Election Law Training Manual

GEORGIA EDITION

Supplementary Materials

THE CARTER CENTER

Contents

About This Publication

This collection of supplementary materials accompanies the Carter Center's Election Law Training Manual, a curriculum for lawyers to understand elections, electoral law and processes, and key electoral issues. Access the curriculum and guide for facilitators at www.cartercenter.org.

Section 1
Strategies and Engagement Case Studies

The Role of Civil Litigation in Election Law

Civil litigation is used by parties and their lawyers to fashion and refine election law in the United States. Unlike the Constitution, statutes passed by Congress and state legislatures, and regulations issued by federal and state government agencies, civil litigation involves direct action by individual citizens or advocacy organizations to effect election law changes. Criminal cases can also affect the interpretation and application of election statutes and regulations, but civil litigation over election-related matters is far more common.

Key concepts and principles

- Election law cases can be litigated in either state or federal court, depending upon whether the question at issue is local or federal.
- State supreme court opinions can be the last word in many cases. (Some argue that in certain instances state legislatures are not subject to judicial review. See *Moore v. Harper* below.)
- To show standing, plaintiffs must suffer individualized harm. A generalized disapproval of how the law is interpreted, implemented, or enforced is insufficient.
- Defendants in civil litigation about elections are usually local, state, or federal election agencies or officials charged with implementing or enforcing election law, but others, including legislatures or legislative leaders, can also be named.
- In election cases, political parties are often not the only ones to submit briefs seeking to influence the outcome—advocacy or political organizations often submit amicus curiae ("friend of the court") briefs.

Legal framework governing civil litigation

Many state or federal statutes or regulations can form the basis of civil electoral litigation, but a few are used most. The Voting Rights Act of 1965 (P.L. 89-110; 52 U.S.C. §§ 10101-10702), prohibits racial discrimination in the election process. It was intended to enforce federal protections bestowed on all citizens under the 14th and 15th amendments to the Constitution, though these constitutional provisions apply in many situations beyond those found in the VRA. In addition, many state constitutions protect voting and electoral rights, often providing different or more expansive rights than those found under federal law.

Recent elections law civil litigation

In the recent case of *Moore v. Harper*, 600 U.S. __ (2023), decided June 27, 2023, the U.S. Supreme Court rejected the North Carolina General Assembly's argument that the redistricting maps it adopted were not subject to judicial review by the state appellate courts. The General Assembly's position, called the "Independent State Legislature" theory, was based on language in the elections clause of the federal Constitution requiring state legislatures to prescribe election rules. The court held this did not mean that a state court had no role in determining whether the legislature's enactment satisfied other constitutional requirements.

Recommendations

The American political system is not one-size-fits-all. There is tremendous diversity, even between states of the same political leaning, in voting systems, early voting, identification requirements, and same-day voter

registration. Federal constitutional constraints on elections were never intended to be a narrow one-lane road permitting only travel of the same type in one direction. Instead, they are designed as guardrails to prevent veering off the road while allowing for freedom of action within multiple lanes of travel, to adapt to state and local concerns. Successful civil litigation must be tailored to the particular facts and circumstances of each individual case.

Policy and Legislation

Ranked-choice voting in New York City: How we did it

By Nick Stabile, attorney, professor, advocate, and organizer

Most elections in the U.S. use a plurality or first-past-the-post (FPTP) system, where voters have one vote, and the candidate with the most votes wins. But FPTP—especially with our two-party system—enables candidates with a small but hardcore base to win elections with small percentages of the electorate. In one House race in New York City, a candidate was selected with just 25% of the vote—meaning that 75% of the voters wanted someone else to represent them. Runoffs between the two top candidates can ameliorate some disadvantages of FPTP, but they are costly and time-consuming, both for the election administration and for voters and candidates.

Ranked choice voting produces candidates with broader support than plurality elections, without the disadvantages of runoff elections, saving time and money and reducing disenfranchisement.

So how did we get ranked-choice voting (RCV) in New York City?

First, we did not overreach. We pushed for RCV only in local party primary elections to prove the concept. We understood that the politics of New York City—including the relative dominance of the Democratic Party—would make this approach the most palatable. We also knew that RCV's advantages in cost and time were powerful selling points both for fiscal conservatives and for those concerned with voting ease. By using both the cost and pro-voter aspects of RCV, we managed to build a cross-party coalition.

Next, we looked at which legislation we would need to change to implement RCV: the state constitution, state law, city charter, and so forth. In this case, we realized that the City Council could form a city Charter Revision Commission to produce a ballot initiative. The resulting law would override state election law, allowing New York City to run RCV in some elections. The ballot initiative was placed on the November 2019 ballot and won 73.5% to 26.5%.

Resource: See the film short "29 Qs with Nick Stabile" on the Carter Center's YouTube channel.

Working with legislators

By David Pechefsky, legislative director for New York State Assembly member Robert C. Carroll

For an average person who has spent endless hours working on an issue, it can be surprising and frustrating when elected officials do not embrace or even understand the importance of your issue. Do not assume this is necessarily due to indifference or lack of knowledge.

First, understand the track record of the potential target of your lobbying. Elected officials must make choices about where they are going to put their time and energy.

Second, target the right people. Some legislative bodies are more democratic—small "d"—than others. Power is often concentrated in the speaker and/or majority leader and a small leadership team. Find out who matters.

Third, know the rules, formal and informal:

- Who can introduce bills and when?
- Does it matter who sponsors or co-sponsors a bill?
- Who selects committee members and chairs and how?
- How do you get a bill on the agenda and how do you get votes in committee and on the floor?
- How do bills get amended?

Remember that some legislators may appear to be good advocates from the outside but are not skilled at using these rules in the "corridors of power" to get things done. Most legislators have a limited ability to get your legislation passed. *It is important to consider if a legislator is a party stalwart, a member of a coalition, or a more independent-minded actor.* This impacts their proclivity and ability to support your issue.

Fourth, do not forget the staff. Staff often perform a gatekeeper role for legislators. Staff can drive the

legislative agenda, and it is necessary to have a working relationship with them or a sponsor that does.

Finally, remember that electoral reforms often do not necessarily excite a large swath of voters. To determine if a legislator will support you, you need to understand where that legislator stands in the political ecosystem. Asking a legislator to promote reforms that could jeopardize their job is a tall order.

Recommendations and steps

1. First, identify your goal.
2. Then, identify the legislator and staff you need to achieve your goal.
3. Next, identify the strategies you will use to engage your identified targets (lobbying, allying, or partnering).
4. Finally, identify and act on tactics to implement these strategies.

Advocacy

Advocacy groups play a crucial role in shaping the electoral system to ensure that the democratic process remains fair, inclusive, and accessible to all citizens. The complexity of the American electoral system, with federal laws and regulations layered on top of state and local laws and regulations, all with varying jurisdictions, creates numerous points of opportunity for electoral advocacy. This case study explores advocacy strategies and engagement efforts related to election law in the U.S.

Advocacy groups and their role

Electoral advocacy organizations represent a broad spectrum of interests and priorities, including voter access, campaign finance reform, redistricting, and more. Notable groups include the American Civil Liberties Union, Common Cause, the League of Women Voters, and the Brennan Center for Justice. These organizations use various strategies to advocate for election law reform, including those that follow here.

Strategies

1. Public education and awareness

Advocacy groups often start by raising public awareness about electoral issues to build support for their cause. They conduct campaigns to inform citizens about the importance of election law reform and its impact on their rights. This includes producing educational materials, hosting workshops, and leveraging social media platforms to reach a wider audience.

2. Lobbying and advocacy

Advocacy groups engage in direct lobbying efforts to influence policymakers at the federal and state levels. They work to build relationships with lawmakers and their staff, providing them with research, data, and expert opinions to support their positions. Lobbying can involve testifying at legislative hearings, meeting with legislators, and mobilizing constituents to advocate for specific reforms.

3. Litigation

Litigation can be an effective strategy to challenge and overturn restrictive laws that organizations believe infringe on citizens' rights. For instance, the ACLU has been involved in numerous lawsuits against voter suppression measures and gerrymandering. Successful litigation can set important legal precedents and bring about significant changes in election law.

4. Grassroots mobilization

Advocacy groups often work at the grassroots level to mobilize volunteers and activists who can engage with their local communities. This can involve door-knocking campaigns, phone banks, and voter registration drives. Grassroots efforts are particularly critical in engaging underrepresented communities and encouraging voter participation.

5. Coalition building

Advocacy groups often form coalitions, not just with other election reform organizations but also with organizations not directly involved in election law issues. Working as a coalition enables these organizations to deploy their resources more efficiently and increase their impact. Coalitions can bring together actors as disparate as civil rights groups, environmental organizations, and labor unions. While some groups in these coalitions may not have a direct interest in a particular issue, ensuring that their members can more easily exercise their right to vote—increasing their political power—is typically very important for them.

Case Study: The fight for the Voting Rights Act

One prominent example of advocacy is the ongoing effort to amend the Voting Rights Act in ways that strengthen its efficacy. Advocacy groups, including the ACLU, the NAACP, and others, have been working to restore and strengthen key provisions of the act, such as preclearance requirements and protections against voter discrimination. Their strategies include litigation, lobbying, grassroots mobilization, and public education campaigns.

Challenges and future directions

While advocacy groups have made significant strides in shaping election law in the U.S., they face ongoing challenges. These challenges include increasing political polarization, efforts to restrict voting rights, and the influence of money in politics.

In the future, advocacy efforts will likely continue to focus on expanding access to the ballot, reforming campaign finance regulations, and addressing gerrymandering. Additionally, advocacy groups will need to adapt to evolving technologies and digital platforms to reach and engage with a diverse and tech-savvy electorate.

Community Engagement

Community engagement is pivotal in ensuring that citizens understand and participate effectively in the electoral process. This section explores effective community engagement strategies focused on election law in the U.S., highlighting some examples from key engagement organizations. Advocacy groups and organizations play a crucial role in empowering communities to drive reform by employing diverse strategies such as civic education, registration drives, outreach, and legal clinics, among other approaches.

Civic education and workshops: League of Women Voters and the McCain Institute

The League of Women Voters conducts workshops and educational programs to empower communities with knowledge about election laws. Through informative sessions, citizens learn about registration, voting procedures, and their rights. These initiatives encourage informed participation.

The McCain Institute supports initiatives that study and advance participatory democracy in Arizona, with an emphasis on youth voters and their political participation. The institute has held conversations with public officials that focused on topics like citizens' responsibility to vote and get involved in their local community. It has also published a study that examined the youth vote in Arizona, their participation in civic processes, and their political views.

Voter registration drives: Rock the Vote

Nonprofit organizations like Rock the Vote organize voter registration drives in communities across the nation. They use online platforms, social media, and on-the-ground events to reach young and underrepresented demographics, making the registration process more accessible and convenient.

Community outreach and partnerships: NAACP

The NAACP collaborates with local organizations, churches, and schools to disseminate information on election laws. By establishing partnerships, they leverage existing community networks to reach a broader audience, especially in historically marginalized communities.

Language access programs: Asian Americans Advancing Justice

Organizations like Asian Americans Advancing Justice work to overcome language barriers by providing translated materials, multilingual hotlines, and in-person support. This ensures that diverse communities can fully understand and exercise their voting rights.

Youth engagement initiatives: When We All Vote

When We All Vote focuses on youth engagement by engaging pop culture influencers and social media campaigns. By meeting young people where they are, this organization can effectively encourage voter participation and educate youth voters on election laws.

Legal clinics and know-your-rights workshops: ACLU Voting Rights Project

The ACLU's Voting Rights Project offers legal clinics and know-your-rights workshops, providing citizens with resources to address potential voting obstacles. By educating communities about their rights, they

empower individuals to navigate election laws confidently.

Community-led advocacy campaigns: Fair Fight Action

Fair Fight Action, founded by Stacey Abrams, former Georgia state representative, engages communities in advocating for fair electoral practices. They mobilize volunteers and activists to champion reforms, combat voter suppression, and push for policy changes at the state level.

Technology-driven engagement: TurboVote

TurboVote uses technology to simplify the voting process. Through online platforms, they provide personalized election information, reminders, and absentee ballot request services, ensuring that citizens can navigate election laws efficiently.

Popular Education

Popular education is a dynamic approach to civic engagement that empowers citizens, ensuring they have the knowledge and resources to engage effectively with election laws. By utilizing interactive workshops, community-based learning centers, school curriculum integration, online resources, peer-to-peer training, storytelling, mobile apps, and community conversations, organizations empower individuals to become informed and active participants in the democratic process. These initiatives strengthen the foundation of democracy and foster an engaged and educated electorate in the U.S.

Interactive workshops and webinars: Brennan Center for Justice

The Brennan Center for Justice conducts interactive workshops and webinars on election law topics, making complex legal concepts accessible to the public. These events engage participants in discussions about issues like gerrymandering and campaign finance reform.

Community-based learning centers: Fair Elections Center

The Fair Elections Center establishes community-based learning centers in underserved areas. These centers provide resources, workshops, and trained facilitators who educate citizens about their rights, voter ID requirements, and registration processes.

Curriculum integration in schools: iCivics

Organizations like iCivics create educational resources for schools, including lesson plans on election laws and the importance of voting. By integrating this curriculum into classrooms, they ensure that young citizens are informed about their role and responsibilities in the U.S. electoral system.

