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# Campaign and Election Reform

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# CAMPAIGN AND ELECTION REFORM

## A Reference Handbook

Glenn H. Utter  
and  
Ruth Ann Strickland

CONTEMPORARY  
WORLD ISSUES



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## Contents

Preface	xi
1 Introduction	1
Suffrage Expansion	2
Electoral Mechanics	5
Term Limits	6
Vote Fraud	7
The Electoral College	10
Low Voter Turnout	12
Early Voting	15
Simplifying Election Forms	16
Voting and the Disabled	16
All-Mail-Ballot Elections	17
Voting Assistance Programs	18
Public Employees	19

Legislative Apportionment and Gerrymandering	20
Campaign Advertising and the Mass Media	21
Nontraditional Voters	22
Campaign Finance and the Federal Election Campaign Act	24
2 Chronology	31
3 Biographical Sketches	63

4 Survey Data and Quotations	101
Survey and Other Data	101
Campaign Finance Law	102
Public Opinion on Campaign Finance Laws	106
Public Attitudes toward Term Limits	108
Public Attitudes toward Political Action Committees	109
Major U.S. Supreme Court Decisions on Campaign Finance	113
Major U.S. Supreme Court Decisions on Political Participation	113
Major U.S. Supreme Court Decisions on Term Limits	114
Major U.S. Supreme Court Decisions on Redistricting	116
PAC Expenditures and the Costs of Elections	118
Voter Turnout and Voter Registration	122
Quotations	124
Buckley v. Valeo	124
Campaign Finance and Ethics	125
Campaign Finance Reform	127
Electoral College Reform	129
Money and Elections	130
Money and Political Participation	132
Motor-Voter Registration	132
Political Action Committees (PACs)	133
Poll Tax	134
Proportional Representation and Cumulative Voting	134
Racial Gerrymandering	136

Redistricting and Reapportionment	138
Term Limits	139
Voting Rights	143
5 Directory of Organizations and Agencies	145
6 Selected Print Resources	171
Books	171
Campaign Finance	171
Campaigns Corruption and Reform	180
Elections and the Political Process	189
Electoral Mechanics and Administration	202

Media and Elections	226
Voting Rights	234
Periodicals	247
7 Selected Nonprint Resources	257
Audio and Video Tapes and Films	257
CD-ROMs and Videodiscs	273
Databases	274
Internet Resources	274
Campaign Finance Reform	274
Electoral Reform	287
Political Participation	290
Racial Gerrymandering and Redistricting	296
Term Limits	298
Glossary	301
Index	321
About the Authors	353



## Preface

Citizens have often reacted with a certain level of cynicism to campaigns and elections. H. L. Mencken, the noted curmudgeon of U.S. journalism, once compared a national campaign to "the best circus ever heard of, with a mass baptism and a couple of hangings thrown in," an event better even than war. And George Bernard Shaw commented that an election is "a moral horror," a battle without blood, and a mud bath for all those involved in it. Despite such evaluations, voting has come to signify the very essence of democracy. This is true in part because the term "democracy" is now used primarily to refer to representative democracy.

When the United States first became a nation, many prominent Americans still regarded democracy with suspicion. Political parties, a major ingredient in the development of representative democracy, had not yet been invented. According to the newly adopted national constitution, U.S. senators were to be selected by state legislatures and the president was to be chosen by a group of individuals, called the electoral college, who were appointed by state legislatures. Only members of the House of Representatives were to be elected by the citizens, according

to electoral rules determined by the respective states. From that inauspicious beginning, the history of campaigns and elections is an account of various reforms intended to provide for more honest and fair electoral procedures and to extend the right to vote. Various measures, such as the elimination of property qualifications for voting, granting women the right to vote, introducing the secret ballot, guaranteeing voting rights to minorities, and providing for the regulation of campaign practices, have significantly altered the campaign and election process.

At times "reforms," rather than expanding the franchise, established significant restrictions. Most obviously, the election laws introduced in southern states following Reconstruction severely limited the voting rights of minorities. Stringent registration requirements introduced in the late nineteenth century and intended to limit vote fraud undoubtedly discouraged many Americans from voting. Since passage of the Voting Rights Act in 1965 and the Federal Election Campaign Act in 1974, much greater attention has been given to facilitating voting. However, despite the many recent reforms, there has been a gradual decline in voter turnout over the last three decades. Troubled by this trend, reformers have recommended their favored explanations and solutions. For instance, in the early 1990s Frances Fox Piven and Richard Cloward campaigned vigorously for voter registration reform, claiming that overly strict registration laws prevented many Americans, especially the less well-to-do, from participating in the electoral process. They argued that the National Voter Registration Act, which went into effect in January 1995, would significantly increase voter participation. However, the disappointing turnout rate in the 1996 presidential election did not support their optimism.

