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**TEACHING *DOBBS* AS A CONTEMPORARY CASE STUDY OF
FEDERALISM IN ACTION AND AN INTRODUCTION TO THE
CROSS-DISCIPLINARY NATURE OF THE LAW**

ANTONIA A.B. MICELI*

ABSTRACT

With its decision in Dobbs v. Jackson Women’s Health Organization, the U.S. Supreme Court ended the constitutional right to an abortion, overturning Roe v. Wade and Planned Parenthood v. Casey, and returned the issue of legal access to an abortion to the states. Prior to Dobbs, reproductive rights and the right to an abortion were firmly situated within the substantive due process and fundamental rights coverage of law school constitutional law courses. But this coverage often falls late in, or completely outside the scope of, the required constitutional law curriculum at U.S. law schools. This Article offers the Dobbs decision as an opportunity for constitutional law professors to begin their coverage of the right to an abortion earlier in the required constitutional law curriculum in a manner that moves away from a strictly “Case-Method” study of law to a more accessible cross-disciplinary study of law.

By using Dobbs as a contemporary case study of federalism in action, constitutional law professors can utilize a rich variety of readily available resources to make the legally complex concept of federalism more approachable and accessible to a wider assortment of students, including students with learning disabilities. Professors also can use Dobbs as an introduction to the cross-disciplinary nature of the law by exploring Dobbs’ impact on other academic disciplines including medicine, business and economics, and political science, while empowering students to engage with their law school studies in a more meaningful and active manner. This Article presents exercises for both recommended uses of Dobbs, which apply different teaching modalities inside and outside the classroom, allowing constitutional law professors to support

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their students in developing new critical thinking skills that support a greater understanding of the law and the intersections between the legal profession and other areas of academic pursuit.

I. INTRODUCTION

Prior to the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*,¹ reproductive rights and the right to an abortion were firmly situated within the substantive due process and fundamental rights coverage of law school constitutional law courses. Through readings and classroom discussions of cases, including *Roe v. Wade*² and *Planned Parenthood v. Casey*,³ constitutional law professors and their students explored the evolution of the right to an abortion in the United States. With its June 2022 decision in *Dobbs*, the Supreme Court halted that evolution and ruled that there was no constitutional right to an abortion, overturning *Roe* and returning the issue of abortion regulation to the states.⁴

The coverage of substantive due process, and thus access to an abortion, often falls later in, or entirely outside the scope of, the required constitutional law curriculum at U.S. law schools. Instead, coverage of this topic and the *Dobbs* decision would typically be relegated to the second half of the required constitutional law curriculum or an upper-division elective. However, in holding that “the authority to regulate abortion must be returned to the people and their elected representatives,”⁵ the Supreme Court opened the door for constitutional law professors to move the *Dobbs* decision earlier in the required constitutional law curriculum, to their coverage of federalism.

This move allows constitutional law professors to take advantage of two opportunities—presented more fully in Part III of this Article—to connect their law students more intimately with the broader impact of law. First, *Dobbs* provides a contemporary case study of federalism in action, taking an abstract concept covered in the first semester of constitutional law courses and providing context to enhance law students' understanding of the real-world impact of federalism. Second, from a pedagogical standpoint, *Dobbs* presents a unique opportunity to illustrate the cross-disciplinary nature of the law for new law students through an exploration of other disciplines by studying the downstream effects of the Supreme Court's decision. Thus, this Article urges earlier coverage of the *Dobbs* decision in the required constitutional law curriculum by providing specific exercises that professors may use to integrate *Dobbs* into their coverage

1. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

2. *Roe v. Wade*, 410 US 113, 164–65 (1973) (establishing a right to abortion under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and establishing a three-trimester framework that sought to balance the competing interests of individuals and the states), *overruled by Dobbs*, 597 U.S. 215 (2022).

3. *Planned Parenthood of Se. Pa. v. Casey*, 505 US 833, 869 (1992) (affirming the right to abortion established in *Roe v. Wade*, 410 US 113 (1973), but replacing *Roe*'s three-trimester framework with the undue burden test to evaluate abortion restrictions before viability), *overruled by Dobbs*, 597 U.S. 215 (2022).

4. *Dobbs*, 597 U.S. at 292.

5. *Id.*

of federalism. Utilizing the exercises discussed in Part III, professors can make their coverage of federalism more accessible for *all* students and introduce new students to the cross-disciplinary nature of the law.

II. AN EVOLUTIONARY ROAD MAP FROM THE “CASE METHOD” TO A CROSS-DISCIPLINARY STUDY OF CONSTITUTIONAL LAW

A. *Step One: Move Coverage of Dobbs and the Right to Abortion Earlier in the Required Constitutional Law Curriculum*

Despite constitutional law’s place as a foundational subject in law school, the scope and timing of the required constitutional law curriculum varies between U.S. law schools, with most schools adopting one of three curricular models. In the first model, a law school requires only one semester of constitutional law within the first-year curriculum, but assigns the course a greater number of credit hours to allow for broader coverage that includes the structure of the government, federalism, separation of powers, and individual rights.⁶ In the second model, constitutional law is taught over two semesters, with the first semester covering foundational topics such as the structure of government, federalism, and separation of powers, and with the second semester covering individual rights.⁷ Law schools adopting this second model typically elect to make the semester covering the foundational topics part of the required first-year curriculum, leaving the other semester covering individual rights as an

6. See *J.D. Program: The First Year*, HARVARD L. SCH., <https://hls.harvard.edu/academics/degree-programs/jd-program> (last visited Mar. 21, 2024); *Spring 2024 Course - Constitutional Law I*, HARVARD L. SCH., <https://hls.harvard.edu/courses/constitutional-law-8/> (last visited Mar. 21, 2024) (describing the course as an introduction to the U.S. Constitution, including “the government structures it establishes and contemplates, and the rights and liberties it recognizes and protects.”).

7. See, e.g., *Curriculum: First-Year Curriculum and Advanced Curriculum*, UCLA L., <https://law.ucla.edu/academics/degrees/jd-program> (last visited Mar. 21, 2024) (listing Constitutional Law as part of both the required first-year curriculum and the advanced curriculum); *LAW 148 - Constitutional Law I*, UCLA L., <https://law.ucla.edu/academics/curriculum/constitutional-law-i> (last visited Mar. 21, 2024) (describing the course coverage to include the structural limitations on government, separation of powers, and the Civil War Amendments as limits on the states and as sources of congressional power); *LAW 201 – Constitutional Law II*, UCLA L., <https://law.ucla.edu/academics/curriculum/constitutional-law-ii> (last visited Mar. 21, 2024) (describing the course as a compliment to Constitutional Law I and being “devoted mainly to the study of the First Amendment’s guarantees of the freedoms of speech, press, and assembly,” while also considering “the First Amendment’s prohibition of laws respecting an establishment of religion and its guarantee of the free exercise of religion”); *Upper level course descriptions*, SEATTLE UNIV. SCH. OF L., <https://law.seattleu.edu/academics/degree-programs/jd/curriculum/upper-level-course-descriptions/#d.en.5863107> (last visited Mar. 21, 2024) (describing Constitutional Law I as focusing “primarily on the structure of government and the functions of each branches” and Constitutional Law II as focusing “primarily on individual rights”).

upper-division elective course.⁸ In the third model, a law school requires a full-year of constitutional law by combining the material taught over those two semesters into one intensive year-long course, which is often shifted into the second-year curriculum to accommodate the year-long nature of the course.⁹ In addition to their required constitutional law curriculum, many law schools also offer additional upper-division electives that provide an in depth focus on specific topics within constitutional law, such as freedom of expression or freedom of religion.¹⁰

As a result, even if a student does receive instruction on individual liberties, most students at U.S. law schools receive this instruction much later than they receive instruction on foundational principles of constitutional law, such as the structure of government, federalism, and separation of powers. Most constitutional law casebooks are organized to cover the foundational principles in the first half of the book and individual rights and liberties in the second half.¹¹ Therefore, for law schools requiring only one semester of constitutional law, any discussion about individual liberties would typically occur later in the semester of the required class or in a separate upper-division elective. For law schools requiring a year-long constitutional law course, this discussion would typically occur later in the year as part of a broader discussion on individual liberties, after the class first covered the foundational principles of constitutional law discussed above.

8. See, e.g., *Curriculum: First-Year Curriculum and Advanced Curriculum*, UCLA L., <https://law.ucla.edu/academics/degrees/jd-program> (last visited Mar. 21, 2024) (listing Constitutional Law as part of both the required first-year curriculum and the advanced curriculum); *Constitutional Law*, UNIV. OF KANSAS SCH. OF L., <https://law.ku.edu/academics/areas/constitutional-law> (last visited Mar. 21, 2024) (explaining that “All KU Law students take Introduction to Constitutional Law, which covers the basic aspects of constitutional law and is required for graduation. Advanced offerings in this area include courses concerning individual rights, the structure and operation of government, and other constitutional topics.”).

9. See, e.g., *Required J.D. Courses: First-Year Courses and Upper-Level Courses*, SEATTLE UNIV. SCH. OF L., <https://law.seattleu.edu/academics/degree-programs/jd/curriculum/required-jd-courses/> (last visited Mar. 21, 2024) (listing both Constitutional Law I and Constitutional Law II as required Upper-Level Courses, with Constitutional Law I taken in the fall of the second-year and Constitutional Law II taken in the spring of the second-year).

10. See, e.g., *Constitutional Law: First Amendment*, HARVARD L. SCH., <https://hls.harvard.edu/courses/constitutional-law-first-amendment-20/> (last visited Mar. 21, 2024); *Advanced Constitutional Law: 1st Amendment*, COLUMBIA L. SCH. <https://www.law.columbia.edu/academics/courses/32982> (last visited Mar. 21, 2024); *Advanced Constitutional Law: Religious Liberty*, COLUMBIA L. SCH., <https://www.law.columbia.edu/academics/courses/32956> (last visited Mar. 21, 2024).

11. See generally ERWIN CHEMERINSKY, *CONSTITUTIONAL LAW* (6th Ed. 2019); DAVID CRUMP ET AL., *CASES AND MATERIALS ON CONSTITUTIONAL LAW* (6th Ed. 2014); NOAH FELDMAN & KATHLEEN SULLIVAN, *CONSTITUTIONAL LAW* (21st Ed. 2022); WILLIAM ARAIZA, *CONSTITUTIONAL LAW: CASES, APPROACHES, AND APPLICATION* (2nd Ed. 2021).

