

Antonin Scalia Law School - Election Law – Law 382-001

Spring 2024

3 credit hours

Professors (adjunct): Ms. Cameron P. Quinn & Mr. Andrew Rivera

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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.

Student Learning Objectives:

- Students will be able to demonstrate knowledge of the federal and state laws, major federal cases, and constitutional provisions governing the election process and be able to identify their interrelationships.
- Students will be able to analyze information and claims about election issues and persuasively argue the merits of those claims under applicable law.
- Students will be able to apply election law information and skills to real world situations.
- Students will be able to communicate their knowledge about this subject orally and in writing, to a variety of audiences.

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 (January 22)

Understanding the context of Election law & administration; constitutional provisions; the tension between federal, state & local officials; the tensions between uniformity & experimentation and the distinct differences in the election rules and regulations governing each state. Read the essays that explain each constitutional provision referenced below in the Heritage Guide to the Constitution.

Assignments: First class:

- Sections 4 and 5, Article I of the U.S. Constitution
<https://www.heritage.org/constitution/#!/articles/1/essays/19/election-regulations>
- Sections 4 and 5, Article I of the U.S. Constitution
- First Amendment: <https://www.heritage.org/constitution/#!/amendments/1/religion-speech-press-assembly-and-petition>.
- Twelfth Amendment:
<https://www.heritage.org/constitution/#!/amendments/12/election-of-the-president>.
- Fourteenth Amendment:
<https://www.heritage.org/constitution/#!/amendments/14/citizenship-privileges-and-immunities-due-process-equal-protection-apportionment-disqualification-for-rebellion-debts-incurred-during-rebellion>.

- Fifteenth Amendment:
<https://www.heritage.org/constitution/#!/amendments/15/suffrage-race>.
- Seventeenth Amendment:
<https://www.heritage.org/constitution/#!/amendments/17/popular-election-of-senators>.
- Nineteenth Amendment:
<https://www.heritage.org/constitution/#!/amendments/19/suffrage-sex>.
- Twentieth Amendment:
<https://www.heritage.org/constitution/#!/amendments/20/lame-duck-amendment-presidential-succession>.
- Twenty-Second Amendment:
<https://www.heritage.org/constitution/#!/amendments/22/limit-on-presidential-terms>.
- Twenty-Third Amendment:
<https://www.heritage.org/constitution/#!/amendments/23/presidential-electors-for-the-district-of-columbia>.
- Twenty-Fourth Amendment:
<https://www.heritage.org/constitution/#!/amendments/24/prohibition-of-the-poll-tax>.
- Twenty-Sixth Amendment:
<https://www.heritage.org/constitution/#!/amendments/26/suffrage-age>.
- Virginia Constitution, Article 2, Sections 1-9 (you may skip 6-A):
<https://law.lis.virginia.gov/constitution/>
- Virginia Code Sections 24.2-102 through 24.2-123
- *Moore v. Harper*, Case No. 21-1271 (U.S. Supreme Court – Oct. 2022 term):
<https://www.scotusblog.com/case-files/cases/moore-v-harper-2/>

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? How is authority divided between the federal and state governments? What offices are elected in Virginia (bonus participation point if you share in class what statewide (non-federal) offices are elected in another state)? Who administers elections in VA (office, not person), including the relevant state and local election officials in the state and their roles in elections (again bonus point answering this question for another state)?

[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, who can also provide suggestions.]

Class 2 (January 29) – VAEHA; NVRA & Voter Registration (including Automatic & Universal VR).

Assignment:

- Voting Accessibility for the Elderly and Handicapped:
<https://uscode.house.gov/view.xhtml?path=/prelim@title52/subtitle2/chapter201&edition=prelim>.
- Review your state's code and Virginia Code (Chapter 4) re: voter registration.

- National Voter Registration Act: <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra> and <https://www.law.cornell.edu/uscode/text/52/subtitle-II/chapter-205>.
- *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1 (2013): https://www.supremecourt.gov/opinions/12pdf/12-71_7l48.pdf.
- *Husted v. A. Philip Randolph Institute*, 584 U.S. ____ (2018): https://www.supremecourt.gov/opinions/17pdf/16-980_f2q3.pdf.
- *ACORN v. Edgar*, 56 F.3d 791 (7th Cir. 1995), available at <http://law.justia.com/cases/federal/district-courts/FSupp/880/1215/1408366/>.
- *Dunn v. Blumstein*, 405 U.S. 330 (1972): <https://supreme.justia.com/cases/federal/us/405/330/>.
- "Mandatory Voter Registration: How Universal Registration Threatens Election Integrity," Hans von Spakovsky, Heritage Foundation Backgrounder No. 2780 (March 27, 2013): <http://www.heritage.org/research/reports/2013/03/mandatory-voter-registration-how-universal-registration-threatens-electoral-integrity>.
- <https://www.ncsl.org/elections-and-campaigns/automatic-voter-registration>

Questions to prepare: Why do we require voters to register to vote? Why did Congress pass the VAEHA and NVRA? What are the enforcement provisions for these Acts? 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? Be prepared to describe alternative registration procedures, and what are their positive and negative issues?

