

THE LAW OF CAMPAIGNS: POLITICAL AND ELECTION LAW
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW
SPRING 2024 SYLLABUS – LAW ~~XXXX~~ – # CREDITS

Professor:

Jessica Furst Johnson

Partner, Holtzman Vogel Baran Torchinsky & Josefiak PLLC

Phone: 202.290.0381

Email: jessica@holtzmanvogel.com

Office Hours: I be available for in-person office hours on Tuesday from 2-3pm and Wednesday from 2-3pm and also be available by appointment.

MEETING TIME: Monday, 9:00a-1:00p; Tuesday, 9:00a-12:00p; Wednesday, 9:00a-1:00p; Thursday, 9:00a-12:00p.

LOCATION: HH-360

COURSE DESCRIPTION AND OBJECTIVES: Political law, and more specifically the study and practice of the authorities in the world of campaign finance and election administration, is certainly a niche field, and one that has received relatively little recent attention prior to the 2020 election. While many Americans go to the polls and vote for candidates without giving much thought to the path candidates navigate to get to that point, the process of declaring candidacy, campaigning for office, and winning (or losing!) an election is truly a legal minefield. This course will cover the legal issues that practitioners advising political candidates and committees face and will explore the relevant authorities in the space.

STUDENT LEARNING OUTCOMES:

At the end of this course, students should be able to demonstrate an understanding of and critically evaluate:

- The role of a political law practitioner, and the legal considerations that shape the practice;
- U.S. Supreme Court jurisprudence that has formed the backbone of the modern campaign finance system;
- The regulatory campaign finance framework and the Federal Election Commission's current role and challenges;
- Recent developments in election law and the challenges facing election administrators;
- Developing issues facing political candidates and committees, including artificial intelligence, privacy concerns, and foreign interests.

REQUIRED READING MATERIALS:

Reading assignments are detailed below. There is no textbook required for this course, and any reading materials are available online. Please be sure to register for the Canvas course and have any required materials with you in print or easily accessible electronic form in class. You are responsible for checking your Canvas page and the e-mail connected to the page on a regular basis for any class announcements or adjustments.

You will notice that the reading material for this course is a bit frontloaded. This sort of schedule will allow us to get the basics of campaign finance down and build to more practical legal discussion from that point forward. Where cases are listed, please do be prepared for an in-depth discussion of the cases. My hope is that you find them interesting!

COURSE EXPECTATIONS AND GRADING EVALUATION:

Students will be evaluated based upon a final take-home exam to be administered two weeks after the last day of class.

CLASS ATTENDANCE POLICY:

Attendance in class is required by both the ABA and the Law School. Attendance will be taken at each class meeting. Students are responsible for ensuring that they are not recorded as absent if they come in late. A student who fails to meet the attendance requirement will be dropped from the course. The law school's policy on attendance can be found [here](#).

UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICIES:

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>.

ABA OUT-OF-CLASS HOURS REQUIREMENTS: ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every "classroom hour" of in-class instruction.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS

This syllabus is offered as a guide to the direction of the course. Our pace will depend in part on the level of interest and the level of difficulty of each section and is subject to change.

<u>Session</u>	<u>Topic</u>	<u>Sub-topic</u>	<u>Reading</u>
Monday 9:00a- 10:30a	Candidacy	• Who makes the rules? • Residency • Ballot Access • Term Limits	• U.S. Const. art. 1, Section 1-6 • <i>Schaefer v. Townsend</i>, 215 F.3d 1031 (9th Cir. 2000) • <i>Munro v. Socialist Workers Party</i>, 479 U.S. 189-201 (1986) • CRS Report on Term Limits, available here: https://crsreports.congress.gov/product/pdf/IF/IF12343
Monday 10:30a- 1:00p	Campaign Finance (Part 1)	• Contribution Limits and Spending Limits • Disparate Treatment of Contribution v. Expenditure Limits • Source Prohibitions	• https://www.ncsl.org/elections-and-campaigns/campaign-contribution-limits-overview • www.fec.gov/resources/cms-content/documents/contribution_limits_chart_2023-2024.pdf • <i>Buckley v. Valeo</i>, 424 U.S. 1, 12-59 (1976) • <i>Federal Election Commission v. Massachusetts Citizens for Life</i>, 479 U.S. 238 (1986) – please read pages 238-251, 256 (starting at heading “B”) -259 • <i>Austin v. Michigan Chamber of Commerce</i>, 494 U.S. 652 (1990) Please read Section I-II and sections IV-V of the majority opinion, along with the Scalia Dissent, Section A-B, D

