

**POLI 104G
ELECTION LAW
Winter 2022**

FINAL –Due Tuesday, March 15, by 3:30

Note: changes will be made to this syllabus throughout the quarter (new cases and analyses come up all the time, especially this year). You are responsible for any changes mentioned in lecture. Announcements of changes will also be posted as necessary.

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The study of election law has grown rapidly in the last half century and has certainly been a topic of recent discussion. Although originally limited mainly to state constitutional and legislative provisions, federal legislative mandates and court decisions, as well as modernizing technology, have expanded the study of election law increasingly into issues of 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 one short book and several academic research essays that place these decisions within historical and theoretical 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. Consequently, I will often, as in law school, ask students to discuss a particular case. Please be prepared.

REQUIREMENTS:

A. **Attendance**—although I don't take attendance, attendance is strongly suggested. These are difficult topics and even more difficult cases to understand.

B. **Readings**--should be completed *before* class discussion. Of course, I can'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 '**UP NEXT**' section of the class Home Page.

Here is a brief rundown of what is required:

- David Schultz, *Election Law and Democratic Theory*
- With a few optional exceptions, all other 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 VPN. Instructions can be found at:
<http://blink.ucsd.edu/technology/network/connections/off-campus/>

NOTE: NEVER pay for any of these online sources. If the site is requesting payment, you aren't linked through the library's VPN.

3. There are several ways (library server) to access cases. Ms. Annelise Sklar, Social Science Research Librarian Extraordinaire (yes, an official title), has put together a very helpful guide to seeking out cases through either *Westlaw Next* or *Lexis-Nexis Academic*. You will be able to review it by week's end by clicking on 'Library Resources' to the left of the class Home Page.

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" or "syllabus." Read through most of the main decision and at least one dissent (if it exists).

C. **Exams**—One 90 minute exam (in-class, Thursday, Feb. 10) and one final take home exam. You will be given a study guide one week before each. The midterm is worth 30-40% of your course grade, final=60-70%. The final will be take-home with a TurnItIn submission due by **Tuesday, March 15, by 3:30**.

Please note:

- In accordance with university policy, any requests for a makeup must be accompanied by documentation. Makeups will only be granted for university-sanctioned reasons (documented illness, death or emergency in the family, unexpected military deployment, etc.).
- Any requests to review exam grades must be made in writing (typed) with a full and detailed justification for the request.

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 us 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 the midterm 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 the TAs.

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 exam date.

“SPECIAL” REQUESTS:

Most of you know that I am already fairly generous with grades (my TAs often more so). 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.

TENTATIVE OUTLINE OF READINGS (Weeks are approximate)

Week 0: Class introduction/How to do legal research

Week 1: The Study of Election Law—the Basics

- Schultz, Introduction, Chapters 1-2
- *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)

Weeks 2-3: Who Qualifies to Vote?—the Franchise, Registration Rules and General Elections

- Schultz, Chapter 3
- Optional*: J. Morgan Kousser, “Suffrage” in *Encyclopedia of American Political History*, v3
- *Skafta 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*: 138 S.Ct. 1833 or 584 U.S. ___ (2018)
- *Brnovich v. Democratic National Committee* 141 S. Ct. 2321 (2021)
- Hajnal 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>
- Cantoni and Pons (2019), “Strict voter ID laws don’t stop voters,” *NBER Working Paper Series*
<https://www.nber.org/papers/w25522.pdf>
- 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
<https://www.liebertpub.com/doi/10.1089/elj.2014.0273>

Optional: 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>

Weeks 3-4: 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 5: Party Independence and Primary Elections

- Schultz, Chapter 6
- 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)
- *Eu v. San Francisco County Democratic Central Committee*, 48 U.S. 214 (1989)
- *Washington State Grange v. Washington State Republican Party* 552 U.S. 442 (2008)
- *California Democratic Party v. Jones*, 530 U.S. 567 (2000)
- *Foster v. Love*, 522 U.S. 67 (1997)

- Congressional and Presidential Primaries: Open, Closed, Semi-Closed, and "Top Two"
<https://www.ncsl.org/research/elections-and-campaigns/primaries-more-than-one-way-to-find-a-party-nominee.aspx>
<http://www.fairvote.org/congressional-and-presidential-primaries-open-closed-semi-closed-and-top-two#.UXMJABWG3h4>

- *Smith v. Allwright*, 321 U.S. 649 (1944)

MIDTERM (in-class): Thursday, February 10

Weeks 6-7: Apportionment and Redistricting

On apportionment:

- Schultz, Chapter 5, up to 'Partisan Gerrymandering'
- *Colegrove v. Green*, 328 U.S. 549 (1946)--(make sure to read dissent)
- *Baker v. Carr*, 369 U.S. 186 (1962)
- *Wesberry v. Sanders*, 376 U.S. 1 (1964)
- *Reynolds v. Sims* 377 U.S. 533 (1964)
- *Kirkpatrick v. Pressler*, 394 U.S. 526 (1969)-lecture
- *Gaffney v. Cummings* (1973)-lecture
- *Evenwel v. Abbott*, 578 U.S. 54 (2016) or 136 S. Ct. 1120 (2016)

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

- Schultz, Chapter 5, 'Partisan Gerrymandering' to 'Defining the First Amendment Harm'
- 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)
- *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006)
- *Rucho et al vs Common Cause et al. and Lamone et al v Benisek et al.* (2019)
- *League of Women Voters of Penn. v. Commonwealth* No. 261 M.D. (2017)—lecture
- *Arizona State Legislature v. Arizona Independent Redistricting Commission* 576 U.S. 787 (2015), 135 S. Ct. 2652 (2015)

- 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>
- 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>
- California's tortured redistricting history materials (perhaps)

Week 8-9: 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
- latest SCOTUS decisions on current wave of cases—does the VRA still exist?

Redistricting Guidelines-Race

- Schultz, Chapter 4, Chapter 5-remainder
- 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)
- *Cooper v. Harris*, 581 U.S. ____ (2017)

These are good examples, using different citation styles, of writing for a law and politics journal:

- David Canon (2008), "Renewing the Voting Rights Act: Retrogression, Influence, and the 'Georgia v. Ashcroft Fix,'" *Election Law Journal*, Vol. 7, No. 1: 3-24
<http://online.liebertpub.com/doi/pdfplus/10.1089/elj.2008.7102>
- Or
- Bernard Grofman, (2006), Operationalizing the Section 5 Retrogression Standard of the Voting Rights Act in the Light of Georgia v. Ashcroft: Social Science Perspectives on Minority Influence, Opportunity and Control," *Election Law Journal*, Vol. 5, No. 3: 250-282
<http://online.liebertpub.com/doi/pdfplus/10.1089/elj.2006.5.250>

Weeks 9-10: Campaign Finance

- Schultz, Chapter 7, Conclusion
- *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* 572 572 U.S. 185 (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

FINAL: TAKE-HOME DUE by Tuesday, March 15, by 3:30 (TurnItIn)