

Florida Constitutional Law

Cases and Materials

FIFTH EDITION

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To my wife Denise for her gentleness,
support, kindness, humor—
and most importantly for not
leaving me when she should have.

John F. Cooper

To my exceeding great reward, Jesus Christ,
for His abundant grace,
immense love and enduring help.

Tishia A. Dunham

To my girls—my loving wife Debra and
our three beautiful daughters Jennifer, Lauren and Kristen
for their undying support and love.

Carlos L. Woody

To borrow freely from the Holy Bible¹—

State governments have only inherent power. This is the first and great commandment and the second is like unto it: state constitutions can thus be nothing other than limitations on state power.

1. 35 Then one of them, which was a lawyer, asked him a question, tempting him, and saying,
36 Master, which is the great commandment in the law?
37 Jesus said unto him, Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind.
38 This is the first and great commandment.
39 And the second is like unto it, Thou shalt love thy neighbour as thyself.
The Gospel according to St. Matthew, Chapter 22.

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Preface to the First Edition

This book is designed to serve as an introduction of the Florida Constitution to the law student. Although state constitutional law has always been important, it has recently assumed a more prominent role. In recent years the federal courts have reduced or restricted expansive interpretations of the Federal Constitution. This has resulted, particularly in the area of individual rights, with the state courts after expanding their state constitutional provisions beyond federal minimums. Florida has been a leader in the area, particularly in regards to the right of privacy guaranteed by the state constitution.

In addition, this work can be valuable to the practitioner. As Florida constitutional law increases in importance, the competent practitioner must be familiar with this expanding area. This book contains most all important cases, currently available, in this area.

The current Florida Constitution was adopted by the electorate in 1968. Prior to that time Florida was governed by 5 separate constitutions enacted respectively in 1838, 1861, 1865, 1868, and 1885. Although the 1885 Constitution is occasionally referenced in the text, all references to the Florida Constitutions are intended to be references to 1968 Constitutions unless otherwise specifically indicated.

We wish to express our appreciation to the people who have helped to make these teaching materials a reality: to Harold L. Sebring and Everett Cushman who pioneered work in this field at Stetson; to our colleagues whose friendship and support nurtured this work; to our research assistants, whose conscientious and enthusiastic efforts have improved the quality of this work; to our students who have made helpful suggestions; to the faculty secretaries, who put up with us during the production of this work and without whom it could not have been accomplished; and to our wives and families for their love and understanding throughout the preparation of this manuscript. Special thanks go to Louise Petren who bore the primary responsibility for manuscript preparation.

John F. Cooper
Thomas C. Marks, Jr.
St. Petersburg, FL
October 1991

Preface to the Second Edition

The theory and organization of the Second Edition remains basically unchanged. New cases have been added and, in some instances, old cases deleted. Also, there does appear some new subject matter e.g., 1) the relationship between judicial review of agency action and an original action for declaratory and injunctive relief and 2) evolving material concerning the right of privacy guaranteed by the state constitution.

The names have changed to some extent. Our appreciation of the efforts of our research assistants would now include Michael J. Bertolini, Tabatha Liebert, and Shawn C. Nagel. The same appreciation to faculty secretaries would now include Choung-Mi Akehurst, Connie Evans, Sharon Gisclair, Barbara Lernihan, Marge Masters, Shad Mullins and Sue Stinson. While our students have changed our appreciation of their interest in the Florida Constitution remains the same. As before, special thanks to Louise Petren for preparation of most of the manuscript. And finally, what should have been in the original preface, to our friends at Carolina Academic Press. Better late than never.

The book remains dedicated to our wives in the terms expressed in the First Edition.

John F. Cooper
Thomas C. Marks, Jr.
St. Petersburg and Gulfport, FL
April 1996

Preface to the Third Edition

Close to ten years have passed since the publication of the first edition of this text. During this decade the Florida Constitution has been frequently amended, and the Florida appellate courts have repeatedly found the need to interpret and construe the provisions of the organic law of Florida.

While these developments have caused a lengthening of the text, the theory and organization of the first and second editions remain unchanged. While all chapters of the text have evolved, the materials involving the courts, individual rights, and the legal sufficiency of initiative petitions have experienced the greatest expansion and evolution.

