

ELECTION LAW – A VIABLE PRACTICE GROUP OR SEASONAL WORK?

THE PRACTICE MAKES PERFECT

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It seems that once every four years, the news is flooded with the terms ‘election fraud’, ‘ballot stuffing’, ‘ballot harvesting’, ‘recounts’, and a few other bits of election-year jargon. This might lead the casual observer to believe that election lawyers sit around during the off years with nothing to do but to gear up for the next ‘hanging chad’ challenge. But nothing could be further from the truth. From monitoring PAC compliance to reporting on corporate political donations and challenging gerrymandering schemes regarding district boundaries, election lawyers are indeed kept busy throughout the decade advising candidates and campaigns as to how to run for office—without running afoul of the law.

Complexity and Consistency

The election laws of the United States and those of the individual states are designed to create and maintain an organized administration of the electoral process. Aside from the Constitution and written legislation, there is, of course, a constantly developing body of case law that informs as to what the rules are of the game of politics. Election legislation and rulings are complex, to be sure, but at the same time, in order for a democracy to function, there must be consistency from election to election and from polling district to polling district.

The legal framework supporting the electoral process must at all times be unambiguous, fair, and transparent so as to maintain public trust and confidence in this hallowed bedrock institution of democracy.

Campaign Finance

Election and campaign finance laws are intended to regulate the level of financial influence an industry or special interest group may wield in the political process while at the same time providing the enormous amount of funding necessary for a political campaign. An entire body of statutes, regulations, and rules have been crafted for oversight of

the relationship between public and private interests and the decision-making of policymakers at all levels of government. Election lawyers have, as one of their functions, protection against abuse from—and the defense of—political contributions.

It is understandable, then, that it is not just politicians and campaign managers who need to retain qualified election law attorneys but also major donors, corporations, lobbyists, and PACs to advise them as to what is legal and what is not. Experienced counsel help to ensure the legality of political campaign funding not just at election time but in between elections as well. A significant part of such legal supervision is not just to monitor the contribution levels and to advise as to compliance with a huge number of laws and regulations restricting political donations but also to make sure that the reporting of legal contributions is proper. This is especially true for the most politically active donors whose contributions are likely to be scrutinized by regulators as well as public watchdog organizations.

Purcell Doctrine

Another area of election law that perhaps gets less media coverage yet is critical to fair elections is the enforcement of the Purcell Doctrine. The doctrine is a legal

“WE HELP PUBLIC SECTOR CLIENTS NAVIGATE THE REQUIREMENTS OF THE ELECTION PROCESS, INCLUDING THE PROPER PREPARATION AND FILING OF NOMINATING PETITIONS AND RELATED DOCUMENTS AS WELL AS CAMPAIGN FINANCE REPORTING AND RECORDING REQUIREMENTS. WE ALSO REGULARLY ASSIST CITIZEN GROUPS WITH THE PREPARATION AND FILING OF PETITIONS SEEKING TO PLACE VARIOUS PUBLIC QUESTIONS OR INITIATIVES ON THE BALLOT.”

— Klein, Thorpe & Jenkins, Ltd., Local Government lawyers

principle that basically states that courts may not make changes to election rules too close to an election so as to avoid confusion by the electorate and, in order not to create problems with the administration of elections for election officials. The name stems from the 2006 landmark case of *Purcell v. Gonzalez*, which was heard by the U.S. Supreme Court via its emergency docket.

In *Purcell*, the Supreme Court reversed an October 2006 decision of the U.S. Court of Appeals for the 9th Circuit blocking an Arizona voter ID law during that year's midterm election. The district court had initially denied a preliminary motion to block the change in the law, but the Appeals Court blocked the law until an appeal on the merits could be heard. That, in effect, allowed for a change in the rules close to the November election. The Supreme

Court based its decision on the short amount of time between the 9th Circuit's order and the election, the need of Arizona election officials for clear guidance, and the 9th Circuit's lack of an explanation for its decision. Election lawyers reference the *Purcell* Doctrine when seeking a stay of a lower court decision that would change the rules for an upcoming election.

And on Election Day, Primaries, Early Voting...

Prior to the 2020 election, the Washington, D.C. law firm of Steptoe & Johnson held their 'Fourth Annual State of Voting Rights', a panel of legal experts speaking on current voting rights cases, gerrymandering, recently enacted state laws, and attempts to restrict voting rights. The panel was asked to address practical ideas as to how attorneys could

help ensure that elections are accessible and fair. Their reply was that there was something that every attorney attending the program could do, and that was to assist with the nation's largest nonpartisan election protection hotline. After proper training, any attorney could work as a volunteer answering calls on the hotline—even without any prior election litigation experience.

