AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 9: Liberalism Divided—Democratic Rights/Voting/Regulating Elections

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Election Regulation Scorecard (1969–1980)

Turner v. Fouche (1970)

> State cannot permit only freeholders to be members of the board of education.
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> It cannot be seriously urged that a citizen in all other respects qualified to sit on a school board must also own real property if he is to participate responsibly in educational decisions.

Jenness v. Fortson (1971)

State may require minor parties to get signatures of 5 percent of the voting population in order to be on the ballot.

> There is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot—the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election. The 5% figure is, to be sure, apparently somewhat higher than the percentage of support required to be shown in many States as a condition for ballot position, but this is balanced by the fact that Georgia has imposed no arbitrary restrictions whatever upon the eligibility of any registered voter to sign as many nominating petitions as he wishes. Georgia in this case has insulated not a single potential voter from the appeal of new political voices within its borders.

Bullock v. Carter (1972)

State may not require candidates to pay a filing fee in order to be on the ballot in a party primary, particular when write-in votes are not allowed.

> By requiring candidates to shoulder the costs of conducting primary elections through filing fees and by providing no reasonable alternative means of access to the ballot, the State of Texas has erected a system that utilizes the criterion of ability to pay as a condition to being on the ballot, thus excluding some candidates otherwise qualified and denying an undetermined number of voters the opportunity to vote for candidates of their choice. These salient features of the Texas system are critical to our determination of constitutional invalidity.

Rosario v. Rockefeller (1973)

States may forbid members of one party as of the last general election from voting in a different party's primary the next year.

> It is clear that preservation of the integrity of the electoral process is a legitimate and valid state goal. . . . In the service of that goal, New York has adopted its delayed-enrollment scheme; and an integral part of that scheme is that, in order to participate in a primary election, a person must enroll [in the party] before the preceding general election. As the Court of Appeals stated: 'Allowing enrollment any time after the general election would not have the same deterrent effect on raiding for it would not put the voter in the unseemly position of asking to be enrolled in one party while at the same time intending to vote immediately for another.' . . . For this reason, New York's scheme requires an insulating general election between enrollment and the next party primary. The resulting time limitation for enrollment is thus tied to a particularized legitimate purpose, and is in no sense invidious or arbitrary.

U.S. Civil Service Commission v. National Ass'n of Letter Carriers, AFL-CIO (1973)

Congress may prohibit federal employees from taking "an active part in political management or in political campaigns."

> Partisan political activities by federal employees must be limited if the Government is to operate effectively and fairly, elections are to play their proper part in representative government, and employees themselves are to be sufficiently free from improper influences. . . . The restrictions so far imposed on federal employees are not aimed at particular parties, groups, or points of view, but apply equally to all partisan activities of the type described. They discriminate against no racial, ethnic, or religious minorities. Nor do they seek to control political opinions or beliefs, or to interfere with or influence anyone's vote at the polls.

Kusper v. Pontikes (1973)

State may not prohibit a person who voted in one party's political primary from voting in another party's political primary for a period of 23 months.

> Under our political system, a basic function of a political party is to select the candidates for public office to be offered to the voters at general elections. A prime objective of most voters in associating themselves with a particular party must surely be to gain a voice in that selection process. By preventing the appellee from participating at all in Democratic primary elections during the statutory period, the Illinois statute deprived her of any voice in choosing the party's candidates, and thus substantially abridged her ability to associate effectively with the party of her choice. . . . The Illinois law, unlike that of New York [in *Rosario v. Rockefeller*], thus 'locks' voters into a pre-existing party affiliation from one primary to the next, and the only way to break the 'lock' is to forgo voting in any primary for a period of almost two years.

Communist Party of Indiana v. Whitcomb (1974)

State may not require as a condition for appearing on the ballot parties to take an oath that they do not advocate the overthrow of the government by force or violence.

> [B]urdening access to the ballot, rights of association in the political party of one's choice, interests in casting an effective vote and in running for office, not because the Party urges

> others 'to do something, now or in the future . . . (but) . . . merely to believe in something,' is to infringe interests certainly as substantial as those in public employment, tax exemption, or the practice of law.

Lubin v. Panish (1974)

States cannot require all candidates for public office to pay a filing fee to get their names on the ballot.

