Florida Constitutional Law

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Cases in Context

SECOND EDITION

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To my wife Beth for her wisdom, support, and love
and to my daughters Marguerite and Elizabeth
who inspire me and give me faith in
the next generation and in the future.
—Jon L. Mills

To my husband Mitchell Prugh,
whose love, good judgment, and support
make everything he touches better.
—Mary E. Adkins

To Amy, in appreciation for her love and support,
and to Hannah, Isaiah, Gabrielle & Samuel,
who remind me not to take myself too seriously.
—Timothy E. McLendon

Contents

Foreword to Second Edition

Constitutional law is always evolving. That is what makes updates important. In the four years since this casebook was first published the Florida Supreme Court has interpreted and reinterpreted multiple provisions of the Constitution. In this context, our reviews, additions, and modifications are wide ranging. Four years ago, this casebook went to press during a pandemic that produced a historic series of legal disputes. The opinions released over the past four years together with our own experience using this book as a teaching tool provide both professors and students with new perspectives and opportunities to analyze the meaning of our Constitution.

As before, we are indebted to those friends and students who have helped us update our research and identify points in the book that would benefit from clarification. Thanks go to the following students at the University of Florida Levin College of Law and Stetson University College of Law: Dominic Vogt, Sarah Janetzke, Hannah Hopper, and Tara Garner, in addition to those who helped us with the original edition of the book. We also appreciate helpful comments on Article VIII provided by David Migut, Esq.

JON L. MILLS
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TIMOTHY MCLENDON
January 2025

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constitutional law experts. The series was created through the vision and generosity of Judge Karen Miller in memory of the late Justice Ben Overton. Participants have included Justice Barbara Pariente, Justice Charles Canady, Justice Jorge Labarga, Justice Harry Anstead, Justice John Couriel, Justice Alan Lawson, Justice Fred Lewis, and Justice James Perry.

Introduction: History and Perspective

A. Florida's Constitution: How We Got Here

Floridians today are governed by a Constitution forged at a time of great change in this state. In the mid-1960s, Florida was poised between its roots in the segregated South and its new growth in the Space Age. Its Constitution, Florida's fifth adopted since statehood, had been adopted in 1885, after Reconstruction ended; that Constitution reflected the reassertion of the values of the vanquished Confederates. Yet by the middle of the twentieth century, Florida was rapidly becoming more urban and diverse than any of the other former Confederate states.

Florida's 1838 Constitution is generally counted as its first state constitution, as it was drafted in anticipation of statehood; statehood occurred in 1845. Just sixteen years after becoming a state, however, Florida seceded from the Union and adopted a new constitution that began with an "Ordinance of Secession."[1] After the end of the Civil War, four years later, a constitution was drafted but never adopted; though it revoked the Ordinance of Secession, it limited suffrage to white male citizens, and thus did not meet the requirements of the Congress.[2]

When Reconstruction came to Florida, the Congress required Florida to hold a convention to create a new constitution. That constitution would have to conform to the federal Constitution, including the Thirteenth and Fourteenth Amendments,

1. Fla. Const. of 1861, Ordinance of Secession.
2. Fla. Const. of 1865, art. VI, § 1.

requiring equal treatment of people of all races, including formerly enslaved people. In 1868, opposing forces representing "radical" groups, which contained most of the African American delegates (who numbered 18 of the 48 delegates), and "moderates" argued over the contents of the next constitution. The moderates left the convention; the radicals continued the work of drafting a constitution. However, the moderates returned, were eventually recognized as a majority, and prevailed. Thus, the resulting Constitution did not provide for as many protections for African Americans as the radicals fought for.[3] The legislative apportionment scheme favored counties with mostly white populations over those with larger African American populations. Almost all offices were appointed, allowing Northern reformers to retain control of government.[4] However, this Constitution did provide for all men, not just white men, to vote.[5] And compared to the Constitution that would come next, it was practically a model of fairness.

This Constitution established some principles that would remain in the next Constitution. For example, it banned lotteries, and, curiously, did so in the legislative article.[6] So would the 1885 Constitution.[7] The 1868 Constitution provided for a Lieutenant Governor who would also be President of the Senate, a scheme imitating the U.S. Constitution.[8] The 1885 Constitution would eliminate the Lieutenant Governor position, but keep the Senate President as next in line for the Governor's office.[9] The 1868 Constitution gave the Governor broad appointive powers; he appointed not only his cabinet, but also the county-wide officers in every county, and every judge and state attorney in the state.[10]

Additionally, the 1868 Constitution brought forth some issues that, though erased by the 1885 Constitution, would be revived in the 1968 Constitution and amendments to it. Among these was a statement in the Education article that it was "the paramount duty" of the state to provide for the "ample education" of Floridians.[11] In 1998, a Constitution Revision Commission would revive the "paramount duty" language, although slightly diluted: it declared it "a" (not "the") paramount duty of the state to provide an "adequate" education to Floridians.[12]

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3. Talbot D'Alemberte, The Florida State Constitution (2d ed., 2017), 10–11.
4. *Id.* at 11.
5. Fla. Const. of 1868, art. XIV, § 1.
6. Fla. Const. of 1868, art. IV, § 20.
7. Fla. Const. of 1885, art. III, § 23.
8. Fla. Const. of 1868, art. V, § 14.
9. Fla. Const. of 1885, art. IV, § 19.
10. Fla. Const. of 1868, art. V, §§ 17, 19; Fla. Const. of 1868, art. VI, §§ 3, 7, 9, 15, 19.
11. Fla. Const. of 1868, art. VIII, § 1.
12. Fla. Const. of 1968, art. IX, § 1 (am. 1998).

The 1868 Constitution barred felons from voting,[13] as had—and as would—all Florida Constitutions until a 2018 amendment reinstated the right of most felons to vote.[14] The legislative implementation of that amendment, however, required "completion of sentence" to include payment of financial obligations.