Before *Dobbs*, coverage of the right to an abortion typically fell within the coverage of individual liberties in constitutional law courses, more specifically within the coverage of substantive due process. Due process coverage in most constitutional law casebooks begins with a discussion of how the Due Process Clause binds both the federal government through the Fifth Amendment to the U.S. Constitution and the states through the Fourteenth Amendment.¹² From there, casebooks typically address substantive due process and procedural due process separately.¹³ Substantive due process coverage explores the limits on the government's ability to regulate certain areas of human life, while procedural due process coverage explores the requirement that the government use fair process before intentionally depriving a person of life, liberty, or property.¹⁴

The rights subject to substantive due process are commonly categorized either as fundamental rights or nonfundamental rights, with recognition of the right to abortion as a fundamental right prior to *Dobbs*.¹⁵ Constitutional law casebooks often begin their coverage of the right to abortion with earlier reproductive autonomy substantive due process cases,¹⁶ including *Skinner v. Oklahoma*, in which the Supreme Court held that the right to procreation was a fundamental right,¹⁷ and *Griswold v. Connecticut*,¹⁸ in which the Supreme Court held that a law forbidding the use of contraceptives violated married couples' constitutional "right to privacy."¹⁹ *Griswold* marked the beginning of the

12. CHERMINSKY, *supra* note 11 at, 504–531.

13. *See Id.* at 903–1169 (beginning Chapter 8 with an introduction to the concept of fundamental rights, the Ninth Amendment, and procedural due process, then providing a framework for analyzing fundamental rights, then breaking the fundamental rights protected by substantive due process down by topic and providing a discussion and cases related to each, followed at the end of the chapter by a discussion and cases related to procedural due process).

14. *Id.*

15. *Roe v. Wade and Supreme Court Abortion Cases*, BRENNAN CTR. FOR JUST. (Sept. 28, 2022), <https://www.brennancenter.org/our-work/research-reports/roe-v-wade-and-supreme-court-abortion-cases?fbclid=>

16. *See generally* CHERMINSKY, *supra* note 11 (Chapter 8.D moves from cases on the right to procreate to cases on the right to purchase and use contraceptives to cases on the right to abortion); CRUMP ET AL., *supra* note 11 (Chapter 9.02 first covers *Skinner v. Oklahoma* regarding substantive due process rights to reproduction, then *Griswold v. Connecticut* for birth control and the basic structure of modern substantive due process, before moving onto abortion and substantive due process); FELDMAN & SULLIVAN, *supra* note 11 (Chapter 8.2 includes *Griswold v. Connecticut* in its coverage of substantive due process regarding childbearing and contraception before moving onto coverage of substantive due process regarding abortion); ARAIZA, *supra* note 11 (Chapter 9 covers *Griswold v. Connecticut* for the foundations of the right to an abortion, then moves to *Roe* and onto *Casey*).

17. *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942).

18. *Griswold v. Connecticut*, 381 U.S. 479 (1965). *Id.* at 485–86. That same freedom was later guaranteed for unmarried couples under the Equal Protection Clause. *Eisenstadt v. Baird*, 405 U.S. 438, 454–55 (1972).

19. *Id.* at 485–86. That same freedom was later guaranteed for unmarried couples under the Equal Protection Clause. *Eisenstadt v. Baird*, 405 U.S. 438, 454–55 (1972).

Supreme Court's use of the Fourteenth Amendment's Due Process Clause to protect fundamental privacy rights and laid the legal foundation for *Roe v. Wade*.²⁰

Less than a decade after *Griswold*, the *Roe v. Wade* Court held that abortion was a fundamental right protected by the Constitution, and established a three-trimester framework such that the State's power to regulate abortions depended upon which trimester the pregnancy was in at the moment of the abortion.²¹ Following *Roe*, constitutional law casebooks typically move on to explore *Planned Parenthood v. Casey*,²² which revisited the constitutional right to abortion nineteen years after *Roe* was decided. Adhering to *stare decisis*, the *Casey* Court reaffirmed *Roe*'s essential holding that women have a fundamental right to a safe and legal abortion but rejected *Roe*'s trimester approach and replaced it with the "undue burden" test.²³ *Casey*'s holding allowed significant government regulation in the first trimester, restricting the constitutional protection that *Roe* had afforded to abortion to only guard against state regulations that create an undue burden on the patient.²⁴

20. *Roe v. Wade*, 410 U.S. 113, 164–65 (1973) (establishing a right to abortion under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and establishing a three-trimester framework that sought to balance the competing interests of individuals and the states), *overruled by Dobbs*, 597 U.S. 215 (2022).

21. The Court, in *Roe*, expanded the constitutional right to privacy under the Fourteenth Amendment, protecting a woman's right to choose to have an abortion without state interference during her first trimester when the "mortality in abortion may be less than mortality in normal childbirth." Weighing the fundamental right of privacy against the state's interest in protecting the health of the pregnant woman and safeguarding the potential life of the fetus, the Court held that the state's interest in protecting the mother was compelling only after the end of the first trimester and the state's interest in protecting the fetus applied only from the start of the third trimester, when the fetus had become viable, or capable of "meaningful life outside the mother's womb." *See id.* at 163–64.

22. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 873–74 (1992) (affirming the right to abortion established in *Roe v. Wade*, 410 U.S. 113 (1973), but replacing *Roe*'s three-trimester framework with the undue burden test to evaluate abortion restrictions before viability), *overruled by Dobbs*, 597 U.S. 215 (2022).

23. *Id.* at 845–46, 853–869, 874–78 (finding that "[o]nly where state regulation imposes an undue burden on a woman's ability to make this decision does the power of the State reach into the heart of the liberty protected by the Due Process Clause" and explaining that "[a]n undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.").

24. In *Casey*, *Planned Parenthood* and its providers challenged five provisions of the Pennsylvania Abortion Control Act of 1982. These five provisions required a woman seeking an abortion to give her informed consent before the abortion could be performed, required a twenty-four-hour waiting period for women seeking abortions, required parental consent for minors seeking an abortion, required spousal notification for a married woman seeking an abortion, and imposed certain reporting requirements on the facilities providing abortion services. Applying the "undue burden" test, the Court upheld all the provisions, except the spousal notification requirement, which the Court concluded was "likely to prevent a significant number of women

Prior to the *Dobbs* decision, constitutional law casebooks often moved from *Casey* to a selection of other right-to-abortion cases, which further defined the rights set out in *Roe* and *Casey*.²⁵ These “legacy cases”²⁶ of *Roe* and *Casey* included *Whole Women’s Health v. Hellerstedt*,²⁷ *Stenberg v. Carhart*,²⁸ *Gonzales v. Carhart*,²⁹ *Maier v. Roe*,³⁰ *Harris v. McRae*,³¹ *Planned Parenthood*

from obtaining an abortion . . .” and therefore would impose a substantial obstacle. *Id.* at 844, 893–94.

25. See generally CHEMERINSKY, *supra* note 11 (Chapter 8, Section D.3 follows *Roe* and *Casey* with *Whole Women’s Health v. Hellerstedt*, *Gonzales v. Carhart*, *Maier v. Roe*, *Harris v. McRae*, *Planned Parenthood v. Danforth*, and *Bellotti v. Baird*); CRUMP ET AL., *supra* note 11 (Chapter 9, section 9.02[B]–[E] follows *Roe* and *Casey* with *Stenberg v. Carhart* and *Gonzales v. Carhart*); FELDMAN & SULLIVAN, *supra* note 11 (Chapter 8, Section 2, follows *Roe* and *Casey* with *Gonzales v. Carhart* before moving onto *Dobbs*); ARAIZA, *supra* note 11 (Chapter 9 does not follow *Roe* and *Casey* with any additional right to abortion cases).

26. Michele Goodwin, *Opportunistic Originalism: Dobbs v. Jackson Women’s Health Organization*, 2022 SUP. CT. REV. 111, 111–112 (2022) (noting that *Dobbs* “destabliz[ed] a legacy of cases that endorsed *Roe*’s principal holding, which decriminalized abortion and established the constitutional right for a woman to terminate a pregnancy. Spanning nearly fifty years of jurisprudence, the ‘legacy cases’ did not equivocate on the constitutional right to terminate a pregnancy across a broad spectrum of laws seeking in various ways to undermine and infringe the right to an abortion. Even as the Court upheld harsh, economically burdensome state and federal laws that denied government funding for abortion, in each instance the Court reaffirmed *Roe* and the fundamental right to terminate a pregnancy”).

27. *Whole Woman’s Health v. Hellerstedt*, 579 U.S. 582, 589–91 (2016) (holding that Texas statutes requiring providers to have admitting privileges at a local hospital located no more than thirty miles from their abortion facility and that abortion facilities meet minimum standards for ambulatory surgical centers imposed an undue burden on women’s right to seek pre-viability abortions).

28. *Stenberg v. Carhart*, 530 U.S. 914, 945–46 (2000) (holding that Nebraska’s statute banning partial birth abortion was unconstitutional because it lacked any exception for the preservation of health of the mother and it applied to both dilation and evacuation procedure and dilation and extraction procedure, which imposed an undue burden on woman’s ability to choose the dilation and evacuation procedure and unduly burdening the right to abortion, itself).

29. *Gonzales v. Carhart*, 550 U.S. 124, 168 (2007) (holding that the federal Partial-Birth Abortion Ban Act was not void for vagueness and did not impose an undue burden on a woman’s right to abortion based on overbreadth or lack of health exception. The State has the power to restrict abortions after viability and has legitimate interests from the pregnancy’s outset in protecting the health of the woman and the life of the fetus).

30. *Maier v. Roe*, 432 U.S. 464, 474 (holding that a Connecticut regulation prohibiting the funding of abortions that were not medically necessary did not place obstacles “absolute or otherwise” in the pregnant woman’s path to an abortion because the State had “imposed no restriction on access to abortions that were not already there [due to financial limitations]” and therefore “[did] not impinge upon the fundamental right recognized in *Roe*.”).

31. *Harris v. McRae*, 448 U.S. 297, 315, 317 (1980) (holding that the Hyde Amendment, which severely limited use of federal funds to reimburse cost of abortions under the Medicaid program, did not “impinge[] on the constitutionally protected freedom of choice recognized in *Wade*” because it “places no governmental obstacle in the path of a woman who chooses to

v. Danforth,³² and *Bellotti v. Baird*,³³ among others, and dealt with the constitutionality of partial-birth abortions, parental consent requirements, state and federal laws denying government funding for abortion, and more. However, with the Supreme Court's decision in *Dobbs*, newer editions of these casebooks have either removed this additional coverage or limited it to only one or two of these legacy cases.³⁴

With *Dobbs*, the Supreme Court reversed nearly fifty years of legal precedent to the constitutionally protected right to an abortion.³⁵ Finding that *Roe* “was egregiously wrong from the start,” the Court determined “[i]t [was] time to heed the Constitution and return the issue of abortion to the people’s elected representatives.”³⁶ The majority opinion, penned by Justice Alito, overruled *Roe* and *Casey*, holding that, “[t]he Constitution does not confer a constitutional right to abortion[,] *Roe* and *Casey* must be overruled, and the authority to regulate abortion must be returned to the people and their elected representatives.”³⁷ Therefore, because the Court no longer recognizes the right to an abortion as a fundamental right, but rather merely a “health and welfare” regulation, it is now subject only to rational basis review—the lowest standard of review that gives “a strong presumption of validity” to state legislatures that regulate or ban abortion.³⁸ Accordingly, such abortion restrictions “must be sustained if there is a rational basis on which the legislature could have thought that it would serve legitimate state interests.”³⁹

While the *Dobbs* decision ordinarily would be found in the substantive due process portion of constitutional law courses and not within the federalism portion, by “return[ing] the issue of abortion to the people’s elected

terminate her pregnancy, but rather, by means of unequal subsidization of abortion and other medical services, encourages alternative activity deemed in the public interest.”).

