

Understanding Election Law and Voting Rights

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Michael R. Dimino

PROFESSOR OF LAW

WIDENER UNIVERSITY COMMONWEALTH LAW SCHOOL

Bradley A. Smith

JOSIAH H. BLACKMORE II/SHIRLEY M. NAULT

PROFESSOR OF LAW

CAPITAL UNIVERSITY LAW SCHOOL

Michael E. Solimine

DONALD P. KLEKAMP PROFESSOR OF LAW

UNIVERSITY OF CINCINNATI COLLEGE OF LAW



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*To everyone who has taught me to see politics as a cynical game—
and to the politicians that prove the wisdom of those lessons.*
—M.R.D.

*To my students, and to Drs. Franklin A. Presler,
Wen Chao Chen (in memoriam), and my other professors.*
—B.A.S.

To my late father, Eugene Michael Solimine, Esq.
—M.E.S.

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Preface

The key insight of election law is that laws regulating the political process are not “neutral”; rather, they affect political outcomes in predictable ways and therefore favor predictable interests. Politics is, therefore, a “game” — not in the sense that its outcomes are trivial, but in the sense that winners and losers are determined by the strategic decisions and actions that are taken within a context created by a system of rules. Election law is about the creation and implementation of those rules.

This book is written principally as a casebook companion or study aid, although it is also designed to be used as a stand-alone course book or treatise. We anticipate that most users of this book will be law-school or political-science students that are taking a course or seminar on a portion of election law. Nevertheless, some users of this book will be practicing lawyers or others researching the legal regulation of the political process. We have tried to make this book useful and accessible to all who might wish to learn more about the subject.

This text is, therefore, designed with two complementary purposes in mind: First, we desire to provide students with a coherent narrative of the various aspects of election law, helping them synthesize and apply election-law doctrines to typical problems and situations faced by practicing attorneys and policymakers. Second, we wish for this text to serve as a concise treatise on election law for practicing lawyers and for students and scholars in political science and other fields.

Naturally, this book can be used as a companion to our own casebook, *VOTING RIGHTS AND ELECTION LAW* (2d ed., Carolina Academic Press 2015). Students who are using one of the other casebooks, or whose classes do not use casebooks, however, should have no problem adapting this book to their own studies. The organization of this book follows that of our casebook. Subjects are presented in rough chronological order through the election process, beginning with setting the ground rules for elections, including establishing voting qualifications and Congress’s power to protect voting rights, the use of race in districting, and political gerrymandering. We then progress to considering the laws applicable to campaigns, including political parties’ rights, the place of third parties, free speech and the First Amendment rights to participate in campaigns and to run for office, and campaign-finance regulation (including a practical guide to the reporting and regulatory obligations concerning different modes of political spending and expression). Our chronology finishes with the election itself, and we consider issues of ballot-casting and vote-counting, as well as the role of courts in adjudicating disputes about political power and challenges to election “irregularities.”

We have tried to present election-law doctrine with an accompanying discussion of major theoretical principles. Along the way, we note areas where the doctrine is unclear or in tension with other areas. Readers will come away from *Understanding Election Law and Voting Rights* knowing not only the holdings of cases and the meanings of important statutes, such as the Voting Rights Act, but they will also understand the contending views of free speech, equality, judicial authority, and political fairness that are present throughout the field. Our primary goal in presenting the material this way is to prepare students for

class (if they are reading this book along with their course material) or for exams (if they are reading this book to aid in reviewing the course). Such a discussion, of course, also might prove useful for litigators who are confronted with questions where the doctrine is unclear.

Election law is largely applied constitutional law (with some statutes, such as the Voting Rights Act and the Help America Vote Act, playing substantial roles as well). Much of election law applies the First and Fourteenth Amendments to the regulation of politics. Basic constitutional doctrine concerning the freedom of speech, equal protection, and fundamental rights, therefore, provides valuable background to the law of elections and voting rights. Although we try to explain basic principles and doctrine of constitutional law when they are relevant, we expect that most people reading this book have had some exposure to them already. Those readers who need more background in constitutional law may consult one of the excellent secondary sources available, including the one in this *Understanding* series: JOHN ATTANASIO & JOEL GOLDSTEIN, *UNDERSTANDING CONSTITUTIONAL LAW* (4th ed. 2012).

The authors wish to thank the editors and publishing staff for their help and especially for their patience in awaiting the manuscript. Keith Moore has always been available and helpful, and we thank him for his efforts. Author Dimino is additionally grateful for the patience of his co-authors, who have been exceptional partners throughout their collaboration, both on the casebook and on this volume.

We welcome comments about how we might improve this book in future editions. Please contact us with suggestions.

Michael R. Dimino
mrdimino@widener.edu

Bradley A. Smith
bsmith@law.capital.edu

Michael E. Solimine
michael.solimine@uc.edu