The 1868 Constitution allowed Seminole Indians to have a seat in each house of the Legislature.[15] No other Florida Constitution provided for Seminole representation. In fact, the 1861 Constitution restricted legislative office-holding to white male citizens of the Confederate States of America, and the 1865 Constitution to white male citizens of the United States.[16]

Finally, both the 1868 and 1885 Constitutions could be amended only by constitutional convention or by the Legislature. However, the 1868 document provided that amendments must be approved by two successive Legislatures, making amendment more difficult; the 1885 Constitution provided for only one.[17] In stark contrast, and perhaps in revolt, the 1968 Constitution would provide no fewer than four ways to amend—and later a fifth.[18]

Reconstruction ended and, without the heavy thumb of Northern reformers, the native whites regained control. The Constitution they drafted in 1885 can be seen as a reaction to that of 1868. The 1885 Constitution did somewhat reflect the values of the people, but the only people reflected were white men. The 1885 Constitution mandated that schools be segregated—even though the public school system was only larval at the time.[19] It banned mixed-race marriages "forever."[20] Though it provided for a basic court system, it also allowed the Legislature to create courts on an ad hoc basis, leading to a wildly uneven judicial system in which courts and jurisdictions varied county by county.[21]

Home rule for local governments barely existed; any needs beyond the routine had to be approved by the Legislature, making legislators essentially czars over their districts.[22] But the Legislature met only once every two years, and only for sixty days.[23] As a result, local bills choked the legislative agenda, making significant legislation difficult to squeeze into the sixty days.

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13. Fla. Const. of 1868, art. XIV, § 2.
14. Fla. Const. of 1838, art. VI, §§ 4, 13; Fla. Const. of 1861, art. VI, §§ 2, 9; Fla. Const. of 1865, art. VI, §§ 2, 9; Fla. Const. of 1885, art. VI, §§ 4, 5; Fla. Const. of 1968, art. VI, § 4 (am. 2018).
15. Fla. Const. of 1868, art. XVI, § 7.
16. Fla. Const. of 1861, art. IV, §§ 5, 6; Fla. Const. of 1865, art. IV, §§ 4, 5.
17. Fla. Const. of 1868, art. XVII, §§ 1, 2; Fla. Const. of 1885, art. XVII, §§ 1, 2.
18. Fla. Const. of 1968, art. XI, (am. 1988).
19. Fla. Const. of 1885, art. XII, § 12.
20. Fla. Const. of 1885, art. XVI, § 24.
21. Fla. Const. of 1885, art. VI.
22. Mary E. Adkins, Making Modern Florida (Gainesville: University Press of Florida 2016) 7, 95.
23. Fla. Const. of 1885, art. III, § 2.

Power in the executive branch was diffuse to the point of absurdity. The Governor could not be re-elected, and had no Lieutenant Governor.[24] After all, as some stated, a Lieutenant Governor would have only one job: to wait for the Governor to stop breathing.[25] But the Governor shared governing duties with a "cabinet" of six other officials elected statewide: the Superintendent of Public Instruction, the Attorney General, the Commissioner of Agriculture, the Secretary of State, the Commissioner of Insurance, and the Comptroller; the occupants of these positions could be re-elected indefinitely.[26] Thus, the Governor was actually the least powerful of the seven. These seven elected executives convened as departments overseeing a bewildering and byzantine network of subjects—so many that no one seemed to know exactly how many there were. Most guesses were around 150. The scheme was often referred to as the "plural executive." Wags called it the "seven Governors" plan.

Voting was available, nominally, to all men who had lived in Florida for one year and in the county in which he wished to vote for six months.[27] But the Constitution allowed the Legislature to institute a poll tax, which it did in 1889, keeping most blacks and many poor whites from voting.[28] It also provided that anyone ever convicted of a laundry list of crimes could not vote unless his rights had been specifically restored; that "insane" people similarly could not vote; and that anyone associated with betting or with fighting a duel could not hold public office.[29] At least the 1838 ban from public office of bankers and "ministers of the gospel" had been removed.[30]

Legislative apportionment was accurate for 1885, when most residents lived within fifty miles of Georgia or Alabama. However, as central and southern Florida experienced periods of steep population growth during the twentieth century, the Constitution's strictures on the apportionment provisions made meaningful reapportionment nearly impossible. For example, the Constitution provided that every county have at least one representative, but that no county have more than three. By 1960, when Dade County had more than 900,000 people but, for example, Lafayette County had fewer than 3,000, the apportionment scheme required each of Dade's three representatives to represent 300,000 people while Lafayette's one representative represented 3,000.[31]

By the time World War II was over and soldiers and sailors began returning home, many moved to Florida, creating another population boom. This one never stopped, and nearly all of the growth was in the south and central parts of the state. Yet most of the legislative districts remained in the north, as they had been drawn in 1885.

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24. Fla. Const. of 1885, art. IV, §§ 2, 19.
25. Reubin O'D. Askew, interview by Mike Vasilinda, May 9, 2001. Tallahassee: Legislative Research Center & Museum.
26. Fla. Const. of 1885, art. IV, § 20.
27. Fla. Const. of 1885, art. VI, § 1.
28. Fla. Const. of 1885, art. VI, § 8.
29. Fla. Const. of 1885, art. VI, §§ 4, 5.
30. Fla. Const. of 1838, art. VI, §§ 3, 10.
31. Florida Census: 1960, http://fcit.usf.edu/florida/docs/c/census/1960.htm.

This sustained, rapid population growth gave rise to a number of problems. First, the Legislature was malapportioned. Because most people resided in South Florida, and most legislative districts were in the north of the state, the residents in the north had more legislators paying attention to their needs than southern residents did. As mentioned above, each district in the southern part of the state contained many more people than each district in the northern part. During much of the period of the 1950s and 1960s, less than twenty percent of the population could elect a majority of representatives in either house of the Legislature.[32]

Worse for the growing areas, most legislators representing the northern districts came from rural areas that had not experienced, and did not wish to experience, the rapid growth South Florida had seen. They had no sympathy for the needs the population growth in South Florida had created. Seeing the large population of newcomers—people not from Florida and not from the South—the rural legislators formed a bloc, explicitly promising one another to vote together to preserve the "Southern way of life." A newspaper editor dubbed the group the "Pork Chop Gang," referring to the "pork" the legislators brought to their rural districts.[33] The nickname stuck, and the legislators themselves embraced it.

The Pork Chop Gang exerted complete control over the legislative agenda, and resisted advice and outside attempts to make the apportionment scheme more equitable. After all, a fair apportionment, one that would put most districts in the south, where the people were, would drain the north of districts. The Pork Chop Gang members occupied the districts that would disappear. Were meaningful reapportionment to occur, the Pork Choppers would lose their jobs.

Even if the members of the Pork Chop gang had wanted a more representative apportionment, they would have been hard-pressed to create one under the 1885 Constitution. Remember that it required each county to have at least one representative and no county to have more than three.[34] Under this straitjacket, Dade County, with its million residents, could do no better than three representatives, and Lafayette and the other tiny counties could do no worse than one. To change apportionment significantly, the Constitution would have to change.

