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SOLO, SMALL FIRM AND GENERAL PRACTICE DIVISION

Election Law

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GPSolo Sep/Oct 2024

Features

Is There a Constitutional Right to Vote? **15**
Katherine Culliton-González
We are at an inflection point in our ability to provide equal access to the ballot. Is an amendment to the Constitution necessary to protect this fundamental right?

Apportionment and Reapportionment Issues in U.S. Politics **20**
Matthew Spolsky
Disputes over the apportionment and reapportionment of the members of the U.S. House of Representatives have involved such issues as partisan gerrymandering, restrictions based on race, and who will be counted in the census.

Increasing the Percentage of Eligible Voters Who Vote **25**
Katherine Murchison
Voter turnout in the United States trails behind that in other liberal democracies. Why is this the case, and what can be done to get more eligible voters to the polls?

The Electoral College: Two Proposals for Reform **30**
John Hardin Young
Two alternatives that were rejected during the drafting of the U.S. Constitution merit reconsideration: relying on the national popular vote and selecting electors by congressional district.

Operating a Campaign Finance Practice: A Practical Guide for Attorneys **35**
Audrey Perry Martin
This article offers insights into the legal framework, necessary expertise, key services, marketing strategies, and ethical considerations of a campaign finance law practice.

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Corporate Political Strategies: Navigating the Intersection of Business and Public Policy **41**
Chris Gober and Eric Wang
This article provides an overview of common political activities conducted by corporations, including a summary of accompanying compliance issues that arise from each effort.

What Makes Super PACs "Super"? A Legal Primer **46**
Eric Wang
While most voters may have heard of Super PACs, seen their advertising, and even met their canvassers, there is still little understanding of what a Super PAC is among those who aren't seasoned political operatives and campaign finance attorneys.

Black Men and the Power of Voting **51**
Michael Anderson
Those who are in and those who seek power in this country are aware that, with a single finger, Black Americans have and can change the political landscape.

Free Speech and Free Press in the Age of Disinformation **55**
Bobby Desmond
While we celebrate the First Amendment's protection of freedom of thought, expression, association, and the press, we continue to elect legislatures that pass laws that drastically and unconstitutionally limit these rights.

Election Law, Artificial Intelligence, and Alternative Facts **60**
Kim Wyman and Carah Ong Whaley
The rapid deployment of AI has the potential to undermine election integrity in the United States and around the world, with the 2024 campaign potentially becoming the election of artificial facts.

Artificial Intelligence Tools for Lawyers **65**
Mathew Kerbis
Lawyers who want to improve their practice and better serve the public must learn to use AI. To help you get there, this article explores the AI landscape, examining various tools, their applications, and their implications for the legal profession.

Columns

The Legal Angle **7**
Presidential Perks
Julie T. Houth

The Chair's Corner **12**
Elections, Lawyers, and Lucky Number 19
Melody M. Wilkinson

Ready Resources **71**
Ready Resources in Election Law

Road Warrior **73**
Handling Your Digital Assets
Jeffrey Allen

Sailing Solo **79**
Three Steps for Launching a Strong Law Firm Brand
Kimberly Russell

Mac User **83**
Electing the Best System Settings for Your Mac
Brett Burney

GP Mentor **86**
Running for Political Office for the First Time
Lynae A. Tucker-Chellew

THE LEGAL ANGLE

Allan Baxter via Getty Images

Presidential Perks

Julie T. Houth

The year 2024 marks another presidential election for the United States. In honor of another election cycle, this article attempts to briefly cover the role of the president and the perks that come with it.

Requirements for Presidential Candidates

Legal requirements for presidential candidates have remained the same since the election of our first president, George Washington. Under the U.S. Constitution, a presidential candidate must be at least 35 years of age, must be a natural-born citizen, and must have lived in the United States for at least 14 years. Anyone who meets these requirements can declare their candidacy for president.

In the modern era, candidates must register with the Federal Election Commission (FEC) once they raise or spend more than $5,000 for their campaign. This includes naming a principal campaign committee to raise and spend campaign funds.

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Election Day is the first Tuesday after the first Monday of November. Voters can vote in person before or on Election Day or vote by mail-in ballot by Election Day, depending on the jurisdiction. When citizens cast their ballots for president in the popular vote, they elect a sale of electors. Electors then cast the votes that decide who becomes president. In December, electors cast their vote for president in the Electoral College. Electoral votes often align with the popular vote in an election, but not always. There have been times when the person who ended up being president did not receive the most popular votes. (Learn more about the history and timeline of the Electoral College from the Library of Congress.) In early January of the next calendar year, Congress counts the electoral votes, and presidential inauguration day is on January 20.

Being the President of the United States

While living and working in the White House, the president has many roles. The president serves as commander-in-chief, chief administrator, chief executive, chief legislator, chief diplomat, chief of party, chief of state, and chief citizen.