Online tutorials and resources: National Conference of State Legislatures

The National Conference of State Legislatures offers a comprehensive online resource library with tutorials, guides, and state-specific information on election laws. This accessible platform enables citizens to research and understand voting issues in their state.

Peer-to-peer training programs: HeadCount

HeadCount mobilizes volunteers and music fans to engage with their peers at concerts and other events. They provide training on voter registration, making the process of registering to vote a social and informative experience.

Storytelling and personal narratives: StoryCorps

StoryCorps collects personal narratives and stories related to voting and election laws. By sharing these stories through podcasts and digital platforms, they create a human connection to the importance of electoral participation.

Mobile apps for voter information: Vote.org

Organizations like Vote.org develop mobile apps that provide voters with personalized information about their registration status, polling locations, and absentee ballot requests. This technology-driven approach makes election law information easily accessible.

Community conversations and discussion circles: League of Women Voters

The League of Women Voters facilitates community conversations and discussion circles where citizens can engage in open dialogues about election law issues. These events encourage participants to explore potential reforms and solutions.

Press

By serving as a watchdog and an educator, media organizations play a crucial role in ensuring a fair and transparent electoral process. They inform the public, uncover voting-related issues, and advocate for reforms. Investigative reporting, fact checking, data visualization, editorials, live coverage, documentaries, podcasts, and social media campaigns all prepare citizens to engage with election laws and the electoral system more effectively.

Given the importance of media organizations in informing the public, electoral reform advocacy organizations require comprehensive media strategies to effectively inform the public about election law issues, hold those in power accountable, and advocate for reforms.

The following are some examples of prominent players in the electoral area.

Investigative reporting: ProPublica

Investigative journalism, as demonstrated by organizations like ProPublica, uncovers instances of voter suppression, election fraud, and gerrymandering. Through in-depth reporting, investigative journalists shed light on election law issues, promote public awareness, and provide the informational foundation demonstrating the need for electoral reform.

ProPublica – Electionland: https://www.propublica.org/electionland

Fact checking and verification: PolitiFact

Organizations like PolitiFact scrutinize claims and statements made by political candidates and parties regarding election laws. By verifying information, they help the public distinguish facts from misinformation.

PolitiFact: https://www.politifact.com

Data visualization and infographics: The Wall Street Journal and The Economist

Well-resourced media outlets like The Wall Street Journal and The Economist use data visualization and infographics to explain complex electoral issues and voting trends. Their graphical presentation of information makes it more comprehensible, accessible, and engaging.

The Wall Street Journal Graphics: https://graphics.wsj.com/

The Economist: https://www.economist.com/

Editorials and opinion pieces: The Washington Post

Newspapers and digital platforms often publish editorials and opinion pieces advocating for certain electoral reforms. These pieces influence public opinion, especially among elites, and pressure lawmakers to take action.

The Washington Post Opinion: https://www.washingtonpost.com/opinions/

Live reporting and election night coverage: CBS

During election seasons, networks like CBS provide comprehensive live coverage, explaining election law implications of voter turnout, exit polls, and election results. This real-time reporting keeps the public informed and engaged.

CBS News Politics: https://www.cbsnews.com/politics/

Documentary films 'Suppressed: The Fight to Vote'

Documentary films, such as "Suppressed," directed by Robert Greenwald, explore issues related to voter suppression and election law. These documentaries provide an in-depth look at the challenges facing voters and the impact of election law on communities.

"Suppressed: The Fight to Vote": https://www.bravenewfilms.org/suppressed

Podcasts and digital storytelling: 'Checks and Balance' by The Economist

Podcasts like "Checks and Balance" delve into U.S. elections and election law topics through interviews and storytelling. These audio formats engage audiences and provide a deeper understanding of the issues.

The Economist, "Checks and Balance": https://www.economist.com/audio/podcasts/checks-and-balance

Social media campaigns: X's Election Integrity Hub

Social media platforms, including X, establish dedicated hubs to combat misinformation and promote accurate information about election laws, voting processes, and election security.

X, Election Integrity Hub: https://help.x.com/en/rules-and-policies/election-integrity-policy

Section 2
Sample Documents

Demand Letters

Demand letters assert a legal claim and request an action from another party in an effort to avoid litigation. In the context of election advocacy, they are a powerful tool to inform government agencies about their obligations to the community under state and federal law.

But be careful. Lawyers should be prepared to litigate once a demand letter is sent. Otherwise, your organization's credibility is reduced.

Elements of a successful demand letter

1. Identify recipients based on the issue, such as a county board of elections for local election issues.
2. Maintain professionalism and impartiality.
3. The first paragraph should start with the client, issue, and violation.
4. Detail the harm, legal aspects, and consequences throughout the remainder of the letter.
5. Include the basis for the harm and the importance of minimizing the harm for your clients. For example, on most election issues, the harm would be limited or no ballot access for specific communities.
6. Keep it concise while underscoring the significance of your proposed remedy.

Example: Demand letter to Forsyth County

Community organizations learned that over 10,000 voters were slated for removal based on unsubstantiated claims from a private citizen. The Forsyth County Board of Elections considered removing those voters 90 days before an upcoming election in violation of federal law. Lawyers at the Elias Law Group sent a demand letter, alerting the county of its potential violation of law and preempting the removal of voters. (See Figure 2.1.)

Example: Demand letter to Secretary of State Brad Raffensperger

Community organizations learned that tens of thousands of active Georgia voter registrations might have been transferred to inactive status before the 2020 general election because absentee ballot applications mailed to them in the spring were returned as undeliverable. Lawyers from the organizations sent a demand letter to the secretary of state, alerting him of the potential violation of law, with the goal of preventing the move of active voters to inactive status. (See Figure 2.2, note that descriptions of each organization that appeared at the end of the letter are not included here.)

Policy Review and Recommendations

Election law is the foundation of the American political process. Regular policy reviews and revisions are essential to ensure that election laws remain fair, inclusive, and responsive to the evolving needs of society and its members. By considering key issues, such as voter registration, ID laws, early voting, redistricting, campaign finance, election security, and voter education, policymakers can work toward strengthening our electoral system and ensuring that election laws are fair and accessible to all citizens.

Figure 2.1. Example demand letter.

ELIAS LAW GROUP

10 G Street NE, Suite 600 | Washington, DC 20002

May 12, 2022

BY E-MAIL

Mandi Smith
Barb Luth
Daniel Boyd Thalimer
Joel Natt
Anita Tucker
Carla Radzikinas
Forsyth County Voter Registrations and Elections
1201 Sawnee Drive
Cumming, GA 30040

Dear Forsyth County Elections Officials:

I am writing on behalf of New Georgia Project Action Fund and its members and affiliates. It has come to our attention that you recently received a letter from Frank Schneider dated May 9, 2022 challenging the eligibility of over 13,000 electors to vote in upcoming elections under O.C.G.A. § 21-2-230, (the "Challenge Letter"). This challenge appears to be based on analysis of voters' residence addresses, including analysis of the United States Postal Service's National Change of Address ("NCOA") database. Although Georgia law requires you to hold prompt hearings on this challenge, **federal law prohibits you from finding probable cause, removing voters from the rolls, or creating barriers to their ability to cast a ballot based on this challenge alone.**

First, Section 8(d) of the National Voter Registration Act ("NVRA") expressly provides that "[a] State ***shall not remove*** the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant changed residence ***unless***" it follows the procedures set out therein, which require that: (1) the State receive written confirmation ***from the voter*** of change of address, or (2) the voter fails to respond to a postcard notice, and also fails to vote in at least two subsequent federal general election cycles. 52 U.S.C.A. § 20507(d) (emphasis added).

There is no indication that the Forsyth Board of Elections has received any written confirmation ***from the voter*** of an address change sufficient to sustain a removal from the voter rolls. *See* 52 U.S.C. § 20507(d)(1)(A). Nor is there any evidence that the challenged voters failed to vote in two subsequent general elections after failing to respond to a notice about an address change. *See* 52 U.S.C. § 20507(d)(1)(B). The NVRA clearly prohibits a removal conducted without following Section 8(d)'s mandatory and exclusive notice and removal procedures.

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Figure 2.1. Continued.

Second, section 8(c) of the NVRA provides an additional, independent prohibition on purging voters this close to the May 24 primary election. Section 8(c) requires that "[a] State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters." 52 U.S.C.A. § 20507(c)(2)(A). This section of the NVRA has been interpreted to apply not just to regular voter list maintenance programs, but also to voter challenges like those which have been reported across Georgia in recent months. For example, a North Carolina federal court recently reviewed voter challenges across four counties and found that, where a county's removal of voters "lack[s] individualized inquiry," rests on "generic evidence" such as mass mailings, and occurs within 90 days of a federal election, it constitutes a systematic removal of names that violates Section 8(c) of the NVRA. *N.C. State Conf. of NAACP v. Bipartisan Bd. of Elections & Ethics Enf't*, 1:16CV1274, 2018 WL 3748172, at *6-*7 (M.D.N.C. Aug. 7, 2018).

In 2020, days before the January 5, 2021 runoff election for U.S. Senate, **the United States District Court for the Middle District of Georgia issued a Temporary Restraining Order to stop two Georgia counties from proceeding with voter challenges similar to the one raised in the Challenge Letter.**The Court found that Ben Hill County and Muscogee County (the "Counties") likely violated federal law, and ordered the Counties to dismiss the challenges. *See Majority Forward v. Ben Hill Cnty. Bd. of Elections*, Case No. 1:20-cv-266-LAG (M.D. Ga. Dec. 28, 2020). The Court then granted a preliminary injunction barring Counties from upholding challenges to voters' eligibility based solely on NCOA information, and required the Counties to allow the challenged voters to cast provisional ballots during the runoff election. *See Majority Forward v. Ben Hill Cnty. Bd. of Elections*, Case No. 1:20-cv-266-LAG (M.D. Ga. Jan. 4, 2021).

First, the court held that removal of voters from the registration rolls—which would be the consequence of any successful challenge, *see* O.C.G.A. § 21-2-230(f), (g), (h), and (i)—would likely violate Sections 8(d) and 8(c) of the National Voter Registration Act ("NVRA") because the Counties did not first receive written confirmation from any voter targeted by the challenge of a change of address and because the challenges did not include the individualized inquiries necessary to sustain challenges made within 90 days of a federal election. *See Majority Forward* at 5-6. Second, the court held the Counties' actions likely severely burden the right to vote by imposing unjustifiable barriers to casting a ballot in the January 5, 2021 runoff elections in violations of the First and Fourteenth Amendments to the U.S. Constitution. *Id.* at 6-8.

O.C.G.A. § 21-2-230(b) requires you to "immediately" consider whether probable cause exists to sustain this challenge. **Because federal law prohibits you from removing voters from the rolls**

(continues)

Figure 2.1. Continued.

based on NCOA information alone, the information set forth in the Challenge Letter cannot be sufficient to find probable cause to sustain the challenge to these voters' qualifications.[1]

For the reasons set forth above, we request that you immediately reject this challenge.

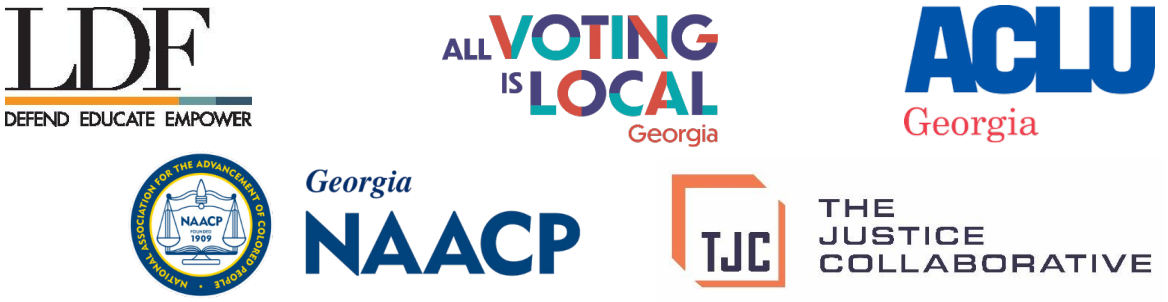
Very truly yours,

Aria Branch

Counsel to New Georgia Project

[1] If you find probable cause despite the clear commands of federal law, the challenged voters will need to take additional steps in order to cast a ballot in the upcoming primary election. If the voters do not appear to vote in the primary election, you will be required to hold a hearing to determine whether the voter is qualified to remain on the list of electors. *See* O.G.C.A. §§ 21-2-230(f), 21-2-229.

Figure 2.2. Example demand letter.



Sent Via Email

August 28, 2020

Hon. Brad Raffensperger
Georgia Secretary of State
214 State Capitol
Atlanta, Georgia 30334
Email: brad@sos.ga.gov

Re: Transferring Voter Registrations to Inactive Status Before the Election

Dear Secretary Raffensperger:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. ("LDF"), All Voting Is Local Georgia, American Civil Liberties Union of Georgia, Georgia NAACP, and The Justice Collaborative, we are writing to urge you to refrain from transferring voters to inactive status until after the November 3, 2020 general election.

