5396/25162: ELECTIONS AND THE LAW OF DEMOCRACY

Preliminary Syllabus – Spring 2027

Professor David Froomkin

This course surveys the law structuring the democratic process in the United States. Topics include the individual right to vote and participate; election administration; reapportionment and redistricting; the regulation of political parties and primary elections; the boundaries of federal and state power over election regulation; and electoral systems. The course will consider important contemporary legal issues in this area, including obstacles to individuals' ability to participate, litigation about racial vote dilution and racial and partisan gerrymandering, legislative reform proposals, and issues relating to the 2026 elections.

Learning objectives: By the end of this course, you will be able to: (1) know and apply the core legal principles governing central areas of election law practice, including the right to vote, redistricting, and regulations of political parties; (2) understand, apply, and interrogate the policy arguments that courts commonly invoke in election law cases; (3) understand the constitutional sources of authority for state and federal regulations of the democratic process; (4) recognize and weigh the competing rationales for and against judicial intervention in the democratic process; (5) evaluate proposals for election law reform.

The course will meet face-to-face on Mondays and Wednesdays from 10:30am to 11:50am. The required casebook is ISSACHAROFF, KARLAN, PILDES, PERSILY & TOLSON, THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS (6th ed. 2022). Reading will average around 25 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. On a few days, there will be supplemental readings, which will be posted on Canvas. It is important to come prepared to discuss the cases, both to maximize your own ability to 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.

Your grade will be based primarily on an anonymous final exam, administered via Electronic Blue Book software on a date chosen by the Law Center. The exam will be closed-book, and you will be permitted to bring only a single sheet of paper (front and back) with notes or an outline. Final grades may be modified up or down by 1/3 of a grade (e.g. B+ to A-) based on quality of class participation.

Schedule of Assignments (*N.B. subject to change before the start of the semester*)

1. Wednesday, January 20 – The New Countermajoritarian Difficulty – CB 1-10, 32-44

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

Optional: Pamela S. Karlan, *The New Countermajoritarian Difficulty*, 109 CAL. L. REV. 2323 (2021)

A. Voting Rights and Election Administration

2. Monday, January 25 – Majority Rule and Minority Inclusion – CB 75-97

Giles v. Harris

Gomillion v. Lightfoot

Optional: Richard H. Pildes, *Democracy, Anti-Democracy, and the Canon*, 17 CONST. COMMENT. 295 (2000)

3. Wednesday, January 27 – The Constitutional Right to Vote – CB 98-121

Lassiter v. Northampton County Board of Elections

Harper v. Virginia State Board of Elections

Kramer v. Union Free School District No. 15

Optional: Bertrall L. Ross II, *Fundamental: How the Right to Vote Became a Constitutional Right*, 109 IOWA L. REV. 1703 (2024)

4. Monday, February 1 – Exclusions from the Franchise – CB 47-74

Minor v. Happersett

Richardson v. Ramirez

Optional: *Should Children Vote?*, UNICEF, https://www.unicef.org/innocenti/should-children-vote

5. Wednesday, February 3 – The *Anderson-Burdick* Framework and Ballot Access – CB 122-130, 394-403, 452-463

Burdick v. Takushi

Bullock v. Carter

Munro v. Socialist Workers Party

6. Monday, February 8 – New Barriers to Voting – CB 131-145, 163-169

Crawford v. Marion County Election Board

Democratic National Committee v. Wisconsin State Legislature

7. Wednesday, February 10 – Section 2 of the Voting Rights Act and the National Voter Registration Act – CB 209-244

Brnovich v. Democratic National Committee

Arizona v. Inter Tribal Council

8. Monday, February 15 – The Help America Vote Act – CB 245-268

Sandusky County Democratic Party v. Blackwell

Husted v. A. Philip Randolph Institute

9. Wednesday, February 17 – Counting Votes – CB 1097-1125 (notes 1-5)

Bush v. Gore

10. Monday, February 22 – Remedies for a Disputed Election – CB 973-1002

Bell v. Southwell

Chisom v. Roemer

In re the Matter of the Protest of Election Returns

11. Wednesday, February 24 – The Role of Federal Courts – CB 1040-1044, 1048-1053; Supp 48-58

Growe v. Emison

The "*Purcell* Principle" (note 10 and Supp 57-58)

