

Introduction

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Disputes over the proper adoption, interpretation, and implementation of local, state, and federal election laws are nothing new, nor is the American Bar Association's involvement in election law questions. As far back as 1972, the ABA House of Delegates passed a resolution urging states to allow college students to register to vote in the area where they attend school. Since then, the ABA, especially through its Standing Committee on Election Law, has published a number of useful publications on election law issues ranging from campaign financing to legislative redistricting to judicial elections. The House of Delegates also has taken positions on election law questions ranging from the proper role of ballot initiatives and referenda to voting rights for residents of the District of Columbia. Most recently, the House of Delegates passed a resolution supporting lobbying reform, based upon the efforts of a task force of which I was a member.

Although election law has been on the ABA's radar screen for some time, public and professional attention to election law has greatly increased since the disputed 2000 presidential election culminating in *Bush v. Gore*. In the decade plus since the opinion, the amount of election law litigation in the courts has more than doubled and the press regularly pays attention to the voting wars between the political parties, which seem to flare up around the elections. States have passed new controversial election laws, often along party lines, such as laws requiring voters to show voter identification before being able to cast a ballot, and many jurisdictions have adopted new voting technologies—in some cases changing voting machinery more than once since 2000.

At the same time, demographic changes and a series of Supreme Court decisions in the area of race, redistricting, and voting rights, along with congressional passage of the 2006 amendments to the Voting Rights Act, have raised a series of important yet unanswered questions about the permissibility of various redistricting plans for state, local, and congressional districts that have been put in place following the 2010 census and that affect minority voting power. Meanwhile, the very constitutionality

of major provisions of the Voting Rights Act remains uncertain, as Arizona, Georgia, Florida, and other jurisdictions have challenged the provision requiring states with a history of racial discrimination in voting to obtain approval from the United States Department of Justice or a federal court before making a change in their voting rules.

It is fair to say that there is more uncertainty now about the state of election law than at any other time in recent memory, and greater acrimony about election law disputes than we have seen in a generation.

The current volume by the ABA Section of State and Local Government Law, cosponsored by the ABA Standing Committee on Election Law, brings light rather than heat to these disputes. Drawing on the knowledge of a wide range of lawyers, law professors, and voting specialists from across the ideological spectrum, the Second Edition of *America Votes!* provides key information and important perspectives on election law questions that the courts are currently addressing or about to address.

The chapters run the gamut from nuts-and-bolts questions about running elections (What safeguards should jurisdictions put in place to make sure that the vote totals generated by vote-counting machines are accurate?) to larger questions about the best methods for democratic governance (Should states be allowed to band together and appoint presidential electors in line with the winner of the national popular vote?). Even questions such as how a third party or independent candidate should be able to gain access to the ballot raise important technical and philosophical questions.

Many chapters in this book discuss both the requirements for compliance with the Voting Rights Act (including its protections for racial, ethnic, and language minorities) as well as the wisdom and logic of those provisions. The Act raises complex issues of both statistical nuance and democratic theory. For example, should prisoners and noncitizens be counted in the creation of legislative districts, and if so, how? Should problems with minority vote dilution be remedied through alternative voting methods, such as cumulative voting?

The Voting Rights Act is not the only constraint on the act of redistricting. Compliance with constitutional commands including the one-person, one-vote requirement of equally populated districts and the ban on racial gerrymandering pose considerable challenges for drawing districts free of legal dispute. In California, with its own Voting Rights Act, drawing complying districts may be even more difficult. It is probably therefore no surprise that some jurisdictions, such as California, have enacted provisions to take redistricting out of the hands of legislators and into the hands of citizen commissions. Thanks in part to the transparency of these recent efforts, we are learning now whether or not this new experiment in nonpartisan redistricting will be successful.

Once the districts are drawn, states and voters face additional challenges in terms of voter registration and voter technology. The National Voter Registration Act both mandates that state take steps to register eligible voters and that they make sure their voter rolls are not bloated with ineligible voters. Not surprisingly, in this

volume as elsewhere, Democrats emphasize the first requirement of the NVRA while Republicans emphasize the second. It is a common divide between Republicans who claim an interest in preventing voter fraud through greater “integrity” of the election process and Democrats who claim an interest in preventing voter suppression through greater voter “access” to the polls.

This volume will not resolve these important and difficult debates among those in the election law world. But the chapters do provide a wealth and breadth of information from varied perspectives to allow the reader both to understand the questions facing the courts and the public and to generate informed answers to those questions.

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