32. *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52, 74 (1976) (holding that Missouri’s requirement of spousal consent and a blanket parental consent requirement for minors were unconstitutional because “the State [did] not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision” to have an abortion.)

33. *Bellotti v. Baird*, 428 U.S. 132, 132–33 (1976) (declining to rule on the constitutionality of a Massachusetts statute regulating a minor’s access to an abortion until the state courts had had an opportunity to determine whether the statute authorized a parental veto over the minor’s decision or the less burdensome requirement of parental consultation).

34. See generally ERWIN CHEREMINSKY, *CONSTITUTIONAL LAW* (Foundation Press, 7th ed. 2023) (Chapter 8, Section D.3, now contains only *Roe*, *Casey*, and *Dobbs*.; FELDMAN & SULLIVAN, *supra* note 11 (Chapter 8, Section 2, follows *Roe* and *Casey* with *Gonzales v. Carhart* before moving onto *Dobbs*).

35. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. at 215 (2022) (holding that “[t]he Constitution does not confer a right to abortion; *Roe* and *Casey* are overruled; and the authority to regulate abortion is returned to the people and their elected representatives.”).

36. *Id.* at 231–32.

37. *Id.* at 292.

38. *Id.* at 301 (citing *Heller v. Doe*, 509 U.S. 312, 320 (1993)).

39. *Id.*

representatives,”⁴⁰ the *Dobbs* court allowed for a state-by-state determination on the right to an abortion, and thus created a contemporary case study of federalism in action.⁴¹ Regardless of a professor’s or student’s personal feelings about the *Dobbs* decision, the case is pivotal in illustrating how federalism plays out in everyday life. At its core, federalism is about “the allocation of power between the national government and state and local governments.”⁴² While federalism as a legal concept does not expressly favor states’ rights over federal power, much of the focus of American federalism has historically been on “narrowing the scope of the federal government’s power for the sake of expanding states’ rights.”⁴³ Interestingly, the U.S. Constitution does not use the words “federal” or “federalism.” However, Article I of the U.S. Constitution provides Congress with a limited set of powers, and the Tenth Amendment specifies that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”⁴⁴

Constitutional law casebooks typically begin their coverage of federalism through an examination of *McCulloch v. Maryland*.⁴⁵ While some constitutional law casebooks use this case to introduce their exploration of the powers of Congress,⁴⁶ others dedicate a separate chapter entirely to the discussion of the history and principles of federalism before exploring the federal legislative powers and their “federalism-based limits” individually.⁴⁷ Section III of this Article provides specific ways that constitutional law professors can incorporate

40. *Dobbs*, 597 U.S. at 232.

41. *Id.* at 292 (While this Article focuses on the use of *Dobbs* in the coverage of federalism, there are two additional first semester areas in which *Dobbs* could also be used: interpretive methodologies and *stare decisis*).

42. Erwin Chemerinsky et al., *Discussion: A Focus on Federalism*, 20 *TOURO L. REV.* 909, 911 (2005).

43. *Id.* at 911–12.

44. U.S. CONST. amend. X.

45. *McCulloch v. Maryland*, 17 U.S. 316, 316 (1819) (holding that Congress had the power to incorporate The Second Bank of the United States pursuant to the Necessary and Proper Clause, which gave Congress powers not explicitly outlined in the U.S. Constitution, but which were “appropriate” and “legitimate” to further the objectives covered by the enumerated powers).

46. See CHEMERINSKY, *supra* note 34 (introducing Chapter 2, the Federal Legislative Power, with a discussion of *McCulloch v. Maryland* as the framework for analyzing congressional and state action); NORMAN REDLICH ET AL., *CONSTITUTIONAL LAW* (LexisNexis, 5th ed. 2008) (introducing Chapter 4, the Federal System, with a discussion of *McCulloch v. Maryland* to illustrate federal supremacy).

47. FELDMAN & SULLIVAN, *supra* note 11 (dedicating Chapter 2 to a discussion of the history and principles of federalism, beginning with *McCulloch v. Maryland* and proceeding to *United States v. Comstock* for a review of the limits of the Necessary and Proper Clause, and then to *U.S. Term Limits, Inc. v. Thornton* for a discussion of recent challenges to the location of sovereignty in the Constitutional system, followed by Chapters 3 which explores the Commerce Power and its federalism-based limits, and then Chapter 4 which explored the national taxing and spending powers and their federalism-based limits).

the *Dobbs* decision earlier in their courses, specifically into their introduction to the concept of federalism, rather than limit *Dobbs* to their coverage of substantive due process. In doing so, professors can use the exercises discussed in Part III to illustrate the effect of federalism on the right to abortion, comparing the availability of abortion access post-*Roe* to that of the post-*Dobbs* period.

B. Step Two: Expand the Pedagogical Approach Used in Constitutional Law Courses Beyond a Default Application of the “Case Method”

Traditional law school pedagogy follows the “case method,” originated in 1870 by Christopher Columbus Langdell.⁴⁸ Prior to Langdell’s innovation, legal education followed the “continental method,” where law professors would summarize legal rules and often read aloud from textbooks and treatises,⁴⁹ while “students focused on transcribing and memorizing the [professor’s] words and the rules of law the [professor] imparted.”⁵⁰ Langdell proposed that “professors stop teaching from textbooks that summarized the law, and instead assign students to read and discuss the original sources, the cases themselves.”⁵¹ In leading this shift in legal pedagogy toward the “case method,” Langdell published the first “casebook,” which focused on appellate opinions and replaced the old lecture format with what became known as the Socratic method.⁵² Shifting away from the lack of class discussion under the “continental method,” professors applying the Socratic method would actively question their students in class, seeking “to guide and redirect students to derive (correct) legal principles from a line of cases.”⁵³

Alongside courses such as Civil Procedure, Contracts, Criminal Law, Criminal Procedure, Legal Research and Writing, Property Law, and Torts, Constitutional Law is often considered a foundational subject in legal education because it provides students with an understanding of the structure of the U.S. legal system and the principles underlying the U.S. Constitution, both of which are essential for subsequent legal studies and practice.⁵⁴ Because of its place in the first-year curriculum,⁵⁵ which focuses heavily on the skills of case reading,

48. Jeannie Suk Gersen, *The Socratic Method in the Age of Trauma*, 130 HARV. L. REV. 2320, 2321 (2017).

49. *Id.*

50. See Rachel Gurvich et al., *Reimagining Langdell’s Legacy: Puncturing the Equilibrium in Law School Pedagogy*, 101 N.C.L. REV. FORUM 118, 126 (2023) (describing the ad hoc landscape of legal education before Langdell).

51. Gersen, *supra* note 48, at 2321.

52. *Id.* at 2322.

53. Gurvich et al., *supra* note 50, at 130.

54. See generally *What You Can Expect from Your Law School Experience*, LSAC, <https://www.lsac.org/discover-law/what-you-can-expect-your-law-school-experience> (last visited Mar. 11, 2024) (listing and describing the subjects typically covered in the first year of law school).

55. See, e.g., *Required Curriculum: First-Year Program*, STANFORD L. SCH., <https://law.stanford.edu/office-of-student-affairs/the-doctor-of-jurisprudence-jd-degree/#slsnav-overview-of-de>

constitutional law professors are more likely to adopt Langdell's "case method" approach when teaching the course. This decision is reinforced by the course's heavy focus on dissecting and analyzing Supreme Court decisions that interpret rights under the U.S. Constitution.⁵⁶

Modernly, the "case method" approach has expanded beyond the Langdellian focus on appellate opinions to include "a variety of other legal and nonlegal texts to tee up the dialogue."⁵⁷ As then-Dean of Harvard Law School, now-Supreme Court Justice Kagan said so well, "[w]hen you haven't changed your curriculum in 150 years, at some point you look around."⁵⁸ Recognizing that analytical skills are only part of the toolbox law students must acquire to best serve their clients, Mari Matsuda calls for law schools to create "strategic generalist[s]" who "must have a radically interdisciplinary toolkit."⁵⁹ This interdisciplinary toolkit requires law students to have general, not expert, knowledge of other academic disciplines so they know enough "to ask useful questions, call in experts, and identify the knowledge paths that require exploration."⁶⁰ They must constantly ask themselves, "What do I know? What do I not know? What do I need to know?"⁶¹ and "Where can I find what I need to know?"

gree-requirements (last visited Mar. 11, 2024); *Academic Requirements and Options: Requirements for the Degree of Juris Doctor (J.D.) – First Term*, YALE L. SCH., <https://bulletin.yale.edu/bulletins/law/academic-requirements-and-options#requirements-for-the-degree-of-juris-doctor-j-d-> (last visited Mar. 11, 2024); *First Year Courses*, UNIV. OF CHI. L. SCH., <https://www.law.uchicago.edu/prospective/1Lcourses> (last visited Mar. 11, 2024); *Graduate Catalog: Law, JD*, UNIV. OF PA. CAREY L. SCH., <https://catalog.upenn.edu/graduate/programs/law-jd/> (last visited Mar. 11, 2024); *Study: First-year Curriculum*, DUKE UNIV. SCH. OF L., <https://law.duke.edu/study/firstyear> (last visited Mar. 11, 2024); *J.D. Program: The First Year*, HARVARD UNIV., <https://hls.harvard.edu/academics/degree-programs/jd-program> (last visited Mar. 11, 2024); *Required Courses: Full-Time Day Course Requirements – Second Semester*, SAINT LOUIS UNIV. SCH. OF L., <https://www.slu.edu/law/academics/curriculum/required-courses.php> (last visited Mar. 11, 2024).

56. See Marsha Griggs, *Race, Rules, and Disregarded Reality*, 82 OHIO ST. L.J. 931, 949 (2021) (explaining that the first-year curriculum focuses heavily on case law reading because podium professors seek to teach "law students to 'think like lawyers' by dissecting and analyzing judicial opinions.")