Roles of the President and Presidential Powers

The president has the power to negotiate and sign treaties (which the Senate then chooses whether to ratify). The president can also issue executive orders and has the power to extend pardons and clemencies (for federal crimes only). Although Congress may override a veto with a two-thirds vote of both houses, the president has the power either to sign legislation into law or to veto bills enacted by Congress. According to the official website of the White House:

> Under Article II of the Constitution, the President is responsible for the execution and enforcement of the laws created by Congress. Fifteen executive departments—each led by an appointed member of the President's Cabinet—carry out the day-to-day administration of the federal government. They are joined in this by other executive agencies such as the CIA and Environmental Protection Agency, the heads of which are not part of the Cabinet, but who are under the full authority of the President. The President also appoints the heads of more than 50 independent federal commissions, such as the Federal Reserve Board or the Securities and Exchange Commission, as well as federal judges, ambassadors, and other federal offices. The Executive Office of the President (EOP) consists of the immediate staff to the President, along with entities such as the Office of Management and Budget and the Office of the United States Trade Representative.

Presidential Perks

Being president of the United States is arguably one of the toughest jobs in the world. While it is a challenge, the president does get some nice perks. The president receives a salary of $400,000 a year, paid monthly, and has an expense allowance of $50,000. Presidents also travel in style in their personal plane, also known as Air Force One, and their personal helicopter, also known as Marine One. Presidents also get their own motorcade and special car. There is also a special bullet-proof car specifically for the president to ride in called the Beast.

A known perk is that the president and his family get to live in the White House. A fun historical fact is that it was not until the Adams administration in 1880 that the president and the president's family began living there. The White House has six stories, 132 rooms, and 35 bathrooms. It also has a tennis court, a movie theater, a bowling alley, a billiard room, a basketball court, and a swimming pool. The president has an allowance of $100,000 paid by the government to redecorate the White House. The presidential family is assisted in the White House by nearly 100 permanent residential staff members, including maids, cooks, butlers, plumbers, engineers, and florists. The government gets the bill for anything the presidential family needs to move into the White House (office space, communication services, etc.) for up to six

months. If they so desire, presidents can choose to dine in the West Wing's formal dining room, called the Navy Mess and Ward Room.

The president can also retreat to Camp David, a quiet country residence in Catoctin Mountain Park, Frederick County, Maryland, which is the president's vacation home. Originally known as Hi-Catoctin, it was built by the Works Progress Administration in 1939 as a retreat for federal government agents and their families. It was converted in 1942 into a presidential retreat for President Franklin D. Roosevelt, who renamed it Shangri-La, after the fictional Himalayan paradise. In 1953, President Dwight D. Eisenhower renamed this residence after his father and grandson, both named David.

The president's salary also includes a non-taxable vacation fund, a stipend of $100,000 to travel wherever they desire. The president's guests, political or personal, get their own home, too. The Blair House, located not far from the White House, is a residence where the president's guests can enjoy their stay comfortably. The president also has an entertainment allowance of $19,000, which can go toward such things as watching a Broadway show or a sporting event. Wellness is an important consideration in any job, and the presidency is no exception. In fact, presidents get their own personal fitness trainer if requested.

Presidential Perks Post-Presidency

Life after being the president has its perks, too. The Former Presidents Act of 1958 provides several benefits and perks that are available to presidents after they leave office. Former presidents are entitled to Secret Service protection, medical care and health insurance, staff and office expenses, and a pension. Presidents receive state funerals upon their death. In addition to having the coffin wrapped in an American flag and a military salute at the Arlington National Cemetery, the funeral will be attended by dignitaries, former presidents, and foreign leaders. Widows of former presidents are eligible for a $20,000 annual pension, but this is optional. In the past, Betty Ford and Nancy Reagan waived this benefit. Widows of former presidents are also entitled to postal franking privileges that allow for free postage for official correspondence.

Presidents who are removed from office through the impeachment process are no longer eligible for the pension and benefits provided in the Former Presidents Act of 1958. Lifetime Secret Service protection is provided under a separate law, so this benefit would not be impacted by removal from office.

Jimmy Carter has received post-presidential benefits and perks longer than any other former president. He is also the oldest living former president and longest-lived president in U.S. history (he was 99 years old at the time of writing in September 2024; he will turn 100 on October 1).

Being the president of the United States is one of the most prestigious and difficult occupations in the world. While the U.S. presidency poses many challenges, the presidential perks during the job and afterward seem to provide some incentive!

This article and issue are dedicated to Eleanor Southers, a long-standing ABA and GPSolo Division member who passed away in early September. Eleanor was an essential member of the GPSolo Magazine Editorial Board. She was a retired lawyer and a brilliant writer and speaker. She dedicated her time to our board and was a bright light for our team. She was always willing to help in whatever way she could. The magazine board's success would not have been possible without her efforts and support. Loss and grief never get easier. I will miss her greatly and find solace in the fact that she lived her life to the fullest in the happiest, most impactful way. From Eleanor's GPSolo family, we love you, Eleanor, and will miss you so much.

