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Office hours: MW 8 am – 9 am, or by appointment

Election Law (Law 577, Sections 1 and 2) Fall 2013 **COURSE DESCRIPTION AND SYLLABUS**

Introduction

This course considers ways in which the law governing the political process affects and reflects political power relationships. Topics covered will include: campaign finance, the right to vote, election administration, the Voting Rights Act, political parties, and redistricting. No background in politics or political science is required.

Required Course Materials

1. DANIEL HAYS LOWENSTEIN, RICHARD L. HASEN, AND DANIEL P. TOKAJI, ELECTION LAW—CASES AND MATERIALS (5th ed. 2012) (“CB”)
2. DANIEL HAYS LOWENSTEIN, RICHARD L. HASEN AND DANIEL P. TOKAJI, ELECTION LAW—CASES AND MATERIALS, 2013 SUPPLEMENT (“Supp.”) (posted on TWEN)
3. RICHARD L. HASEN, THE VOTING WARS: FROM FLORIDA 2000 TO THE NEXT ELECTION MELTDOWN (2012) (“TVW”)

I will also hand out additional materials for you to read from time to time.

Please pay careful attention to the Course Requirements, which differ depending on whether you are in Section 1 (final exam session) or Section 2 (paper section). This class is NOT eligible to take on Credit/No Credit basis regardless of the section in which you are enrolled.

Course Requirements for Section 1

1) Attendance and participation requirements: 20% of course grade

I expect regular attendance. I will pass around an attendance sheet for you to sign. (It is a violation of the honor code to sign for another student.) Students who miss more than three classes without a valid doctor’s note or excuse approved by the assistant dean for students shall be ineligible to take the final examination.

I also expect you to participate regularly in class. Students in Section 1 will sign up for four class sessions to be “on call” via TWEN. Students who fail to show up or who pass during their “on call” sessions will receive a lower grade, and missing more than one “on-call” day without an approved excuse will result in a failing grade in this part of the course.

2) Final examination: 80% of course grade

The final examination will consist of an objective component (multiple choice questions, closed book and closed note) worth 1/3 of your grade and an essay component (two essays, open book and open note) worth 2/3 of your final grade.

Course Requirements for Section 2

1) Attendance, participation, and “reaction papers:” 25% of course grade

I expect regular attendance. I will pass around an attendance sheet for you to sign. (It is a violation of the honor code to sign for another student.) Students who miss more than three classes without a valid doctor’s note or excuse approved by the assistant dean for students shall be ineligible to submit a final paper.

I also expect you to participate regularly in class. As part of your class participation, you must prepare 10 very short “reaction papers” related to the particular class readings. The class meets 26 times, but you need turn in only 10 reaction papers for weeks of your choosing (not including those sessions for which there is no assigned reading). Each reaction paper will address at least 2 thoughts, questions, or critical comments you have about the class reading. A few sentences about each thought, question, or critical comment should suffice. You should focus on conceptual issues rather than factual matters. Reaction papers are due **no later than 5 pm the day before each class** and must be submitted **via TWEN**. Be sure to put your names on the assignments. I do not grade individual reaction papers. Because these reaction papers will form the basis for the day’s class discussion, I will not accept late reaction papers. I also may call on you to discuss items in your reaction papers the days which you submit them.

2) Original Research Paper: 75% of course grade

A paper submitted as part of Section 2 satisfies the UCI Law writing requirement. (If you wish to use this course to satisfy the writing requirement, you must submit the writing requirement signoff form for my signature at the end of the semester: <http://law.uci.edu/registrar/WritingRequirementSignoff.pdf>).

By the deadlines listed below, you must produce an original, scholarly research paper at least 25 double-spaced pages in length (Times New Roman, font 12, 1-inch margins, single spaced footnotes). Your paper must provide more than a mere description of a legal issue or problem in the field of election law; instead, you must put forward an original argument. Your

paper should reflect meticulous research and depth and clarity of analysis. It may consist primarily of (1) a legal/constitutional analysis of an election law issue; (2) an analysis of an election law issue from a philosophical/political theory perspective; or (3) an empirical analysis of an election law issue. For general guidance on writing an academic paper, see Eugene Volokh, *Academic Legal Writing* (4th edition 2010), on reserve in the law library. For some examples of good student writing in election law, see the five student papers I supervised for a “Developments in Election Law” issue of the *Loyola of Los Angeles Law Review* (<http://lr.lls.edu/42-3.html>).

For many students, the most difficult part about writing a paper is choosing an appropriate topic. My advice is that you choose a topic that interests you. You may have read or heard about a particular aspect of election law that is currently in the news. You might want to critique a recent election law case, or write about a case working its way through the courts now. Alternatively, you might consider topics listed on a handout I will provide separately. Once you locate an aspect of election law that interests you, read a few scholarly articles or court cases on the subject. Often, these sources will mention issues that remain unresolved or present a point of view that perhaps seems wrongheaded. The easiest way to come up with a thesis is to take a position against the position someone else has already taken.

