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 and due process in the administration of elections; and fourth, the constitutional fault lines of campaign finance regulation.

The next several 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:

- **Chiafalo et al. v. State of Washington.** In 2016, three of Washington’s 12 electors cast their ballot for Colin Powell instead of Hillary Clinton, who had earned the most votes on Election Day. State law prohibits “faithless electors” and provides for their punishment via a $1,000 fine. The Washington State Supreme Court upheld the constitutionality of the state law on the grounds that Art. II §1 of the Constitution “gives to the states absolute authority in the manner of appointing electors [and that] it is thus within a state’s authority to impose a fine on electors for failing to uphold their pledge.” The faithless electors appealed to the U.S. Supreme Court in Oct. 2019 citing, among other things, a 10th Cir. opinion in Aug. 2019 that invalidated a faithless elector provision in Colorado’s state law.

- **Jones v. DeSantis.** On Nov. 4, 2018 nearly 65% of Florida voters approved a constitutional amendment to automatically restore voting rights to most ex-felons. In May 2019 the Florida state legislature enacted SB7066, a bill that conditions the restoration of voting rights on complete payment of all legal financial obligations. A federal judge struck down SB7066 on Oct. 18, 2019. Gov. DeSantis announced that he would appeal the decision on Nov. 22, 2019.

- **Georgia Shift v. Gwinnett County, et al..** Ongoing federal litigation seeking a court to order defendants (the four most populous counties in Georgia) to provide sufficient resources for the 2020 election, including enough polling places, voting machines, and election staff to prevent unreasonably long lines on Election Day and to process all registration forms and absentee ballot applications within one day. Plaintiffs allege that insufficient resources have infringed on the right to vote in violation of the Fourteenth Amendment.
The law of the electoral process is a challenging and exciting topic of study. The cases we will read are anything but tidy; we are dealing with an area of law that, doctrinally, is very unsettled. The course 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.

Diversity

It is my intent that students from all backgrounds and perspectives be well served by this course, that students’ learning needs be addressed both in and out of class, and that the diversity that students bring to this class be viewed as a resource, strength and benefit. Your suggestions are encouraged and appreciated if I ever fall short of this standard.

Required text


Links to additional readings for the course are embedded in the syllabus below and also available on Canvas.

Grading

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

1. Legal Writing (35%)

For this assignment you will produce a legal document related to a contemporary election law issue. For example, you may choose to draft a complaint seeking relief against a group or individual that has (allegedly) acted in violation of the law. Or you may choose to draft a response to a claim currently pending in federal court. Or you may choose to draft a litigation strategy memo in anticipation of legal action. A description of the available projects, fact patterns, relevant laws/regulations, and templates will be posted to Canvas on February 2. The assignment is due, via upload on Canvas on Monday, March 23 by 8:10am. You may work alone or in pairs.

2. Response Paper (60%)

The second assignment is a response paper (1,500 words) that evaluates one or more of the secondary sources listed on the syllabus. Your goal will be to produce a short piece of legal scholarship. To that end, you should organize your response paper as follows:

   Introduction
   Part I. Lay of the Land
   Part II. What is wrong/missing?
   Part III. Your contribution
   Conclusion
As a general matter, your paper should not read like a book report or an encyclopedia entry but should, instead, follow a cohesive narrative arc that amplifies your voice. I will discuss the expectations for, and answer questions about, the papers during class on March 23. Final drafts should be uploaded to Canvas by Monday, April 27 at 8:10am. Extensions will be granted only in exceptional cases that receive approval from the Associate Dean of Students.

3. Class Participation (5%)

Regular attendance and class participation are required. Each student should actively participate in all group exercises and also contribute to the larger class discussion at least once during the semester. I will display a list of (randomly-selected) students who are on call at the beginning of each class. 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 at the beginning of class, and I will not call on you that day.

Alternative: Research Paper

In lieu of the response paper and legal writing assignment, you may choose to write a research paper on an election law topic of your choice. The paper must be at least 5,000 words, excluding footnotes, and be written in the style and quality of a law review Note. If you would like to earn credit for a Substantial Paper, you must submit a 250-word topic proposal by February 24. Due to the size of the class, I will only be able to accept a limited number of proposals for Substantial credit. In order to earn credit for a Substantial Paper, you will need to submit a first draft to me before March 30 and incorporate my feedback into your final draft. The final draft of all papers is Monday, April 20 by 8:10 a.m.

Assignment Schedule

<table>
<thead>
<tr>
<th>Assignment</th>
<th>Due dates</th>
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| Legal Writing          | 2/2 – Assignment posted on Canvas  
                          | 3/23 – Final draft due by 8:10 a.m. (upload to Canvas)                     |
| Response Paper         | 3/23 – Discuss assignment in class  
                          | 4/27 – Final draft due by 8:10 a.m. (upload to Canvas)                     |
| Research paper (optional) | 2/24 – Approve topic with professor (for Substantial)*  
                          | 3/30 – First draft due (for Substantial)*  
                          | 4/27 – Final draft due by 8:10 a.m. (e-mail to professor)                  |

Students With Disabilities

Please contact me, if you are comfortable, to discuss any academic accommodations that may be needed during the semester due to a documented disability. In any case, students with documented disabilities should contact the Yale University Student Accessibility Services office by email (mike.thompson@yale.edu) or phone (203-432-2324) to request accommodation for examinations or other course-related needs.
Course Overview