It has been reported that tens of thousands of Georgia voter registrations may be transferred to inactive status before the general election because absentee ballot applications mailed to them in the spring were returned as undeliverable.[1] It is critical that you refrain from taking this action until after the general election, at the earliest, for four main reasons. *First*, Georgia law may not permit this action to be taken now. *Second*, a significant portion of voters whose absentee ballot applications were returned as undeliverable are likely still active voters who intend to participate in the general election. *Third*, transferring voters to inactive status now would have unintended consequences for the general election. *Fourth*, even if the state is permitted to transfer voters to inactive status now, it is more efficient to postpone this action until after the general election.

[1] *See* Mark Niesse, *Georgia voters to be made 'inactive' after absentee mail undeliverable*, The Atlanta Journal Constitution (Aug. 18, 2020) available at https://www.ajc.com/politics/georgia-voters-to-be-made-inactive-after-absentee-mail-undeliverable/D7K5RATLZVGDHBZXZJE6EUSC6Y/.

(continues)

Figure 2.2. Continued.

Georgia Law May Not Permit the State to Transfer Voters to Inactive Status Within 90 Days of the Election

Georgia law requires that all list maintenance activities—including transferring voters to the inactive list—must conclude no later than 90 days prior to a general election for federal offices.[2] Georgia carves out only one narrow exception to this rule: If mail sent to specific voters had been returned as undeliverable, the state may send confirmation notices to those voters within the 90-day period prior to the election.[3] However, this narrow exception appears to *only* permit the mailing of confirmation notices, and does not permit the transfer of voters to the inactive list.[4] Therefore, because we are currently within the 90-day period prior to the general election, transferring voters to the inactive list may not be permitted under Georgia law.

Moreover, even if we were not within the 90-day period prior to the election, there is nothing in Georgia law *requiring* the state to transfer voters to the inactive list now. Although Georgia law dictates that confirmation notices should be sent to any voters if mail is returned as undeliverable, the law does not dictate how quickly the state must take action after mail is returned as undeliverable.[5] Similarly, although Georgia law requires electors to return confirmation notices within 30 days, the law does not dictate how quickly the state must act to transfer voters to the inactive list after a voter fails to return the confirmation notice within 30 days.[6] Therefore, even if the state were not barred from transferring voters to the inactive voter list now, there is nothing in the law requiring this action to take place within any particular timeframe.

A Significant Portion of Voters Whose Absentee Ballot Applications Were Returned as Undeliverable Are Likely Still Active Voters Who Intend to Participate in the General Election

There are a wide range of circumstances that would result in the absentee ballot application mailing being returned as undeliverable, even though voters have not moved and have every intention of participating in the general election this November. For example:

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2 *See* Ga. Code § 21-2-234(i) ("List maintenance activities pursuant to this Code section and Code Section 21-2-233 shall be completed not later than 90 days prior to a general primary or general election for federal offices or a presidential preference primary.").

3 The prohibition on list maintenance activities during the last 90 days "shall not apply to notices sent pursuant to subsection (b) of this Code Section." *Id.*

4 This letter does not address whether the decision to transfer voters to the inactive list is barred on other grounds, including federal statutes or the United States or Georgia Constitutions.

5 *See* Ga. Code § 21-2-234(b).

6 *See* Ga. Code § 21-2-234(c).

(continues)

Figure 2.2. Continued.

- Mail may be returned as undeliverable because of typos in the voter registration database or other data entry errors.[7]
- Mail can be undeliverable due to USPS adjustments, including renumbering of houses, renaming of streets, or conversion from rural-style addresses to city-style addresses.[8] This may be a particular problem in some of Georgia's rural counties where voters may have used rural-style addresses, rather than city-style addresses, on their registration forms.
- Mail sent to voters whose residences differ from their mailing addresses may be particularly at risk of having mail returned as undeliverable.[9] Although Georgia's voter registration form asks voters to identify their mailing address if it is different from their residence,[10] voters may inadvertently neglect to provide their mailing address or they may change their mailing address without changing their residence. In particular, some voters may have used a P.O. Box on their voter registration and have since changed boxes or failed to pay rent on their boxes.[11]
- Mail may be returned as undeliverable if the voter does not live at a traditional address. Homeless individuals, who may only list a temporary address, are a prime example of this problem.
- Mail may be returned as undeliverable if the voter does not have a functional mailbox.[12]
- Mail may be returned as undeliverable if the voter is not listed on the mailbox of the address. Couples, roommates, or family members may list only one or two members of the residential unit

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7 Moreover, address numbers and names may be mistyped or transposed, portions of address (including apartment numbers, house numbers, or directional indicators) may be dropped, or addresses may simply be entered incorrectly.

8 *See* United States Postal Service, *507 Mailer Services*, available at https://pe.usps.com/text/dmm300/507.htm ("Mail can be undeliverable because of USPS adjustments such as the following: a. Renumbering of houses. b. Renaming of streets. c. Conversion from rural-style addresses (rural route and box number or highway contract route and box number) to city-style addresses (house number and street name). d. Realignment of rural or highway contract routes. e. Conversion from rural or highway contract service to city delivery service. f. Consolidation of routes. g. Consolidation of Post Offices or adjustment of delivery districts.").

9 In fact, the absentee ballot application mailed to voters in the spring was erroneously sent to residence addresses for about 323,000 voters who had listed P.O. Boxes as their mailing addresses on their voter registration forms. *See* Sarah Kallis, *Georgia to mail out 323,000 new absentee ballot request forms*, Atlanta Journal-Constitution (Apr. 30, 2020) available at https://www.ajc.com/news/state--regional-govt--politics/georgia-mail-out-323-000-new-absentee-ballot-request-forms/bWgargMOEMBLLYNwxOdbML/. These applications were returned as undeliverable and new applications had to be mailed to those voters. The Secretary of State should ensure that the 323,000 voters whose absentee ballot applications were returned as undeliverable only because the application was erroneously sent to their residential address rather than their mailing address are not at risk of being transferred to inactive status.

10 *See* Georgia Application for Voter Registration, available at https://sos.ga.gov/admin/files/GA_VR_APP_2019.pdf.

11 *See* United States Postal Service, *507 Mailer Services*, available at https://pe.usps.com/text/dmm300/507.htm (mail is undeliverable if "[p]ost office box closed for nonpayment of rent.").

12 *See* United States Postal Service, *507 Mailer Services*, available at https://pe.usps.com/text/dmm300/507.htm (mail is undeliverable if "[a]ddressee failed to provide a receptacle for receipt of mail.").

(continues)

Figure 2.2. Continued.

on the mailbox. Particularly when the unlisted members of the unit do not share the same surname, the postal delivery person may presume that the individual does not live at the listed address.

- A voter has the right to refuse to accept mail, in which case it will be returned as undeliverable.[13]

As a result, a decision to transfer voters to inactive status, based on the absentee ballot application being returned as undeliverable, would likely affect a significant number of voters who have not moved and intend to participate in the general election this year. Moreover, we are concerned that these risk factors will disproportionally affect Black, Latinx, and low-income communities.

Transferring Voters to Inactive Status Now Would Have Unintended Adverse Consequences for the General Election

A significant number of eligible and registered Georgia voters who would be transferred to the inactive list are likely to nonetheless vote in the general election. This would have at least two significant unintended adverse consequences.

First, the quantities of election materials that registrars must prepare for election day—including the number of voting devices,[14] the number of ballots,[15] and the number of voting booths or enclosures[16]—are calculated based on the number of *active* electors. Therefore, transferring voters to inactive status creates a risk that registrars may not have sufficient ballots and other equipment on election day. This risk is especially concerning in light of the fact that many Georgia poll sites experienced shortages of devices and ballots in the June 9, 2020 primary election.[17] Transferring voters to the inactive list before the general election—notwithstanding the possibility that many of them will participate in that election—only further increases the risk that many poll sites will lack adequate ballots and materials.

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13 *See* United States Postal Service, *508 Recipient Services*, available at https://pe.usps.com/text/dmm300/508.htm ("The addressee may refuse to accept a mailpiece when it is offered for delivery.")

14 *See* Ga. Code § 21-2-235(a) ("Notwithstanding any other provision of law to the contrary, the names of electors on the inactive list of electors shall not be counted in computing the number of ballots required for an election, the number of voting devices needed for a precinct, the number of electors required to divide or constitute a precinct, or the number of signatures needed on any petition.").

15 *Id*.; *see also* G.A. Code § 21-2-290 ("The superintendent shall provide, for each precinct in which a primary or election is to be held, a sufficient number of ballots equal to the number of active registered electors.").

16 *See* Ga. Code § 21-2-367(b) ("In each precinct in which optical scanning voting systems are used, the county or municipal governing authority, as appropriate, shall provide at least one voting booth or enclosure for each 250 electors therein, or fraction thereof.").

17 Pam Fessler, *Chaos In Primary Elections Raises Fears For November*, NPR (June 15, 2020), available at https://www.npr.org/2020/06/15/876474124/chaos-in-primary-elections-raises-fears-for-november; Danny Hakim, Reid Epstein, and Stephanie Saul, *Anatomy of an Election 'Meltdown' in Georgia*, The New York Times (July 25, 2020) available at https://www.nytimes.com/2020/07/25/us/politics/georgia-election-voting-problems.html.

(continues)

Figure 2.2. Continued.

Second, the state and registrars often send mailings only to active voters.[18] Therefore, transferring voters to inactive status creates a possibility that these voters would not receive critical election communications or other informational materials. To the extent registrars disseminate information on in-person voting only to active voters (such as poll site changes and early voting dates and times), voters transferred to the inactive list would be excluded and may attempt to vote at an incorrect location or time. To the extent registrars disseminate information on absentee voting only to active voters (such as absentee ballot applications), voters transferred to the inactive list may miss their opportunity to vote by absentee ballot and may be forced to vote in person, resulting in longer lines for everyone.

It is More Efficient to Postpone this Action Until After the General Election

Many of the voters whose mail was returned as undeliverable are likely active voters who intend to participate in the general election. Therefore, rather than transferring these voters to inactive status now, it is more efficient to wait to take any action until after November 3, 2020. If these voters participate, there is no need to transfer them to inactive status.

Moreover, this is an especially concerning time to impose additional administrative burdens on election officials, who are currently working hard to prepare for the upcoming election, including processing new registrations, identifying and finalizing polling locations, preparing voting materials, recruiting and training poll workers, and navigating the unprecedented logistical challenges imposed by the COVID-19 pandemic. This project would distract election officials from more urgent and important tasks, and without the time to exercise due care, the process of transferring tens of thousands of registrations to inactive status is prone to mistakes or data entry errors. Therefore, we urge you to delay this action until after the November election.

We ask that you respond by September 9, 2020. In addition, if you have questions or would like to discuss these issues in the meantime, please contact Aklima Khondoker by email at aklima@allvotingislocal.org or telephone at (678) 628-8298.

[18] For example, the absentee ballot application was only sent to active voters, and not inactive voters. *See* Mark Niesse, *Online absentee ballot applications approved for Georgia voters*, The Atlanta Journal-Constitution (Aug. 10, 2020), available at https://www.ajc.com/politics/online-absentee-ballot-applications-approved-for-georgia-voters/V7IZNIOGXNANLAVIAXNRZFT43A/. Georgia law obligates registrars to provide reasonable notice to active electors of the availability of early voting options, but registrars have discretion as to whether to include inactive voters in those communications. *See* Ga. Code § 21-2-385.

5

Below is a summary of policy review considerations and recommendations based on a selection of legal issues from 2008 through 2023.

Policy Reviews

1. Voter registration policies

Review the current voter registration policies to assess their accessibility and efficiency. Consider implementing automatic voter registration systems, as seen in states such as Oregon and California, to increase voter registration rates and accuracy.

Sample document: Brennan Center for Justice, Automatic Voter Registration https://www.brennancenter.org/our-work/policy-solutions/automatic-voter-registration

2. Voter ID laws

Evaluate voter ID requirements to ensure they do not disproportionately disenfranchise vulnerable populations. Consider allowing a broader range of acceptable IDs, as done in states like Wisconsin, while maintaining safeguards against voter fraud.

Sample document: National Conference of State Legislatures, Voter ID Requirements https://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx

3. Early voting and absentee ballots

Review early voting and absentee ballot policies to facilitate access to the polls. Consider models like the "no excuse" absentee voting system in states like Michigan, which allows any registered voter to vote by mail without providing a reason.

Sample document: Michigan Secretary of State, No-Excuse Absentee Voting https://www.michigan.gov/sos/elections/voting/absentee-voting

4. Redistricting and gerrymandering

Consider addressing partisan gerrymandering by establishing independent redistricting commissions, like Arizona, California, and Michigan, to ensure fair representation and prevent partisan manipulation.

Sample document: National Conference of State Legislatures, Redistricting Commissions https://www.ncsl.org/research/redistricting/redistricting-commissions.aspx

5. Campaign finance reform

Review campaign finance laws to increase transparency and limit money's influence in politics. Consider implementing public financing systems, like Arizona and Maine in their Clean Elections programs.

Sample document: Brennan Center for Justice: Public Financing of Elections https://www.brennancenter.org/our-work/research-reports/public-financing-elections

6. Election security

Assess election security measures to safeguard against cyber threats and external interference. Refer to best practices outlined in the Election Infrastructure Cybersecurity Act and collaborate with federal agencies for guidance.

