

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

Procedural Concerns Related to Pre-Election Litigation

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Outline of this unit

- Strain on court resources
- Difficulty in developing evidentiary record in TRO/preliminary injunction context
- Supreme Court weighs in--- importance of giving reasons and taking evidence

Procedural Concerns

A. Expedited litigation can strain court resources, especially if rules for expedited appeals are uncertain

Suggestion: Court administrators should put in place special rules for expedited treatment of cases, including rules related to service, appeals, etc.

Procedural Concerns

B. Many cases concern request for preliminary injunction or TRO, and court must often act with incomplete evidentiary record

Suggestion: Despite rushed time frame, allow parties to submit available evidence to facilitate timely appellate review

Procedural Concerns

The Supreme Court Weighs In

C. Despite strained resources and evidentiary problems, Supreme Court expects lower courts to *give reasons* for opinion (*Purcell v. Gonzalez*)

Giving reasons also keeps public confidence in the judicial process

Procedural Concerns

Note: Possibility of issuing pre-election decision (or brief opinion) followed by fuller post-election opinion (New Jersey case)

Option best for state high courts or courts where expedited appeal is not expected

Procedural Concerns

Summary

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