

# USC Gould

## School of Law

### Law and Politics: Voting Rights Law 201 Spring 2023

#### CONTACT INFORMATION

Prof. Franita Tolson  
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#### CLASS INFORMATION

T 4:15-7:20 Room Law 12  
4 Units

**Teaching Assistant:** Katherine Sims  
[katherine.sims.2023@lawmail.usc.edu](mailto:katherine.sims.2023@lawmail.usc.edu)

**Office Hours:** Thursdays 9:00-10:00 (use Zoom Meeting ID)  
**Zoom Meeting ID for Office Hours:** 749 194 5446

#### COURSE DESCRIPTION/LEARNING OBJECTIVES

In this course, we will discuss the basic themes surrounding the legal regulation of elections, politics, and the political process as a whole. We will cover all the major Supreme Court cases (and a few important lower court decisions) on the topics of voting rights, reapportionment/redistricting, ballot access, regulation of political parties, and the 2020/2000 presidential election controversies. We will also discuss competing political philosophies; alternatives to the two-party system; and the role of the courts and state legislatures in our system. By the end of the course, the goal is that you will have a basic understanding of the structure, mechanics, and history of the political process in this country, but with an appreciation for the complexities of the right to vote and the difficulties involved in regulating the behavior of political actors.

#### COURSE MATERIALS

- Douglas and Mazo, eds., *Election Law Stories* (2016) (hereinafter **Douglas et al**)
- All of the assigned cases and readings (not in *Election Law Stories*) are available on blackboard

#### ATTENDANCE AND CLASSROOM PARTICIPATION POLICY

You are required to come to class prepared and on time. Attendance is mandatory and excessive tardiness will not be tolerated. Roll will be taken at each class. If you must miss a class, it is your responsibility to obtain the materials, notes, and assignments from that class. I strongly encourage

each of you to do your part to make our discussions a rewarding experience for us all. **If you are not feeling well, do not come to class.**

## GRADING POLICY

### A. Overview

1. Complete **all readings** and **participate in class discussion**.
2. **Attend lecture**. Your attendance is recorded and counts for 10% of your grade.
3. Complete the **Midterm Exam, voting rights presentation, and term paper**. This is required for a passing grade.
4. The Midterm Exam will cover material read and discussed through Class 9 of the semester.
5. All students are required to complete a term paper based on a voting rights topic approved by a teaching assistant. Exemplary papers/projects will reexamine original materials, whether that be newspapers, tapes of the news, position papers issued, or advertisements used in the media; interview key participants, and/or use the readings and scholarly research to place their topic or issue in a larger context. Papers must be 15-20 pages, and projects should be of comparable size and scope. **Please email me (and cc Katherine Sims) a 1-page proposal by February 14th, a detailed outline by April 4th, and a final draft by May 10th.**
6. Each student will be responsible for doing a **20-25 minute presentation** on any voting rights controversy of their choosing. Ideas for potential presentations include:
  - Voting related topics (efforts at voter suppression in a particular state, history of/assessment of current literature on voter fraud; efforts at felon re-enfranchisement in some states, etc)
  - Election related events or set of events (controversies surrounding the 2020 Election, the disputed 1876 Election, etc)
  - Historical election related atrocities (the Colfax Massacre, the Wilmington Insurrection, etc)
  - A controversial or consequential figure in election law (Boss Tweed, Nicolas de Katzenbach, the namesake of a particular voting rights case, etc)

**The presentation must be a deep dive on whatever subject is chosen and cannot simply mimic material that we discuss in class.** For example, if you choose to do a presentation on voter ID laws, you cannot simply rehash the class lecture on the same topic. You must offer a new and different perspective on the issue that reflects the research and effort that went into preparing the presentation. **Your presentation must also be on a different topic than your final term paper.**

### B. General Grading System

**Final Grades will be calculated as follows:**

Class Participation **10%**

Presentation **30%**

Midterm **30%**

Paper **30%**

Total 100%

### C. Make-Up Exam Policy

Unless you have an exam conflict (another exam at the exact same time), you will be expected to take the exam on the scheduled day, at the scheduled hour. If you know that you will be unable to take the exam on the scheduled day, you must inform the TA **at least 72 hours before the scheduled test time**. If you fail to do so, you must take the make-up exam at whatever time it is scheduled.

