

Election Law

LAW 7703.01

Professor Douglas Spencer
University of Connecticut

Spring 2015

Class

Knight 205
Tuesdays 10:30a - 12:30p

Contact

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Office Hours: Thursdays 10-11a (4-6pm)

Course Description

This course introduces some of the central issues in the law governing the democratic process in the United States. It will cover, first, the development and nature of the right to vote under the U.S. Constitution, including limits on the franchise; second, the relationship between majority rule and minority representation, as reflected in the 15th Amendment to the U.S. Constitution and the federal Voting Rights Act; third, thorny questions about equality in the administration of elections; and fourth, the constitutional fault lines of campaign finance regulation.

The next few months will be very interesting for election lawyers and I may diverge from the syllabus from time to time to respond to developments in current cases. For example:

- *Williams-Yulee v. Florida Bar*. Oral arguments at SCOTUS on January 20 challenging a rule preventing candidates for judicial office from personally soliciting campaign contributions.
- *Ariz. State Legislature v. Ariz. Indep. Redistricting Commission*. Oral arguments at SCOTUS in March whether independent redistricting commissions are constitutional.
- *League of Women Voters of North Carolina v. Howard*. Pending federal litigation in North Carolina. Does the reduction in early voting days, loss of same-day registration, and elimination of out-of-precinct provisional voting opportunities violate the Fourteenth Amendment?
- *Perez v. Texas*. Pending federal litigation in Texas. Does Texas' redistricting plan violate the Constitution because it does not make a good faith effort to maintain population equality and treats inmates as residents of the counties in which they are incarcerated?

The law of the political process is a challenging and exciting area of law. The cases we will read are anything but tidy—we are dealing with an area of law that, doctrinally, is very unsettled. The seminar will teach the close reading of appellate opinions and the formulation of arguments during periods of legal change. This course will be fun as well as challenging, and it should serve you well if you're interested in a career in politics—be it at the local, state, or national level—or as a lawyer for advocacy groups, political parties, or candidates for elected office.

There is no formal prerequisite for this course, but I strongly advise that you not take this course unless you have taken Intro. to Constitutional Law.

Required text

JAMES GARDNER & GUY CHARLES, *ELECTION LAW IN THE AMERICAN POLITICAL SYSTEM* (Aspen Casebook Series) (2012).

Additional readings for the course will be posted to TWEN throughout the semester.

Grading

Your grade in this class will be based on three factors:

1. Class Participation (60%)

Regular attendance and class participation are required. Each student should participate during every class, though the quality of your participation matters much more than the quantity. Note that some weeks involve heavy reading. You are responsible to know *something* about every case or article that we read, but I don't necessarily expect you to read every word. I will trust your judgment. Also, I appreciate that because of other pressures in your lives complete preparation may not be possible for every class. If you are not ready to respond on a particular day, simply let me know by e-mail, or a note before class, and I will not call on you that day.

2. Legal Complaint (20%)

For this assignment you will assume the role of Attorney at the Federal Election Commission (FEC). You will draft a complaint to the District Court for D.C. seeking declaratory and injunctive relief against a group or individual that has acted in violation of election laws and FEC regulations. You may work alone or in pairs. A description of the facts, a list of the relevant laws and regulations, and a template for formatting the complaint will be posted to TWEN on Tuesday, February 17 at 5:00 p.m. and will be **due on Monday, March 16 by 11:59 p.m.**

3. Case Analysis Memo (20%)

The memo assignment will consist of a practical, real-world election law problem that you will be instructed to analyze as if you were counsel representing one of the parties to the dispute. You will produce a "case analysis" memo akin to what a real lawyer assigned to a new case would produce for purposes of the initial strategizing sessions. You will be required to work alone. There will be a 2,000 word limit. The memo assignment will be posted to TWEN on Tuesday, April 14 at 5:00 p.m. and will be **due on the last day of the exam period, May 14 by 11:59 p.m.**

Alternative: Research Paper

In lieu of the complaint and memo assignment, you may choose to write a research paper on an election law topic of your choice. The paper must be at least 20 pages long and be written in the style and quality of a law review note. I must approve the topic of your paper by March 3. A first draft will be due April 14 and the final draft due on the last day of the exam period, May 14 by 11:59 p.m.

Assignment Schedule

	Due dates
Legal Complaint	2/17 – Assignment posted on TWEN at 5:00 p.m. 3/16 – Complaint due by 11:59 p.m. (via e-mail)
Case Analysis Memo	4/14 – Assignment posted on TWEN at 5:00 p.m. 5/14 – Memo due by 11:59 p.m. (via e-mail)
Research paper (optional)	3/3 – Approve topic with professor 4/14 – First draft due 5/14 – Final draft due by 11:59 p.m.

