

**POLI 104G SUMMER 2018 DRAFT SYLLABUS
ELECTION LAW, SPECIAL SEMINAR EDITION**

MTWTh 12:30-1:50 WLH 2208 (Note—no class Tuesday, August 14)

FINAL TAKE HOME—Due Friday, September 7, Noon

Note: changes may be made to this syllabus throughout the quarter. You are responsible for any changes mentioned in class, even if you are absent. They will be posted on the class TritonEd page.

Instructor: Peter Galderisi, SSB 449

Office Hours: TTh 2-3:30 no Th, week 1

Email: pgalderisi@ucsd.edu

Please feel free to email me with questions/concerns at any time. I generally read my emails each morning and early evening until 6 PM (Saturdays excluded).

The study of election law has grown rapidly in the last half century. Although originally limited mainly to state constitutional and legislative provisions, federal legislative mandates, presidential orders, and court decisions, as well as modernizing technology, have expanded the study of election law increasingly into issues of equal voting rights, vote dilution, election administration (including ballot forms and ballot counting), nomination rules, party autonomy, redistricting and campaign finances. All we be covered in this class.

Much of this class will be comprised of the study of these laws and court decisions that sustain or override them. We will also, however, read several academic research essays that place these decisions within historical context and discuss their political aftermath.

You will be required in this class to wade your way through court cases. This is not as easy as reading an academic article, but it will provide you a skill set that will help if you intend to pursue a degree in law, paralegal studies or the like. Please be prepared. If you don't intend to participate fully and keep up with the readings on a timely basis, I advise that you drop this class.

REQUIREMENTS:

A. **Attendance**--in both body and mind. Please don't ask me if it's OK to take a week off for a family vacation.

B. **Readings**--should be completed *before* class discussion (a prerequisite for the second condition in A). Of course, I couldn't enforce that rule on the first day or two. A tentative schedule of readings begins on the back pages of this handout. I'll mention the readings required each class as the lectures progress and post them on the "**To Do**" module on the class's TritonEd page.

With a few optional exceptions, all readings are online. They are available through three different sources:

1. A direct url hyperlink link to a court case, journal essay, or web page
2. Available online directly or through the UCSD library server (access on campus or at home through a proxy server or VPN. Instructions for each can be found at:
<http://blink.ucsd.edu/technology/network/connections/off-campus/>
3. There are several ways (library server) to access cases. Ms. Annelise Sklar, Social Science Research Librarian Extraordinaire (yes, her official title) has put together a very helpful guide to seeking out cases through either *Westlaw Next* or *Lexis-Nexis Academic*.
<http://ucsd.libguides.com/c.php?g=148169&p=971874>

One other service, found on www.law.cornell.edu, gives probably the cleanest results, but only includes U.S. Supreme Court cases/federal laws, etc. and searching isn't always straightforward.

You should read more than just the "synopsis." Read through most of the main decision and at least one dissent (if it exists).

C. **Exam (50%)**—With your approval, I would like to remove the midterm exam. You will have a final, take home exam where you will discuss several cases using a theme or themes that I suggest. I will provide you with written guidance to help you with assessing the cases. The final must be submitted through the TritonEd facility's TurnItIn drop box by Friday, September 7, Noon.

(Please note: any requests to review exam grades must be made in writing (typed) with a full and detailed justification for the request.)

D. **Presentation (50%)**—Each of you will be assigned a series of cases to discuss, based upon your preference schedule that you submit. You will have a rubric to guide you in laying out your presentation. PowerPoints or some similar presentation program must be used.

POLICY ON CHEATING and PLAGIARISM

Failure--no exceptions.

“Cheating” includes copying from someone during the in-class exam *or* the take home final. You can help each other with general questions about basic concepts, facts, readings, lectures, citation style, etc. In fact, I strongly suggest you do so on a regular basis. On the other hand, collaborating on the final essay, either in preparation or final production, is *strictly* forbidden.

“Plagiarism” is the intentional use of another’s words (by direct transcription) or ideas (by paraphrasing) without attribution. University prohibitions against plagiarism are rather clear.

If you are not sure about what qualifies as cheating or plagiarism, please ask me to clarify and/or review the university policy:

<http://academicintegrity.ucsd.edu/excel-integrity/define-cheating/index.html>

INCOMPLETES

The university grants me precious little discretion here. To qualify for an incomplete, I must demonstrate that you have been doing passable work (so you must have taken at least one exam and passed it) and you must demonstrate a reason for requesting an incomplete that conforms to university guidelines (documented illness, death or emergency in the family, unexpected military deployment, etc.). Again, the university makes this decision—not me nor Mr. Bredell.

OSD ACCOMMODATIONS

As per University and Federal regulations, all accommodation requests made through OSD certification will be honored. Please remind the professor one week before any quiz or exam date.

