

# Election Law & Administration – Summer 2009

GMUSL – Syllabus version 4-09

Course no. - 2 credit hours

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Office hours by appointment

This class will receive a separate Writing Grade, based solely on your paper. Class Grade will be based on class preparation and participation (40%) and a paper, including your presentation to the class (60%).

The paper will propose state legislation to improve elections in a particular state, and will include the following: (1) actual legislation drafted to fit a chosen state's election code; (2) a policy memorandum (of 12-20 pages) geared to key decision makers explaining what is proposed, why it is proposed, whether it is supported or opposed by elections officials, party officials, and other civic activists, and (3) no more than 2 pages of key talking points to support the proposal and responses to likely opposition.

Ongoing Assignment: All students will be assigned a state that they will be responsible for investigating and following during the semester. Each week students should have reviewed news coverage and be prepared to discuss any election related issues occurring in their state, as well as in the Commonwealth of Virginia and the US Congress. Additionally, students will be expected to have reviewed the Virginia Code as well as their assigned state code/regulations on the subject matter that will be the focus of that week's discussions.

Tentative Schedule – subject to revisions announced in class and posted on class website.

## **Week 1 (May 18 & May 20)**

Understanding the context of Election law & administration; constitutional provisions; the tension between federal, state & local officials; the role of political parties; initiatives and referendum.

Assignments:

First class:

- Article I of the US Constitution  
<http://www.law.cornell.edu/constitution/constitution.articlei.html>
- Article II of the US Constitution  
<http://www.law.cornell.edu/constitution/constitution.articleii.html>
- First Amendment:  
<http://www.law.cornell.edu/constitution/constitution.billofrights.html#amendmenti>

- Twelfth Amendment:  
<http://www.law.cornell.edu/constitution/constitution.amendmentxii.html>
- Fourteenth Amendment:  
<http://www.law.cornell.edu/constitution/constitution.amendmentxiv.html>
- Fifteenth Amendment:  
<http://www.law.cornell.edu/constitution/constitution.amendmentxv.html>
- Seventeenth Amendment:  
<http://www.law.cornell.edu/constitution/constitution.amendmentxvii.html>
- Nineteenth Amendment:  
<http://www.law.cornell.edu/constitution/constitution.amendmentxix.html>
- Twentieth Amendment:  
<http://www.law.cornell.edu/constitution/constitution.amendmentxx.html>
- Twenty-Second Amendment:  
<http://www.law.cornell.edu/constitution/constitution.amendmentxxii.html>
- Twenty-Third Amendment:  
<http://www.law.cornell.edu/constitution/constitution.amendmentxxiii.html>
- Twenty-Fourth Amendment:  
<http://www.law.cornell.edu/constitution/constitution.amendmentxxiv.html>
- Twenty-Sixth Amendment:  
<http://www.law.cornell.edu/constitution/constitution.amendmentxxvi.html>
- Virginia Constitution, Article 2, Sections 1-9
- Virginia Code sections 24.2-102 through 24.2-123

Second class:

- Virginia Code sections 24.2-500 through 24.2-543
- Virginia Code sections 24.2-684 through 24.2-687
- The laws/rules in your state's laws/regulations regarding (1) political parties' roles re: nominations, (2) offices elected (3) referenda & ballot initiatives and (4) who are the relevant state and local election officials in the state and what their roles in elections are.

Questions to prepare (class #1): why do we have elections? What should be the goals of elections? What is an appropriate ballot length? Can there be too many ballot questions or ballot choices for a single question? What should be the goals of election law & procedures? What are the benefits & disadvantages uniformity of rules? Who makes the rules? Who should?

**[Before class 2 you should have identified a state you would like to follow; no student may choose the same state as another student – first one to ask will get that state.]**

Questions to prepare (class #2): what offices are elected? Who administers elections? What is the process for nomination for office? Who can vote to nominate a party candidate? What is the process for independent candidates? What are the appropriate roles of parties? How does ballot initiative & referendum work?

## **Week 2 (May 27 class only due to holiday 5/25)**

Election Disputes; Recounts & Contests

Assignment 5/27 class: Prepare the ongoing assignment re: Virginia Code (Chapter 8 on Recounts and Contests) and your state's code. Pick one of the following and research to discuss for class: Washington State Governor's recount 2004; Puerto Rico Governor's race 2004; Virginia AG's recount 2005; Minnesota Senate recount 2008;

Questions to prepare (class #5/27): What kinds of actions are the subjects of election disputes? What are the differences in recounts and contests? What were the relevant issues in the recount you researched? In your opinion, did the court handle it well (irrespective of the determination of the winner), and why or why not?

## **Week 3 (June 1 & June 3)**

Voter qualifications; Voter registration; Absentee Voting laws & issues; NVRA; UOCAVA; VAEHA & voting accessibility; Election law violations related to these issues.

