

# Election Law

Professor Doug Spencer  
Yale Law School

## **Class**

Spring 2020  
Room 129  
Monday: 8:10a-10a

## **Contact**

Office: Room 433  
E-mail: douglas.spencer@yale.edu  
Office Hours: TBD (see Canvas calendar)

## 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

JAMES GARDNER & GUY CHARLES, *ELECTION LAW IN THE AMERICAN POLITICAL SYSTEM*, Aspen Casebook Series, **2d ed. 2018**. (ISBN-13: 978-1454883319)

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

	<b>Due dates</b>
Legal Writing	2/2 – Assignment posted on <b>Canvas</b> 3/23 – Final draft due by 8:10 a.m. (upload to <b>Canvas</b> )
Response Paper	3/23 – Discuss assignment in class 4/27 – Final draft due by 8:10 a.m. (upload to <b>Canvas</b> )
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.

Date	Topic	CB	Canvas	# pages
1/13	Introduction & Felon Disenfranchisement	171-180	✓	41
1/20	NO CLASS (MLK Day)			
1/27	Limits on Voting	115-136 142-171		48
2/3	Reapportionment Revolution	207-235	✓	51
2/10	Partisan Gerrymandering	268-327	✓	85
2/17	Redistricting		✓	68
2/24	Voting Rights Act §5	344-365	✓	92
3/2	Voting Rights Act §2, part I	369-400	✓	64
3/9 3/16	NO CLASS (Spring Break)			
3/23	Voting Rights Act §2, part II	401-459	✓	81
3/30	Campaign Finance Enforcement (Guest speaker)	724-728	✓	80
4/6	Campaign Finance Law, part I	710-723 729-752	✓	69
4/13	Campaign Finance Law, part II	825-888	✓	105
4/20	Election Administration	934-947 960-963 968-983	✓	63
4/27	MAKEUP: Candidates & Parties	466-484 525-546 562-600		94

## 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

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 171-176)
3. *Hunter v. Underwood*, 471 U.S. 222 (1985) (CB 178-180)

#### Additional Material

- *Farrakhan, et al. v. Gregoire, et al.*, 623 F.3d. 990 (9th Cir. 2010)
- ALEXANDER KEYSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* (revised ed.), pp. 258-302
- JEFF MANZA & CHRISTOPHER UGGEN, *LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY*, 2006, pp. 95-112
- Pamela S. Karlan, *Convictions and Doubts: Retribution, Representation, and the Debate Over Felon Disenfranchisement* 56 STAN. L. REV. 1147 (2004)
- Alan S. Gerber, et al. *Does Incarceration Reduce Voting? Evidence About the Political Consequences of Spending Time in Prison*, 79. J. POL. 1130 (2017)
- 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

- Eugene D. Mazo, *Residency and Democracy: Durational Residency Requirements from the Framers to the Present*, 43 FLA. ST. U. L. REV. 611 (2016)
- Joseph Fishkin, *Taking Virtual Representation Seriously*, 59 WM. & MARY L. REV. 1681 (2018)
- Joshua A. Douglas, *In Defense of Lowering the Voting Age*, 165 U. PA. L. REV. ONLINE 63 (2017)
- Arthur Lupia, *How Elitism Undermines the Study of Voter Competence*, 18 CRIT. REV. 217 (2006)
- John E. Filer, Lawrence W. Kenny & Rebecca B. Morton, *Voting Laws, Educational Policies, and Minority Turnout*, 34 J.L. & ECON. 371 (1991)
- CATHERINE PRENDERGAST, LITERACY AND RACIAL JUSTICE: THE POLITICS OF LEARNING AFTER BROWN V. BOARD OF EDUCATION, 2003

## 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
2. *Evenwel v. Abbott*, 126 S.Ct. 1120 (2016) (on Canvas)
3. *Federalist 68*
4. Michael C. Dorf, *Could a Faithless Elector Ruling Doom an Attempt to Circumvent the Electoral College?* VERDICT (Sept. 4, 2019)

## Additional Material

- BRUCE E. CAIN, THE REAPPORTIONMENT PUZZLE (1984)
- Jeffrey W. Ladewig, *One Person, One Vote, 435 Seats: Interstate Malapportionment and Constitutional Requirements*, 43 CONN. L. REV. 1125 (2011)
- Pamela S. Karlan, *Reapportionment, Nonapportionment, and Recovering Some Lost History of One Person, One Vote*, 59 WM. & MARY L. REV. 1921 (2018)
- Kelly Rader, *Malapportionment in the U.S. House of Representatives: The Effect of Census Reapportionment on the Distribution of Federal Funds to States*, Working paper (2014)
- Justin Levitt, *Citizenship and the Census*, 119 COLUM. L. REV. 1355 (2019)
- *Can a Set of Equations Keep U.S. Census Data Private?* SCIENCE (Jan. 4, 2019)
- “A History of Census Privacy Protections”, U.S. CENSUS BUREAU (Oct. 10, 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
2. *Rucho v. Common Cause*, 588 U.S. \_\_\_ (2019) (on [Canvas](#))
3. Douglas Spencer & Guy Charles, “The Law of Gerrymandering,” in *POLITICAL GEOMETRY* (forthcoming 2020) (on [Canvas](#))

