

Election Law Issues *for State Court Judges*

ELECTION LAW PROGRAM

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

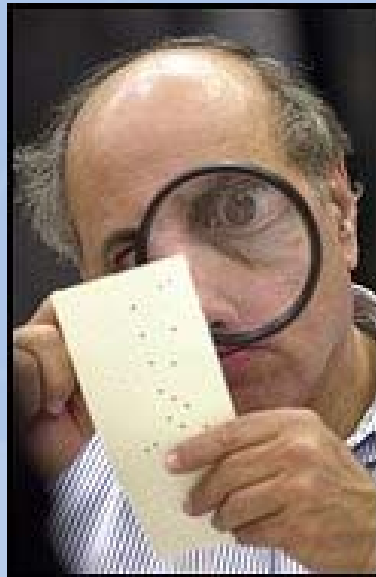
Introduction: Why Election Law Cases are Different

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Outline of this section

- The Political Thicket
- The Rise in Election Law Cases
 - * Statistics
 - * Reasons for increased litigation
- Public Confidence: party and race divide

The Political Thicket and Concerns About Courts Getting Involved in Politics



Introduction

1. Justice Frankfurter's warnings
"the political thicket"
2. Post-Florida 2000
3. Implications for pre-election vs. post
election review

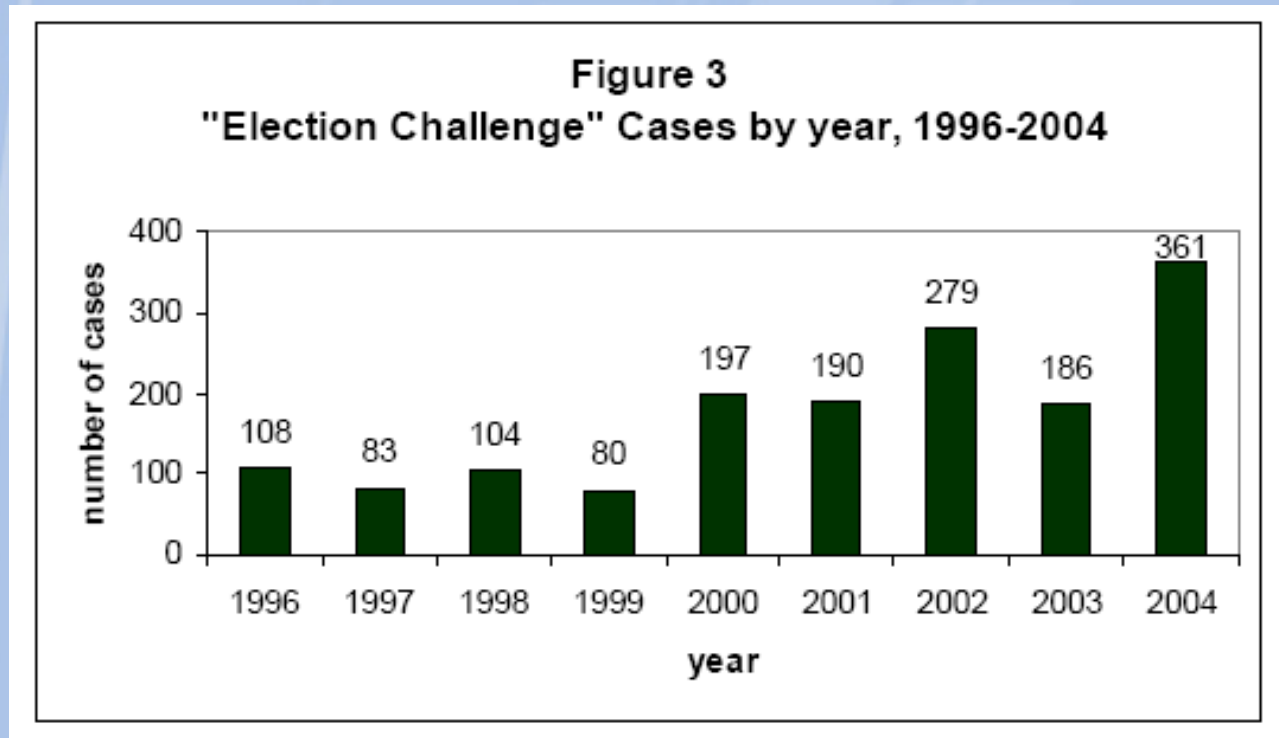
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The Rise in Election Law Cases Since 2000