Sample document: U.S. Election Assistance Commission, Election Security https://www.eac.gov/election-officials/election-security

Policy recommendations

Based on the above, consider the following policy recommendations:

1. Automatic voter registration

Implement AVR at the federal level, ensuring that eligible citizens are automatically registered to vote when they interact with government agencies, such as the Department of Motor Vehicles.

2. Voter ID reforms

Standardize voter ID requirements across states, allowing a range of identification options, including utility bills and student IDs.

Establish a federal program to provide free voter IDs to eligible citizens who lack the necessary documents.

3. Early voting and absentee ballots

Promote early voting options and no-excuse absentee voting in all states, ensuring that voters have ample opportunities to cast their ballots.

4. Independent redistricting commissions

Encourage states to establish independent redistricting commissions composed of nonpartisan members to draw electoral maps fairly.

5. Campaign finance transparency

Strengthen campaign finance disclosure requirements to increase transparency and reduce the influence of "dark money" in political campaigns.

6. Public financing of elections

Implement a voluntary public financing system for federal and state elections to reduce the influence of wealthy donors and promote a level playing field for candidates.

7. Election security enhancements

Increase investment in election security infrastructure, including secure voting machines and cybersecurity measures, to protect against foreign interference and hacking.

8. Voter education and outreach

Allocate resources for voter education and outreach programs to ensure that citizens are informed about changes in election laws and voting procedures.

Open Records and Freedom of Information Act Requests

The U.S. government's Freedom of Information Act grants the public the right to request federal agency records. Federal agencies must disclose the requested information, except when it qualifies for one of nine exemptions, including safeguarding privacy, national security, and law enforcement concerns. See 5 U.S.C. § 552.

Sample document: ACLU, Freedom of Information Act request https://www.aclu.org/legal-document/foia-request

Georgia's Open Records Request Act (ORR) provides the same public right to request state, county, and municipality information, except for certain confidential records such as medical or veterinary records, open police investigation files, pending economic development records, grand jury records, real estate appraisals of public property prior to purchase, and personal information on publicly held documents (i.e., birthdate, Social Security numbers, address, phone number). See O.C.G.A. §§ 50-18-70 et seq.

FOIA and ORR are used to gather specific information for community investigations or litigation with the overall aim of upholding government transparency.

Elements of a FOIA and ORR request

1. Identify the holder of the desired records and use their prescribed method to complete the request. Many governmental agencies use an online portal. However, always include a separate letter detailing your request via email or upload it onto their portal. A separate letter provides a detailed record of your request and can be used when communicating with the press.
2. Provide a clear and concise request, including the requested files, file terms, and format, and, for Georgia, include the relevant code sections for the request (i.e., O.C.G.A. §§ 50-18-70 et seq.).
3. Include a request for a fee waiver if the request is a matter of public concern and is made on behalf of a nonprofit organization. Also, include the relevant code section for Georgia (i.e., O.C.G.A. §§ 50-18-71(c)(1) et seq.).
4. For Georgia, specify that a response to the request, with either the requested items, timetable for submission, or reason for declining the request, is expected within three days from the date of receiving the request. O.C.G.A. § 50-18-71(b)(1)(A).

Example: Open Records request from American Oversight and All Voting is Local, Georgia to Gwinnett County Board of Elections

In 2020, new Georgia legislation enacted measures to prevent fraud. However, these measures included criminal investigations without a clearly defined process. This lack of transparency raised concerns, particularly among historically marginalized communities that have been frequently affected by ambiguous and restrictive ballot access laws.

Community organizations such as American Oversight and All Voting is Local learned that the Gwinnett County Board of Elections was being investigated for alleged fraud in the 2020 elections. In response, these organizations requested information detailing the procedures for investigating election fraud to introduce transparency into the state's investigative process. (See Figure 2.3.)

Figure 2.3. Example Open Records request.

AMERICAN OVERSIGHT

ALL VOTING IS LOCAL

December 10, 2020

VIA EMAIL

Lynn Ledford, Director of Elections
Gwinnett County Registrations and Elections Office
75 Langley Drive
Lawrenceville, GA 30046
lynn.ledford@gwinnettcounty.com

Re: Open Records Request

Dear Records Custodian:

Pursuant to the Georgia Open Records Law (O.C.G.A. §§ 50-18-70 et seq.), American Oversight and All Voting is Local Georgia (together, Requesters) make the following request for records.

Requested Records

Requesters ask that your office produce the following within three business days, or provide a written description of any responsive records with a timeline for their availability within three business days:

> All email communications (including emails, complete email chains, calendar initiations, and attachments thereto) between (a) any representative of the Gwinnett County elections office and (b) any official in the Office of the Secretary of State (@sos.ga.gov) regarding investigations, evaluations, reviews, or probes into potential cases of election fraud, voter fraud, or election irregularities (including, but not limited to, communications with any Investigator employed by the Office of the Secretary of State).
>
> Please provide all responsive records from November 3, 2020, through the date the search is conducted.
>
> Please notify Requesters of any anticipated fees or costs in excess of $100 prior to incurring such costs or fees.

Requesters insist that your office use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. Requesters are available to work with you to craft appropriate search terms. **However, custodian searches are still required; your office may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

1030 15th Street NW, Suite B255, Washington, DC 20005 | AmericanOversight.org

(continues)

Figure 2.3. Continued.

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by your office before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, Requesters welcome an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, Requesters and your office can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records, please also provide responsive material on a rolling basis.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to Requesters, please do not hesitate to contact Requesters to discuss this request. Requesters welcome an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, Requesters and your office can decrease the likelihood of costly and time-consuming litigation in the future.

We share a common mission to promote transparency in government. Requesters looks forward to working with you on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested

(continues)

Figure 2.3. Continued.

records, please contact Khahilia Shaw at records@americanoversight.org or 202.539.6507.

Sincerely,

Austin R. Evers
Executive Director
American Oversight

Aklima Khondoker
Georgia State Director, All Voting is Local
The Leadership Conference Education Fund
The Leadership Conference on Civil and Human Rights

– 3 –

GA-GWINNETT-20-2902

Issue and Bench Memos

Issue memos are essential for detailing the application of law in a dispute and explaining advocacy strategies for a given issue. In electoral matters, issue memos educate and outline strategies for supporting a community's advocacy efforts.

Similarly, bench memos provide an objective summary of the law and the parties' arguments, offering a clear picture of the expected outcome when the law is applied to the case facts. As judges may only see a few electoral cases every few years and have little opportunity to develop expertise, election law bench memos are essential for helping judges grasp the law's application to balance voter access, efficient administration, and election security.

Elements of an issue memo

1. Issue memos, like other legal memos, provide an analysis of a legal issue and relevant law, with the addition of advocacy strategies to support community efforts.
2. When considering advocacy strategies, it is also important to include laws relevant to a particular action. For example, if the action is a press conference, include relevant permitting requirements for a municipality. Similarly, include relevant information about nonprofit compliance.
3. Include any cautionary notes about setting unintended precedents, triggering other legal provisions, or any other relevant issue that could harm an organization or the cause.

Elements of a bench memo

1. Bench memos serve as educational tools for judges that provide recommendations on how to proceed. They are authoritative in their discussions and conclusions.
2. Include direct quotations of key language from the relevant sources. Do not paraphrase.
3. When drafting, begin with a high-level recommendation and an overview of the issues to be analyzed. Then, explore legal standards, case law explanations, and their application to the case's facts. Thoroughly address each party's arguments, possibly by incorporating them into an "issues" or "arguments" section before or after discussing legal standards, adapting placement based on the judge's preference and the complexity of the arguments.

Example: Issue memo and demand letter

In 2023, former President Donald Trump and 18 associates, including Georgia State Sen. Shawn Still, were indicted by Fulton County District Attorney Fani Willis on election tampering and fraud charges. Concerned constituents and community leaders in Still's district worried about his ability to fulfill his oath of office while under indictment. Georgia's Constitution mandates a commission to assess the removal or suspension of an indicted legislator.

Community leaders developed an issue memo (see Figure 2.4) that was used as the foundation of a demand letter to Georgia's governor and attorney general (see Figure 2.5). This letter requested the formation of a review commission for Still, and the governor complied. The issue memo and its recommendations initiated the administrative procedures mandated by the Georgia Constitution.

See Rahul Bali, "Kemp appoints commission to consider future of state senator indicted in Fulton Trump probe," WABE. (Sept. 1, 2023) Available at: https://www.wabe.org/governor-appoints-commission-to-consider-future-of-state-senator-indicted-in-fulton-trump-probe/. Also see Jake Johnson, "Advocates Demand Removal of Georgia State Republican Named in Election Indictment," Common Dreams. (Aug. 17, 2023). Available at: https://www.commondreams.org/news/shawn-still-indictment.

Figure 2.4. Example issue memo.

Issue Memo on Georgia Constitution's Requirements for Elected Officials' Removal or Suspension

Purpose: This document outlines the applicability of Article II, Section III, "Suspension and Removal of Public Officials", under Paragraph I, "Procedures for and effect of suspending or removing public officials upon felony indictment of the Georgia Constitution.

This document is not intended to provide legal advice or guidance, but to inform the public and advocacy organizations about how this Constitutional provision has been generally applied and how it may be applicable to Georgia legislators. Below is an overview of the Constitutional provision, relevant practice, case law, applicability, and best strategies, with a note of caution.

Ga. Const. art. I, § III, para I, in brief:

This provision of the Constitution refers to specific government positions, including members of the General Assembly. If a member of the General Assembly is indicted for a felony related to their office (i.e., "which felony indictment relates to the performance or activities of the office of any public official"), the Attorney General or district attorney must send the indictment to the Governor or Lieutenant Governor, who forms a review commission, composed of the Attorney General, one member of the Senate, and one member of the House, to consider removal or suspension of that member.

A speedy hearing is conducted, and within 14 days, the commission submits a report.

If the indictment affects the office's administration and public interests, the official is suspended until case resolution or term end.

If acquitted or conviction is overturned, the official is reinstated and compensated. A replacement is appointed during suspension, except for General Assembly members. Upon final conviction, the office becomes vacant. A 14-day waiting period before commission formation can be extended by the Governor. The official may voluntarily suspend during this time. The suspended official can request a review; if recommended, reinstatement occurs.

Commission records are not admissible in court and are not public.

Relevant practice

As referenced above, commission records are not admissible in court and are not public. Therefore, removal or suspension records related to this provision have not been retrieved. However, a recent example from the felony indictment review of Rep. Tyrone Brooks is informative.

Rep. Tyrone Brooks was indicted for felony tax fraud in 2013. The review commission, consisting of State Attorney General Sam Olens, House Minority Leader Stacey Abrams, and Senate Minority Leader Steve Henson, appointed by Governor Nathan Deal, recommended that State Representative Tyrone Brooks should not be removed from his position as a Georgia House member. The commission found that the indictment against Brooks, which includes allegations of tax fraud and misusing funds for personal use, does not pertain to his duties as a state representative. The hearing lasted less than 15-minutes. Governor Deal was obligated by the state's Constitution to follow the commission's recommendation.

Though the records of the hearing proceedings are scant (*See WABE, GPB, and Review Commissions Report*) we have a few important guidance pieces to consider:

1. Review Commissions must be assigned by the Governor **at least** 14-days after receiving the indictment.
2. The **review commission** for a General Assembly member is **set by the Governor** and must be comprised of the Attorney General, one House member, and one Senate member.
3. It appears that committee members are determined based on their party affiliation (i.e., Democrats have other Democrats serve as their review commission).
4. Removal is permissible when **the review commission finds** that the "indictment *relates to and adversely affects the administration of the office of the indicted public officials* **and** that *the rights and interests of the*

(continues)

Figure 2.4. Continued.

public are adversely affected thereby….” The indictment must be related to their duties to the general assembly **and** must negatively impact their work **and** their duty to the public. All clauses must apply.
5. Review commission’s proceedings and records **are not public**. Therefore, there is no right of the public to review or petition review parameters.
6. The commission ensures a prompt hearing with notice, witness process, and counsel.
7. A report is due within 14 days, unless extended.
8. If indictment impacts office administration and public rights, the Governor or Lieutenant Governor **must** suspend the official until the case ends or term expires.
9. If acquitted, nolle prosequi, or conviction overturned on appeal, reinstatement occurs **during term**.
10. Suspended officials **receive compensation until trial conviction**. **No compensation post initial trial conviction**.

Case law

Although these types of cases are largely kept away from public review, there are analogous cases under statute, that may be applicable here when considering how a legislator might face removal.

OCGA § 45-5-6 provides similar language on how a county or local official may be removed. In *Hill v. Kemp*, 880 S.E.2d 590 (2022), Gov. Kemp signed an executive order to remove the Sheriff of Clayton County from office for being indicted on felony charges. This was permissible because his felony crimes were related to his job as Sheriff. Although the Sheriff’s indictments did not lead to conviction, the Governor was not required to reinstate him to his previous position.

Suspension is also allowable under the State Constitution in the state Board of Education context, when there is a failure to uphold an accreditation standard for a school—a duty that is inextricably linked to their duties under the Board of Education. *DeKalb Co. School Dist. et al. v. Georgia State Board of Education et al.*, 751 S.E.2d 827 (2013). Similarly, the State is not required to reinstate anyone if they were justifiably removed. The Constitution allows for reinstatement, following the continuation of their term in office.

