Lecture Notes

# Chapter 15: Voting and Representation

## Annotated Chapter Outline

1. Voting Rights
   1. At the Constitutional Convention of 1787, the states already had election systems that were quite liberal.
   2. Suffrage, however, was granted only to free adult men, and in several states only to those who owned sufficient property.
   3. The lack of uniformity would cause conflict when instituting federal voting requirements.
      1. Article I, Section 2: if citizens can cast state ballots, they are also qualified to vote in congressional elections.
      2. Fifteenth Amendment (1870): the right to vote cannot be denied on the basis of race, color, or previous condition of servitude.
      3. Nineteenth Amendment (1920): the right to vote cannot be denied on the basis of sex.
      4. Twenty-fourth Amendment (1964): the government cannot impose a poll tax as a voter qualification for federal elections.
      5. Twenty-sixth Amendment (1971): the minimum voting age for all state and federal elections is 18.
   4. ***Oregon v. Mitchell* (1970)**
      1. The justices held that, although Congress could set a minimum age for voting in federal elections, it could not impose an age standard on state and local elections.
      2. Congress overcame the *Mitchell* ruling by proposing the Twenty-sixth Amendment.
   5. Post-Civil War attempts to legislate protections for Black Americans were met with resistance.
   6. *United States v. Cruikshank* (1876)
      1. The Court ruled the Enforcement Act of 1870 could not be the basis for prosecuting perpetrators of violence, since it did not appear the defendants intended to prevent Black Americans from exercising their right to vote.
   7. *United States v. Reese* (1976)
      1. The Court did not uphold the indictment of a Kentucky election official who refused to register a qualified Black voter because the Enforcement Act was too broadly drawn.
   8. *United States v. Harris* (1883)
      1. The Court was reluctant to approve sanctions under the Ku Klux Klan Act when the prosecution centered private behavior.
   9. *Ex parte Yarbrough* (1884)
      1. The Court strongly supported federal enforcement actions against private behavior when the right to vote in national elections was abridged.
   10. The Court approved criminal charges against state officials who compromised the integrity of federal elections in:
       1. *Ex parte Clark* (1880).
       2. *Ex parte Siebold* (1880).
       3. *United States v. Gale* (1883).
   11. State Restrictions on Voting
       1. ***Louisiana v. United States* (1965)**
          1. The Court struck down Louisiana’s “understanding test,” which permitted voting registrars to determine whether individuals understood state and federal constitutions to be qualified to vote.
          2. This was a warning the Court would not tolerate state schemes designed to deny marginalized individuals access to the ballot.
       2. ***Harper v. Virginia State Board of Elections* (1966)**
          1. The Court found that poll taxes imposed as a requirement to vote in *state elections* violated the Fourteenth Amendment.
          2. Coupled with the Twenty-fourth Amendment, this decision eliminated the willingness or ability to pay a tax as a voting rights requirement.
       3. ***Kramer v. Union Free School District* (1969)**
          1. The Court removed ownership/rental of real property as a requirement for voting on certain property tax issues.
       4. ***Dunn v. Blumstein* (1972)**
          1. The Court struck down state laws that established residency requirements of up to a year as a voting prerequisite.
   12. The Voting Rights Act of 1965
       1. The act contained general provisions and sections that targeted areas with a history of voting rights discrimination.
          1. General: prohibited all practices and procedures (e.g., poll taxes, literacy tests), that had a discriminatory impact on voting rights.
          2. Targeted: prohibited implementing changes in election procedures without approval from the U.S. Justice Department/three-judge district court in Washington, D.C.
       2. *South Carolina v. Katzenbach* (1966)
          1. The Court dismissed a suit challenging the Voting Rights Act on the ground that its provisions exceeded Congress’s Constitutional power over the states.
       3. *Shelby County, Alabama v. Holder* (2013)
          1. It did not strike down nondiscrimination principles or reduce the opportunity for legal challenges.
          2. The Court struck down the law’s coverage formula, finding it to have limited contemporary relevance.
          3. Civil rights advocates criticized this decision for eliminating the act’s most effective provisions, arguing discriminatory laws can be challenged only through expensive litigation and only after laws go into effect.
   13. Contemporary Restrictions on the Right to Vote
       1. *Crawford v. Marion County Election Board* (2008)
          1. The Court upheld Indiana’s voter identification law.
          2. Critics claimed this law would impose unwarranted hardship on those living in poverty and older adults, who are less likely to have these IDs.
       2. ***Husted v. A. Philip Randolph Institute* (2018)**
          1. The Court ruled Ohio’s method of striking people from voting rolls if they did not turn out to vote consecutively was valid since failure to vote was not the sole criterion (it relied on a failure to vote and return a notice card).