Moore v. Harper

<u>B. Political Parties</u>

12. Monday, March 1 – The White Primary Cases – CB 369-391

Nixon v. Herndon

Smith v. Allwright

Terry v. Adams

13. Wednesday, March 3 – 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

14. Monday, March 8 – Regulating Intraparty Affairs II – CB 423-441

California Democratic Party v. Jones

Washington State Grange v. Washington State Republican Party

15. Wednesday, March 10 – Third Parties – CB 451-456, 464-476; Hasen

Timmons v. Twin Cities Area New Party

Richard L. Hasen, *Entrenching the Duopoly: Why the Supreme Court Should Not Allow the States to Protect the Democrats and Republicans from Political Competition*, 1997 SUP. CT. REV. 331

[N.B. No class on March 15 or March 17 due to Spring Break]

C. Reapportionment and Redistricting

16. Monday, March 22 – The Reapportionment Revolution – CB 269-300

Colegrove v. Green

Baker v. Carr

Reynolds v. Sims

17. Wednesday, March 24 – 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

18. Monday, March 29 – Racial Vote Dilution under the Constitution – CB 478-507

Whitcomb v. Chavis

White v. Regester

City of Mobile v. Bolden

19. Wednesday, March 31 – Section 2 and the *Gingles* Test – CB 524-533, 536-557

Thornburg v. Gingles

20. Monday, April 5 – Racial Gerrymandering – CB 654-663, 679-696

Shaw v. Reno

Easley v. Cromartie

Cooper v. Harris

21. Wednesday, April 7 – The End of the Voting Rights Act and the Policy Debate over Race-conscious Districting – Supp 3-33

Allen v. Milligan (summary)

Louisiana v. Callais

Optional: Jowei Chen & Nicholas O. Stephanopoulos, *The Race-Blind Future of Voting Rights*, 30 YALE L.J. 862 (2020)

22. Monday, April 12 – Partisan Gerrymandering I – CB 711-744

Gaffney v. Cummings

Rucho v. Common Cause

Optional: Alexander Kustov et al., *The Rise of Safe Seats and Party Indiscipline in the U.S. Congress*

Optional: Ella Koeze, Denise Lu & Charlie Smart, "Can You Gerrymander Your Party to Power?," N.Y. TIMES (Jan. 27, 2022), https://www.nytimes.com/interactive/2025/us/politics/congressional-gerrymandering-redistricting-game.html

23. Wednesday, April 14 – Partisan Gerrymandering II – CB 744-759

League of Women Voters of Pennsylvania v. Commonwealth

League of Women Voters of Ohio v. Ohio Redistricting Commission

24. Monday, April 19 – Partisan Gerrymandering III – supplemental reading on Canvas

LULAC v. Abbott, 809 F.Supp.3d 502 (2025)

Abbott v. LULAC, 146 S. Ct. 418 (2025)

D. Electoral Systems

25. Wednesday, April 21 – Cumulative Voting – CB 1147-1171

Dillard v. Chilton County Board of Education and Chilton County Commission

McCoy v. Chicago Heights

Harper v. City of Chicago Heights

Optional: Lani Guinier, *Groups, Representation, and Race-Conscious Districting: A Case of the Emperor's Clothes*, 71 TEX. L. REV. 1589 (1993)

26. Monday, April 26 – Ranked-choice Voting and Proportional Representation – CB 1172-1187, 1201-1208

Dudum v. Arntz

27. Wednesday, April 28 – Election Law Reform – supplemental reading on Canvas

Office hours: I encourage you to meet with me. My regular office hours are Wednesdays from 2:30-3:30pm in room 430M. You can also email me at dfroomkin@central.uh.edu to set up a different meeting time, including via Zoom if that is more convenient for you.

Attendance: Attendance is mandatory. If you fail to attend at least 80% of class meetings (i.e. at least 22 of our 27 meetings in spring 2027) you will be in violation of ABA and Law Center policy and may be dropped from the course. Additionally, please be in class on time: late arrivals are disruptive to other students, and they may be treated as absences.

Computer Policy: Use of laptops or other electronic devices is generally not permitted. However, a student who wishes to use a laptop or a tablet may email the instructor pledging that they will only use the device for notetaking and consulting either notes or an electronic version of the casebook—and for no other purpose. You are best-placed to know whether you can use a laptop responsibly, and I urge you to think carefully about whether you are such a person. Violations of this policy will be treated as absences. Audio or visual recording of class by students is prohibited.