### COURSE OUTLINE

#### 1. “WE THE PEOPLE” VS. “WE THE VOTERS”: THE RIGHT TO VOTE IN A REPUBLICAN SYSTEM (1/10)

- Franita Tolson, *In Congress We Trust?: Enforcing Voting Rights from the Founding to the Jim Crow Era*, Chapter 3
- *Minor v. Happersett* (1875)
- *Richardson v. Ramirez* (1974)

#### *Reading Questions:*

- What did the constitution say about the right to vote, and why was it written in this way?
- What kind of right is the right to vote? Which level of government sets the terms of participation in our system?
- Why does the Court, in *Minor v. Happersett*, say that citizenship is not sufficient to confer the right to vote?
- What constitutional provision permits states to disenfranchise those who have committed a felony? According to *Richardson v. Ramirez*, are there any constraints on this authority?

#### 2. DEFINING THE RIGHT TO PARTICIPATE (1/17)

- *Harper v. Virginia State Board of Elections* (1966)
- Franita Tolson, *Offering A New Vision for Equal Protection: The Story of Harper v. Virginia State Board of Elections*, in **Douglas et al**
- *Kramer v. Union Free School District* (1969)
- Eugene Mazo, *The Right to Vote in Local Elections: The Story of Kramer v. Union Free School District No. 15*, in **Douglas et al**
- **Sign Up for Presentations**

*Reading Questions:*

- According to the Supreme Court, what language in the constitution constrains how the right to vote may be limited?
- Which kinds of limits on the right to vote has the Supreme Court upheld, and which has it struck down? What are the important differences between the restrictions that the Court has upheld and those that it has struck down?
- What is the standard of review that the Court uses to review restrictions on the right to vote?
- Which groups are still excluded from the franchise today?

**3. REAPPORTIONMENT (1/24)**

- *Colegrove v. Green* (1946)
- *Baker v. Carr* (1960)
- *Reynolds v. Sims* (1965)
- Guy-Uriel Charles & Luis Fuentes-Rohwer, *Reynolds Revisited*, in **Douglas et al**

*Reading Questions:*

- Why did the Supreme Court believe that courts are ill equipped to resolve reapportionment claims?
- What happened between *Colegrove* and *Baker* that made the Court decide that it should enter “the political thicket”?
- According to the Supreme Court’s opinion in *Reynolds v. Sims*, what was the constitutional problem with Alabama’s legislative apportionment plan challenged in the case?
- What new constraints on redistricting did the Supreme Court impose in *Reynolds v. Sims*?
- Why must states redraw their congressional and legislative lines every decade?

**4. RACE AND THE RIGHT TO VOTE (1/31)**

- Franita Tolson, *In Congress We Trust?: Enforcing Voting Rights from the Founding to the Jim Crow Era*, Chapter 9
- *Giles v. Harris* (1903)
- White Primary Cases (1920s-1950s)

*Reading Questions:*

- What were the defining features of the disenfranchising state constitutions of the 1890s?
- Why was the Court willing to intervene in *Nixon v. Herndon* but not in *Giles v. Harris*?
- What is the state action requirement?
- What tools did Congress use to police voter disenfranchisement in the south? Is it possible for Congress to prevent disenfranchisement without the assistance of the courts?

## 5. THE VOTING RIGHTS ACT – SECTION 5 (2/7)

- South Carolina v. Katzenbach (1966)
- Shelby County v. Holder (2013)
- Ellen D. Katz, *The Shelby County Problem*, in **Douglas et al.**
- **Presentations (2 max)**

### *Reading Questions:*

- Is *South Carolina v. Katzenbach* still good law after *Shelby County v. Holder*?
- On what grounds did the Court uphold the preclearance regime in *Katzenbach*? Why did the Court strike it down in *Shelby County*?
- What steps can Congress take to protect voting rights in the wake of *Shelby County*? What evidence of voting discrimination is needed to justify congressional action?

## 6. THE VOTING RIGHTS ACT – SECTION 2 (2/14)

- City of Mobile v. Bolden (1980)
- Thornburg v. Gingles (1986)
- Daniel P. Tokaji, *Realizing the Right to Vote: The Story of Thornburg v. Gingles*, in **Douglas et al**
- Preview: Merrill v. Milligan (2023)
- **Presentations (2 max)**
- **PAPER PROPOSAL DUE**

### *Reading Questions:*

- How did *Mobile v. Bolden* interpret the requirements (and prohibitions) of Section 2 of the Voting Rights Act?

- How was the Voting Rights Act amended after *Mobile v. Bolden* and what does the current version of Section 2 say?
- What was being challenged in *Thornburg v. Gingles*, what legal test did the Court adopt, and how did it ultimately rule?

