in the same circumstances. It does not prescribe one rule for one citizen or soldier, and another for his neighbor, if they are in the same situation. We have a statute regulating continuances on account of the absence of witnesses, which gives a uniform rule to all litigants. And yet one may be entitled to a continuance and another not. This results, not because a different rule is prescribed for each, but because one brings himself within its terms and the other does not.[153]

This passage sounds like another variant of the notion that a law can validate itself under the uniformity clause. In other words, uniform operation requires only that the law apply to everyone it is supposed to apply to.[154] Seemingly, such a standard makes it very difficult for a law to violate the uniformity clause.[155]

Over the ensuing five years, between 1864 and 1869, other uniformity clause cases that did not involve geographic disparities came before the supreme court.[156] Each of the cases concerned laws that treated some businesses differently from others. In every instance, the court upheld the

151. *Id.* at 129.

152. *Id.* at 129–30.

153. *Id.*

154. *See id.*

155. In its recent article I, section 6 jurisprudence, the Iowa Supreme Court has raised essentially the same concern with respect to the view that classifications cannot be unconstitutional whenever the groups being classified are not "similarly situated." *See, e.g.*, Qwest Corp. v. Iowa State Bd. of Tax Review, 829 N.W.2d 550, 561 (Iowa 2013) (citing Varnum v. Brien, 763 N.W.2d 862, 882–83 (Iowa 2009)) ("There is some risk of succumbing to a tautology if we decide an equal protection claim on this ground, however."); *Varnum*, 763 N.W.2d at 882–83 (discussing this concern in depth).

156. *See, e.g.*, McAunich v. Miss. & Mo. R.R. Co., 20 Iowa 338, 343–44 (1866); Jones v. Galena & Chi. Union R.R. Co., 16 Iowa 6, 8–9 (1864).

law.

Jones v. Galena & Chicago Union Railroad Co. (1864) tested the constitutionality of a statute making any railroad company that failed to fence along its tracks liable in damages to any livestock owner whose livestock were injured or killed by a train.[157] In quickly rejecting the constitutional challenge to this law, the court (in another Justice Wright opinion) explained that such laws are not required to apply to all people—or even all common carriers—on an equal basis.[158] The court summarized its reasoning thus: "The constitution never meant that the same law should be made to fix and limit the liability of a railroad company, running an engine thirty or fifty miles an hour, and a stage coach making the same distance in perhaps as many hours."[159] Again, this potentially reduces the uniformity clause to a tautology.

Two years later, the Iowa Supreme Court decided another case involving disparate treatment of railroads as compared with other businesses: *McAunich v. Mississippi & Missouri Railroad Co.*[160] There, a brakeman had been fatally injured when the train on which he was working collided with an ox team.[161] The administrator of his estate sued, alleging another train employee had negligently caused the accident.[162] To get around the fellow-servant rule, the plaintiff relied on an Iowa statute holding railroads liable for damages caused by their employees' negligence, even when the party suing was another employee.[163] In its answer, the railroad challenged the constitutionality of the statute under both prongs of article I, section 6, claiming that it granted exclusive privileges which do not belong to all citizens on the same terms and that it was not general and uniform throughout the state because it applied only to railroads.[164]

The court disagreed.[165] In an opinion that Justice Wright for once did not author, the court reasoned that the law complied with the uniformity

157. *Jones*, 16 Iowa at 8–9.
158. *Id.* at 9–10.
159. *Id.* at 10.
160. *McAunich*, 20 Iowa at 341.
161. *Id.*
162. *Id.*
163. *Id.*; *see Fellow-Servant Rule*, BLACK'S LAW DICTIONARY (9th ed. 2009) (defining the fellow-servant rule as "[a] common-law doctrine holding that an employer is not liable for an employee's injuries caused by a negligent coworker").
164. *McAunich*, 20 Iowa at 341.
165. *Id.* at 343–44.

clause because it applied equally to any *railroad*.[166] The court elaborated:

> Very many laws, the constitutionality of which are not doubted, do not operate alike upon all citizens of the State. . . .
>
> These laws are general and uniform, not because they operate upon every person in the State, for they do not, but because every person who is brought within the relations and circumstances provided for, is affected by the law. They are general and uniform in their operation upon all persons in the like situation, and the fact of their being general and uniform is not affected by the number of persons within the scope of their operation.[167]

Under this now-increasingly-familiar standard, a law seemingly would not violate the uniformity clause so long as it affected everyone that it was designed to affect.[168] A number of later Iowa cases quoted with approval some of the foregoing language from *McAunich*.[169]

To the same effect is *U.S. Express Co. v. Ellyson* (1869).[170] The law in that case established a separate formula for assessing tax on telegraph and express companies: 60 percent of the gross receipts were presumed to be expenses, and the rest would be taxed.[171] The court upheld the statute, deciding it was a general law of uniform operation.[172] The court explained that the law was simply "an amendment to our general . . . law" that prescribed how the taxable estate of telegraph and express companies was

166. *Id.* at 343.

167. *Id.* at 343–44.

168. *See id.*

169. *See, e.g.*, Midwest Mut. Ins. Ass'n v. De Hoet, 222 N.W. 548, 550–51 (Iowa 1928) (quoting *McAunich*, 20 Iowa at 343–44); Huston v. City of Des Moines, 156 N.W. 883, 889 (Iowa 1916) (quoting *McAunich*, 20 Iowa at 344–45); State v. Fairmont Creamery Co. of Neb., 133 N.W. 895, 899 (Iowa 1911) (quoting *McAunich*, 20 Iowa at 343–44) ("Turning to our own previous cases great liberality has always been indulged in the matter of classification."); Eckerson v. City of Des Moines, 115 N.W. 177, 184 (Iowa 1908) (quoting *McAunich*, 20 Iowa at 344); McGuire v. Chi., B. & Q. R. Co., 108 N.W. 902, 906 (Iowa 1906) (quoting *McAunich*, 20 Iowa at 343–44), *aff'd* Chi., Burlington, & Quincy R.R. Co. v. McGuire, 219 U.S. 549 (1911); Morris v. Stout, 78 N.W. 843, 844 (Iowa 1899) (quoting *McAunich*, 20 Iowa at 343–44); Iowa Eclectic Med. Coll. Ass'n. v. Schrader, 55 N.W. 24, 27 (Iowa 1893) (quoting *McAunich*, 20 Iowa at 343–44); Iowa R.R. Land Co. v. Soper, 39 Iowa 112, 116 (1874) (quoting *McAunich*, 20 Iowa at 343–44).

170. *See* U.S. Express Co. v. Ellyson, 28 Iowa 370, 375–76 (1869).

171. *Id.* at 376.

172. *Id.* at 375–76.

to be determined, and if this law were called into question, so would all laws prescribing different rules for the assessment of different businesses.[173]

In *Haskel v. City of Burlington* (1870), the court considered a constitutional challenge to a law that empowered cities incorporated under special charters to sell property for delinquent taxes.[174] The plaintiff's attack was based upon article III, section 30, and the court found the law was general and uniform even though it only applied to certain cities—namely, those previously incorporated under special charters.[175] Explaining what was meant by a uniform operation, the court observed:

> The true construction seems to be, that the act in question operates upon a particular condition, and attaches to it certain consequences, and that whenever that condition exists the consequences follow. So that wherever cities are found, in whatever portion of the State, be they few or many, which were incorporated under special charters, to them the law applies. And it applies to *all cities* in the State falling within the class specified, and, hence, is not local nor special, but of uniform operation.[176]

The court distinguished *Pritz* because there the law had singled out one city (Davenport) instead of defining a class to which it applied.[177] Thus, in *Haskel*, the court took a lenient view of the uniformity requirement even though the case involved geographic discrimination.[178]

In *City of Dubuque v. Illinois Central Railroad Co*., the court briefly touched upon the uniformity clause.[179] There the city challenged a state law that exempted railroad property from municipal taxation.[180] A majority of the court found this law violated article VIII, section 2 of the Iowa constitution, which provides, "The property of all corporation for pecuniary profit, shall be subject to taxation, the same as that of individuals."[181] Although article I, section 6 was not the basis for the court's ruling, in passing, the court added, "This uniformity in taxation is within the purview

173. *Id.* at 376–77.
174. Haskel v. City of Burlington, 30 Iowa 232, 233–34 (1870).
175. *Id.* at 236–37.
176. *Id.* at 237.
177. *Id.* (distinguishing *Ex parte* Pritz, 9 Iowa 30, 32–33 (1858)).
178. *See id.*
179. City of Dubuque v. Ill. Cent. R.R. Co., 39 Iowa 56, 59–60 (1874).
180. *Id.* at 59–60 (quoting H.F. 279, 14th Gen. Assemb., Reg. Sess. (Iowa 1872)).
181. *Id.* at 68 (quoting IOWA CONST. art. VIII, § 2).

of Art. I, § 6 of the Constitution, which secures uniform operation of all laws and forbids the General Assembly to grant to any citizen or class of citizens special privileges or immunities."[182] While observing that the term "taxation" in article VIII, section 2 was "general and comprehensive," the court noted somewhat cryptically that it did not mean "to convey the thought that taxes upon all property must be levied in the same manner, but that all property must be subjected to taxation for the same purpose."[183]

The following year, Federal Circuit Judge John Dillon, a former Iowa Supreme Court Justice,[184] rejected a challenge based on article I, section 6's uniformity clause to a complicated railway tariff that was tied to the railroad's earnings per mile (the more the railway earned per mile, the less it could charge the customer).[185] In this case, entitled *Chicago, B. & Q. R. Co. v. Attorney General* (1875), Judge Dillon commented that there "may be good reasons" for the differential, and the law "is uniform in its operation upon all roads in each class."[186] He added that similar acts "are not uncommon in our legislation, and their validity has been sustained by the courts."[187]

State v. Shreoder (1879) involved a law that authorized municipalities to regulate the sale of liquors both within the city limits and less than two miles outside those limits.[188] The challenger urged that the law violated the uniformity clause because cities might exercise their regulatory authority in different ways—some banning and others allowing the sale of liquor.[189] The court resolved the challenge with a conclusory statement that "[t]he constitutionality of this provision cannot be doubted."[190]

B. *The Privileges and Immunities Clause*

Early Iowa case law did not devote nearly as much attention to the privileges and immunities clause. In *McAunich* (1866), which, as noted,

182. *Id.* at 68–69.

