

University of Miami School of Law
FLORIDA CONSTITUTIONAL LAW – Fall 2019
SYLLABUS (with cases in text added)

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Course The text is Cooper, John F. and Marks, Jr., Thomas C., *Florida*
Materials: *Constitutional Law*, Carolina Academic Press (5th ed. 2013), plus
copies of supplemental cases listed in this Syllabus or provided later.
Supplemental materials are available via Westlaw or from our
assistant, Catherine May (cmay@law.miami.edu).

Florida Contained in Appendix to text.
Constitution:

Classes held from 7:30pm to 8:50pm, in Room F108, Monday and Wednesday
evenings

BRIEF OVERVIEW

As a survey course studying the Florida Constitution as the charter of state government and a source of fundamental rights for its citizens, the course covers two aspects of the State Constitution: regulating the structure of the state government and providing for individual rights on a variety of topics (some beyond those provided by the Federal Constitution). Elements of state constitutional law which are covered in the “structural” section include separation of powers; jurisdiction of courts; functions of the legislature and governor; powers and functions of city and county governments; and constitutional means of, and limitations on, public finance. The “rights” section of the course covers the Florida constitutional right to privacy, the right to medical self-determination; protections for criminal defendants; equal protection, due process; Florida homestead protection, and access to courts. The interrelationship and comparisons between the Florida and the U.S. Constitutions in multiple areas of law are addressed.

Goals: Upon completion of this course, each student should be able:

- (1) To explain the purpose of the Florida Constitution and contrast its fundamental purpose with that of the United States Constitution;
- (2) To identify, describe, and analyze the primary Florida Constitutional limitations on the branches of state government and local government, and on the exercise of governmental regulatory, tax, and financing powers;
- (3) To identify and describe certain significant individual rights and protections guaranteed by the Florida Constitution, which are in some ways comparable but not identical to rights and protections under the United States Constitution;
- (4) To identify and describe certain individual rights and protections unique to the Florida Constitution, including homestead protection against creditors, privacy, and access to courts, and compare and contrast those rights and protections against the United States Constitution's provisions.

SCHEDULE

8/12/19 (Monday Week 1)

Introduction; Overview of Florida Constitution and Its History and Federal Constitutional Provisions Regarding Limits on and Powers of States

- Read headings of Articles of Florida Constitution (as background)
- U.S. Constitution, Article I, sections 8, 9, and 10
- U.S. Constitution, Article IV, sections 3 and 4
- U.S. Constitution, Article VI, Clause 2
- U.S. Constitution, Ninth and Tenth Amendments

8/14/19 (Wednesday Week 1)

Amending the Florida Constitution: Let Me Count the Ways

- Read Florida Constitution Article XI
- Text: Read pp. 15-25 – covers *Advisory Opinion to AG re Florida Marriage Protection Amendment* (2006)
- *Advisory Opinion to the Attorney General re: Limiting Cruel and Inhumane Confinement of Pigs During Pregnancy*, 815 So. 2d 597 (Fla. 2002)
- *Advisory Opinion re Voting Restoration Amendment*, 215 So. 3d 1202 (Fla. 2017)
- Materials regarding Constitution Revision Commission (2017-2018)

8/19/19 (Monday Week 2)

Interpreting the Florida Constitution; State Constitution as a Limit on Inherent Power; State v. U.S. Constitutions; Self-Executing Provisions or Not

- Read: Fla. Constitution Article I section 1, Article II section 3
- Text: Read and Brief pp. 3-15 –covers *Peters v. Meeks* (1964) and *Fla. Hospital Waterman v. Buster* (2008)
- *Pleus v. Crist*, 14 So. 3d 941 (Fla. 2009)
- *Brinkman v. Francois*, 184 So. 3d 504 (Fla. 2016)
- *Fla. Hospital Waterman Inc. v. Buster*, 984 So. 2d 478 (Fla. 2008)

8/21/19 (Wednesday Week 2)

Separation of Powers

- Read: Fla. Constitution Article II section 3
- Text: Read pp. 45-47, 62-86; covers *Bush v. Schiavo* (2004); *Fla House of Rep. v Crist* (2008); *Office of State Attorney for Eleventh Circuit v. Polites* (2005); *Jones v. Chiles* (1994); *McNeil v. Canty* (Fla 2009)
- *Cannon v. Thomas*, 133 So. 3d 634 (Fla. 2014)

8/26/19 (Monday Week 3)

The Judicial Branch: Jurisdiction of the Circuit Courts, DCAs, and Supreme Court

- Read: Fla. Constitution Article V and Article IV sections 1(c) and 10
- Text: Read pp. 135-36; 141-149, 170-74, 195-97, 216-219; covers *Jackson v. State* (2006); *Fla. State Board of Health v. Lewis* (1963); *Floridians for an Level Playing Field v. Floridians Against Expanded Gambling* (Fla. 2007); *Davis v. Mandau* (1981); *State v. Vickery* (2007); *Haines City Community Development v. Heggs* (1995)