## 7. THE REEMERGENCE OF FIRST GENERATION BARRIERS TO POLITICAL PARTICIPATION (2/21)

- Crawford v. Marion County (2008)
- Joshua Douglas, *The History of Voter ID Laws and the Story of Crawford v. Marion County Election Board*, in **Douglas et al**
- Brnovich v. Democratic National Committee (2021)
- **Presentations (2 max)**

### *Reading Questions:*

- What is the difference between “vote dilution” and “vote denial?”
- How many and which voters (in terms of demographics and partisanship) are most likely to lack a valid photo ID?
- What are the different types of potential “voter fraud” and how much of each kind of fraud has been successfully documented/prosecuted in Indiana?
- Which of these kinds of fraud would be prevented by a voter ID law?
- Which provisions of the Arizona voting laws were challenged in *Brnovich* as violations of the Voting Rights Act?
- How did the court rule on these challenges?
- To what extent did the Arizona laws in question disproportionately affect some groups of voters more than others?
- Which “guideposts” for applying the Voting Rights Act to claims involving rules that specify the time, place, or manner for casting ballots did the majority of the court adopt in *Brnovich*?
- Why did the dissenting justices disagree with these “guideposts?”
- How has the *Brnovich* decision limited the scope of Section 2 of the Voting Rights Act?

## 8. RACIAL GERRYMANDERING AND PARTISAN GERRYMANDERING (2/28)

- Shaw v. Reno (1994)
- Rucho v. Common Cause (2018)

- Justin Levitt, *LULAC v. Perry: The Frumious Gerry-Mander, Rampant*, in Douglas et al.
- **Presentations (2 max)**

*Reading Questions:*

- Is partisan redistricting “justiciable?” How has the Court’s views on this issue changed over time?
- What makes partisan gerrymandering cases unusual and harder to adjudicate than other political cases (e.g., malapportionment, Voting Rights Act litigation)?
- What prompted the dispute in *Shaw v. Reno* and how did the court rule?
- According to the Court, what are the harms that “racial gerrymanders” produce and why are they unconstitutional?
- Compare and contrast the court’s approach to “partisan” and “racial” gerrymandering cases. How (and why) do the approaches vary?
- Is it possible for the court to distinguish a racial gerrymander from a partisan one? Why or why not?

**\*\*Discussion Session (2/28 - 3/6) (Midterm Exam Review Session) (online) (optional)\*\***

9. **MIDTERM EXAM (3/7)**

10. **SPRING BREAK (3/14) (NO CLASS)**

11. **POLITICAL PARTIES (BALLOT ACCESS AND REGULATION) (3/21)**

- *Burdick v. Takushi*
- *Duke v. Massey*
- *Republican Party of Texas v. Dietz*
- *California Democratic Party v. Jones*
- **Presentations (2 max)**

*Reading Questions:*

- What was the *Burdick* case about and how did the court ultimately rule?
- Does the Court, in *Burdick*, consider the right to vote to be core political speech protected under the First Amendment? Why or why not?

- Why can the Republican Party exclude David Duke from running as a candidate in its primary? Should excluding an unwanted candidate from the primary ballot be treated the same as excluding unwanted individuals from voting in the primary? Why or why not?
- Why can the Republican Party exclude the Log Cabin Republicans from participating in its convention? Would the outcome in *Dietz* be the same if Republicans wanted to exclude this group from voting in its primary?
- Is *California Democratic Party v. Jones* consistent with the *White Primary Cases*?

## 12. ELECTORAL COLLEGE (3/28)

- *Chiafalo v. Washington* (2020)  
Alexander Keyssar, *Why Do We Still Have the Electoral College* (various excerpts)

**\*Class will end at 5p.m.**

*Reading Questions:*

- What did the Court hold in *Chiafalo*? Is the Court's holding consistent with how the framers of the Constitution conceived of the role of electors?
- Why did southern states originally prefer the Electoral College over the direct election of the president?
- What are the possible methods or formulas for states to allocate their presidential electors to different candidates?
- What is the National Popular Vote initiative and what would it do?

## 13. COURTS AND THE REGULATION OF ELECTORAL PROCESS (4/4)

- *Bush v. Gore* (2000)
- Preview: *Moore v. Harper*
- **PAPER OUTLINE DUE**

*Reading Questions:*

- Why did a controversy over ballot design arise during the 2000 election in Florida?
- How did the design of the relevant ballot affect who people voted for (as compared to who they intended to vote for)? How do we know?
- How did these errant votes affect the election?
- Why did the Supreme Court find that the Florida recount was unconstitutional?



- According to his concurring opinion, on what grounds would Chief Justice Rehnquist have stopped the recount in Florida?
- What is the independent state legislature doctrine?