Class 3 (February 5) Help America Vote Act; Voting Systems & Internet Voting; Election Day procedures; provisional ballots; "One Person, One Vote."

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
- Help America Vote Act: https://www.eac.gov/about_the_eac/help_america_vote_act.aspx and <https://fedsoc.org/commentary/publications/the-help-america-vote-act-of-2002-a-statutory-primer>.
- Hans von Spakovsky, "The Dangers of Internet Voting," July 26, 2016: <https://www.heritage.org/report/the-dangers-internet-voting>.
- https://aceproject.org/ace-en/focus/e-voting/benefits-risks-and-costs/mobile_browsing/onePag
- Read pages 30-40 (on improving voting equipment issues) of this proposal for improved elections <https://www.oseinstitute.org/research/2020/12/21/2030plan>
- <https://www.ncsl.org/elections-and-campaigns/electronic-ballot-return-internet-voting>

Questions to Prepare:

- Why did Congress pass HAVA? Have the goals been met? Why or why not? What are the benefits/challenges of federalism? What does "one person, one vote" mean?

Are we ready for internet voting? Why, or why not? Electronic return of voted ballots is expanding with each election creeping, towards acceptance of losing security and confidentiality. Is this a good or a bad thing?

Class 4 (February 12) - Election Access and Election Integrity; Voter ID; Felon Voting; non-citizen voting

Assignment:

- *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).
<https://www.law.cornell.edu/supct/html/07-21.ZS.html>
- *Lee v. Virginia State Board of Elections*, 843 F.3d 592 (4th Cir. 2016):
<https://casetext.com/case/lee-v-va-state-bd-of-elections-8>
- *NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016); <https://casetext.com/case/nc-state-conference-of-the-naacp-v-mccrory-4>.
- *Frank v. Walker*, 768 F.3d. 744 (7th Cir. 2014): <https://casetext.com/case/frank-v-walker-27>.
- *Brnovich v. Democratic National Committee*, 594 U.S. ____ (2021):
https://www.supremecourt.gov/opinions/20pdf/19-1257_g204.pdf.
- "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>
- "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>
- 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>
- <https://newrepublic.com/article/168274/washington-dc-noncitizen-voting-bill-mistake>
- <https://www.brennancenter.org/issues/ensure-every-american-can-vote/vote-suppression/myth-voter-fraud>
- <https://www.dhs.gov/topics/election-security>

Non-required reading/review:

- 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).

- John Fund and Hans von Spakovsky, "Our Broken Elections: How the Left Changed the Way You Vote," Encounter Books (2021).
- Heritage Foundation Election Fraud Database: <https://www.heritage.org/voterfraud>.

Questions to prepare: What have the courts said about voter ID? How do you define voter fraud and what steps should the Government take to prevent it. Should felons be able to vote? If so, when should their right to vote be restored? What are the advantages and disadvantages of mail voting? Should non-citizens be allowed to vote?

Class 5 (February 19) - Political Parties, 3rd Parties & Independent Candidates, Initiative & Referendum; Ballot Access

Assignment:

- *Democratic Party of U.S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107 (1981): <https://www.oyez.org/cases/1980/79-1631>.
- *California Democratic Party v. Jones*, 530 U.S. 567 (2000): <https://supreme.justia.com/cases/federal/us/530/567/>.
- *Clingman v. Beaver*, 544 U.S. 581 (2005): <https://supreme.justia.com/cases/federal/us/544/581/>.
- 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) referenda & ballot initiatives
- <https://www.elections.virginia.gov/formswarehouse/ballot-access-candidate-qualification/>

Questions to prepare: What is the process (or processes) 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 political parties? How does ballot initiative & referendum work?