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

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>CB</th>
<th>Canvas</th>
<th># pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/13</td>
<td>Introduction &amp; Felon Disenfranchisement</td>
<td>171-180</td>
<td>✓</td>
<td>41</td>
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<tr>
<td>1/20</td>
<td>NO CLASS (MLK Day)</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>1/27</td>
<td>Limits on Voting</td>
<td>115-136</td>
<td>142-171</td>
<td>48</td>
</tr>
<tr>
<td>2/3</td>
<td>Reapportionment Revolution</td>
<td>207-235</td>
<td>✓</td>
<td>51</td>
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<tr>
<td>2/10</td>
<td>Partisan Gerrymandering</td>
<td>268-327</td>
<td>✓</td>
<td>85</td>
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<tr>
<td>2/17</td>
<td>Redistricting</td>
<td></td>
<td>✓</td>
<td>68</td>
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<tr>
<td>2/24</td>
<td>Voting Rights Act §5</td>
<td>344-365</td>
<td>✓</td>
<td>92</td>
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<tr>
<td>3/2</td>
<td>Voting Rights Act §2, part I</td>
<td>369-400</td>
<td>✓</td>
<td>64</td>
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<tr>
<td>3/9</td>
<td>NO CLASS (Spring Break)</td>
<td></td>
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<td>3/16</td>
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<tr>
<td>3/23</td>
<td>Voting Rights Act §2, part II</td>
<td>401-459</td>
<td>✓</td>
<td>81</td>
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<td>3/30</td>
<td>Campaign Finance Enforcement (Guest speaker)</td>
<td>724-728</td>
<td>✓</td>
<td>80</td>
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<td>4/6</td>
<td>Campaign Finance Law, part I</td>
<td>710-723</td>
<td>729-752</td>
<td>✓</td>
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<tr>
<td>4/13</td>
<td>Campaign Finance Law, part II</td>
<td>825-888</td>
<td>✓</td>
<td>105</td>
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<td>4/20</td>
<td>Election Administration</td>
<td></td>
<td>934-947</td>
<td>960-963</td>
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<tr>
<td>4/27</td>
<td>MAKEUP: Candidates &amp; Parties</td>
<td></td>
<td>968-983</td>
<td>466-484</td>
</tr>
</tbody>
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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. 13: Introduction & Felon Disenfranchisement

- Expectations for the course
- Overview of writing assignments
- Constitutional foundations of election regulation
- Felon disenfranchisement

Reading


Additional Material

- Farrakhan, et al. v. Gregoire, et al., 623 F.3d. 990 (9th Cir. 2010)
- The Sentencing Project, *Felony Disenfranchisement: A Primer* (June 27, 2019)

Jan. 20: NO CLASS: MLK Day

Jan. 27: Limits on Voting

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

Reading

CB 115-136, 142-152, 158-171
Additional Material


Feb. 3: Apportionment & the Electoral College

- The “political thicket”
- One person, one vote
- The relevant population base
- Census, citizenship, and “differential privacy”
- National Popular Vote Interstate Compact (NPVIC)

Reading

1. CB 207-235
3. Federalist 68

Additional Material

- *Can a Set of Equations Keep U.S. Census Data Private?* SCIENCE (Jan. 4, 2019)
- “Agreement Among the States to Elect the President by National Popular Vote,” NPVIC
Feb. 10: Partisan Gerrymandering

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

Reading

1. CB 268-327

Additional Material


Feb. 17: Redistricting

- Competition, polarization, and alignment
- Natural vs. artificial geographic sorting
- Individual rights vs. structural regulation

Reading

Feb. 24: Voting Rights Act, Section 5

- Geography of discrimination
- Scope of congressional authorization
- Bail out and bail in

Reading

1. CB 334-369
3. Amicus Brief of Political Science and Law Professors in Support of Respondents, Shelby County v. Holder

Additional Materials


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

- Results test
- *Gingles* factors

Reading

1. CB 369-400

Additional Materials

Mar. 9: NO CLASS (Spring Break)

Mar. 16: NO CLASS (Spring Break)

Mar. 23: Voting Rights Act, Section 2, part II

- Race and redistricting
- Race as the predominant factor

Reading

1. CB 401-459

Additional Materials


Mar. 30: Enforcing Campaign Finance Laws

- Polarization and enforcement
- Technology, innovation, and the regulation lag

**Guest speaker:** Ellen Weintraub (BA ’78), Federal Election Commission

- **Commissioner:** 2002-present
- **Chair:** 2003, 2013, 2019

Reading

2. Caroline Hunter, *How My FEC Colleague is Damaging the Agency and Misleading the Public*, POLITICO (Oct. 22, 2019)
Additional Materials


Apr. 6: Campaign Finance, part I

- History of campaign finance
- Justifications for campaign finance regulations
- Bribery and corruption

Reading

1. CB 710-723, 729-752

Additional Materials

Apr. 13: Campaign Finance, part II

- Independent expenditures
- Corporations and “distortion”

**Reading**

1. CB 825-888
3. John Paul Stevens, *Oops!*, Harold Levanthal Lecture to the Administrative Law Section of the D.C. Bar (2014) on Canvas

**Additional Materials**

- *SpeechNow.org v. FEC*, 599 F.3d. 686 (D.C. Cir. 2010)

Apr. 20: Election Administration

- Recounts and remedies
- Partisan election administration
- Voter ID requirements

**Reading**

1. CB 934-947, 960-963, 968-983
Additional Materials


Apr. 27: Candidates & Parties, An Overview

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

Reading

1. CB 466-484, 525-546, 562-600

Additional Materials

On the Aggregation of Individual Preferences

Optional Reading

- CB 28-38