The Constitution, though, could be changed only two ways. The first, a full-fledged constitution convention, was unlikely to ever occur. The only other way to amend the Constitution was through the Legislature.[35]

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32. Manning J. Dauer, *Florida: The Different State*, *in* Susan A. MacManus, ed., Reapportionment and Representation in Florida: A Historical Collection (Tampa: University of South Florida, 1991).

33. Stephen Ansolabehere & James M. Snyder, Jr., The End of Inequality: One Person, One Vote and the Transformation of American Politics (New York: Norton, 2008); Allen Morris, Reconsideration: Second Glances at Florida Legislative Events (Tallahassee: Officer of the Clerk, Florida House of Representatives, 1982).

34. Fla. Const. of 1885, art. VII, § 3.

35. Fla. Const. of 1885, art. XVII.

The Pork Choppers were in charge of the barbecue, so there would be no hog turning on the spit.

A second difficulty the 1885 Constitution created was the chaos its crazy-quilt court system caused. It called for a state Supreme Court, Circuit Courts, Criminal Courts, County Courts, County Judges, and Justices of the Peace.[36] Though each county was required to have a county judge, county courts were optional creatures of the Legislature and, when created, had a different jurisdiction than county judges did.[37] These optional county courts heard appeals from justice-of-the-peace courts; appellants could demand de novo review.[38] Though the salaries of justices and circuit judges were prescribed in the Constitution, county judges' compensation was "provided by law."[39] Every county also had at least two justices of the peace, whose jurisdiction varied according to whether that county had an optional County Court.[40] Where there was a justice of the peace, there was also a constable.[41] Escambia County and any other county where the Legislature deemed it "expedient" got an additional court, called the Court of Criminal Record.[42] The Legislature could also establish municipal courts, and, of course, any court the Legislature could create it could also abolish.[43]

The variation among courts and jurisdictions from county to county made for confusion among litigants, but served as job security for experienced lawyers, whose knowledge of the ins and outs of jurisdictions gave them an advantage over newer lawyers.

Third, the weakness of the Governor's office did not spring only from the Governor's status as the lone state-level elected officer who could not succeed himself. It also was vulnerable because the Governor had no Lieutenant. Instead, in the event the Governor could not complete his term, the office would fall to the President of the Senate and, failing that, the Speaker of the House.[44]

It took nearly seventy years for the fallacy of this scheme to become apparent. In 1952, Governor Dan McCarty was elected at the healthy young age of forty. Before he had been in office a year, however, he died. The President of the Senate, Charley Johns of Starke, became acting Governor—a man who had been elected to his state senate seat in a rural district which, at its most recent census, had a population of only 11,457, less than one-half of one percent of the state's population.[45] Johns, a Pork Chopper, had very different priorities than McCarty had had, and replaced several

36. Fla. Const. of 1885, art. V, § 1.
37. Fla. Const. of 1885, art. V, §§ 16, 17, 18.
38. Fla. Const. of 1885, art. V, § 18.
39. Fla. Const. of 1885, art. V, § 16.
40. Fla. Const. of 1885, art. V, § 22.
41. Fla. Const. of 1885, art. V, § 23.
42. Fla. Const. of 1885, art. V, § 24.
43. Fla. Const. of 1885, art. V, § 32, 34.
44. Fla. Const. of 1885, art. IV, § 19.
45. Florida Census: 1950, http://fcit.usf.edu/florida/docs/c/census/1950.htm.

of McCarty's appointees with his own. He lost resoundingly in the special midterm election to fill the remaining two years of McCarty's original term. His short tenure, combined with the stark policy differences between him and his predecessor, made clear that the gubernatorial succession scheme was flawed: it allowed a person elected by a tiny percentage of the population to govern the state with no commitment to continuing the policies of his predecessor.

Fourth, the lack of power of municipal government officials to make major decisions concerning their localities meant that localities depended on their legislators for any positive structural change.[46] But the Constitution provided that the Legislature met for only sixty days every two years. By the time the legislative session started, legislators had armloads of local bills to pass; little time was left to consider the needs of the state as a whole.

Fifth, the Constitution retained its racist provisions. Though *Brown v. Board of Education* had been decided in 1954 and 1955, the provision mandating racially segregated schools remained in the Constitution.[47] And the provision allowing a poll tax remained, although the Legislature had removed the law implementing one in 1938.[48]

By the early 1960s, the world's eyes were on Florida—Cape Canaveral, in Brevard County, in particular—as it led the race to the moon. The space industry led Brevard to experience a population increase of 471 percent between 1950 and 1960, and the county was on track to more than double between 1960 and 1970.[49] In 1965, Walt Disney announced he had bought tens of thousands of acres of swampy land in Central Florida to build what he was then calling Disneyland East.

Yet Florida's government, as constructed by its Constitution, was a backward-facing embarrassment, its legislators mulishly favoring rural interests over urban needs and its court system unable to provide uniform justice throughout the state.

In the years following World War II, groups interested in government had attempted to draft new constitutions, but no effort stuck. The Florida Bar created two drafts, both of which the Legislature ignored; the League of Women Voters published a "yardstick for constitutional revision." The nearly all-male Legislature, still living in an era that dismissed women, paid no attention to it. When LeRoy Collins was Governor, from 1954 through 1960, he tried nearly every year to encourage the formation of a new constitution, from commissions to committees to workshops. The Pork Chop Legislature, displeased with the "urban" Tallahassee reformer who had defeated their rural

46. Fla. Const. of 1885, art. VIII, § 8; Fla. Const. of 1885, art. III, §§ 20, 21, 24.

47. 347 U.S. 483 (1954); 349 U.S. 294 (1955); Fla. Const. of 1885, art. XII, § 12.

48. Florida abolished the poll tax in 1938. U.S. Senator from Florida Spessard Holland led the charge that abolished poll taxes in federal elections in 1964 with the passage of the 24th amendment. Darryl Paulson, *Florida's History of Suppressing Black Votes*, Tampa Bay Times, October 11, 2013.

49. Florida Census: 1950, http://fcit.usf.edu/florida/docs/c/census/1950.htm; Florida Census: 1960, http://fcit.usf.edu/florida/docs/c/census/1960.htm; Florida Census: 1970, http://fcit.usf.edu/florida/docs/c/census/1970.htm.