14. **Presentations (4/11) (3 max)**

**Meeting re: final paper (4/12 - 4/17) (online) (mandatory)**

15. **Presentations (4/18) (3 max)**

16. **Presentations (4/25) (3 max)**

**FINAL PAPER DUE 5/10**

## Statement on Academic Conduct and Support Systems

### Academic Conduct:

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in SCampus in Part B, Section 11, “Behavior Violating University Standards” [policy.usc.edu/scampus-part-b](http://policy.usc.edu/scampus-part-b). Other forms of academic dishonesty are equally unacceptable. See additional information in SCampus and university policies on scientific misconduct, [policy.usc.edu/scientific-misconduct](http://policy.usc.edu/scientific-misconduct).

### Support Systems:

*Student Health Counseling Services - (213) 740-7711 – 24/7 on call*  
[engemannshc.usc.edu/counseling](http://engemannshc.usc.edu/counseling)

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention.

*National Suicide Prevention Lifeline - 1 (800) 273-8255 – 24/7 on call*  
[suicidepreventionlifeline.org](http://suicidepreventionlifeline.org)

Free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week.

*Relationship and Sexual Violence Prevention Services (RSVP) - (213) 740-4900 – 24/7 on call*  
[engemannshc.usc.edu/rsvp](http://engemannshc.usc.edu/rsvp)

Free and confidential therapy services, workshops, and training for situations related to gender-based harm.

*Office of Equity and Diversity (OED) | Title IX - (213) 740-5086*  
[equity.usc.edu](http://equity.usc.edu), [titleix.usc.edu](http://titleix.usc.edu)

Information about how to get help or help a survivor of harassment or discrimination, rights of protected classes, reporting options, and additional resources for students, faculty, staff, visitors, and applicants. The university prohibits discrimination or harassment based on the following protected characteristics: race, color, national origin, ancestry, religion, sex, gender, gender identity, gender expression, sexual orientation, age, physical disability, medical condition, mental disability, marital status, pregnancy, veteran status, genetic information, and any other characteristic which may be specified in applicable laws and governmental regulations.

*Bias Assessment Response and Support - (213) 740-2421*  
[studentaffairs.usc.edu/bias-assessment-response-support](http://studentaffairs.usc.edu/bias-assessment-response-support)

Avenue to report incidents of bias, hate crimes, and microaggressions for appropriate investigation and response.

*The Office of Disability Services and Programs - (213) 740-0776*  
[dsp.usc.edu](http://dsp.usc.edu)

Support and accommodations for students with disabilities. Services include assistance in providing readers/notetakers/interpreters, special accommodations for test taking needs, assistance with architectural barriers, assistive technology, and support for individual needs.

*USC Support and Advocacy - (213) 821-4710*

[studentaffairs.usc.edu/ssa](https://studentaffairs.usc.edu/ssa)

Assists students and families in resolving complex personal, financial, and academic issues adversely affecting their success as a student.

*Diversity at USC - (213) 740-2101*

[diversity.usc.edu](https://diversity.usc.edu)

Information on events, programs and training, the Provost's Diversity and Inclusion Council, Diversity Liaisons for each academic school, chronology, participation, and various resources for students.

*USC Emergency - UPC: (213) 740-4321, HSC: (323) 442-1000 – 24/7 on call*

[dps.usc.edu](https://dps.usc.edu), [emergency.usc.edu](https://emergency.usc.edu)

Emergency assistance and avenue to report a crime. Latest updates regarding safety, including ways in which instruction will be continued if an officially declared emergency makes travel to campus infeasible.

*USC Department of Public Safety - UPC: (213) 740-6000, HSC: (323) 442-120 – 24/7 on call*

[dps.usc.edu](https://dps.usc.edu)

Non-emergency assistance or information.

### **Help with Basic Needs**

<https://studentbasicneeds.usc.edu/>

<https://studentbasicneeds.usc.edu/resources/covid-19/>

*If you are experiencing food insecurity*

<https://studentbasicneeds.usc.edu/resources/food-insecurity/>

*If you are experiencing housing insecurity*

<https://studentbasicneeds.usc.edu/resources/housing-insecurity/>

*If you are experiencing financial insecurity*

<https://studentbasicneeds.usc.edu/resources/financial-insecurity/>

*If you need help procuring technology to perform coursework remotely*

<https://studentbasicneeds.usc.edu/resources/technology-assistance/>

We realize attending classes online and performing coursework remotely requires access to technology that not all students may possess. If you need resources to successfully participate in your classes, such as a laptop or internet hotspot, you may be eligible for the University's equipment rental program. To apply, please fill out this form (see link above) and our Student Basic Needs team will partner with you to evaluate your options.