

**Law 6816
2006
Election Law**

Spring,

Mondays

**Schultz
David**

3:35-5:30

There is hardly a political question in the United States which does not sooner or later turn into a judicial one. Consequently the language of everyday party-political controversy has to be borrowed from legal phraseology and conceptions.

– Alexis DeTocqueville, *DEMOCRACY IN AMERICA*

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to . . . freedom of worship . . . and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.

– Justice Jackson, *West Virginia v. Barnette*

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Description: This course examines judicial and legislative regulation of the political process. Two main themes are explored: First, how do legislatures, including Congress and state governments, regulate campaigns, elections, and participants in the political process. Second, under what conditions are either judges justified to intervene in the political process. Topics to be examined include: The legacy of the Florida 2000 *Bush v. Gore* litigation, McCain-Feingold (BCRA) and the 2004 election; reapportionment and legislative districting; elections and ballot access; bribery and campaign finance reform; the right to vote and the Voting Rights Act; and regulation of political action committees, political parties, unions, and corporations. In addition, course will also examine specific election laws and regulations in Minnesota.

Goals:

1. Evaluate the role of the courts in American society.
2. Understand how the courts have sought to regulate the political process.
3. Develop an understanding of the different variables affecting the way the American political process operates.
4. Strengthen analytical and oral and written communication skills.

5. Explore the practical of election law.

Books: Daniel Hayes Lowenstein, ELECTION LAW: CASES AND MATERIALS, 3e

Lowenstein & Hasen, ELECTION LAW: 2005 SUPPLEMENT, downloadable at <
<http://www.lls.edu/academics/faculty/pubs/electionlaw-2005update.pdf> >

Malbin, Michael, *The Election After Reform: Money, Politics, and the Bipartisan Campaign Reform Act*, chapters downloadable at <
<http://www.cfinst.org/studies/ElectionAfterReform/chapters.html> >

Supplemental Cases, (packet in the bookstore) (marked on the syllabus with an asterisk (*)).

Requirements: There are two requirements for the course.

Class attendance and participation in the weekly discussion is worth 30% of your final course grade. This requirement includes the expectation that you shall do the readings and be prepared for class discussion.

Preparation and presentation of a 20 page paper is worth 70% of your final grade.

Please note: The syllabus outlines an aggressive reading schedule. We may edit out some topics if necessary, and readjust the schedule accordingly.

Important Due Dates:

One page description of a paper due: March 6

Annotated Bibliography and Outline due: April 3

Final Paper due: May 1, end of day.

Writing Requirement: You may elect to have the paper for this class fulfill your third year writing requirement if you receive a grade of an C or better. Students wishing to take this class to secure their writing requirements should inform the professor when submitting the one page description of the paper. I would also encourage turning in an early draft for review.

Organization

(dates are approximate)

January 23

Overview and the Values of the American Political Process

Lowenstein, chapter 1,
Madison, James, *Federalist* 10 & 51,*
United States v. Carolene Products , *

January 30

Voting Rights and Franchise

Lowenstein, chapter 2,
Supplement, chapter 2.
Minor v. Happersett,*
Reynolds v. Sims.*
*Harper v. Virginia State Board of Elections**
*Richardson v. Ramirez**
Erlandson v. Kiffmeyer.*

February 6

Voting, Representation, and the 2000 Election

Lowenstein, chapter 3,
Supplement, chapter 3.
Bell v. Gannaway,*
Murray v. Floyd.*

February 13

Legislative Districting

Lowenstein, chapters 4, 7 (Only part II for chapter 7),
Chapter 7, Supplement.
Travis County v. Perry, sub. nom. Henderson v. Perry, 2005 WL 3370536 (orals before the Supreme Court on March 1, 2006) (copy to be distributed in class)

February 20 -27

Campaign Finance Reform and Targeted Regulation

BUCKLEY V. VALEO
Lowenstein, chapter 15 (read very carefully!)
Schultz, David, “Special Interest Money in Minnesota Politics”(distributed in class).

POST-BUCKLEY DEFERENCE

Lowenstein, chapter 17 (Part I)
Supplement, chapter 17 (*Randall v. Sorrell*)(pp. 21-25) (orals before the Supreme Court on February 28, 2006).

BALLOT MEASURES

Lowenstein, chapter 16 (Part I)

PACs, UNIONS, CORPORATIONS, AND LOBBYISTS

Lowenstein, chapter 16 (Part II),

Wisconsin Right to Life, Inc. v. Federal Election Commission (orals before the Supreme Court on January 17, 2006, no lower court decision).

March 6

Bipartisan Campaign Reform Act and the 2004 election

Lowenstein, chapter 17, part II

Malbin, chapters 1, 2, 5,

Supplement, chapter 17 (pp. 26-32).

March 13

Spring Break (No Class)!

March 20

Judicial elections

Republican Party of Minnesota v. White (both the S. Ct. and 8th Cir. Opinions),*

Schultz, David, "Judicial Selection in Minnesota: Options After *Republican Party v. White*,"
downloadable at < http://www2.mnbar.org/benchandbar/2005/nov05/judicial_selection.htm >.

Note: February 23 AM conference at University of St. Thomas Law School on options and responses to *Republican Party v. White*.

March 20

Bribery

Lowenstein, chapter 13,

Miller v. Maier.*

March 27

No Class (Oxford University bound!)

April 3 -10

Voting Rights Act

Lowenstein, chapters 5, 6

April 17

Political Parties

Lowenstein, chapter 9 (III, and IV only) and chapter 10,

Supplement, chapters 9 and 10.

Republican Party of Minnesota v. Pauly.*

April 24

Campaign Communications and Disclosure

Lowenstein, chapter 11 (Part I only)

Lowenstein, chapter 19,

State v. Jude,*

Schultz, David, "Disclosure is Not Enough" (to be distributed in class).

Olson v. Broadkorb, * (distributed in class) (political blogs and libel).

April 26

Independent Expenditures

Lowenstein, chapter 18 Part I only).

*Day v. Hollahan**.

COURSE RULES

There are several basic rules for this course.

It is assumed that you understand these rules and that they will apply to you and this course unless otherwise noted.

1. **Follow the Rules.** All the University and law school rules are applicable in this class, including the general rules on academic honesty and the honor code.
2. **Be Creative and Daring.** I have no monopoly on knowledge and do not enforce either PC or a party line. While I may have particular views on a subject, what I care more about is that you reach your conclusions and find ways to support your positions. Hence, I invite disagreement and discourage silence out of fear of what you think I or other students may think. However, seek to support your conclusions and disagreements; that is the goal of school and education, i.e., reasoned argument.
3. **Be Vocal.** Class is more fun if you talk and share your views.
4. **Early Submission of Assignments.** It is my belief that you will learn more by rewriting than by simply turning a paper in once and praying for the best. Thus, if you turn your term paper in early enough I will try to grade it and give you an option to rewrite it. This may be especially helpful for those taking the class to fulfill their third year writing requirement.