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. We will study multiple-choice questions after every major topic to acculturate you to the Bar’s MBE test. 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. 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:

2. Erwin Chemerinsky, Constitutional Law, 2019 Supplement
3. Course Materials on TWEN

RECOMMENDED MATERIALS:

Erwin Chemerinsky, Constitutional Law, Principles and Policies (5th ed. 2017 or 6th ed. 2019). Either one of these will work well as a supplement to the textbook.

OPEN OFFICE HOURS ON TEAMS:

Tuesday, 9:30 am – 11 am
Thursday, 1 pm – 3 pm
And by appointment (email me at: gjohnson@vermontlaw.edu)

TEACHING ASSISTANTS:

Heather Francis, HeatherFrancis@vermontlaw.edu
Office Hours: Friday, 12:45 pm – 2 pm, or by appointment
James Mulhall, JamesMulhall@vermontlaw.edu
Office Hours: Tuesday, 2:30 pm – 4 pm, or by appointment
GRADES:

Grades will be computed as follows:

(1) Midterm Exam (Friday, February 26) 20%

(2) Final Exam 80%

You will take four quizzes this semester. These quizzes are not graded. I have marked in bold on the syllabus the times of these quizzes. Your quizzes are due on TWEN on the following dates:

- Sunday, January 24 (by 10 pm on TWEN)
- Sunday, February 14 (by 10 pm on TWEN)
- Thursday, April 1 (by 10 pm on TWEN)
- Tuesday, April 13 (by 10 pm on TWEN)

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 limited powers; separation of powers; federalism; and individual rights.
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.
Part I: Judicial Review

WEEK ONE: JANUARY 11 – 15

Monday, January 11
The Birth of Con Law and Judicial Review: Marbury v. Madison
Textbook, pp. 1-9
Amy Coney Barrett, Originalism and Stare Decisis (2017) (TWEN)

Marbury v. Madison (1803)

Wednesday, January 13
Limits on Judicial Review
Textbook, pp. 11-32
Recommended: More Perfect Podcast—The Gun Show (Season 2)

Kanter v. Barr (7th Circuit, Judge Barrett in dissent) (2019) (on TWEN)

Friday, January 15
Justiciability Limits on Judicial Review, Part 1: Advisory Opinions and Standing
Textbook, pp. 40-42, 45-61

Opinion of the Justices
Hayburn’s Case (1792)
Allen v. Wright (1984)
Massachusetts v. EPA (2007)
City of Los Angeles v. Lyons (1983)

WEEK TWO: JANUARY 18 – 22

Monday, January 18
NO CLASS – MLK DAY

Wednesday, January 20
Justiciability, Part 2: Taxpayer Standing, Ripeness, and Mootness
Textbook, pp. 75-90

Flast v. Cohen (1968)
Arizona School Tuition Organization v. Winn (2011)
Poe v. Ullman (1961)
Abbott Laboratories v. Gardner (1967)
Friends of the Earth, Inc. v. Laidlaw Environmental Services (2000)
Friday, January 22
Justiciability, Part 3: Mootness (cont’d); The Political Question Doctrine
Textbook, pp. 91-96
Supplement, pp. 1-20
Recommended: More Perfect Podcast—The Political Thicket (Season 1)

Baker v. Carr (1962)

MBE Questions on Judicial Review

The First Quiz of the semester (Judicial Review) must be uploaded to TWEN (under Assignments) by Sunday, January 24, at 10 pm.

Part II: Separation of Powers

WEEK THREE: JANUARY 25 – 29

Monday, January 25
Congress’s Plenary Power under Article I
Textbook, pp. 115-29
Charles Beard, *An Economic Interpretation of the Constitution of the United States* (1913) (Chapter I) (TWEN)

*McCulloch v. Maryland* (1819)

Wednesday, January 27
Congress’s Treaty Power and
Congress’s Commerce Clause Power, Part 1: The first two Eras
Textbook, pp. 156-66

*Gibbons v. Ogden* (1824)

Friday, January 29
The Commerce Clause Power, Part 2: The expansive Third Era
Textbook, pp. 166-80

*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. McClurg, Sr. & McClurg, Jr.* (1964)
WEEK FOUR: FEBRUARY 1 – 5

Monday, February 1
The Commerce Clause Power, Part 3: Retraction in the Modern Era
Textbook, pp. 188-216

*Gonzales v. Raich* (2005)

Wednesday, February 3
The Tenth Amendment as a Limitation on Congress’s Power
Textbook, pp. 217-37
Supplement, pp. 21-28