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THE CHAIR'S CORNER

SDI Productions via Getty Images

Elections, Lawyers, and Lucky Number 19

Melody M. Wilkinson

The number 19 has special meaning for me and my family. You may wonder, what is so special about the number 19? In mathematics, 19 is a prime number, meaning it has no divisors other than one and itself. In numerology, the number 19 is sometimes seen as significant and represents new beginnings, leadership, and independence. In tarot, the 19th card of the Major Arcana is "The Sun," which often symbolizes success, vitality, and enlightenment. The number 19 is a magical number in the *Dark Tower* novels by Stephen King. Nineteen is the last number in the teens, which also reminds me of my twin daughters, Elizabeth and Emily. When Elizabeth and Emily were pre-teens and teens, they always sought to wear lucky jersey number 19 for their sports teams if the number was available. Why is this important? I invite you to continue reading to learn the answer.

Elections and Our Civic Duty as Lawyers

As I sit down to write this column and we begin our 2024–2025 bar year, I am grateful to *GPSolo* Magazine Editor-in-Chief Julie T. Houth, who has worked tirelessly along with Convening Issue Editors

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Randi B. Starrett and Lesly Longa Vaillancourt and the entire Editorial Board on this “Election Law” issue. This is a timely edition as Election Day draws near. At the time I write this column, the election process is already underway, with ballots having already been placed in the mail in several states; by the time you read this, early voting will likely have begun in several states. The upcoming elections serve as a powerful reminder of the critical role each of us plays in shaping the future, not only through our legal work but also through our civic duties. As members of the legal profession, particularly those of us in solo and small firm practices, we are uniquely positioned to be the guardians of our democratic principles. Our roles may vary, but the duty to uphold justice and the rule of law remains a constant thread that binds us together.

The right to vote is often hailed as the cornerstone of democracy. It is the mechanism through which power is transferred peacefully and through which legitimacy is conferred on our leaders. As attorneys, we understand the power of laws and the impact of governance on every aspect of life. Our votes and the votes of our clients, families, and communities determine the leaders who will shape policies, influence the judiciary, and make decisions that affect the very fabric of our society.

Beyond our professional obligations, there is also a broader civic responsibility that we, as lawyers, must embrace. Democracy does not sustain itself; it requires active participation and vigilance from all citizens, particularly those who understand the intricacies of the law. We must encourage our peers, our clients, and our communities to exercise their right to vote and to do so in an informed manner.

The Power of a Single Vote

In the realm of politics, where every decision has the potential to shape the future of a community, a single vote can carry immense weight. Sixteen years ago, this reality was dramatically highlighted when a primary runoff election for state district judge in Fort Worth, Texas, was won by a razor-thin margin of just 19 votes.

A campaign for a judicial position is a classic example of a race that often goes unnoticed by many voters. Judicial elections, often overshadowed by higher-profile races, sometimes struggle to capture the attention of the electorate. However, that 19-vote margin serves as a potent reminder of the power held by each individual vote.

That election also served as a broader lesson about the democratic process. In a world where voter turnout can be unpredictable and where many people may feel that their vote doesn’t make a difference, a razor-thin victory is a compelling argument against such skepticism. It reinforces the idea that in every election—whether it is for a local judge, a school board member, or the president—every vote counts, and every voter has the power to influence the outcome. The act of voting is a fundamental part of participating in the democratic process. It is a reminder that democracy is not a spectator sport; it requires active participation from all eligible voters. In any election, large or small, local or national, your vote is your voice—use it.

Oh, and if you’re wondering, my daughters wanted to wear lucky jersey number 19 for their sports teams because it was their mom who secured her party’s nomination by 19 votes.

Leading by Example

As Chair of the Solo, Small Firm and General Practice Division of the American Bar Association, I encourage each of you not only to exercise your right to vote but also to be a beacon of information and advocacy in your communities. Whether you practice in a solo firm or within a small group, your voice and leadership are vital to ensuring that the legal community remains engaged and informed.

This bar year is not just about addressing the immediate needs of our clients; it's about looking forward to the kind of society we want to help build. It's about making sure that the principles of justice, fairness, and equality under the law are upheld at every level of government. As we prepare for the challenges and opportunities of the coming year, I urge you to consider how you can contribute beyond your legal practice, whether by volunteering at polling stations, providing legal assistance to voters, or simply encouraging those around you to participate in the democratic process.

Our Division has always prided itself on being close to the communities that we serve. Let's continue that tradition by leading by example. Engage in the election process, advocate for fair and just policies, and make sure that the voices of our clients and communities are heard loud and clear. Together, we can make a difference—not just in our courts and our practices but also in the governance of our nation. Here's to a productive and impactful 2024–2025 bar year and to lucky number 19.