**[You should have a tentative paper topic in mind and plan to discuss it with me during the week. I am happy to meet before or after class, or can be reached by phone. ]**

Assignment: In addition to the ongoing assignment re: your state & the Virginia Election Code, read the following:

- National Voter Registration Act  
[http://www.usdoj.gov/crt/voting/42usc/subch\\_ig.htm#anchor\\_1973gg](http://www.usdoj.gov/crt/voting/42usc/subch_ig.htm#anchor_1973gg),
- Voting Accessibility for Elderly and Handicapped Act  
[http://assembler.law.cornell.edu/uscode/html/uscode42/usc\\_sup\\_01\\_42\\_10\\_2\\_0\\_20\\_1-F.html](http://assembler.law.cornell.edu/uscode/html/uscode42/usc_sup_01_42_10_2_0_20_1-F.html)
- Uniformed and Overseas Citizens Absentee Voting Act  
[http://www.usdoj.gov/crt/voting/42usc/subch\\_ig.htm](http://www.usdoj.gov/crt/voting/42usc/subch_ig.htm)

Questions to prepare (class #1): Who is eligible to vote? How does one register to vote? Why do we require voters to register to vote? What are alternative registration procedures, and what are their positive and negative issues?

Questions to prepare (class #2): Why do we allow absentee voting? Who is eligible to vote absentee? How does one vote absentee?

## **Week 4 (June 8 & June 10)**

The Help America Vote Act; State Plans; Progress on HAVA election reform implementation; HAVA litigation; Voting Systems; Election Day procedures; provisional ballots; the tensions of accessibility versus integrity; the changing role of courts; the tensions between uniformity & experimentation.

**[Paper topics should be finalized by the end of class #1].**

Assignment: In addition to the ongoing assignment, read the following:

- Help America Vote Act (skim all; study Title III)  
[http://www.usdoj.gov/crt/voting/hava/HAVA\\_2002.html](http://www.usdoj.gov/crt/voting/hava/HAVA_2002.html)
- Bush v. Gore <http://www.law.cornell.edu/supct/html/00-949.ZPC.html>
- Your state's state plan, along with the Virginia state plan
- Electionline.org's 2008 report "What's changed, what hasn't and why"  
<http://www.electionline.org/>
- Electionline.org's chart on Election litigation  
<http://www.electionline.org/Portals/1/docs/Litigation%20chaaat.doc>
- Moritz Law's litigation chart  
<http://moritzlaw.osu.edu/electionlaw/litigation/index.php>

Questions to prepare (class #1): Why did Congress pass HAVA? What are its goals? Are the goals likely to be met? Why or why not? What progress has been made in improving elections? What are the procedures for voting on Election Day? When are they all in place?

Questions to prepare (class #2): How has litigation affected Election Day in the past 6 years? What kinds of election litigation have resulted? What are the benefits and challenges of uniformity in election procedures? What are the benefits and challenges of federalism? What did the Supreme Court intend when it decided *Bush v. Gore*?

**Week 5 (June 15 & June 17)**

The Voting Rights Act; language accessibility issues (Secs 4(e), 4(f) and 203); Section 5; Section 2; Section 208; Districts & Redistricting; bailout

Assignment: In addition to the ongoing assignment, read the following:

- Voting Rights Act  
[http://assembler.law.cornell.edu/uscode/html/uscode42/usc\\_sup\\_01\\_42\\_10\\_20.html](http://assembler.law.cornell.edu/uscode/html/uscode42/usc_sup_01_42_10_20.html)
- Section 5 Preclearance Guidelines  
[http://www.usdoj.gov/crt/voting/28cfr/51/28cfr51.htm#anchor51\\_1](http://www.usdoj.gov/crt/voting/28cfr/51/28cfr51.htm#anchor51_1)
- HR 9, "The Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006"  
<http://thomas.loc.gov/cgi-bin/thomas>
- <http://www.csg.org/pubs/Documents/BOS2005-LegislativeRedistricting.pdf>

Questions to prepare (class #1): [expect some continuation of Week 3 discussion on HAVA] Why was the Voting Rights Act passed? Why was it constitutional when passed? Is it still constitutional? Why or why not?

Questions to prepare (class #2): Why did Congress add the language accessibility provisions? Why do we draw lines for districts? What are the appropriate considerations to take into account when drawing district lines?

**[I am willing to review drafts of papers between 6/15 and 6/26 if you would like feedback]**

### **Week 6 (June 22 & June 24)**

Continuation of Voting Rights Act; State & federal Campaign Finance issues;

Class #1 will be a continuation – no new assignments, unless later announced.

- Assignment (Class #2): In addition to the ongoing assignment in the Virginia Code (Chapter 9 on the Campaign Finance Disclosure Act) and in your state's code

Questions to prepare (class #2): What are the problems that campaign finance laws are trying to solve? Do the rules take care of the perceived problems? What are alternative methods for dealing with those problems? How do the states differ in their approach to campaign finance laws?

### **Week 7 (June 29)**

Bipartisan Campaign Reform Act; Political Advertising

- Assignment: read the following: Bipartisan Campaign Reform Act <http://www.fec.gov/law/feca/feca.pdf> ; In addition to the ongoing assignment re: Virginia Code (Chapter 9.2 on Disclosure Requirements for Political Campaign Advertisements), read your state's code on political campaign advertisements.

Questions to prepare (class #2): What was Congress trying to accomplish with BCRA? What problems have resulted from it? Why are there efforts to regulate political advertising? How does the first amendment apply to political advertising?

### **End of Week 7 & Week 8 (July 1 & July 6)**

Class presentations; the future of election law & administration

Assignment: Be prepared to present & defend your proposal. Be prepared to challenge and make suggestions for improvements to other students on their suggestions.