Professionalism: Our classroom is a learning space where each student is treated with respect and dignity and where everyone is provided the opportunity to participate, contribute, and succeed. In this course, all students are welcome regardless of background or identity. I encourage you to speak up and share your views appropriately throughout the semester. I also expect every class member to remember that in this learning environment, we will engage respectfully and with professionalism toward each other. In the words of the Texas Lawyer's Creed, "[a] lawyer should always adhere to the highest principles of professionalism."

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 not to generate or use any AI-generated text—whether from yourself or others—in relation to any assessment in this course. The term "assessment" means any graded or ungraded work product for this course that is submitted to the instructor, presented in a class session, or used in a graded written assignment for this course. However, you may generate and use AI-generated text for class preparation or for study supplements to aid with general understanding of

course content, although you must disclose the full extent of that use if your professor asks. Nevertheless, you should be cautious about relying on the substance of AI-generated text: for legal analysis, in particular, it is very error-prone.

Mental Health and Wellness: The University of Houston has a number of resources to support students' mental health and overall wellness, including CoogsCARE and the UH Go App. UH Counseling and Psychological Services (CAPS) offers 24/7 mental health support for all students, addressing various concerns like stress, college adjustment and sadness. CAPS provides individual and couples counseling, group therapy, workshops and connections to other support services on and off-campus. For assistance visit uh.edu/caps, call 713-743-5454, or visit a Let's Talk location in-person or virtually. Let's Talk are daily, informal confidential consultations with CAPS therapists where no appointment or paperwork is needed. Need Support Now? - If you or someone you know is struggling or in crisis, help is available. Call CAPS crisis support 24/7 at 713-743-5454, or the National Suicide and Crisis Lifeline: call or text 988, or chat 988lifeline.org.

Title IX/Sexual Misconduct: Per the UHS Sexual Misconduct Policy, your instructor is a "responsible employee" for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/.

Reasonable Academic Adjustments/Auxiliary Aids: The University of Houston is committed to providing an academic environment and educational programs that are accessible for its students. Any student with a disability who is experiencing barriers to learning, assessment or participation is encouraged to contact the Justin Dart, Jr. Student Accessibility Center (Dart Center) to learn more about academic accommodations and support that may be available to them. Students seeking academic accommodations will need to register with the Dart Center as soon as possible to ensure timely implementation of approved accommodations. Please contact the Dart Center by visiting the website: https://uh.edu/accessibility/ calling (713) 743-5400, or emailing jdcenter@Central.UH.EDU.

The Student Health Center offers a Psychiatry Clinic for enrolled UH students. Call 713-743-5149 during clinic hours, Monday through Friday 8 a.m. - 4:30 p.m. to schedule an appointment.

The A.D. Bruce Religion Center offers spiritual support and a variety of programs centered on well-being.

The Center for Student Advocacy and Community (CSAC) is where you can go if you need help but don't know where to start. CSAC is a "home away from home" and serves as a resource hub to help you get the resources needed to support academic and personal success. Through our Cougar Cupboard, all students can get up to 30 lbs of FREE groceries a week. Additionally, we provide 1:1 appointments to get you connected to on- and off-campus resources related to essential needs, safety and advocacy, and more. The Cougar Closet is a registered student organization advised by our office and offers free clothes to students so that all Coogs can feel good in their fit. We also host a series of cultural and community-based events that fosters social connection and helps the cougar community come closer together. Visit the CSAC homepage or follow us on Instagram: @uh_CSAC and @uhcupbrd. YOU belong here.

Recording of Class: Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Justin Dart, Jr. Student Accessibility Center. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use the instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

Security Escorts and Cougar Ride: UHPD continually works with the University community to make the campus a safe place to learn, work, and live. The security escort service is designed for the community members who have safety concerns and would like to have a Security Officer walk with them, for their safety, as they make their way across campus. Based on availability either a UHPD Security Officer or Police Officer will escort students, faculty, and staff to locations beginning and ending on campus. If you feel that you need a Security Officer to walk with you for your safety, please call 713-743-3333. Arrangements may be made for special needs. Parking and Transportation Services also offers a late-night, on-demand shuttle service called "Cougar Ride" that provides rides to and from all on-campus shuttle stops, as well as the MD Anderson Library, Cougar Village/Moody Towers and the UH Technology Bridge. Rides can be requested through the UH Go app. Days and hours of operation can be found at https://uh.edu/af-university-services/parking/cougar-ride/.

Syllabus Changes: Any updates to this syllabus will be announced on Canvas. It is the responsibility of students to ensure that they have an up-to-date version of the syllabus.