Melody M. Wilkinson (mwilkinson@tarrantcountytx.gov) is Chair of the GPSolo Division. She serves as judge of the 17th District Court in Tarrant County, Texas.

AnnaStills via Getty Images

Is There a Constitutional Right to Vote?

Katherine Culliton-González

This issue of *GPSolo* magazine covers election law in 2024. As a voting rights lawyer asked to write the lead article, I must report that the situation has worsened over the last 20 years. American democracy is declining due to a measurable amount of "strategic manipulation of elections" and backsliding that has put us behind 49 other countries around the world and at greater risk of authoritarianism.

This article examines whether the U.S. Constitution includes an affirmative right to vote. It does not. The lack of a constitutional right to vote exacerbates many issues challenging American democracy in 2024. Some academics propose amending the Constitution to include an affirmative right to vote while adding new voter ID requirements. This will not resolve the systemic problems described below. Instead, we should focus on protecting the vote for the next generation and passing the John R. Lewis Voting Rights Advancement Act.

We are at an inflection point in our ability to provide equal access to the ballot. Current problems rocking the foundation of American democracy include Supreme Court decisions eviscerating the Voting Rights Act, interference with the peaceful transfer of power, false allegations of elections being stolen, bias-driven political rhetoric, state laws restricting voter access, and a lack of proportional representation along with constant

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litigation and constantly changing voting rules. There are more than 10,000 state and local jurisdictions running elections in the United States, and, although some do well, they now have increasing latitude to restrict access. These problems are rooted in resistance to having an inclusive, multiracial democracy.

Modern dilution of voting rights has occurred in tandem with the changing demographics of our nation and the increasing *potential* political power of communities of color. This is untenable in a democracy in which 52 percent of the next generation are people of color (American children under 18 are now 26 percent Latino, 14 percent, Black, 6 percent Asian, and 6 percent multiracial).

The entire U.S. population (of all ages) will no longer be majority White in 2045, and the eligible voting population will be majority people of color by 2060 or sooner. Our democracy needs to catch up and stop resisting the inclusion of the coming majority.

Although this is a current problem, it is also an old one—and a manifestation of a foundation not built on solid ground. The founders did not envision a democracy that included anyone except white men. But since then, through many battles led by great civil rights leaders, we have expanded what the late Justice Ruth Bader Ginsburg called the "theory of the [U.S.] Constitution" (*Evenwel v. Abbott*, 578 U.S. 54, 67–68 (2016)), to represent all people, and the right to vote now includes all citizens over 18, regardless of race or gender. Your pocket Constitution will confirm these important amendments, as well as the lack of a specific, affirmative constitutional right to vote. The 14th and 15th Amendments include specific rights to freedom from discrimination in voting, making it clear that racial discrimination in voting is subject to strict scrutiny. Amending the Constitution to provide a similarly specific right to vote would make *any* infringements on this fundamental right subject to strict scrutiny.

The Supreme Court and the Fundamental Right to Vote

Despite the lack of an affirmative right to vote, the Supreme Court has historically ruled that the right to vote is fundamental, as it is "preservative of all other rights." In 1886, after noting the lack of a specified constitutional right to vote, the Court ruled that:

> Though not regarded strictly as a natural right, but as a privilege merely conceded by society according to its will under certain conditions, nevertheless [the right to vote] it is regarded as a fundamental political right, because [it is] *preservative of all rights*.

Yick Wo v. Hopkins, 118 U.S. 356, 370 (ending discrimination against persons of Chinese origin in California) (emphasis added).

In 1964, in *Reynolds v. Sims*, 377 U.S. 533, 565 (1964), the fundamental nature of the right to vote was used to end a racially discriminatory redistricting scheme in Alabama, but the decision was not based on race. Instead, the Court held that under the Equal Protection clause of the 14th Amendment, legislative districts must provide voters with equal representation "regardless of where they live." Recalling that only fundamental rights are subject to strict scrutiny, we can see that *Reynolds* applied that standard:

> Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, *any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized*.

Id. (emphasis added).

The late John Lewis and other civil rights heroes risked their lives to support the Voting Rights Act of 1965, which was enacted to better protect against racial discrimination in voting. During the Civil Rights Era, the Supreme Court also considered the right to vote to be fundamental and subject to strict scrutiny. Using this reasoning, in 1966, the Warren Court ended poll taxes based on income disparities alone (*Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 666 (1966) (quoting *Reynolds*)). This distinction is critical because, although racial discrimination in voting continues to be widespread, it is very difficult to prove. *Reynolds* and *Harper* show that location and income disparities also counted until the Court under Chief Justice John Roberts began to interpret the right to vote restrictively.

Additionally, in several earlier cases, the Court opined that there is no affirmative constitutional right to vote. Professor Richard L. Hasen's new book, *A Real Right to Vote* (2024), summarizes this history and rightly calls for a constitutional amendment. Prior to the 19th Amendment in 1919, the lack of a specific constitutional right to vote enabled the all-male Court to permit states to exclude women from voting (*Minor v. Happerset*, 88 U.S. 162 (1875)). Further, the lack of a specific constitutional right to vote left a gap that the all-white Supreme Court exploited when it failed to overturn Jim Crow laws (*Giles v. Harris*, 189 U.S. 475 (1903)).