183. *Id.* at 69–71.

184. *Dillon, John Forrest (December 25, 1831–May 6, 1914)*, U. IOWA, http://uipress.lib.uiowa.edu/bdi/DetailsPage.aspx?id=95 (last visited Nov. 11, 2017).

185. Chi., B. & Q. R. Co. v. Att'y Gen., 5 F. Cas. 594, 598 (D. Iowa 1875), *aff'd sub nom.* Chi., B. & Q. R. Co. v. Iowa, 94 U.S. 155 (1876).

186. *Id.*

187. *Id.*

188. State v. Shreoder, 1 N.W. 431, 431–32 (Iowa 1879).

189. *Id.* at 432.

190. *Id.*

upheld an Iowa law rendering railroads liable for damages caused by their employees' negligence, the Iowa Supreme Court briefly considered the privileges and immunities clause.[191] Initially, the court raised the possibility that the statute did not even grant a privilege or immunity, but simply imposed "a new liability."[192] Thus, the court signaled it might be receptive to the view that a law treating one category of business—railroads—*less* favorably rather than more favorably did not implicate the privileges and immunities clause at all.[193] Rather than decide the case on that basis, though, the court concluded that the clause was not violated because it applied to all railroads and thus "the same liability is extended by the act, '*upon the same terms*,' to all in the same situation."[194]

The last six words we have just quoted put a gloss on the text of article I, section 6.[195] The privileges and immunities clause, to be precise, forbids the granting of privileges or immunities that are not available upon the same terms to "all citizens."[196] The text does not expressly require that citizens be "in the same situation" to receive the clause's protection.[197]

The privileges and immunities clause drew closer scrutiny from the Iowa Supreme Court in *In re Ruth* (1871).[198] The case involved a precursor of today's medical marijuana laws.[199] State law at the time allowed private individuals to get licenses "to sell intoxicating liquors for mechanical, medicinal, culinary and sacramental purposes."[200] However, before someone could obtain a license, a county judge had to determine whether the person was of good moral character and the license would be necessary and proper for the accommodation of the neighborhood.[201]

A person who had been denied a license brought suit.[202] Perhaps surprisingly, the petitioner conceded he did not have good moral character but nonetheless challenged the law as violating the privileges and immunities

191. McAunich v. Miss. & Mo. R.R. Co., 20 Iowa 338, 344 (1866).
192. *Id.*
193. *See id.*
194. *Id.*
195. *Id.*
196. U.S. CONST. art. IV, § 2.
197. *Compare id.*, *with McAunich*, 20 Iowa at 344.
198. *In re* Ruth, 32 Iowa 250, 252–53 (1871).
199. *See id.* at 250–51.
200. *Id.*
201. *Id.* at 251.
202. *Id.*

clause, among other things.[203] Although it is difficult to tease a rule of law out of *Ruth*, the court appears to conclude that "license laws which bestow privileges upon fit and proper persons making application" do not present a cognizable constitutional issue and "have always been sustained."[204] In other words, the privileges and immunities clause would not prevent the legislature from withholding a privilege from unqualified persons (or to put it another way, from granting it only to qualified persons).[205]

Grant v. City of Davenport (1873) was the next privileges and immunities clause case decided by the Iowa Supreme Court.[206] State law authorized cities to establish waterworks and to collect a property tax to cover their costs.[207] In furtherance of this law, the city of Davenport passed an ordinance to create a water company, which it exempted from municipal taxes.[208] A number of citizens and taxpayers sued to block the city from implementing the ordinance.[209] Among other things, they objected that the ordinance would unconstitutionally grant the water company "privileges and immunities, which, on the same terms, cannot be enjoyed by all citizens."[210] The Iowa Supreme Court disagreed in *Grant*, reasoning that the city needed only one water company and requiring the city to enter into "a multiplicity of contracts might give the city too much water."[211]

In *City of Dubuque v. Illinois Central Railroad Co*. (1874), the court addressed a corrective state law that retroactively exempted railroads from having to pay already-levied municipal taxes if they had previously paid a certain state tax.[212] The court majority found the law violated article VIII, section 2 of the Iowa constitution.[213] Two of the four justices also commented as follows on article I, section 6:

> If classes or individuals be exempted from taxation, uniformity and

203. *Id.*
204. *Id.* at 253.
205. *See id.*
206. Grant v. City of Davenport, 36 Iowa 396, 401 (1873).
207. *Id.* at 404.
208. *Id.* at 401–02.
209. *Id.*
210. *Id.* at 406.
211. *Id.* The court did not suggest that the privileges and immunities clause could not be applied to a city ordinance. *See supra* Part II.
212. City of Dubuque v. Ill. Cent. R.R. Co., 39 Iowa 56, 59–60 (1874).
213. *Id.* at 88. This section states, "The property of all corporations for pecuniary profit, shall be subject to taxation, the same as that of individuals." IOWA CONST. art. VIII, § 2.

> equality is destroyed. This uniformity in taxation is within the purview of Art. 1, § 6, of the Constitution, which secures uniform operation of all laws and forbids the General Assembly to grant to any citizen or class of citizens special privileges or immunities. The history of corporations for pecuniary profit in this country shows that there long has been a disposition on the part of these artificial persons to seek, and on the part of legislatures to grant, immunities and exemptions from taxation. It has often occurred that their charters provided for total exemptions from taxes or for rules of taxation applicable to them, different from those affecting other property holders. Legislation in other forms has been often sought and granted, securing the same end. The law before us, as well as others enacted in this State, bear evidence of the correctness of this statement. Against such legislation, the evils of which existed and were felt when the Constitution of 1857 was adopted, the provision above quoted was aimed.[214]

From these early interpretations of article I, section 6 out of the 1850s, 1860s, and 1870s, some tentative lessons can be drawn. *Geebrick* and *Whiting* illustrate that in the earliest days, the uniformity clause had some teeth as applied to geographic disparities.[215] It soon became apparent, though, that the legislature could defang these teeth simply by giving local governments an option, so long as each government received the same option.[216] At the same time, the uniformity clause had little force when other types of disparities were challenged. In *McCormick, Jones, McAunich, U.S. Express,* and *Chicago, B. & Q. R. Co.*, the courts gave short shrift to claims that laws violated the uniformity clause because similarly situated persons had been treated differently.[217] Rather, the courts' reasoning was basically circular: if the law defined a category to which it would apply, and it applied to everyone in that self-defined category, then the law was uniform.[218]

214. *City of Dubuque,* 39 Iowa at 68–69.

215. *See* Whiting v. City of Mt. Pleasant, 11 Iowa 482, 485 (1861); Geebrick v. State, 5 Iowa 491, 497 (1858).

216. *See* Dalby v. Wolf, 14 Iowa 228, 231–32 (1862).

217. McGuire v. Chi., B & Q. R. Co., 108 N.W. 902, 906 (Iowa 1906), *aff'd* Chi., Burlington, & Quincy R.R. Co. v. McGuire, 219 U.S. 549 (1911); U.S. Express Co. v. Ellyson, 28 Iowa 370, 375–76 (1869); McAunich v. Miss. & Mo. R.R. Co., 20 Iowa 338, 343–44 (1866); Jones v. Galena & Chi. Union R.R. Co., 16 Iowa 6, 9–10 (1864); McCormick v. Rusch, 15 Iowa 127, 129 (1863).

218. Chi., B & Q. R. Co. v. Att'y Gen., 5 F. Cas. 594, 598 (D. Iowa 1875) *aff'd sub nom.* Chi., B. & Q. R. Co. v. Iowa, 94 U.S. 155 (1876); *U.S. Express Co.*, 28 Iowa at 375–76; *McAunich*, 20 Iowa at 343–44; *Jones*, 16 Iowa at 9–10; *McCormick*, 15 Iowa at 129.

Meanwhile, the privileges and immunities clause was seen as targeting a different problem: grants of special economic status. To be sustained, such a grant had to have some specific justification, such as the need to weed out unfit purveyors of alcoholic beverages[219] or the inefficiency of having multiple water companies in one city.[220] Early on, the court voiced doubt that the privileges and immunities clause would apply to a law that resulted in worse treatment, rather than better treatment, for a specific line of business.[221]

Thus, in early case law, the two clauses appeared to serve independent, if related, goals. One clause addressed differences in treatment based on geography; the other concerned special economic privileges granted to a few. Also, for the most part, these mid-nineteenth-century court decisions focused on one clause rather than the other. But some blending of the two clauses was already starting to occur; for example, in *Pritz*.[222] The 1866 decision in *McAunich* stands out because the court effectively merged discussion of the two clauses.[223] Notably, *McAunich* is the case from this era most cited in later case law.[224]

IV. SIMILAR LANGUAGE IN OTHER STATE CONSTITUTIONS

As we have already discussed, article I, section 6 consists of two clauses forged together.[225] Both clauses have parallels in other state constitutions.[226] It is, therefore, worth considering how other states interpreted these analogous provisions during the mid-nineteenth century. Iowa was unique, though, in *combining* the uniformity clause and the privileges and immunities clause within a single constitutional provision.[227]

219. *In re* Ruth, 32 Iowa 250, 251 (1871).