### Additional Material

- Samuel S.-H. Wang, Richard Ober Jr. & Ben Williams, *Laboratories of Democracy Reform: State Constitutions and Partisan Gerrymandering*, 22 U. PA. J. CONST. L. 203 (2019).
- Daniel Hessel, *Litigating Partisan Gerrymandering Claims Under State Constitutions*, CAMPAIGN LEGAL CTR. (July 2018)
- James A. Gardner, *Foreword: Representation Without Party: Lessons from State Constitutional Attempts to Control Gerrymandering*, 37 RUTGERS L.J. 881 (2006)
- Guy-Uriel Charles & Luis E. Fuentes-Rohwer, *Judicial Intervention as Judicial Restraint*, 132 HARV. L. REV. 236 (2018)
- Vladimir Kogan and Eric McGhee, *Redistricting California: An Evaluation of the Citizens Commission Final Plans*, 4 CAL. J. POL. & POL’Y 1 (2012)
- Moon Duchin, *Gerrymandering Metrics: How to Measure? What’s the Baseline?*, ARXIV (Jan. 2018)

## Feb. 17: Redistricting

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

### 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, 668-690)
2. Nathaniel Persily, *In Defense of Foxes Guarding Henhouses*, 118 HARV. L. REV. 649 (2004) (pp. 649-673)
3. Nicholas O. Stephanopoulos, *Elections and Alignment*, 114 COLUM. L. REV. 283 (2014) (pp. 283-291)
4. Sam Wang, *The Great Gerrymander of 2012*, N.Y. TIMES, Feb. 2, 2013.
5. John Sides and Eric McGhee, *Redistricting Didn’t Win Republicans the House*, THE WASH. POST WONKBLOG, Feb. 12, 2014.
6. Seth Masket, Jonathan Winburn & Gerald Wright, *The Gerrymanders are Coming! Legislative Redistricting Won’t Affect Competition or Polarization Much, No Matter Who Does It*, 45 PS: POL. SCI. & POLITICS 39 (2012).

## Feb. 24: Voting Rights Act, Section 5

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

### Reading

1. CB 334-369
2. Nathaniel Persily, *The Promise and Pitfalls of the New Voting Rights Act*, 117 YALE L.J. 174 (2007) (pp. 176-207)
3. *Amicus Brief of Political Science and Law Professors in Support of Respondents*, Shelby County v. Holder
4. H.R. 1799, *Voting Rights Amendment Act of 2019* (Introduced 03/14/2019)

### Additional Materials

- Leah M. Litman, *Inventing Equal Sovereignty*, 114 MICH. L. REV. 1207 (2016)
- Thomas B. Colby, *In Defense of the Equal Sovereignty Principle*, 65 DUKE L.J. 1087 (2016)
- Christopher S. Elmendorf & Douglas M. Spencer, *The Geography of Racial Stereotyping: Evidence and Implications for VRA “Preclearance” After Shelby County*, 102 CAL. L. REV. 1123 (2014)
- Travis Crum. Note. *The Voting Rights Act’s Secret Weapon: Pocket Trigger Litigation and Dynamic Preclearance*, 119 YALE L.J. 1993 (2010)

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

- Results test
- *Gingles* factors

### Reading

1. CB 369-400
2. Christopher S. Elmendorf, *Making Sense of Section 2: Of Biased Votes, Unconstitutional Elections, and Common Law Statutes*, 160 U. PA. L. REV. 377 (2012) (pp. 377-409)

### Additional Materials

- Christopher S. Elmendorf & Douglas M. Spencer, *Administering Section 2 of the VRA After Shelby County*, 115 COLUM. L. REV. 2143 (2015)
- Nicholas O. Stephanopoulos, *Disparate Impact, Unified Law*, 128 YALE L.J. 1566 (2019)
- Heather K. Gerken, *Understanding the Right to an Undiluted Vote*, 114 HARV. L. REV. 1663 (2001)
- Franita Tolson, *What is Abridgment? A Critique of Two Section Twos*, 67 ALA. L. REV. 433 (2016)
- D. James Greiner, *Re-Solidifying Racial Bloc Voting: Empirics and Legal Doctrine in the Melting Pot*, 86 IND. L.J. 447 (2011)