Applicability

Here, it’s important to note that the Governor may only assign a review commission 14-days after the indictment. Officials are only removed if the indictment is linked to their duties to the legislature *and* would be detrimental to their duties to the legislature *and* to the public. If a legislator is removed or suspended, they have the right to appeal. However, that appeal may be denied for a variety of reasons—including if procedure wasn’t followed or if their term has ended.

Best strategies

If a sign-on letter is deployed, here is some guidance on how it should be structured and what to expect:

1. The letter should be addressed to the Governor and Attorney General. It should request a fair and Constitutional process that explicitly considers the charges in the indictment and the duties of office.
2. It should also include each member under indictment by name, the felony charges, the implications of those charges, their respective office and committees, and their duties to the public.
3. The letter must also lay out the timeframe in which a commission should be formed (14-days post indictment, unless an extension is granted) and when a commission report with recommendations is final (14-days after commission review).

Caution

As with any advocacy strategy, the precedent created here will be applicable to other instances where other party actors may also be under indictment, with removal requested from other organizations. It’s important to remember that this advocacy strategy may be replicated in other instances.

Figure 2.5. Example demand letter.

The Honorable Brian Kemp
Governor of Georgia
206 Washington Street
Suite 203, State Capitol
Atlanta, GA 30334

The Honorable Chris Carr
Attorney General
47 Trinity Street, SW
Atlanta, Georgia 30334

August 17, 2023

Dear Governor Kemp and Attorney General Carr,

We, as organizations who fight to protect voters and dismantle threats to voting in Georgia, write to address the serious matter concerning the felony criminal indictment of State Senator Shawn Still (District 48), and his current term in office. We request that you move forward with the Constitutional authority bestowed on your office to convene a review commission to remove Senator Still from office.

On August 14, 2023, the Fulton County District Attorney's Office announced felony charges against Sen. Still and 18 other individuals for their alleged role in the fake electors scheme following the 2020 presidential election. Sen. Still, along with others, allegedly signed documents approving electoral votes for former President Trump despite having no authority to serve as qualified electors.

Sen. Still is currently charged with six felonies, including impersonating a public officer, forgery in the first degree, and false statements and writing, among other serious crimes. The allegations raise serious concerns about Sen. Still's ability to fulfill his duties in a manner that upholds the values and principles an elected official must abide by. The charges also prohibit Senator Still from upholding his duties of office. The Senator's alleged actions represent an alarming breach of trust and duty with the communities he serves in the legislature.

As outlined in Article II, Section III, Paragraph I of the Georgia Constitution,

(continues)

Figure 2.5. Continued.

"Upon indictment for a felony by a grand jury of this state or by the United States, which felony indictment relates to the performance or activities of the office of any public official, the Attorney General or district attorney shall transmit a certified copy of the indictment to the Governor…who shall…appoint a review commission." Further,

"If the indicted public official is a member of the General Assembly, the commission shall be composed of the Attorney General and one member of the Senate and one member of the House of Representatives. The commission shall provide for a speedy hearing, including notice of the nature and cause of the hearing, process for obtaining witnesses, and the assistance of counsel. Unless a longer period of time is granted by the appointing authority, the commission shall make a written report within 14 days. If the commission determines that the indictment relates to and adversely affects the administration of the office of the indicted public official and that the rights and interests of the public are adversely affected thereby, the Governor or, if the Governor is the indicted public official, the Lieutenant Governor shall suspend the public official immediately and without further action pending the final disposition of the case or until the expiration of the officer's term of office, whichever occurs first."

It is your Constitutional duty to ensure that a review commission is established, with the Attorney General, one member of the Senate, and one member of the House, to consider the removal or suspension of Senator Still. The grave allegations contained in the indictment make clear Senator Still's alleged activities prohibit him from carrying out his duties of office.

We are calling on you to convene the review commission within 14 days of the indictment. The deadline for the establishment of this commission as outlined under the Georgia Constitution is August 28, 2023, unless an extension is granted. You can reinforce public trust and ensure the continued progress of free and fair elections by demonstrating a commitment to addressing this issue through a fair and constitutional process. While we recognize the presumption of innocence until proven guilty, the pending criminal charges are extremely serious. We firmly believe that it is in the best interest of the State of Georgia for Sen. Still to be removed.

Thank you for your attention to this matter. We trust that you will handle this situation with the gravity it deserves, keeping the best interests of the citizens of Senate District 48 and all Georgians in mind.

Signed,

Lana Goitia-Paz
Georgia Campaign Manager
All Voting is Local Action

Tips for Your Amicus Brief

An amicus curiae brief, often known simply as an amicus brief, is a brief presented by a "friend of the court," rather than a litigant. It provides interested parties or those with relevant experience an opportunity to offer their perspectives and insights to assist a court in making informed decisions. When dealing with election law cases, the preparation of an amicus brief requires careful consideration and strategic planning. This document offers tips and best practices for creating a compelling amicus brief, supported by examples.

1. Clearly define your interest and expertise

Tip: Begin by articulating your organization's specific interest in the case and your expertise related to election law.

Example: In *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2013), various organizations, such as the ACLU, filed amicus briefs to express their concerns about campaign finance laws. They clearly stated their interest in protecting free speech rights and their expertise in First Amendment matters.

Sample source: Supreme Court of the U.S. – *Citizens United v. Federal Election Commission* (https://www.supremecourt.gov/opinions/09pdf/08-205.pdf).

2. Provide unique and valuable perspectives

Tip: Focus on offering insights or perspectives that might not be presented by other parties in the case, particularly the primary litigants. Your amicus brief should provide a fresh angle or additional context.

Example: In *Shelby County v. Holder*, 570 U.S. 529 (2013), the Leadership Conference on Civil and Human Rights emphasized the ongoing relevance of the VRA and the importance of its enforcement to protect minority voting rights.

Sample source: Supreme Court of the U.S., *Shelby County v. Holder* (https://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf).

3. Collaborate with legal experts

Tip: Work with experienced legal experts or attorneys who specialize in election law. Their expertise can significantly enhance the quality and credibility of your amicus brief.

Example: Organizations like the Brennan Center for Justice and the Campaign Legal Center often collaborate with legal experts to provide comprehensive analyses of election law issues in their amicus briefs.

Sample source: Brennan Center for Justice, Amicus Briefs (https://www.brennancenter.org/our-work/legal-briefs).

4. Ground your arguments in legal precedent

Tip: Reference relevant legal precedents, statutes, and court decisions to support your arguments. Demonstrating a strong legal foundation strengthens your brief's persuasiveness.

Example: Amicus briefs in *Rucho v. Common Cause*, 588 U.S. 684 (2019), referenced previous Supreme Court decisions, such as *Vieth v. Jubelirer*, to argue against partisan gerrymandering.

Sample source: Supreme Court of the U.S., *Rucho v. Common Cause* (https://www.supremecourt.gov/opinions/18pdf/18-422_9ol1.pdf).

5. Be concise and well-organized

Tip: Keep your amicus brief concise and well-organized. Use clear headings, subheadings, and a logical structure to make it easy for the court to follow your arguments. A brief that is long-winded and confusing is likely to be ignored by the court.

Example: The amicus brief filed by the LWV in *Husted v. A. Philip Randolph Institute*, 584 U.S. __ (2018), presented its arguments in such a structured format.

Sample source: Supreme Court of the U.S., *Husted v. A. Philip Randolph Institute* (https://www.supremecourt.gov/opinions/17pdf/16-980_f2qg.pdf).

6. Cite relevant data and research

Tip: Support your arguments with data, research studies, and empirical evidence whenever possible. This lends credibility to your brief and strengthens your position.

Example: In various amicus briefs concerning voter ID laws, organizations like the Brennan Center for Justice cited research on the impact of such laws on voter turnout.

Sample source: Brennan Center for Justice, Voter ID (https://www.brennancenter.org/our-work/research-reports/voter-id).

7. Address potential counterarguments

Tip: Anticipate and address potential counterarguments in your amicus brief. This demonstrates that you have thoroughly considered the issue and can strengthen your position.

Example: In amicus briefs submitted in the case *Gill v. Whitford*, 585 U.S. __ (2018), proponents of reducing partisan gerrymandering acknowledged the challenges but argued that the court had a role in setting limits on extreme gerrymandering.

Sample source: Supreme Court of the U.S., *Gill v. Whitford* (https://www.supremecourt.gov/opinions/17pdf/16-1161_dc8f.pdf).

8. Respect court rules and deadlines

Tip: Adhere to court rules and deadlines for filing amicus briefs. Failure to do so may result in your brief being rejected or not considered by the court.

Example: The Supreme Court's rules specify the format and timing of amicus brief submissions. It is essential to follow these guidelines carefully.

Sample source: Supreme Court of the U.S., Rules for Filing (https://www.supremecourt.gov/rules/brfpr_2013.pdf).

Crafting an effective amicus brief on election law requires a thoughtful approach that combines legal expertise, unique perspectives, and clear organization. By following these tips and considering the examples and sources provided, you can contribute meaningfully to important legal cases and help shape election law.

Working With Grand Juries

Grand juries are vital in investigating potential election law violations in the U.S. This document provides a comprehensive guide on working with grand juries in cases related to election law. It includes examples and reputable sources to illustrate key points.

Working with grand juries on election law cases is a complex but essential part of ensuring the integrity of the electoral process. While you may not be in the position of deciding whether to convene a grand jury (prosecutors make that decision), by understanding the grand jury process, initiating investigations, protecting witness identities, and providing legal representation, you can effectively navigate this critical aspect of election law enforcement and present a convincing case that is taken up by a prosecutor. It is imperative to follow legal procedures and maintain transparency and accountability throughout the process.

Understanding the grand jury process

A grand jury is a group of citizens convened by prosecutors to determine whether there is sufficient evidence to bring criminal charges in a case. They are often used in cases involving election law violations, such as voter fraud or campaign finance irregularities.

Example: In 2016, a federal grand jury in North Carolina indicted individuals for involvement in a voter fraud scheme during a municipal election.

See: Department of Justice, Voter Fraud Cases (https://www.justice.gov/crt/voter-fraud-cases).

Initiating a grand jury investigation

To initiate a grand jury investigation into an election law violation, you must follow these steps:

1. Evidence gathering—Compile evidence, documents, and witness statements relevant to the alleged violation.
2. Prosecutor's presentation—Present the evidence to a prosecutor, who will determine if this case is worth presenting to a grand jury.
3. Grand jury subpoenas—If the prosecutor decides to proceed, the prosecutor will issue subpoenas to compel witnesses to testify and produce documents.

Secrecy of grand jury proceedings

Grand jury proceedings are typically kept secret to protect the investigation's integrity. This secrecy encourages witnesses to speak candidly without fear of retaliation.

Example: In 2020, as part of Special Counsel Robert Mueller's investigation of President Donald Trump, grand jury materials were kept confidential to prevent potential tampering with witnesses.

See: The Washington Post, Grand Jury Secrecy (https://www.washingtonpost.com/local/legal-issues/supreme-court-grand-jury/2020/07/02/69efaf5c-bb6a-11ea-80b9-40ece9a701dc_story.html).

Presenting evidence and witnesses

Golden rules when presenting your case to the grand jury:

1. Clarity and detail—Be clear and provide as much detail as possible when presenting evidence and witness testimonies.
2. Legal expertise—Collaborate with legal experts specializing in election law to ensure the presentation is legally sound.

Indictment or no true bill

After hearing the evidence, the grand jury can take two actions:

1. Indictment—If the grand jury finds sufficient evidence, it will issue an indictment, charging the accused with a violation of the law.
2. No true bill—If the evidence is deemed insufficient, the grand jury issues a "no true bill," meaning no charges will be filed.

Example: In 2021, a grand jury in Georgia issued an indictment against individuals accused of election interference during the 2020 presidential election.

See: CNN, Georgia Grand Jury Indictment (https://www.cnn.com/2021/02/11/politics/grand-jury-indictment-georgia-elections/index.html).

Protecting witness identities

Witnesses may fear retaliation, so it can be crucial to protect their identities during grand jury proceedings. This can be done through redaction or sealing of documents.

Example: During the investigation into Russian interference in the 2016 election, witness identities were protected to ensure their safety and cooperation.

See: Justice Department's Report on the Investigation into Russian Interference (https://www.justice.gov/storage/report.pdf).

Legal representation

Individuals called as witnesses in grand jury proceedings have the right to legal representation. Encourage witnesses to seek legal counsel to protect their interests.

Example: Witnesses involved in the investigation into alleged campaign finance violations by former President Trump had legal representation throughout the proceedings.

See: The New York Times, Trump Campaign Finance Probe (https://www.nytimes.com/2021/02/23/nyregion/trump-taxes-investigation.html).

Post-indictment proceedings

If an indictment is issued, the case proceeds to a trial, where the accused has the opportunity to defend themselves. The trial process follows established legal procedures.

Example: In *U.S. v. Manafort*, 321 F. Supp. 3d 640 (E.D. Va. 2018), following a grand jury indictment, the accused faced a trial on charges related to his work as a political consultant.

See: U.S. v. Manafort (https://www.justice.gov/archives/sco/case-entry/us-v-manafort-gates).