1. The Statistics

Introduction

Average of 96 election cases per year before 2000/254 cases per year after 2000



Introduction

1996-2000 v. 2001-2004: State and Federal courts

Average Number of Cases Per Year

	State	Federal
Pre - 2000	54	40
Post - 2000	198	55

Source: author's compilation of data

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The Reasons for the Rise in Election Law Cases Since 2000

2. The Reasons for Increased Litigation

- a. Parties less reluctant to sue/
“election law as a political strategy”

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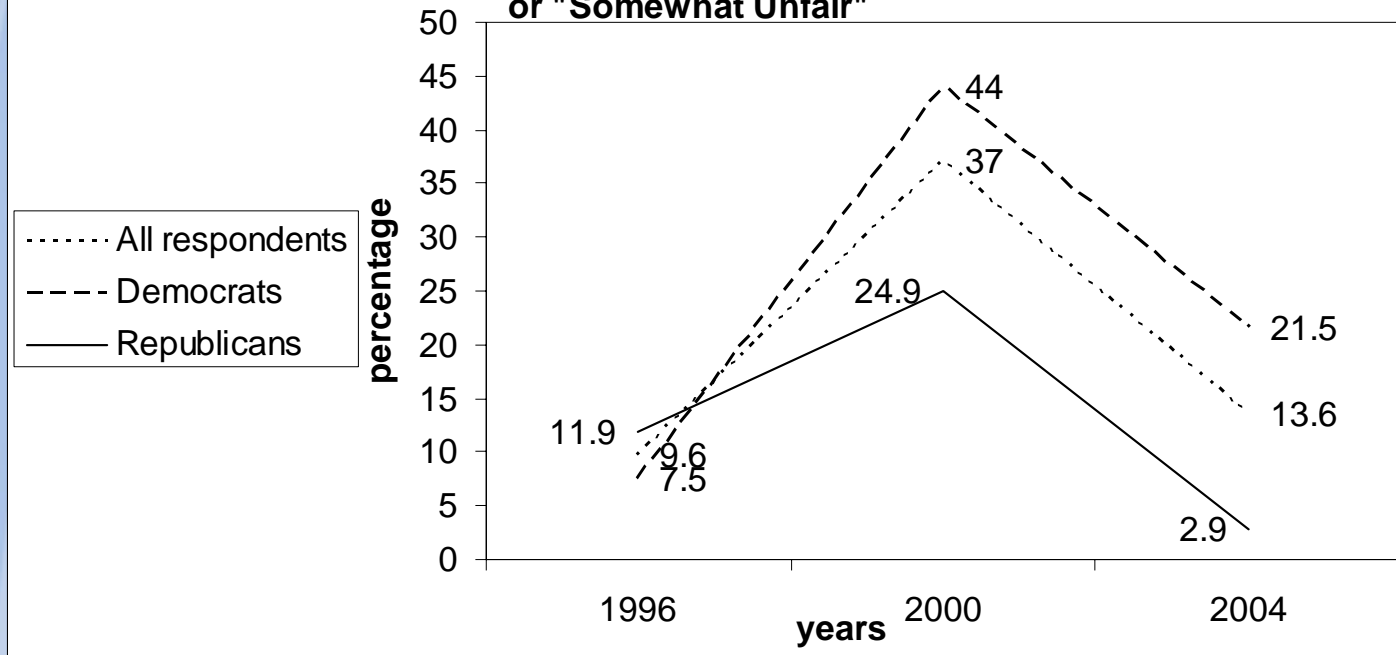
- b. Changes in voting technology and voting laws in response to 2000 problems
 - i. Help America Vote Act (“HAVA”)
 - ii. Changes in voting technology
 - iii. Partisan divide over “access”
“integrity”