57. See Gersen, *supra* note 48, at 2342. See also Griggs, *supra* note 56, at 949–50 (discussing professors' reliance on the "case method" and the many criticisms of that method of legal pedagogy and explaining that there can be effective legal instruction without the use of appellate opinions).

58. Jonathan D. Glater, *Training Law Students for Real-Life Careers*, N.Y. TIMES (Oct. 31, 2007), <http://www.nytimes.com/2007/10/31/education/31lawschool.html> (citing Justice Elena Kagan, then dean of Harvard Law School).

59. Mari J. Matsuda, *Admit That the Waters Around You Have Grown: Change and Legal Education*, 89 IND. L.J. 1381, 1393 (2014).

60. *Id.*

61. *Id.*

A cross-disciplinary,⁶² or interdisciplinary,⁶³ study of the law goes beyond the traditional framework of law school pedagogy, incorporating insights drawn from other academic disciplines to facilitate a deeper understanding of the social, cultural, economic, and political factors that influence the development, implementation, and impact of laws.⁶⁴ This cross-disciplinary approach promotes innovation and creativity in legal research and practice by encouraging law students to explore new methods, theories, and approaches to complex legal problems, and enables these future lawyers to approach legal problems from a broader perspective, leading to better informed, more balanced judgments.⁶⁵ It also provides a foundation for the exchange of ideas between disciplines, promoting interdisciplinary discussions and knowledge sharing which can lead to the development of interdisciplinary legal theories and approaches that address the evolving needs of society.

As Matsuda makes clear,

The point is not to create a laundry list of required reading or a fixed course of study, but rather to cultivate a habit of the mind that says close, critical reading of books in many disciplines is part of your ongoing obligation to make sense of the complex world in which you do your work.⁶⁶

Take for example an intellectual property (IP) lawyer:

With the exception of patent prosecutors, most IP lawyers do not in fact have additional graduate technical degrees. The reality is that in practice, IP practitioners rely on technical professionals, either clients or colleagues, to guide them. Even dual-degree lawyers cannot know everything about the invention or the product at stake. Professionals must translate across disciplines . . . [and] must ably communicate across disciplines in order to meet client objectives.⁶⁷

62. *Cross-disciplinary*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/cross-disciplinary> (last visited Mar. 12, 2024).

63. Kim D. Connolly, *Elucidating the Elephant: Interdisciplinary Law School Classes*, 11 WASH. U. J. L. & POL'Y 11, 15–16 (2003) (exploring the “use of interdisciplinary law school classes as a fundamental way to connect law students with future colleagues who are receiving different professional training, as well as with concepts related to but outside of traditional doctrinal law.”).

64. Jarameel Odhiambo, *Interdisciplinary Study of Law*, LINKEDIN (June 7, 2023), <https://www.linkedin.com/pulse/interdisciplinary-study-law-jerameel-kevins-owuor-odhiambo#:~:text=Firstly%2C%20it%20facilitates%20a%20holistic,legal%20analysis%20and%20decision%20making.>

65. Mathias M. Siems, *The Taxonomy of Interdisciplinary Legal Research: Finding the Way Out of the Desert*, 7 J. COMMW. L. LEGAL EDUC. 5, 12 (2009).

66. See Matsuda, *supra* note 59, at 1397.

67. Cynthia L. Dahl, *Teaching Would-Be IP Lawyers to “Speak Engineer”: An Interdisciplinary Module to Teach New Intellectual Property Attorneys to Work Across Disciplines*, 19 LEWIS & CLARK L. REV. 361, 365 (2015).

Similarly, a health law lawyer must often possess knowledge about science and technology issues,⁶⁸ and a litigator can benefit from an understanding of psychology when conducting *voir dire*.⁶⁹ Thus, an appreciation of the cross-disciplinary nature of the law is an increasingly essential aspect of legal education.

Students' comprehension of the impact of *Dobbs*, and consequently, the effects of federalism on the right to an abortion, can be enhanced by developing an understanding of *Dobbs*' influence on other disciplines such as medicine, business, economics, and political science, among others. Constitutional law professors can capitalize on their earlier coverage of *Dobbs* not only to provide a contextual understanding of federalism but also to introduce the cross-disciplinary nature of the law early in students' academic journey. By stepping beyond the traditional "case method" to integrating *Dobbs* as both a contemporary case study in federalism and an introduction to the cross-disciplinary nature of the law, constitutional law professors can incorporate innovative legal pedagogy into their classroom, thereby better equipping their students to practice law in an increasing cross-disciplinary space.

III. DISCUSSION

A. *Dobbs as a Contemporary Case Study of Federalism in Action*

Employing *Dobbs* as a case study of federalism in action for first-year constitutional law students, professors can utilize a rich variety of resources, including scientific and news articles, interactive maps and tables, and policy reports, to present information on how *Dobbs* has impacted the right to abortion at the state level. By utilizing this array of resources in studying *Dobbs*, constitutional law professors can empower students to engage with the material and make the legally complex concept of federalism more approachable. By varying their teaching delivery methods, constitutional law professors also can break down barriers for students with disabilities⁷⁰ and ensure access for *all* the

68. *Id.* at 364.

69. Ariana R. Levinson et al., *Challenging Jurors' Racism*, 57 GONZ. L. REV. 365, 365, 371 (2022) ("providing an introduction to insightful psychometric tools that can be used to prioritize the selection of anti-racist jurors, identify prospective jurors who may hold implicit and explicit biases, or identify those who are likely to be impartial in their assessment of the case").

70. This Article uses "person-first language" rather than "identity-first" language, such as "disabled [students]," unless directly citing a source that uses "identity-first" language. See Heather A. Swadley & Maeve Keeley-Mehrad, "Deeply Rooted": *Abortion Federalism, Divided Citizenship, and Disability Reproductive (In)justice*, 45 J. WOMEN, POLITICS & POL'Y 59, n. 5 (explaining that "Language is a contentious topic among and between disabled people" and while "some communities think that person-first language implies that disability makes one less of a person . . . many in the intellectual/developmental disability community find person-first language empowering, as self-advocacy groups developed person-first language.")

students in their constitutional law class.⁷¹ The Socratic method, adopted by Langdell, appeals only to auditory learners and gives those students an unfair advantage in learning the material over other students who learn differently.⁷² To make their classrooms more accessible for *all* students enrolled in their course, professors can, “develop and incorporate new and innovative teaching styles that accommodate many different types of learners.”⁷³

One point in their coverage of federalism where professors can utilize various external resources is asking students to explore the differences between post-*Dobbs* state abortion restrictions and protections. By simultaneously opening the door for states to either impose greater limits on the right to abortion or protect the right to abortion by confirming or expanding that right at the state level, the *Dobbs* holding illustrates the effect that federalism can have on issues of national concern. In the first year following the *Dobbs* decision, “more than a dozen states [] enacted extremely restrictive abortion bans,” while seventeen states and the District of Columbia enacted laws protecting abortion.⁷⁴ Six months later, a total of fourteen states had banned abortion in almost all circumstances while ten more states had enacted gestational limits on the right to abortion.⁷⁵ These gestational limits, which ban abortion based on the week of pregnancy, range from six weeks of pregnancy to viability.⁷⁶

While some states worked to limit the right to abortion, others worked to protect the right to abortion through enacting legislation or amending the state constitution.⁷⁷ Nine states now protect the right to abortion through their state

71. See LaToya Jones Burrell, *So What's Next? Life After the Americans with Disabilities Amendment Act of 2008 for the Learning Disabled Law Student*, 41 S.U. L. REV. 59, 81–82 (2013) (encouraging law professors to incorporate different teaching mechanisms into their course pedagogy to adapt to the changing law school classroom demographics, which include an increasing number of learning disabled students and millennial learners).

72. *Id.* at 83.

73. *Id.* at 86.

74. See Vanessa Romo, *A Year After Dobbs and the End of Roe v. Wade, There's Chaos and Confusion*, NPR (June 24, 2023, 6:00 AM ET), <https://www.npr.org/2023/06/24/1183639093/abortion-ban-dobbs-roe-v-wade-anniversary-confusion>.

75. Allison McCann et al., *Tracking Abortion Bans Across the Country*, N.Y. TIMES, <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html> (Jan. 8, 2024, 9:30 AM ET) (listing AL, AR, ID, IN, KY, LA, MS, MO, ND, OK, SD, TN, TX, and WV as having total bans; GA and SC banning abortion after 6 weeks of pregnancy; NE and NC as banning abortion after 12 weeks of pregnancy; AZ and FL banning abortion after 15 weeks of pregnancy; UT banning abortion after 18 weeks of pregnancy; IA banning abortion after 22 weeks of pregnancy; and MT and WY banning abortion after viability).

76. *Id.*

77. *Id.* (listing AK, KS, OH, CA, IL, MA, MI, MN, and VT as protecting abortion through their state constitution; CO, CT, DC, DE, HI, ME, MD, NV, NJ, NY, OR, RI, and WA as protecting abortion through state and local laws; and NH, MN, PA, VA, and WI as not expressly protecting abortion through state law, but noting that abortion will most likely stay accessible for other reasons).

constitutions, with five states doing so through state supreme court rulings that recognized the right to abortion implicit in the state constitution and four states doing so by enshrining the right to abortion into their state constitutions via the ballot box.⁷⁸ In November 2022, California, Michigan, and Vermont all passed ballot measures to protect the right to abortion in their state's constitutions, followed by Ohio in November 2023.⁷⁹

1. Use of Visual Aids, Including Interactive Maps

Constitutional law professors can adopt visual aids,⁸⁰ like interactive maps reflecting the level of abortion restriction or protection of each state, as an innovative teaching method to explore the differences between how individual states responded to *Dobbs*.⁸¹ Many of those same resources also provide table formats as an alternative to the map format for their data.⁸² These visual representations of the different level of restrictions on or protections for the right to abortion can assist a more visual learner with understanding the effect that the *Dobbs* decision had on the right to abortion from state-to-state, and thus understand how federalism plays out when a matter such as abortion is left to the states to decide on a state-to-state basis.⁸³

78. *Id.* (listing AK, KS, IL, MA, and MI as protecting abortion through the state's Supreme Court recognizing the right under the state constitution; and listing OH, CA, MN, and VT as passing ballot measures to enshrine the right to abortion into the state constitution).

79. *Id.*

80. See Burrell, *supra* note 71, at 86–88 (listing visual aids, such as PowerPoint, graphs and charts, as one innovative teaching method professors might use in addition to the Socratic method).