8/28/19 (Wednesday Week 3)

The Judicial Branch (continued)

- Read: Fla. Constitution Article V
- Text: Read pp. 256-69, 275-79; covers *SE Utilities v. Redding* (1961); *Montgomery v. Dept of Health & Rehab Svcs.* (1985); *Bryant v. Gray* (1954); *North Broward Hosp. District v. Fornes* (1985); *US Steel Corp v. Save Sand Key Inc.* (1974)
- *City of Hialeah v. Delgado*, 963 So. 2d 754 (Fla. 3rd DCA 2007)
- *Pino v. Bank of New York*, 76 So. 3d 927 (Fla. 2011)
- *League of Women Voters of Fla. v. Scott*, 232 So. 3d 264 (Fla. 2017).

9/2/19 (Monday Week 4) NO CLASS - LABOR DAY HOLIDAY

9/4/19 (Wednesday Week 4)

The Executive Branch

Read: Article IV; Article III section 8; and Article V sections 11 and 21

Text: Read pp. 129-31, covering *Fla. Society Ophthalmology v. Fla. Optometry* (1986)

- *Chiles v. Children A through E*, 589 So. 2d 260 (Fla. 1991)
- *Whiley v. Scott*, 79 So. 3d 702 (Fla. 2011)
- *Pleus v. Crist*, 14 So. 3d 941 (Fla. 2009)
- *League of Women's Voters v. Scott (II)*, 257 So. 3d 900 (Fla. 2018)
- *Israel v. DeSantis*, 269 So. 3d 491 (Fla. 2019)

9/9/19 (Monday Week 5)

The Legislative Branch; General and Special Laws

- Read: Fla. Constitution Article III
- Text: Read pp. 89-127, covers *Franklin v. State* (2004); *Salter v. State* (2000); *Santos v. State* (1980); *State v. Combs* (1980); *North Ridge Hosp. v. City of Oakland Park* (1979); *Dept. of Education v. Lewis* (1982); *St. Johns Water Mgmt v. Deseret Ranches of Florida* (1982); *Pinellas County Veterinary v. Chapman* (1969); *State ex rel Cotterill v. Bessenger* (1961); *Lawnwood Medical Center v. Seeger* (2008)
- *Schrader v. Florida Keys Aqueduct Authority*, 840 So. 2d 1050 (Fla. 2003)
- *License Acquisitions v. Debary Real Estate LLC*, 155 So. 3d 1137 (Fla. 2014)
- *Lee Memorial Health System v. Progressive Ins Co.*, 260 So. 3d 1038 (Fla. 2018)
- *City of Miami v. McGrath*, 824 So. 2d 143 (Fla. 2002)

9/11/19 (Wednesday Week 5)

Local Government

- Read: Fla. Constitution Article VIII
- Text: Read and Brief pp. 281-90, 296-300, 322-327, covers *Speer v. Olson* (1978); *Misty's Café v. Leon County* (1994); *Hollywood Inc. v. Broward County* (1983); *State ex rel Lee v. Cape Coral* (1973); *Hillsborough County v. Florida Restaurant Assn* (1992)
- *Telli v. Broward County*, 94 So. 3d 504 (Fla. 2012)
- *Masone v. City of Aventura*, 147 So. 3d 492 (Fla. 2014)
- *D'Agostino v City of Miami*, 220 So. 3d 410 (Fla. 2017)

9/16/19 (Monday Week 6)

Florida's Constitutional Right to Public Education

- Read: Fla. Constitution Article IX (especially section 1)
- *Advisory Opinion to the Attorney General (class size)*, 816 So. 2d 580 (Fla. 2002)
- *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006)
- *Coalition for Adequacy and Fairness v. Chiles*, 680 So. 2d 400 (Fla. 1996)
- *Citizens for Strong Schools v Fla. State Bd. Education*, 262 So. 3d 127 (Fla. 2019)

9/18/19 (Wednesday Week 6)

Elections, Public Office and the Vote

- Read: Fla. Constitution Article III section 16; Article VI; Article II sections 5, 6, 8; Article X sections 1, 3, 12
- *Advisory Opinion to Attorney General Re Standards For Establishing Legislative District Boundaries*, 2 So. 3d 175 (Fla. 2009)
- *League of Women Voters v. Fla. House of Representatives*, 132 So. 3d 135 (Fla. 2013)
- *Advisory Opinion re Voting Restoration for Felons*, 215 So. 3d 1202 (Fla. 2017)

9/23/19 (Monday Week 7)

