Election Law: The Role of Law in the Political Process
Short Course

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Introduction

This course examines the concept and application of the right to vote in the American political system. While other versions of courses with this title have varied topics, this particular version of the class (i.e., the one I will teach in this short course) will emphasize the law of the political process. That is not to suggest that other issues like campaign finance are irrelevant to our plan of study or are otherwise unimportant issues. However, the main goal of this course is to examine the legal rather than the political science questions about representation.

We will cover many of the major Supreme Court and appellate cases on topics related to voting rights, reapportionment/redistricting, ballot access, regulation of political parties, and election controversies. We will pay particular attention to competing philosophies and empirical assumptions that underlie judicial reasoning while still focusing on the ways that lawyers and elected officials use these cases as litigation tools and to serve political ends.

Since this year’s course occurs amidst a very frenzied level of election litigation focused on Alabama, we will spend some time examining important intellectual and practical questions concerning the rules that govern the structure of the process of electing candidates. At various points in the term, students will be expected to work in teams to develop litigation strategies according to the specific set of interests that each time will be assigned.

Course Requirements

This course requires a considerable, though not overwhelming, amount of reading. For each session, I have assigned several cases from our casebook, Samuel Issacharoff, Pamela Karlan & Richard Pildes, The Law of Democracy (noted hereafter as IKP). At various points, I will supplement the assignments including current Supreme Court opinions and web-based tools.

We will discuss the cases roughly in the order they appear on the syllabus, not the order they appear in the casebook. Class participation will count toward 10% of your grade. The second component of the course grade (20%) will be various exercises that teams of students will be assigned during the course of the term. Finally, the remainder (70%) is a final exam will be a take-home consisting of a combination of hypothetical questions and at least one question that requires some broader thinking about the themes of the course as a whole.

The Honor Code is in effect in this class and all others at this University. If you have questions,
it is your responsibility to ask me about the Code’s application. All exams, written work and other projects must be submitted with a statement that you have complied with the requirements of the Honor Code in all aspects of the submitted work.

Course Schedule

Session 1 -- The Concept of the Right to Vote

*Introduction* (IKP 1-16)

*Minor v. Happersett* (IKP 16-27)

Session 2 – Judicial Treatment of the Right to Vote

*Richardson v. Ramirez* (IKP 27-41)

*Giles v. Harris* (IKP 97-107)

*Lassiter v. Northampton County Board of Elections* (IKP 42-44)


*Kramer v. Union Free School District No. 14* (IKP 48-68)

*Crawford v. Marion County Election Board* (IKP 79-97)

*Common Cause / Georgia v. Billups* (IKP 98-103)

Session 3 –Political Parties

**Background** (IKP 214-21)

*Nixon v. Herndon* (IKP 221-23)

*Smith v. Allwright* (IKP 223-26)

*Terry v. Adams* (IKP 226-38 with note 3 discussion of *Morse v. Republican Party of Va.*)

*Nader v. Schaffer* (IKP 250-54 including discussion of *Democratic Party of the United States v. LaFollette* in note 2)

*Tashjian v. Republican Party of Connecticut* (IKP 261-268)

*Burwick v. Takushi* (IKP 68-79)

*Bullock v. Carter* (IKP 239-49)

Session 4-- Reapportionment and Redistricting

*Colegrove v. Green* (IKP 127-32)

*Baker v. Carr* (IKP 132-47)

*Reynolds v. Simms* (IKP 147-63, including note 3 discussion of *Burns v. Richardson & Garza v. County of Los Angeles*)

*Gray v. Sanders* (IKP 210-13)

*Lucas v. the Forty Fourth General Assembly of the State of Colorado* (IKP 163-176)

*Karcher v. Daggett* (IKP 176-86)

*Board of Estimate v. Morris* (IKP 170-77)

*Ball v. James* (IKP 187-200)

Session 5 – Partisan Gerrymandering

*Gaffney v. Cummings* (IKP 821-24; 828-29)

*Davis v. Bandemer* (IKP 829-34)

*Badham v. Eu* (IKP 834-41)

*Vieth v. Jubilier* (IKP 841-80 including discussion of *Larios v. Cox* in note 8)
Session 6 – Sec. 5 of the Voting Rights Act: Constitutionality

South Carolina v. Katzenbach (IKP 516-27, including discussion of Dougherty County Board of Ed. v. White in note 2 and Lopez v. Monterey County in note 8)
Allen v. State Board of Elections (IKP 528-536)
Presley v. Etowah County Commission (IKP 536-46 including discussion of McDaniel v. Sanchez in note 6)
NAMUDNO v. Holder
Shelby County v. Holder

Session 7 – Vote Dilution: The Constitution

Whitcomb v. Chavis (IKP 587-596)
White v. Regester (IKP 596-603, including discussion of Zimmer v. McKeithen in note 5)
Mobile v. Bolden (IKP 603-23, including discussion of Rogers v. Lodge in note 3)
Thornburg v. Gingles (IKP 652-82)
Gingles first prong (IKP 696-702)
Gingles second prong (IKP 702-705).
Bartlett v. Strickland 682-705

Session 8 – Applications of Sec. 2 of the Voting Rights Act

Dillard v. Baldwin County Board of Education (IPK 632-33, note 6)
Nixon v. Kent County (IPK 637-38, note 1)
LULAC v. Clements (IPK 705-711)
Johnson v. DeGrandy (IKP 721-734)
Rural West Tennessee African-American Affairs Council v. Sundquist (IKP 651-52, note 7; 781-82, note 5)
Holder v. Hall (IKP 735-50)
Page v. Bartels (IKP 652-54, note 8)

Session 9 –Gerrymandering, Old & New

Gomillion v. Lightfoot (IKP 116-19)
UJO v. Carey (IKP 846-52)
The Redistricting Game www.redistrictinggame.com
Shaw v. Reno (IKP 852-877, including discussion of Bush v. Vera in notes 3, 5, & 6, 734-36, and note 2, 741-47 and discussion of Miller v. Johnson in note 7, 737-38, and notes 1, 2, & 4, 740-49)
Easley v. Cromartie (Cromartie II) (IKP 879-88)
League of United Latin American Citizens v. Perry (IKP 916-35)