81. See generally *After Roe Fell: Abortion Laws by State*, CTR. FOR REPROD. RTS., <https://reproductiverights.org/maps/abortion-laws-by-state/> (last visited Mar. 13, 2024) (providing an interactive map that is updated in real time to reflect the level of access to abortion in the United States, grouping states into one of five categories based on abortion policies they currently have in effect); *Interactive Map: U.S. Abortion Policies and Access After Roe*, GUTTMACHER INST., <https://states.guttmacher.org/policies/> (Mar. 13, 2024) (providing an interactive map that is updated to reflect the level of access to abortion in the United States, grouping states into one of seven categories based on abortion policies they currently have in effect); Policy Surveillance Program, *Abortion Bans*, LAWATLAS, <https://lawatlas.org/datasets/abortion-bans> (Nov. 1, 2022) (providing an interactive map that can be filtered by level of abortion restriction, timing of abortion gestational limits, types of exemptions provided by the law, and more); *Abortion Policy Tracker*, KAISER FAM. FOUND. (Nov. 2, 2023), <https://www.kff.org/other/state-indicator/abortion-policy-tracker/?activeTab=map¤tTimeframe=0&selectedDistributions=status-of-abortion&sortModel=%7B%22collId%22:%22Location%22,%22sort%22:%22asc%22%7D> (providing an interactive map reflecting the status of abortion, as of November 2, 2023, in the United States, grouping states into one of four categories based on whether abortion is subject to a total ban or a gestational limit within the first, second, or third trimester); Allison McCann et al, *supra* note 75 (providing several static maps reflecting the level of abortion restriction in the United States and where abortion is legal, either due to a blocked abortion ban or due to laws and new protections being added).

82. See generally *id.*

83. Students may gain a more complete understanding of how many women these changes in law might impact by utilizing population density maps to compare the population density of

2. Use of In-Class, Hands-On Exercises to Actively Engage with Interactive Resources

Another useful teaching method that professors can employ in this case study is the use of in-class, hands-on exercises, which may appeal directly to kinesthetic learners⁸⁴ as well as to Gen X and Millennial students.⁸⁵ Gen X⁸⁶ and Millennial⁸⁷ students can require more than the traditional Socratic Method. Having been introduced to computers and video games at a young age, these students are primarily visual learners and are accustomed to accessing information at the touch of the fingertip.⁸⁸ Professors can lean into that comfort with technology and instruct students to select four states, each from a different geographic or political region of the United States (perhaps one on the West Coast, one in the Midwest, one on the East Coast, and another in the South) and to then use one of the interactive resources mentioned above to determine the level of abortion restriction or protection in each of those states. Professors could then ask students to complete a short research and writing assignment identifying the four states they selected and describing the differences between the level of abortion restriction or protection found in those states, concluding with a short explanation of one positive aspect and one negative aspect of federalism as it relates to the right to abortion post-*Dobbs*. To fully round out the experience, professors might provide feedback to the students on their writing assignment, which would allow the professor to assess the students'

different states side-by-side with the interactive abortion restriction maps discussed above. See United States Census Bureau, 2020 Census Demographic Data Map Viewer (Sept. 28, 2023), <https://www.census.gov/library/visualizations/2021/geo/demographicmapviewer.html> (last visited May 1, 2024) (portraying the distribution of the United States population based on the results of the 2020 Census of Population and Housing); Lisa Berry, ArcGIS Online Living Atlas of the World: Male and Female Population in the US (2020 Census) (Aug. 16, 2023), <https://www.arcgis.com/home/item.html?id=4f9e3ded71e748c49717f4ebb8d3424e> (last visited May 1, 2024) (portraying the distribution of the United States population by predominant gender category).

84. See Burrell, *supra* note 71, at 87–88 (listing the use of in-class, hands-on exercises as one innovative teaching method professors might use in addition to the Socratic method to appeal to kinesthetic learners).

85. See *id.* at 90–92 (describing the Millennial student and their preferred learning styles).

86. See Michael Dimock, *Defining Generations: Where Millennials End and Generation Z begins*, PEW RSCH. CTR. (Jan. 17, 2019), <https://www.pewresearch.org/short-reads/2019/01/17/where-millennials-end-and-generation-z-begins/> (explaining that anyone born between 1965 and 1980 (ages 54 to 39 in 2019) is considered a member of Gen X).

87. See *Id.* (explaining that “[a]nyone born between 1981 and 1996 (ages 23 to 38 in 2019) is considered a Millennial”).

88. See Diana Oblinger, *Boomers Gen-Xers & Millennials: Understanding the New Students*, EDUCAUSE REVIEW, July/Aug. 2003 (discussing the learning styles and aptitudes of Gen X and Millennial students and noting that experiential and interactive learning opportunities may better serve students who were raised on the Internet and interactive games compared to the “lecture tradition of colleges and universities . . .”).

understanding of the concept of federalism and give some early feedback and instruction on the students' writing skills.⁸⁹

3. Use of Post-Class Multimedia News Stories to Provide a More Extensive Learning Experience

In closing out the *Dobbs* case study, professors can assign a post-class reading, such as an article discussing the increase in interstate travel for abortion care⁹⁰ or an article describing the personal experience of a pregnant individual who was forced to travel to another state to terminate their pregnancy.⁹¹ Even more impactful, professors could assign a multimedia news story following the stories of a group of women's pregnancy journeys and health care experiences living in states with abortion restrictions post-*Dobbs*.⁹² These stories would connect the larger scale data students interacted with in-class to the individuals actually affected by those abortion restrictions, further illustrating how federalism plays out in an area such as the right to abortion. Additionally, "[r]ecognizing that we generally remember twenty-five percent of what we see, forty percent of what we see and hear, and seventy-five percent of what we see, hear, and do," this interactive, multisensory case study of federalism in action allows constitutional law students to engage in a more extensive learning experience that can lead to a deeper level of critical thinking and understanding of the concept of federalism.⁹³

89. See Burrell, *supra* note 71, at 88–89 (describing how providing feedback on writing assignments is another innovative teaching method professors might use in addition to the Socratic method because it allows students to practice conveying their knowledge of a topic in writing in the manner required by the professor, prior to taking one comprehensive final exam in the class).

90. See, e.g., New Data Show that Interstate Travel for Abortion Care in the United States Has Doubled Since 2020, GUTTMACHER INST. (Dec. 7, 2023), <https://www.guttmacher.org/news-release/2023/new-data-show-interstate-travel-abortion-care-united-states-has-doubled-2020> (discussing the first comprehensive data measuring the magnitude of interstate travel for abortion post-*Dobbs*).

91. See, e.g., Kelcie Moseley-Morris, *Before and After Dobbs, Questions of 'When and Where' Affect Abortion Access*, GA. RECORDER (Jan. 27, 2024 9:00 a.m.) <https://georgiarecorder.com/2024/01/27/before-and-after-dobbs-questions-of-when-and-where-affect-abortion-access/> (reporting on the experience of an individual who was unable to access an abortion in Texas due to Senate Bill 9 taking effect in Texas and banning abortions after six weeks gestational age, and traveled to New Mexico to terminate their pregnancy after contraception failed them).

92. See, e.g., Nadine El-Bawab et al., *Fighting for Their Lives: Women and the Impact of Abortion Restrictions in Post-Roe America*, ABC NEWS (Dec. 14, 2023, 4:11A.M.), <https://abcnews.go.com/US/fighting-lives-women-impact-abortion-restrictions-post-roe/story?id=105563174> (providing, in three parts, written and video coverage of pregnant women's experience in post-*Roe* America).

93. Cecilia A. Silver, *The Writing's on the Wall: Using Multimedia Presentation Principles from the Museum World to Improve Law School Pedagogy*, 126 DICK L. REV. 75, 502–03 (2022) (discussing the benefits of layering teaching modalities in the law school classroom).

B. Dobbs as an Introduction to the Cross-Disciplinary Nature of Law

The use of *Dobbs* as part of a constitutional law course's coverage of federalism also provides a unique opportunity to support law students in cultivating the cross-disciplinary habit of the mind that Matsuda envisioned.⁹⁴ By exploring the cross-disciplinary impact of the *Dobbs* decision within a required constitutional law, students can increase their awareness of the many academic disciplines whose research and methods intersect with the legal decisions they are studying. From medicine to business and economics to political science, the *Dobbs* decision has set in motion the development of a rich, new body of research across disciplines focused on *Dobbs*' impact.

Faculty can approach this introduction to cross-disciplinary learning in several ways. First, a professor may select articles from different academic disciplines—such as medicine, business, economics, or political science—that consider the impact of *Dobbs* on those disciplines and assign those articles for students to read and analyze. Alternatively, a professor may assign students the task of locating a certain number of articles from other disciplines that consider the impact of *Dobbs* on those disciplines, thus creating an opportunity for students to become more familiar with the research tools utilized by other disciplines. In adopting the second option, the professor should reach out to their school's law library to identify whether there are research guides available for the students to reference⁹⁵ or whether the law library has databases they might recommend students utilize, such as PubMed®,⁹⁶ Scopus,⁹⁷ or Education Resources International Center (or ERIC).⁹⁸

To ensure that students actively engage with the assigned articles, the professor might provide a list of guided reading questions for students to answer as they complete the assignment. Suggested questions include:

94. See Matsuda, *supra* note 59, at 1393.

95. See SLU Research Guides, Saint Louis University <https://libguides.slu.edu/?b=s> (containing research guides created by SLU librarians that are organized by subject, type, library, or librarian).

96. PubMed® comprises more than 36 million citations for biomedical literature from MEDLINE, life science journals, and online books. Citations identified in PubMed® may include links to full text content from PubMed Central and publisher web sites. *PubMed*, NAT'L CTR. FOR BIOTECHNOLOGY INFO., <https://pubmed.ncbi.nlm.nih.gov/> (last visited Apr. 7, 2024).

97. Scopus is a comprehensive, multidisciplinary, abstract and citation database that covers 330 disciplines. SCOPUS, <https://www.scopus.com/home.uri> (last visited Apr. 7, 2024).

98. ERIC (Education Resources Information Center) is an authoritative database of indexed and full-text education literature and resources that is sponsored by the Institute of Education Sciences of the U.S. Department of Education. *Education Resources Information Center*, INST. OF EDUC. SCIS., <https://eric.ed.gov/> (last visited Apr. 7, 2024).

- (1) From which academic discipline is this article drawn?
- (2) In what way does this article report on a research study, provide a commentary/analysis on an issue related to legal changes following *Dobbs*, or seek to serve a different purpose?
- (3) How reliable or significant are the methods used or data set analyzed?⁹⁹
- (4) What are the authors' expressed or implicit biases on the issue?
- (5) What were three key takeaways from this article about the impact of *Dobbs* on this area?
- (6) What is the citation for this article?

Professors might ask students to submit their answers to these questions in writing and select a few submissions to raise as examples during the next class discussion. Alternatively, professors might ask students to complete the questions in preparation for being called upon to share one of their articles during the next class discussion. This exercise would be an excellent opportunity to utilize a discussion board and ask students to post a link to their articles and their answers to the discussion board, then read their fellow students' submissions and select one article from another student's submission to read and respond to on the discussion board. This exercise may be particularly useful for an online course, class session, or make-up exercise.