			• <i>Citizens United v. Federal Election Commission</i>, 558 U.S. 310 (2010) - please read the majority opinion, drafted by Kennedy. No need to read the concurrences and dissents, though we will review relevant parts in class. • 52 USC §§30116, 30118, 30119, 30121, 30122
Tuesday 9:00a- 10:30a	Campaign Finance (Part 2)	• Coordination and Super PACs • Nonprofits engaging in Political Activity • Foreign Money	• www.fec.gov/resources/cms-content/documents/policy-guidance/candgui.pdf (Appendix D) • <i>SpeechNow.org v. Federal Election Commission</i>, 599 F.3d 686 (D.C Cir 2010)(en banc) – Please read Section I, and Section II.A. • Mike McIntire & Michael Luo, <i>Fine line Between ‘Super PACs’ and Campaigns</i>, N.Y. Times, Feb. 25, 2012. • Shane Goldmacher, <i>The Little Red Boxes Making a Mockery of Campaign Finance Laws</i>, N.Y. Times, May 16, 2022, https://perma.cc/V8BT-FHEW • <i>Bluman v. FEC</i>, 800 F. Supp. 2d 281(D.D.C. 2011). • Richard L. Hasen, <i>Cheap Speech and What It Has Done (to American Democracy)</i>, 16 First Amendment Law Review 200, 206-207, 217-219
Tuesday 10:30a- 12:00p	Political Communications	• Advertising Disclaimers • Trademark/copyright • False Statement Laws	• https://campaignlegal.org/update/its-time-congress-disclose-election-spending • https://www.ifs.org/blog/ccps-analysis-of-the-disclose-act/ • https://www.politicallawbriefing.com/2016/07/copyright-tips-for-political-campaigns-and-their-consultants/ • <i>Grimmett v. Freeman</i>, 59 F.4th 689 (4th Cir. 2023) • <i>Susan B. Anthony List v. Driehaus</i>, 815 F.3d 466 (6th Cir. 2016) • Ardia, David S. and Ringel, Evan and Scatterday, Allysan, <i>State Regulation of Election-Related Speech in the U.S.: An Overview and Comparative Analysis</i> (August 4, 2021), Sections 1-3. UNC Legal Studies Research Paper , Available at SSRN: https://ssrn.com/abstract=3899542
Wednesday 9:00a- 11:30a	Federal Election Commission	• Structure and Current Posture • Rulemaking process • Advisory Opinions • Complaints and Enforcement • Preemption for Federal Candidates • Conversation via zoom with FEC	• https://transition.fec.gov/info/appfour.htm • https://www.fec.gov/legal-resources/advisory-opinions-process/ • https://www.fec.gov/legal-resources/enforcement/ • https://www.brennancenter.org/our-work/analysis-opinion/fec-still-failing-enforce-campaign-laws-heads-capitol-hill • <i>NH Attorney General v. Bass Victory Committee</i>, 104 A. 3d 181 (2014) • https://rollcall.com/2023/09/20/democrats-rap-fec-gridlock-that-republicans-say-is-a-feature/

		Chairman, Sean Cooksey at 10am	
Wednesday 11:30a-1:00p	Emerging Legal Issues Intersecting with Political Law	• Donor Privacy • Data and Privacy Law • Artificial Intelligence • House and Senate Rules - Ethics	• <i>Americans for Prosperity Foundation v. Bonta</i>, 141 S. Ct. 2373 (2021) – please read the majority opinion by Roberts, Thomas’ concurrence, and Sotomayor’s dissent • https://theconversation.com/how-ai-could-take-over-elections-and-undermine-democracy-206051 • https://www.cnn.com/2023/09/08/tech/google-political-ad-policy-ai-content/index.html
Thursday 9:00a-10:00a	Election Administration: Preparing for the Election as Counsel	Discussion of legal issues to anticipate when voting starts, including but not limited to weather issues, long lines, malfunctioning voting machines, ballot issues, and observers. Does the current legal regime make sense? What changes, if any, are needed?	The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration (available at: http://web.mit.edu/supportthevoter/www/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf)
Thursday 10:00a-10:45a	Conversation with General Counsel and Chief Counsel to the US Committee on House Administration		
Thursday 10:45a-12:00p	Post-Election Issues	• Recounts • Contests	• <i>Bush v. Gore</i>, 531 U.S. 98 (2000) – please read the per curium opinion, Section II of the Rehnquist, Scalia, Thomas concurrence, and the Stevens, Ginsburg, Breyer dissent. • https://www.miamiherald.com/news/politics-government/state-politics/article221815280.html