C. Declining public confidence in the electoral process, especially partisan and race divide

Introduction

Belief in the Fairness of the Most Recent Election

Figure 1.
Percentage of National Election Studies Survey Respondents Believing the Most Recent Presidential Election Was "Very Unfair" or "Somewhat Unfair"



Wide Gaps in Confidence about Accurate Vote Tally

Confident your vote will be accurately counted?

Not too!

	<u>Very</u>	<u>Somewhat</u>	<u>Not at all</u>	<u>DK</u>
	%	%	%	%
Total	58	29	12	1=100
White	63	28	8	1=100
Black	30	37	29	4=100
Men	63	24	12	1=100
Women	53	33	12	2=100
18-29	49	36	15	0=100
30-49	61	26	11	2=100
50-64	60	29	11	*=100
65+	55	30	11	4=100
Republican	79	17	3	1=100
Democrat	45	36	16	3=100
Independent	52	32	15	1=100

Based on registered voters.

Courtesy Pew Center for People and the Press, October 2006 survey.

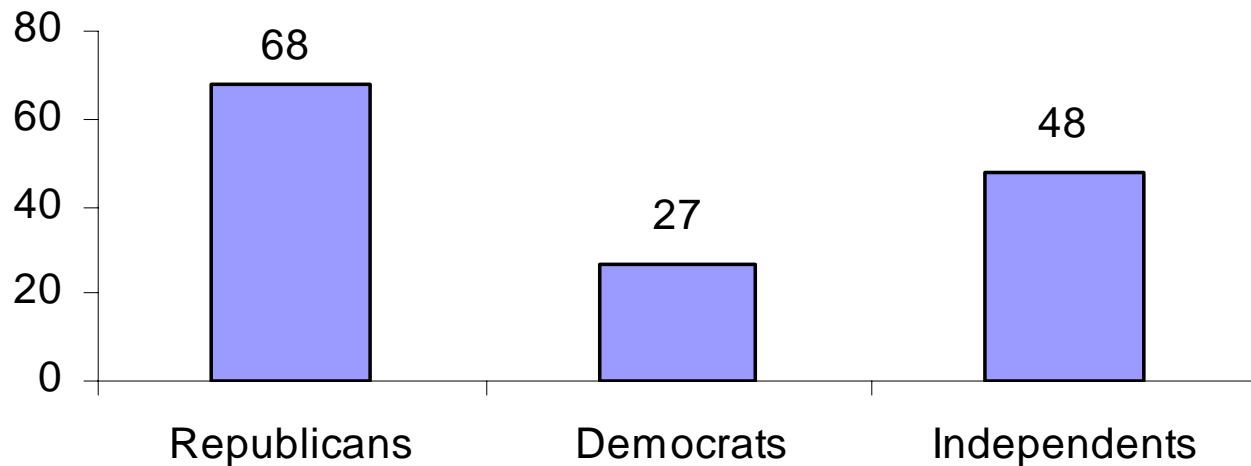
Introduction

Blacks' Confidence in Accurate Vote Count Declines

	Oct 2004	Oct 2006
Confident your vote will be accurately counted?	2004 %	2006 %
Very	47	30
Somewhat	36	37
Not too	11	24
Not at all	4	5
Don't know	2	4
Based on registered voters	100	100
	(N=120)	(N=161)

But in Washington State, after the contested gubernatorial election, the partisan divide is reversed

Percentage of Washington State Voters Viewing the Election Process as Unfair, January 2005



Introduction

Summary

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- Public Confidence: party and race divide