220. Grant v. City of Davenport, 36 Iowa 396, 406 (1873).

221. *McAunich*, 20 Iowa at 343.

222. *See Ex parte* Pritz, 9 Iowa 30, 35 (1858).

223. *See McAunich*, 20 Iowa at 343.

224. *See* Graham v. Worthington, 146 N.W.2d 626, 639 (Iowa 1966); Midwest Mut. Ins. Ass'n v. De Hoet, 222 N.W. 548, 550–51 (Iowa 1928); Huston v. City of Des Moines, 156 N.W. 883, 889 (Iowa 1916).

225. *Supra* Part II.

226. *See infra* Part IV.A.

227. *See* IOWA CONST. art. I, § 6. North Dakota's 1889 constitution included counterparts to both provisions, but in separate sections. *Compare* IOWA CONST. art. I, § 6, *with* N.D. CONST. art. I, §§ 21–22.

A. *Other States with Similar Uniformity Clauses*

The state constitutions of California, Georgia, Kansas, North Dakota, Ohio, Oklahoma, Utah, and Wyoming contain uniformity clauses similar to Iowa's.[228] Of these states, California, Kansas, and Ohio deserve the closest look because they adopted their provisions at approximately the same time as Iowa.

Ohio's 1851 constitution contained the following text: "All laws, of a general nature, shall have a uniform operation throughout the State . . . ."[229] The job soon fell to the Supreme Court of Ohio to interpret this language. In 1853, that court upheld a law authorizing a particular county to subscribe to the stock of a railroad, citing the necessity of a local or special law in this area.[230] The court observed,

> The origin of this section is perfectly well known. The legislature had often made it a crime to do in one county, or even township, what it was perfectly lawful to do elsewhere; and had provided that acts, even for the punishment of offenses, should be in force, or not, in certain localities as the electors thereof respectively might decide. It was to remedy this evil and prevent its recurrence that this section was framed.[231]

Just three years later, the Supreme Court of Ohio struck down a law that varied the jurisdiction of trial courts depending on the county.[232] The court reasoned, "A partial operation, confined to 'certain counties,' thus attempted to be given to a law general in its nature; and a majority of the court think that this act is therefore in direct conflict with the constitutional provision on that subject."[233]

Then, in an 1863 opinion, the Supreme Court of Ohio distilled its basic geographic understanding of the uniformity provision into a single, lengthy paragraph, stating,

228. *Compare* IOWA CONST. art. I, § 6, *with* CAL. CONST. art. IV, § 16, *and* GA. CONST. art. III, § 6, para. IV, *and* KAN. CONST. art. II, § 17, *and* N.D. CONST. art. I, § 22, *and* OHIO CONST. art. II, § 26, *and* OKLA. CONST. art. 5, § 59, *and* UTAH CONST. art. I, § 24, *and* WYO. CONST. art. I, § 34.

229. OHIO CONST. art. II, § 26. Note the additional phrase "throughout the State." *Id.*

230. Cass v. Dillon, 2 Ohio St. 607, 609 (1853).

231. *Id.* at 617.

232. Kelley v. State, 6 Ohio St. 269, 273–74 (1856).

233. *Id.* at 274.

> Again, it is urged that the law in question is in conflict with the 26th section of the 2d article of the constitution, which provides, that 'all laws of a general nature, shall have a uniform operation throughout the state.' Under the former constitution, laws having a general subject matter, and, therefore, 'of a general nature,' were frequently limited expressly, in their operation, to one or more counties, to the exclusion of other portions of the state. As a consequence, on the same subject, there might be one law for Hamilton county, another for Franklin, and still a third for Ashtabula. This naturally led to improvident legislation, enacted by the votes of legislators who were indifferent in the premises, because their own immediate constituents were not to be affected by it. To arrest and, for the future, prevent this evil, the provision in question was inserted in the present constitution. But the law in question is the *same* for every part of the state; its operation is 'uniform throughout the state.' Its subject matter is the exercise of the elective franchise by electors of the state who are in its military service, or in that of the United States. And its provisions are the same for all such electors of the state, wherever their place of residence may be, and for all elections of officers for the state, and any and every portion thereof. Being thus uniform in its operation throughout the state, it is, clearly, in harmony with this provision, and does not fall within the mischief which it was intended to prevent. It is said, however, to be a species of *class* legislation, because its operation is limited to the case of electors who are in the military service of the state, or of the United States, and does not embrace all the electors of the state who may be absent from their place of residence on the day of election. But, class legislation, of this kind, is of frequent occurrence, and has never been supposed to be in conflict with the constitution. Many statutes are intended to operate exclusively, or mainly, upon certain classes of persons; as, for example, upon attorneys at law, auctioneers, brokers and bankers, etc.; criminal laws impose their penal sanctions only upon transgressors; and the elective franchise itself, is, by the constitution, limited to a class of citizens composing less than one fourth of the whole.[234]

According to this 1863 decision, in other words, laws could define classes, so long as those classes were not based on location.[235]

234. Lehman v. McBride, 15 Ohio St. 573, 605–06 (1863); *accord* Cricket v. State, 18 Ohio St. 9, 22 (1868) (overruling a challenge based on the uniformity clause and stating, "The effect of the act of 1862, as already remarked, is to prescribe one rule of compensation for auditors in office at the time of its passage, and another for those coming into office afterward. Each rule has a uniform operation to the extent that it operates at all.").

235. *Lehman*, 15 Ohio St. at 605–06.

The Supreme Court of Ohio continued on the same theme a number of years later when it examined the debates that took place during the drafting of the 1851 constitution:

> There were different laws in different counties respecting the descent and distribution of intestate property. Some statutes defining legal offenses were excluded in their operation from a large part of the state; and different penalties for a violation of the same act, were, in some instances, provided for different localities. These are examples of the legislation, to prevent which in the future, and the mischief resulting from it, this provision of the constitution was adopted.[236]

Thus, in their emphasis on geography, Ohio's early uniformity clause decisions mirror Iowa's jurisprudence from *Geebrick* to *Dalby*.[237]

California's 1849 constitution—using wording identical to the 1844 and 1846 Iowa constitutions—provided, "All laws of a general nature shall have a uniform operation."[238] Subsequent mid-century California decisions found this uniformity language to have little practical effect.[239] Rejecting a constitutional attack on a tax law, the Supreme Court of California said that "[t]he idea of a revenue law which is equal in its operation, is entirely Utopian," and "if, in trying to approximate to a correct standard, the law may work a hardship in particular supposed cases, it would rather be a consideration for the Legislature, than an argument for the Courts."[240]

Another early case addressed a law changing the venue for a specific murder trial from San Francisco County, where the murder allegedly occurred, to Placer County.[241] Citing other examples of legislative

236. McGill v. State, 34 Ohio St. 228, 238 (1877) (citations omitted).

237. *Compare McGill*, 34 Ohio St. at 238, *and Lehman*, 15 Ohio St. at 605–06, *and Kelley*, 6 Ohio St. at 273–74, *and* Cass v. Dillon, 2 Ohio St. 607, 617 (1853), *with* Dalby v. Wolf, 14 Iowa 228, 231 (1862), *and* Whiting v. City of Mt. Pleasant, 11 Iowa 482, 485 (1861), *and* McMillen v. Lee Cty. Judge, 6 Iowa 391, 392–93 (1858), *and* Geebrick v. State, 5 Iowa 491, 499 (1858).

238. CAL. CONST. art. I, § 11. According to the California Secretary of State's website, "Much of the 1849 Constitution was based heavily upon the constitution of Iowa, and to a lesser degree, the constitution of New York." *1849 California Constitution Fact Sheet*, ALEX PADILLA CAL. SECRETARY ST., http://www.sos.ca.gov/archives/collections/constitutions/1849-constitution-facts/ (last visited Nov. 18, 2017).

239. *See, e.g.*, People *ex rel.* Smith v. Judge of the Twelfth Dist., 17 Cal. 547, 552 (1861); People v. Coleman, 4 Cal. 46, 55–56 (1854), *overruled in part by* People v. McCreery, 34 Cal. 432, 458 (1868).

240. *Coleman*, 4 Cal. at 55–56.

