

STATE
CONSTITUTIONAL
LAW:
CASES AND MATERIALS

Fifth Edition

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STATE CONSTITUTIONAL LAW: CASES AND MATERIALS

Fifth Edition

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Print ISBN: 978-1-6304-3586-8
Looseleaf ISBN: 978-1-6304-3587-5
Ebook ISBN: 978-1-6304-3588-2

Library of Congress Cataloging-in-Publication Data

Williams, Robert F. (Robert Forrest), 1945- author.
State constitutional law : cases and materials / Robert F. Williams, Distinguished Professor of Law, Rutgers University, Camden; Lawrence Friedman, Professor of Law, New England School of Law. -- Fifth edition.
pages cm
Includes index.
ISBN 978-1-63043-586-8 (hardbound)
1. Constitutional law--United States--States. I. Friedman, Lawrence, 1967- author. II. Title.
KF4530.W54 2015
342.73--dc23
2014049775

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MATTHEW  BENDER

Dedication

Second Edition

For Alaine, Sarah, and Tyler

Third Edition

I dedicate the Third Edition of this book to Marc Feldman, lawyer, law teacher, and friend. I learned much about law practice, teaching, scholarship, life, and friendship from Marc.

Fourth Edition

For Betty C. Williams
and
Robert H. Williams
My Parents

Fifth Edition

For Alaine, Sarah, Tyler, and Lakshmi
—RFW

For Elizabeth and Piper
—LF

Preface to the Fifth Edition

I am very pleased to be working with Professor Lawrence Friedman on this new edition. He was also instrumental in the 2011 supplement. Lawrence has been a significant scholar of state constitutional law for a number of years and brings important new energy and ideas to the coursebook.

The field of state constitutional law continues, as it has for many years, to grow in importance and recognition. This edition eliminates some of the material from the last edition in order to accommodate new content, but it follows closely the earlier organization. We have continued the use of fairly extensive Notes and Questions not only to expand on the excerpts but also in the hopes that this book may also serve a continuing reference and research function for students, lawyers, judges, and scholars.

Again, I thank Denise Johnson-Steinert and David Batista, as well as the LexisNexis Law Publishing staff.

Robert F. Williams
Camden, New Jersey
August, 2014

Lawrence Friedman
Boston, Massachusetts
August, 2014

Preface to the Fourth Edition

The field of state constitutional law continues to grow in both its breadth of understanding by lawyers, judges, law professors and students and its depth of sophistication. I continue to learn from our Rutgers law students, who are approaching their twentieth year of our Law Journal's *Annual Issue on State Constitutional Law*. In addition, the articles appearing there continue to make major contributions to the field and to this casebook.

Further, I have continued to learn from the many state judges with whom I have interacted at judicial conferences in their states and in the programs of the America Bar Association's Appellate Judges Seminar Series and the New York University Institute for Judicial Administration's summer programs for appellate judges. These judges have a lot to say about state constitutional law and their opinions provide the "stuff" for this book.

The fourth edition, as in the past, follows the organization of earlier editions, but I have added important new material.

I want to thank Denise Johnson Steinert for her tireless word processing efforts and David Batista, one of our excellent research librarians, for his cheerful assistance in the face of my limited technological skills. The Lexis Law Publishing staff, including Leslie Levin and Gregory Ealick, make this work enjoyable.

Robert F. Williams
Camden, New Jersey
February, 2006

Preface to the Third Edition

In the time since the second edition of this coursebook appeared in 1993, interest in state constitutional law has continued to increase. Scholarship on the topic has become much more sophisticated. A growing number of legal and political science scholars have fixed their attention on state constitutional law. The second edition has been used successfully at a number of law schools, and has been reviewed favorably. I have received constructive feedback from a number of professors who have used the book, for which I thank them.

I continue to benefit from the interaction with law students participating in *Rutgers Law Journal's* Annual Issue On State Constitutional Law, which is now in its eleventh year. Also, I have gained valuable insights from participation in a number of programs in the American Bar Association's Appellate Judges Seminar Series. The lessons gained from state judges working directly with state constitutions are invaluable.

The third edition follows the organization of the earlier edition quite closely, but there are a number of important changes that I believe improve the book.

Finally, I want to thank Debbie Comuso for her monumental efforts in organizing and producing the new edition. The Lexis-Nexis editorial staff, including M. Lyndon Whitmore and Bruce Ponman, are a delight to work with and a great help.

