

**POLITICS 167**  
**SUPREME COURTS AND ELECTIONS:**  
**AMERICAN AND INTERNATIONAL EXPERIENCE**

TR 11:00 – 12:15

Fall 2010

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Office hours: I will try to be available every day (Mon-Fri) in Medbury 103 from 2 to 3 pm. A meeting at another time might also be arranged.

**Overview**

Elections are the most sensitive and perhaps the most important moment in the life of a democracy. In past times, courts would have declined to hear most electoral cases as “political questions” beyond their purview. In the last fifty years, however, judges have accepted cases covering more and more aspects of the electoral process, and have developed a distinct judicial view of them. The accumulated consequences of these interventions from the bench have been tremendous, putting up constitutional fences around almost every question of democratic competition: Who may vote, how constituency lines may be drawn, who may appear on the ballot, how campaigns may be financed and what may be said during them.

To show that “judicialization” of elections is not a uniquely American phenomenon, these cases will be compared with rulings on similar questions by the high courts of ten other countries on five continents. We will also consider the adjudication of an international court, the European Court of Human Rights, in a case brought against Turkey. While it is expected that students will already have some knowledge of US institutions, no prior study of judicial politics or of other countries’ institutions is assumed.

**Course organization**

Instruction will involve one 75-minute lecture (usually Thursday), and one 75-minute class (usually Tuesday) each week.

- The lecture will introduce the context of each topic and its leading decisions, while the class will be driven by close reading of the cases singled out for discussion and by students’ written briefs of (and questions regarding) those cases.
- Once we are a few weeks into the course, students will be assigned to act as “co-pilots” for individual cases in class. Co-pilots do not have to prepare a presentation, but just come equipped with an especially good grasp of the

material and any questions, observations or scenarios that they think will help get their classmates thinking and talking. It can be as simple as asking classmates to help explain something you didn't understand in the reading or lecture, or drawing attention to relevant current events. You may make use of the audio-visual system if you wish.

### Requirements

Most weeks we shall be reading one long or two shorter cases. You are not expected to trudge through the many footnotes that accompany judicial decisions. All readings and cases are in a course reader (split into two parts) available at CopyCat Photocopying at 1203 25<sup>th</sup> Street (near the Varsity Theater). Their phone number is 255-9284. Part one costs around \$69, part two \$76.

Students must turn in (usually on Tuesdays) a “brief” (synopsis) of one case. These briefs should normally not exceed 1.5 pages (single-spaced, 12-point font), although up to 2 pages will be allowed for exceptionally long cases.

Your briefs should

- follow the format recommended in Donald Kommers, et al, *American Constitutional Law. Volume 1: Governmental Powers and Democracy*, Appendix E, subject to your own modifications and my “further tips for briefing”.
- extract the key elements of the court’s opinion and, where relevant, of the dissent(s);
- convey whether (and why) you find the majority’s or dissenters’ reasoning persuasive.
- compare, whenever possible, the reasoning of the judge(s) in the case with that of the judge(s) in another case.

To keep the briefs brief, avoid heavy use of quotations from the cases; put everything in your own words as much as possible. Any quotations must be properly cited (i.e., attributed to a judge or page number). Wholesale copying of chunks of the text of the case will result in the brief being returned for rewriting. If you cannot turn in the brief at the appointed time owing to illness, bereavement or a serious crisis, we can negotiate an extension; otherwise that brief will be given an automatic F.

The final grade for the course will comprise the following components:

|                         |     |
|-------------------------|-----|
| Weekly briefs (15):     | 70% |
| Final in-class exam:    | 20% |
| “Co-piloting” in class: | 10% |

Assignments will be evaluated in terms of letter grades, but letter grades will then be averaged and weighted in terms of a 12-level point system:

|         |        |        |        |       |
|---------|--------|--------|--------|-------|
| A+ = 12 | B+ = 9 | C+ = 6 | D+ = 3 | F = 0 |
| A = 11  | B = 8  | C = 5  | D = 2  |       |
| A- = 10 | B- = 7 | C- = 4 | D- = 1 |       |

Of your case briefs, the first one will not be graded, so the overall grade for the briefs will

be derived by summing the individual grades' numerical values and dividing by 14.