241. *People ex rel. Smith*, 17 Cal. at 550–51.

enactments "exempting cities, counties and individuals from the operation of general laws," the Supreme Court of California upheld the statute:

> The language must be carefully noted. It is not that all laws shall be universal or general in their application *to the same subjects,* nor is it even that all "laws of a general nature" shall be universal or general in their application *to such subjects*; but the expression is, that these laws "of a general nature" shall be "uniform *in their operation*"—that is, that such laws shall bear equally, in their burdens and benefits, upon persons standing in the same category. But this category depends upon the facts which characterize the offense. Every defendant is not entitled to the same privileges, or subject to the same burdens, as every other; for instance, some are entitled to bail, others are not, and this depends upon the particular facts characterizing the imputed crime. When we speak of uniformity in the operation of a law, we speak of that operation which is equal *under the same facts*; for what justice or uniformity would there be in applying the same rigor of remedy or the same measure of punishment to all conditions of fact or degrees of criminality, merely because there existed a similarity or identity in the general charge? *The effect* of laws of a general nature shall be the same to and upon all; but who are "the all" who are the subjects of this operation? Obviously, the answer is, all who stand in the same relations to the law; all, in other words, the facts of whose cases are in substance the same.[242]

In a subsequent case involving the constitutionality of absentee voting by soldiers, which the majority resolved without reaching the uniformity clause, a dissenting justice commented rather acerbically on that clause:

> The language of this section, like the laws of which it speaks, is of a general nature. So general as to leave in doubt, when by itself considered, the nature and extent of the rule it was designed to establish. The more one turns it over in his mind with a view to extract therefrom some intelligible rule for legislative guidance, the more strongly he will become impressed with the idea that this clause in our Constitution, by itself considered, does not rise much above the level of nonsense. The meaning of the predicate, however, is clear, for by a "uniform operation," I understand as was said in [an earlier case], an operation which is equal in its effect upon all persons or things upon which the law

242. *Id.* at 552, 554–55. A later commentator called this an example of "reductionist reasoning" that "rendered article I, section 11 virtually meaningless." Joseph R. Grodin, *The California Supreme Court and State Constitutional Rights: The Early Years*, 31 HASTINGS CONST. L.Q. 141, 158–59 (2004).

is designed to operate at all.[243]

In the views of this dissenter, once a law established a classification, California courts simply would not second-guess it.[244]

To put it another way, in mid-nineteenth-century California, identically situated persons needed to be treated the same, but merely similarly situated persons did not.[245] Laws had to apply equally when the facts were *identical*.[246] This way of thinking departs from a modern equal protection analysis that requires differences in treatment to be justified by differences in circumstances. The early California approach thus resembles that taken by the Iowa Supreme Court in early cases involving claims of nongeographic disparity, such as *McCormick*, *McAunich, U.S. Express, Co.* and *Chicago, B. & Q. R. Co*.[247] The Supreme Court of California summarized this narrower approach with the following maxim: "Every general law . . . must operate equally on all persons and upon all things upon which it acts at all."[248]

Kansas's 1859 constitution contained the following Ohio-like provision: "All laws of a general nature shall have a uniform operation throughout the state . . . ."[249] In 1863, the Kansas Supreme Court posited that a law would be "nugatory as not being of uniform operation" if it allowed redemption by warrants of lots sold for unpaid taxes within cities—but only cash redemption of lots outside the city limits.[250] The following year, the

243. Bourland v. Hildreth, 26 Cal. 161, 256 (1864) (Sanderson, C.J., dissenting) (citation omitted).

244. *See id.*

245. *See People ex rel. Smith*, 17 Cal. at 552; *Coleman*, 4 Cal. at 55–56.

246. *See People ex rel. Smith*, 17 Cal. at 552; *Coleman*, 4 Cal. at 55–56.

247. *Compare People ex rel. Smith*, 17 Cal. at 552, *and Coleman*, 4 Cal. at 55–56, *with* Chi., B & Q. R. Co. v. Att'y Gen., 5 F. Cas. 594, 598 (D. Iowa 1875), *aff'd sub nom.* Chi., B. & Q. R. Co. v. Iowa, 94 U.S. 155 (1876), *and* U.S. Express Co. v. Ellyson, 28 Iowa 370, 375–76 (1869), *and* McAunich v. Miss. & Mo. R.R. Co., 20 Iowa 338, 343–44 (1866), *and* McCormick v. Rusch, 15 Iowa 127, 129 (1863).

248. French v. Teschemaker, 24 Cal. 518, 544 (1864). For example, in *Corwin v. Ward*, the Supreme Court of California saw "no constitutional objection" to an act that authorized 5 percent damages to be taxed as costs against the losing party only in San Francisco County. 35 Cal. 195, 198–99 (1868) (citations omitted). The court noted, "It operates equally and uniformly upon all parties in the same category—upon all upon whom it acts at all—that is to say, upon parties in the City and County of San Francisco, where the cause was litigated." *Id.*

249. Compare KAN. CONST. art. II, § 17, *with* OHIO CONST. art. II, § 26.

250. Judd v. Driver, 1 Kan. 455, 464 (1863).

same court stated that a law "not being in force in certain parts of the State" lacked a "uniform operation."[251] The year after that, the court found a law giving judges discretion whether to summon a grand jury complied with the Kansas constitution.[252] The court reasoned that "wherever a grand jury shall be summoned within the State it must be done according to that act."[253] Geography seems to have been the major concern,[254] although as with Ohio, the language of the clause was slightly different from article I, section 6.[255]

B. *Other States with Similar Privileges and Immunities Clauses*

Presently, Arizona, Arkansas, Indiana, North Dakota, Oregon, South Dakota, and Washington have state constitutional provisions that resemble Iowa's privileges and immunities clause.[256] Of these other jurisdictions, Indiana and Oregon are potentially the most relevant. Their constitutions were adopted in 1851 and 1857, respectively, making them quite close in time to Iowa's 1857 constitution.[257]

Indiana's constitution, like that of Iowa, provides, "The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens."[258] Helpfully, the provision was fiercely debated by the Indiana delegates.[259] One supporter of the provision stated, "Sir, the proposition is a plain one, that there shall be no exclusive monopolies—no privileges granted to one man which shall not, *under the same circumstances*, belong to all men."[260] The sponsor of the language concurred, saying, "This [clause]

251. State v. Thompson, 2 Kan. 432, 437 (1864).

252. Rice v. State, 3 Kan. 141, 169 (1865).

253. *Id.*

254. *See id.*

255. *Compare* KAN. CONST. art. II, § 17 (1859), *and* OHIO CONST. art. II, § 26, *with* IOWA CONST. art. I, § 6.

256. *Compare* ARIZ. CONST. art. II, § 13, *and* ARK. CONST. art. II, § 18, *and* IND. CONST. art. I, § 23, *and* OR. CONST. art. I, § 20, *and* S.D. CONST. art. 6, § 18, *and* WASH. CONST. art. I, § 12, *with* IOWA CONST. art. I, § 6.

257. *Compare* IND. CONST. art. I, § 23, *and* OR. CONST. art, XVIII, § 1, *with* IOWA CONST. art. I, § 6.

258. *Compare* IND. CONST. art. I, § 23, *with* IOWA CONST. art. I, § 6.

259. *See* 2 REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF INDIANA 1393–94 (1850) [hereinafter 2 REPORT OF THE DEBATES].

260. *Id.* at 1394.

destroys the monopoly principle . . . ."[261]

The Indiana delegates discussed and debated several hypotheticals that demonstrate the "privileges" and "immunities" they contemplated were economic.[262] First, the sponsor of the provision was asked what effect the clause would have on the possible creation of a state bank.[263] This delegate responded:

> [If the] Legislature or [the] convention should authorize the establishment of a State Bank and branches, upon the principle of the proposed section; in that case every branch would have to come in on the same terms. For example, if there was a sufficient amount of capital in a town or village, it would be in the power of the capitalists of that place to commence the business of banking as a branch of the State Bank, and upon the same conditions with other branches, and no one set of individuals in the business of banking could claim exclusive privileges.[264]

A second hypothetical pertained to the grant of a contract to operate a ferry.[265] The delegate explained that the section would not require "that any corporation enjoying a certain monopoly . . . shall divide its profits with every citizen in the State."[266] This would be as unreasonable as to require an "individual who makes a contract with another [to] give the benefits of that contract to all his fellow citizens."[267] Instead it required only that a privilege be granted to a citizen or corporation after all citizens have the right to "apply under the same circumstances and on similar terms."[268]

Indiana case law is perhaps less enlightening than these debates. One early Indiana case involved restrictions on the manufacture, distribution,

261. *Id.* at 1393.
262. *Id.*
263. *Id.*
264. *Id.*
265. *Id.*
266. *Id.* at 1394.
267. *Id.*
268. *Id.* In the early case of *Burlington & Henderson County Ferry Co. v. Davis*, the question was raised whether a monopoly granted by the City of Burlington to operate a ferry across the Mississippi violated the privileges and immunities clause. 48 Iowa 133, 134–35 (1878). The Iowa Supreme Court sidestepped the issue, ruling that the clause in any event did not apply retroactively to a charter that predated the 1857 constitution. *Id.* at 138–39.

and sale of alcoholic beverages.[269] Without discussing the language concerning privileges and immunities in Indiana's constitution, the majority struck down the law.[270] A dissenting judge, however, argued that the law was constitutional, and with respect to the section of the act providing for the appointment of agents to sell liquors for purposes deemed lawful, he concluded there was no violation of the privileges and immunities section.[271] He explained,

> It is more easy to discover what that section does not mean, than to find any practical operation for it as a principle of government. It may be that some unforeseen event may, in process of time, transpire, which shall call the principle announced in that section into exercise, but the section of the act referred to does not seem destined to perform that office.[272]

He added that "agents," by definition, had to be limited in number: "It is quite evident that all men can not hold these offices or employments, and if they can not, whatever else the 23d section of the bill of rights may mean, it can have no application to the privileges or immunities there mentioned."[273] Another Indiana case from the 1850s found a state law granting a tax exemption to the state bank of Indiana did not violate privileges and immunities, so long as every citizen had the same opportunity to obtain stock in the bank.[274]

As time went on, the Indiana Supreme Court issued a number of cursory decisions in the 1870s that seemed to veer away from the delegates' original economic conception of "privileges and immunities" and move toward a more elastic and perhaps result-oriented approach.[275] In 1871, a seminal Indiana case concluded that the provision did not benefit persons who were not Indiana residents—"citizens" in the clause being a reference only to Indiana citizens.[276] In 1872, a decision held Indiana could limit liquor

269. Beebe v. State, 6 Ind. 501, 501 (1855), *overruled in part by* Schmitt v. F.W. Cook Brewing Co., 187 Ind. 623 (1918).