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
2. Ellen D. Katz, “Race and Redistricting: The Legal Framework,” in POLITICAL GEOMETRY (forthcoming 2020) (on Canvas)

#### Additional Materials

- *Alabama Legislative Black Caucus v. Alabama*, 135 S.Ct. 1257 (2015)
- Travis Crum, *The Superfluous Fifteenth Amendment?*, 114 NW. U. L. REV. (forthcoming 2020)
- Richard L. Hasen, *Race or Party, Race as Party, or Party All the Time: Three Uneasy Approaches to Conjoined Polarization in Redistricting and Voting Cases*, 59 WM. & MARY L. REV. 1837 (2018)
- Daniel Tokaji, *The New Vote Denial: Where Election Reform Meets the Voting Rights Act*, 57 S. CAR. L. REV. 689 (2006)
- Dale E. Ho, *Something Old, Something New, or Something Really Old? Second Generation Racial Gerrymandering Litigation as Intentional Racial Discrimination Cases*, 59 WM. & MARY L. REV. 1887 (2018)

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

1. Reis Thebault, *Stymied by a Polarized Agency, FEC Chairwoman Ellen Weintraub Finds Her Voice as a Trump Critic*, WASH. POST (Oct. 18, 2019)
2. Caroline Hunter, *How My FEC Colleague is Damaging the Agency and Misleading the Public*, POLITICO (Oct. 22, 2019)
3. Richard L. Hasen, *Deep Fakes, Bots, and Siloed Justices: American Election Law in a Post-Truth World*, ST. LOUIS L.J. (forthcoming 2020)
4. Abby K. Wood & Ann Ravel, *Fool Me Once: Regulating ‘Fake News’ and Other Online Advertising*, 92 S. CAL. L. REV. 1227 (2018)

## Additional Materials

- Christopher S. Elmendorf & Abby K. Wood, *Elite Political Ignorance: Law, Data, and the Representation of (Mis)Perceived Electorates*, 52 U.C. DAVIS L. REV. 571 (2018)
- Bertrall L. Ross II & Douglas M. Spencer, *Passive Voter Suppression: Campaign Mobilization and the Effective Disfranchisement of the Poor*, 114 NW. U. L. REV. 633 (2019)

## 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
2. Yasmin Dawood, *Classifying Corruption*, 9 DUKE J. CONST. L. & PUB. POL. 103 (2014)

## Additional Materials

- *McDonnell v. U.S.*, 579 U.S. \_\_\_ (2016)
- Deborah Hellman, *Defining Corruption and Constitutionalizing Democracy*, 111 MICH. L. REV. 1385 (2013)
- Ciara Torres-Spelliscy, *Deregulating Corruption*, 13 HARV. L. & POL. REV. 471 (2019)
- ZEPHYR TEACHOUT, CORRUPTION IN AMERICA (2016)
- Samuel Issacharoff, *On Political Corruption*, 124 HARV. L. REV. 118 (2010)
- Richard L. Hasen, *Buckley Is Dead, Long Live Buckley: The New Campaign Finance Incoherence of *McConnell v. Federal Election Commission**, 153 U. PA. L. REV. 31 (2004)
- BRADLEY A. SMITH, UNFREE SPEECH: THE FOLLY OF CAMPAIGN FINANCE REFORM (2003)
- JOHN SAMPLES, THE FALLACY OF CAMPAIGN FINANCE REFORM (2006)
- JAMES A. GARDNER, *WHAT ARE CAMPAIGNS FOR? THE ROLE OF PERSUASION IN ELECTORAL LAW & POLITICS* (2009)

## Apr. 13: Campaign Finance, part II

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

### Reading

1. CB 825-888
2. Richard L. Hasen, *Citizens United and the Illusion of Coherence*, 109 MICH. L. REV. 581 (2011) (Introduction)
3. John Paul Stevens, *Oops!*, Harold Levantahl 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)
- *McCutcheon v. FEC*, 572 U.S. 185 (2014)
- DANIEL P. TOKAJI & RENATA E.B. STRAUSE, THE NEW SOFT MONEY (2014)
- Tabatha Abu El-Haj, *Beyond Campaign Finance Reform*, 57 B.C. L. REV. 1127 (2016)
- Michael S. Kang, *The End of Campaign Finance Law*, 98 VA. L. REV. 1 (2012)
- Douglas M. Spencer & Abby K. Wood, *Citizens United, States Divided: An Empirical Analysis of Independent Political Spending*, 89 IND. L.J. 315 (2014)
- RICHARD L. HASEN, PLUTOCRATS UNITED (2016)
- ROBERT C. POST, CITIZENS DIVIDED (2014)
- Bertrall Ross, *Addressing Inequality in the Age of Citizens United*, 93 N.Y.U. L. REV. 1120 (2018)
- Abby K. Wood, *Campaign Finance Disclosure*, 14 ANN. REV. L. & SOC. SCI. 11 (2018)