Class 6 (February 26) – Voting Rights Act, Sec. 2; Constitutionality of Sec. 5

Assignment:

- Voting Rights Act of 1965: <https://www.justice.gov/crt/history-federal-voting-rights-laws> and <https://uscode.house.gov/view.xhtml?path=/prelim@title52/subtitle1&edition=prelim>
- *Thornburg v. Gingles*, 478 U.S. 30 (1986): <https://supreme.justia.com/cases/federal/us/478/30/>.
- *Brnovich v. Democratic National Committee*, 594 U.S. ____ (2021): https://www.supremecourt.gov/opinions/20pdf/19-1257_g204.pdf.
- *Shelby County, Alabama v. Eric Holder*, 570 U.S. 529 (2013): <https://www.oyez.org/cases/2012/12-96>.
- "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), <https://www.heritage.org/legal-report/disparate-impact-and-section-2-of-the-voting-rights-act>.

available at <http://www.heritage.org/research/reports/2014/03/disparate-impact-and-section-2-of-the-voting-rights-act?ac=1>

- Hans A. von Spakovsky, "The Myth of Voter Suppression and the Enforcement Record of the Obama Administration," *University of Memphis Law Review*, Vol 49, Issue 4 (Summer 2019): https://www.memphis.edu/law/documents/07_von_spakovsky.pdf.

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?

NO CLASS MARCH 4 – SPRING BREAK

Class 7 (March 11) – Voting Rights Act, continued; Redistricting; Voting Rights Act Language Access Provisions (Secs 4(e), 4(f) and 203);

Assignment:

- Virginia Code Sections, & your state's Code regarding redistricting criteria
- VA Constitution, Art. 2, Sec, 6-A: <https://law.lis.virginia.gov/constitution/>
- Bonus participation for finding your state's the last big redistricting case
- *Shaw v. Reno*, 509 U.S. 630 (1993): <https://www.oyez.org/cases/1992/92-357>.
- *Rucho v. Common Cause*, 139 S.Ct. 2484 (2019): <https://casetext.com/case/rucho-v-common-cause-2>.
- *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. 787 (2015): https://www.supremecourt.gov/opinions/14pdf/13-1314_3ea4.pdf.
- *Evenwel v. Abbott*, 136 S.Ct. 1120 (2016): https://www.supremecourt.gov/opinions/15pdf/14-940_ed9g.PDF.
- *Moore v. Harper*, Case No. 21-1271 (U.S. Supreme Court – Oct. 2022 term): <https://www.scotusblog.com/case-files/cases/moore-v-harper-2/>
- 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

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 and politics into account in redistricting? What are your state's criteria for redistricting? 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?

Class 8 (March 18) – State Campaign Finance; Political Advertising; Federal Campaign Finance

Assignment:

- Virginia Code (Chapter 9.2 on Disclosure Requirements for Political Campaign Advertisements), and your state's code on political campaign advertisements.
- Review campaign finance provisions in your state's code and the Virginia Code (Chapter 9 on the Campaign Finance Disclosure Act).
- "Keep Out: How State Campaign Finance Laws Erect Barriers to Entry for Political Entrepreneurs," Jeffrey Milyo, Institute for Justice (Sept. 2010): http://ij.org/wp-content/uploads/2015/03/keep_out_political_entrepreneurs-10-10.pdf
- *Arizona Free Enterprise Club's Freedom PAC v. Bennett*, 564 U.S. 721 (2011): www.oyez.org/cases/2010-2019/2010/2010_10_238.
- Find the rating for your state on the "Free Speech Index" at the Institute for Free Speech: <https://www.ifs.org/research/free-speech-index/#:~:text=The%20Free%20Speech%20Index%20rates,public%20policy%2C%20and%20their%20government>.

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? Why are there efforts to regulate political advertising? How does the first amendment apply to political advertising?

Class 9 (March 25) - Federal Campaign Finance

Assignment:

- Federal Election Campaign Act and the Federal Election Commission: <https://www.fec.gov/about/>.
- "Understanding Ways to Support Federal Candidates," FEC: <https://www.fec.gov/introduction-campaign-finance/understanding-ways-support-federal-candidates/>.
- *Buckley v. Valeo*, 424 U.S. 1 (1976): <https://www.oyez.org/cases/1975/75-436>.
- *McConnell v. FEC*, 540 U.S. 93 (2003): <https://www.fec.gov/legal-resources/court-cases/mcconnell-v-fec/>.
- *McCutcheon v. Federal Election Commission*, 572 U.S. 185 (2014): <https://www.fec.gov/legal-resources/court-cases/mccutcheon-et-al-v-fec/>.
- *Citizens United v. Fed. Election Comm.*, 558 U.S. 310 (2010): <https://www.fec.gov/legal-resources/court-cases/citizens-united-v-fec/>.
- "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>

- Alec Greven, "Issue Analysis No. 12: Did Citizens United Harm Political Participation? Institute For Free Speech (Sept 20, 2021): <https://www.ifs.org/research/issue-analysis-12-citizens-united-political-participation/>.
- Alec Greven, "Has Citizens United Increased Corruption? An Examination of Public Corruption Prosecutions," Institute for Free Speech (Sept. 3, 2020): <https://www.ifs.org/research/citizens-united-corruption/>.

