

# **Election Law Issues** *for State Court Judges*

## **ELECTION LAW PROGRAM**

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A JOINT VENTURE BY THE COLLEGE OF WILLIAM & MARY SCHOOL OF LAW  
& THE NATIONAL CENTER FOR STATE COURTS

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# Substantive Concerns Related to Pre-election Litigation

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# Outline of this unit

- Standard of review
  - Fundamental rights v. sliding scale
- Literal reading v. intent of voters
  - Substantial compliance
  - Mandatory v directory laws
  - Three examples
  - Steps to minimize such difficult disputes

**Substantive Concerns**

A. Standard of review issues

1. Fundamental right standard

2. *Burdick* “flexible”/sliding scale standard  
for cases involving garden variety  
election challenges

**Substantive Concerns**

B. Enduring issue: literal reading of elections code v. intent of the voters/fundamental rights protection in a number of contexts

1. Substantial compliance doctrine
2. “Mandatory” v. “directory” laws

**Substantive Concerns**

### 3. Illustrative examples

- a. New Jersey Torricelli replacement case
- b. California Prop. 77 case
- c. San Diego mayor's race

**Substantive Concerns**

4. How to minimize these difficult issues for courts

- a. Clear signals from state supreme courts
- b. Legislatures more precisely drafting election laws to explain effects of violations

**Substantive Concerns**

# Summary

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