Robert F. Williams
Camden, New Jersey
June, 1999

Preface to the Second Edition

This book is the result of many positive developments over the past fourteen years. The first, and most important, was the foresight of my colleagues at Rutgers University School of Law, Camden, who permitted me to offer a new course in 1980 called State Constitutional Law. At the time, there was no course like it in the country, approaching the topic on a comparative, or allstates, basis. The opportunity to teach this course over the past fourteen years has permitted me to develop the materials contained in this book.

Professor Frank P. Grad, of Columbia Law School, has been unfailingly supportive of these efforts. He has not only shared his writings, both published and unpublished, but has been very generous with his ideas and support. This book owes a much greater debt to him than is reflected by the excerpts and citations contained in it.

Over the years, the students at Rutgers University School of Law, Camden, who have taken the course have added to my interest and understanding immeasurably. Their excitement at discovering another way of looking at constitutional law is a sustaining force for me to continue the investigations reflected in the book. Also, for the past five years the law students who have participated in *Rutgers Law Journal's* Annual Issue on State Constitutional Law have served as, in effect, the best research assistants any professor could have. The sheer amount of work it takes to gather and analyze every state constitutional case in the country is hard to describe. I always learn from their insights, together with those of the authors of the articles included in the Annual Issue. I include my thanks here as well to the many dedicated research assistants who have worked directly for me.

I have also been helped immeasurably by a small but dedicated group of law professors who have taken an interest in this subject. Our discussions by letter and on the telephone, as well as our Roundtables on State Constitutional Law at the Annual Meeting of the Association of American Law Schools, from 1982 through 1988, always gave me new ideas and understanding.

A generous fellowship from the American Council of Learned Societies for the academic year 1985-86 enabled me to do in-depth research into the first state constitutions, which predated the federal Constitution. In addition, several Rutgers sabbaticals were also indispensable in providing the time to develop the ideas and approaches reflected in the book.

In 1988 the Advisory Commission on Intergovernmental Relations published the first edition of this book. I owe John Kincaid, the Executive Director of ACIR, a debt of gratitude for his idea to publish the materials and promote them. Publication of the book in that form made it available generally, so that its appeal and usefulness could be “tested” around the country. It met with enough success to convince the current publisher to adopt it. That would never have happened without the commitment of ACIR.

A number of state court judges around the country have been extraordinarily supportive. By naming a few, I do not intend to exclude others. Hans A. Linde of Oregon (now retired), Stanley Mosk of California, Robert Utter of Washington, Shirley Abrahamson of Wisconsin, Stewart Pollock of New Jersey, Judith Kaye of New York, Christine Durham of Utah, and Dorothy Beasley of Georgia have all been especially supportive. Several programs of the National Conference of Chief Justices have been

Preface to the Second Edition

devoted to state constitutional law, at which a number of the ideas in this book were disseminated.

I owe a substantial debt to a number of professors who have taught the course with the book as published by ACIR, and have generously shared their ideas with me. Once again, without intending to exclude anyone, I want to give special thanks to Charles “Buzzy” Baron of Boston College, Michael Libonati of Temple, Harry Martin of North Carolina and Harry Witte of Widener. A. E. Dick Howard of Virginia has also given me valuable assistance over the years. Harold Levinson of Vanderbilt taught me Florida Constitutional Law at Florida, opened my eyes to the possibilities of looking beyond one state, and has encouraged me ever since.

My political science colleague, G. Alan Tarr has guided me in interdisciplinary approaches to state constitutional law and always provides encouragement and a ready sounding board for many of the ideas contained in this book. My wife, Alaine S. Williams, who practices state constitutional law extensively in Pennsylvania, always lends a practical, “feet-on-the-ground” perspective in the brief moments in her busy schedule that she can devote to these academic matters.

Members of the law library staff at Rutgers Law School left no stone unturned in searching out and obtaining materials. The Michie Company editorial staff, including Fran Warren and Don Whitenack, are a pleasure to work with and a great help. Finally, in some ways most importantly, my thanks go to Sandra Hill and Thea Dugan, the “wizards of the word processor” who made it possible to produce this Second Edition.

Robert F. Williams
Camden, New Jersey
June, 1993

Foreword to the Second Edition

The U.S. Advisory Commission on Intergovernmental Relations (ACIR) is pleased to have helped give birth to this important, ground-breaking text. *State Constitutional Law: Cases and Materials* lays a solid foundation for more comparative and systematic attention to state constitutional law by students, teachers, and practitioners of the law, and for more widespread understanding and appreciation of state constitutional issues by citizens of our country's fifty states.