Various measures, such as election-day registration, voting assistance for the disabled, and early voting, have contributed to a fairer campaign and election process but are responsible primarily for making the voting procedure more convenient for those who already are inclined to participate. Nearly 50 percent of eligible citizens remain aloof from electoral politics. In a continuing effort to deal with this situation, recent proposals call for an alteration in electoral mechanics. For instance, rather than employing the single-member district plurality system, some argue that a variation of proportional representation, such as cumulative voting, should be introduced. Such alternatives would give citizens a greater sense of the importance of their vote and would



grant minority group members greater opportunity to be elected to office. However, a proportional system, which would also increase the influence of minor parties, has not gained much support from Democratic and Republican party leaders.

Campaign finance is one of the most difficult reform issues to resolve. Campaign finance laws so far have been ineffective in controlling the use of money in politics. While some point to the corrupting influence of money and the need for stricter regulations, others argue that the constitutional right to free speech includes the right to use one's resources freely to affect the political process. In contrast to proposals further limiting the amount individuals may contribute to political campaigns, some recommend that limits on donations and spending should be greatly eased or even eliminated and that at the same time strong disclosure legislation should be enacted that would allow citizens to gain information about the sources of candidates' campaign funding.

Clearly, reform proposals are generally guided by considerations of political advantage. The rules and regulations governing campaigns and elections are seldom neutral. Whether intentionally or not, they almost inevitably advantage some political interests and disadvantage others. However, while admitting that political reform is itself a part of the political process, we believe that any treatment of campaign and election reform must be guided ultimately by considerations of fairness and a clear understanding of democratic principles.

Many people contributed to the various phases of this project. We wish to thank James Vanderleeuw, who made significant contributions to the early stages. We also wish to thank those who provided valuable information and advice. They include Douglas Amy, Kathleen Barber, Richard Cloward, Chandler Davidson, Richard Engstrom, Stanley Halpin, Omar Jabara, Laughlin McDonald, Mark Petracca, Richard Pildes, Frances Fox Piven, and Edward Still. While acknowledging their assistance, the authors take final responsibility for any errors.



# 1

## Introduction

Throughout the history of the United States many changes in the electoral system have been classified as campaign and election reforms. However, what represents reform to one person amounts to antidemocratic reaction to someone else, and what some consider an advancement in the right to vote, others believe only provides greater opportunities for fraud. Just what constitutes reform? The term might qualify as an essentially contested concept, for there has often been fundamental disagreement over the reform status of specific measures. For instance, the introduction of voter registration undoubtedly decreased the amount of vote fraud, but it also discouraged many eligible Americans from voting. We will touch on many changes that could be termed reforms from at least some ideological perspective. Among such changes we include measures that extend the right to vote, enhance the integrity of the electoral process by limiting the opportunity for fraud, increase the convenience of registration and voting procedures for the average voter, improve the efficient operation of the election system, help ensure that elections reflect the choices of the electorate, and eliminate biases in favor of or against specific individu-

als or groups. We will touch on many changes, both large and small, that have been proposed or instituted since the early years of the nation.

### Suffrage Expansion

The most basic reform involves the expansion of the right to vote. The history of voting in the United States is a history of suffrage expansion. When delegates from 12 of the 13 states met in Philadelphia in the summer of 1787 to write a new constitution, voting rights in the states generally were restricted to white males who owned property. The new constitution said little about voting other than providing for the popular election of members of the House of Representatives. Voting qualifications were left to the individual states because regulations varied widely among them and the delegates thought it prudent not to attempt a resolution of the differences.

In the first half of the nineteenth century property qualifications steadily disappeared in all of the states, except for certain elections dealing, for instance, with tax issues. Following the Civil War, ratification of the Thirteenth, Fourteenth, and Fifteenth Amendments constituted a constitutional revolution in which the federal government received significantly greater powers to ensure the rights of citizens in the several states. The Fifteenth Amendment specifically guaranteed the right to vote to former slaves. The national Constitution notwithstanding, southern states were able to deny voting rights to African Americans during the later years of the nineteenth century and the first decades of the twentieth by instituting what many southern whites considered voter registration "reforms." Such strategies as the literacy test, "good character" requirements that disfranchised those convicted of certain crimes, the grandfather clause that exempted many whites from voter registration requirements, and intimidation virtually eliminated minority voting in southern states.

