

CONSTITUTIONAL LAW
SPRING TERM 2024
Professor Johnson

Syllabus

Welcome to Constitutional Law! In this class, you will learn key principles in the four areas of Constitutional Law tested on the Bar: Judicial Review; Separation of Powers; Federalism; and Individual Rights. This course requires careful and critical reading because the doctrines in Constitutional Law can be subtle and hard to define over time and through multiple cases. Yet this can be done if you give yourself time to prepare for each class. Throughout the course, we will examine different approaches to interpreting the Constitution. We will also have abundant opportunities to study the history of the Constitution as different doctrines come into and out of vogue. Yet we also will pay close attention to Court's recent—and revolutionary—jurisprudence to appreciate where the Court stands today on a wide range of hotly debated issues. Finally, we will focus on select Justices—giants of the Judiciary—to help us understand diverse jurisprudential philosophies at play in the Court's decision-making. You will be enlightened, hopefully entertained, and prepared for the Bar by the end of this course.

REQUIRED MATERIALS:

1. Erwin Chemerinsky, *Constitutional Law* (6th ed. 2020).
2. Course Materials on Canvas.

RECOMMENDED MATERIALS:

Erwin Chemerinsky, *Constitutional Law, Principles and Policies* (6th ed. 2019).

OFFICE HOURS:

Debevoise 315

Tuesday, 1:00-2:00 pm

Thursday, 1:00-2:00 pm

And by appointment (email me at: gjohnson@vermontlaw.edu)

TEACHING ASSISTANTS:

Meriam Elawad, MeriamElawad@vermontlaw.edu

Office Hours: Thursday, 8:00-9:00 am, Hoff Lounge

Nick Glover, NicholasGlover@vermontlaw.edu

Office Hours: Wednesday, 11:30-12:30 pm, Chase Loft

Lindsey Wood, LindseyWood@vermontlaw.edu

Office Hours: Tuesday, 1:00-2:00 pm, Chase Loft

GRADES:

Grades will be computed as follows:

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| (1) Midterm Exam (Thursday, February 29) | 20% |
| (2) Final Exam | 80% |

QUIZZES:

I have created four optional, ungraded quizzes for this course. The quizzes cover Judicial Review; Separation of Powers; Equal Protection; and Fundamental Rights. Each quiz contains MBE multiple-choice questions and short-answer questions. The quizzes are a way for you to assess your understanding of the material covered in the course. I see the quizzes as a precursor to your outline. I will post the answers to the MBE questions on Canvas after you have had an opportunity to take the quizzes. I will not comment on individual quiz responses, but I am happy to meet with you to answer any questions you might have about the quizzes after you have taken them.

PODCASTS

Podcasts on the Supreme Court have proliferated in recent years. I have listened to many of them and enjoy each for different reasons. But I still think the best are the More Perfect podcasts from WNYC Studios. These podcasts humanize the cases we read by telling the stories of the people behind them. The podcasts are entertaining, educational, and often revealing. I have noted these podcasts throughout this Syllabus, aligned with the subject matter we cover. I have included links to the podcasts in the Canvas Modules. They are, of course, optional. But if you feel the cases we study are a bit dry, check out the podcasts to see the human side of the Court's jurisprudence.

LEARNING OUTCOMES:

By the end of this course, you will:

1. Demonstrate an understanding of the central features of American Constitutional Law: A federal government of defined and enumerated powers; separation of powers among the three branches of the federal government and between the federal and state governments; federalism and the limits on state powers; and individual rights found in the Constitution and its Amendments.
2. Become conversant in the basic approach to multiple-choice questions on the Multistate Bar Exam.
3. Gain competency in the competing approaches to constitutional interpretation.
4. Apply precedent to fact patterns to suggest likely outcomes.

5. Learn of the great epochs in the Supreme Court's history, including the Marshall Court; the laissez-faire Court of the 1870s–1930s; the New Deal Court; the Warren Court; and the Court in modern times.
6. Understand the jurisprudence of some of the more noteworthy members of the Supreme Court in its 230-year history.