Bradford County chum Charley Johns in the race for Governor, made it a point not to approve or even encourage Collins's efforts.[50]

Then, in 1962, the U.S. Supreme Court decided *Baker v. Carr*, in which it ruled that federal courts could become involved in state legislative apportionment suits.[51] The same day, a Florida case was filed in the United States District Court for the Southern District of Florida, challenging Florida's apportionment scheme. The case would become known as *Swann v. Adams*, and, like apportionment cases in many states, would be influenced by evolving federal standards for apportionment. When, in 1964, the Supreme Court decided a group of consolidated cases known as *Reynolds v. Sims*, it established "one person, one vote" as the law of the land.[52] It decided *Swann v. Adams*, part of another group of state apportionment cases, one week after *Reynolds*, holding *Swann* and the other cases to the *Reynolds* standard.[53]

In the meantime, Florida, like other states, had paid attention when *Baker* had been decided. In the two years after *Baker*, most states accomplished some form of reapportionment.[54] In Florida, the Legislature took baby steps toward better apportionment with each decision in the *Swann v. Adams* saga.[55] But it was constrained by its Constitution's apportionment rules.

By 1965, the Pork Chop Gang's hold had loosened just enough that the Legislature was able to pass a joint resolution to establish another constitution revision commission, one with the mission of creating a new constitution.[56] Like the commissions established in the 1950s, its recommendations would have to be approved by the Legislature before they could appear on the ballot. Had the Legislature changed enough to pass a new proposed constitution to the voters for approval?

The commission met throughout 1966. Its chair, Chesterfield Smith, was then known as the immediate past president of The Florida Bar and a forceful and powerful lawyer and lobbyist for the phosphate industry, a notorious polluter. What he was not yet famous for was his reformist streak. That quality would flower during his role leading the Constitution Revision Commission (and would even, eventually, cause him to curb his phosphate clients' excesses).

The commission, led by Smith and peopled with young reformers who would later become well-known (among them Reubin Askew and Lawton Chiles), drafted a new constitution that was devoid of racist language, that strengthened individual rights,

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50. See generally Adkins, *supra* note 22, at Cha. 1.

51. *Baker v. Carr*, 369 U.S. 185 (1962).

52. *Reynolds v. Sims*, 377 U.S. 533 (1964).

53. *Swann v. Adams (I)*, 378 U.S. 553 (1964).

54. Bernard Schwartz, Super Chief: Earl Warren and His Supreme Court—A Judicial Biography 417 (New York: New York University Press, 1983).

55. *Sobel v. Adams*, 285 F. Supp. 316 (S.D. Fla. 1962); *Sobel v. Adams*, 214 F. Supp. 811 (S.D. Fla. 1963); *Swann v. Adams*, 379 U.S. 871 (1964); *Swann v. Adams*, 258 F. Supp. 819 (S.D. Fla. 1965).

56. SB 65-977 (1965).

and that expanded home rule. It called for the Legislature to meet yearly, as the 1868 Constitution had.[57] It did not appreciably strengthen the office of Governor, however, even though Smith and others argued mightily to eliminate the elected cabinet.

The draft constitution went to the Legislature in January 1967 to await its fate. But that fate changed without notice when, on the opening day of the special session at which the Legislature was to take up constitution reform, the U.S. Supreme Court ruled on the latest apportionment scheme challenged in *Swann v. Adams*.[58] The Court once again invalidated the apportionment and told the Legislature that, this time, the Court, and not the Legislature, would create a fair scheme.

It was the Legislature elected under the Court-approved apportionment scheme that finally met to consider the new proposed constitution. Whether the previous Legislature would have approved the revision commission's proposal will never be known, but the new reformed Legislature—the one that finally gave full representation to the population centers in the state—approved the new constitution with just a handful of changes and passed it on to the voters. The voters approved their new Constitution in November of 1968.

Among the changes the Legislature had made to the new Constitution was, perhaps surprisingly, to strengthen the office of the Governor. The new Constitution allowed the Governor to serve two terms, not just one, and provided for a Lieutenant Governor.[59]

The new Constitution did not, however, contain a judicial article. Though the revision commission had passed one to the Legislature, the Legislature could not agree on a version to send to the voters. That part of the Constitution would not pass at the ballot box until four years later, in 1972. It gave Florida the uniformly organized four-tier judicial system we now know: a seven-justice Supreme Court, District Courts of Appeal, multi-county judicial circuits, and county courts.[60]

Several aspects of the 1968 Constitution harked back to the 1868 Reconstruction Constitution: both have a Legislature that meets annually;[61] both have a Lieutenant Governor;[62] the 1968 Constitution was amended in 1998 to eliminate half the elected cabinet, edging closer to the all-appointive cabinet of the 1868 Constitution;[63] both have appellate judges appointed, albeit through different methods;[64] both explicitly value public education.[65]

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57. Fla. Const. of 1868, art. IV, § 2.
58. 385 U.S. 440 (1967).
59. Fla. Const. of 1968, art. IV, §§ 2, 5.
60. Fla. Const. art. V (1972).
61. Fla. Const. of 1868, art. IV, § 2; Fla. Const. of 1968, art. III, § 3(b).
62. Fla. Const. of 1868, art. V, § 14; Fla. Const. of 1968, art. IV, § 2.
63. Fla. Const. of 1868, art. V, § 17; Fla. Const. of 1968, art. IV, § 4 (am. 1998).
64. Fla. Const. of 1868, art. VI, § 3; Fla. Const. of 1972, art. V, § 11.
65. Fla. Const. of 1868, art. VIII, § 1; Fla. Const. of 1968, art. IX, § 1(a) (am. 1998).

But one of the more remarkable features of the 1968 Constitution is its malleability. When adopted in 1968, it provided for four amendment methods: by convention and by the Legislature, as before;[66] by citizens' initiative;[67] and by a method unique, then and now, to Florida: an automatically recurring, appointed Constitution Revision Commission able to place proposals directly on the ballot without legislative approval.[68] Since 1968, a fifth method has been adopted: a Taxation and Budget Reform Commission, also appointed and also with direct-to-ballot authority, but restricted to tax and budget-related issues.[69]

Not surprisingly, since 1968, Florida's Constitution has been amended more than one hundred times. Whether that is good or bad is in the eye of the beholder—or, perhaps, of the scholar.