Students With Disabilities

Please contact me during office hours to discuss academic accommodations that may be needed during the semester due to a documented disability. The Disability Services office engages in an interactive process with each student and reviews requests for accommodations on an individualized, case-by-case basis. Depending on the nature and functional limitations of a student's documented disability, he/she may be eligible for academic accommodations. Disability Services collaborates with students and their faculty to coordinate approved accommodations and services for qualified students with disabilities. If you have a documented disability for which you wish to request academic accommodations and have not contacted Disability Services, please do so as soon as possible. For more information regarding the accommodations process at UConn Law, you may visit the Disability Services website at <https://www.law.uconn.edu/student-life-resources/student-services/disability-services> or contact Jane Thierfeld Brown, Director of Student Services, at (860) 570-5132 or jane.brown@uconn.edu

Class Cancellations

Class will be cancelled only if absolutely necessary. If it becomes necessary to cancel class, students will be notified by email. A banner will also be added to the Law School's website homepage. If the weather is inclement, students should call the Law School hotline at (860) 570-5145. Note that the University will send general announcements via text to those who have registered for the notification service at alert.uconn.edu. Individual students who are not comfortable driving in the existing weather conditions may exercise their discretion not to do so.

Absences Due to Religious Observance

Students anticipating any conflicts with class attendance or assignments due to religious observances should inform me in writing within the first three weeks of the semester, and prior to the anticipated absence, and should take the initiative to work out a schedule for making up missed work.

Course Overview

Page numbers from the casebook are listed under CB, additional readings will be posted to TWEN on the weeks marked with a check (✓), and the total number of combined pages is listed.

Date	Topic	CB	TWEN	# pages
1/21	Introduction & Felon Disenfranchisement	134-142	✓	37
1/27	Limits on Voting	105-106 108-134		29
2/3	Reapportionment Revolution	176-204		29
2/10	Partisan Gerrymandering	233-271	✓	83
2/17	Voting Rights Act §5, part I	273-314	✓	41
2/24	Voting Rights Act §5, part II		✓	100
3/3	Redistricting (Guest Speaker)		✓	69
3/10	SPRING BREAK (no class)			
3/17	Voting Rights Act §2, part I	314-354		41
3/24	Voting Rights Act §2, part II	355-396	✓	87
3/31	Election Administration, part I	839-868	✓	60
4/7	Election Administration, part II	868-908		41
4/14	Candidates & Parties	402-418 462-492		48
4/21	Campaign Finance, part I	637-678		42
4/28	Campaign Finance, part II	739-750 757-790 802-803	✓	105
5/5	Alternative Forms of Voting	26-36	✓	45

Schedule of Topics and Readings

I am committed to following the schedule below. However, it may be the case that our discussions move faster or slower than I anticipate. If it is necessary to revise this schedule, I will make an announcement and also circulate an updated syllabus at that time.

Jan. 21: Introduction & Felon Disenfranchisement

- Expectations for the seminar
- Overview of writing assignments
- Constitutional foundations of election regulation
- Felon Disenfranchisement

Reading

1. Pamela S. Karlan, *Ballots and Bullets: The Exceptional History of the Right to Vote*, 71 U. CINN. L. REV. 1345 (2002)
2. *Richardson v. Ramirez*, 418 U.S. 24 (1974) (CB 134-139)
3. *Hunter v. Underwood*, 471 U.S. 222 (1985) (CB 140-142)

Jan. 27: Limits on Voting

- Residency requirements
- Literacy tests
- Age qualifications
- Poll taxes

Reading

CB 105-106, 108-134

Feb. 3: Reapportionment Revolution

- The “political thicket”
- One person, one vote
- The relevant population base

Reading

CB 176-204

Feb. 10: Partisan Gerrymandering

- Incumbent protection vs. party power maximization
- Independent redistricting commissions
- The redistricting game

Reading

1. CB 233-271
2. Bruce Cain, *Commissions as Political Buffers*, 121 YALE L.J. 1808 (2012) (only Part I)
3. Vladimir Kogan and Eric McGhee, *Evaluation of California Redistricting Commission*, 4 CAL. J. POL. & POL'Y (2012)

Feb. 27: Voting Rights Act, Section 5, part I

- Nonretrogression
- Safe vs. coalitional vs. influence districts
- Bailout

Reading

1. CB 273-314
2. Nathaniel Persily, *The Promise and Pitfalls of the New Voting Rights Act*, 117 YALE L.J. 174 (2007)

Feb. 24: Voting Rights Act, Section 5, part II

- *Shelby County v. Holder* (2013) (edited version on TWEN)

Reading

1. *Amicus Brief of Political Science and Law Professors in Support of Respondents*, Shelby County v. Holder
2. Guy-Uriel E. Charles & Luis Fuentes-Rohwer, *State's Rights, Last Rites, and Voting Rights*, 42 CONN. L. REV. 481 (2014)
3. Ari Berman, *Members of Congress Introduce a New Fix for the Voting Rights Act*, THE NATION, Jan. 16, 2014.
4. Sen. Patrick Leahy, *Voting Rights Act Amendment Act of 2014: Section by Section Description of VRA Draft Legislation*, Jan. 16, 2014.

