

# ELECTIONS AND THE LAW OF DEMOCRACY

5396/25896 – Preliminary Syllabus – Fall 2024

Professor David Froomkin

This course covers the law that structures the democratic process in the United States. Subjects covered include the individual right to vote and participate; reapportionment and redistricting; the regulation of political parties and primary elections; campaign finance regulation; the contested boundaries of federal and state power over election regulation; the tension between majorities and minorities in the design of representative institutions; and the role of courts in overseeing democratic processes. The course will focus primarily on American law and doctrine. The course will consider important contemporary legal issues in this area, including obstacles to individuals' ability to participate, litigation about racial vote dilution and partisan gerrymandering, new challenges for campaign finance regulation, and issues relating to the 2024 presidential election.

The required casebook is ISSACHAROFF, KARLAN, PILDES, PERSILY & TOLSON, *THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS* (6th ed. 2022). A helpful resource for staying up to date with new developments is the Election Law Blog, at <http://electionlawblog.org/>.

**Time:** Monday and Wednesday from 4:00pm to 5:15pm

**Location:** face-to-face, room TBD

**Required Casebook:** ISSACHAROFF, KARLAN, PILDES, PERSILY & TOLSON, *THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS* (6th ed. 2022)

**Grading:** Your grade will be based primarily on an anonymous final exam. Final grades may be modified up or down by 1/3 of a grade (e.g. A- to A) based on quality of class participation.

**Attendance:** Attendance is mandatory. If you fail to attend at least 80% of class meetings (i.e. at least 23 of our 28 meetings in fall 2024) you will be in violation of ABA and Law Center policy and may be dropped from the course. Even aside from this requirement, excessive unexplained absences may affect your participation grade. Please inform me in advance of a meeting if you will be unable to attend and why. Additionally, please be in class on time: late arrivals are disruptive to other students, and they may be treated as absences.

**Participation:** Reading will average around 30 casebook pages per class session. The casebook pages and cases that will be discussed in each session are listed in the schedule of assignments below. It is important to come prepared to discuss the cases, both to maximize your own benefit from the course and for the benefit of our collective discussion. While I will prioritize and encourage voluntary participation, I reserve the right to cold call.

**Learning Objectives:** By the end of this course, you will be able to:

- Know and apply the core legal principles governing central areas of election law practice, including the right to vote, redistricting, regulations of political parties, and campaign finance regulations
- Understand, apply, and interrogate the policy arguments that courts commonly invoke in election law cases
- Understand the constitutional sources of authority for state and federal regulations of the democratic process
- Recognize and weigh the competing rationales for and against judicial intervention in the democratic process
- Evaluate proposals for election law reform

**Computer Policy:** Use of laptops or other electronic devices is permitted for class-related purposes only. Violations of this policy will be treated as unpreparedness. Audio or visual recording of class by students is prohibited.

**Honor Code:** The UHLC Honor Code applies to all aspects of this course. You are responsible for knowing all Honor Code provisions and for complying with the Honor Code. Please inquire if you have any questions regarding how the Honor Code's provisions apply to specific activities or situations related to this course. Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to comply with the Honor Code in relation to this course and to comply with the instructions in the course syllabus.

**AI Policy:** Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to not prompt, generate, obtain, read, or use any AI Generated Text in relation to any activity or assessment in this course. This applies to AI Generated Text from yourself or others. This pledge includes that your assessment work product in the course is without any contribution from AI Generated Text. This specifically extends to the plagiarism policy and unauthorized aid/materials parts of the Honor Code: AI Generated Text will be treated as from another/others in applying the plagiarism policy to this course. The term "assessment" means any work product

generated for this course that is submitted to the instructor or presented in a class session. Assessments include mid-terms and final exams.

*The content of this syllabus is subject to change before the start of the fall semester. Additional information TBD.*

## **Schedule of Assignments**

**1. Monday, August 19 – Constitutional Architecture** – CB 1-20, 32-44; U.S. Constitution Art. I, §§ 1-4

*Pacific States Telephone & Telegraph Company v. Oregon*

*U.S. Term Limits, Inc. v. Thornton*

Optional: excerpt from JOHN HART ELY, DEMOCRACY AND DISTRUST

### A. The Right to Vote

**2. Wednesday, August 21 – Constitutional Neglect** – CB 47-79

*Minor v. Happersett*

*Richardson v. Ramirez*

*Giles v. Harris*

**3. Monday, August 26 – Constitutional Protection** – CB 94-113

*Gomillion v. Lightfoot*

*Lassiter v. Northampton County Board of Elections*

*Harper v. Virginia State Board of Elections*

*Kramer v. Union Free School District No. 15*

**4. Wednesday, August 28 – The *Anderson-Burdick* Framework** – CB 122-145, 158-169

*Burdick v. Takushi*

*Crawford v. Marion County Election Board*

*Republican National Committee v. Democratic National Committee*

*Democratic National Committee v. Wisconsin State Legislature*

[No class Monday, September 2 for Labor Day]