270. *Id.* at 522.

271. *Id.* at 550–51 (Gookins, J., dissenting).

272. *Id*.

273. *Id.* at 551.

274. Bank of State of Ind. v. City of New Albany, 11 Ind. 139, 141–42 (1858).

275. *See, e.g.*, Fry v. State, 63 Ind. 552, 560–61 (1878); Cory v. Carter, 48 Ind. 327, 341 (1874); Blair v. Kilpatrick, 40 Ind. 312, 315 (1872); Sears v. Bd. of Comm'rs, 36 Ind. 267, 279–80 (1871).

276. *Sears*, 36 Ind. at 279–80.

licenses to men only, stating simply, "[W]e do not think that the right to engage in the business of retailing intoxicating liquors is one of the rights contemplated by the section in the bill of rights which we have copied."[277] Two years later, the court upheld segregated schools in Indiana, finding the privileges and immunities clause did not apply because at the time of the 1851 constitution, "[African Americans] were neither citizens of the United States nor of this State."[278] Thereafter, another conclusory decision held that a law banning the brokerage of common-carrier tickets did not violate the clause, either, because "[t]he provisions of the statute in this regard are manifestly police regulations."[279] Yet, as we have already discussed, there are solid grounds in the constitutional debates for attributing an antimonopoly original purpose to Indiana's privileges and immunities clause.[280]

Article I, section 20 of the Oregon constitution likewise states: "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."[281] Oregon borrowed this language from the 1851 Indiana constitution.[282] However, there was no recorded debate on this provision at the Oregon Constitutional Convention of 1857.[283] And we have been unable to find any Oregon case law applying article I, section 20 during the 1850s through 1870s.[284]

277. *Blair*, 40 Ind. at 315.

278. *Cory*, 48 Ind. at 341.

279. *Fry*, 63 Ind. at 560–61.

280. *See* 2 REPORT OF THE DEBATES, *supra* note 259, at 1394.

281. OR. CONST. art. I, § 20.

282. W. C. Palmer, *The Sources of the Oregon Constitution*, 5 OR. L. REV. 200, 201, 214–15 (1926).

283. Burton & Grade, *supra* note 41, at 533.

284. For an article arguing that the privileges and immunities clause was part of a Jacksonian movement against government-conferred monopoly, see Steven G. Calabresi & Larissa C. Leibowitz, *Monopolies and the Constitution: A History of Crony Capitalism*, 36 HARV. J.L. & PUB. POL'Y 983, 1077–78 (2013) (characterizing the Iowa, Indiana, and Oregon provisions as "prohibitions on granting exclusive privileges, which arguably provide even broader protection against government favoritism than is provided by a monopoly ban"). *See also* Robert F. Williams, *Equality Guarantees in State Constitutional Law*, 63 TEX. L. REV. 1195, 1207 (1985) (stating that such provisions "reflect the Jacksonian opposition to favoritism and special treatment for the powerful").

V. IOWA'S LANDMARK CIVIL RIGHTS DECISIONS

Iowa is justly known for three landmark civil rights decisions.[285] Yet, it is worth noting that none of these decisions were based upon article I, section 6.[286]

In re Ralph (1839) presented essentially the same issue as the *Dred Scott* case 18 years later—namely, what happens when an owner in a slave state allows one of his slaves to take up residence in a free state.[287] Ralph was originally a slave in Missouri, which was then a slave state.[288] In 1834, Ralph's owner agreed to let him move to the Iowa Territory and buy his freedom for $500 plus interest.[289] The arrangement was memorialized in a written contract.[290] Ralph settled in Dubuque and went to work in the lead mines, but did not earn enough to pay off the contract.[291] The former owner therefore tried to have Ralph seized and returned to Missouri as a slave once again.[292] Ralph was captured by bounty hunters and taken into the sheriff's custody in Dubuque County.[293] A concerned citizen stepped in and filed for habeas corpus on Ralph's behalf.[294] The district judge ordered Ralph to be released.[295] The case was then transferred to the newly established Iowa Supreme Court.[296]

Reaching the opposite conclusion from the subsequent *Dred Scott* decision, the Iowa Supreme Court held that Ralph was a free man and ordered his discharge.[297] The court reasoned that Congress *banned* slavery

285. *See* Coger v. Nw. Union Packet Co., 37 Iowa 145, 152–53 (1873); Clark v. Bd. of Dirs., 24 Iowa 266, 269 (1868); *In re* Ralph, Morris 1, 4–5 (Iowa 1839); *see generally* Cady, *supra* note 14 (discussing *In re Ralph*, *Clark v. Bd. of Dirs.*, and *Coger v. Nw. Union Packet Co.*).

286. IOWA CONST. art. 1, § 6.

287. *Compare In re Ralph*, Morris at 4–5, *with* Dred Scott v. Sandford, 60 U.S. 393, 459–60 (1857), *superseded by constitutional amendment*, U.S. CONST. amend. XIV.

288. *In re Ralph*, Morris at 5.

289. *Id.*

290. *Id.*

291. *Id.*; Elaine Croyle Bezanson, *People in the News: Ralph Montgomery*, GOLDFINCH, Summer 1995, at 1, 6.

292. *In re Ralph*, Morris at 5.

293. Bezanson, *supra* note 291, at 6.

294. *Id.*

295. *Id.*

296. *Id.*

297. *In re Ralph*, Morris at 7.

in the Iowa Territory, and allowing Ralph's former owner to reclaim him would in effect *recognize* slavery within the territory.[298] As the court put it, "The master who . . . permits his slave to become a resident here, cannot afterward exercise any acts of ownership over him within this territory."[299] Otherwise stated, Ralph's owner forfeited any property right when he allowed Ralph to move to a free territory.[300] Ralph's debt to his former owner, the court reasoned, was like any other contract debt and could not reduce a free man to the status of slave in the free Iowa Territory.[301] Although the court ended its opinion with the noble sentiment that "the laws . . . should extend equal protection to men of all colors and conditions," it based its decision on the Missouri Compromise of 1820, not article I, section 6, which was not then in existence.[302]

The next two landmark Iowa civil rights cases were decided after the 1857 constitution had been ratified.[303] Therefore, the court potentially could have invoked article I, section 6 if it had been viewed at that time as an equal rights guarantee. The first case, *Clark v. Board of Directors* (1868), was brought on behalf of twelve-year-old Susan Clark, who had been refused admission to her neighborhood public school in Muscatine because of her African American ancestry.[304] The essential question for the court was whether local school boards had discretion to establish segregated schools.[305] Relying on article IX, section 12 of the Iowa constitution and subsequent legislation, the Iowa Supreme Court held to the contrary:

> Now, under our Constitution, which declares that provision shall be made "for the education of *all the youths of the State* through a system of common schools," which constitutional declaration has been effectuated by enactments providing for the "instruction of youth between the ages of five and twenty-one years," without regard to color or nationality, is it not equally clear that all discretion is denied to the board of school directors as to what *youths* shall be admitted? It seems

298. *Id.* at 6.
299. *Id.* at 7.
300. *Id.* at 6–7.
301. *Id.*
302. *See id.*
303. Coger v. Nw. Union Packet Co., 37 Iowa 145, 153–55 (1873); Clark v. Bd. of Dirs., 24 Iowa 266, 274 (1868).
304. *Clark*, 24 Iowa at 274.
305. *Id.* at 269–70.

> to us that the proposition is too clear to admit of question.[306]

The court added that any school board discretion "is limited by the line which fixes the *equality of right* in all the youths between the ages of five and twenty-one years."[307]

The final landmark civil rights case was *Coger v. Northwest Union Packet Company*.[308] A woman of color filed an assault and battery claim after she had been forcibly ejected from a whites-only dining area on a steamboat crossing the Mississippi River.[309] As a defense, the steamboat line asserted that it acted pursuant to its own reasonable rules and regulations.[310] The trial court instructed the jury, however, that this supposed regulation was unreasonable; the jury thereupon returned a verdict for the passenger.[311] On appeal, the Iowa Supreme Court affirmed the jury's verdict and the lower court's denial of the steamboat line's "reasonable regulation" defense, explaining,

> The decision is planted on the broad and just ground of the equality of all men before the law, which is not limited by color, nationality, religion or condition in life. This principle of equality is announced and secured by the very first words of our State constitution which relate to the rights of the people, in language most comprehensive, and incapable of misconstruction, namely: "All men are, by nature, free and equal." Art. 1, § 1. Upon it we rest our conclusion in this case.[312]

The court added,

> If the [African American] must submit to different treatment, to accommodations inferior to those given to the white man, when transported by public carriers, he is deprived of the benefits of this very principle of equality. His contract with a carrier would not secure him the same privileges and the same rights that a like contract, made with the same party by his white fellow citizen, would bestow upon the

306. *Id.* at 274.
307. *Id.* at 275.
308. *Coger*, 37 Iowa at 148–49.
309. *Id.*
310. *Id.* at 152.
311. *Id.* at 151–52.
312. *Id.* at 154–55. Coger was, of course, a woman, so even in 1873 the Iowa Supreme Court was not comprised of pure textualists. *Id.*

latter.[313]

In short, these cases—justly honored today—do not demonstrate that article I, section 6 was intended as an equal rights guarantee comparable to the Equal Protection Clause of the Fourteenth Amendment.[314] One could even argue that the court's failure to mention article I, section 6 in *Clark* or *Coger*—despite commendably broad language in both cases on equal rights—suggests the section was not seen as relevant.[315] The *Clark* court spoke of "the principle of equal rights to all, upon which our government is founded," at the beginning of its opinion, yet never mentioned article I, section 6.[316] *Coger* not only cited and discussed article I, section 1 of the Iowa constitution, it also invoked "natural law," the Fourteenth Amendment, and the federal Civil Rights Act of 1866.[317] Despite that fairly extensive survey, *Coger* did not refer to article I, section 6 either.[318]

313. *Id.* at 153–54.