*Printz v. United States* (1997)
*Murphy v. NCAA* (2018)

Friday, February 5
Congress’s Taxing and Spending Power
Textbook, pp. 237-45, 129-50

*United States v. Butler* (1936)
*South Dakota v. Dole* (1987)

WEEK FIVE: FEBRUARY 8 – 12

Monday, February 8
Congress’s Enforcement Powers
Textbook, pp. 245-71

*City of Boerne v. Flores* (1997)
*Shelby County, Alabama v. Holder* (2013)
Wednesday, February 10
The Eleventh Amendment
Textbook, pp. 272-80, 285-307

Fitzpatrick v. Bitzer (1976)
Kimel v. Florida Board of Regents (2000)
Board of Trustees, University of Alabama v. Garrett (2001)
Tennessee v. Lane (2004)

Friday, February 12
The Executive Power
Textbook, pp. 321-30, 381-85
Supplement, pp. 29-43

Youngstown Steel & Tube Co. v. Sawyer (1952)
United States v. Curtiss-Wright Export Corp. (1936)

MBE Questions on Separation of Powers

The Second Quiz of the semester (Separation of Powers) must be uploaded to TWEN (under Assignments) by Sunday, February 14, at 10 pm.

Part III: Federalism

WEEK SIX: FEBRUARY 15 – 19

Monday, February 15
Preemption of State Law
Textbook, pp. 451-67

Lorillard Tobacco Co. v. Reilly (2001)
Florida Lime and Avocado Growers v. Paul (1963)
Wednesday, February 17
The Dormant Commerce Clause, Part 1
Textbook, pp. 476-82, 492-98, 503-06, 511-14

H.P. Hood & Sons, Inc. v. Du Mond (1949)
Exxon Corp. v. Governor of Maryland (1978)
Dean Milk Co. v. City of Madison, Wisconsin (1951)
Maine v. Taylor & United States (1986)
Consolidated Freightways Corp. v. Kassel (1981)

Friday, February 19
The Dormant Commerce Clause, Part 2
Textbook, pp. 517-23
Supplement, pp. 77-85

Tennessee Wine and Spirits v. Thomas (2019)
Reeves v. William Stake (1980)
South-Central Timber Development, Inc. v.
Dep’t of Natural Resources of Alaska (1984)

WEEK SEVEN: FEBRUARY 22 – 26

Monday, February 22
The Privileges and Immunities Clause of Article IV, § 2
Textbook, pp. 523-35

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)

Wednesday, February 24
Q and A Before Mid-Term Examination

MBE Questions on Federalism

Friday, February 26
Mid-Term Examination
WEEK EIGHT: MARCH 1 – 5

NO CLASS – SPRING BREAK

Part IV: Individual Rights

WEEK NINE: MARCH 8 – 12

Monday, March 8
“Incorporation”: The Application of the Bill of Rights to the States
Textbook, pp. 538-52
Supplement, pp. 97-101
Ilya Shapiro and Josh Blackman, The Once and Future Privileges and
Immunities Clause (on TWEN)

Barron v. Mayor & City Council of Baltimore (1833)
The Slaughterhouse Cases (1872)
Saenz v. Roe (1999)
Timbs v. Indiana (2019)

Wednesday, March 10
“State Action”
Textbook, pp. 574-77, 591-600
Supplement, pp. 101-11

Jackson v. Metropolitan Edison Company (1974)
Moose Lodge No. 107 v. Irvis (1972)
Burton v. Wilmington Parking Authority (1961)
Norwood v. Harrison (1973)
Manhattan Community Access Corp. Halleck (2019)

Friday, March 12
Economic Substantive Due Process
Textbook, 613-18, 621-30, 635-39, 653-58

Lochner v. New York (1905)
Muller v. Oregon (1908)
West Coast Hotel Co. v. Parrish (1937)
United States v. Carolene Products Co. (1938)
**WEEK TEN: MARCH 15 – 19**

**Monday, March 15**
Equal Protection, Part 1: The Rational Basis Test  
Textbook, pp. 725-40, 747-54

*U.S. Department of Agriculture v. Moreno* (1973)  
*City of Cleburne, Texas v. Cleburne Living Center, Inc.* (1985)

**Wednesday, March 17**
Equal Protection, Part 2: Classifications Based on Race and National Origin  
Textbook, pp. 754-67  
Supplement, pp. 135-44  
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)  

**Friday, March 19**
Equal Protection, Part 3: Segregation and Its Aftermath  
Textbook, pp. 771-81, 818-33

*Plessy v. Ferguson* (1896)  
*Brown v. Board of Education* (1954)  