There is one significant change in the way the text is organized. In earlier versions, brackets were placed around footnotes that accompanied cases included in the material. This was done to distinguish these footnotes from footnotes prepared by the authors. In this edition that distinction was not possible. As a result, occasionally author footnotes are commingled with footnotes in cases. These instances can be identified where footnotes do not appear sequentially, and the footnotes can be distinguished by context.

Once again we wish to express our appreciation for the outstanding efforts of our research assistants Joelle Aboytes, David Blum, Victoria Cecil, Dennis Hudson, Carol McCrory, Shakonda McDaniel, Susan Mitchell, Neil Morales, Patrice Parker, Thomas Townsend, and Lisa Wilcox.

We would also like to acknowledge the outstanding administrative and secretarial support we have received from the Faculty Support Staff at Stetson University College of Law. We would particularly like to thank Connie Evans, the director of the faculty support staff, for her thoroughness, efficiency, diligence, and good humor. We would also like to thank Sharon Gisclair who was responsible for the preparation of most of the text of the third edition. Through endless changes, rewrites, and edits, Sharon remained even tempered and committed to the completion of the project. Once again, our thanks to the folks at Carolina Academic Press for their support.

Finally, and certainly not least, this book remains dedicated to our spouses, as expressed in the First and Second Editions.

John F. Cooper
Thomas C. Marks
St. Petersburg, FL
December 2000

Preface to the Fourth Edition

As one who compares the Fourth Edition to the Third will see, our attempt to shorten the book met with some success, but not as much as we had hoped for. Some cases were more heavily edited to make them easier to deal with. Some duplicative cases were left out and several new cases were added.

The main function of this Preface is to thank people. First and foremost, our gratitude goes to what we call our team of editors. Pamela Buha, a Stetson student, was our Editor-in-Chief, and did a fantastic job. She was ably assisted by Shannon Mullins, Petra Risco-Adam, and Stephanie Jones. Petra and Stephanie are also Stetson students. Shannon, Coordinator of the Faculty Support Services, typed the manuscript in her usual flawless way. She could also be described as a co-Editor-in-Chief. With the retirement of Connie Evans in May, Louise Petren became Director of Faculty Support Services. Both Connie and Louise deserve worlds of credit for heading up the world class group of people who make up Stetson Law School's Faculty Support Services. We would like to thank our colleague, Brooke J. Bowman, Assistant Professor of Legal Skills and Special Assistant to the Dean, and her team of student Teaching Fellows, Erick Cruz, Katherine Jane Hurst, Jennifer Tanck, and Wilnar Jeanne Paul, for their assistance with checking the citations. Thanks is also due to so many fine people in the Stetson Law Library that it would be impossible to name them all. We could not conclude the list of people at Stetson without thanking our students for their suggestions. Finally, last but certainly not least, our thanks go to Dean Darby Dickerson for her unfaltering support.

Outside the Stetson family, thanks is due to Tom's friend, Professor Vin Bonventre of the Albany Law School for the permission to reprint the article found in Chapter 7. Thanks is also due to Tom's friends, Tom Graves and Charles Reischmann, who explained the change in the federal tax code that affected Florida's estate tax as discussed in Chapter 6. And, we cannot forget our friends at Carolina Academic Press. Last, but far from least, our thanks to Rohan Kelley, Esq. for his kind permission to use the Kelley's Homestead Paradigm diagram.

The book remains gratefully dedicated to our wives, Denise and Nancy, as has been the case since the First Edition.

John F. Cooper
Thomas C. Marks, Jr.
Gulfport, FL
July 2006

Preface to the Fifth Edition

The theory and organization of the Fifth Edition remains basically unchanged from the Fourth Edition. It has been seven years since the publication of the Fourth Edition and our primary goal in writing this edition was to update the book, while at the same time, make it more user friendly. In doing so, the authors have added more explanatory commentary; used a blend of lengthy and short cases to emphasize significant state constitutional principles and concepts; and re-edited select cases. While all chapters of the text have evolved, there have been important constitutional and statutory amendments to the materials involving the takings clause, homestead, taxation and finance.

This project could not have been completed without the assistance of many people. We wish to express our sincere thanks and appreciation for the exceptional efforts of our research assistants Margaret Carland, Rebecca Csikos, Zouzouko Doualehi, Shaquana Harper, Courtney Norris and Howard Williams, all of whom are either current or former students at Stetson University College of Law (“Stetson”).

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