Voting rights advocates such as Penda Hair and the late Harvard Law Professor Lani Guinier have long argued that a specific constitutional right to vote would help expand equal access to the ballot and protect against discrimination. Although Hasen once took issue with this proposition, he now agrees with it; however, he now proposes adding voter ID requirements to assuage conservatives' baseless allegations about voter fraud. This is entirely political, as federal law already requires some form of ID to register to vote. Further, the experiences of communities of color show that additional voter ID requirements would have discriminatory impacts and dilute voting rights.

Bush v. Gore and the Erosion of the Fundamental Right to Vote

The 2000 election recount in Florida was a shock at the time. On the positive side, despite disagreement with the results of the election, there was a smooth transfer of power when candidate Al Gore conceded. But, like many, I was shocked to read the Supreme Court's opinion in *Bush v. Gore*, 531 U.S. 98 (2000). Buried among the twisted reasoning about Equal Protection and the fact that some Florida counties counted ballots differently than others, the Court pointed out that there was no specific constitutional right to vote. Therefore, despite the holding in *Reynolds*, the argument that counting votes equally should not depend on where you live was no longer a good argument in federal court (*id*. at 104).

Bush v. Gore certainly put voting rights on my radar, but the people I serve made me a voting rights lawyer. I was drafted to monitor elections for the Latino community in 2004 and have done so in every presidential election since then. I served in the U.S. Department of Justice's Voting Section from 2007 to 2012 and have helped lead the voting rights work of the Hispanic National Bar Association (HNBA) since 2012. My cases in Florida, Georgia, Massachusetts, New Jersey, New York, Ohio, Texas, and Wisconsin have addressed many types of discrimination against Black and Latino voters.

As history marched forward, our nation elected our first Black president, Barack Obama, in 2008. With every major victory in civil rights comes a backlash, and in 2008, in the first modern voter ID case, the Supreme Court "allowed states to pass more onerous voting rights rules, such as strict voter identification laws, without proof that such laws serve any interests in preventing fraud" (Richard L. Hasen, A Real Right to Vote 26 (2024), discussing *Crawford v. Marion County,* 533 U.S. 181 (2008)).

Voter fraud is infinitesimal—*allegations* comprise 0.00006 percent of all votes cast—so fraud-based arguments to justify limitations on access to the ballot should not even pass low levels of scrutiny. But also, since *Crawford*, the underlying costs of voter ID laws are no longer subject to strict scrutiny. These

include the cost of securing a birth certificate, which is especially difficult for Black citizens. Copies of naturalization certificates currently cost more than $500, disparately impacting Asian and Latino American citizens who live in states with the most egregious voting laws.

The arguments about income disparities that served to strike down poll taxes in 1966 are no longer viable today, in part because, since 2000, the Roberts Court does not consider voting to be a fundamental right. An affirmative, constitutional right to vote would be helpful to restore strict scrutiny of state measures such as strict voter ID, cuts to early voting, limiting mail-in voting and drop-off locations, and allowing baseless challenges.

The Threat of Originalism

The rising threat of "originalism" also argues for a federal constitutional amendment. On the other hand, not all fundamental rights are found in the exact text of the Constitution. There is no specific constitutional right to privacy, and the retrogressive "originalist" movement leveraged this to eviscerate reproductive rights (*Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022)). There is also no specific constitutional right to marry, so the same originalist argument could potentially undo *Loving v. Virginia*, 388 U.S. 1 (1967), which ended prohibitions against interracial marriage, and *Obergefell v. Hodges*, 576 U.S. 644 (2015), guaranteeing the fundamental right to marriage to same-sex couples.

Although there is no specific constitutional right to education, in *Brown v. Board of Education*, 347 U.S. 483 (1954), and *Plyler v. Doe*, 457 U.S. 202 (1982), the Court ruled that education was so important to every individual that discrimination in public education did not pass strict scrutiny. It is far from certain that a specific constitutional right to education would change the Court's more recent rulings.

Is Equal Access to the Ballot or a Constitutional Amendment More Important?

There is a movement for a constitutional right to vote building from the states, as communities have had success in litigation under state constitutional rights to vote. I was thrilled to play a small part in the team that between 2012 and 2014 successfully litigated against Pennsylvania's strict voter ID law based on the state constitutional right to vote. I will never forget testimony from the Commonwealth stating their position against homeless people having the right to vote.

Recent scholarship by Professors Jessica Bulman-Pozen and Miriam Seifter shows that "every state constitution confers the right to vote." Leveraging and expanding these state rights to vote may present a powerful way to build a multiracial democracy and lead to an expansive federal constitutional amendment without voter ID as a compromise.