READING ASSIGNMENTS BY CLASS:

Unit 1: The Federal Judicial Power

WEEK ONE: JANUARY 15 – 19

Tuesday, January 16

The Birth of Con Law: *Marbury v. Madison*
Textbook, pp. 1-9

Marbury v. Madison (1803)

An Introduction to Originalism:

Amy Coney Barrett, *Originalism and Stare Decisis* (2017) (on Canvas)

Thursday, January 18

Originalism Applied: *District of Columbia v. Heller*
Textbook, pp. 11-32

Recommended: More Perfect Podcast—The Gun Show (Season 2)

Limits on Judicial Review, Part 1: No Advisory Opinions
Textbook, pp. 39-42

Opinion of the Justices
Hayburn's Case (1792)

WEEK TWO: JANUARY 22 – 26

Monday, January 22

Limits on Judicial Review, Part 2: Standing
Textbook, pp. 44-52, 58-63

Transunion v. Ramirez (2021) (on Canvas)

Allen v. Wright (1984)
City of Los Angeles v. Lyons (1983)
Lujan v. Defenders of Wildlife (1992)
Transunion v. Ramirez (2021)

Tuesday, January 23

Limits on Judicial Review, Part 3: Standing (cont'd), Ripeness, and Mootness
Textbook, pp. 79-83, 85-88
Uzuegbunam v. Preczewski (2021) (on Canvas)

Uzuegbunam v. Preczewski (2021)
Poe v. Ullman (1961)
Abbott Laboratories v. Gardner (1967)
Roe v. Wade (1971)
DeFunis v. Odegaard (1974)
Friends of the Earth, Inc. v. Laidlaw Environmental Services (2000)

Thursday, January 25

Limits on Judicial Review, Part 4: The Political Question Doctrine
Textbook, pp. 90-109
Recommended: More Perfect Podcast—The Political Thicket (Season 1)

Baker v. Carr (1962)
Rucho v. Common Cause (2019)

MBE Questions on Judicial Review (on Canvas)

Unit 1 Quiz on Judicial Review available on Canvas (optional)

Unit 2: Separation of Powers

WEEK THREE: JANUARY 29 – February 2

Monday, January 29

Congress's Powers under Article I
Textbook, pp. 119-32

McCulloch v. Maryland (1819)

Special Guest Lecture by Eleanor Moody

Eleanor Moody, *Adapting to the Crises of Human Affairs: Constitutional Interpretation as a Means to Enhance Democracy* (on Canvas)

Tuesday, January 30

Congress's Commerce Clause Power, Part 1: The first two Eras
Textbook, pp. 155-66

Gibbons v. Ogden (1824)
United States v. E.C. Knight (1895)
Carter v. Carter Coal Co. (1936)
A.L.A. Schechter Poultry Corp. v. United States (1935)
The Child Labor Case (Hammer v. Dagenhart) (1918)
The Lottery Case (Champion v. Ames) (1903)

Thursday, February 1

Congress's Commerce Clause Power, Part 2: The Expansive Third Era
Textbook, pp. 166-79
Recommended: More Perfect Podcast—One Nation, Under Money (Season 3)

NLRB v. Jones and Laughlin Steel Corp. (1937)
United States v. Darby (1941)
Wickard v. Filburn (1942)
Heart of Atlanta Motel, Inc. v. United States (1964)
Katzenbach v. McClung, Sr. & McClung, Jr. (1964)

WEEK FOUR: FEBRUARY 5 – 9

Monday, February 5

Congress's Commerce Clause Power, Part 3: Retraction in the Modern Era
Textbook, pp. 187-204, 207-15

United States v. Lopez (1995)
United States v. Morrison (2000)
Gonzales v. Raich (2005)

Tuesday, February 6

The Tenth Amendment as a Limit on Congress's Powers
Textbook, pp. 216-40

New York v. United States (1992)
Printz v. United States (1997)
Reno v. Condon (2000)
Murphy v. NCAA (2018)

Thursday, February 8

Congress's Taxing and Spending Power
Textbook, pp. 240-42, 245-48, 133-54

United States v. Butler (1936)