## Apr. 20: Election Administration

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

### Reading

1. CB 934-947, 960-963, 968-983
2. Edward Foley, “Recounts: Elections in Overtime,” in LAW & ELECTION POLITICS (2013) (ch. 7) on Canvas
3. Benjamin Highton, *Voter Identification Laws and Turnout in the United States*, 20 ANN. REV. POL. SCI. 149 (2017)

## Additional Materials

- HEATHER K. GERKEN, THE DEMOCRACY INDEX (2009)
- EDWARD FOLEY, BALLOT BATTLES: THE HISTORY OF DISPUTED ELECTIONS IN THE U.S. (2016)
- Stephen Ansolabehere & Nathaniel Persily, *Vote Fraud in the Eye of the Beholder: The Role of Public Opinion in the Challenge to Voter Identification Requirements*, 121 HARV. L. REV. 1737 (2008) (pp. 1737-1760)
- Michael Tomz & Robert P. Van Houweling, *How Does Voting Equipment Affect the Racial Gap in Voided Ballots?* 47 AM. J. POL. SCI. 46 (2003)
- Ariel White, Noah Nathan & Julie Faller, *What Do I Need to Vote? Bureaucratic Discretion and Discrimination by Local Election Officials*, 109 AM. J. POL. SCI. 129 (2015)
- LORRAINE C. MINNITE, THE MYTH OF VOTER FRAUD (2010)
- Michael D. Gilbert, *The Problem of Voter Fraud*, 115 COLUM. L. REV. 739 (2015)
- Robert S. Erickson & Lorraine C. Minnite, *Modeling Problems in the Voter Identification-Voter Turnout Debate*, 8 ELECTION L.J. 85 (2009)
- Charles Stewart, *2016 Survey of the Performance of American Elections*, pp. 1-41.
- Edward B. Foley, *Due Process, Fair Play, and Excessive Partisanship: A New Principle for Judicial Review of Election Laws*, 84 U. CHI. L. REV. 655 (2017)
- Keith Chen, Kareem Haggag, Devin Pope, & Ryne Rohla, *Racial Disparities in Voting Wait Times: Evidence from Smartphone Data*, NBER Working Paper (Nov. 2019)

## 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
2. *Utah Republican Party v. Cox*, 885 F.3d. 1219 (10th Cir. 2018), cert. denied, 586 U.S. \_\_\_ (2019) (parts I, III and IIIa)

## Additional Materials

- Daniel Hays Lowenstein, *Associational Rights of Major Political Parties: A Skeptical Inquiry*, 71 TEX. L. REV. 1740 (1993)
- Michael S. Kang, *Sore Loser Laws and Democratic Contestation*, 99 GEO. L. REV. 1013 (2011)

## On the Aggregation of Individual Preferences

### Optional Reading

- CB 28-38
- Paul Cuff, Sanjeev Kulkarni, Mark Wang & John Sturm, *Voting Theory Primer* (2012)
- LAWRENCE LEDUC, RICHARD G. NIEMI, AND PIPPA NORRIS, COMPARING DEMOCRACIES: NEW CHALLENGES IN THE STUDY OF ELECTIONS AND VOTING (vol. 2) (ch. 2) on Canvas
- Lindsay Nielson, *Ranked Choice Voting and Attitudes Toward Democracy in the United States: Results from a Survey Experiment*, 45 POL. & POL'Y 535 (2017)
- KENNETH ARROW, SOCIAL CHOICE AND INDIVIDUAL VALUES (1970)
- GARY COX, MAKING VOTES COUNT (1997)
- ANTHONY DOWNS, AN ECONOMIC THEORY OF DEMOCRACY (1957)
- William H. Riker & Peter C. Ordeshook, *A Theory of the Calculus of Voting*, 62 AM. POL. SCI. REV. 25 (1968) Riker, William H. 1982. Liberalism Against Populism. Waveland Press.
- Craig M. Burnett & Vlad Kogan, *Ballot (and Voter) 'Exhaustion' Under Instant Runoff Voting: An Examination of Four Ranked-Choice Elections*, 37 ELECTORAL STUD. 41 (2015)
- Matthew M. Singer, *Was Duverger Correct? Single-Member District Election Outcomes in Fifty-three Countries*, 43 BRITISH J. POL. SCI. 201 (2013)