314. *See id.* at 154–55; Clark v. Bd. of Dirs., 24 Iowa 266, 274–75 (1868); *In re* Ralph, Morris 1, 6–7 (Iowa 1839).

315. *See Coger*, 37 Iowa at 154–55; *Clark*, 24 Iowa at 274–75.

316. *See Clark*, 24 Iowa at 269.

317. *See Coger*, 37 Iowa at 154–55.

318. *See id.* The Iowa Supreme Court also decided a case in 1849 that seemingly could have mentioned the uniformity clause if the court had deemed it pertinent. *See* Reed v. Wright, 2 Greene 15, 15 (Iowa 1849). Recall that at that point, Iowa's constitution had only a uniformity clause, not a privileges and immunities clause. IOWA CONST. art. II, § 5 (1846). The case involved the constitutionality of legislation of the Wisconsin and later the Iowa Territories, which intended to sort out claims to land in southeast Iowa previously allocated by Congress to certain persons of partial Native American descent. *Reed*, 2 Greene at 15–17. The Wisconsin act set up a process whereby any person claiming an interest in the land had an obligation to file a written claim within one year, and the claims would be resolved by three commissioners. *Id.* at 16. The subsequent Iowa act terminated the process but allowed the commissioners to recover from the landowners for their services. *Id.* at 17. The court noted that the laws violated, among other things, the Iowa constitution, and said the following:

> Laws affecting life, liberty and property must be general in their application, operating upon the entire community alike. It is the boast and pride of our institutions that we have no favored classes; no person so high that he does not require the care and protection of the law, no person so low as not to be entitled to them. The life, liberty and property of one citizen rest upon the same legal foundation as those of another, and if these are taken from him, it must be by a law which operates upon all alike. If it were otherwise, all would be at the mercy of legislative power, and the dearest rights of the citizen would not be worth possessing.

VI. THE SUBSEQUENT INCORPORATION OF FEDERAL EQUAL PROTECTION CLAUSE ANALYSIS INTO ARTICLE I, SECTION 6 INTERPRETATION

Congress passed the Fourteenth Amendment, including the Equal Protection Clause, on June 13, 1866, and a sufficient number of states ratified the Amendment on July 9, 1868.[319] As we discuss herein, the Iowa Supreme Court's view of the relationship between the Equal Protection Clause and article I, section 6 has evolved over the years. Initially, whenever a party raised both provisions in an appeal, the court often applied the same analysis to both, but never actually *said* that the two provisions served the same or even similar functions.[320] Then, beginning around the start of the twentieth century, article I, section 6 came to be treated as a direct counterpart to the Equal Protection Clause.[321] The court would occasionally characterize it as the "equal protection clause" of the Iowa constitution and say that a violation of either provision was a violation of the other.[322] In more recent times, article I, section 6 and the Equal Protection Clause have not necessarily received the same interpretation, but importantly, article I, section 6 continues to be viewed as an equal protection clause, serving the same purpose as the federal version in the Fourteenth Amendment.[323]

A. *Parallelism, 1885–1906*

It was probably inevitable that a party to a lawsuit in Iowa would raise both article I, section 6 and the Fourteenth Amendment in the same case. But it took a while, which possibly implies that most mid-nineteenth-century

> Whatever might have been the exigencies which would seem to require an act to settle the different conflicting titles to the half-breed lands, still the legislature had no right, under the organic law and ordinance, to pass a special and limited act confined to a particular class of individuals, by which they were to be deprived of their property. In common with all other persons of the territory, the owners of these lands could only be divested of them by judicial proceedings according to the course of the common law.

Id. at 27–28. Nonetheless, the court did not cite to the uniformity clause, then located in article II, section 5 of the 1846 constitution. *See id.*

319. *The Constitution: Amendments 11-27*, NAT'L ARCHIVES, https://www.archives.gov/founding-docs/amendments-11-27 (last visited Nov. 18, 2017).

320. *Infra* Part VI.A.

321. *Infra* Part VI.B.

322. *Infra* Part VI.B.

323. *Infra* Part VI.C.

Iowans did not believe the two provisions were congruent.[324] In 1885, the Iowa Supreme Court saw the first such two-pronged challenge.[325] The railroad plaintiff in that case argued that a state law unconstitutionally authorized railroad property to be assessed for property-tax purposes every year, whereas other property could be assessed only every other year.[326] In sustaining this law, the court explained that a classification violated neither the Fourteenth Amendment nor article I, section 6 so long as "property belonging to all corporations of the same character, and which possess the same rights and privileges, [was] assessed in the same manner."[327] The court did not separate its Fourteenth Amendment analysis from its article I, section 6 analysis, but to be fair, the court's abbreviated opinion did not really contain much in the way of analysis at all.[328]

The next reported decision to refer to both article I, section 6 and the Fourteenth Amendment surfaced almost a decade later.[329] *Owen v. Sioux City* (1894) presented a challenge to a state law authorizing "cities of the first class, that have been or may be organized since Jan. 1st, 1881" to assess property owners for costs of streets and sidewalks.[330] The court found that the law had a uniform operation: although it ostensibly divided up cities based on their date of incorporation, in reality all cities of similar population were being treated similarly.[331] At the tail end of its opinion, the court also stated that the law did not violate the Equal Protection Clause.[332]

Next came a lawsuit in 1899 that objected to a state law taxing the premiums of foreign (and out-of-state) insurance companies at a higher rate than Iowa-based companies.[333] There the Iowa Supreme Court found no violation of the uniformity clause, based on the *McAunich* maxim that "every person or corporation brought within the relations and circumstances provided for is affected by the law," and the court also found no violation of

324. *See* Cent. Iowa Ry. Co. v. Bd. of Supervisors, 25 N.W. 128, 128–29 (Iowa 1885).
325. *Id.*
326. *Id.* at 128.
327. *Id.* at 129.
328. *See id.*
329. Owen v. City of Sioux City, 59 N.W. 3, 3 (Iowa 1894).
330. *Id.* at 3 (quoting Acts 20th Gen. Assem. C. 20).
331. *Id.* at 4.
332. *Id.* at 5 (citing U.S. CONST. amend. XIV, § 1).
333. Scottish Union & Nat'l Ins. Co. of Edinburgh v. Herriott, 80 N.W. 665, 666 (Iowa 1899), *overruled in part by* Yoerg v. Iowa Dairy Indus. Comm'n, 60 N.W.2d 566 (Iowa 1953).

the privileges and immunities clause, because that clause only "has reference to citizens or classes of citizens residing in the state."[334] The court acknowledged that the foreign-insurance-company plaintiff had also raised the Fourteenth Amendment, but it brushed past this claim with the observation: "There is no requirement of either the federal or state constitution that a tax on business or on privileges shall be uniform."[335]

In the foregoing two cases, the Iowa Supreme Court reached the same result under article I, section 6 and the Fourteenth Amendment, but it didn't analyze the two provisions together.[336] That changed in *State v. Santee* (1900).[337] There the court held unconstitutional a statute that forbid the use of certain petroleum products for lighting purposes, except when used in a particular brand of lamp.[338] In light of the parties' agreement that other lamps were just as safe, the court determined that the law violated article I, section 6 and the Fourteenth Amendment, stating, "[A] law that required [the defendant] to use a particular lamp, when others equally safe were in the market, would be a violation of his constitutional rights and would also give to the manufacturer special privileges over others producing equally meritorious lamps."[339] Then, a month later, in *State v. Garbroski* (1900), the court consciously borrowed from federal Equal Protection law standards in invalidating a law that exempted Civil War veterans from an itinerant peddler's tax under article I, section 6.[340] The court observed,

> The classification attempted by this statute is based on no apparent necessity, or difference in conditions or circumstances that have any relation whatever to the employment in which the veteran of the Civil War is authorized to engage without paying license. It savors more of philanthropy (worthy of the highest commendation, in its proper sphere) than of reasonable discrimination, based on real or apparent fitness for the work of peddling.[341]

Thus, *Santee* and *Garbroski* both struck down laws that granted favored economic status—in one case an effective monopoly for a certain

334. *Id.* at 667 (citing McAunich v. Miss. & Mo. R.R. Co., 20 Iowa 338 (1866)).
335. *Id.* at 667–68.
336. *See id.* at 666–68; *Owen*, 59 N.W. at 4–5.
337. State v. Santee, 82 N.W. 445, 446 (Iowa 1900).
338. *Id.*
339. *Id.*
340. State v. Garbroski, 82 N.W. 959, 959–61 (Iowa 1900).
341. *Id.* at 961.