At the federal level, the U.S. Constitution provides specific rights to freedom from discrimination in voting, as does the Voting Rights Act of 1965 (VRA). These fundamental rights are subject to strict scrutiny—but the Roberts Court has limited them anyway. In 2013, in *Shelby County v. Holder*, 570 U.S. 529, the majority's version of strict scrutiny ignored the record. Relying on pre-Reconstruction states' rights cases, the Court eviscerated the most effective protections of the VRA by opining that discrimination in voting was a relic of the past. Nothing could be further from the truth.

In 2018, the bipartisan U.S. Commission on Civil Rights published a comprehensive report finding that discriminatory state voting laws had increased four-fold in the wake of the *Shelby* decision. In 2023, the Brennan Center for Justice at New York University School of Law reported that states *enacted* more than 100 restrictive voting laws since *Shelby*, which correlated with decreasing turnout among Black and Latino voters. These extremely high levels of discriminatory impacts can only be stopped by legislation to restore the VRA, which was first introduced in 2015. A Senate filibuster blocked its passage in 2022. In

the meantime, despite increasing litigation, even intentionally discriminatory changes have stayed in place during elections.

The most urgent reform now is the John R. Lewis Voting Rights Advancement Act of 2024. His legacy Act would require review of state or local changes in voting procedures that are likely to be discriminatory *before* they can be implemented during elections.

Leaders of the Student Nonviolent Coordinating Committee argue that "we still need the right to vote, a generation later," and support a constitutional amendment to expand equal access and include important concepts of justice. The situation today calls for strong protection against discrimination in voting and fixes for the worst Supreme Court decisions that have diluted voting rights. Considering "originalism," a provision against retrogression is also necessary. This is already part of the John Lewis Act, and it should not be left out of proposals to amend the Constitution to add a right to vote.

What Lawyers Can Do

ABA President Mary Smith created the nonpartisan ABA Task Force on American Democracy. The HNBA followed suit, and I am honored to chair our committee of outstanding Latino voting rights lawyers. We should all support an affirmative constitutional right to vote that ensures equal access for the next generation while immediately focusing on the great need to pass the John Lewis Act. Please also volunteer to protect citizens' right to vote on Election Day.

Katherine Culliton-González was valedictorian of the 1993 law class at American University; she has since innovated multiple strategies to protect democracy. A former Fulbright Scholar, she is a widely published expert in inclusive democracy. She recently served as a presidential appointee in the Biden-Harris Administration, where she developed policies to advance race and gender equity. Among prior activities, she led eight successful federal voting rights cases.

Katherine Culliton-González receiving the Unsung Heroes of Democracy Award from ABA President Mary Smith on August 2, 2024. Photo courtesy of ABA.

LauriPatterson via Getty Images

Apportionment and Reapportionment Issues in U.S. Politics

Matthew Spolsky

The apportionment and reapportionment of the members of the U.S. House of Representatives has been a political issue in this country since it was founded. Some of the issues related to apportionment include partisan gerrymandering, redistricting based on race, and who will be counted in the census, on which apportionment is based.

The Apportionment Process

Apportionment among the states is based on the census. Article 1, Section 2 of the U.S. Constitution requires a census be taken: “The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.” Outside of the 1920 census, seats in the U.S. House of Representatives have been apportioned on the results of each census.

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The Congressional Research Service informs the U.S. House of Representatives on how the then-current census data is processed to determine reapportionment of representatives among the states:

> Apportionment (or reapportionment) refers to the process of dividing seats in the U.S. House of Representatives among the states. Article 1, Section 2, of the U.S. Constitution, as amended by Section 2 of the Fourteenth Amendment, requires that seats for Representatives are divided among states, based on the population size of each state. House seats today are reallocated due to changes in state populations, since the number of U.S. states (50) has remained constant since 1959; in earlier eras, the addition of new states would also affect the reapportionment process, as each state is constitutionally required to receive at least one House seat.

In total, there are 435 seats in the U.S. House of Representatives. Each state automatically gets one seat, so 50 of the seats are predetermined based on the 50 states. The remaining 385 seats are determined based on the census data, which is reported every ten years through the census. The criteria used to determine which states get more seats in the House include population equality and protections for racial and language minorities. Other reapportionment considerations include political subdivisions, communities of interest, compactness and continuity in a district, promotion of political competition, and considerations for the existing district or the incumbent candidate.

The American Redistricting Project already has a 2030 apportionment forecast as of December 2022. This forecast predicts which states will lose representatives and which states will gain representatives based on population changes. They currently predict California will lose five seats while Texas and Florida will each gain four seats. Other state predictions are available as well. These estimates are based on the U.S. Census Bureau forecast of population changes.

