

ELECTION LAW FALL TERM, 2009

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SYLLABUS

Welcome to the Election Law class. This course surveys state and federal election laws and regulations and examines the legal structure and political basis of American democracy.

The paper you will write in this class satisfies the upper level writing requirement. The paper will account for 80% of your grade. The remaining 20% of your grade will be based on an oral presentation of an assigned topic from the course materials and your attendance and participation.

The textbook is "Election Law" by Lowenstein, Hasen and Tokaji,. You will also be provided with a copy of a book containing the Arkansas election code, the Arkansas Constitution and the U.S. Constitution and other handouts that I will provide as the course progresses. Although it is not required reading, an article by Richard Hasen, "The Democracy Canon", will be the subject of the first day's lecture and can be downloaded from SSRN (search for "The Democracy Canon").

The Paper

The paper gives the student the opportunity to demonstrate the ability to research and analyze issues, and to write clearly and effectively. The paper may be in the form of a scholarly paper, a case note, or a brief. It must be a document of substance. Generally, it will require at least 20 pages, typewritten and double-spaced, including footnotes.

If you write a brief, the topic will be a hypothetical case based on stipulated facts regarding the redistricting of electoral districts of a mythical legislative body in Arkansas. This information will be provided to you. Otherwise, you may write on the election law topic of your choice. You may choose from the following list, or you may select a topic after discussing it with me.

- *Comparative Analysis of Alternative Ballot Access – compare Arkansas' ballot access laws for minor parties, independents, and write-ins to those laws governing major parties and to those laws in other states*
- *Truth Squad – the constitutionality and feasibility of regulating "truth in advertising" in elections*
- *Helping America Count the Vote – the status and potential improvement of voting systems and the provisional voting process mandated by the Help America Vote Act*
- *Is the Results Test of Section 2 of the Voting Rights Act Constitutional?*
- *The People Speak – suggest improvements to Amendment 7 initiative and referendum procedures*
- *Proportional Representation as a Remedy for Section 2 Legislative Districting Violations*
- *The Case for and against Felon Voting*
- *Limiting corporate financing in American elections – whither Citizens United?*

Deadlines

September 24	Deadline to choose topic
November 19	First draft due; schedule conference with instructor
December 17	Final Draft due

The Presentation, participation and attendance

Each student will be scheduled to make a presentation of one day's reading assignment. The presentations will be scheduled one week in advance. The presenter will be expected to provide an informative overview of the day's assignment and the presentation will include discussion time. Presenters may include materials in addition to the assigned reading, and may use PowerPoint presentations or other audio-visual equipment to augment their presentation. Notify me in advance if you need assistance with such equipment. Additionally, students are expected to participate by asking and answering questions, joining in argument and debate about the issues, and regularly attend. Failure to participate or to attend class regularly will result in a lower grade.

Readings

Readings will be supplemented with handouts supplied by the instructor during the course of the semester. "Text" refers to the textbook. References to the state code and constitution are found in the spiral bound handout book entitled "*Election Laws of Arkansas and the Constitution of the State of Arkansas*".

Other Stuff

Each night's class will be treated as two separate hours. The following schedule of readings may be altered by the course of events as cases are decided and new federal and state legislation is considered. This course will deal not only with the legal framework of democracy but will seek to keep current with the legal evolution of that framework.

Issues in Election Law

- Aug. 27
1. Introduction to the course
 2. Discussion of The Democracy Canon Hasen article, recommended, but not required.

Who gets to vote?

- Sept. 3
1. Text at 27-56; Ark. Code Ann. 7-5-201
 2. Text at 339-349; The Uniformed and Overseas Citizens Absentee Voting Act
- Sept. 10
1. Text at 315-332; Ark. Code Ann Sec. 7-5-306.
 2. Ark. Const. Art. 3, as amended by Amendment 85; Amendment 51, Sections 3, 4, 6, 9 and 11; Ark. Code Ann. 7-5-305

Whose vote counts?

Equal Population and the results of line drawing

- Sept. 17 1. Text 285-306
 2. Text at 308-314; The Help America Vote Act Sections 301, 302, 304, 305
- Sept. 24 1. Text at 65-86
 2. Drawing district lines; Text at 103-114; Article 8 of the Arkansas Constitution

The Voting Rights Act

- Oct. 1 1. Text at 115-132
 2. Text at 133-143; *Namundo v. Holder*
 <http://www.supremecourtus.gov/opinions/08pdf/08-322.pdf>
- Oct. 8 1. Text at 143-186
 2. Text at 186-193; *Jeffers v. Clinton* 756 F. Supp. 1195 (ED Ark. 1990)

Racial gerrymandering

- Oct. 15 1. Text at 193-233
 2. Text at 233-342

Partisan Gerrymandering

- Oct. 22 1. Text at 243-279
 2. *Larios v. Cox* 305 F.upp. 1335 (NDGa2004)

Two Hours with a Master Gerrymanderer

- Oct. 29 1 and 2. Gerrymandering 101

Who and what gets on the Ballot?

Political Parties and Ballot Access

- Nov. 5 1. Text at 501-538; Ark. Code Ann. 7-7-103; 7-7-205
 2. Text at 618-630; Amendments 73 and 76 of the Arkansas Constitution
- Nov. 12 1. Text at 349-369; Amendment 7, Arkansas Constitution (Article 5, Section 1)

Campaigns

FIRST I look at the purse – Money in Elections

2. Text at 677-713
- Nov. 19 1. Text at 713-736
 2. Text at 774-790; 823-850

Dec. 2

1. Text at 875-905

What did you say?

Campaign speech

2. Text at 550-568