B. State Constitutions and the U.S. Constitution

Why do states have constitutions when the United States already has one? That is not an embarrassing question; in fact, in a certain light, it is quite reasonable. In England's North American colonies, colonial constitutions already existed. When the States became United, these now-state constitutions remained as the guiding documents for their respective states. Not until 1787 did the United States adopt its own federal constitution, and it was not met with universal approbation. After all, the delegates had traveled to Philadelphia not to write a new document but to reform the Articles of Confederation. Their work that summer experienced mission creep, and soon they were crafting not just a contract between states, as the Articles had been, but an entire document created "to form a more perfect Union."

The U.S. Constitution describes relatively few abilities and responsibilities of the federal government, and leaves the remaining governing authority with the states. It is that authority that is described in the various state constitutions. So one major function of a state constitution is to describe the nature of a state's authority. For that reason, most state constitutions are considerably longer than the U.S. Constitution: they have more to do.

State and federal constitutions are separate and distinct sources of authority. However, state and federal constitutionsfrequently contain similar, if not identical language. The U.S. Supreme Court has held that any judicial decision resting primarily on state constitutional grounds—*even if those grounds consist of language identical to that*

66. Fla. Const. of 1968, art. XI, §§ 1, 4.
67. Fla. Const. of 1968, art. XI, § 3.
68. Fla. Const. of 1968, art. XI, § 2.
69. Fla. Const. of 1968, art. XI, § 6 (am. 1988).

of the U.S. Constitution—cannot be reviewed by federal courts.[70] The U.S. Supreme Court articulated this principle in *Michigan v. Long*. An excerpt follows.

A few years before *Michigan v. Long*, Justice Brennan wrote an article published in the *Harvard Law Review* urging state courts to consider the U.S. Supreme Court's rulings on rights to be a floor—a minimum standard—for assessing the extent of human rights:

> [S]tate courts cannot rest when they have afforded their citizens the full protections of the federal Constitution. State constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law. The legal revolution which has brought federal law to the fore must not be allowed to inhibit the independent protective force of state law—for without it, the full realization of our liberties cannot be guaranteed.[71]

Michigan v. Long

463 U.S. 1032 (1983)

Opinion

Justice O'CONNOR delivered the opinion of the Court.

In *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), we upheld the validity of a protective search for weapons in the absence of probable cause to arrest because it is unreasonable to deny a police officer the right "to neutralize the threat of physical harm," *id.*, at 24, 88 S.Ct., at 1881, when he possesses an articulable suspicion that an individual is armed and dangerous. We did not, however, expressly address whether such a protective search for weapons could extend to an area beyond the person in the absence of probable cause to arrest. In the present case, respondent David Long was convicted for possession of marijuana found by police in the passenger compartment and trunk of the automobile that he was driving. The police searched the passenger compartment because they had reason to believe that the vehicle contained weapons potentially dangerous to the officers. We hold that the protective search of the passenger compartment was reasonable under the principles articulated in Terry and other decisions of this Court. We also examine Long's argument that the decision below rests upon an adequate and independent state ground, and we decide in favor of our jurisdiction.

* * *

We granted certiorari in this case to consider the important question of the authority of a police officer to protect himself by conducting a Terry-type search of the

70. *Michigan v. Long*, 463 U.S. 1032, 1039 (1983).

71. William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489,491 (1977).

passenger compartment of a motor vehicle during the lawful investigatory stop of the occupant of the vehicle. 459 U.S. 904, 103 S.Ct. 205, 74 L.Ed.2d 164 (1982).

II

Before reaching the merits, we must consider Long's argument that we are without jurisdiction to decide this case because the decision below rests on an adequate and independent state ground. The court below referred twice to the state constitution in its opinion, but otherwise relied exclusively on federal law.[72] Long argues that the Michigan courts have provided greater protection from searches and seizures under the state constitution than is afforded under the Fourth Amendment, and the references to the state constitution therefore establish an adequate and independent ground for the decision below.

It is, of course, "incumbent upon this Court . . . to ascertain for itself . . . whether the asserted non-federal ground independently and adequately supports the judgment." *Abie State Bank v. Bryan*, 282 U.S. 765, 773, 51 S.Ct. 252, 255, 75 L.Ed. 690 (1931). Although we have announced a number of principles in order to help us determine whether various forms of references to state law constitute adequate and independent state grounds,[73] we openly admit that we have thus far not developed a satisfying and consistent approach for resolving this vexing issue. In some instances, we have taken the strict view that if the ground of decision was at all unclear, we would dismiss the case. [citations omitted] In more recent cases, we have ourselves examined state law to determine whether state courts have used federal law to guide their application of state law or to provide the actual basis for the decision that was

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72. [FN3.] On the first occasion, the court merely cited in a footnote both the state and federal constitutions. See 413 Mich., at 471, n. 4, 320 N.W.2d, at 869, n. 4. On the second occasion, at the conclusion of the opinion, the court state: "We hold, therefore, that the deputies' search of the vehicle was proscribed by the Fourth Amendment to the United States Constitution and art. 1, § 11 of the Michigan Constitution." *Id.,* at 472–47, 320 N.W.2d, at 870.

73. [FN4.] For example, we have long recognized that "where the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, our jurisdiction fails if the non-federal ground is independent of the federal ground and adequate to support the judgment." *Fox Film Corp. v. Muller,* 296 U.S. 207, 210, 56 S.Ct. 183, 184, 80 L.Ed. 158 (1935). We may review a state case decided on a federal ground even if it is clear that there was an available state ground for decision on which the state court could properly have relied. *Beecher v. Alabama,* 389 U.S. 35, 37, n. 3, 88 S.Ct. 189, 190, 19 L.Ed.2d 35 (1967). Also, if, in our view, the state court "'felt compelled by what it understood to be federal constitutional considerations to construe . . . its own law in the manner that it did,'" then we will not treat a normally adequate state ground as independent, and there will be no question about our jurisdiction. *Delaware v. Prouse,* 440 U.S. 648, 653, 99 S.Ct. 1391, 1395, 59 L. Ed.2d 660 (1979) (quoting *Zacchini v. Scripps-Howard Broadcasting Co.,* 433 U.S. 562, 568, 97 S.Ct. 2849, 2854, 53 L.Ed.2d 965 (1977)). See also *South Dakota v. Neville,* ___ U.S. ___, ___, n. 3, 103 S.Ct. 1535, 1540, n. 3, 75 L.Ed.2d 502 (1983). Finally, "where the non-federal ground is so interwoven with the [federal ground] as not to be an independent matter, or is not of sufficient breadth to sustain the judgment without any decision of the other, our jurisdiction is plain." *Enterprise Irrigation District v. Farmers Mutual Canal Company,* 243 U.S. 157, 164, 37 S.Ct. 318, 321, 61 L.Ed. 644 (1917).