South Dakota v. Dole (1987)

National Federation of Independent Business v. Sebelius (2012)

WEEK FIVE: FEBRUARY 12 – 16

Monday, February 12

Congress's Enforcement Powers
Textbook, pp. 248-74

The Civil Rights Cases (1883)

United States v. Morrison (2000) (Reprise)

Katzenbach v. Morgan & Morgan (1966)

City of Boerne v. Flores (1997)

Shelby County, Alabama v. Holder (2013)

Tuesday, February 13

The Eleventh Amendment as a Limit on Congress's Power
Eleventh Amendment Readings (on Canvas)

Seminole Tribe of Florida v. Florida (1996)

Kimel v. Florida Board of Regents (2000)

Board of Trustees, University of Alabama v. Garrett (2001)

Nevada Department of Human Resources v. Hibbs (2003)

Tennessee v. Lane (2004)

Thursday, February 15

The Executive Power
Textbook, pp. 275-84, 395-406

Youngstown Steel & Tube Co. v. Sawyer (1952)

Trump v. Hawaii (2018)

MBE Questions on Separation of Powers (on Canvas)

Unit 2 Quiz on Separation of Powers available on Canvas (optional)

Unit 3: Federalism

WEEK SIX: FEBRUARY 19 – 23

Monday, February 19

Federal Supremacy and Preemption of State Law
Textbook, pp. 419-35
Virginia Uranium v. Warren (2019) (on Canvas)

Lorillard Tobacco Co. v. Reilly (2001)
Florida Lime and Avocado Growers v. Paul (1963)
Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm. (1983)
Virginia Uranium v. Warren (2019)

Tuesday, February 20

The Dormant Commerce Clause, Part 1
Textbook, pp. 444-46, 457-67, 471-77

H.P. Hood & Sons, Inc. v. Du Mond (1949)
City of Philadelphia v. New Jersey (1978)
Hunt v. Washington State Apple Advertising Commission (1977)
Exxon Corp. v. Governor of Maryland (1978)
Dean Milk Co. v. City of Madison, Wisconsin (1951)
Maine v. Taylor & United States (1986)
Pike v. Bruce Church, Inc. (1970)

Thursday, February 22

The Dormant Commerce Clause, Part 2
Textbook, pp. 483-89
National Pork Producers Council v. Ross (2023) (on Canvas)

National Pork Producers Council v. Ross (2023) (on Canvas)
Reeves v. William Stake (1980)
White v. Massachusetts Council of Constr. Employers (1983)
South-Central Timber Development, Inc. v. Dep't of Natural Resources of Alaska (1984)

WEEK SEVEN: FEBRUARY 26 – March 1

Monday, February 26

The Privileges and Immunities Clause of Article IV, § 2
Textbook, pp. 489-501

Toomer v. Witsell (1948)
*United Building & Construction Trades Council of Camden County
v. Mayor & Council of the City of Camden* (1984)
Baldwin v. Fish & Game Commission of Montana (1978)
Supreme Court of New Hampshire v. Piper (1985)

MBE Questions on Federalism

Tuesday, February 27

Q and A before Midterm Examination

Thursday, February 29

Midterm Examination (One Hour)

WEEK EIGHT: MARCH 4 – 8

NO CLASS – SPRING BREAK

WEEK NINE: MARCH 11 - 15

Unit 4: Individual Rights

A. Preliminary Matters

Monday, March 11

“Incorporation”: The Application of the Bill of Rights to the States
Textbook, pp. 503-06, 516-21

Timbs v. Indiana (2019) (on Canvas)
Ramos v. Louisiana (2020) (on Canvas)

Barron v. Mayor & City Council of Baltimore (1833)
Palko v. Connecticut (1937)
Adamson c. California (1947)
Timbs v. Indiana (2019)
Ramos v. Louisiana (2020)

Tuesday, March 12

The Requirement of “State Action” for the Bill of Rights to Apply to Private Conduct

Textbook, pp. 532-37 540-43, 546-51, 561-66, 568-71

The Civil Rights Cases (1883)