brand of lamp, in the other case a tax exemption limited to veterans.[342] While the court was now looking at these matters through a Fourteenth Amendment lens, a viewpoint based on the original understanding of the privileges and immunities clause might have produced the same result.[343]

By now, the Iowa Supreme Court was fully embarked on using one mode of analysis for both federal and state claims. In *Brady v. Mattern* (1904), the court employed a single line of reasoning in rejecting, simultaneously, both an article I, section 6 challenge and a Fourteenth Amendment challenge.[344] The law in that case imposed additional requirements on individuals, partnerships, and unincorporated associations, but not corporations, engaged in the savings and loan business.[345] The court said that the legislature may discriminate among classes, when "such discrimination . . . [is] based on a reasonable distinction, involving the public welfare."[346] And in *Shaw v. City Council of Marshalltown* (1905), the court also utilized an identical analysis under both state and federal constitutions in sustaining a state law that required municipalities to give a hiring preference to Civil War veterans.[347] The court found the law constitutional because the act of being hired by a municipality was neither a natural right nor a privilege in which a property right inhered, and, therefore, no constitutional right had been invaded.[348]

In *Mier v. Phillips Fuel Co.* (1906), the Iowa Supreme Court likewise needed only one stroke to turn back both an article I, section 6 and an Equal Protection Clause assault on a law that imposed double damages on persons mining coal—but not other minerals—without permission.[349] "Coal mining," it said, "has long been recognized in this state as a distinct occupation . . . ."[350] At this point, it was becoming fairly routine for both article I, section 6 and the Equal Protection Clause to be invoked in the same case.

342. *Id.*; *Santee*, 82 N.W. at 448.
343. *See Garbroski*, 82 N.W. at 959–61; *Santee*, 82 N.W. at 448.
344. Brady v. Mattern, 100 N.W. 358, 361–62 (Iowa 1904).
345. *Id.*
346. *Id.* at 360.
347. Shaw v. City Council of Marshalltown, 104 N.W. 1121, 1123–25 (Iowa 1905).
348. *Id.* at 1123–24.
349. Mier v. Phillips Fuel Co., 107 N.W. 621, 625 (Iowa 1906).
350. *Id.*

B. *Convergence, 1906–1979*

Soon after *Mier*, the Iowa Supreme Court in *McGuire v. Chicago, B. & Q. R. Co*. (1906) said expressly, for the first time, that the same principles of law governed both the federal and the state constitutional provisions.[351] The *McGuire* case involved a railroad worker who allegedly had been injured by the negligence of a co-employee (remember *McAunich*).[352] State law at that time allowed a railroad to set up a "relief association" to provide benefits to injured workers, but prohibited contracts whereby a worker who elected to receive such benefits waived the right to sue his or her employer.[353] In upholding the law, the court first noted that it had been construing article I, section 6 similar to the way other courts had construed the Equal Protection Clause.[354] The court then went on:

> The provisions relied upon by counsel are those which announce the right of all persons to acquire, possess, and protect property, and require all laws of a general character to have uniform operation. Const. Iowa, art. 1, §§ 1, 6. The rules there expressed do not differ materially in effect from those embodied in the fourteenth amendment to the federal Constitution. Certainly they place no narrower restriction upon the legislative power. The discussion already had embraces all which need be said upon this branch of the case, and we hold that the objection to the statute as being in contravention of our state Constitution must be overruled.[355]

Five years later, the court repeated this message. In *State v. Fairmont Creamery Co. of Nebraska* (1911), it overruled a constitutional challenge to a law that prohibited price discrimination by certain buyers of milk, cream, poultry, eggs, and grain—and no one else.[356] Although the challenger raised a number of constitutional provisions, including article I, section 6 and the Equal Protection Clause, the Iowa Supreme Court determined that "all must be tested by the same considerations . . . , and we shall have no need to discuss them separately."[357] The court quoted from both *McAunich* and

351. McGuire v. Chi., B. & Q. R. Co., 108 N.W. 902, 906 (Iowa 1906), *aff'd* Chi., Burlington, & Quincy Ry. Co. v. McGuire, 219 U.S. 549 (1911).

352. *Compare McGuire*, 108 N.W. at 902–03, *with* McAunich v. Miss. & Mo. R.R. Co., 20 Iowa 338, 341 (1866).

353. *McGuire*, 108 N.W. at 903.

354. *Id.* at 905–06.

355. *Id.* at 915.

356. State v. Fairmont Creamery Co. of Neb., 133 N.W. 895, 897 (Iowa 1911).

357. *Id.*

McGuire.[358]

A generation later, a federal district court cited *McGuire* and concluded, "The Supreme Court of Iowa has in effect interpreted the provision of section 6 of article 1 of its State Constitution as imposing substantially the same restrictions upon the power of the Legislature as are imposed on the states by the Fourteenth Amendment to the Constitution of the United States."[359] The court used this justification to give article I, section 6 "no separate consideration" when it upheld the constitutionality of a Depression-era escalating tax on chain stores.[360]

Meanwhile, Iowa Supreme Court decisions through the early part of the twentieth century reflected converging standards, but generally without repeating *McGuire*'s maxim that the Fourteenth Amendment and article I, section 6 "do not differ materially" in their effects.[361] In *Berg v. Berg* (1936), the Iowa Supreme Court said the federal and state "attacks may be considered together because the two provisions invoked so far as applicable here, both seek to insure equality before the law and aim at the same evil, namely, class legislation."[362]

The Iowa Supreme Court took a firmer step toward formally merging its analysis of the two provisions in 1948 in *Dickinson v. Porter*.[363] There the court upheld a state tax credit that was available only for agricultural lands of ten acres or more located within a school district where the property tax rate was above a certain level.[364] The court stated, "The effect of section 1, Fourteenth Amendment to the federal constitutional as applied to this case is substantially the same as these uniformity provisions of our own constitution. In general, if a law does not offend against one constitution it

358. *Id.* at 899 (quoting *McGuire*, 108 N.W. at 906; McAunich v. Miss. & Mo. R.R. Co., 20 Iowa 338, 343–44 (1866)).

359. Great Atl. & Pac. Tea Co. v. Valentine, 12 F. Supp. 760, 764 (S.D. Iowa 1935) *aff'd*, 299 U.S. 32 (1936) (citing *McGuire*, 108 N.W. at 915).

360. *Id.*

361. *See, e.g.*, Iowa Nat'l Bank v. Stewart, 232 N.W. 445, 450 (Iowa 1930), *rev'd sub nom.* Iowa-Des Moines Nat'l Bank v. Bennet, 284 U.S. 239 (1931) (referring to article I, section 6 as "the corresponding guaranty" to the Equal Protection Clause); Chi. & Nw. Ry. Co. v. Bd. of Supervisors of Clinton Cty., 198 N.W. 640, 643 (Iowa 1924) (referring for the first time to the "equal protection clauses of both the state and federal Constitutions").

362. Berg v. Berg, 264 N.W. 821, 824 (Iowa 1936).

363. Dickinson v. Porter, 35 N.W.2d 66, 72 (Iowa 1949).

364. *Id.* at 70.

is inoffensive to the other."[365]

It took 17 more years, but the court eventually began using *Dickinson* as its decisional template. In *Becker v. Board of Education of Benton County* (1965), while citing both *Dickinson* and *Berg*, the court said,

> We need not consider the two constitutional provisions separately since the effect of Article I, section 6, of our state constitution is substantially the same as the equal protection clause of Amendment 14 and if a statute does not offend against one of these provisions it is inoffensive to the other. [366]

The court essentially made the same point again in *Graham v. Worthington* (1966), when it sustained certain classifications established by the Iowa Tort Claims Act.[367]

Of course, one effect of convergence (and, for that matter, parallelism) was that the two separate clauses within article I, section 6 no longer had independent significance.[368] The uniformity clause did not mean anything different from the privileges and immunities clause, and vice versa. As the Iowa Supreme Court later said, "When a classification survives an equal protection challenge under article I, section 6, it will also survive a privileges and immunities challenge under the same provision . . . ."[369]

C. *Federal Equal Protection Analysis as the Starting Point, 1980–Present*

Since 1980, the Iowa Supreme Court has generally used federal Equal Protection Clause jurisprudence as its starting point when considering claims under article I, section 6.[370] Often, it has also used that jurisprudence as its endpoint—reaching the same result as the federal courts.[371] Sometimes

365. *Id.* at 72.

366. Becker v. Bd. of Educ., 138 N.W.2d 909, 912 (Iowa 1965) (citation omitted).

367. Graham v. Worthington, 146 N.W.2d 626, 638 (Iowa 1966); *see also* Hawkins v. Preisser, 264 N.W.2d 726, 730 (Iowa 1978); City of Waterloo v. Selden, 251 N.W.2d 506, 509 (Iowa 1977); State v. Books, 225 N.W.2d 322, 323 (Iowa 1975).

368. *See In re* Chi., Milwaukee, St. Paul & Pac. R.R. Co., 334 N.W.2d 290, 294 (Iowa 1983).

369. *Id.*

370. *See, e.g.*, Bierkamp v. Rogers, 293 N.W.2d 577, 579 (Iowa 1980) (stating that, although not binding, the U.S. Supreme Court's construction of the Federal Constitution "is persuasive[]. . . upon this court in construing analogous provisions in our state constitution").