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? What was Congress trying to accomplish with these federal laws? What unanticipated consequences have resulted from it?

Class 10 (April 1) – UOCAVA, Absentee Voting Issues, including vote-by-mail and early voting.

Assignment:

- Review your state's code and Virginia Code (Chapter 7) re: absentee voting.
- Uniformed and Overseas Citizens Absentee Voting Act: <https://www.justice.gov/crt/uniformed-and-overseas-citizens-absentee-voting-act>.
- "The Costs of Early Voting," Hans von Spakovsky, Heritage Foundation Legal Memorandum No. 218 (Oct. 3, 2017): <https://www.heritage.org/election-integrity/report/the-costs-early-voting>.
- "COVID-19 and Ebola: What We Can Learn from Prior Elections," Hans von Spakovsky and J. Christian Adams, Heritage Foundation Issue Brief No. 5066 (May 1, 2020): <https://www.heritage.org/election-integrity/report/covid-19-and-ebola-what-we-can-learn-prior-elections>.
- *McDonald v. Board of Election Commissioners*, 394 U.S. 802 (1969): <https://www.oyez.org/cases/1968/68>.
- "Nearly 15 Million Mail Ballots Went Unaccounted for in the 2020 Election," Public Interest Legal Foundation (August 18, 2021): https://publicinterestlegal.org/wp-content/uploads/2021/05/Mail-Voting-2012_2020-1P-1.pdf.
- "Four Stolen Elections: The Vulnerabilities of Absentee and Mail-In Ballots" Hans A. von Spakovsky, Heritage Foundation Legal Memorandum No. 268 (July 16, 2020) https://www.heritage.org/sites/default/files/2020-07/LM268_0.pdf.
- <https://www.ncsl.org/elections-and-campaigns/voting-outside-the-polling-place>
- <https://www.fvap.gov/>
- "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): <https://www.heritage.org/election-integrity/report/elections-exclusively-mail-terrible-idea-whose-time-should-never-come?query=Elections%20Exclusively%20by%20Mail%3A%20A%20Terrible%20Idea%20Whose%20Time%20Should%20Never%20Come>.

Questions to prepare - Why do we allow absentee voting? Is it a right or a privilege? Who is eligible to vote absentee in your state? And in Virginia? How does one vote absentee versus early? How does state & federal law on absentee voting interact?

Class 11 (April 8)

Election Disputes; Recounts & Contests

Assignment:

- Review your state's code re: recounts & contests and review Virginia Code (Chapter 8 on Recounts and Contests).
- *Bush v. Gore*, 531 U.S. 98 (2000):
<https://supreme.justia.com/cases/federal/us/531/98/>.
- *Texas v. Pennsylvania*, Case No. 220155 (U.S. 2020), Motion For Leave to File a Bill of Complaint:
https://www.supremecourt.gov/DocketPDF/22/220155/162953/20201207234611533_TX-v-State-Motion-2020-12-07%20FINAL.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?

Class 12 (April 15) - Class Presentations – 2/3rd of students to present

Class 13 (April 22) - Class Presentations – 1/3rd of students to present Equal Protection, *Bush v. Gore* & Counting the Votes; election litigation, and the changing strategy of political parties & candidates.

Assignment:

- "The Facts About Election Integrity and the Need for States to Fix Their Election Systems," Heritage Foundation Fact Sheet No. 196 (Feb. 1, 2021):
<https://www.heritage.org/election-integrity-facts>.
- "Safeguarding Future Elections," Honest Elections Project (Feb. 2021):
<https://www.honestelections.org/wp-content/uploads/2021/02/HEP-Election-Reform-Report.pdf>.

Nonrequired reading:

- "Building Confidence in U.S. Elections," Commission on Federal Election Reform (Sept. 2005):
https://web.archive.org/web/20070609115256/http://www.american.edu/ia/cfer/report/full_report.pdf.

Questions to prepare (other): What did the Supreme Court intend when it decided *Bush v. Gore*? What are the benefits/ challenges of federalism? 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? Where is US election law likely to go next? How is your state likely to change before 2024?