Burton v. Wilmington Parking Authority (1961)

Moose Lodge No. 107 v. Irvis (1972)

Jackson v. Metropolitan Edison Company (1974)

Rendell-Baker v. Kohn (1982)

Manhattan Community Access Corp. Halleck (2019)

Thursday, March 14

Economic Rights and the Origins of Substantive Due Process

Textbook, 579-84, 586-95, 599-606

Lochner v. New York (1905)

Muller v. Oregon (1908)

West Coast Hotel Co. v. Parrish (1937)

United States v. Carolene Products Co. (1938)

Williamson v. Lee Optical (1955)

WEEK TEN: MARCH 18 – 22

B. Equal Protection

Monday, March 18

Equal Protection, Part 1: The Rational Basis Test

Textbook, pp. 683-98, 705-11

Romer v. Evans (1996)

U.S. Department of Agriculture v. Moreno (1973)

City of Cleburne, Texas v. Cleburne Living Center, Inc. (1985)

Tuesday, March 19

Equal Protection, Part 2: Classifications Based on Race and National Origin

Textbook, pp. 711-28

Recommended: More Perfect Podcast—American Pendulum I

(*Korematsu*) and American Pendulum II (*Dred Scott*) (Both in Season 2)

Dred Scott v. Sandford (1857)

Korematsu v. United States (1944)

Loving v. Virginia (1967)

Palmore v. Sidoti (1984)

Thursday, March 21

Equal Protection, Part 3: Segregation and Its Aftermath

Textbook, pp. 728-38, 775-90

Recommended: More Perfect Podcast –Clarence X (Season 4)

Plessy v. Ferguson (1896)

Brown v. Board of Education (1954)

Johnson v. California (2005)

Parents Involved in Community Schools v. Seattle School District No. 1 (2007)

WEEK ELEVEN: MARCH 25 – 29

Monday, March 25

Equal Protection, Part 4: Facially Neutral Laws with Discriminatory Impact

Textbook, pp. 738-47, 752-57

Palmer v. Thompson (1971)

Washington v. Davis (1976)

McCleskey v. Kemp (1987)

Personnel Administrator v. Feeney (1979)

Village of Arlington Heights v. Metropolitan Housing Development Corp. (1977)

Tuesday, March 26

Equal Protection, Part 5: Laws Benefitting Minorities

Textbook, pp. 790-803

Students for Fair Admissions, Inc. v. Harvard College (2023) (on Canvas)

Richmond v. J.A. Croson Co. (1989)

Adarand Constructors, Inc. v. Peña (1995)

Students for Fair Admissions, Inc. v. Harvard College (2023)

Thursday, March 28

Equal Protection Part 6: Laws that Discriminate Against Non-Citizens

Textbook, pp. 876-91

Graham v. Richardson (1971)

Foley v. Connelie (1978)

Ambach v. Norwick (1979)

Matthews v. Diaz (1976) and *Hampton v. Wong* (1976)

Plyler v. Doe (1982)

WEEK TWELVE: APRIL 1 – 5

Monday, April 1

Equal Protection, Part 7: Gender Classifications

Textbook, pp. 836-50, 854-59

Recommended: More Perfect Podcast—Sex Appeal (Season 2)

Frontiero v. Richardson (1973)

Craig v. Boren (1976)

United States v. Virginia (1996)

Orr v. Orr (1979)

Mississippi University for Women v. Hogan (1982)

Tuesday, April 2

Equal Protection, Part 8: Gender Classifications (continued)

Textbook, pp. 859-66, 867-75

Recommended: OLC Opinion on the Equal Rights Amendment (2020) & Opinion of Chair Maloney on ERA Ratification (2021) (both on Canvas)

Michael M. v. Superior Court of Sonoma County (1981)

Rostker v. Goldberg (1981)

Nguyen v. Immigration & Naturalization Service (2001)

MBE Questions on Equal Protection

Unit 4 Quiz on Equal Protection available on Canvas (optional)

C. Fundamental Rights

Thursday, April 4

Substantive Due Process (Reprise)