**WEEK ELEVEN: MARCH 22 – 26**

**Monday, March 22**
Equal Protection, Part 4: Facially Neutral Laws with Discriminatory Impact  
Textbook, pp. 781-97  

*Washington v. Davis* (1976)  
*Palmer v. Thompson* (1971)
Wednesday, March 24
Equal Protection, Part 5: Laws Benefitting Minorities
Textbook, pp. 833-47, 870-78
Recommended: More Perfect Podcast—The Architect (Season 2)

*Fisher v. University of Texas, Austin* (2016)

Friday, March 26
Equal Protection Part 6: Alienage Classifications
Textbook, pp. 922-38

*Graham v. Richardson* (1971)
*Foley v. Connellie* (1978)
*Ambach v. Norwick* (1979)

WEEK TWELVE: MARCH 29 – APRIL 2

Monday, March 29
Equal Protection, Part 7: Gender Classifications
Textbook, pp. 882-86, 889-97, 901-05
Recommended: More Perfect Podcast—Sex Appeal (Season 2)

*Craig v. Boren* (1976)
*Orr v. Orr* (1979)

Wednesday, March 31
Equal Protection, Part 8: Gender Classifications (continued)
Textbook, pp. 905-12, 914-22

*Michael M. v. Superior Court of Sonoma County* (1981)
*Nguyen v. Immigration & Naturalization Service* (2001)

The Third Quiz of the semester (Equal Protection) must be uploaded to TWEN (under Assignments) by Thursday, April 1, at 10 pm.
Friday, April 2
Fundamental Rights, Part 1: The Right to Marry
Textbook, pp. 949-56, 967-81
Supplement, pp. 155-58

_Loving v. Virginia_ (1967)

**WEEK THIRTEEN: APRIL 5 – 9**

Monday, April 5
Fundamental Rights, Part 2: The Right to Custody and Control of One’s Children
Textbook, pp. 981-93, 997-1002

_Stanley v. Illinois_ (1972)
_Moore v. City of East Cleveland_ (1977)

Wednesday, April 7
Fundamental Rights, Part 3: The Right to Abortion
Textbook, pp. 1014-35

_Roe v. Wade_ (1973)
_Planned Parenthood v. Casey_ (1992)

Friday, April 9
Fundamental Rights, Part 4: Government Regulation of Abortion
Textbook, pp. 1058-65, 1035-41

_Planned Parenthood v. Danforth_ (1976)
_Planned Parenthood v. Casey_ (1992)
_Whole Women’s Health v. Hellerstedt_ (2016)
WEEK FOURTEEN: APRIL 12 – 16

Monday, April 12
Fundamental Rights, Part 5: The Right to Physician-Assisted Suicide and the Right to Sexual Liberty
Textbook, pp. 1077-82, 1084-97
Recommended: More Perfect Podcast—The Imperfect Plaintiffs (Season 1)


The Fourth Quiz of the semester (Fundamental Rights) must be uploaded to TWEN (under Assignments) by Tuesday, April 13, at 10 pm.

Wednesday, April 14
The Free Exercise Clause, Part 1
Textbook, pp. 1731-41, 1748-54
Supplement, pp. 223-36

*Employment Division v. Smith* (1990)
*Burwell v. Hobby Lobby* (2014)

Friday, April 16
The Free Exercise Clause, Part 2: Government Funding
Supplement, pp. 173-87

*Trinity Lutheran Church v. Pauley* (2017)
*Espinoza v. Montana* (2020) (on TWEN)

WEEK FIFTEEN: APRIL 19 – 23

Monday, April 19
The Establishment Clause, Part 1: The *Lemon* Test
Textbook, pp. 1759-74
Supplement, pp. 251-61

*Lemon v. Kurtzman* (1971)
*County of Allegheny v. ACLU* (1989)
Wednesday, April 21
Class Evaluations

The Establishment Clause, Part 2: Prayers at Football Games and City Council Meetings
Textbook, pp. 1774-82, 1818-27

Town of Greece v. Galloway (2014)

Friday, April 23
Constitutional Law in the Time of the Pandemic

Josh Blackman, What Rights are “Essential”? The 1st, 2nd, and 14th Amendments in the Time of Pandemic (2020) (on TWEN), pages 11-39 Second Amendment and Abortion

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

WEEK SIXTEEN: APRIL 26 – 30

Monday, April 26
Review Class Q and A

MBE Questions on the First Amendment Religion Clauses

END OF THE SEMESTER