371. *See, e.g.*, Bowers v. Polk Cty. Bd. of Supervisors, 638 N.W.2d 682, 689 (Iowa

not.[372] But a key point is that even when the state interpretation of article I, section 6 differs from the federal interpretation of the Equal Protection Clause, the latter interpretation has become the frame of reference. Thus, convergence is no longer the automatic rule, but it has not been replaced by an adherence to the original understanding of article I, section 6—or to any other Iowa-based standard. Instead, recent analysis has worked off of federal precedent, with the end product a derivative of that precedent.

In *Bierkamp v. Rogers* (1980), the Iowa Supreme Court overturned Iowa's guest statute, which barred nonpaying passengers from suing negligent drivers.[373] The court began its discussion with U.S. Supreme Court precedent upholding guest statutes under the Fourteenth Amendment, and then acknowledged that it had long found a similar standard "to flow from Article I, section 6."[374] Yet it then proceeded to find the guest statute unconstitutional under the same standard that the U.S. Supreme Court had employed to find it constitutional.[375] *Bierkamp* did not stop the court from continuing to proclaim that it interpreted the Equal Protection Clause and article I, section 6 "to be substantially similar."[376] In *Miller v. Boone County*

2002) ("We usually deem the federal and state equal protection clauses to be identical in scope, import, and purpose." (citing Exira Cmty. Sch. Dist. v. State, 512 N.W.2d 787, 792–93 (Iowa 1994))).

372. *See, e.g.*, Racing Ass'n of Cent. Iowa v. Fitzgerald, 675 N.W.2d 1, 3 (Iowa 2004).

373. *Bierkamp*, 293 N.W.2d at 578.

374. *Id.* at 579–80.

375. *Id.* at 582–85.

376. Stracke v. City of Council Bluffs, 341 N.W.2d 731, 733 (Iowa 1983); *accord Bowers*, 638 N.W.2d at 689 ("We usually deem the federal and state equal protection clauses to be identical in scope, import, and purpose."); *In re* Morrow, 616 N.W.2d 544, 547 (Iowa 2000); State v. Cronkhite, 613 N.W.2d 664, 666 (Iowa 2000) ("Generally, as here, we deem the federal and state Due Process and Equal Protection Clauses to be identical in scope, import, and purpose"); State v. Mann, 602 N.W.2d 785, 792 (Iowa 1999) (alterations in original) (quoting State v. Ceaser, 585 N.W.2d 192, 196 (Iowa 1998), *overruled by* State v. Bruegger, 773 N.W.2d 862 (Iowa 2009)) ("We apply the same analysis in considering [a] state equal protection claim as we do in considering [a] federal equal protection claim."); Sherman v. Pella Corp., 576 N.W.2d 312, 317 (Iowa 1998) ("We . . . apply the same analysis under the equal protection provisions of both constitutions."); *Ceaser*, 585 N.W.2d at 192 ("We apply the same analysis in considering the state equal protection claim as we do in considering the federal equal protection claim."); *Ex rel.* C.P., 569 N.W.2d 810, 811 (Iowa 1997) ("Typically, we deem the federal and state due process and equal protection clauses to be identical in scope, import, and purpose."); Krull v. Thermogas Co. of Northwood, Iowa, Div. of Mapco Gas Prods., Inc., 522 N.W.2d 607, 614 (Iowa 1994) ("In equal protection challenges based on the federal and Iowa Constitutions, we usually interpret both federal and state equal protection

Hospital (1986), the court acknowledged this similarity of interpretation before overruling a prior case and finding that a statutory notice requirement for municipal tort claims violated *both* provisions because it was "a trap for the unwary."[377]

In the much-noted case of *Racing Ass'n of Central Iowa v. Fitzgerald* (*RACI*)(2002), the Iowa Supreme Court found that a higher tax of up to 36 percent on gross receipts at racetrack casinos—as contrasted with a maximum 20 percent gross receipts tax at riverboat casinos—violated both the Equal Protection Clause and article I, section 6.[378] The court quoted prior case law to the effect that "Iowa courts are to 'apply the same analysis in considering the state equal protection claims as . . . in considering the federal equal protection claim.'"[379] The court then applied federal equal protection case law in determining the tax discrepancy violated both constitutional provisions.[380]

The U.S. Supreme Court granted certiorari and reversed as to the federal equal protection claim.[381] It disagreed with the Iowa Supreme Court's reading of federal case law.[382] As it said, "[T]he Constitution grants

provisions the same."); *Exira Cmty. Sch. Dist.*, 512 N.W.2d at 792 ("We usually deem the federal and state due process and equal protection clauses to be identical in scope, import, and purpose."); Bruns v. State, 503 N.W.2d 607, 609 (Iowa 1993) ("We have interpreted these constitutional provisions similarly."); CMC Real Estate Corp. v. Iowa Dep't of Transp., 475 N.W.2d 166, 171 (Iowa 1991) ("Article I section 6 of the Iowa Constitution places substantially the same limitations upon the state as does the equal protection clause of the United States Constitution."); Ruden v. Parker, 462 N.W.2d 674, 675 (Iowa 1990) ("Article I section 6 of the Iowa Constitution places substantially the same limitations upon the state as does the equal protection clause of the United States Constitution."); Hearst Corp. v. Iowa Dep't of Revenue & Fin., 461 N.W.2d 295, 304 (Iowa 1990) ("Section 6 of article 1 of the Iowa Constitution places substantially the same limitations upon the state legislation as does the equal protection clause of the fourteenth amendment."); Suckow v. NEOWA FS, Inc., 445 N.W.2d 776, 777 (Iowa 1989) ("Article 1, section 6 of our state constitution puts substantially the same limitations on state legislation as does the equal protection clause of the fourteenth amendment to the federal constitution."); Harden v. State, 434 N.W.2d 881, 885 (Iowa 1989) ("In a challenge based on the equal protection clauses of the Iowa and the United States Constitution, we usually interpret both federal and state provisions similarly.").

377. Miller v. Boone Cty. Hosp., 394 N.W.2d 776, 778–81 (Iowa 1986).

378. Racing Ass'n of Cent. Iowa v. Fitzgerald, 648 N.W.2d 555, 562 (Iowa 2002), *rev'd*, 539 U.S. 103 (2003).

379. *Id.* at 558 (quoting *In re Morrow*, 616 N.W.2d at 547).

380. *Id.* at 560–62.

381. Fitzgerald v. Racing Ass'n of Cent. Iowa, 539 U.S. 103, 105 (2003).

382. *Id.* at 108–10.

legislators, not courts, broad authority (within the bounds of rationality) to decide whom they wish to help with their tax laws and how much help those laws ought to provide."[383] It remanded the case to the Iowa Supreme Court to reconsider the state constitutional claim in light of this ruling on federal constitutional law.[384]

On remand, the Iowa Supreme Court nonetheless decided again that the tax disparity violated article I, section 6.[385] Significantly, the court expressly declined to "consider an analysis that might be more compatible with Iowa's constitutional language."[386] Instead, it performed an "independent application of the rational basis test," and concluded on that basis that article I, section 6 had been violated.[387] Indeed, the court quoted from the U. S. Supreme Court's synopses of equal protection law before explaining why in its view they warranted a different outcome in the particular case.[388] Today, the court continues to work from this federal playbook in deciding claims under article I, section 6.[389] It has yet to consider an analysis grounded in Iowa's constitutional language.

An interesting facet of *RACI* is that the text and original understanding of article I, section 6 might have furnished alternative grounds for invalidating the challenged tax.[390] The racetracks demonstrated the tax disparity was effectively a geographic disparity.[391] Also, the dramatic difference in tax rates could perhaps have been characterized as a special privilege for one of the two groups of casinos, both groups being "in direct competition" with each other.[392]

383. *Id.* at 108.

384. *Id.* at 112.

385. Racing Ass'n of Cent. Iowa v. Fitzgerald, 675 N.W.2d 1, 3 (Iowa 2004).

386. *Id.* at 6.

387. *Id.* at 6–7.

388. *Id.* at 14–16.

389. *See, e.g.*, Residential & Agric. Advisory Comm., LLC v. Dyersville City Council, 888 N.W.2d 24, 50 (Iowa 2016).

390. *See* Racing Ass'n of Cent. Iowa v. Fitzgerald, 648 N.W.2d 555, 557 n.2 (Iowa 2002), *rev'd*, 539 U.S. 103 (2003); *supra* Parts II.A, II.B.

391. *See Racing Ass'n of Cent. Iowa*, 648 N.W.2d at 557 n.2 (noting that a state representative from a riverboat county proposed what became the higher tax on racetrack casinos).

392. *See id.* at 561.

VII. CONCLUSION

Article I, section 6 is an Iowa original. Iowa was the first state to have a uniformity clause in its constitution, and remains the only state to combine such a clause with a prohibition on special privileges and immunities.[393] As we have tried to demonstrate, these two clauses were probably intended to fill distinct roles. The uniformity clause was designed to be a barrier against geographic discrimination, the privileges and immunities clause a barrier against government-bestowed monopolies (or oligopolies).[394] Neither, it appears, was originally thought of as an equal rights guarantee.

By fusing two clauses and two principles into a single section, our framers may have inadvertently diluted that section's force and undermined its clarity. By the beginning of the twentieth century, article I, section 6's two clauses were no longer being analyzed separately, but were simply being treated as Iowa's version of the federal Equal Protection Clause.

393. *Supra* Part IV.
394. *Supra* Parts II.A, II.B.