

Voting Law 101: What Voters and Advocates Need to Know



“The right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.”

Reynolds v. Sims, 377 U.S. 533, 556 (1964)

I. Background

- **Constitutional authority to regulate elections is a shared state and federal authority.**

Elections clause (Art. 1, § 4): “The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.”



Background (cont'd)

- **States cannot:**
 - (1) Substantially burden the right to vote (*Anderson-Burdick*);
 - (2) Discriminate on the basis of race (14A and Voting Rights Act);
 - (3) Infringe on First Amendment rights; or
 - (4) Violate the NVRA and other federal laws regulating elections.



1) Substantial burden on the right to vote

- ***Anderson-Burdick* analysis:**

- Level of scrutiny: Sliding scale.
- Standard: Courts weigh “the character and magnitude of the asserted injury” to the right to vote against “the precise interests put forward by the State as justifications for the burden imposed by its rule.” *Burdick*, 504 U.S. at 434.
- Example: challenges to strict voter ID requirements (WI).



2) Discrimination on the basis of race

- **Equal Protection Clause** (14A) protects against intentional discrimination.
 - Example: *NAACP v. McCrory*, 431 F.3d 204 (4th Cir. 2016).
- **Voting Rights Act of 1965** “effects test” based on the “totality of the circumstances.”
 - Sec. 2 prohibits practices that “results in a denial or abridgement of the right to vote on account of race or color.” Protects against “less opportunity to participate in the political process and to elect reps. of their choice.”
 - Example: *NAACP v. FFSD*, 201 F.Supp.3d 1006 (E.D.Mo., Aug. 22, 2016).



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