

Federal Election Law – Summer 2016

GMUSL – Syllabus version

Course no. - 3 credit hours

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Office hours by appointment

Students will be graded based on class participation (30%), a presentation (20%) and an exam (50%). Schedule is subject to revisions.

Ongoing Assignment: All students will be assigned a state that they will be responsible for investigating and following during the semester. In addition to specific assigned material, for each class students should 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 to the extent applicable to the discussion. The presentation topic will be related to the chosen state's election laws.

Class 1 (May 17)

Understanding the context of Election law & administration; constitutional provisions; the tension between federal, state & local officials [KY & OR primaries]

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
- <https://en.wikipedia.org/wiki/Democracy>
- "Democracy in Danger: What States Can Do to Safeguard America's Election System," Hans A. von Spakovsky, Heritage Foundation, Heritage Lectures, August 11, 2009, available at <http://www.heritage.org/research/lecture/democracy-in-danger-what-states-can-do-to-safeguard-americas-election-system?query=Democracy+in+Danger:+What+States+Can+Do+to+Safeguard+America's+Election+System>

Questions to prepare: why do we have elections? What should be the goals of elections? What is an appropriate ballot question? What is an appropriate ballot length? What should be the goals of election law & procedures? What are the benefits & disadvantages re: uniformity of rules? Who makes the rules? Who should? What offices are elected? Who administers elections, including the relevant state and local election officials in the state and their roles in elections?

[By 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; requests to Professor Quinn.]

Class 2 (May 19) – Voting Rights Act, Sec. 2 & Constitutionality of Sec. 5

Assignment:

- Voting Rights Act
http://assembler.law.cornell.edu/uscode/html/uscode42/usc_sup_01_42_10_20.html
- <http://www.csg.org/pubs/Documents/BOS2005-LegislativeRedistricting.pdf>
- "Disparate Impact and Section 2 of the Voting Rights Act," Roger Clegg and Hans A. von Spakovsky, Heritage Foundation Legal Memorandum No. 119 (March 17, 2014), available at <http://www.heritage.org/research/reports/2014/03/disparate-impact-and-section-2-of-the-voting-rights-act?ac=1>
- Shelby County, Alabama v. Eric Holder, 570 U.S. ____ (2013), available http://www2.bloomberglaw.com/public/desktop/document/Shelby_Cnty_v_Holder_No_1296_2013_BL_167707_US_June_25_2013_Court
- Northwest Austin Mun. Utility District No. One v. Holder, 129 S.Ct. 2504 (2009), available at http://www.oyez.org/cases/2000-2009/2008/2008_08_322
- Testimony on "The Voting Rights Act after the Supreme Court's Decision in Shelby County," Hans A. von Spakovsky, available at <http://www.fed-soc.org/publications/detail/testimony-on-the-voting-rights-act-after-the-supreme-courts-decision-in-shelby-county> .

Questions to prepare: Why did Congress pass the Voting Rights Act? Has it achieved its purpose? Why was Section 5 of the Voting Rights Act found to be constitutional when passed? Why did the Supreme Court find it unconstitutional in 2013? Is it still needed today, and if so, why?

Class 3 (May 24) – Voting Rights Act & Redistricting, continued; Voting Rights Act & Redistricting “One Man, One Vote” [WA primary]

Assignment:

- Virginia Code Sections & your state’s Code regarding redistricting criteria.
- “From *Ashcroft* to *Larios*: Recent Redistricting Lessons From Georgia,” Gaddie and Bullock, III, 34 *Fordham Urb. L.J.* 997 (2007), available at <http://cbullock.myweb.uga.edu/Ashcroft.pdf>
- *Baker v. Carr*, 369 U.S. 186 (1962)
- *Shaw v. Reno*, 509 U.S. 630 (1993)
- *Vieth v. Jubelirer*, 541 U.S. 267 (2004)
- *Evenwel v. Abbott*, 578 U.S. ____ (2016); http://www.supremecourt.gov/opinions/15pdf/14-940_ed9g.pdf
- *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. ____ (2015), http://www.supremecourt.gov/opinions/14pdf/13-1314_kjfl.pdf
- *Harris v. Arizona Independent Redistricting Commission*, Docket No. 14-232 decided Apr 20, 2016 by the U.S. Supreme Court, <http://www.scotusblog.com/case-files/cases/harris-v-arizona-independent-redistricting-commission/>

Questions to prepare: How does apportionment work? How do we draw lines for representational districts? What are the appropriate considerations to take into account when drawing district lines? Should legislators be allowed to take race into account in redistricting?

