

State Constitutional Law Seminar
Course No. PUB7592 01

Vermont Law & Graduate School - Fall 2022
Tuesdays 5:15 – 6:55pm (210 Oakes Hall)
Professor Ben Battles (he/him)

Course Overview: This seminar explores the nature and significance of state constitutional law. We begin with a brief examination of the nature of our States and the historical role of their constitutions. Then we will consider the rights protected by the state constitutions and compare them to those protected by the federal constitution. In doing so, we will consider how state courts interpret state constitutional provisions that have counterparts in the federal constitution, the weight given to the U.S. Supreme Court's interpretations of those federal provisions. We then compare the constitutional structures of the state governments, both to one another and to the federal government. We finish up by covering issues of popular control over state governments, including the means of amending state constitutions and the methods for selecting state judges.

Learning Objectives:

Students who successfully complete this course will:

- Gain a deeper understanding of the role that state constitutions play in our federal system of government;
- Appreciate the differences and similarities between the federal constitution and the various state constitutions;
- Learn how lawyers use state constitutional guarantees to achieve desired outcomes for their clients and to advance broader societal goals;
- Learn how the structure of state constitutions affects the way in which rights are protected;
- Improve legal writing skills by writing 2 papers on issues of state constitutional law;
- Improve public speaking skills by delivering in-class presentation.

Materials: The assigned readings come primarily from *State Constitutional Law: The Modern Experience* (West 3rd Edition). Those readings will be supplemented by opinions and law review articles distributed via email and/or the course website.

Course Requirements:

Attendance: Attendance at all classes is required. But life happens, so a student unable to attend a particular class should notify me beforehand or as soon as practicable.

Reading materials: Weekly reading assignments will be posted on the course website. Students will be expected to have read and be prepared to discuss the assigned materials in advance of each class.

Papers: Students will be responsible for writing two papers (6-8 pages each) on propositions identified in the syllabus or on other mutually agreed topics. Students may choose to argue either side of a proposition. Students should select one proposition from weeks 3 through 8 on the syllabus and a second proposition from weeks 9 through 14. The papers are due on the day the proposition is discussed.

Class presentation: Students are also required to give an in-class presentation on the basis of one of their papers.

Class participation: This is a discussion-based seminar. Class participation is critical. Students should be prepared to discuss the assigned reading materials, and to ask questions of the instructor and guest speakers. Participation will be evaluated based on quality not quantity. Please plan to be an active but respectful member of the class.

Grading:

Grading turns on the two papers, the class presentation, and class participation. There is no final exam.

Grades will be determined as follows:

Paper 1: 40%

Paper 2: 40%

Class Presentation: 10%

Class Participation: 10%

Contact Information:

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Class Schedule:

Date	Topic	Guest Speaker*
8/30 Week 1	Introduction; Principles of federalism	
9/6 Week 2	State constitutions compared to the federal constitution	
9/13 Week 3	State constitutional provisions with no federal counterpart PROPOSITION: The state courts should construe single-subject clauses to be mandatory rather than directory.	
9/20 Week 4	Administrative law PROPOSITION: The state courts should reject administrative deference in general and Chevron in particular based on state separation-of-powers principles.	
9/27 Week 5	School funding PROPOSITION: State constitutional measures governing public education can and should be interpreted to empower state courts to determine the proper methods for financing public schools.	
10/4 Week 6	Individual rights PROPOSITION: Advocates should not ask the Supreme Court to recognize an unenumerated right in the federal constitution absent a clear consensus among the States.	Hon. Jeffrey Sutton, U.S. Court of Appeals, Sixth Circuit
10/11	<i>NO CLASS</i>	

<p>10/18 Week 7</p>	<p>Individual rights cont.</p> <p>PROPOSITION: State courts should apply a “reasonableness” test to determine whether a gun safety law violates a state constitutional right to bear arms.</p>	<p>Hon. Beth Robinson, U.S. Court of Appeals, Second Circuit</p>
<p>10/25 Week 8</p>	<p>Religion clauses</p> <p>PROPOSITION: Interpreting state “compelled support” clauses to limit public funding of religious education violates the federal Free Exercise Clause.</p>	
<p>11/1 Week 9</p>	<p>Criminal procedure</p> <p>PROPOSITION: State courts are better able than state legislatures to protect the rights of criminal defendants.</p>	<p>Lia Ernst, Legal Director, Vermont ACLU</p>
<p>11/8 Week 10</p>	<p>Elections and voting rights</p> <p>PROPOSITION: State courts must ensure that legislatures comply with state constitutional “free and equal” election clauses when passing laws that regulate voting in federal elections.</p>	
<p>11/15 Week 11</p>	<p>Property Rights</p> <p>PROPOSITION: (A) State law developments since <i>Kelo</i> show that <i>Kelo</i> was correctly decided. Or: (B) State courts should interpret “public-purpose” clauses at a lower level of generality to prohibit granting tax breaks and credits to corporations.</p>	
<p>11/22 Week 12</p>	<p>Environmental protection</p> <p>PROPOSITION: State constitutional “green amendments” can be an effective tool for</p>	

	combating climate change and advancing environmental justice.	
11/29 Week 13	Structure of state governments PROPOSITION: (A) The Attorney General of the United States should be elected. Or (B) State court judges should not be elected.	
12/6 Week 14	Amending the constitution PROPOSITION: The current system, under which the federal constitution is very difficult to amend and state constitutions are comparatively easier to amend, is appropriate and should not be changed.	Eleanor Spottswood, Vermont Solicitor General and Chair of Vermont Judicial Nominating Board

* Listed guest speakers are tentative and subject to change based on speakers' availability.