If you are thrown off by some of the legal terms encountered in the US cases, many are explained at <http://www.uscourts.gov/Common/Glossary.aspx>

For an even stronger flavor of the judicial thinking involved in the US cases (and an occasional laugh), you can listen to recordings of the oral arguments for most of them at <http://www.oyez.org>

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### **1. The law of elections (Aug. 24)**

- Donald Kommers, et al, *American Constitutional Law. Volume 1: Governmental Powers and Democracy*. Third edition (Rowman & Littlefield, 2009), ch. 1 ('The Supreme Court') and Appendix E ('Understanding Supreme Court Opinions').
- Further tips on briefing for Politics 167
- Background law: Frequently cited sections of the US Constitution

### **2. The right to vote:**

#### **a. in the US (lecture Aug. 26, case brief due Aug. 31)**

[Read the "Nuts and Bolts of the Voting Rights Act" in the course pack.]

1. *Minor v. Happersett*
2. *Richardson v. Ramirez*

#### **b. in Canada and Australia (lecture Sept. 2, brief due Sept. 7)**

3. *Sauvé v. Canada (Chief Electoral Officer)*
4. *Roach v. Electoral Commissioner*

### **3. Apportionment (lecture Sept. 9, brief due Sept. 14)**

5. *Wesberry v. Sanders*
6. *The Attorney General for Saskatchewan v. Carter*

And check out this on-line apportionment/districting game to get a feel for what is involved in mapping constituencies:

<http://www.redistrictinggame.org>

### **4. Representation:**

#### **a. in the US (lecture Sept. 16, brief due Sept. 21)**

7. *United Jewish Organizations v. Carey*
8. *Shaw v. Reno*

#### **b. in Kenya and Hong Kong (lecture Sept. 23, brief due Sept. 28)**

9. *Lemeiguran v. Attorney General*
10. *Chan Wah v. Hang Hau Rural Committee*

### **5. Voter ID (lecture Sept. 30, brief due Oct. 5)**

11. *Crawford v. Marion County Election Board*
12. *New National Party v. Government of South Africa*

**6. Electronic voting (lecture Oct. 7, brief due Oct. 12)**

- 13. *Gusciora v. Corzine*
- 14. Decision 2 BvC 3/07 (2009) of the Constitutional Court of Germany

**7. Campaign claims and content:**

**a. in the US (lecture Oct. 14; brief due Oct. 21)**

- 15. *Henley v. DeVore*
- 16. *Siefert v. Alexander*

**b. in the UK, India and Malaysia (brief due Oct. 26):**

[Read the background notes in the course pack]

- 17. *ProLife Alliance v. British Broadcasting Corporation*\*
- 18. *Harcharn Singh v. Sajjan Singh*
- 19. *Kho Whai Phaw v. Chong Chieng Jen*

**8. Parties barred and banned:**

**a. in the US (lecture Oct. 28, brief due Nov. 2)**

- 20. *Dennis v. United States*

**b. in Philippines and Turkey (lecture Nov. 4, brief due Nov. 9)**

- 21. *Ang Ladlad v. Commission on Elections*
- 22. *Refah Partisi v. Turkey*

**9. American specialties:**

**a. campaign finance (lecture Nov. 11, brief due Nov. 16)**

- 23. *Randall v. Sorrell*

**b. corporate expenditure (lecture Nov. 18, brief of JJ Kennedy's & Thomas's opinions due Nov. 23, brief of Justice Stevens's dissent due Nov. 30)<sup>†</sup>**

- 24. *Citizens United v. FEC* [Kennedy & Thomas – brief together]
- 25. *Citizens United v. FEC* [Stevens]

**c. party primaries (lecture Dec. 2, brief due Dec. 7)**

- 26. *Tashjian v. Republican Party of Connecticut*
- 27. *California Democratic Party v. Jones*

**10. Wrap-up (Dec. 9):** last briefs returned, guide to final exam issued, course evaluations filled out.

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\* As this case contains somewhat graphic description of abortions, you may skip it if you would be disturbed by the material. Read the other two cases instead.

<sup>†</sup> It may help you to watch this debate on *Citizens United* by a panel of leading experts on election law: <http://www.vimeo.com/13036281>