By no means is the list of academic disciplines highlighted above and discussed below exhaustive. Rather, the fields of study mentioned in this Article are intended to serve as an introduction to the many ways that the *Dobbs* decision impacts work done in other disciplines and to offer a starting place for professors who wish to provide articles to their students on the topic. Further exploration of areas such as ethics, social work, nursing, healthcare administration, and beyond would likely reveal many interesting articles that professors could also use in the exercises discussed above.

1. Impact of *Dobbs* on Medicine

The field of medicine was immediately affected by the *Dobbs* decision, impacting both providers and patients. One area of research explores the impact

99. Despite eighty-eight percent of Americans finding claims more reliable when supported by a chart or data analysis, only thirty-four percent of Americans have the data literacy skills needed to decipher if the data is accurate or an attempt to deceive readers with a "data-driven" argument. See Sarah Norman, *How Data Literacy Can Keep America Safe*, TIME (June 29, 2023), <https://time.com/6290684/data-literacy-us-national-security/>. If data literacy is not incorporated into education, America could become a "democracy manipulated by skewed narratives." *Id.* It is crucial for data-literate educators to teach students how to "understand the importance of data literacy when consuming news media by using critical thinking skills to evaluate information, sources, and reputability." See, e.g., Berkley School of Information, *Strategies for Teaching Data Literacy* (Dec. 13, 2021), <https://ischoolonline.berkeley.edu/blog/strategies-teaching-data-literacy/> (overviewing strategies and methods of teaching data literacy).

of *Dobbs* and subsequent state law changes on physicians' practices. It investigates how the fear of legal entanglement can cause physicians to avoid providing any care that may be associated with abortion, regardless of whether that care is actually legally proscribed. Michelle Oberman and Lisa Soleymani Lehmann conducted a series of semi-structured hour-long interviews with twenty-five doctors in a range of practice areas and a diversity of practice settings, all of whom practiced medicine in a state where the provision of abortion was criminalized.¹⁰⁰ Through their research, Oberman and Lehmann explored these physicians' potential hesitation to share abortion information despite the provision of such information being central to sound ethical and clinical practice.¹⁰¹ Erika Sabbath et al. conducted a separate qualitative study describing the experiences of fifty-four obstetrician-gynecologists (OB-GYNs) practicing under abortion bans in thirteen states and measuring their perceptions of clinical and personal impacts of the abortion bans.¹⁰² That research revealed a range of perceived impacts among the OB-GYNs interviewed for the study, including distress at having to delay essential patient care, fears of legal ramifications, planned or actual attrition to states with stronger abortion protections, and negative mental health effects for the physicians, including symptoms of anxiety and depression.¹⁰³ Finally, Brittini Frederiksen et al. conducted a nationally representative survey of office-based OB-GYNs in Spring 2023, examining the provision of sexual and reproductive health care provided by OB-GYNs before and after the *Dobbs* decision and comparing the experiences of OB-GYNs based on the level of abortion restrictions or protections in place in their state of practice.¹⁰⁴ Key post-*Dobbs* findings from this study included physicians experiencing increased constraints on the care they could provide, lessened decision-making autonomy, and increased concern

100. See Michelle Oberman & Lisa Soleymani Lehmann *Doctors' Duty to Provide Abortion Information* (June 30, 2023), 10 J.L. & BIOSCIENCES 2023 (forthcoming) (manuscript at 4), <https://ssrn.com/abstract=4430194>.

101. *Id.* at 4, 7.

102. Erika Sabbath et al., *US Obstetrician-Gynecologists' Perceived Impacts of Post-Dobbs v Jackson State Abortion Bans*, JAMA NETWORK OPEN (Jan. 17, 2024), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2814017#:~:text=Findings%20in%20this%20qualitative%20study,and%20planned%20or%20actual%20attrition> (describing the impact that state abortion bans have on OB-GYNs and the implications for patient outcomes and the sustainability of the OB-GYNs workforce).

103. *Id.*

104. Brittini Frederiksen et al., *A National Survey of OBGYNs' Experiences After Dobbs*, KAISER FAM. FOUND. 3 (June 21, 2023), <https://www.kff.org/womens-health-policy/report/a-national-survey-of-obgyns-experiences-after-dobbs/> (describing findings of constraints on care, worsening decision-making autonomy, concern about legal risks, differences in the provision of abortion services, and increased demand for contraception).

about legal risks, as well as differences in the provision of abortion services and increased demand for contraception.¹⁰⁵

Beyond affecting provider practices, the *Dobbs* decision has also negatively impacted the geographic availability of physicians, consequently reducing access to appropriate care for a range of reproductive needs beyond abortion. Sarah Thomas et al. discuss the potential impact *Dobbs* is likely to have on the successful recruitment and retention of new physicians, noting that “[a]bortion bans could affect the recruitment process at multiple points during a person’s journey through the higher education system,” including during the college and medical school application process, as well as when choosing a residency program.¹⁰⁶ Kendal Orgera et al. explored the impact of *Dobbs* on medical residency applications to programs located in states where abortion was banned, in states with gestational limits on abortion, and in states where abortion was legal.¹⁰⁷ The authors’ preliminary examination of Electronic Residency Application Service® data from the 2022-2023 application cycle “suggest[ed] that restrictions on women’s health care may disproportionately decrease the likelihood that [medical school graduates] will apply for residencies in states with the most restrictive practice environments, although the effect is small.”¹⁰⁸ They also examined the change in the number of applicants to specialties whose patients were most likely to be affected by the *Dobbs* decision and found that “[t]he largest drop in unique applicants across all states was seen in emergency medicine (-21.4%; -376 applicants);” a similar but smaller drop was seen in OB-GYN (-5.2%; -73 applicants).¹⁰⁹

105. *Id.* at 3–4.

106. See Sarah Thomas et al., *Recruiting and Retention of Physicians after Dobbs v. Jackson – The Worst is Yet to Come*, 97 CLINICAL IMAGING 68, 68 (2023).

107. See Kendal Orgera et al., *Training Location Preferences of U.S. Medical School Graduates Post Dobbs v. Jackson Women’s Health*, AAMC RSCH. AND ACTION INST. (Apr. 13, 2023), <https://www.aamcresearchinstitute.org/our-work/data-snapshot/training-location-preferences-us-medical-school-graduates-post-dobbs-v-jackson-women-s-health>.

108. *Id.* at 3. This small effect could grow as views on abortions change among the younger generation of Gen Z individuals, who have different views on abortion, begin entering the medical school and residency applicant pool. As of 2024, Gen Z ranges from age twelve to twenty-seven. See *Generations Defined by Name, Birth Year, and Ages in 2024*, BERESFORD RESEARCH, <https://www.beresfordresearch.com/age-range-by-generation/> (last visited Apr. 27, 2024). Gen Z voters increasingly see more links between abortion and other voting issues, like sexism and racism, and are more likely than other voting age groups to believe abortion should be legal. See Monica Potts & Amelia Thomson-DeVeaux, *How Gen Z Could Transform American Politics*, FIVETHIRTYEIGHT (Dec. 14, 2022), <https://fivethirtyeight.com/features/how-gen-z-could-transform-american-politics/>. Given that most medical students are twenty-eight years old upon graduating, it could be expected that Gen Z’s increasingly accepting views on the legalization of abortion will be better reflected in the upcoming medical school and residency application pools. See also *How Long Does It Take to Become a Doctor*, KAPLAN, <https://www.kaptest.com/study/mcat/how-long-does-it-take-to-become-a-doctor/> (last visited Apr. 27, 2024).

109. Orgera et al., *supra* note 107, at 2.

These findings were consistent with those of Luci Hulsman et al., which utilized a cross-sectional, anonymous survey, taken in the wake of a proposed abortion ban which has since taken effect, to explore Indiana medical students' desire to stay in Indiana.¹¹⁰ Hulsman et al. found that 66.8% of respondents were less likely to pursue residency training in Indiana after the proposed abortion ban, and 70% of respondents were also less likely to pursue residency training in any state with an abortion ban.¹¹¹ Moreover, 52.2% of respondents were less likely to pursue OB-GYN as a specialty after Indiana's proposed abortion ban.¹¹² Hulsman et al. identified six overall themes that emerged from the qualitative comments provided by study participants.¹¹³ These themes focused on the impact of the proposed abortion ban on the quality and access to comprehensive health care, frustration with Indiana's political climate, concern about potential legal ramifications for health care providers, intent to relocate out of Indiana and seek alternative programs, a desire to advocate and fight for change, and personal beliefs and ethical considerations surrounding the sanctity of life.¹¹⁴

Research also indicates difficulties with recruiting physicians in other specialties in states with restrictive abortion laws. Thomas et al. identified added challenges in recruiting and retaining female physicians in radiology—a practice area without a close nexus with obstetrics—in states with abortion bans because female physicians, who already experience more pregnancy complications than the general population, are likely to be affected by family planning in states with abortion bans.¹¹⁵ Ariela Marshall et al. raised similar gender equity concerns for the specialty of hematology, which the authors noted is a field that already faces substantial workforce shortages and cannot afford negative recruitment and retention outcomes for female physicians.¹¹⁶ Thomas et al. also stepped beyond the gender equity focus, noting many physicians want to settle in a state that is hospitable to childrearing, which will create an additional challenge for recruiting faculty or private practice partners in states with abortion bans.¹¹⁷

110. See Luci Hulsman et al., *Impact of the Dobbs v Jackson Women's Health Organization Decision on Retention of Indiana Medical Students for Residency*, 5 AM. J. OB. & GYN. MFM, Nov. 2023, at 2 (2023). Hulsman et al. conducted their survey in November 2022, at which time Indiana's abortion ban, Senate Bill 1 (SB 1) was enjoined. See *Planned Parenthood N.W. Haw., Alaska, Ind., Ky. v. Members of the Med. Licensing Bd. of Ind.*, No. 53C06-2208-PL-001756 (Monroe Cnty. Cir. Ct., Sept. 22, 2022). The Indiana Supreme Court vacated that injunction on June 30, 2023. See *Members of the Med. Licensing Bd. of Ind. v. Planned Parenthood N.W. Haw., Alaska, Ind., Ky.*, No. 22S-PL-338 (Ind. Sup. Ct., June 30, 2023).

111. Hulsman et al., *supra* note 110, at 2.

112. *Id.*

113. *Id.*

114. See generally, *id.* at 6–7.

115. See Thomas et al., *supra* note 106, at 68.

116. See Ariela Marshall et al., *Abortion Access and the U.S. Medical Workforce: A Looming Crisis for Haematology*, 9 LANCET HAEMATOLOGY e874, e875 (2022).