For many Americans today, “constitutional law” is associated only with the great Constitution of the United States. Although citizens are frequently asked to vote on amendments to state constitutions, in ACIR's 1991 national opinion poll, only 52 percent of adult Americans realized that their state has its own constitution. Yet, the states, beginning while colonies, pioneered the idea of written constitutions, and the Massachusetts Constitution of 1780 is the oldest written republican constitution still in effect in the modern world.

State constitutions are important for many reasons, but three are especially notable.

For one, state constitutions are expressions of democratic self-governance in our diverse society. Although they are frequently criticized for excessive detail and revision, state constitutions reflect the efforts of successive generations of Americans to come to grips with changing conditions of society and changing conceptions of governance while retaining the people's authority over government through their sovereign power to frame, adopt, and amend these constitutions. The state constitutions, therefore, reflect the diversity of American society more dramatically than the U.S. Constitution — all the way from Delaware, the last holdout against popular ratification of constitutional amendments, to California, a hotbed of amendment by popular initiative. Unlike the U.S. Constitution, which has evolved primarily through elite judicial interpretation punctuated by reform amendments, state constitutions have evolved primarily through legislative and public action marked by waves of reform and reaction often sparked by major changes in the composition of state electorates and makeups of state economies. As such, the history of state constitutions captures the history of grassroots America in more vivid detail than the history of the U.S. Constitution.

Second, state constitutions are the bedrock of American constitutionalism. The federal Constitution is one of limited, delegated powers. Although those powers have been interpreted broadly since the 1930s, for the first 150 years of U.S. history, state constitutions were the primary consequential documents in the governance of American society. Even today, in the face of vastly expanded federal power, the limits of reliance on the federal Constitution have been made apparent, for example, by the now old “new judicial federalism” in which state court reliance on state declarations of rights has highlighted the importance of state constitutions and of the states themselves as laboratories of democracy. As such, developments in state constitutional law also continue to serve as forerunners and models for federal constitutional law.

Third, state constitutions play crucial roles in intergovernmental relations. They are especially important in structuring relations between the states and their local

Foreword to the Second Edition

governments and in granting and limiting powers exercised by our nation's 86,692 local governments. State constitutions also establish and structure the ground rules for interlocal relations (e.g., annexation, consolidation, cooperation, and tax-base sharing and competition) — matters of great significance for metropolitan governance in America.

For these and other reasons, ACIR believes it important to focus more attention on state constitutions. ACIR is an independent, bipartisan federal commission established by law in 1959 to monitor and evaluate developments in the American federal system and to make recommendations for improving intergovernmental cooperation. ACIR consists of 26 members: three private citizens, three members of the U.S. House, three U.S. senators, three Cabinetlevel officers of the federal executive branch, four governors, three state legislators, four mayors, and three county officials. Except for the congressional members, the members of ACIR are appointed by the president for two-year terms. Thus, ACIR is a unique intergovernmental forum with a keen interest in the constitutional and legal, as well as fiscal and administrative, structure of federalism.

ACIR published an earlier version of this text, compiled by Professor Williams, in October 1988 and reissued it in October 1990 with a supplementary update. ACIR also issued a complementary policy report in July 1989, *State Constitutions in the Federal System: Selected Issues and Opportunities for State Initiatives*. These reports stimulated more awareness of the place of state constitutions in the American federal system, particularly among elected officials, and encouraged more law schools to give greater attention to the teaching of state constitutional law.

Having achieved its objectives, ACIR takes great pleasure in placing this important and ongoing work in the capable hands of Professor Williams, where it can establish an enduring foothold in the commercial marketplace and the profession of law.

John Kincaid
ACIR Executive
Director
Washington, DC

Introduction

This is a book about constitutional law. It recognizes, though, that the study of American constitutional law has been dominated by a virtually exclusive focus on the federal Constitution and its judicial interpretation. Legal scholars and political scientists have contributed to this by their preoccupation with constitutional matters as defined by the U.S. Supreme Court. In fact, however, the federal Constitution is “incomplete”¹ in the sense that it relied extensively on mechanisms established in state constitutions, and leaves nearly all matters within the sphere of state power to be regulated by state constitutions and laws. Realistically, however, casebooks on constitutional law are unlikely to include any significant treatment of state constitutions.