2. Political Representation
   1. The Reapportionment Controversy
      1. Constitutional issues regarding apportionment arose after World War II.
      2. ***Colegrove v. Green* (1946)**
         1. The Court refused to rule on a case challenging congressional districts in Illinois, where the most populous district had almost nine times as many residents as the least populous.
         2. The justices held reapportionment was a political issue.
      3. ***Baker v. Carr* (1962)**
         1. The justices ruled that apportionment issues raise serious equal protection questions that are justiciable.
         2. The Court announced it would welcome reapportionment challenges.
      4. ***Wesberry v. Sanders* (1964)**
         1. The justices held that Georgia’s Congressional districts were significantly malapportioned, and this violated Article I, Section 2, of the Constitution.
         2. To satisfy that constitutional provision, the Court ruled, the congressional districts within a state must be as equal in population as practicable.
         3. This ruling did not solve the issue of malapportionment within state legislatures.
      5. *Reynolds v. Sims* (1964)
         1. The majority opinion stated both houses of a state legislature must be apportioned on a population basis.
         2. State advocates tried to amend the Constitution allow states to have at least one state legislative house based on factors other than population, but the proposal failed.
         3. Today, reapportionment occurs each decade following the national census.
         4. In addition, the reapportionment rulings have been extended to the local level.
   2. Political Representation and Minority Rights
      1. Gerrymandering: the art of structuring legislative districts to ensure political success.
      2. ***Gomillion v. Lightfoot* (1960)**
         1. A unanimous Court decision held that when an otherwise lawful exercise of state power is used to circumvent a federally protected right, the courts may intervene.
         2. A legislative act that removes citizens from the municipal voting rolls in a racially discriminatory fashion violates the Fifteenth Amendment.
      3. ***United Jewish Organizations of Williamsburgh v. Carey* (1977)**
         1. The Court upheld legislative actions creating “majority-majority” districts, representational units in which a majority of the residents were members of a particular marginalized group.
         2. Civil rights groups/liberal organizations argue this practice is the only meaningful way to guarantee marginalized Americans a fair share of legislative seats.
         3. Republican administrators back these efforts because when districts with a high concentration of Black voters are created, the other districts become more white and Republican.
      4. ***Shaw v. Reno* (1993)**
         1. The Court ruled congressional districts created to maximize marginalized representation may be unconstitutional under some circumstances.
         2. States had to abide by federal antidiscrimination law but could not exceed it by engaging in rank racial segregation.
         3. District lines that created bizarrely shaped configurations would be viewed with great skepticism.
      5. *Miller v. Johnson* (1995)
         1. The Court continued to apply strict scrutiny standards to legislative redistricting designed to satisfy the Voting Rights Act.
         2. Justices would demand assurance that states were not simply “carving electorates into racial blocs.”
   3. Partisan Gerrymandering
      1. ***Davis v. Bandemer* (1986)**
         1. The decision held political gerrymandering does present a justiciable claim under the equal protection clause.
         2. The justices conceded that the Indiana law may have discriminated against Democrats.
         3. However, the Court ruled in favor of the state, since the effect—some disproportionate representation after a single election—was not sufficiently adverse to trigger a constitutional violation.
         4. This signaled that, while a degree of partisan bias natural, the Constitution would be violated with excessive discrimination.
         5. The Court did not provide a standard for determining when discrimination becomes unreasonable.
      2. *Vieth v. Jubelirer* (2004)
         1. The justices were divided and could not resolve the case, as they could not agree on an acceptable rule/remedy to apply to cases in which a party in power draws congressional district lines that favor themselves.
      3. ***Arizona State Legislature v. Arizona Independent Redistricting Commission* (2015)**
         1. The Court upheld the right of the Arizona electorate to initiate a state constitutional amendment removing reapportionment power from the state legislature and vesting it in an independent redistricting commission.
         2. More than a dozen states have adopted some independent body for reapportionment.
         3. Officials in other states continue to try to secure electoral benefits.
      4. *Gill v. Whitford* (2018)
         1. The justices sidestepped the technological issue ofWisconsin’s redistricting scheme that favored Republicans by dispensing the case on procedural grounds.
      5. *Benisek v. Lamone* (2018)
         1. The justices sidestepped the technological issue ofMaryland’s redistricting plan that favored Democrats by dispensing the case on procedural grounds.
      6. *Rucho v. Common Cause* (2019)
         1. The justices decided the issue of redistricting proved too unwieldy for judges and was better left to the political process.
         2. Without a firm standard, the Court could only evaluate the fairness of partisan appointment.
         3. This implies that state policy-makers are free to develop districting plans that secure the long-term dominance of their majority party.