reached. *See Texas v. Brown*, ___ U.S. ___, ___, 103 S.Ct. 1535, 1538, 75 L.Ed.2d 502 (1983) (plurality opinion). *Cf. South Dakota v. Neville*, ___ U.S. ___, ___, 103 S.Ct. 916, 925, 74 L.Ed.2d 748 (1983) (Stevens, J., dissenting). In *Oregon v. Kennedy*, 456 U.S. 667, 670–671, 102 S.Ct. 2083, 2086–2087, 72 L.Ed.2d 416 (1982), we rejected an invitation to remand to the state court for clarification even when the decision rested in part on a case from the state court, because we determined that the state case itself rested upon federal grounds. We added that "[e]ven if the case admitted of more doubt as to whether federal and state grounds for decision were intermixed, the fact that the state court relied to the extent it did on federal grounds requires us to reach the merits." *Id.*, at 671, 102 S.Ct., at 2087.

This ad hoc method of dealing with cases that involve possible adequate and independent state grounds is antithetical to the doctrinal consistency that is required when sensitive issues of federal-state relations are involved. Moreover, none of the various methods of disposition that we have employed thus far recommends itself as the preferred method that we should apply to the exclusion of others, and we therefore determine that it is appropriate to reexamine our treatment of this jurisdictional issue in order to achieve the consistency that is necessary.

The process of examining state law is unsatisfactory because it requires us to interpret state laws with which we are generally unfamiliar, and which often, as in this case, have not been discussed at length by the parties. Vacation and continuance for clarification have also been unsatisfactory both because of the delay and decrease in efficiency of judicial administration, see *Dixon v. Duffy*, 344 U.S. 143, 73 S.Ct. 193, 97 L.Ed. 153 (1952), and, more important, because these methods of disposition place significant burdens on state courts to demonstrate the presence or absence of our jurisdiction. See *Philadelphia Newspapers, Inc. v. Jerome*, 434 U.S. 241, 244, 98 S. Ct. 546, 548, 54 L.Ed.2d 506 (1978) (Rehnquist, J., dissenting); *Department of Motor Vehicles v. Rios*, 410 U.S. 425, 427, 93 S.Ct. 1019, 1021, 35 L.Ed.2d 398 (1973) (Douglas, J., dissenting). Finally, outright dismissal of cases is clearly not a panacea because it cannot be doubted that there is an important need for uniformity in federal law, and that this need goes unsatisfied when we fail to review an opinion that rests primarily upon federal grounds and where the independence of an alleged state ground is not apparent from the four corners of the opinion. We have long recognized that dismissal is inappropriate "where there is strong indication . . . that the federal constitution as judicially construed controlled the decision below." [*Minnesota v.*] *National Tea Co.*, *supra*, 309 U.S., at 556, 60 S.Ct., at 679 (1940).

Respect for the independence of state courts, as well as avoidance of rendering advisory opinions, have been the cornerstones of this Court's refusal to decide cases where there is an adequate and independent state ground. It is precisely because of this respect for state courts, and this desire to avoid advisory opinions, that we do not wish to continue to decide issues of state law that go beyond the opinion that we review, or to require state courts to reconsider cases to clarify the grounds of their

decisions. Accordingly, when, as in this case, a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so. If a state court chooses merely to rely on federal precedents as it would on the precedents of all other jurisdictions, then it need only make clear by a plain statement in its judgment or opinion that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached. In this way, both justice and judicial administration will be greatly improved. If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision.

This approach obviates in most instances the need to examine state law in order to decide the nature of the state court decision, and will at the same time avoid the danger of our rendering advisory opinions. It also avoids the unsatisfactory and intrusive practice of requiring state courts to clarify their decisions to the satisfaction of this Court. We believe that such an approach will provide state judges with a clearer opportunity to develop state jurisprudence unimpeded by federal interference, and yet will preserve the integrity of federal law. "It is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions. But it is equally important that ambiguous or obscure adjudications by state courts do not stand as barriers to a determination by this Court of the validity under the federal constitution of state action." *National Tea Co.*, *supra*, 309 U.S., at 557, 60 S.Ct., at 679.

The principle that we will not review judgments of state courts that rest on adequate and independent state grounds is based, in part, on "the limitations of our own jurisdiction." *Herb v. Pitcairn*, 324 U.S. 117, 125, 65 S.Ct. 459, 463, 89 L.Ed. 789 (1945).[74] The jurisdictional concern is that we not "render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion." *Id.*, at 126, 65 S.Ct., at 463. Our requirement of a "plain statement" that a decision rests upon adequate and independent state grounds does not in any way authorize the rendering of advisory opinions. Rather, in determining, as we must, whether we have jurisdiction to review a case that is alleged to rest on adequate and independent

74. [FN7.] In *Herb v. Pitcairn,* 324 U.S. 117, 128, 65 S.Ct. 459, 464, 89 L.Ed. 789 (1945), the Court also wrote that it was desirable that state courts "be asked rather than told what they have intended." It is clear that we have already departed from that view in those cases in which we have examined state law to determine whether a particular result was guided or compelled by federal law. Our decision today departs further from *Herb* insofar as we disfavor further requests to state courts for clarification, and we require a clear and express statement that a decision rests on adequate and independent state grounds. However, the "plain statement" rule protects the integrity of state courts for the reasons discussed above. The preference for clarification expressed in *Herb* has failed to be a completely satisfactory means of protecting the state and federal interests that are involved.

state grounds, see *Abie State Bank v. Bryan*, *supra*, 282 U.S., at 773, 51 S.Ct., at 255, we merely assume that there are no such grounds when it is not clear from the opinion itself that the state court relied upon an adequate and independent state ground and when it fairly appears that the state court rested its decision primarily on federal law.

Our review of the decision below under this framework leaves us unconvinced that it rests upon an independent state ground. Apart from its two citations to the state constitution, the court below relied exclusively on its understanding of *Terry* and other federal cases. Not a single state case was cited to support the state court's holding that the search of the passenger compartment was unconstitutional.[75] Indeed, the court declared that the search in this case was unconstitutional because "[t]he Court of Appeals erroneously applied the principles of *Terry v. Ohio* . . . to the search of the interior of the vehicle in this case." 413 Mich., at 471, 320 N.W.2d, at 869. The references to the state constitution in no way indicate that the decision below rested on grounds in any way independent from the state court's interpretation of federal law. Even if we accept that the Michigan Constitution has been interpreted to provide independent protection for certain rights also secured under the Fourth Amendment, it fairly appears in this case that the Michigan Supreme Court rested its decision primarily on federal law.