Fundamental Rights, Part 1: The Right to Marry

Textbook, pp. 903-10, 915-29

Kim Davis Statement by Justices Thomas and Alito (2020 (on Canvas)

Loving v. Virginia (1967)

Obergefell v. Hodges (2015)

Kim Davis Statement by Justices Thomas and Alito (2020)

WEEK THIRTEEN: APRIL 8 – 12

Monday, April 8

Fundamental Rights, Part 2: The Right to Custody and Control of One's Children
Textbook, pp. 929-50

Meyer v. Nebraska (1923)

Pierce v. Soc. of the Sisters of the Holy Names of Jesus and Mary (1925)

Stanley v. Illinois (1972)

Michael H. v. Gerald D. (1989)

Moore v. City of East Cleveland (1977)

Village of Belle Terre v. Boraas (1974)

Troxel v. Granville (2000)

Tuesday, April 9

Fundamental Rights, Part 3: The Right to Procreate and the Right to
Reproductive Autonomy
Textbook, pp. 950-52, 961-68, 970-81

Buck v. Bell (1927)

Skinner v. Oklahoma (1942)

Roe v. Wade (1973)

Planned Parenthood v. Casey (1992)

Thursday, April 11

Fundamental Rights, Part 4: *Dobbs* and Its Implications

Dobbs v. Jackson Women's Health Organization (2022) (on Canvas)

Planned Parenthood v. South Carolina (South Carolina Supreme Court 2023) (on
Canvas)

WEEK FOURTEEN: APRIL 15 – 19

Monday, April 15

Fundamental Rights, Part 5: The Right to Physician-Assisted Suicide (Death with
Dignity) and the Right to Sexual Liberty
Textbook, pp. 1023-28, 1030-42

Recommended: More Perfect Podcast—The Imperfect Plaintiffs (Season 1)

Washington v. Glucksberg (1997)

Lawrence v. Texas (2003)

Unit 4 Quiz on Fundamental Rights available on Canvas (optional)

D. The First Amendment: The Religion Clauses

Tuesday, April 16

The Free Exercise Clause, Part 1

Textbook, pp. 1675-77, 1681-99

Recommended: More Perfect Podcast—The Supreme Court v. Peyote (Season 4)

Sherbert v. Verner (1963)

Employment Division v. Smith (1990)

Church of the Lukumi Babalu Aye, Inc. v. Hialeah (1993)

Masterpiece Cake Shop, Ltd. v. Colorado Civil Rights Commission (2018)

Thursday, April 18

The Free Exercise Clause in the Time of the Pandemic

Roman Catholic Diocese of Brooklyn v. Cuomo (2020) (on Canvas)

Dr. A. v. Hochul (2021) (on Canvas)

Recommended: More Perfect Podcast—The Original Anti-Vaxxer (Season 4)

Roman Catholic Diocese of Brooklyn v. Cuomo (2020)

Dr. A. v. Hochul (2021)

WEEK FIFTEEN: APRIL 22 – 26

Monday, April 22

The Establishment Clause, Part 1

Textbook, pp. 1717-29, 1782-90

Liam Stack, *Satan is in the Illinois Capitol. Because It's the Holidays!* NY Times (2018) (on Canvas)

Lemon v. Kurtzman (1971) (case ends after fourth paragraph on page 1729)

County of Allegheny v. ACLU (1989)

American Legion v. American Humanist Association (2019)

Tuesday, April 23

The Establishment Clause, Part 2: Prayer in Public Places

Textbook, pp. 1747-62

Santa Fe Independent School District v. Doe (2000)

Marsh v. Chambers (1983)

Town of Greece v. Galloway (2014)

Thursday, April 25

Class Evaluations

The Free Exercise and Establishment Clauses Today

Kennedy v. Bremerton School District (2022) (on Canvas)

WEEK FIFTEEN: APRIL 29 – May 3

Monday, April 29

Q and A Before Final Examination

MBE Questions on the First Amendment Religion Clauses (time permitting)

END OF THE SEMESTER