Political Issues Surrounding Apportionment

Redistricting and Race

Redistricting is an issue caused by apportionment based on the census data, which can sometimes be inherently race-based. Rebecca Green, a professor at William and Mary School of Law, gave a December 3, 2021, presentation on the issues caused by redistricting. Professor Green points out the flaws in redistricting decisions based on reapportionment of U.S. House of Representatives seats. One of the most difficult things to determine when redistricting a jurisdiction is the impact on racial minorities. Professor Green states:

> There's also a federal statute, the 1965 Voting Rights Act, that requires line drawers to not dilute minorities' ability to elect their candidates of choice. This is incredibly complex, this area of the law . . . but essentially, if there is a minority group that is sufficiently large and geographically compact, and if the voting in that area is highly racially polarized where the minorities vote differently than the majority population, then the 1965 Voting Rights Act creates protections for that group of minority voters from being sort of intentionally divided or packed into districts or cracked into multiple districts. . . . [L]ine drawers are told that they must ensure that minorities are able to maintain their ability to elect their candidates of choice, but line drawers can't take race too much into account—that is, there have been several court cases that have held that, for example, when legislatures set specific targets, like if they set a minority district has to have 55 percent minority voters or 60 percent minority voters, the U.S. Supreme Court has said that that's a racial gerrymander because it's an arbitrary sort of target and it doesn't take the needs of the minority communities into account. . . .

Partisan Gerrymandering

An important apportionment issue stemming from redistricting based on census-reported data is partisan gerrymandering, the drawing of political districts to favor one party over the other. The persons responsible for drawing the political lines can change which candidates can be voted for in which areas. Partisan gerrymandering can potentially remove candidates from being voted for by their target voting pool simply by redrawing the districts. This can lead to inherently race-based redistricting that dilutes the voting strength of political minorities in specific areas.

Lawsuits aimed at preventing partisan gerrymandering have been filed yearly in various states across the country. For years after it was passed, the 1965 Voting Rights Act itself was challenged in the U.S. Supreme Court (see, for example, *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966), and *Allen* v. *State Board of Elections*, 393 U.S. 544 (1969)). In 2024, cases such as *League of Women Voters of Utah v. The Utah State Legislature*, *Simpson v. Thurston*, *Black Voters Matter Capacity Building Inst., Inc. v. Byrd*, and *Wygant v. Lee* are all being litigated *based on the issue of partisan gerrymandering*.

Executive Orders, the Census, and Apportionment

The executive branch decides how census data is used to apportion seats in the House of Representatives. The two most recent presidential administrations have staked out very different approaches to apportionment—and, as a result, the census—in two opposing executive orders.

Donald Trump's Executive Order

President Donald Trump's executive order is titled *Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census*. It is based on the Constitution and excludes persons who were not U.S. citizens or legal residents from being included in the reapportionment of representatives following the 2020 census. It states in part,

> The President, by law, makes the final determination regarding the "whole number of persons in each State," which determines the number of Representatives to be apportioned to each State, and transmits these determinations and accompanying census data to the Congress (2 U.S.C. 2a(a)). . . . For the purpose of the reapportionment of Representatives following the 2020 census, it is the policy of the United States to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act, as amended (8 U.S.C. 1101 et seq.), to the maximum extent feasible and consistent with the discretion delegated to the executive branch.

Joe Biden's Executive Order

President Joe Biden's executive order is titled *Executive Order on Ensuring a Lawful and Accurate Enumeration and Apportionment Pursuant to the Decennial Census*. Section 1 begins,

> We have long guaranteed all of the Nation's inhabitants representation in the House of Representatives. This tradition is foundational to our representative democracy, for our elected representatives have a responsibility to represent the interests of all people residing in the United States and affected by our laws. This tradition also respects the dignity and humanity of every person. Accordingly, the executive branch has always determined the population of each State, for purposes of congressional representation, without regard to whether its residents are in lawful immigration status.

President Biden's executive order says there is a long tradition of accounting for persons who are not citizens during the census, dating back to the Civil War and abolition of slavery. This executive order is based on the 14th Amendment to the U.S. Constitution and Section 2a(a) of Title 2, United States Code. This executive order also revoked Executive Order 13880 of July 11, 2019 (Collecting Information about

Citizenship Status in Connection with the Decennial Census), and the above-mentioned presidential memorandum of July 21, 2020 (Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census).

It is unclear at this time whether the Democratic candidate, Vice President Kamala Harris, will change the party's stance on apportionment-related issues if she were to win the election. It may be safe to assume that the party will maintain its opinion on these issues in order to preserve some of President Biden's political platforms. It seems unlikely that Harris would change the current executive order relating to apportionment should the Democrats win the 2024 presidential election.

Apportionment Litigation Based on Executive Orders

Neither of these executive orders is safe from litigation. Two cases being litigated in 2024 deal with presidential executive orders relating to apportionment and reapportion issues: *Common Cause Florida v. Byrd* and *Citizens for Constitutional Integrity v. Census Bureau*.