Class 4 (May 26) – Voting Rights Act Language Access Provisions (Secs 4(e), 4(f) and 203); Felon Voting

Assignment:

- Virginia Code Sections & your state’s Code regarding language accessibility and voter accessibility.
- Review the Voting Rights Act Sections 4(e), 4(f) and 203 (above)
- Hans von Spakovsky and Roger Clegg, “Felon Voting and Unconstitutional Congressional Overreach,” Heritage Foundation Legal Memorandum No. 145 (Feb. 11, 2015), <http://www.heritage.org/research/reports/2015/02/felon-voting-and-unconstitutional-congressional-overreach>.
- Testimony of Hans A. von Spakovsky before the House Judiciary Committee’s Subcommittee on the Constitution, Civil Rights and Civil Liberties, H.R. 3335 – Democracy Restoration Act, March 16, 2010, available at <http://judiciary.house.gov/hearings/pdf/Spakovsky100316.pdf>
- Hans von Spakovsky and Roger Clegg, “In Virginia, Terry McAuliffe Breaks the Constitution to Plump the Democratic Vote,” *National Review Online* (April 25, 2016), <http://www.nationalreview.com/article/434491/terry-mcauliffe-virginia-felons-right-vote-unconstitutional>.

Questions to prepare: Why did Congress add the language accessibility provisions? Are the current designations based on the stated purpose? Does your state have additional

criteria regarding language accessibility? Should felons be able to vote? When should their right to vote be restored?

Class 5 (May 31) – VAEHA; NVRA & Voter Registration

Assignment:

- Voting Accessibility for Elderly and Handicapped Act
http://assembler.law.cornell.edu/uscode/html/uscode42/usc_sup_01_42_10_20_20_I-F.html
- Review your state's code and Virginia Code (Chapter 4) re: voter registration.
- National Voter Registration Act
http://www.usdoj.gov/crt/voting/42usc/subch_ih.htm#anchor_1973gg,
- *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. ____ (2013), available at http://www.oyez.org/cases/2010-2019/2012/2012_12_71.
- *Arcia v. Florida Secretary of State*, 772 F. 3d 1335 - Court of Appeals, 11th Circuit 2014, available at <http://law.justia.com/cases/federal/appellate-courts/ca11/12-15738/12-15738-2014-04-01.html>
- *ACORN v. Edgar*, 56 F.3d 791 (7th Cir. 1995), available at <http://law.justia.com/cases/federal/district-courts/FSupp/880/1215/1408366/>

Questions to prepare: Why did Congress pass VAEHA? What are the VAEHA enforcement provisions? Does your state have additional criteria regarding disabled accessibility? Who is eligible to vote under federal law? Does your state have additional criteria? 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?

Class 6 (June 2) - UOCAVA, MOVE & Absentee Voting Issues

Assignment:

- Review your state's code and Virginia Code (Chapter 7) re: absentee voting.
- Uniformed and Overseas Citizens Absentee Voting Act ,
http://www.usdoj.gov/crt/voting/42usc/subch_ig.htm
- February 13, 2009 ruling by District Judges Elizabeth Hayden, Kurt Marben and Denise Reilly in *Coleman v. Franken*, available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/Orderon19categories.pdf>
- "Voting By Military Personnel and Overseas Citizens," Hans A. von Spakovsky, Federalist Society (Jan. 2005), available at http://www.fed-soc.org/doclib/20070403_UOCAVA.pdf
- "America's Military Voters: Re-enfranchising the Disenfranchised," Hans A. von Spakovsky and Eric Eversole, Heritage Foundation, Legal Memorandum No. 45 (July 28, 2009); available at <http://www.heritage.org/Research/Reports/2009/07/Americas-Military-Voters-Re-enfranchising-the-Disenfranchised>
- "Elections Exclusively by Mail: A Terrible Idea Whose Time Should Never Come," Hans A. von Spakovsky, Heritage Foundation Legal Memorandum No. 51 (April 21, 2010), available at <http://www.heritage.org/research/reports/2010/04/vote-by-mail-elections-exclusively-by-mail-are-a-terrible-idea>

[idea?query=Elections+Exclusively+by+Mail:+A+Terrible+Idea+Whose+Time+Should+Never+Come](#)

Questions to prepare - Why do we allow absentee voting? Is it a right or a privilege? Who is eligible to vote absentee? How does one vote absentee? How does state & federal law on absentee voting interact? Should we switch entirely to mail voting?