Mar. 3: Redistricting

- Competition, polarization, and alignment
- Natural vs. artificial geographic sorting

GUEST SPEAKER: Jeff Greenfield, Redistricting Consultant for CT House Democrats

Reading

1. Samuel Issacharoff and Richard Pildes, *Politics as Markets: Partisan Lockups of the Democratic Process*, 50 STAN. L. REV. 643 (1998) (pp. 643-652)
2. Richard Pildes, *The Constitutionalization of Democratic Politics*, 118 HARV. L. REV. 28 (2004) (pp. 55-65)
3. Nathaniel Persily, *In Defense of Foxes Guarding Henhouses*, 118 HARV. L. REV. 649 (2004) (pp. 649-673)
4. Nicholas O. Stephanopoulos, *Elections and Alignment*, 114 COLUM. L. REV. 283 (2014) (pp. 283-291)
5. Sam Wang, *The Great Gerrymander of 2012*, N.Y. TIMES, Feb. 2, 2013.
6. John Sides and Eric McGhee, *Redistricting Didn't Win Republicans the House*, THE WASH. POST WONKBLOG, Feb. 12, 2014.
7. Seth Masket, Jonathan Winburn & Gerald Wright, *The Gerrymanders are Coming! Legislative Redistricting Won't Affect Competition or Polarization Much, No Matter Who Does It*, PS: Political Science & Politics, Jan. 2012.

Mar. 10: SPRING BREAK (no class)

Mar. 17: Voting Rights Act, Section 2, part I

- *Gingles* factors
- Race and redistricting
- Authentic vs. token representation

Reading

CB 314-354

Mar. 24: Voting Rights Act, Section 2, part II

- Race as the predominant factor
- Standing in redistricting cases
- “New vote denial”

Reading

1. CB 355-396
2. Daniel Tokaji, *The New Vote Denial: Where Election Reform Meets the Voting Rights Act*, 57 S. CAR. L. REV. 689 (2006)

Mar. 31: Election Administration, part I

- Voter registration
- Voter ID requirements
- Long lines at polling stations
- HAVA and election technology

Reading

1. CB 839-868
2. *League of Women Voters v. Brunner* (6th Cir. 2008) and the parties’ settlement agreement
3. Doug Spencer & Zach Markovits, *Long Lines at Polling Stations? Observations from an Election Day Field Study*, 9 ELECTION L.J. 3 (2010)
4. Charles Stewart, *2012 Survey of the Performance of American Elections*, PPT slides (2012)

Apr. 7: Election Administration, part II

- *Bush v. Gore* (2000)
- Recounts and remedies
- Partisan election administration

Reading

CB 868-908

Apr. 14: Candidates & Parties, An Overview

- Term limits and other qualifications for office
- State institutionalization of two-party system
- Ballot access

Reading

CB 402-418, 462-492

Apr. 21: Campaign Finance, part I

- History of campaign finance
- Justifications for campaign finance regulations
- *Buckley v. Valeo* (1976)

Reading

CB 637-678

Apr. 28: Campaign Finance, part II

- Independent expenditures
- Corporations and “distortion”
- *Citizens United v. FEC* (2010)

Reading

1. CB 739-750, 757-790, 802-803
2. *McCutcheon v. FEC* (2014) (skim Roberts opinion)
3. Richard L. Hasen, *Citizens United and the Illusion of Coherence*, 109 MICH. L. REV. 581 (2011) (Introduction)
4. Doug Spencer & Abby Wood, *Citizens United, States Divided: An Empirical Analysis of Independent Political Spending*, 89 IND. L.J. 315 (2014)

May 5: Alternative Forms of Voting

- Condorcet’s Jury Theorem
- Arrow’s Impossibility Theorem
- Ranked choice voting
- Plurality vs. majority vs. proportional representation

Reading

1. CB 26-36
2. LAWRENCE LEDUC, RICHARD G. NIEMI, AND PIPPA NORRIS, *COMPARING DEMOCRACIES: NEW CHALLENGES IN THE STUDY OF ELECTIONS AND VOTING* (vol. 2) (ch. 2)