

State Constitutional Law Seminar

Course No. PUB 7541 01

Vermont Law & Graduate School - Fall 2023
Thursdays 3:35 – 5:10PM (Debevoise Hall, MAP)
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 4th Edition). Those readings will be supplemented by judicial opinions, law review articles, and other materials posted on the course page on Canvas.

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. Under VLGS's attendance policy, students who miss more than two of the regularly scheduled classes will be automatically withdrawn from the course with a grade of F-Wd.

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.

Guest speakers: On occasion throughout the semester, guest speakers will address the class. The guest speakers will be judges and practitioners with special expertise in the field of state constitutional law.

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
8/31 Week 1	Introduction; Principles of federalism
9/7 Week 2	State constitutions compared to the federal constitution
9/14 Week 3	State constitutional provisions with no federal counterpart PROPOSITION: State constitutional provisions should be drafted broadly to reflect general principles.
9/21 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.
9/28 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.
10/5 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.
10/12 Week 7	Individual rights cont. PROPOSITION: State courts should apply a “reasonableness” test to determine whether a gun safety law violates a state constitutional right to bear arms.

10/19 Week 8	Environmental protection PROPOSITION: State constitutional “green amendments” can be an effective tool for combating climate change and advancing environmental justice.
10/26 Week 9	Religion clauses PROPOSITION: Interpreting state “compelled support” clauses to limit public funding of religious education violates the federal Free Exercise Clause.
11/2 Week 10	Criminal procedure PROPOSITION: State courts are better able than state legislatures to protect the rights of criminal defendants.
11/9 Week 11	Elections and voting rights 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.
11/16 Week 12	Property Rights PROPOSITION: State law developments since <i>Kelo</i> show that <i>Kelo</i> was correctly decided.
11/30 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.
12/7 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.