According to John Powers, counsel for the Lawyers Committee for Civil Rights under Law Voting Rights Project, a lot of tough calls come in on election day, and just as the entire electoral process needs in-court litigators to file emergency petitions and motions, so too is there a demand for an army of lawyers in the field to provide legal guidance via the hotline. According to Powers, "A lot of the litigation that we do actually has arisen from phone calls we get." The hotline also needs attorneys during primaries and to assist with early voting matters.



No Longer A Niche Practice

Long after the polling sites have closed, lawyers continue to file their post-election lawsuits. Election litigation continues as critical rulings need to be decided upon not just for the recent election but also as precedents for the next one. Months after an election, such topics as 'line warming' at polling stations and other disputes continue until resolved. What was once considered a niche specialty practiced by a handful of Washington, D.C. law firms or Chicago LaSalle Street powerhouses has mushroomed into a multi-million-dollar practice area which, between 2008 and 2020, grew by 1,700%.

In fact, today, the website of almost every Big Law firm in the country boasts an Election Law sector with lawyers at the ready to represent campaigns, donors, and voting rights activists. With the heavy reliance on perhaps not so well-tested election technology, the questionable location of U.S. election servers in overseas locations, and other possible irregularities in the U.S. electoral process, the need for election lawyers will only continue to increase.

Executive Summary

1. The Issue

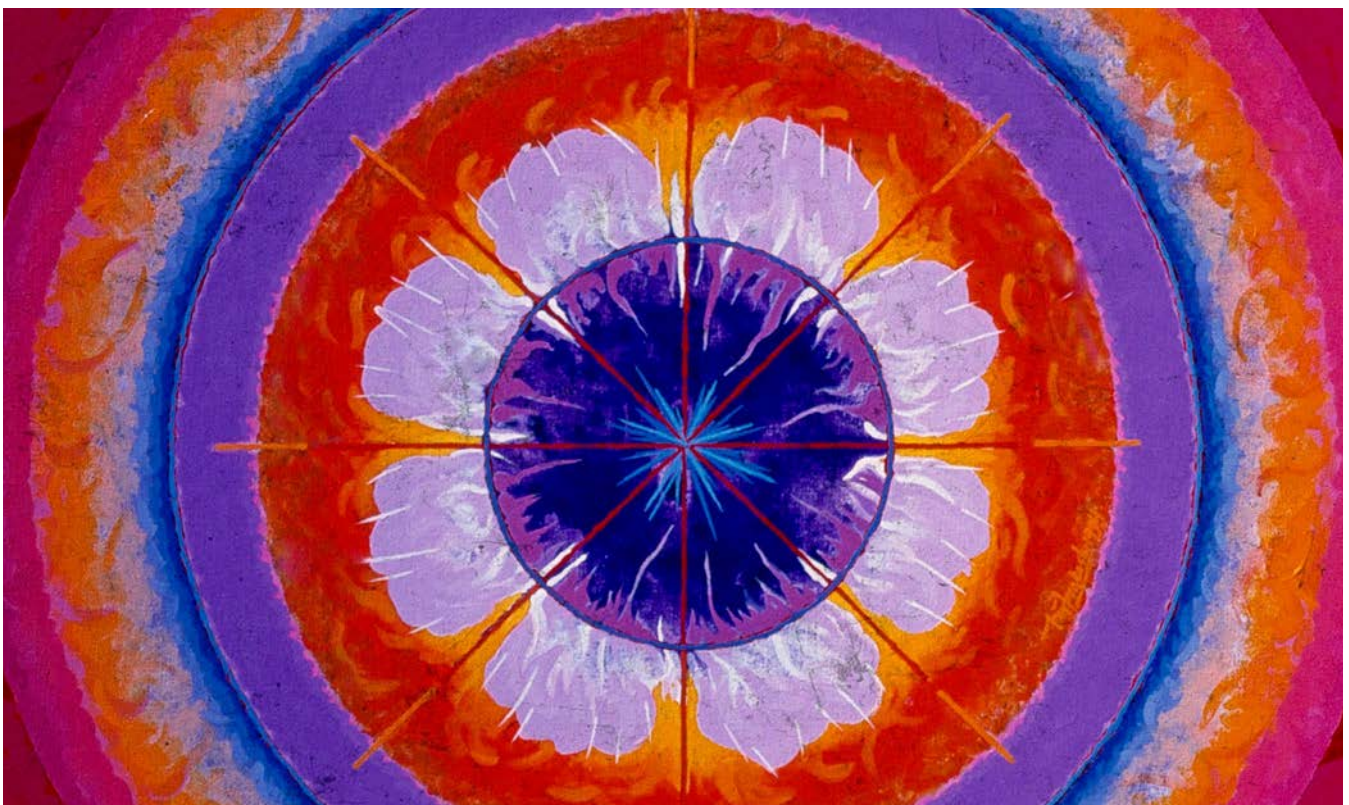
Is an election law practice merely a seasonal niche or a viable, ongoing practice area?