Prepping a Witness

Depositions are pretrial events that can significantly impact the outcome of civil litigation. A deposition records the out-of-court, sworn testimony of a party or nonparty witness. At the deposition, each party may pose questions for the "deponent" to answer. The questions, answers, objections, and on-the-record discussions ("colloquy") are recorded in a written or video transcript for later use. To prepare, you should thoroughly know the case, plan for what you hope to achieve at the deposition, and anticipate what your adversary may do.

Deposition testimony may be used:

- To learn the strengths and weaknesses of the adversary's version of the case and underlying facts.
- To obtain evidentiary rulings before trial.
- To identify the person associated with a business, government entity, or organization who performed acts or has information about the policy or its alleged impact, so future discovery can be directed to the identified person. Fed.R.Civ.P. 30(b)(6).
- To identify and preserve documentary, electronic, or other demonstrative evidence. Federal Rule of Evidence (FRE) 901.
- To preserve the sworn testimony of a witness who may be unavailable in the future. Fed.R.Civ.P. Rule 32(a)(4).

- To "perpetuate" testimony that is needed prior to a federal action being initiated. Fed.R.Civ.P. Rule 27.
- To obtain greater understanding and/or challenge the substance or qualifications of the adversary's designated testifying expert. Fed.R.Civ.P. 26(a)(2); *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S.579 (1993).
- To support or oppose a pretrial motion (e.g., summary judgment, in *limine*, or "*Daubert* motion"). *See, for example,* Fed.R.Civ.P. 56(c)(1)(a). FRE 801(d).
- At trial, to present direct testimony of an unavailable witness, or for cross-examination or impeachment of an adverse witness. Fed.R.Civ.P. Rule 32.

Prepare for your role at the deposition

Regardless of whether you are "taking the deposition" (asking the deponent questions) or "defending the deposition" (representing the deponent being questioned), your preparation should always include the following:

- Review the notice of deposition or subpoena, any attachments describing the scope of the inquiry, requested documents, and so forth.
- Know each element of every claim and what you will need to prove or defend it. For example, does the claim require proof of intent, willful violation, or is it enough to establish the violation occurred? Research any issues that could impact whether any potential line of questions is relevant or material.
- Review the applicable federal or state rules, local rules, individual practice rules, and so forth, regarding the conduct of depositions, how privilege is asserted, objections raised and resolved, and so forth. Consider having a copy of the relevant portions of the rules available at the deposition.
- Familiarize yourself with local deposition practice, such as duration, location, common stipulations or statements placed on the record, colloquy, etc. Frequently, there are customary practices followed by practitioners in the jurisdiction. Ask an experienced practitioner whether there are any conventions you should know so that you are not inadvertently blindsided, and your adversary cannot exploit your apparent inexperience.
- Review the pleadings, discovery, previously marked evidence, party statements, etc. Make sure to "update" this review for each witness to identify issues specific to that witness and because additional information may have become available from other depositions or subsequent disclosure.
- Identify and research relevant topics given the elements of the case, the background of the witness, and the goal of the deposition.
- Research the scope of any privilege issue you anticipate may arise. Consider bringing the leading cases that support your position to the deposition.
- Obtain and review the deponent's prior testimony, affidavits, verified pleadings, or any other types of statements.
- Research the witness's background, even if it is your witness, using search engines, public-facing social media like Facebook, Instagram, or online court records, etc. You can assume that your adversary is using the same tools; your investigation will likely let you know what they will find. Be aware that many jurisdictions permit inquiry concerning the deponent's criminal background (especially crimes of dishonesty), prior sworn testimony, the documents that were reviewed by deponent, and discussions not covered by privilege before the deposition. Always stay within the ethical boundaries of investigation.
- Research the testimonial foundation needed to admit key evidence you anticipate using at summary judgment or trial, who the witness needs to be for that purpose, and what questions you will need to ask them. See, e.g., FRE 803(6) (exception to hearsay rule for records of regularly conducted activities and the elements that must be established, through testimony or certification by a witness with knowledge).

Anticipate your adversary's goals at the deposition by considering their positions, what testimony they hope the deponent will provide, and what testimony or evidence is likely to support or contradict your adversary's position.

Preparing to 'take' a deposition

- Identify the key issues for that witness, what you hope to achieve by your questions, and how you anticipate the witness may respond. You may wish to, for example, learn the witness's version of the facts or whether they have personal knowledge, or assess or attack the witness's credibility and vulnerabilities, etc.
- Prepare a deposition outline for each witness. An outline should contain the issues to address with the witness, the order in which you hope to raise them, any evidence for identification during the deposition,

etc. The outline should include questions regarding background information on the witness, such as name, aliases, addresses, employment, criminal history (when permitted), deposition preparation, and discussions about the case other than privileged discussions with their attorney, prior sworn testimony, prior litigation, etc.

- An outline is useful when, as often happens, the deposition does not proceed in the order that you anticipated, such as when the witness testifies to matters that you had not yet raised. Since it is often preferable to follow up on the testimony as it comes up, the outline will help you refocus on your goals and not miss anything from your plan. For the same reason, it is better to prepare an outline rather than a "script" with full questions to be read, so that you may listen and follow up on the witness's testimony as it arises and then return to unaddressed topics in your outline.
- Identify evidence, such as documents, the witness's prior statements, pleadings, etc. that you anticipate questioning the witness about, whether to expand on their contents or contradict the witness's present statements. Arrange to have the selected evidence available for use at the deposition through hard copies at an in-person deposition or electronically at a virtual deposition. However, it is generally not advisable to share it with adversaries before the deposition.

Preparing to 'defend' your client's deposition

When your client is being deposed, you are not truly in control and generally have only a limited role in what you can say or do. Pre-deposition preparation, as discussed above, is nevertheless essential to anticipate the adversary's questions and work with your client-deponent to best respond. Therefore, whenever possible, meet with your client at least once before the deposition. At the meeting:

- Familiarize the witness with what to expect at the deposition. Explain what a deposition is, where it will be conducted, who will be present, how it will be recorded, and who will be asking questions. Do not forget to discuss prosaic issues like how the witness should dress, when to arrive, what the room will look like, and where to sit. The client should be directed *NOT* to bring anything to the deposition. Discuss your local rules about when a witness may request a break and whether you can talk during the break.
- Advise the client that it is essential to testify ***honestly***. They should never change or qualify what they know to be true or testify to something they do not know to be true in response to an inquiry by the adversary.
- Consider which documents to show or discuss with the client pre-deposition. You should balance the need to prepare the client to testify about a specific document with the possibility that the document's existence or importance might only be discovered if the adversary asks what documents the client reviewed as part of deposition preparation.
- Discuss some of the documents that may be shown to them during the deposition. Instruct them to take their time reviewing the document and then answer only the questions posed to them about the document to the best of their ability.
- Help the client to avoid surprise by anticipating questions that may be asked. Remind them that the deposition may include personal questions, substantive questions about the claim or defense, their prior testimony, and what they did to prepare for the deposition, etc. Remind them that they never need to testify about the contents of their discussions with you or other lawyers on the case.
- Discuss the reality that every case has strong points and vulnerabilities. You should discuss anticipated questions and practice responding. Remind the client that how you say something is as important as what is said. When problem areas are identified, work with the witness to formulate ***honest*** responses that put the testimony in the best light.
- Explain the role of lawyers as advocates for their respective clients. The deponent should *never* engage in belligerence or arguments with the opposing lawyer or participate in any discussion—on or off the record. They are solely there to give testimony. Advise the client that you will make objections or otherwise take steps at the deposition or afterward to protect their interests. The client should never read anything into any objections or arguments between the lawyers.
- Review the "rules of the road" when answering a question. Specifically, the client should be instructed to:
  - Answer every question *honestly*. This should be reinforced.

  - Listen to the question as posed and answer *only* that question.
  - Wait until the question is fully articulated and on the record. Do not start answering before the question is completed.
  - Pause after the question before responding. This has these benefits:
    - Enables the witness to review the question to make sure they understood it.
    - Gives you an opportunity to object or place another statement on the record and, in the rarest of occasions, direct the witness not to answer due to privilege.
    - Allows the witness to think about and formulate an answer that directly responds to the question.
  - Allows you and the client to exercise some measure of control by influencing the deposition's pace.
- Direct the client to answer questions in the clearest and simplest form possible. The client should be directed to never guess, make assumptions, or engage in hypotheticals. Advise them that the answers "Yes," "No," "I don't know," and "I don't remember" are adequate when they fully and *honestly* answer the question.
- Tell the client to ask that a question be read back or rephrased if they have any uncertainty that they understood it or cannot recall the question, especially if the question was lengthy or convoluted, or followed by significant colloquy before the deponent was permitted to answer.
- Explain that the end result of a deposition is a transcript or recording that can be used in court. To make that as useful as possible, the client should never talk over anyone. The client should wait until the question is fully stated to ensure a clear record. Assure the client that they will generally have an opportunity, with your assistance, to review the record and submit corrections after reviewing the transcript.

Applicable federal rules

Federal law favors "liberal discovery" to "assist in the preparation and trial, or the settlement, of litigated disputes." *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984). Nevertheless, it is "clear from experience that pretrial discovery by depositions ... has a significant potential for abuse..." that may cause undue delay or expense or implicate the privacy interests of litigants and third parties. *Id.* Following the federal and local rules may help to reduce discovery abuse.

The Federal Rules of Civil Procedure (Fed.R.Civ.P.)

- Rule 26 defines the scope, timing, and means of all discovery, including depositions, such as mandatory disclosure of the identity of any witness believed to have "relevant" information, limitations and exceptions to frequency and scope of discovery, discoverability of certain information, and objections thereto.
- Rule 30 sets forth the when, how, and conduct of depositions. Generally, each party may conduct up to 10 depositions of individuals believed to have "relevant" information lasting up to seven hours each.
- Rule 31 regards deposition rules for written questions.
- Rule 32 provides for the use of deposition testimony in court proceedings.
- Rule 45 concerns subpoenas to compel nonparty testimony (*subpoena ad testifacandum*) or production of documents (*subpoena duces tecum*).

The Federal Rules of Evidence

- Rule 401 defines "relevant" as evidence tending to make a "consequential" fact "more or less probable than it would be without the evidence."
- Rule 402 states that relevant evidence is presumed to be admissible.
- Rule 403 provides for the exclusion of relevant evidence due to prejudice, confusion, or waste of time.
- Rule 502 discusses the scope of attorney-client privilege, work product, and their inadvertent or deliberate waiver, which may be governed by either federal or state law. (FRE 501).

Local rules

Local rules are enacted by each District Court to govern its own calendar and to expeditiously resolve cases in its forum. See:

- Local Rules of the Northern District of Georgia at https://www.gand.uscourts.gov/sites/gand/files/local_rules/NDGARulesCV_0.pdf
- Local Rules of the Southern District of Georgia, https://www.gasd.uscourts.gov/court-info/local-rules-and-orders/local-rules#lr26

- Local Rules of the U.S. District Courts of the Southern and Eastern Districts of New York. https://img.nyed.uscourts.gov/files/local_rules/localrules_8.pdf

State law

Each state has its own rules and procedures concerning depositions. Although depositions in federal court cases will be governed by the Federal Rules, substantive state law should be considered where state law claims are raised.

Whom to depose

Depending on the case and resources, consider deposing:

- The parties to the lawsuit.
- Any eyewitnesses to the "incidences" (such as voter interference or intimidation).
- Other "fact witnesses" concerning relevant issues, such as prior voter experiences, course of conduct, general election practices in the community, post-incident communications, etc.
- "Damages witnesses" to testify regarding the "injury" claimed as a result of the incident, the impact of the injury, and the redress sought, such as remedial measures, injunctive relief, or monetary damages.
- Some or all witnesses identified by the adversary in disclosure under Fed.R.Civ.P. 26(a)(1) and 26(a)(3).
- Adverse "testifying expert witnesses" as permitted under Fed.R.Civ.P. 26(a)(2).
- "Foundation witnesses" who may be needed to establish the admissibility of documentary or other demonstrative evidence under the Federal Rules of Evidence.

General procedure

Pre-deposition

The requesting party serves a "notice" on the party or a "subpoena" on a nonparty witness (with a copy and notice to the adverse party) stating the name of the deponent, the date, time, location, the means of recording, and the deposition's general subject matter, and provides sufficient time for the deponent to respond. See Fed.R.Civ.P. 30(b). (Notice of a "30(b)(6) deposition" is served on a governmental entity, corporation, or organization when the name of the individual with knowledge is not yet known.) Sample forms are usually available from each court and/or online services. The party or deponent may move for a "protective order" to protect the deponent from "annoyance, embarrassment, oppression, or under burden or expense..." Rule 26(c).

At the deposition

- The deponent is sworn in by the reporter, by swearing to tell the truth under penalties of perjury. Fed.R.Civ.P. Rule 30(c). The reporter contemporaneously records the deposition. Fed.R.Civ.P. Rule 30(b)(4) and Rule 30(f).
- The "noticing" or "requesting" party generally goes first to question the deponent.
- The other parties' attorneys (including the deponent's attorney) may but are not required to follow with questions to the deponent (generally in the order they appear in the caption).
- Questions may be "direct examination" or "cross-examination" depending on the identity of the deponent and who is questioning. Fed.R.Civ.P. Rule 30(c).
- The deponent may be questioned about evidence that is marked "for identification," but issues of admissibility are generally decided after the deposition concludes. Fed.R.Civ.P. Rule 30(d)(1).
- Objections to the form or scope of questions may be placed on the record, but generally, the deponent must answer the question (unless the objection is based on privilege). Fed.R.Civ.P. Rule 30(c).
- Each party may ask follow-up questions ("re-direct" and "re-cross") until all parties have concluded or the deposition has met the time limit imposed by the rules, jurisdiction, or court order.