“SPECIAL” REQUESTS:

Most of you know that I am already fairly generous with grades. Please do not ask me to change grades because you “need them” to:

- maintain a scholarship
- retain your enrollment at the university
- impress your parents
- get into Harvard Law School.
- just because you would like it (believe it or not, that is becoming more common!)

You will be graded on the merits of your work, not on your needs or desires.

TENTATIVE OUTLINE OF READINGS (Weeks are approximate)

Day 1: Class introduction/How to do legal research

Week 1: The Study of Election Law—the Basics

- *U.S. Constitution*, Article 1 Sections 2 & 4; Amendments 14, 15, 17, 19, 22, 23, 24, 26

Basics—Who Qualifies to Run (Citizenship and Terms)?

- *U.S. v. Wong Kim Ark*: 169 U.S. 649, 18 S. Ct. 456 (1898)
- *Ankeny v. Daniels*: 916 N.E.2d 678 (Indiana Ct. App. 2009)
- *U.S. Term Limits, Inc. v. Thornton*: 514 U.S. 779 (1995)

Week 1-2: Who Qualifies to Vote?—the Franchise, Registration Rules and General Elections

Optional: J. Morgan Kousser, “Suffrage” in *Encyclopedia of American Political History*, v3 (reserves)

- *Skaft v. Rorex*: 553 P.2d 830 (Colo. 1976)
 - *Kramer v. Union Free School District No. 15*: 395 U.S. 621 (1969)
 - *Dunn v. Blumstein*: 405 U.S. 330 (1972)
 - *Richardson v. Ramirez*: 418 U.S. 24 (1974)
 - *Crawford v. Marion County*: 553 U.S. 181 (2008)
 - *Veasy v. Perry*: 71 F.Supp.3d 627 (2014) to *Veasy v. Abbott*: 830 F.3d 216 (2016)
 - *Husted v. A. Philip Randolph Institute*: 584 U.S. ___ (2018)
 - Haznal et al. (2016), “Voter Identification Laws and the Suppression of Minority Votes,” *The Journal of Politics*, volume 79, number 2. Published online January 5, 2017
<http://www.journals.uchicago.edu/doi/pdfplus/10.1086/688343>
 - Alvarez and Hall (2009), “Resolving voter registration problems,” Caltech/MIT Voting Technology Project
<http://vote.caltech.edu/working-papers/87>
- Optional*: Shaw et al. (2015), “A Brief Yet Practical Guide to Reforming U.S. Voter Registration Systems,” *Election Law Journal*, vol. 14, No 1: 26-31
- J. Bryan Cole (2016), “Does Same Day Registration Lead to Repeat Customers at the Ballot Box?” *Election Law Journal*, vol. 15, No 4: 271-284
<http://online.liebertpub.com/doi/pdfplus/10.1089/elj.2015.0350>

Week 2: How are votes counted?

- *Bush v. Gore*: 531 U.S. 98 (2000)
- *Coleman v. Franken*: 767 N.W.2d 453 (Minn. 2009)

Optional: Caltech/MIT Voting Technology Project, “Voting: What Has Changed, What Hasn't, & What Needs Improvement” (2012--not as large as it seems)

- <https://people.csail.mit.edu/rivest/pubs/AKSRx12.pdf>
- Steven Huefner (2007), “Remedying Election Wrongs,” 44 *Harvard Journal of Legislation* 265
<http://www.electionlawissues.org/Resources/~/media/Microsites/Files/election/huefner.pdf>
- Charles Stewart III (2011), “Voting Technologies,” *Annual Review of Political Science* Vol. 14: 353-378
<http://www.annualreviews.org/doi/pdf/10.1146/annurev.polisci.12.053007.145205>

Week 3: Party Independence and Primary Elections

- Marni Ezra, "Nomination politics: primary laws and party rules" in *Guide to Political Campaigns in America*, Herrnson, ed., CQ Press, 2005.
<http://sk.sagepub.com/cqpress/guide-to-political-campaigns-in-america/n5.xml>
- *Democratic Party v. Wisconsin ex rel. La Follette*, 450 U.S. 107 (1981)
- *Tashjian v. Republican Party of CT*, 479 U.S. 208 (1986)
- *Smith v. Allwright*, 321 U.S. 649 (1944)
- *Eu v. San Francisco County Democratic Central Committee*, 48 U.S. 214 (1989)
- *Foster v. Love*, 522 U.S. 67 (1997)
- *California Democratic Party v. Jones*, 530 U.S. 567 (2000)
- Congressional and Presidential Primaries: Open, Closed, Semi-Closed, and "Top Two"
<http://www.fairvote.org/congressional-and-presidential-primaries-open-closed-semi-closed-and-top-two#.UXMJAbWG3h4>
- cases/readings on California's new "top-two" primary debacle, eh, system
- current controversies