In the last forty years there have been striking developments in state constitutional law. We have experienced a “constitutional revolution” in the judicial interpretation of individual rights provisions of state constitutions since the early 1970s. The era of major state constitutional innovation prior to the turn of this century was concerned primarily with changes in constitutional texts. Similarly, the wave of state constitutional change that took place between 1945 and 1970 dealt with revisions to, and modernization of, the constitutions, themselves. The rediscovery of state constitutional law in the past four decades, however, involves judicial interpretation of the rights guarantees in state constitutions.²

Although state constitutional interpretation always has been important in areas of civil litigation such as state taxation and eminent domain, and in areas of criminal procedure such as bail rights, a broader spectrum of the private bar and a growing number of law professors, political scientists, students, and even the media now are discovering state constitutional law for the first time. This is attributable directly to the many “evasion cases”³ of the past four decades; that is, state supreme courts have relied on their own constitutions (1) to provide greater civil liberties protections for their citizens than are required by United States Supreme Court interpretations of the federal Constitution and (2) to insulate their decisions from Supreme Court review.

These events have captured the attention of the legal and political community, as well as the media and the public, in a way that a state constitutional convention’s increase in gubernatorial powers or modernization of fiscal and budgetary provisions never could. Such structural or political reforms were relegated to the domain of a few political scientists. Their interests have included the structure and power allocations of state and local government, as well as the ways in which such powers actually are exercised. Lawyers and law teachers, by contrast, tend to be concerned with the extent and limit of governmental powers and with the interpretation of constitutional provisions in litigation. It is no surprise, therefore, that the state bill of rights “explosion” of recent decades has

¹ Donald S. Lutz, *The Purposes of American State Constitutions*, 12 *PUBLIUS: THE JOURNAL OF FEDERALISM* 38-42 (1982); *The United States Constitution as an Incomplete Document*, 496 *Annals* 23 (1988).

² This “new” use of state constitutions will be detailed in Chapters 3 and 4.

³ Donald E. Wilkes, *More on the New Federalism in Criminal Procedures*, 63 *KY. L.J.* 873 n. 2 (1975).

Introduction

captured the attention of lawyers and legal scholars. This new attention, however, has generally been limited to state constitutional protection of individual liberties as an alternative to federal constitutional protections.

The field of state constitutional law, like federal constitutional law, is by no means limited to cases involving the application of state bills of rights. The structure and power of state and local governments, state-local relations, state judicial systems, taxation and public finance, and public education all are affected by the state constitution and its interpretation. Furthermore, the issues governed by state constitutions do not differ significantly from one state to another. State constitutional law, however, has not been treated as a matter of political or legal theory or as a subject for comparative treatment; rather, it usually is thought of as a parochial matter. The recurring themes and issues found throughout state constitutional law make it susceptible to treatment on a comparative or “all state” basis.

State constitutions operate within, and are limited by, the federal Constitution. As V.O. Key, Jr. noted “[T]he American states operate not as independent and autonomous political entities, but as units of the nation.”⁴

Each of the states has a constitution. All 50 of these documents, although varying widely as to detail and length, perform the same general function in our federal system of law and government. This function is very different from that of the Constitution of the United States — the constitution usually thought of when we refer to “constitutional law.” See Christian G. Fritz, *Foreword: Out From Under the Shadow of the Federal Constitution: An Overlooked American Constitutionalism*, 41 RUTGERS L.J. 851 (2010).

A state constitution serves as a charter of law and government for the state — the supreme law of the state — and prescribes in more or less detail the structure and functions of government. Further, it provides limitations on the otherwise plenary, sovereign power of states to make law and govern themselves. At the outset, this fundamental point regarding the legal and political function and effect of state constitutions must be understood. By contrast, the federal Constitution is a grant of enumerated powers, upon which all exercises of federal power must be based. The states delegated to the federal government certain powers and agreed to restrain themselves with respect to other powers and functions. Such restraints are found in the federal and state constitutions.

A study of state constitutional law, while pointing out similarities, also highlights the differences among the legal and governmental systems of our 50 states. In the famous words of Justice Louis Brandeis:

It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.⁵

Many common themes appear in the constitutional law of all states. They touch upon many of the same issues, despite differences in how such issues may be resolved. It is the

⁴ V.O. KEY, JR., *AMERICAN STATE POLITICS: AN INTRODUCTION* 18 (1956).