After the deposition

- The record is compiled into a deposition transcript by the reporter, who certifies that the record accurately reflects what was said. The transcript may also have copies or originals of marked exhibits annexed to it. Fed.R.Civ.P. Rule 30(f).
- Upon request, the deponent and parties have 30 days to review for transcription errors and submit a sworn statement of changes. Fed.R.Civ.P. Rule 30(e).
- Motions to "compel" or for "protective order" may be made concerning objections as to the scope, privilege, and relevancy of testimony. Fed.R.Civ.P. Rule 26(c).

- The transcript may be used in court for all permitted purposes subject to any corrections or later rulings as to admissibility by the court. Fed.R.Civ.P. Rule 32.

Deposition testimony advances case resolution

Realistically, civil lawsuits are only rarely resolved by trial, as most cases are either settled or concluded through dispositive motion practice (i.e., summary judgment). See, e.g., Smith & MacQueen, "Going, Going, But not Quite Gone: Trials Continue to Decline in Federal and State Court. Does It Matter?" Duke Law Center for Judicial Studies. Vol. 101, No. 4, Winter 2017 (Less than 2% of federal civil litigation is tried, as 80%-95% of federal civil cases settle before trial and many others are subject to summary disposition by motion.).

Deposition testimony of the parties and other key witnesses is an essential component of achieving a potential resolution of the dispute. Critically, at the early stages of litigation, the parties' pleadings and understanding of the issues are primarily based on the facts known to that party and their allies. A deposition is a formalized interview of that adversary and witnesses to learn if and how the parties disagree on the facts and the strength of any witness's performance when questioned. Post-depositions, both sides may reassess their positions, sometimes even to the point of formal or tacit addition or deletion of claims or defenses. It is not uncommon for parties to refuse even to discuss settlement until depositions have been conducted or for parties to soften previously hardened positions once they have been tested through the crucible of deposition testimony.

Summary judgment following the close of discovery is another frequent method of pretrial resolution. Summary judgment motions rely on deposition testimony and other evidence to argue that a claim should be granted or dismissed because there are no material issues of fact underlying the dispute. Fed.R.Civ.P. Rule 56. The success rate of summary judgment motions may vary depending on the type of case. For example, summary judgment motions were fully granted more than 40% of the time when made in "miscellaneous statutory rights cases" in federal courts. Indeed, the tendency of a well-supported summary judgment motion aids the settlement process, as it did in 55% of the cases in one study. Fotohabadi, "Odds of Winning Summary Judgement," ADR Times, April 8, 2023.

Lastly, if a case must be tried, the witness's prior deposition testimony helps to "keep them honest." It is difficult for individuals to change their prior sworn testimony at the trial, and it will be up to the jury or judge to decide whether the witness's change was reasonable or leads them to suspect the honesty of the witness on other matters. The prospect of taking the stand following the deposition experience will often motivate a party's interest in settlement.

Working With the Media

As a legal professional using litigation or nonlitigation approaches to support the rule of law, it is important to have a basic familiarity and competency with the media. It is especially beneficial to understand how to effectively interact with and leverage the media to support your cause.

Here are some resources and templates to guide and support your media outreach:

Resource: The Elections Group, Media relations tips for election officials, https://electionsgroup.com/resource/11-media-relations-tips-for-election-officials

Nonprofit Compliance

Nonprofit legal compliance refers to the adherence of an organization to federal, state, and local regulations. Nonprofit legal compliance is essential for avoiding penalties, maintaining tax-exempt status, and upholding transparency. Compliance measures enforce organizational accountability, enhance nonprofits' operational efficiency and effectiveness, and, with thorough financial reporting, bolster donor confidence by demonstrating responsible financial management and transparency.

Lawyers are responsible for ensuring that an organization's activities comply with applicable regulations. Most electoral nonprofits operate as a 501(c)(3) and/or 501(c)(4) corporation. Some may also operate a separate political action committee. It is critically important that the activities of each entity comply with both federal

and state law for the organization to maintain its nonprofit status.

A common challenge for 501(c)(3) organizations (which can receive tax-deductible donations) is maintaining nonpartisan language while advocating for specific issues, as they cannot support or oppose candidates or advocate for legislation. In contrast, 501(c)(4) organizations have far more freedom and can engage in partisan issues and legislation.

Elements of basic 501(c)(3) compliance review

1. 501(c)(3) organizations may engage in community-based advocacy and education.
2. Organizational communications and activities must not support or oppose a political candidate or endorse or oppose specific legislation.
3. Activities may include education on legislation, including why legislation is good or bad for a particular community. Education on ballot measures and hosting discussions between partisan candidates is also permissible, provided all candidates are allowed to participate.
4. 501(c)(3) organizations may conduct nonpartisan "get out the vote" activities and nonpartisan voter protection activities.
5. Importantly, 501(c)(3)s can establish 501(c)(4) affiliates to engage in other activities, like endorsing candidates and proposing legislation.

Resource: Alliance for Justice, Comparison of 501(c)(3) and 501(c)(4) Permissible Activities https://afj.org/resource/comparison-of-501c3-and-501c4-permissible-activities/

Case study: *Georgia Government Transparency and Campaign Finance Commission v. New Georgia Project*

Stacey Abrams founded The New Georgia Project (a 501(c)(3) nonprofit) to register Black and brown voters and increase voter turnout. The addition of the New Georgia Project Action Fund (a 501(c)(4) organization) raised questions about funding sources for candidate advocacy, leading to investigations into both entities' management and funding. This uncertainty could jeopardize their mission's advancement. See *New Georgia Project, Inc., et al. v. Attorney General, State of Georgia, et al.*, No. 1:22CV03533-VMC (11th Cir. 2023), available at: https://law.justia.com/cases/federal/district-courts/georgia/gandce/1:2022cv03533/307041/31/.

Resource: Alliance for Justice, How 501(c)3s and 501(c)4s Can Work Together, https://afj.org/wp-content/uploads/2019/08/BA-Power-of-Collaboration-2.pdf

Section 3
Resources

Campaign Finance Primer

While the focus of the Election Law Training Manual is on the administration of electoral processes, not campaign management, an overview of the large body of laws related to campaign finance is worthwhile. Federal, state, and some local governments regulate the financing of campaigns through both civil and criminal law. These laws include imposing limitations on campaign contributions and expenditures, providing for public funding or matching of campaign contributions, and limitations on how certain entities can participate in the electoral process.

Federal law takes precedence in regulating the financing of federal elections and prohibiting some election finance activities by foreign nationals, national banks, and federally chartered corporations, while states may legislate in other areas.

The Federal Election Campaign Act established the Federal Election Commission, responsible for overseeing campaign finance issues at the federal level. The act also governs federal political contribution limits and expenditures, disclosure requirements, and public funding of presidential campaigns. The Bipartisan Campaign Reform Act aka the McCain-Feingold Act, banned national party committees from raising or spending soft money, previously unregulated funds that could be used for political activities.

While the court has generally upheld limits on campaign *contributions*, the First Amendment's broad freedoms have frustrated attempts to regulate campaign *spending*. In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court held that political expression is protected speech, and that [a] restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." The court rejected the argument that campaign spending restrictions are merely restrictions on conduct.

Expanding on Buckley, *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), held that corporations have a First Amendment right to make campaign contributions, striking down a state law restricting such contributions. *Citizens United v. Federal Election Commission*, directly attacking McCain-Feingold, struck down limits on corporations, trade unions, and other organizations' independent spending on political campaigns as violative of the First Amendment, although restrictions on contributing directly to candidates or candidate committees were upheld.

PACs are tax-exempt organizations that pool campaign contributions from members and donate those funds to campaigns for or against candidates, ballot initiatives, or legislation. Depending on whether they are state or federal, PACs face limitations on their contributions. *Citizens United* led to the creation of a new type of PAC, a Super PAC, or "independent expenditure-only political action committees," which may raise unlimited amounts from individuals, corporations, unions, and other groups to spend on ads overtly advocating for or against political candidates or other political purposes.

Federal election laws govern the conduct of elections, regulate campaign financing, and protect the rights of voters. Below is a list of basic federal election laws and institutions, their purpose, and practical application examples.

The Federal Election Campaign Act

Purpose: The Federal Election Campaign Act (P.L. 92-225; 2 U.S.C. § 431) governs the financing of federal elections, including contributions and expenditures, disclosure requirements, and public funding of presidential campaigns.

Example: The act establishes limits on individual contributions to federal candidates. In 2021, the individual contribution limit for federal candidates was $2,900 per election.

Example: The Federal Election Commission actively enforces the act in cases involving campaign finance violations. In *U.S. v. Lev Parnas, et al.* (19-CR-725 (JPO) (S.D.N.Y. July 14, 2021)), two associates of former President Trump's personal lawyer, Rudy Giuliani, were indicted for campaign finance violations related to illegal political contributions. The FEC and federal prosecutors pursued charges against the defendants, alleging that they violated the Federal Election Campaign Act by making illegal campaign contributions.

See: Federal Election Commision, Contribution Limits (https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/). Also see "Lev Parnas And Igor Fruman Charged With Conspiring To Violate Straw And Foreign Donor Bans" (https://www.justice.gov/usao-sdny/pr/lev-parnas-and-igor-fruman-charged-conspiring-violate-straw-and-foreign-donor-bans).

The Bipartisan Campaign Reform Act

Purpose: Also known as the McCain-Feingold Act, the Bipartisan Campaign Reform Act (P.L. 107-155; 116 Stat. 81) addresses campaign financing issues, including restrictions on soft money contributions and electioneering communications.

Example: The Bipartisan Campaign Reform Act banned national party committees from raising or spending soft money, which was previously unregulated funds that could be used for political activities. The act was used in *Citizens United v. Federal Election Commission*. In this landmark case, the Supreme Court examined whether restrictions on corporate and union spending on electioneering communications violated the First Amendment. The court's ruling had a profound impact on campaign finance, effectively allowing corporations and unions to spend unlimited funds on independent political expenditures.

See: Federal Election Campaign Reform Act (https://www.fec.gov/resources/cms-content/documents/bipartisan_campaign_reform_act_of_2002_bcra.pdf). Also see *Citizens United v. Federal Election Commission* (https://www.fec.gov/legal-resources/court-cases/citizens-united-v-fec/).

The Help America Vote Act

Purpose: The Help America Vote Act (P.L. 107-252; 52 U.S.C. §§ 20901-21145) focuses on election administration, including the improvement of voting systems, voter identification, and provisional voting.

Example: In the 2020 U.S. presidential election, states used Help America Vote Act funds to enhance election security, upgrade voting systems, and implement measures to accommodate voters with disabilities. The act's provisions helped states address the challenges posed by the COVID-19 pandemic and facilitate secure and accessible voting.

See: Election Assistance Commission, Help America Vote Act (https://www.eac.gov/help-america-vote-act).

The Voting Rights Act

Purpose: The VRA (P.L. 89-110; 52 U.S.C. §§ 10101-10702) addresses voting discrimination, particularly against minority communities. Prior to 2013, Section 5 of the VRA required certain states with a history of discrimination to obtain federal approval (preclearance) before making changes to their voting laws.

Example: In *Shelby County v. Holder*, the Supreme Court invalidated the coverage formula of Section 4(b), effectively suspending Section 5 preclearance requirements. This decision had significant implications for voting rights, including closing polling locations in Black districts and passing restrictive voter ID laws.

Example: In *Brnovich v. Democratic National Committee*, 594 U.S. __, 141 S.Ct. 2321 (2021), the VRA played a central role as the Supreme Court considered voting restrictions in Arizona. The case focused on two provisions: one involving out-of-precinct voting and the other concerning restrictions on ballot collection. The court examined whether these provisions disproportionately affected minority voters, highlighting the ongoing relevance of the VRA in safeguarding voting rights.

Example: The VRA has been invoked in redistricting cases to address racial and ethnic gerrymandering. In *Rucho v. Common Cause*, the VRA played a pivotal role as plaintiffs argued that North Carolina's congressional districts were drawn to dilute the voting power of minority communities. The case underscored the VRA's significance in combating discriminatory redistricting practices.

See: U.S. Department of Justice, Voting Section (https://www.justice.gov/crt/voting-section)

The National Voter Registration Act

Purpose: The National Voter Registration Act (P.L. 103-31; 52 U.S.C. §§ 20501–20511[b]), also known as the "Motor Voter Act," simplifies the voter registration process by allowing eligible citizens to register to vote when applying for or renewing their driver's licenses.

Example: States are required to provide voter registration services at motor vehicle offices, public assistance agencies, and other government offices under the National Voter Registration Act.

Example: In *League of Women Voters of Florida v. Lee*, 566 F. Supp. 3d 1238 (N.D. Fla. 2021), the National Voter Registration Act was cited, challenging Florida's restrictions on voter registration drives. The lawsuit argued that Florida's regulations on third-party voter registration efforts violated the act's provisions, which aim to facilitate voter registration activities and prevent unnecessary barriers to voter participation.