Rather than dismissing the case, or requiring that the state court reconsider its decision on our behalf solely because of a mere possibility that an adequate and independent ground supports the judgment, we find that we have jurisdiction in the absence of a plain statement that the decision below rested on an adequate and independent state ground. It appears to us that the state court "felt compelled by what it understood to be federal constitutional considerations to construe . . . its own law in the manner it did." *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 568, 97 S.Ct. 2849, 2854, 53 L.Ed.2d 965 (1977).[76]

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75. [FN9.] At oral argument, Long argued that the state court relied on its decision in *People v. Reed,* 393 Mich. 342, 224 N.W.2d 867, cert. denied, 422 U.S. 1044, 95 S.Ct. 2660, 45 L.Ed.2d 696 (1975). See Tr. of Oral Arg., at 29. However, the court cited that case only in the context of a statement that the State did not seek to justify the search in this case "by reference to other exceptions to the warrant requirement." 413 Mich., at 472, 320 N.W.2d, at 869–870 (footnote omitted). The court then noted that *Reed* held that "'A warrantless search and seizure is unreasonable per se and violates the Fourth Amendment of the United States Constitution and art. 1, § 11 of the state constitution unless shown to be within one of the exceptions to the rule.'" *Id.,* at 472–473, n. 8, 320 N.W.2d, at 870, n. 8.

76. [FN10.] There is nothing unfair about requiring a plain statement of an independent state ground in this case. Even if we were to rest our decision on an evaluation of the state law relevant to Long's claim, as we have sometimes done in the past, our understanding of Michigan law would also result in our finding that we have jurisdiction to decide this case. Under state search and seizure law, a "higher standard" is imposed under art. 1, § 11 of the 1963 Michigan Constitution. See *People v. Secrest,* 413 Mich. 521, 525, 321 N.W.2d 368, 369 (1982). If, however, the item seized is, *inter alia,* a "narcotic drug . . . seized by a peace officer outside the curtilage of any dwelling house in this state," art. 1, § 11 of the 1963 Michigan Constitution, then the seizure is governed by a standard identical to that imposed by the Fourth Amendment. See *People v. Moore,* 391 Mich. 426, 435, 216 N.W.2d 770, 775 (1974). . . .

V

The decision of the Michigan Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice BLACKMUN, concurring in part and concurring in the judgment.

I join Parts I, III, IV, and V of the Court's opinion. While I am satisfied that the Court has jurisdiction in this particular case, I do not join the Court, in Part II of its opinion, in fashioning a new presumption of jurisdiction over cases coming here from state courts. Although I agree with the Court that uniformity in federal criminal law is desirable, I see little efficiency and an increased danger of advisory opinions in the Court's new approach.

Justice BRENNAN, with whom Justice MARSHALL joins, dissenting. [Dissents were entirely on merits and not on jurisdiction. Thus, the dissents are omitted here.]

Justice STEVENS, dissenting.

The jurisprudential questions presented in this case are far more important than the question whether the Michigan police officer's search of respondent's car violated the Fourth Amendment. The case raises profoundly significant questions concerning the relationship between two sovereigns—the State of Michigan and the United States of America.

The Supreme Court of the State of Michigan expressly held "that the deputies' search of the vehicle was proscribed by the Fourth Amendment of the United States Constitution and art. 1, § 11 of the Michigan Constitution." Pet. for Cert. 19. . . . The state law ground is clearly adequate to support the judgment, but the question whether it is independent of the Michigan Supreme Court's understanding of federal law is more difficult. Four possible ways of resolving that question present themselves: (1) asking the Michigan Supreme Court directly, (2) attempting to infer from all possible sources of state law what the Michigan Supreme Court meant, (3) presuming that adequate state grounds are independent unless it clearly appears otherwise, or (4) presuming that adequate state grounds are not independent unless it clearly appears otherwise. This Court has, on different occasions, employed each of the first three approaches; never until today has it even hinted at the fourth. In order to "achieve the consistency that is necessary," the Court today undertakes a reexamination of all the possibilities. *Ante*, at 3475. It rejects the first approach as inefficient and unduly burdensome for state courts, and rejects the second approach as an inappropriate expenditure of our resources. *Ibid*. Although I find both of those decisions defensible in themselves, I cannot accept the Court's decision to choose the fourth approach over the third—to presume that adequate state grounds are intended to be dependent on federal law unless the record plainly shows otherwise. I must therefore dissent.

If we reject the intermediate approaches, we are left with a choice between two presumptions: one in favor of our taking jurisdiction, and one against it. Historically, the latter presumption has always prevailed. [citations omitted] The rule, as succinctly

stated in *Lynch* [*v. New York ex rel. Pierson*, 293 U.S. 52, 55 S. Ct. 16, 79 L. Ed. 191 (1934)], was as follows:

> "Where the judgment of the state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction." [citations omitted]

The Court today points out that in several cases we have weakened the traditional presumption by using the other two intermediate approaches identified above. Since those two approaches are now to be rejected, however, I would think that stare decisis would call for a return to historical principle. Instead, the Court seems to conclude that because some precedents are to be rejected, we must overrule them all.

Even if I agreed with the Court that we are free to consider as a fresh proposition whether we may take presumptive jurisdiction over the decisions of sovereign states, I could not agree that an expansive attitude makes good sense. It appears to be common ground that any rule we adopt should show "respect for state courts, and [a] desire to avoid advisory opinions." *Ante*, at 3475. And I am confident that all members of this Court agree that there is a vital interest in the sound management of scarce federal judicial resources. All of those policies counsel against the exercise of federal jurisdiction. They are fortified by my belief that a policy of judicial restraint—one that allows other decisional bodies to have the last word in legal interpretation until it is truly necessary for this Court to intervene—enables this Court to make its most effective contribution to our federal system of government.

The nature of the case before us hardly compels a departure from tradition. These are not cases in which an American citizen has been deprived of a right secured by the United States Constitution or a federal statute. Rather, they are cases in which a state court has upheld a citizen's assertion of a right, finding the citizen to be protected under both federal and state law. The complaining party is an officer of the state itself, who asks us to rule that the state court interpreted federal rights too broadly and "overprotected" the citizen.