         4. Legislatively, many states have created nonpartisan institutions to draw legislative boundaries.
3. Election Campaign Regulation
   1. ***Buckley v. Valeo* (1976)**
      1. The Court upheld provisions in the Federal Election Campaign Act of 1971 (FECA) that restricted how much individuals and groups could contribute to candidates, parties, and political action committees (PACs) in federal elections, imposed record-keeping requirements, and provided for federal funding of presidential election campaigns.
      2. The Court also struck down FECA’s provisions that limited independent campaign expenditures and candidate expenditures of personal funds.
      3. This decision rested on the assumption that restricting these expenditures was equivalent to limiting political speech.
      4. The justices concluded that reducing electoral corruption was a sufficient interest to limit campaign contributions but not expenditures.
   2. Since strategists found ways to circumvent the law, Congress passed the Bipartisan Campaign Reform Act of 2002 (BCRA).
      1. The BCRA prohibited national political parties from raising/spending soft money, barred officeholders and candidates for federal office from soliciting/receiving soft money, and prevented state and local party organizations from spending soft money.
      2. The law prohibited labor unions and corporations (including incorporated interest groups) from using general funds to engage in “electioneering communication” (advertising (primarily televised) clearly referring to a candidate for federal office that appears in the days leading up to an election).
      3. The law raised the ceiling on hard-money contributions ($1,000 to $2,000) per election to a candidate and limited a donor’s aggregate contribution to candidates/groups.
   3. *Austin v. Michigan Chamber of Commerce* (1990)
      1. The Court reinforced their *Buckley* reasoning and upheld a prohibition on corporate spending on behalf of candidates in elections.
   4. ***McConnell v. Federal Election Commission* (2003)**
      1. The Court upheld the BCRA against arguments that Congress had exceeded its authority and that the law violated the First Amendment, but the Court was badly fractured.
      2. This was a 5–4 split between liberal and conservative justices, respectively.
   5. *Davis v. Federal Election Commission* (2008)
      1. The justices declared unconstitutional the so-called millionaire’s amendment to the BCRA.
      2. This gave way to speculation that the Court now had a 5-justice majority opposing strong limits on campaign finance on First Amendment grounds.
   6. *Citizens United v. Federal Election Commission* (2010)
      1. Although the decision did not upset the ban on corporate donations directly to political candidates, it provided constitutional protection for unions and corporations using funds to support their own independent political advertising.
   7. *McCutcheon, et al. v. Federal Election Commission* (2014)
      1. With the same majority that decided *Citizens United*, the Court overturned a previously approved limitation on campaign contributions.
      2. Placing limits on an individual’s total contributions, the Court says, is akin to restricting the number of candidates a person might choose to endorse.
   8. *Buckley v. Valeo* (1976)
      1. This decision upheld the right of government to limit the amounts of money that can be contributed to candidates, parties, and political organizations, and that holding remains unaffected by the *McCutcheon* decision.
   9. *Federal Election Commission v. Ted Cruz for Senate* (2022)
      1. The justices struck down a law that stated a candidate could loan their campaign organizations an unlimited amount of money, but any money loaned in excess of $250,000 had to repaid from campaign contributions raised *before* the election.
      2. This law was struck down because the justices reasoned that the possibility of not recovering their money served to deter candidates from relying upon their own resources to campaign for office.
   10. ***Randall v. Sorrell* (2006)**
       1. The justices struck down a Vermont law that placed stringent ceilings on campaign contributions, saying the Constitution is violated when contribution and spending limitations become so severe as to damage freedom of speech interests.
   11. *Thompson v. Hebdon* (2019)
       1. The Court strongly hinted that Alaska’s law that limited individual contributions to $500 annually to any candidate/group (other than a political party) violated free speech.
       2. The Court instructed the lower court to reconsider its decision and take *Randall* into account.
4. The Court and Presidential Elections
   1. *Bush v. Gore* (2000)
      1. After a dispute over the vote count procedures in Florida during the presidential election in 2000, the Court stopped the Florida recount, ending the controversy and allowing Bush’s victory to stand.
      2. This caused an intense debate:
         1. There was a question of whether SCOTUS should have heard the case in the first place.
         2. Many believed the votes were excessively influenced by the justices’ own political preferences.
         3. The Court may have felt an institutional obligation to resolve the dispute.
   2. *Texas v. California* (2020)
      1. The Court declined to resolve a dispute in which Texas questioned the validity of the balloting procedures in four other states, stating Texas had no standing to challenge the election procedures of other states.
   3. *Chiafalo v. Washington* (2020)
      1. The Court held that a state may bind its presidential electors to support its popular vote choice in the Electoral College.