See: U.S. Election Assistance Commission, National Voter Registration Act (https://www.eac.gov/help-america-vote-act).

The Uniformed and Overseas Citizens Absentee Voting Act

Purpose: The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA; 52 U.S.C. §§ 20301-20311, 39 U.S.C. § 3406, 18 U.S.C. §§ 608-609) ensures that members of the military and overseas citizens can vote in federal elections.

Example: UOCAVA requires states to provide absentee ballots to military personnel and overseas citizens at least 45 days before federal elections.

Example: UOCAVA is regularly used to ensure military and overseas citizens' participation in elections. During the 2020 U.S. presidential election, UOCAVA was instrumental in facilitating the voting process for service members and citizens living abroad. Various states provided extended deadlines and electronic voting options to comply with UOCAVA requirements, enabling military personnel and overseas citizens to cast their ballots.

See: Federal Voting Assistance Program, UOCAVA (https://www.fvap.gov/).

The Federal Election Commission

Purpose: The Federal Election Commission is the federal agency responsible for enforcing campaign finance laws, administering the public financing program for presidential elections, and disclosing campaign finance information.

Example: In 2016, the Federal Election Commission played a crucial role in investigating allegations of campaign finance violations that ultimately resulted in *People of the State of New York v. Trump*, 2023 N.Y. Slip Op. 33314 (N.Y. Sup. Ct. 2023). The case involved hush money payments made to the adult film actress Stephanie Clifford ("Stormy Daniels") in an attempt to conceal her alleged affair with then-presidential candidate Trump. The commission investigated whether these payments constituted unreported campaign contributions.

Example: The Federal Election Commission is actively involved in enforcing campaign finance laws, particularly in cases involving Super PACs and dark money. One notable case is the investigation into Crossroads GPS, a politically active nonprofit group that spent substantial sums on political advertising during election cycles. The commission examined whether Crossroads GPS had violated campaign finance disclosure requirements.

The Presidential Election Campaign Fund

Purpose: The Presidential Election Campaign Fund allows eligible presidential candidates to receive public funding for their campaigns, provided they meet specific requirements and spending limits.

Example: In the 2020 U.S. presidential election, several candidates used the fund. President Joe Biden was one such candidate who opted to participate in the public financing program. By accepting public funds, he agreed to adhere to spending limits in exchange for receiving government funds to support his campaign.

Conclusion

Federal election laws in the U.S. are designed to ensure the integrity of the electoral process, protect voters' rights, and regulate campaign financing. Understanding these laws and their application is essential for candidates, political committees, and citizens participating in the democratic process.

Relevant State and Federal Case Law

This reference document provides an overview of landmark state and federal cases that have had a lasting impact on the U.S. electoral landscape. They have addressed campaign finance regulations, voting rights, redistricting practices, and more. They continue to influence legal interpretations and decisions related to elections and voting nationwide.

Reynolds v. Sims (1964)

Case Overview: In *Reynolds v. Sims*, 377 U.S. 533 (1964), the Supreme Court addressed the "one person, one vote" principle, ruling that state legislative districts must have roughly equal populations to ensure equal representation, ending the practice of rural overrepresentation in state legislatures.

Significance: Reynolds v. Sims profoundly impacted the redistricting process, ensuring that legislative districts accurately represented the population, thereby enhancing electoral fairness.

Harper v. Virginia Board of Elections (1966)

Case Overview: In *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966), the Supreme Court ruled that imposing poll taxes for voting in state elections was an unconstitutional violation of the equal protection clause of the 14th Amendment, ensuring that poverty could not be a barrier to voting.

Significance: The case eliminated a discriminatory practice and reinforced the principle that voting should be accessible to all eligible citizens, regardless of their financial means.

Richardson v. Ramirez (1974)

Case Overview: In *Richardson v. Ramirez*, 418 U.S. 24 (1974), the Supreme Court upheld state laws that disenfranchise individuals with felony convictions, emphasizing that voting rights are not automatically restored upon the completion of a sentence of imprisonment.

Significance: This case upheld state laws disenfranchising felons, impacting the voting rights of individuals with criminal convictions.

Buckley v. Valeo (1976)

Case Overview: In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court upheld limits on campaign contributions but struck down limits on candidates' personal spending on First Amendment grounds, equating money to free speech in campaign finance contexts.

Significance: This case reshaped the landscape of campaign finance regulation, influencing laws governing contributions, expenditures, and disclosure requirements.

City of Mobile v. Bolden (1980)

Case Overview: In *City of Mobile v. Bolden*, 446 U.S. 55 (1980), the Supreme Court ruled that a discriminatory purpose or intent was required to establish a violation of Section 2 of the Voting Rights Act, making it more challenging for plaintiffs to prove vote dilution.

Significance: The case shaped the legal standards for vote dilution, emphasizing the significance of intent in proving claims under the Voting Rights Act.

Thornburg v. Gingles (1986)

Case Overview: In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the Supreme Court addressed Section 2 of the Voting Rights Act. The court established the "Gingles Test" to determine whether a redistricting plan violates the VRA by diluting minority voting power, ruling that vote dilution could occur through districting practices that weaken the influence of minority voters.

Significance: Thornburg v. Gingles set the precedent for analyzing racial vote dilution in redistricting cases, impacting the drawing of electoral boundaries to ensure minority representation.

Shaw v. Reno (1993)

Case Overview: Shaw v. Reno, 509 U.S. 630 (1993), addressed racial gerrymandering, with the Supreme Court ruling that North Carolina's redistricting plan, which had created a highly irregular, snakelike district with a majority African American population, violated the 14th Amendment's equal protection clause as it was drawn solely based on race.

Significance: The case set a precedent for examining racial considerations in redistricting, requiring that race not be the predominant factor in drawing electoral boundaries.

Miller v. Johnson (1995)

Case Overview: Miller v. Johnson, 515 U.S. 900 (1995), also dealt with racial gerrymandering and scrutinized whether race was the predominant factor in drawing electoral districts. Applying the rule created by *Shaw v. Reno*, the Supreme Court ruled that strict scrutiny is required whenever race is the overriding, predominant force in a redistricting process.

Significance: This case has had a lasting impact on redistricting practices, influencing efforts to ensure that electoral boundaries are not drawn solely based on race.

Bush v. Gore (2000)

Case Overview: The U.S. Supreme Court's decision in *Bush v. Gore*, 531 U.S. 98 (2000), resolved the 2000 presidential election between George W. Bush and Al Gore. The court held that the recount process in Florida, as it was conducted, violated the equal protection clause of the 14th Amendment, effectively ending the recount and awarding the presidency to Bush.

Significance: Bush v. Gore showcased the judiciary's role in resolving electoral disputes and highlighted the significance of accurate and uniform election procedures.

Crawford v. Marion County Election Board (2008)

Case Overview: Crawford v. Marion County Election Board, 553 U.S. 181 (2008), examined the constitutionality of Indiana's voter identification law that required voters to present photo identification at the polls. The Supreme Court upheld the law, ruling that it did not impose an undue burden on voters and therefore did not violate the 14th Amendment.

Significance: The decision had implications for voter ID laws in other states, shaping the ongoing debate over voter access and election integrity.

Citizens United v. Federal Election Commission (2013)

Case Overview: Citizens United v. Federal Election Commission challenged the FEC's restrictions on political spending by corporations and unions. The court's ruling held that corporate and union spending on independent political expenditures could not be limited based on the First Amendment's right to free speech, thus allowing for the creation of Super PACs and significantly altering campaign finance regulations.

Significance: The ruling in *Citizens United* led to the proliferation of Super PACs, which have spent billions of dollars on elections since the ruling.

Shelby County v. Holder (2013)

Case Overview: Shelby County, Alabama, challenged the constitutionality of Section 4(b) of the Voting Rights Act, which determined the coverage formula for Section 5 preclearance requirements. The court ruled that this exceeded Congress' authority under the 14th and 15th amendments, violating the 10th Amendment and Article 4 of the Constitution. This ruling effectively suspended Section 5's preclearance process, stating that the coverage formula was outdated.

Significance: Following *Shelby County v. Holder*, several states enacted changes to their voting laws, including voter ID requirements and redistricting, which some argued had a disproportionate impact on minority voters.

Key Election Actors and Networks in the U.S.

The U.S. electoral system involves a complex network of actors and organizations that play crucial roles in the administration, regulation, and advocacy for elections. This document provides an overview of key election actors and networks, along with examples, to better understand their significance in the U.S. electoral process.

Federal Election Commission

Role: The FEC is the federal agency responsible for enforcing campaign finance laws, administering the public financing program for presidential elections, and disclosing campaign finance information. Compared with national election commissions in other democracies, the FEC has a very limited role in U.S. elections.

Example: In the 2020 U.S. presidential election, the FEC played a role in monitoring campaign finance compliance, investigating violations, and overseeing public funding for eligible presidential candidates.

National Association of Secretaries of State

Role: The National Association of Secretaries of State is an organization composed of secretaries of state, who oversee election administration in their respective states. They collaborate on best practices, election security, and voter outreach.

Example: NASS members played a significant role in coordinating election procedures and security measures during the 2020 presidential election amid the COVID-19 pandemic, with the goal of ensuring smooth elections.

U.S. Election Assistance Commission

Role: The EAC is an independent federal agency responsible for assisting states in improving election

administration, including the testing and certification of voting equipment.

Example: The EAC provides resources and guidelines to states for implementing the Help America Vote Act, helping to enhance election infrastructure. During the 2020 elections, EAC guidance supported the implementation of drop boxes in Georgia.

State and local election officials

Role: State and local election officials are responsible for managing and conducting elections within their jurisdictions, including voter registration, ballot distribution, and polling place management.

Example: During the 2020 election, election officials across the nation worked to ensure the safe and secure administration of the election despite the challenges posed by the pandemic.

Political parties

Role: Political parties, such as the Democratic National Committee and the Republican National Committee, nominate candidates, mobilize voters, and engage in campaign activities. Remember that in our federal system, each state has its own party apparatus as well.

Example: In the 2020 election, both major political parties employed extensive ground operations, digital outreach, and fundraising efforts to support their candidates.

See: DNC (https://democrats.org/) and RNC (https://www.gop.com/).

Nongovernmental organizations

Role: Nongovernmental organizations like the League of Women Voters (LWV) and Common Cause advocate for voter rights, conduct voter education initiatives, and monitor election integrity.

Example: LWV has a history of promoting voter engagement and providing nonpartisan information on elections to empower citizens.

Voting rights activists and advocacy groups

Role: Voting rights activists, including individuals like Stacey Abrams and organizations like the NAACP Legal Defense Fund, work to protect and expand voting rights, combat voter suppression, and promote fair election practices.

Example: Stacey Abrams founded Fair Fight Action to advocate for electoral reform and challenge voter suppression efforts, particularly in Georgia.

Social media platforms

Role: Social media platforms like Facebook, Twitter/X, and Instagram play a significant role in disseminating legitimate election information and illegitimate election misinformation, political advertising, and voter outreach during election campaigns.

Example: Social media platforms implemented policies to combat misinformation and promote voter registration and turnout in the 2020 election.

See: Facebook Election Integrity (https://about.fb.com/news/2020/09/election-integrity/), X Election Integrity (https://blog.twitter.com/en_us/topics/company/2020/2019_Election_Integrity.html).

The U.S. Postal Service

Role: The U.S. Postal Service has a critical role in facilitating mail-in voting by collecting and delivering mail-in ballots during elections.

Example: USPS was a focal point of discussion and concern during the 2020 election, with concerns raised regarding its ability to ensure timely ballot delivery.

International observers

Role: International organizations and observers, such as the Organization for Security and Co-operation in Europe, monitor U.S. elections to assess their fairness and adherence to democratic standards.

Example: OSCE deployed observers during the 2020 U.S. presidential election to assess election practices and provide recommendations.

Nonpartisan election observation

Role: Nonpartisan election observers, often deployed by organizations like The Carter Center and the LWV, play a critical role in monitoring elections for fairness, transparency, and adherence to democratic principles. They provide impartial assessments and recommendations to improve electoral processes.

Nonpartisan election observation serves as an additional layer of scrutiny to ensure that U.S. elections meet international standards and uphold democratic principles. These observers contribute to public confidence in the electoral process and provide valuable feedback for improving election administration.

Example: LWV has a long history of observing U.S. elections, including monitoring polling stations, reviewing election administration, and engaging with stakeholders to enhance the integrity of elections.

See: The Carter Center (www.cartercenter.org), The League of Women Voters (www.lwv.org)

Lawyers' Committee for Civil Rights Under Law, Election Protection Hotline

Role: The Lawyers' Committee for Civil Rights Under Law operates the Election Protection Hotline, a nonpartisan initiative aimed at ensuring that all eligible voters can exercise their rights and participate in elections without barriers or discrimination. The hotline provides assistance, information, and resources to voters facing issues or questions related to voting.

Example: The Election Protection Hotline is a vital resource during every major election cycle, including the 2020 U.S. presidential election. It offers support to voters on issues including voter registration, absentee ballots, polling place accessibility, and voter intimidation.

See: Lawyers' Committee for Civil Rights Under Law, Election Protection (https://866ourvote.org/)

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