⁵ *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). Justice Oliver Wendell Holmes referred to “social experiments . . . in the insulated chambers afforded by the several states. . . .” *Truax v. Corrigan*, 257 U.S. 312, 344 (Holmes, J., dissenting).

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purpose of this book to focus on these common themes and issues, which are likely to arise in any jurisdiction. This will, in turn, accent the importance of the unique language and judicial interpretation of the constitutions of the states in the resolution of specific issues.

A 1988 national poll by ACIR revealed that 52 percent of the respondents did not know that their state had its own constitution. John Kincaid, *The New Judicial Federalism*, 61 J. STATE GOVT'S 169 (Sept./Oct. 1988). In 1989, ACIR made the following finding:

Even among lawyers, state constitutional law is relatively unknown and little practiced. Compared to the U.S. Constitution, state constitutions are less frequently mentioned in the history and civics classes of public schools or the university, and regular reporting of state constitutional decisions, as well as the statistics of state court activities, has been, until very recently, quite rare. Even the law schools seldom offer courses in state constitutional law. If the American federal system is to be properly balanced — giving full rein to the potentials of local governments, the states, and the national government — then the field of state constitutional law needs to be developed more fully.

The Commission recommended that “law schools teach state constitutional law as part of their regular curriculum, that state bar examiners include a section on state constitutional law in their bar exams, and that public and private institutions support research on state constitutional law.” ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, STATE CONSTITUTIONS IN THE FEDERAL SYSTEM: SELECTED ISSUES AND OPPORTUNITIES FOR STATE INITIATIVES 2, 3 (1989).

In recent years educators in law and political science have noted the absence of state constitutional law in the curriculum and called for courses and materials on the subject. This gap has been acknowledged by judges as well as by educators. Justice Charles G. Douglas of the Supreme Court of New Hampshire observed: “The fact that law clerks working for state judges have only been taught or are familiar with *federal* cases brings a federal bias to the various states as they fan out after graduation from ‘federally’ oriented law schools. Justice Douglas deplored the “lack of . . . textbooks developing the rich diversity of state constitutional law.”⁶ Justice Hans A. Linde of the Oregon Supreme Court observed:

[T]he law schools have nationalized legal education, and constitutional law books deal with the opinions of the United States Supreme Court. perhaps, if we could develop more constitutional law courses that are built around the issues and the choices which exist throughout our fifty-one constitutions and that would treat the opinions of judges as historic but not infallible struggles with those issues and choices. . . .⁷

⁶ Charles G. Douglas, *State Judicial Activism — The New Role for State Bills of Rights*, 12 SUFFOLK U. L. REV. 1123, 1147 (1978).

⁷ Hans A. Linde, *First Things First: Rediscovering the States' Bills of Rights*, 9 U. BALT. L. REV. 379, 392-93 (1980). See also Stanton S. Faville, *Dissecting a Constitution*, 13 WAYNE L. REV. 549 (1967) (calling for required course in state constitutional law); Lester J. Mazor, *Notes on a Bill of Rights in a State Constitution*, 1966 UTAH L. REV. 326, 328. (No treatise exists on state constitutional law, nor one on the subject of civil liberties under state constitutions).

Introduction

This coursebook is intended to fill a major gap in the teaching of American constitutional law, and contribute to the ongoing process identified by Justice Shirley S. Abrahamson of the Wisconsin Supreme Court:

State constitutions are coming out of the archives into the legal literature and into the classroom. They are coming out of the literature and the classroom into the courtroom. State constitutions will go from the courtroom back into the legal literature and into the classroom, and maybe back to the courtroom, through the lawyers trained in the 1980s⁸

The range of issues that can arise under any state's constitution, as illustrated by the materials in this book, is treated in Robert F. Williams, *State Constitutional Law Processes*, 24 WM. & MARY L. REV. 169 (1983). That article follows the same organization and substance as this book.

Invaluable sources of information concerning each state's constitution can be found in William F. Swindler's 11-volume *Sources and Documents of U.S. Constitutions* (1973-1979); and the Legislative Drafting Research Fund, Columbia University, *Constitutions of the United States: National and State* (various dates), 7 vols. *See also* Thomas C. Marks, Jr. & John F. Cooper, *State Constitutional Law in a Nutshell* (1988).