Class 7 (June 7) – Elections Access versus Elections Integrity; Voting Systems & Internet Voting; Election Day procedures, Voter ID [CA, MT, NJ, NM, ND, SD primaries]

Assignment:

- Virginia Code 24.2-600 et seq. and 24.2-1000 et seq. & your state's code provisions on election day procedures & election crimes
- "Democracy in Danger: Case Studies of Election Fraud," Hans A. von Spakovsky, Heritage Foundation Special Report SR-24 (October 2008), available at <http://www.heritage.org/Research/Reports/2008/10/Democracy-in-Danger-Case-Studies-of-Election-Fraud>
- "Without Proof: The Unpersuasive Case Against Voter Identification," Hans A. von Spakovsky, Heritage Foundation Legal Memorandum No. 72 (August 24, 2011), available at <http://www.heritage.org/research/reports/2011/08/without-proof-the-unpersuasive-case-against-voter-identification>
- "Voter Photo Identification: Protecting the Security of Elections," Hans A. von Spakovsky, Heritage Foundation Legal Memorandum No. 70 (July 13, 2011), available at <http://www.heritage.org/Research/Reports/2011/07/Voter-Photo-Identification-Protecting-the-Security-of-Elections>
- "Lessons from the Voter ID Experience in Georgia" Hans A. von Spakovsky, Heritage Foundation Issue Brief No. 3541 (March 19, 2012), <http://www.heritage.org/research/reports/2012/03/lessons-from-the-voter-id-experience-in-georgia?ac=1>.
- "Faulty Data Fuel Challenges to Voter ID Laws," Don Palmer, Heritage Foundation Backgrounder No. 3069 (Jan. 12, 2016), <http://www.heritage.org/research/reports/2016/01/faulty-data-fuel-challenges-to-voter-id-laws>
- "Revisiting the Lessons from the Voter ID Experience in Texas: 2015," Hans von Spakovsky, Heritage Foundation Backgrounder No. 3042 (August 4, 2015), <http://www.heritage.org/research/reports/2015/08/revisiting-the-lessons-from-the-voter-id-experience-in-texas-2015>
- "Election Reform in North Carolina and the Myth of Voter Suppression," Hans von Spakovsky, Heritage Foundation Backgrounder No. 3044 (July 30, 2015), <http://www.heritage.org/research/reports/2015/07/election-reform-in-north-carolina-and-the-myth-of-voter-suppression>
- *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008). <https://www.law.cornell.edu/supct/html/07-21.ZS.html>. U.S. v. North Carolina (M.D.N.C.), http://www.ncmd.uscourts.gov/sites/ncmd/files/opinions/13cv658moo_2016.pdf; Hans von Spakovsky, "The DOJ Got Owned by this Federal Judge on Voter ID,"

Conservative Review (April 27, 2016),
<https://www.conservativereview.com/commentary/2016/04/icymi-the-doj-got-owned-by-this-federal-judge-on-voter-id>

- Frank v. Walker, 768 F.3d 744 (7th Cir. 2014), <http://caselaw.findlaw.com/us-7th-circuit/1680107.html>.

Non-required reading:

- Tracy Campbell, "Deliver the Vote – A History of Election Fraud, and American Political Tradition -1742-2004," Carroll & Graf Publishers (2005)
- Larry Sabato and Glenn Simpson, "Dirty Little Secrets: the Persistence of Corruption in American Politics," Random House (1996)
- John Fund and Hans von Spakovsky, "Who's Counting? How Fraudsters and Bureaucrats Put Your Vote at Risk," Encounter Books (2012)

Class 8 (June 9) – Political Parties, 3rd Parties & Independent Candidates, Initiative & Referendum; Ballot Access;

- 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
- Hans von Spakovsky, "Election Fraud in the 2008 Presidential Election: A Case Study in Corruption," Heritage Foundation Legal Memorandum No. 111 (Jan. 13, 2014), available at www.heritage.org/research/reports/2014/01/election-fraud-in-the-2008-indiana-presidential-campaign-a-case-study-in-corruption

Questions to prepare: 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?