117. See Thomas et al., *supra* note 106, at 69.

Turning from *Dobbs*'s impact on physicians to *Dobbs*'s impact on patients, the University of California San Francisco's Advancing New Standards in Reproductive Health launched the Care Post-*Roe* Study on September 29, 2022 "to provide a venue for health care providers to anonymously share information about cases of poor-quality care due to new restrictions on abortion care."¹¹⁸ Between September 29, 2022, and March 30, 2023, the Study received fifty submissions describing detailed cases of patient care that took place in one of fourteen states that banned abortion following *Dobbs* and which deviated from the usual standard of care.¹¹⁹ The cases described in the submissions fell into several categories, including obstetric complications in the second trimester, ectopic pregnancy, underlying medical conditions complicating care, fetal anomalies, early miscarriage, delays in obtaining abortion care, and delays in obtaining care unrelated to abortion.¹²⁰ The preliminary report on these first fifty submissions noted:

The post-*[Dobbs]* laws and their interpretations altered the standard of care across these scenarios in ways that contributed to delays, worsened health outcomes, and increased the cost and logistic complexity of care. In several cases, patients experienced preventable complications, such as severe infection or having the placenta grow deep into the uterine wall and surrounding structures, because clinicians reported their "hands were tied," making it impossible for them to provide treatment sooner . . . Health care providers described feeling moral distress when they were unable to provide evidence-based care, and some reported considering moving their practices to a state where abortion remains legal.¹²¹

Looking to other ways that *Dobbs* was affecting women's health, Daniel Dench et al. provided the first empirical evidence on the extent to which state abortion bans were affecting fertility post-*Dobbs*.¹²² Using newly released CDC provisional state resident birth counts, Dench et al. found that birth rates increased by an average of 2.3% in states with total abortion bans compared to states where abortion remains protected.¹²³ Dench et al. noted that the effects of abortion bans varied across demographic groups and tended to be more

118. DANIEL GROSSMAN ET AL., U.C. SAN FRANCISCO ADVANCING NEW STANDARDS IN REPROD. HEALTH, CARE POST-*ROE*: DOCUMENTING CASES OF POOR-QUALITY CARE SINCE THE *DOBBS* DECISION: PRELIMINARY FINDINGS, MAY 2023, 5 (2023), <https://sites.utexas.edu/txpep/files/2023/05/ANSIRH-Care-Post-Roe-Report-Embargoed-until-15-May-23.pdf> (describing the preliminary findings from 50 submissions to the Care Post-*Roe* Study).

119. *Id.* at 6.

120. *Id.* at 4.

121. *Id.*

122. See Daniel Dench et al., *The Effects of the Dobbs Decision on Fertility*, 3-4 (IZA Discussion Paper, Working Paper No. 16608, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4636864.

123. *Id.* at 15.

significant for younger women and women of color.¹²⁴ Effects were especially large for Hispanic women whose fertility rates¹²⁵ increased by 4.7%, and for women aged 20-24 whose fertility rates increased by 3.3%.¹²⁶ Effects also varied substantially across states with total abortion bans, with much larger effects observed in states that are bordered by other states that also have total abortion bans thus requiring longer travel distances to reach abortion facilities that remain open.¹²⁷ For example, the estimated increases in fertility were larger in states surrounded by other states with abortion bans such as Mississippi (4.4%) and Texas (5.1%), which thus require patients to travel further to access an abortion.¹²⁸

Considering another way that *Dobbs* is affecting women's health, Abigail Aiken et al. assessed changes in telemedicine requests to self-manage abortions with medications before and after the *Dobbs* decision.¹²⁹ Aiken et al. analyzed anonymized requests for medications to the nonprofit Aid Access, which was the only online telemedicine service providing self-managed medication abortion in the United States.¹³⁰ Breaking the requests up into three periods (baseline, post-*Dobbs* leak, post-*Dobbs* formal announcement), and categorizing states by level of abortion ban in place, Aiken et al. examined changes in the requestor's stated reasons for accessing the telemedicine service before and after the *Dobbs* decision was formally announced.¹³¹ They found that "[r]equests for self-managed abortion through online telemedicine increased following *Dobbs*. The largest increases occurred in states that implemented total bans, with requestors frequently citing these bans as their motivation for accessing the service."¹³²

Thus, there is a growing body of research on *Dobbs*' impact on the medical field. From the increasingly negative experiences of medical doctors in navigating their professional obligations to patients while maintaining legal compliance, to the negative impact on the training, recruitment, and retention of doctors in states with abortion bans, the research suggests that *Dobbs* will reduce access to care in these states. Moreover, the evidence on patient outcomes post-*Dobbs* is also concerning, with stories of poor quality of care due to restrictions

124. *Id.*

125. CDC WONDER: Births Data Summary, CDC, <https://wonder.cdc.gov/wonder/help/nativity.html#Fertility-Rates> (last visited Apr. 10, 2024) (defining fertility rates as "the number of births divided by the number of females age 15 - 44 years old in the given year(s).")

126. Dench et al., *supra* note 122, at 4.

127. *Id.* at 15.

128. Dench et al., *supra* note 121, at 4.

129. See Abigail Aiken et al., *Requests for Self-managed Medication Abortion Provided Using Online Telemedicine in 30 US States Before and After the Dobbs v Jackson Women's Health Organization Decision*, 328 JAMA 1768, 1768 (2020).

130. *Id.*

131. *Id.*

132. *Id.* at 1769.

on abortions, greater increases in fertility in states with abortion bans compared to those with protections in place, and greater increases in requests for self-managed abortions through online telemedicine in states that implemented total abortion bans compared to those without.

2. Impact of *Dobbs* on Business and Economics

Other areas of academic study impacted by *Dobbs* are business and economics. The right to abortion impacts a woman's ability to participate in the workforce, particularly for Black women.¹³³ In 2023, Occupational Health Science published a review article containing an anthology in which ten experts in industrial-organizational psychology shared their perspective on the impact of *Dobbs* "on a variety of workplace and work-related processes."¹³⁴ Vanessa Gaskins noted that "[t]he [*Dobbs*] decision [came] at a time when women [were] already facing significant barriers to being able to contribute fully, and be recognized fully, for their contributions at work."¹³⁵ Ho Kwan Cheung, explained how "the stigmatized nature of women's pregnancy [in the workplace] will likely be further exacerbated by the lack of federal protection for the right to abortion" and that "the [*Dobbs*] decision is likely to exacerbate workplace gender disparity in health and career outcomes."¹³⁶ In her contribution, Eden King discussed the intersection between reproductive freedom and income. King described the financial and practical barriers that exist for low-income people who become pregnant in states that ban abortion, including: additional transportation expenses, childcare expenses, medical fees, and lost wages due to taking time away from work.¹³⁷ She noted that low-income people "often have little flexibility in schedules and need to work every day and hour possible to earn enough to cover everyday costs such as food and housing; taking time away from work [to access an abortion] would generate less income at the same time as creating more costs for people who can afford neither."¹³⁸ In turn, these

133. ASHA BANERJEE, ECONOMIC POLICY INSTITUTE, THE ECONOMICS OF ABORTION BANS 1 (Jan. 18, 2023), <https://www.epi.org/publication/economics-of-abortion-bans/>, (discussing a cross-sectional study of state abortion status and economic security which drew upon government data on minimum wage, union estimates, unemployment rates, imprisonment rates, and Medicaid expansion. This study found that "abortion restrictions and bans do have economic effects, given the strong correlation between abortion status and various economic wellbeing metrics. Further, the consistent pattern of state abortion bans and negative economic outcomes shows how abortion fits into an economics and politics of control.")

134. Mindy Bergman et al., *The Dobbs Decision and the Future of Occupational Health in the US*, 7 OCCUPATIONAL HEALTH SCI. 1, 5 (2023).

135. *Id.* at 23.

136. *Id.* at 7.

137. *Id.* at 12.

138. *Id.*

dynamics will exacerbate financial insecurity, particularly for women of color, and “have compounding effects on income inequality.”¹³⁹

Addressing the organizational perspective, Mindy Bergman discussed how organizations would experience increased healthcare costs for women who experience a missed or incomplete miscarriage but are unable to access the appropriate care because of abortion bans, as well as lost days for workers due to care and recovery and rising health insurance costs because employees will need more expensive care.¹⁴⁰ Bergman also addressed how some pregnant employees may be unwilling to travel to states with abortion bans, which has “wide-ranging implications for work location,” including conference travel, traveling between work sites, and accepting short-term or long-term consulting assignments.¹⁴¹ Bergman noted negative impacts on the organization’s abilities “to deploy talent across the organization and . . . to retain top talent who might seek employment elsewhere rather than relocate for a promotion or other developmental opportunity.”¹⁴²

Alexandra Zelin and Corrine Wolfe focused their comments on the link between domestic violence and abortion, and the resulting workplace impact of that domestic violence.¹⁴³ Explaining that domestic violence is often connected to reasons for seeking an abortion and that individuals forced to continue a pregnancy suffer more prolonged domestic violence and are more likely to keep in contact with their abuser, Zelin and Wolfe noted that, “the rates and the extent to which someone experiences [domestic violence] (staying with abuser, exposing children to [domestic violence]), are likely to rise.”¹⁴⁴ Employees experiencing domestic violence impact the workplace financially because of the employee’s associated productivity loss, which can result from the mental and emotional health effects of domestic violence and from the victims needing to miss work due to legal meetings and medical care needs.¹⁴⁵ Tammy Allen added to the productivity loss discussion by noting that “[c]oping with an unintended pregnancy and restricted abortion access demands the use of time and energy resources in the personal domain that may make it difficult to meet work demands.”¹⁴⁶

Thus, the negative impact of *Dobbs* on a woman’s ability to effectively participate in the workforce, particularly women of color and those with greater financial insecurity, as well as the organization’s increased financial burden due

139. Bergman et al., *supra* note 134, at 12.

140. *Id.* at 14.

141. *Id.* at 15.

142. *Id.* 14–15.

143. *Id.* at 16–19.

144. Bergman et al., *supra* note 134, at 17.

145. *Id.* at 17–18.

146. *Id.* at 19.

to the loss of productivity in women who cannot access abortions, are just some of the ways that *Dobbs* is intersecting with the fields of business and economics.