Week 3-4: Apportionment and Redistricting

On apportionment:

- *Colegrove v. Green*, 328 U.S. 549 (1946)--(make sure to read dissent)
- *Baker v. Carr*, 369 U.S. 186 (1962)
- *Reynolds v. Sims*, 377 U.S. 533 (1964)

Redistricting Guidelines-Geography

- Brennan Center for Justice (2010 update), *A Citizen's Guide to Redistricting*, pp. 16-17, 20-28, 40-42, 44-45, 50-56

http://www.brennancenter.org/sites/default/files/legacy/Democracy/CitizensGuidetoRedistricting_2010.pdf

Redistricting Guidelines-Party

- Brennan Center for Justice (2010 update), *A Citizen's Guide to Redistricting*, pp. 57-65
- *Davis v. Bandemer*, 478 U.S. 109 (1986)
- *Vieth v. Jubelirer*, 541 U.S. 267 (2004)
- Recent cases on Pennsylvania, Michigan and Maryland gerrymanders
- Chen and Row (2013), "Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures," *Quarterly Journal of Political Science*, vol. 8, No 3: 239-269.
<http://www.nowpublishers.com/article/Details/QJPS-12033>
- *Optional*: Jowei Chen (2017), "The Impact of Political Geography on Wisconsin Redistricting: An Analysis of Wisconsin's Act 43 Assembly Districting Plan,"
Election Law Journal, vol. 16, No 4: 443-452 <http://online.liebertpub.com/doi/pdfplus/10.1089/elj.2017.0455>
- Theodore S. Arrington (2016), "A Practical Procedure for Detecting a Partisan Gerrymander,"
Election Law Journal, vol. 15, No 4: 385-402 <http://online.liebertpub.com/doi/pdfplus/10.1089/elj.2016.0383>
- California's tortured redistricting history materials (perhaps)

Week 4: The Voting Rights Act and Its Amendments

- *South Carolina v. Katzenbach*, 383 U.S. 301 (1966)
Note: the full text of the Voting Rights Act is appended to the decision. The majority decision not only speaks to the facts of the case, but also the history behind the VRA.
- *Allen v. State Board of Elections*, 393 U.S. 544 (1969)
- *Beer v. U.S.*, 425 U.S. 130 (1976)
- *Shelby County v. Holder*, 570 U.S. 2 (2013) or 133 S.Ct. 2612

Redistricting Guidelines-Race

- Brennan Center for Justice (2010 update), *A Citizen's Guide to Redistricting*, pp. 46-49
- *Gomillion v. Lightfoot*, 364 U.S. 339 (1960)
- *City of Mobile v. Bolden*, 446 U.S. 55 (1980)
- *Thornburg v. Gingles*, 478 U.S. 30 (1986)
- *Shaw v. Reno*, 509 U.S. 630 (1993)
- *Hunt v. Cromartie*, 526 U.S. 541 (2001)
- *Georgia v. Ashcroft*, 539 U.S. 461 (2003)
- Latest North Carolina redistricting case

Week 5: Campaign Finance

- *Guide to U.S. Elections*, 6th ed., vol. 1, Chapter 3 (through library server—CQ Electronic Library).
 - *Buckley v. Valeo* 424 U.S. 1 (1976)
 - *FEC v. NCPAC* 470 U.S. 480 (1985)
 - *McConnell v. Federal Election Commission* 540 U.S. 93 (2003)
 - *FEC v. WI Right to Life* 551 U.S. 449 (2007)
 - *Citizens United v FEC* 558 U.S. 310 (2010)
 - *McCutcheon v. FEC* 572 U.S. ____ (2014)
- Donald B. Tobin (2011), "Campaign Disclosure and Tax-Exempt Entities: A Quick Repair to the Regulatory Plumbing," *Election Law Journal*, vol. 10, No 4: 427-448.
<http://online.liebertpub.com/doi/pdfplus/10.1089/elj.2011.0118>
- Adam Lioz (2017), "Limiting the Limits: Principles to Protect Free Expression While Fighting the Power of Big Money in Politics," *Election Law Journal*, vol. 16, No 1: 57-74.
<http://online.liebertpub.com/doi/pdfplus/10.1089/elj.2016.0400>
- Allegra Chapman (2017), "Is the Supreme Court at Odds with Itself When It Comes to Democracy? A Look at the Disparities Between *Crawford* and *Citizens United*," *Election Law Journal*, vol. 16, No 1: 142-152.
<http://online.liebertpub.com/doi/pdfplus/10.1089/elj.2016.0409>

You might also want to look up the following tax codes:

501c(3) and 501(c)4, 527

opensecrets.org is a good quick source that one can read without an accountancy/tax law degree