**5. Wednesday, September 4 – The Voting Rights Act – CB 169-220**

*South Carolina v. Katzenbach*

*Shelby County v. Holder*

*Brnovich v. Democratic National Committee*

**6. Monday, September 9 – Other Statutory Protections – CB 227-267**

*Arizona v. Inter Tribal Council*

*Sandusky County Democratic Party v. Blackwell*

*Husted v. A. Philip Randolph Institute*

**B. One Person, One Vote**

**7. Wednesday, September 11 – The Reapportionment Revolution – CB 269-300**

*Colegrove v. Green*

*Baker v. Carr*

*Reynolds v. Sims*

**8. Monday, September 16 – Implementing One-Person, One-Vote – CB 301-331**

*Lucas v. The Forty-Fourth General Assembly of the State of Colorado*

*Karcher v. Daggett*

*Evenwel v. Abbott*

C. Political Parties

**9. Wednesday, September 18 – The White Primary Cases – CB 369-391**

*Nixon v. Herndon*

*Smith v. Allwright*

*Terry v. Adams*

**10. Monday, September 23 – Ballot Access and Third Parties – CB 394-399, 451-469**

*Bullock v. Carter*

*Munro v. Socialist Workers Party*

*Timmons v. Twin Cities Area New Party*

**11. Wednesday, September 25 – Regulating Intraparty Affairs I – CB 404-421**

*Nader v. Schaffer*

*Duke v. Massey*

*Republican Party of Texas v. Dietz*

*Tashjian v. Republican Party of Connecticut*

**12. Monday, September 30 – Regulating Intraparty Affairs II – CB 423-441**

*California Democratic Party v. Jones*

*Washington State Grange v. Washington State Republican Party*

Optional: Richard L. Hasen, *Do the Parties or the People Own the Electoral Process?*, 149 U. PA. L. REV. 815 (2001)

D. Districting

**13. Wednesday, October 2 – Racial Vote Dilution under the Constitution – CB 478-507**

*Whitcomb v. Chavis*

*White v. Regester*

*City of Mobile v. Bolden*

**14. Monday, October 7 – Section 2 and the *Gingles* Test – CB 524-557**

*Thornburg v. Gingles*

**15. Wednesday, October 9 – Applying the *Gingles* Test – CB 566-607**

*Bartlett v. Strickland*

*Johnson v. De Grandy*

**16. Monday, October 14 – Evolution of the VRA – CB 610-650**

*Georgia v. Ashcroft*

*LULAC v. Perry*

Optional: Cameron, Epstein & O'Halloran, *Do Majority-Minority Districts Maximize Substantive Black Representation in Congress?*, 90 AM. POL. SCI. REV. 794 (1996)

**17. Wednesday, October 16 – Racial Gerrymandering – CB 654-696**

*Shaw v. Reno*

*Easley v. Cromartie*

*Cooper v. Harris*

**18. Monday, October 21 – Partisan Gerrymandering I – CB 718-739**

*Davis v. Bandemer*

*Vieth v. Jubelirer*

*Rucho v. Common Cause*

**19. Wednesday, October 23 – Partisan Gerrymandering II – CB 744-757**

*League of Women Voters of Pennsylvania v. Commonwealth*

*League of Women Voters of Ohio v. Ohio Redistricting Commission*

E. Presidential Elections

**20. Monday, October 28 – The Electoral College** – CB 1055-1075; U.S. Const. Art. II, § 1

*Chiafalo v. Washington*

The Electoral Count Act

**21. Wednesday, October 30 – *Bush v. Gore* and the Independent State Legislature Theory** – CB 1097-1126; 2023 Supplement 7-16

*Bush v. Gore*

*Moore v. Harper*

**22. Monday, November 4 – The 2020 and 2024 Elections** – TBD

*Trump v. Anderson*

[N.B. Tuesday, November 5 is Election Day]

F. Campaign Finance

**23. Wednesday, November 6 – The *Buckley* Framework** – CB 763-787

*Buckley v. Valeo*

**24. Monday, November 11 – The Legacy of *Buckley*** – CB 795-825

*Nixon v. Shrink Missouri Government PAC*

*Randall v. Sorrell*

*Colorado Republican I*

*Colorado Republican II*

**25. Wednesday, November 13 – BCRA** – CB 844-876

*McConnell v. FEC*

*Citizens United v. FEC*

**26. Monday, November 18 – Disclosures – CB 885-914**

*Citizens United v. FEC*

*SpeechNow.org v. FEC*

*Washington Post v. McManus*

**27. Wednesday, November 20 – Public Financing – CB 924-944**

*Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*

G. Reform

**28. Monday, November 25 – Election Law Reform – Primer on For the People Act**