Class 9 (June 14) - Election Disputes; Recounts & Contests, Equal Protection, *Bush v. Gore* & Counting the Votes; The Help America Vote Act; provisional ballots; election litigation, and the changing strategy of political parties & candidates; the tensions between uniformity & experimentation [DC primary]

Assignment:

- Review your state's code re: recounts & contests and review Virginia Code (Chapter 8 on Recounts and Contests).
- *Bush v. Gore* <http://www.law.cornell.edu/supct/html/00-949.ZPC.html>

- Class will be expected to pick one of the following and research to discuss for class (assignment confirmed the week before): Washington State Governor's recount 2004 https://en.wikipedia.org/wiki/Washington_gubernatorial_election,_2004 ; Puerto Rico Governor's race 2004; https://en.wikipedia.org/wiki/Puerto_Rican_general_election,_2004; Minnesota Senate recount 2008 https://en.wikipedia.org/wiki/United_States_Senate_election_in_Minnesota,_2008 ; Alaska Senate race 2010 https://en.wikipedia.org/wiki/United_States_Senate_election_in_Alaska,_2010 .
- 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
- The Help America Vote Act of 2002: A Statutory Primer, Hans A. von Spakovsky, Federalist Society (June 2005), available at http://www.fed-soc.org/doclib/20070403_HelpAmericaVote.pdf

Questions to prepare re: your state: 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? Why did Congress pass HAVA? Have the goals been met? Why or why not? What progress has been made in improving elections? What are the benefits/ challenges of federalism? What did the Supreme Court intend when it decided Bush v. Gore?

Class 10 (June 16) - State Campaign Finance

Assignment:

- Review campaign finance provisions in your state's code and the Virginia Code (Chapter 9 on the Campaign Finance Disclosure Act).
- Campaign Finance Reform: Experience of Two States that Offered Full Public Financing for Political Candidates, U.S. Government Accountability Office (May 2010) [read at least executive summary], available at http://campaignfreedom.org/doclib/20100609_GAO2010MEAZUpdate.pdf
- "Keep Out: How State Campaign Finance Laws Erect Barriers to Entry for Political Entrepreneurs," Jeffrey Milyo, Institute for Justice (Sept. 2010), available at http://campaignfreedom.org/doclib/20101001_Milyo2010ContribReport.pdf
- Arizona Free Enterprise Club's Freedom PAC v. Bennett, 564 U.S. ____ (2011), www.oyez.org/cases/2010-2019/2010/2010_10_238.

Questions to prepare: How does state campaign finance law interact with federal campaign finance law? 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?

Class 11 (June 21) – Class Presentations

Class 12 (June 23) - Class Presentations

Class 13 (June 28) - Federal Campaign Finance

Assignment:

- Quick Answers to General Questions, Federal Election Commission, available at http://www.fec.gov/ans/answers_general.shtml
- Citizens' Guide, Federal Election Commission, available at http://www.fec.gov/pages/brochures/citizens_guide_brochure.pdf
- *Buckley v. Valeo*, 424 U.S. 1 (1976)
- *Citizens United v. Fed. Election Comm.*, 558 U.S. ____, 130 S.Ct. 876 (2010), <https://www.law.cornell.edu/supct/html/08-205.ZS.html>
- *McCutcheon v. Federal Election Commission*, 572 U.S. ____ (2014), available at http://www.oyez.org/cases/2010-2019/2013/2013_12_536 "The Liberal Mythology of an 'Activist' Court: *Citizens United* and *Ledbetter*," Robert Alt and Hans A. von Spakovsky, Heritage Foundation, Legal Memorandum No. 54 (June 15, 2010), [http://www.heritage.org/research/reports/2010/06/the-liberal-mythology-of-an-activist-court-citizens-united-and-ledbetter?query=The+Liberal+Mythology+of+an+\"Activist\"+Court:+Citizens+United+and+Ledbetter](http://www.heritage.org/research/reports/2010/06/the-liberal-mythology-of-an-activist-court-citizens-united-and-ledbetter?query=The+Liberal+Mythology+of+an+\)
- "Citizens United and the Restoration of the First Amendment," Hans A. von Spakovsky, Heritage Foundation Legal Memorandum No. 50 (Feb. 17, 2010), <http://www.heritage.org/research/reports/2010/02/citizens-united-and-the-restoration-of-the-first-amendment?query=Citizens+United+and+the+Restoration+of+the+First+Amendment>

Questions to prepare: What are the problems that federal 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?

Class 14 (June 30) - Federal Campaign Finance - Bipartisan Campaign Reform Act; Political Advertising; The future of US Election Law

Assignment:

- Bipartisan Campaign Reform Act <http://www.fec.gov/law/feca/feca.pdf> ;
- Virginia Code (Chapter 9.2 on Disclosure Requirements for Political Campaign Advertisements), and your state's code on political campaign advertisements.

- *McConnell v. FEC*, 540 U.S. 93 (2003),
<https://www.law.cornell.edu/supct/html/02-1674.ZS.html>

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? Where is US election law likely to go next? How is your state likely to change before 2020?