Government in the Sunshine

- Read: Fla. Constitution Article I section 24
- *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974)
- *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971)
- *Sarasota Citizens for Resp. Govt. v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010)
- *Bruckner v. City of Dania Beach*, 823 So. 3d 167 (Fla. 4th DCA 2002)

9/25/19 (Wednesday Week 7)

Public Records

- Read: Fla. Constitution Article I section 24
- Fla. Stat. §119.01
- *NCAA v. Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009)
- *Times Publishing Co v. St. Petersburg*, 558 So. 2d 487 (Fla 2DCA 1990)
- *News and Sun-Sentinel v. Schwab Twitty, et al.*, 596 So. 2d 1029 (Fla. 1992)
- *James, Hoyer et al. v. Rodale, Inc.*, 41 So. 3d 386 (Fla. 1st DCA 2010)

9/30/19 NO CLASS—ROSH HASHANAH

10/2/19 (Wednesday Week 8)

Homestead, Part 1 (Protection from Creditors)

- Read: Fla. Constitution Article X section 4
- Text: Read pp. 695-707, covers *McGann v. Halker* (1988); *Orange Brevard Plumbing v. LaCroix* (1962); *Havoco of America Ltd v. Hill* (2001)
- *Geraci v. Sunstar EMS*, 93 So. 3d 384 (Fla 2d DCA 2012), *rev. dismissed*, 129 So. 3d 1069 (Fla. 2013)

10/7/19 – 10/11/19 FALL BREAK – NO CLASSES

10/14/19 (Monday Week 9)

Homestead, Part 2 (Exceptions and Devise Limitations)

- Read: Fla. Constitution Article X section 4
- Text: Read pp. 708-731, covers *Public Health Trust v. Lopez* (1988); *Snyder v. Davis* (1997); *Jameson v. Jameson* (1980); *Clemons v. Thornton* (2008); *Estate of Finch* (1981); *Marger v. DeRosa* (2011)
- Fla. Stat. § 732.401
- *Chames v. DeMayo*, 972 So. 2d 850 (Fla. 2007)

10/16//19 (Wednesday Week 9)

Taxation: State and Local Taxation

- Read: Fla. Constitution Article VII sections 1, 2, 5, 9 and 18
- Text: Read and Brief pp.345-53, 366-67; 371-72, 430-40, 448-54: covers *Contractors & Builders Assn Pinellas County v. Dunedin* (1976); *Lake County v. Water Oak Mgmt Corp* (1997); *McGrath v. City of Miami* (2001); *State v. Daytona Beach*; *Garcia v. Andonie* (2012); *Zingale v. Powell* (2004)
- *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965)
- *Homestead Hospital, Inc. v. Miami-Dade County*, 829 So. 2d 259 (Fla. 2002)

10/21/19 (Monday Week 10)

Public Finance (bonds, full faith and credit, referenda and mortgaging public property)

- Read: Fla. Constitution Article VII sections 10, 11, 12, 14, 15, 16 and 17
- Text: Read pp. 465-72, 479-95 covers *Nohrr v. Brevard County Educational Facilities Authority* (1971); *Northern Palm Beach Cty. Water Control Dist. v State* (1992); *State v. Division of Bond Finance* (1971); *Division of Bond Finance v. Smathers* (1976); *County of Volusia v. State* (1982)
- *Miccosukee Tribe v. S. Fla. Water Mgmt. Dist.*, 48 So. 3d 811 (Fla. 2011)
- *Donovan v. Okaloosa County*, 82 So. 3d 801 (Fla. 2012)

10/23/19 (Wednesday Week 10)

Florida Declaration of Rights Part I (introduction; state action; fundamental rights and their protection; the “Florida Rational Basis Test”)

- Read: Fla. Constitution Article I, sections 1, 2
- Text: Read pp. 509-541, 578-582, and 689-693 covers *Traylor v. State* (1992); *Fla. v. Powell* (2010); *Shriners Hosp. v. Zrillic*, 563 So. 2d 64 (Fla. 1990) (divided into two in text); *Schreiner v. McKenzie Tank Lines* (1983); *State v. J.P.* (2004); *Fla. Dept. of Children & Families v. Adoption of X.X.G.* (2010); *Rollins v. State* (1978); and *City of Hollywood v. 1843 LLC* (2008)
- *Estate of McCall v. United States*, 134 So. 3d 894 (Fla. 2014)
- *Silvio Membreno v. Street Vendors*, 188 So. 3d 13 (Fla. 3d DCA 2016)

10/28/18 (Monday Week 11)

Florida Declaration of Rights (continued) - Property Rights (continued); Substantive and Procedural Due Process