> The absence of any alternative means of gaining access to the ballot inevitably renders the California system exclusionary as to some aspirants. As we have noted, the payment of a fee is an absolute, not an alternative, condition, and failure to meet it is a disqualification from running for office. Thus, California has chosen to achieve the important and legitimate interest of maintaining the integrity of elections by means which can operate to exclude some potentially serious candidates from the ballot without providing them with any alternative means of coming before the voters. Selection of candidates solely on the basis of ability to pay a fixed fee without providing any alternative means is not reasonably necessary to the accomplishment of the State's legitimate election interests. Accordingly, we hold that in the absence of reasonable alternative means of ballot access, a State may not, consistent with constitutional standards, require from an indigent candidate filing fees he cannot pay.

American Party of Texas v. White (1974)

States may require minor parties and independent candidates wishing to appear on the ballot to obtain between signatures from 1 to 5 percent of the voters in the last gubernatorial election, and none of the signatories may have voting in another party primary, but states may not only include the names of major party candidates on absentee ballots.

> [T]he State may determine that it is essential to the integrity of the nominating process to confine voters to supporting one party and its candidates in the course of the same nominating process. At least where, as here, the political parties had access to the entire electorate and an opportunity to commit voters on primary day, we see nothing invidious in disqualifying those who have voted at a party primary from signing petitions for another party seeking ballot position for its candidates for the same offices.
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> [I]t is plain that permitting absentee voting by some classes of voters and denying the privilege to other classes of otherwise qualified voters in similar circumstances, without affording a comparable alternative means to vote, is an arbitrary discrimination violative of the Equal Protection Clause.

Storer v. Brown (1974)

State may prohibit persons from appearing on the ballot as independent candidates who were affiliated with a political party during the year before the election.

> The State's general policy is to have contending forces within the party employ the primary campaign and primary election to finally settle their differences. The general election ballot is reserved for major struggles; it is not a forum for continuing intraparty feuds. The provision against defeated primary candidates running as independents effectuates this aim, the visible result being to prevent the losers from continuing the struggle and to limit the names on the ballot to those who have won the primaries and

those independents who have properly qualified. The people, it is hoped, are presented with understandable choices and the winner in the general election with sufficient support to govern effectively.

Cousins v. Wigoda (1975)

States may not regulate how parties choose delegates for the national convention.

States themselves have no constitutionally mandated role in the great task of the selection of Presidential and Vice-Presidential candidates. If the qualifications and eligibility of delegates to National Political Party Conventions were left to state law 'each of the fifty states could establish the qualifications of its delegates to the various party conventions without regard to party policy, an obviously intolerable result.' . . . Such a regime could seriously undercut or indeed destroy the effectiveness of the National Party Convention as a concerted enterprise engaged in the vital process of choosing Presidential and Vice-Presidential candidates—a process which usually involves coalitions cutting across state lines. The Convention serves the pervasive national interest in the selection of candidates for national office, and this national interest is greater than any interest of an individual State.

Illinois State Board of Elections v. Socialist Workers Party (1979)

State may not have more demanding requirements for access to the ballot in local elections than in statewide elections.

The signature requirements for independent candidates and new political parties seeking offices in Chicago are plainly not the least restrictive means of protecting the State's objectives. The Illinois Legislature has determined that its interest in avoiding overloaded ballots in statewide elections is served by the 25,000-signature requirement. Yet appellant has advanced no reason, much less a compelling one, why the State needs a more stringent requirement for Chicago.

Marchioro v. Chaney (1979)

States may require each major party to have two representatives from each county on the "State Committee" as long as the state does not determine the responsibilities of that committee.

The requirement that political parties form central or county committees composed of specified representatives from each district is common in the laws of the States. These laws are part of broader election regulations that recognize the critical role played by political parties in the process of selecting and electing candidates for state and national office. The State's interest in ensuring that this process is conducted in a fair and orderly fashion is unquestionably legitimate. . . . That interest is served by a state statute requiring that a representative central committee be established, and entrusting that committee with authority to perform limited functions, such as filling vacancies on the party ticket, providing for the nomination of Presidential electors and delegates to national conventions and calling statewide conventions. Such functions are directly related to the orderly participation of the political party in the electoral process. . . .
[A]ll of the "internal party decisions" which appellants claim should not be made by a statutorily composed Committee are made not because of anything in the statute, but because of delegations of authority from the Convention itself. Nothing in the statute required the party to authorize such decisionmaking by the Committee; as far as the

statutory scheme is concerned, there is no reason why the Convention could not have created an entirely new committee.