In order to facilitate the highest possible level of scholarship, you must start on this project early and work on it throughout the semester. You must complete *each* stage of paper drafting described below in order to pass the course, and your final grade will suffer for each stage of a late paper. I will not accept late final papers submitted after the end of the fall term absent an excuse approved by the assistant dean for students:

- By 9/10 *Submission of proposed paper topic.* A general description of the topic you wish to explore is all that is required; you need not have developed a thesis by this point. Submit via TWEN.
- By 9/24 *Submission of an outline, including your tentative thesis.* By this point, you should have located the important sources you plan to use in your paper and developed a tentative thesis you wish to prove in your paper. Submit an outline of your paper that incorporates these elements. Submit via TWEN.
- By 11/12 *Submission of rough draft.* The rough draft should be as close to a finished project as possible. Your introduction should set forth a clear thesis and provide a road map for your paper. The paper should be geared toward one goal: marshaling evidence to prove your thesis. Submit via TWEN.
- By 12/11 *Submission of final paper.* This paper must be turned in by December 11 at 5:00 pm. Submit via TWEN. Late papers will be penalized depending upon the degree of lateness, but papers

submitted after the end of the fall term on December 18 at 5 pm
will not be accepted absent extension granted by the assistant dean
of students.

Syllabus (Subject to Revision) (Dates are estimates, not guarantees, of when we will cover material)

I. Voting and Representation: The Warren Court's Equal Protection Legacy

- A. The Right to Vote: Age, Residency, Citizenship, Non-felon status**
Reading: (Skim for background 27-40), CB 40 (bottom) – 63 (**August 19**)
- B. The Right to an Equally Weighted Vote**
Reading: CB 66 -86, Supp. 2 (**Aug 21**)
- C. Special Purpose Elections and Districting Criteria**
Reading: CB 86 -107 (**Aug 26**) [**Note: Class is cancelled Aug 28 and there is no class for Labor Day, September 2]**]

II. Partisan Gerrymandering and Political Competition

- A. Partisan Gerrymandering**
Reading: CB 109-44, Supp. 3 (**Sept 4**)
- B. Incumbency and Competition**
Reading: CB 144 (bottom) – 63, additional reading to be handed out in class (**Sept. 9**)

III. Minority Vote Dilution

- A. Section 5 of the Voting Rights Act**
Reading: CB 165-79, Supp. 4-29 (*Shelby County*), additional reading to be handed out in class (**Sept. 11**)
- B. Section 2 of the Voting Rights Act**
Reading: CB 201 (bottom) – 236 (top), Supp. 30 (**Sept. 16**)
- C. Unconstitutional Racial Gerrymandering; Future of Section 2**
Reading: CB 236-66, additional reading to be handed out in class (**Sept. 18**)

IV. Election Administration

- A. Bush v. Gore and Florida 2000**
Reading: TVW 11-40, CB 267-93, Supp. 31-33 (**Sept. 23**)
- B. Voter ID and The Voting Wars**
Reading: TVW 41-104, CB 302 (middle) – 323, Supp. 33 (middle) -34 (top) (**Sept. 25**)
- C. Election Administrators and Voting Technology**
Reading: TVW 105-30, 159-81, CB 293-302 (**Oct. 2**)

D. The Future of the Voting Wars

Reading: TVW 131-57, 183-201, CB 323-40, Supp. 33 (bottom) -36 (**Oct. 14**; **Note: On October 16 or 21, Professor Nate Persily of Stanford and the Presidential Commission on Election Administration will be guest lecturer.**)

V. Ballot Propositions

A. Pro and Con, Pre-Election Review, Hard Looks

Reading: CB 341-61, 397-402 (**Oct. 21**)

B. Single Subject Rule, Petitioning, Financing Qualification Drives

Reading: CB 370 (middle) -391, 403-11, Supp. 37-38 (**Oct. 23**)

VI. Major Political Parties

Reading: Read for background CB 413-31; Read CB 431-39, 443-475 (**Oct. 28**)

VII. Third Parties and Independent Candidates

Reading: CB 495-533, Supp. 39 (**Oct. 30**)

VIII. Campaigns (False Campaign Speech and Judicial Elections)

Reading: CB 535-87, Supp. 40-41 (**Nov. 4**)

IX. Campaign Finance Laws and Reform

A. The *Buckley* Framework

Reading: CB 641-76, Supp. 44-45, *skim* CB 676-99 (**Nov. 6**) [**No class Nov. 11: Veterans Day**]

B. Spending Limits After *Buckley*

Part 1

Reading: CB 701-38 (**Nov. 13**)

Part 2

Reading: CB 738-59 Supp. 46-47 (**Nov. 18 and see below**)

C. Contribution Limits After *Buckley*

Part 1

Reading: CB 761-810 (**start Nov. 18 and continue Nov. 20 and see below**)

Part 2

Reading: CB 810-30, Supp. 48-56 (**Nov. 20**)

D. Public Financing

Reading CB 844-81(**Nov. 25**)

E. Campaign Finance Disclosure

Reading: CB 883-920, Supp. 57 (**Nov. 27**)

X. Conclusion

Reading: No assigned reading (**Dec. 2**)