3. Impact of *Dobbs* on Political Science

There is no doubt that the *Dobbs* decision had an immediate impact on the field of political science.¹⁴⁷ Republicans long wanted to overturn *Roe v. Wade* and the abortion issue motivated Republican voters at the ballot box.¹⁴⁸ Conversely, after *Roe* became the law of the land, Democrats were no longer as energized by the abortion issue and Democratic politicians tried to avoid the issue.¹⁴⁹ Following *Dobbs*, that paradigm flipped, with Democrats once again becoming the energized party. This shift is evidenced by election night of 2022, when Michigan voters waited in line for hours to vote on a referendum establishing a state constitutional right to abortion and contraception, some voters waiting until a little after 2:00 a.m. to cast their vote.¹⁵⁰ Labeled “the *Dobbs* effect,” Democrats capitalized on the issue to turn out the Democrat vote and get Democrats elected in races at all levels of government.¹⁵¹ In Michigan, the *Dobbs* effect helped flip both chambers of the Michigan legislature for the first time in forty years and kept incumbent Governor Gretchen Whitmer in her office.¹⁵² Not only did Governor Whitmer beat her GOP opponent by a substantial margin of ten percentage points—her opponent believed the only exception to a ban on abortion should be the life of the mother—but the state referendum was approved by Michigan voters by an even larger margin.¹⁵³

This trend of energizing voters was consistent with the findings of Udi Sommer et al., who examined whether the *Dobbs* decision mobilized women to register to vote in greater numbers.¹⁵⁴ To avoid the potential biases inherent in

147. Tamara Keith, *One Year After the Dobbs Ruling, Abortion Has Changed the Political Landscape*, NPR (June 23, 2023, 5:00AM ET), <https://www.npr.org/2023/06/23/1183830459/one-year-after-the-dobbs-ruling-abortion-has-changed-the-political-landscape> (describing the effect the *Dobbs* decision had in the Michigan 2022 election and considering how it changed things for Republicans heading into the 2024 national election cycle).

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. Keith, *supra* note 147.

153. *Id.* See also *2018 Michigan Election Results*, MICH. DEP’T OF STATE, https://mielections.us/election/results/2018GEN_CENR.html (last updated Nov. 26, 2018) (showing that Governor Whitmer won the 2018 gubernatorial election by a 9.56% margin against GOP candidate Bill Schuette); *2022 Michigan Election Results*, MICH. DEP’T OF STATE, https://mielections.us/election/results/2022GEN_CENR.html#90000001 (last updated Dec. 22, 2022) (showing that Michigan State Proposal 22-3: Constitutional Amendment: Reproductive Freedom for All (Recount) passed by a 13.32% margin).

154. Uli Sommer et al., *The Political Ramifications of Judicial Institutions: Establishing a Link between Dobbs and Gender Disparities in the 2022 Midterms*, 9 *SOCIUS* 1, 2, 12 (2023).

public opinion survey data, Sommer et al. utilized the behavioral measure of registering to vote to determine whether the *Dobbs* decision “was associated with a behavioral response among voters of sufficient proportions to cause political change.”¹⁵⁵ They utilized voter registration data from North Carolina, which had been competitive in the past four presidential elections before 2024 and was “effectively a swing state.”¹⁵⁶ North Carolina was also the only state whose voter registration data was complete enough to provide granular data over time, allowing Sommer et al. to see who had registered to vote several weeks before and several weeks after the *Dobbs* decision, including the period between the leak of the *Dobbs* decision and the official announcement.¹⁵⁷ They found “[t]he overall trend for nearly 300,000 voters in North Carolina indicate[d] that indeed the ruling coincided with the mobilization of women to register to vote,” a trend that was “clear in the state overall at the level of individual registrants as well as aggregately at the county level and in the state as a whole.”¹⁵⁸

Growing research in political science considers whether the *Dobbs* ruling lessened the Supreme Court’s legitimacy. James Gibson explored this question on the basis that the Supreme Court is an American democratic institution, and “[a]ccording to cultural theories of democracy, the views of ordinary people . . . are crucial to the survival of democratic institutions” (also known as “sociological legitimacy”).¹⁵⁹ Using pre- and post-*Dobbs* representative national surveys, Gibson analyzed how support for the Supreme Court changed between July 2020 and July 2022.¹⁶⁰ Gibson found “that *Dobbs* produced a sizeable dent in institutional support, perhaps an unprecedented dent, in part because abortion attitudes for many are infused with moral content and in part owing to the Court’s substantial tilt to the right since 2020.”¹⁶¹ Matthew Levendusky et al. extended this line of research by analyzing two different data sources (a short-term panel study conducted between 2020 to 2023 and eighteen surveys conducted over nearly two decades) to assess how much *Dobbs* affected Supreme Court trust, approval, legitimacy, and public support for reform.¹⁶² Levendusky et al. analyzed eight waves of the Annenberg Institutions of Democracy panel study, allowing them to compare responses at time points both before and after the *Dobbs* leak and the *Dobbs* decision on Supreme Court

155. *Id.*

156. *Id.* at 4.

157. *Id.*

158. *Id.* at 12.

159. See James Gibson, *Losing Legitimacy: The Challenges of the Dobbs Ruling to Conventional Legitimacy Theory*, AM. J. POL. SCI. 1, 2 (2023).

160. *Id.* at 4–5.

161. *Id.* at 1.

162. See Matthew Levendusky et al., *Has the Supreme Court Become Just Another Political Branch? Public Perceptions of Court Approval and Legitimacy in a Post-Dobbs World*, 10 SCI. ADVANCES 1, 1 (2024).

favorability and legitimacy.¹⁶³ The researchers analyzed eighteen nationally representative surveys tracking perceptions of the Court's legitimacy since 2005, allowing them to situate their short-term findings in a broader, decades-long context.¹⁶⁴ Levendusky et al. determined that the Court's sharp turn to the right in recent years had polarized its public approval and legitimacy, with partisanship turning from a weak predictor of the Court's approval and legitimacy to a strong one.¹⁶⁵ Similar to Gibson's findings, Levendusky et al. concluded "that *Dobbs*, and the broader set of decisions in the 2021–2022 term, fundamentally undercut the Court's reservoir of legitimacy, polarized views of the Court along partisan lines, and increased support for reforming the Court"—not just in the short term, but in a way that has persisted ever since.¹⁶⁶

Turning to the final piece of political science research this Article will highlight, Laura Elder et al. studied post-*Dobbs* survey data from a nationally representative sample to understand public opinion on abortion limits, how political messaging about gestational limits on abortion influences support, and how the amount of knowledge about pregnancy correlates with attitudes toward abortion.¹⁶⁷ By collecting post-*Dobbs* survey data, Elder et al. were able to align their survey questions with the contemporary abortion restriction proposals centering on the gestational age at which abortion should be banned.¹⁶⁸ They found that post-*Dobbs* Americans did not see a meaningful difference between a six-week and twelve-week gestational limit on abortion, that political messaging framed as either supporting or opposing a right to abortion shifted public opinion towards political candidates that were aligned with that viewpoint, and that more knowledge about pregnancy is associated with more attitudes that supported access to an abortion.¹⁶⁹

While the articles discussed in the above sections provide concrete examples of the many ways that the *Dobbs* decision impacts work done in the fields of medicine, business and economics, and political science, professors may also utilize this exercise to highlight articles from additional disciplines in which they, or other colleagues at the law school, conduct cross-disciplinary research. In doing so, professors could reinforce the students' understanding of the

163. *Id.* at 4.

164. *Id.* at 7–8.

165. *Id.* at 10.

166. *Id.*

167. See LAUREL ELDER ET AL., PUBLIC OPINION ON ABORTION IN POST-*ROE* AMERICA 3 (Southern Political Science Association Conference, 2024), https://www.researchgate.net/publication/377438841_SPSA2024ElderGreeneLizotte. For a shorter reading assignment, professors may consider assigning Matt Shipman, *Study: The More People Know About Pregnancy, the More Likely They Are to Support Access to Abortion*, NC STATE NEWS (Jan. 24, 2024), <https://news.ncsu.edu/2024/01/post-dobbs-attitudes-on-abortion-laws/>.

168. ELDER ET AL., *supra* note 167, at 2; Shipman, *supra* note 167.

169. ELDER ET AL., *supra* note 167, at 3; Shipman, *supra* note 167.

intersection between the study and practice of law and the research and methods used by other disciplines. Further, by highlighting cross-disciplinary research conducted by faculty within the student's own institution, professors would be modeling the type of cross-disciplinary inquiry they seek to develop within their students.

IV. CONCLUSION

When a constitutional law professor waits to cover *Dobbs* until the substantive due process section of their Constitutional Law course, they miss an opportunity to engage with their students and collectively take a step back to observe how the concept of federalism is playing out every day throughout the United States—through legislation, executive orders, state constitutional amendments, and more. This Article makes unique contributions at the intersection of law school pedagogy and constitutional law by presenting several ways that professors can utilize a variety of resources to enhance their students' understanding of the concept of federalism. The recommendations made herein offer a launching point for improving the accessibility of the constitutional law classroom using:

- (1) Visual aids, such as interactive maps reflecting the level of abortion restriction or protection in each state, to support visual learners in understanding how federalism plays out when the matter of abortion access is left to the states to decide.
- (2) In-class, hands-on exercises that require students to use the interactive resources mentioned above to determine the level of abortion restrictions or protections in a set group of states and then describe, in writing, the differences they identify between the states. Then, encourage students to conclude with a short explanation of one positive aspect and one negative aspect of federalism as it relates to the right to abortion post-*Dobbs*. Professor feedback on this assignment would make the learning experience even more meaningful for the student's critical thinking, media literacy, research, and writing skill development.
- (3) Post-class multimedia news stories that connect the larger scale data students explored in earlier exercises to the individuals actually affected by abortion restrictions, thus engaging students in a more extensive learning experience that can lead to a deeper level of critical thinking and understanding of the concept of federalism.

By providing this contemporary example of federalism to students, constitutional law professors can provide context to an otherwise obscure and complicated topic within the study of constitutional law, making their coverage of federalism more accessible to *all* students.

Additionally, this Article presents exercises that constitutional law professors can utilize to engage their students in a more meaningful and active

manner by providing students with opportunities to observe how other academic disciplines are responding to the *Dobbs* decision. These exercises include:

- (1) Select a set of articles from different academic disciplines (such as medicine, business, economics, and/or political science) that consider the impact of *Dobbs* on those disciplines and assign those articles for students to read or assess.
- (2) Assign students the task of locating a certain number of articles from other disciplines that consider the impact of *Dobbs* on those disciplines, thus creating an opportunity for students to become more familiar with the research tools and methods utilized by other disciplines.
- (3) Provide a list of guided reading questions for students to answer as they complete the assignment to ensure that students actively engage with the assigned articles.

Regardless of which exercise—or set of exercises—a professor uses, this Article suggests multiple ways in which a professor can incorporate student answers into the class discussion, whether that be in class or via a discussion board in an online class. By encouraging students to explore these cross-disciplinary connections through different modalities, constitutional law professors can support their students in developing critical thinking skills that will support their greater understanding of the intersections between the legal profession and other areas of academic pursuit.