2. The Gravamen

Election lawyers are needed for a host of issues well outside of election day, and the proper counseling of both campaigns and donors, as well as challenging changes in election laws, makes for a very full-time, year-round practice specialty.

3. The Path Forward

Because of the complexity of election law legislation and, in particular financial contribution regulation, the demand for election lawyers will continue to grow.



Action Items:

1 Federal+ Fifty:

Our electoral process is grounded in the U.S. Constitution, and therefore any lawyer seeking to practice in this field must be fully versed in Article I, Section 4 of the U.S. Constitution and the parallel provisions of the various states.

2 Legal and Ethical Pitfalls:

Because election financing law has become so complex, it is the job of the election lawyer to protect his or her client from overstepping the numerous laws and regulations that a client could face.

3 Not Just Litigation:

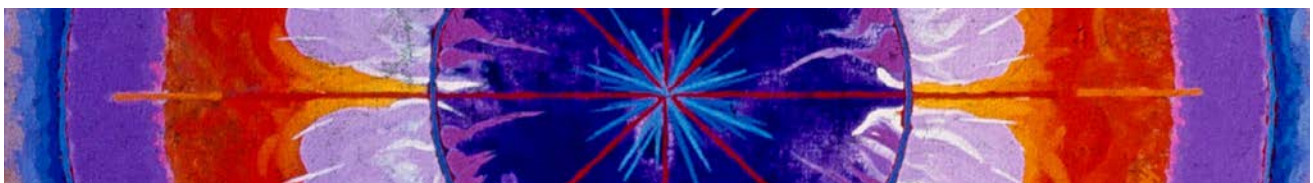
A key role that the election lawyer plays is to give wise counsel to client-donors, especially corporate or special interest clients, not just to campaign contributions but also to permissible funding of PACs and other use of corporate funds for political purposes.

4 Monitoring Proposed Changes:

Hardly a legislative session goes by without a proposal being introduced to make a change in the election laws, and election lawyers must monitor such proposals in order to act in their client's best interests.

Further Readings

1. <https://www.jw.com/sub-practice-areas/elections-campaign-finance/>
2. <https://www.scotusblog.com/election-law-explainers/the-purcell-principle-a-presumption-against-last-minute-changes-to-election-procedures/>
3. <https://www.law.com/nationallawjournal/2021/10/22/how-election-law-grew-from-a-niche-practice-to-a-multi-million-dollar-draw/?sreturn=20230511103231>
4. <https://www.yalelawjournal.org/tag/election-law>
5. <https://clp.law.harvard.edu/knowledge-hub/magazine/issues/election-lawyers/election-law-as-a-clinical-endeavor/>





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After receiving his Juris Doctor degree from The John Marshall Law School in Chicago, Mr. Brochin served as an Administrative Law Judge with the Illinois Department of Labor for six years where he presided over cases dealing with job separation issues and matters pertaining to contested Unemployment Insurance claims. He also co-wrote the agency's administrative rules, and periodically served as a 'ghost writer' for Board of Review decisions. Following that position, he was Director of Development for a Chicago-area non-profit college where he was responsible for High Net Worth donations to the institution. For the next eighteen years he practiced as a solo practitioner attorney with an emphasis in the fields of Real Estate law and Commercial Contracts transactions, and was an agent for several national title insurance agencies.

In 2003 he was recruited to head up a U.S. title insurance research office in Israel, a position he held for four years, and between 2007-2017 he participated in litigation support for several high-profile cases. He has taught Business Law as a faculty member of the Jerusalem College of Technology, and has authored a wide variety of legal White Papers and timely legal articles as a professional legal content writer for GPL clients. Separate from his legal writing, he has co-authored academic articles on Middle East security topics that have been published in peer-reviewed publications.



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William Anderson is Managing Director and Head of Law & Compliance. He leads the GreenPoint practice in providing regulatory, legal, and technology solutions to law firms, legal publishers, and in-house law departments around the world, overseeing our team of experienced US attorneys and data and technology experts. Will has over 25 years' experience working with corporations to improve the management of their legal and corporate compliance functions. Will began his legal career as a litigator with a predecessor firm to Drinker, Biddle LLP. He then served as in-house counsel to Andersen Consulting LLP, managing risk and working with outside counsel on active litigation involving the firm.

Will has leveraged his legal experience interpreting regulations and appearing before federal (DOJ, SEC, FTC) and state agencies (NYAG) to oversee research and other areas at Bear Stearns. In this capacity, he counseled analysts on regulatory risk and evolving compliance requirements. Will also consulted on the development of a proprietary tool to ensure effective documentation of compliance clearance of research reports. Will then went on to work in product development and content creation for a global online compliance development firm pioneering the dynamic updating of regulated firms' policies and procedures from online updates and resources. Will holds a Juris Doctorate with High Honors from the Washington University School of Law in Saint Louis and is admitted to state and federal bars. He lives in Pawling, NY, with his wife and daughter.



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