At the same time black men were being denied the right to vote, women were crusading for the franchise. To a certain extent the women's rights movement in the United States grew out of the antislavery cause. Elizabeth Cady Stanton, the wife of an abolitionist leader, organized the first women's rights convention in Seneca Falls, New York, in 1848. During the Civil War Stanton and Susan B. Anthony established the Women's Na-

tional Loyal League in order to lobby for what became the Thirteenth Amendment, which abolished slavery. Following the Civil War many in the women's rights movement expected that women would be granted the franchise along with black men. However, the more cautious supporters of black suffrage believed that combining their goal with the push for woman suffrage would jeopardize both causes. In 1869 rival woman suffrage organizations were established: the more radical National Woman Suffrage Association, based in New York, which called for immediate nationwide enfranchisement of women, and the more conservative American Woman Suffrage Association, headquartered in Boston, which was more willing to accept the precedence of black suffrage. The two organizations combined in 1890 to form the National American Woman Suffrage Association. The fight for woman suffrage continued for over 50 years before final victory was achieved in 1920 with ratification of the Nineteenth Amendment. There were successes along the way, especially in western states, but they were few as the frustrating struggle dragged on year after year. In 1904, two years before her death, Anthony made her final appearance before a Senate committee considering a woman suffrage amendment. She reminded the senators that she was the only surviving member of a group that 35 years before had appealed to Congress for the franchise. <sup>1</sup> The early advocates did not live to see the end result of their efforts, but they had prepared the way for a new generation that made the final push for woman suffrage.

The United States traveled a tortuous road of reform to remedy the injustices that denied the franchise to minorities. The white primary, which prohibited blacks from voting in the Democratic primary, was declared unconstitutional by the Supreme Court in 1944 (*Smith v. Allwright*). However, southern states resorted to other methods of discrimination to discourage minority voting. The Civil Rights Act of 1957, the first civil rights legislation since 1875, authorized the U.S. attorney general to file suits in federal district court to gain injunctions against violations of the Fifteenth Amendment.<sup>2</sup> This act failed to bring about significant reforms. The Attorney General's Office filed only four suits in the three years following the act's passage.<sup>3</sup> Attempting to remedy some of the weaknesses of the 1957 legislation, Congress passed another civil rights act in 1960. Although the new act authorized federal district court judges to appoint federal referees to replace state election officials and required local election ad-

ministrators to store voting records for 22 months after an election, it ultimately had little more effect than its predecessor. By 1965 only 35.5 percent of eligible African Americans were registered to vote in the South, compared to 73.4 percent of eligible whites. <sup>4</sup> In 1964 Congress had passed a significant new civil rights act. Although it focused primarily on questions of public accommodation, school funding, and employment, one section placed limitations on the use of literacy tests.

This legislation was soon followed by the Voting Rights Act of 1965 (VRA). Section 2 reinforced the Fifteenth Amendment, prohibiting any voting qualifications, standards, or procedures that denied or abridged the right to vote because of race or color. The act bolstered the attorney general's suit-filing authority, but most important, it authorized the Justice Department to circumvent the judiciary in southern states to intervene in the interest of blacks who had been denied the right to vote. In certain jurisdictions, the literacy test was suspended for five years and voting regulations were to remain unaltered unless the attorney general or the District Court of the District of Columbia approved any application to change the voting system. The act provided for federal registration examiners and election observers to ensure that voting procedures would remain fair and nondiscriminatory. In just two years the proportion of eligible blacks registered to vote increased significantly, to over 52 percent. In no state targeted by the act were fewer than 50 percent of eligible blacks registered.<sup>5</sup> The VRA demonstrated how effective reform legislation can be in bringing about increased voter participation if it targets a specific problem.

The 1970 revisions to the legislation continued the strict provisions of the 1965 act. Literacy tests were suspended in all states for an additional five years. In 1975 Congress extended the act once more and expanded its provisions to cover language minorities. Election administrations were required to provide bilingual election materials if 5 percent of the jurisdiction's voting-age population constituted a single language minority and if the illiteracy rate in that group exceeded the national rate. Literacy tests were eliminated rather than simply suspended.

Since passage of the Voting Rights Act of 1965, which effectively ensured the right of minorities to register and vote, concern gradually shifted to questions of the effectiveness of the franchise. For instance, at-large elections came under attack for their tendency to deny minority candidates representation on

governing bodies. Originally a progressive reform measure, at-large