

Election Law Manual

Prepared by Elizabeth Bircher
Spring 2008

Produced and distributed by the
Election Law Program, a joint project of the
College of William and Mary School of Law
and the National Center for State Courts.



Preparation of this Manual was funded by a grant from
the Deer Creek Foundation.

Introduction

This Manual is designed to provide a basic overview of election law in the United States. Its primary focus is state election law, although reference is made to important federal statutes that are relevant to election law, such as the Help America Vote Act and the Voting Rights Act, as well as to relevant federal constitutional provisions such as the first and fourteenth amendments.

Our primary goal in creating this Manual is to provide assistance to state court judges who are called upon to resolve election-related cases. During the past decade, there has been a substantial increase in election-related litigation in the United States. Much of this litigation has been filed in state court and requires an interpretation of state election law. With the encouragement of the Conference of Chief Justices, who have identified election law as an increasingly important issue for state court judges, we have sought to provide a short, but comprehensive overview of the basic principles that govern election-related litigation.

This Manual does not attempt to provide a detailed analysis of election law statutes in all fifty states. Rather, it attempts to present an overview of basic principles that may be of use to a judge or lawyer who requires a basic understanding of this area of the law.

We have organized the Manual around various substantive election-law issues that are likely to be litigated, as well as important procedural issues that govern this type of litigation.

Chapter One provides an overview of the way in which federal statutes and constitutional provisions affect state and local election practices.

Chapters Two, Three, and Four consider issues that arise out of the regulation of various actors in the election process: candidates, political parties, and voters.

Chapter Five addresses the topic of ballot measures and particular legal issues that can arise when such measures are voted upon by the people.

Chapter Six provides an overview of the system of state election administration.

Chapter Seven addresses the special legal issues that can arise on election day.

Chapters Eight and Nine provide an overview of the post-election administrative processes and legal disputes that can arise from those processes. These include canvassing, certification, recounts, and election contests.

Chapter Ten and Eleven address various procedural issues that are of particular importance in election-related litigation: statutes of limitations and laches, and extraordinary and equitable relief.

Chapter Twelve concludes the Manual by focusing on a few special election-related issues.

This Manual will be revised on a regular basis. Accordingly, we welcome your feedback and suggestions for issues that warrant coverage. You may contact us at:

Election Law Program

David B. Rottman, Ph.D.
National Center for State Courts
300 Newport Avenue
Williamsburg, VA 23185
(757) 259-1856 (O)
(757) 564-2082 (fax)
drottman@ncsc.org

Rebecca G. Hulse
Adjunct Professor of Law
William and Mary School of Law
P.O. Box 8795
Williamsburg, VA 23187
(757) 221-4100 (O)
(757) 221-3261 (fax)
rghuls@wm.edu