- Read: Fla. Constitution Article I sections 2 and 9; Article X section 6
- Text: Read pp. 542-569, 578-588, 604-612 and 619-622 covers *Maxcy v. Mayo* (1931); *State v. Saiez* (1986); *Lite v. State* (1993); *Hall v. Recchi America* (1995) and *Del Valle v. State* (2011)
- *Sult v. State*, 906 So. 2d 1013 (Fla. 2005)
- *St. Johns River Mgmt. District v. Koontz*, 77 So. 3d 1220 (Fla. 2011), reversed, 570 US 595 (2013)
- *Keshbro v. City of Miami*, 801 So. 2d 864 (Fla. 2001)

10/30/19 (Wednesday Week 11)

Labor Rights; Imprisonment for Debt; Ex Post Facto Laws; Impairment of Contract; Access to Courts

- Read: Fla. Constitution Article I sections 6, 10, 11 and 21
- Text: *Hillsborough County Government Employees v. Hillsborough County Aviation Auth* (1988); *Pomponio v. Claridge of Pompano Condominium* (1979); *Cohn v. Grand Condominium* (2011); *Shenfeld v. State* (2010); *Kluger v. White*; *Warner v. State Farm*
- *Sears v. Forbes/Cohen*, 2017 WL 2983290 (Fla. 4th DCA 2017)

11/04/19 (Monday Week 12)

Declaration of Rights—Right to Privacy, Part 1 (Expectation of Privacy and Abortion)

- Read: Fla. Constitution Article I section 23
- Text: Read pp. 613-617, 620-622; 627-642, covers *Winfield v. Division of Pari Mutuel Wagering* (1985); *City of North Miami v. Kurtz* (1995); *In re T.W.* (1989); *State v. Presidential Women's Center* (2006)
- *State v. Young*, 974 So. 2d 601 (Fla. 1st DCA 2008)
- *Rowe v. Rodriguez*, 89 So. 3d 1101 (Fla. 2d DCA 2012)
- *In re Doe 13A*, 136 So. 3d 723 (Fla. 1st DCA 2014)

11/06/19 (Wednesday, Week 12)

Declaration of Rights—Privacy (continued); Medical Decision-Making; Parental Rights

- Read: Fla. Constitution Article I section 23
- Text: Read pp. 642-64 and 675-92 covers *In re Guardianship of Browning* (1990); *Burton v. State* (2010); *Krischer v. McIver* (1997); *Beagle v. Beagle* (1996); *Von Eiff v. Azicri* (1998); *Saul v. Brunetti* (2000).
- *DMT v. TMH*, 129 So. 3d 320 (Fla. 2013)

11/11/19 (Monday Week 13)

Freedom of Speech, Free Expression and Press

- Read: Fla. Constitution Article I section 4
- Text: Read pp. 623-27; *Barron v. Florida Freedom Newspapers* (1988)
- *State v. O'Daniels*, 911 So. 2d 247 (Fla. 3rd DCA 2005)
- *Frandsen v. DER*, 829 So. 2d 267 (Fla. 1st DCA 2002)

11/13/19 (Wednesday Week 13)

Declaration of Rights—Search and Seizure; Rights of Criminal Defendants

Fla. Constitution: Read Article I, section 12; Rights of Accused In Criminal Proceedings; Article I sections 6, 9-20, 22

- Text: Read pp. 557-560, 588-600 covers *Jardines v. State* (2011); *Shenfeld v. State*
- *Kelly v. State*, 77 So. 3d 818 (Fla. 4th DCA 2012)
- *K.P. v. State*, 129 So. 3d 1121 (Fla. 3d DCA 2013)
- *State v. Hume*, 512 So. 2d 185 (Fla. 1987)
- *Shaktman v. State*, 553 So. 2d 148 (Fla. 1989)
- *Limbaugh v. State*, 887 So. 2d 387 (4th DCA 2004), *rev. denied*, 903 So. 2d 189 (Fla. 2005)

11/18/19 (Monday Week 14)

Freedom of Religion under Florida Law

- Read: Fla. Constitution Article I section 3
- *Malicki v Doe*, 814 So. 2d 347 (Fla. 2002)
- *Warner v. City of Boca Raton*, 887 So. 2d 1023 (Fla. 2004)
- *Silver Rose Entertainment v. Clay County*, 646 So. 2d 246 (Fla D1 1994)
- *Toca v. State*, 834 So. 2d 204 (Fla. 2d DCA 2002)
- *Council for Secular Humanism v. McNeil*, 44 So. 3d 112 (Fla D1 2010)

11/20/19 (Wednesday Week 14)

REVIEW SESSION

If you have a disability, or suspect that you may have a disability, the Law School encourages you to contact Iris Morera, Coordinator, Disability Services in the Office of Disability Services, for information about available opportunities, resources, and services. Her phone number is 305-284-9907, and her email address is imorera@law.miami.edu. You may also visit the Office of Disability Services website, at www.law.miami.edu/disability-services.