Research sources in state constitutional law include an "Annual Issues on State Constitutional Law," published in the Rutgers Law Journal each year since 1989. The issue includes articles as well as commentary on all the important state constitutional interpretations from the previous year. *See especially* Earl M. Maltz, Robert F. Williams & Michael Araten, *Selected Bibliography on State Constitutional Law, 1980-1989*, 20 RUTGERS L.J. 1093 (1989) and Susan King, *State Constitutional Law Bibliography: 1989-1999*, 31 RUTGERS L.J. 1623 (2000). *See also* BERNARD D. REAMS, JR. & STUART D. YOAK, EDs., *THE CONSTITUTIONS OF THE STATES: A STATE-BY-STATE GUIDE AND BIBLIOGRAPHY TO CURRENT SCHOLARLY RESEARCH* (1988); TIM J. WATTS, *STATE CONSTITUTIONAL LAW DEVELOPMENT: A BIBLIOGRAPHY* (1991); ROBERT L. MADDEX, *STATE CONSTITUTIONS OF THE UNITED STATES* (1998); CHRISTOPHER W. HAMMONS & GEORGE E. CONNOR, EDs., *THE CONSTITUTIONALISM OF AMERICAN STATES* (2008).

Between 1988 and 1991, the National Association of Attorneys General published an annual law review, *Emerging Issues in State Constitutional Law*. Albany Law Review publishes an issue each year on state constitutional law. Greenwood Press announced the publication of a 50-volume reference work on state constitutions, at least forty-five of which are now available. Oxford University Press bought the series and is now issuing new editions for all the states as *The Oxford Commentaries on the State Constitutions of The United States*. Excellent treatments of state constitutional rights cases are contained in JENNIFER FRIESEN, *STATE CONSTITUTIONAL LAW: LITIGATING INDIVIDUAL RIGHTS, CLAIMS AND DEFENSES* (4th ed. 2008) and BARRY LATZER, *STATE CONSTITUTIONAL CRIMINAL LAW* (1995), the latter of which is not being regularly supplemented.

Recent publications addressing the importance of state constitutional law as a subject of inquiry include Sanford Levinson, *Courts as Participants in "Dialogue": A View from The American States*, 59 U. KAN L. REV. 791 (2011); *America's "Other Constitutions": The Importance of State Constitutions for Our Law and Politics*, 45 TULSA L. REV. 813

⁸ Shirley S. Abrahamson, *Reincarnation of State Courts*, 36 SW. L.J. 951, 971 (1982).

Introduction

(2011); Mary Whisner, *Fifty More Constitutions*, 104 LAW LIBR. J. 331 (2012); Jeffrey S. Sutton, *Why Teach — and Why Study — State Constitutional Law*, 34 OKLA. CITY U. L. REV. 165 (2009); Michael E. Libonati, *State Constitutions and Legislative Processes: The Road Not Taken*, 89 B.U. L. REV. 863 (2009); and Mila Versteeg & Emily Zackin, *American Constitutional Exceptionalism Revisited*, 81 U. CHI. L. REV. 101 (2014). In addition, one of us (Williams) recently published a comprehensive one-volume treatment of state constitutional law, see Robert F. WILLIAMS, *THE LAW OF AMERICAN STATE CONSTITUTIONS* (2009), which complements G. Alan Tarr's *UNDERSTANDING STATE CONSTITUTIONS* (1998), a one-volume treatment of the history, evolution, politics and theory of state constitutions. And each year, Dr. John Dinan provides an excellent survey of developments in State Constitutional Law in Chapter 1 of *THE BOOK OF THE STATES*.

Many state constitutional law resources are available through the Rutgers Center for State Constitutional Studies, www.camlaw.rutgers.edu/statecon/. These resources may help to assist attorneys seeking guidance on how to meet the expectations of the resolution adopted by the Conference of Chief Justices as proposed by the Professionalism and Competence of the Bar Committee at the Conference of Chief Justices 2010 Midyear Meeting:

Encouraging the Teaching of State Constitutional Law Courses

WHEREAS, all lawyers take an oath to support the United States Constitution and the Constitution of their state; and

WHEREAS, although all law schools offer a course in constitutional law, the overwhelming majority of those courses are taught from the perspective of the federal Constitution; and

WHEREAS, the United States Constitution creates a dual system of government with two sets of sovereigns whereby all powers not delegated to the federal government are reserved to the states; and

WHEREAS, state constitutions contain different structures of government, unique provisions, and substantive provisions or declarations of rights that are often greater than federally guaranteed individual rights and liberties; and

WHEREAS, being a competent and effective lawyer requires an understanding of both the Federal Constitution and state constitutional law;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices encourages all law schools to offer a course on state constitutional law.

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