

## PRESIDENTIAL SELECTION

Instructor: Scott E. Gessler  
Adjunct Professor

Meeting Times: Tues/Thursday, 4:30-5:45  
January 22, 24, 29, and 31;  
February 5, 7, 12, 14, 19, and 21  
Final Exam: March 3, 2008.

Required Reading: Assigned materials

A combination of federal, state, and local laws shapes how Americans select their president. But more than ever before, Americans are questioning the rules that influence presidential selection, such as the major party primary system, ballot access, presidential campaign financing, and the electoral college. This course examines the laws and regulations that uniquely shape presidential selection, analyzing practical applications as well as the broader constitutional and policy considerations.

### A. Candidate nomination

#### 1. Party associational rights and primaries

- a. *California Democratic Party v. Jones*, 530 U.S. 567 (2000).
- b. *Clingman v. Beaver*, 544 U.S. 581 (2005).
- c. *Tashjian v. Republican Party of Conn.*, 479 U.S. 208 (1986).
- d. *Democratic Party of U.S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107 (1981).
- e. *Wash. State Republican Party v. Wash.*, 460 F.3d 1108, cert. granted 127 S. Ct. 1373 (2007).

#### 2. Party associational rights and primaries (continued)

- a. Democratic Party of the United States, *Delegate Selection Rules* (2006).
- b. Republican National Convention, *Rules of the Republican Party*, Rules 12 to 20 (2006).
- c. N.H. Rev. Stat. Ann. §§ 653:5, 653:9 (2007).
- c. Fla. Stat. § 103.101 (2007).
- d. Political science article explaining game theory dynamics.

#### 3. Independent and minor party candidates

- a. *Anderson v. Celebrezze*, 460 U.S. 780 (1983).
- b. *Munro v. Socialist Workers Party*, 479 U.S. 189 (1986).
- c. *Nader v. Keith*, 385 F.3d 729 (7th Cir. 2004).
- d. Richard Winger, *How Many Parties Ought to Be on the Ballot?: An Analysis of Nader v. Keith*, 5 Election Law Journal 170 (2006).

**4. Laws favoring the two-party system**

- a. *Buckley v. Valeo*, 424 U.S. 1 (1976).
- b. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997).
- c. Presidential debates
  - (1). *Arkansas Educational Television Commission v. Forbes*, 523 U.S. 666 (1998).
  - (2). *Kay v. Bruno*, 605 F.Supp. 767, (D.C.N.H. 1985), *aff'd Kay v. New Hampshire Democratic Party*, 821 F.2d 31 (1st Cir. 1987).
  - (3). Commission on Presidential Debates, *Candidate Selection Process* (2003).
  - (4). Potential excerpt from George Farah, *No Debate*.

**B. Campaign finance**

**5. Contribution limits and political party expenditures**

- a. Applicable statutes and regulations
  - (1). Contribution limits, 2 U.S.C. 441a(b)-(d).
  - (2). Coordination regulations, 11 C.F.R. § 109.21.
- b. *Buckley v. Valeo*, 424 U.S. 1 (1976).
- c. *Colorado Republican Federal Campaign Comm. v. Federal Election Comm'n*, 518 U.S. 604 (1996).
- d. *Federal Election Com'n v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001).

**6. Presidential campaign public financing**

- a. 26 U.S.C. § 9001 *et. seq.*
- b. 11 C.F.R. § 9901 *et. seq.*
- c. *Buckley v. Valeo*, 424 U.S. 1 (1976).
- d. Commentary article on presidential campaign financing.

**7. "527" spending**

- a. *Buckley v. Valeo*, 424 U.S. 1 (1976).
- b. 26 U.S.C. § 527
- c. *Mobile Republican Assembly v. U.S.*, 353 F.3d 1357 (11th Cir. 2003).
- c. 69 Fed. Reg. 68056-59, 68066-68 (Nov. 23, 2004).
- d. *Federal Election Commission v. McConnell*, 540 U.S. 93 (2003).
- e. *Federal Election Commission v. Wisconsin Right to Life*, 127 S. Ct. 2652 (2007).

**8. Nonprofit political involvement**

- a. 26 U.S.C. § 501(c).
- b. 26 C.F.R. § 501 *et. seq.*
- c. IRS Rev. Rul. 2004-6, 2004-1 C.B. 328.

**C. The electoral college and selection of electors**

**9. Distribution of electoral votes**

- a. 13 U.S.C. §141.
- b. *Utah v. Evans*, 526 U.S. 425 (2002).
- c. *Department of Commerce v. U.S. House of Representatives*, 525 U.S. 316 (1999).
- d. 2 U.S.C. 2a.
- e. *U.S. Dept. of Commerce v. Montana*, 503 U.S. 442 (1992).

**10. State selection of presidential electors**

- a. U.S. Const. art. II, § 1.
- b. 3 U.S.C. §§ 1-5.
- c. *Bush v. Palm Beach County Canvassing Bd.*, 531 U.S. 70 (2000)
- d. *Bush v. Gore*, 531 U.S. 98 (2000) (Rehnquist concurrence).
- e. State initiatives
  - (1). Proposed Colorado Amendment 36, *Selection of Presidential Electors*.
  - (2). Proposed California Initiative No. 07-0032, *Presidential Election Reform Act*.
  - (3). National Popular Vote, *Agreement among the States to Elect the President by National Popular Vote* (2006).
  - (4). Commentary article on impact and constitutionality of initiative proposals.