Such cases should not be of inherent concern to this Court. The reason may be illuminated by assuming that the events underlying this case had arisen in another country, perhaps the Republic of Finland. If the Finnish police had arrested a Finnish citizen for possession of marijuana, and the Finnish courts had turned him loose, no American would have standing to object. If instead they had arrested an American citizen and acquitted him, we might have been concerned about the arrest but we surely could not have complained about the acquittal, even if the Finnish Court had based its decision on its understanding of the United States Constitution. That would be true even if we had a treaty with Finland requiring it to respect the rights of American citizens under the United States Constitution. We would only be motivated to intervene if an American citizen were unfairly arrested, tried, and convicted by the foreign tribunal.

In this case the State of Michigan has arrested one of its citizens and the Michigan Supreme Court has decided to turn him loose. The respondent is a United States citizen as well as a Michigan citizen, but since there is no claim that he has been mistreated by the State of Michigan, the final outcome of the state processes offended no federal interest whatever. Michigan simply provided greater protection to one of its citizens than some other State might provide or, indeed, than this Court might require throughout the country.

I believe that in reviewing the decisions of state courts, the primary role of this Court is to make sure that persons who seek to vindicate federal rights have been fairly heard. That belief resonates with statements in many of our prior cases. In *Abie State Bank v. Bryan*, 282 U.S. 765, 51 S.Ct. 252, 75 L.Ed. 690 (1931), the Supreme Court of Nebraska had rejected a federal constitutional claim, relying in part on the state law doctrine of laches. Writing for the Court in response to the Nebraska Governor's argument that the Court should not accept jurisdiction because laches provided an independent ground for decision, Chief Justice Hughes concluded that this Court must ascertain for itself whether the asserted nonfederal ground independently and adequately supported the judgment "in order that constitutional guarantees may appropriately be enforced." *Id.*, at 773, 51 S.Ct., at 255. He relied on our earlier opinion in *Union Pacific Railroad Co. v. Public Service Commission of Missouri*, 248 U.S. 67, 39 S.Ct. 24, 63 L.Ed. 131 (1918), in which Justice Holmes had made it clear that the Court engaged in such an inquiry so that it would not "be possible for a State to impose an unconstitutional burden" on a private party. *Id.*, at 70, 39 S.Ct., at 25. And both *Abie* and *Union Pacific* rely on *Creswill v. Knights of Pythias*, 225 U.S. 246, 261, 32 S.Ct. 822, 827, 56 L.Ed. 1074 (1912), in which the Court explained its duty to review the findings of fact of a state court "where a Federal right has been denied."

Until recently we had virtually no interest in cases of this type. Thirty years ago, this Court reviewed only one. *Nevada v. Stacher*, 358 U.S. 907, 79 S.Ct. 232, 3 L.Ed.2d 228 (1953). Indeed, that appears to have been the only case during the entire 1952 Term in which a state even sought review of a decision by its own judiciary. Fifteen years ago, we did not review any such cases, although the total number of requests had mounted to three. [FN omitted.] Some time during the past decade, perhaps about the time of the 5-to-4 decision in *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 97 S. Ct. 2849, 53 L.Ed.2d 965 (1977), our priorities shifted. The result is a docket swollen with requests by states to reverse judgments that their courts have rendered in favor of their citizens. [FN omitted.] I am confident that a future Court will recognize the error of this allocation of resources. When that day comes, I think it likely that the Court will also reconsider the propriety of today's expansion of our jurisdiction.

The Court offers only one reason for asserting authority over cases such as the one presented today: "an important need for uniformity in federal law [that] goes unsatisfied when we fail to review an opinion that rests primarily upon federal grounds and where the independence of an alleged state ground is not apparent from the four corners of the opinion." *Ante*, at 3475 (emphasis omitted). Of course, the supposed

need to "review an opinion" clashes directly with our oft-repeated reminder that "our power is to correct wrong judgments, not to revise opinions." *Herb v. Pitcairn*, 324 U.S. 117, 126, 65 S.Ct. 459, 463, 89 L.Ed. 789 (1945). The clash is not merely one of form: the "need for uniformity in federal law" is truly an ungovernable engine. That same need is no less present when it is perfectly clear that a state ground is both independent and adequate. In fact, it is equally present if a state prosecutor announces that he believes a certain policy of nonenforcement is commanded by federal law. Yet we have never claimed jurisdiction to correct such errors, no matter how egregious they may be, and no matter how much they may thwart the desires of the state electorate. We do not sit to expound our understanding of the Constitution to interested listeners in the legal community; we sit to resolve disputes. If it is not apparent that our views would affect the outcome of a particular case, we cannot presume to interfere. Finally, I am thoroughly baffled by the Court's suggestion that it must stretch its jurisdiction and reverse the judgment of the Michigan Supreme Court in order to show "[r]espect for the independence of state courts." *Ante*, at 3475. Would we show respect for the Republic of Finland by convening a special sitting for the sole purpose of declaring that its decision to release an American citizen was based upon a misunderstanding of American law?

I respectfully dissent.

As you read the cases, commentary, and questions in this book, think of the role Florida's Constitution plays in the federal system. In the interplay between state courts, the state Legislature, the federal courts, and the Congress, how does each entity play its role? How do courts interpret the Florida Constitution? Do federal courts treat the state constitution differently than state courts do? Construing a constitution gets even more entertaining once you realize the many ways provisions can be interpreted. More than seventy years ago, the legal scholar Karl Llewellyn wrote an article for the *Vanderbilt Law Review* setting out twenty-eight canons of statutory and constitutional interpretation—and the twenty-eight opposing canons. All, Llewellyn stated, are correct, depending on context.[77]

As a convenience to readers, and because Florida's Constitution changes every two years, we recommend you refer to a regularly updated online version of it. One such link is https://www.flsenate.gov/Laws/Constitution. We hope you enjoy your journey through Florida's legal world.

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77. Karl N. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes are to be Construed*, 3 Vand L. Rev. 395–406 (1949–50); *see generally Plante v. Smathers*, 372 So. 2d 933 (Fla. 1979); *Gray v. Bryant*, 125 So. 2d 846 (Fla. 1960); *Taylor v. Dorsey*, 19 So. 2d 876 (Fla. 1944).

Table of Cases

(*italics* indicate cases cited in comments only)