

Election Law

Election Law

Cases and Materials

SEVENTH EDITION

Daniel Hays Lowenstein

PROFESSOR OF LAW EMERITUS
UCLA SCHOOL OF LAW

Richard L. Hasen

CHANCELLOR'S PROFESSOR OF LAW AND POLITICAL SCIENCE
UC IRVINE SCHOOL OF LAW

Daniel P. Tokaji

FRED W. & VI MILLER DEAN AND PROFESSOR OF LAW
UNIVERSITY OF WISCONSIN LAW SCHOOL

Nicholas O. Stephanopoulos

KIRKLAND & ELLIS PROFESSOR OF LAW
HARVARD LAW SCHOOL



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— D.H.L.

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Lori
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Shana
Jared
— R.H.

For
Renuka
Aria
Mohan
— D.T.

For
Ruth
Iliana
— N.S.

To the memory of
our friend and colleague,
Gary Schwartz
— D.H.L. and R.H.

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Introduction to the Seventh Edition

Readers of this book may well find nothing surprising about its existence. After all, Election Law is a course taught at many law schools and political science departments across the country. There are a growing number of competing casebooks, a quarterly journal dedicated to the field (*Election Law Journal*), and regular conferences and law review symposia dedicated to election law issues such as campaign finance, voting rights, redistricting, election administration, ballot measures and other topics.

But when the First Edition of this book first appeared in 1995, written solely by Daniel Hays Lowenstein, it was the first modern casebook on the subject. Things have changed much since Professor Lowenstein wrote in the First Edition's Introduction: "So election law has not been a subject in the university." Lowenstein was one of a handful of pioneers in the field, and his book helped define the range of topics which would come to fall under the "election law" category, the theoretical approaches which would be brought to bear on the subject matter, and the importance of empirical political science and political theory to a full examination of the questions raised in this book.*

The First Edition also spoke in Lowenstein's distinctive voice: a mixture of dry and self-deprecating humor, a healthy skepticism of courts and abstract legal theory, and unremitting grammatical correctness.

The Seventh Edition of this casebook appears twenty-seven years after the First Edition, and is written by Professor Rick Hasen of UC Irvine, Dean Dan Tokaji of the University of Wisconsin, and Professor Nicholas Stephanopoulos of Harvard; Lowenstein retired from the field over a decade ago and the book now bears less of Lowenstein's voice. But it kept the sensibility that Lowenstein articulated in the First Edition: "Although I have not attempted to conceal my own views on the subjects treated in this book, I have tried to assure that the book is not a brief for those or any other views. But I hope the book is animated by a respect for truth and a regard for the public good."

* A special "festschrift" issue of the *Election Law Journal* (Volume 9, Number 4, December 2010) considers Lowenstein's considerable contributions to the field. Lowenstein and Hasen served as founding co-editors of *ELJ* from 2001–2010. Tokaji served as co-editor from 2011–2013.

We have tried to emulate Lowenstein's ethos, something particularly important in this hyperpartisan era following the 2020 election when there is so much mistrust and misinformation about the voting and election process.

The goals of this Seventh Edition of the casebook are the same as Lowenstein's ambition with the First: to shed more light than heat on a disputed subject; to give students and their instructors a fair presentation of the cases and scholarship in the key areas of election law; to bring in political science evidence with which to evaluate legislative and judicial interventions into democratic processes; and to do all of this in clear language.

As always, we welcome your comments on how we can improve on this book. No doubt the book is already greatly improved thanks to the generosity of earlier readers.

Conventions Used in This Book

In the interest of saving the publisher's space and the reader's time, most of the materials reprinted in this book have been significantly edited. Insertions are indicated with brackets. Deletions are indicated with brackets or ellipses. However, footnotes have been deleted and citations have been deleted or altered without signalling. Sometimes, formatting of the original sources has been revised. For purposes of serious research, the reader should consult the original sources.

Footnotes that are signalled with a number are from the original work and retain the numbers that they have in the original. Footnotes signalled with a letter are those of the Editors.

Opinions differ on the extent to which law school casebooks should contain references to the scholarly literature. The interdisciplinary nature of this book has persuaded us that these annotations are appropriate. Very few readers of this book — whether instructors, students, or general readers — will have a strong background on all the subjects presented. The references are intended to facilitate further reading on matters of interest and to provide a head start on research projects. They are not intended to be intimidating, and we hope they will not have that effect.

Although the references are extensive, they are not remotely exhaustive. In most cases they should be sufficient to get you into the literature that interests you.

Acknowledgments

Before this Seventh Edition of the book, we republished in each edition the Introduction to the prior editions. We are no longer continuing this tradition to save ink and space, but the one thing lost from cutting those older Introductions are the names of all the people who helped make this book better through comments, research, proofreading, and overall assistance. Please refer to the Sixth Edition, pages xv-xxviii, for the earlier acknowledgments.

For this Seventh Edition of the Casebook, we thank Sara Sampson for her contribution of the updated Appendix on election law research. We also thank our research assistants: Hannah Bartlett, Alyx Bogus, Timothy Duong, Anna Setyaeva, Katy Shanahan, Timothy Duong and Xuechun Wang. We thank Stacy Tran for excellent administrative assistance and the team at Carolina Academic Press for wonderful production assistance.

RICK HASEN
Los Angeles, CA

DAN TOKAJI
Madison, WI

NICHOLAS STEPHANOPOULOS
Cambridge, MA

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