Common Cause Florida v. Byrd was filed in Florida by Common Cause Florida, Fair Districts Now, the Florida State Conference of the NAACP, and individual voters. The case alleges that "the Florida Legislature and Governor DeSantis engaged in intentional racial discrimination in violation of the 14th and 15th Amendments of the U.S. Constitution in crafting the state's current congressional map." After a bench trial held in September and October 2023, the U.S. District Court for the Northern District of Florida found there was not a racially discriminatory purpose in enacting the redistricting plan.

Citizens for Constitutional Integrity v. Census Bureau is a federal lawsuit filed

> against the U.S. Census Bureau, its Director, and the Secretary of the Department of Commerce challenging the Bureau's apportionment of congressional representatives following the 2020 Decennial Census as violating the 14th Amendment and the Administrative Procedure Act (the "APA"). . . . [The plaintiffs] are seeking a judicial declaration that the defendants violated the 14th Amendment and the APA, and that the congressional reapportionment report based off the 2020 Census is void, an order vacating and remanding the report to the Census Bureau, and an injunction mandating the Bureau reapportion and reissue the report in accordance with the 14th Amendment's requirements using the Census Bureau's data of citizens and voter registration rates.

The case was dismissed for lack of standing on April 18, 2023; however, it is still on appeal in the U.S. Court of Appeals for the District of Columbia Circuit (case number 23-5140).

While apportionment may be an issue constantly ripe for litigation, plaintiffs in these cases must meet their constitutional burden to change the proposed apportionment plan.

A Choice for Voters

During the 2024 election season, it is important to note that the way census data is interpreted may not ultimately be dictated by either candidate on the ballot. The upcoming presidential term will end on January 20, 2029, but census data will not be calculated until 2030. Although the next president may issue another executive order relating to apportionment, it may not be controlling on how the 2030 census is decided. Litigation will likely continue to arise as executive orders are implemented. However, we may not know how census data will be used to apportion representatives until the presidential term that starts in 2029.

As a result, the question of who should be included in census-based reapportionment will factor into the political discussions surrounding both of the next two election cycles. In 2024, two candidates with different viewpoints on this issue will be on the ballot. One candidate holds the position that only U.S. citizens and legal residents should be counted, while the other candidate backs the proposition that all people living in the United States should be counted. These opposing positions are likely to be held by the candidates of the Republican and Democratic parties in the 2028 election as well. The decision is ultimately up to those voting in the 2024 and 2028 election cycles, as they will determine the president who will answer this question.

Matthew Spolsky is a seasoned commercial litigation attorney proficient in managing cases from inception to resolution. Active in the legal community, Spolsky serves on the Executive Committee of the San Diego County Bar Association (SDCBA) New Lawyers Division (NLD) and holds a position on the Executive Committee of the SDCBA's Sports and Entertainment Law Section. His involvement extends to judicial interviews for the SDCBA NLD, where he has conducted interviews with four judges in San Diego. With a background encompassing construction cases, defense litigation, products liability, government tort claims, and website consumer privacy cases at Clark Hill, Spolsky brings a wealth of experience to his practice. He has prior experience in subrogation and defense litigation, and he eagerly anticipates delving into additional real estate work for Clark Hill.

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Increasing the Percentage of Eligible Voters Who Vote

Katherine Murchison

The vote is the most powerful tool that the American public wields. The vote empowers American citizens to decide who will speak in Congress, who will lead as the commander in chief, and who will serve in the local judiciary. As such, the vote is the most accessible way to engage in the political arena. Exercising the right to vote has proven even more vital as the country has become increasingly polarized. With political parties diverging more and more each day, the vote is an invaluable way to engage in our ever-changing democracy. Why, then, has voter engagement been low historically, and what can be done to get more eligible (voting-age and registered) voters to the polls?

Voter Turnout Today

The Federal Election Commission (FEC) publishes a compilation of officially certified federal election results. These publications include primary, runoff, and general election results for the Senate, the House of Representatives, and, when applicable, the president. According to the FEC, 158,429,631 votes were cast in the 2020 presidential election. However, according to the United States Elections Project, there were 239,924,038 total eligible voters in the United States that year. Elementary math reveals the stark reality that more than 80 million Americans, constituting one-third of the electorate, did not participate in the

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election at all. Perhaps even worse, the 2020 election was one of the highest-turnout U.S. national elections since 1900. Even at our best, by comparison, voter turnout in the United States trails behind other liberal democracies, ranking 31st out of 49 national elections in 2020—falling between Colombia (62.5 percent voter turnout) and Greece (63.5 percent voter turnout). It begs the question: How did we get here?

History of Voting in America

The history of voting in the United States starts with the birth of the nation. The colonies originally adopted from England the requirement of property ownership to vote, bestowing the right to vote only upon white, landowning males. In the new country's first few national elections, only four to six percent of eligible voters actually cast a ballot. Historians attribute this low voter turnout to primitive forms of transportation, poor dissemination of information, and little party affiliation.

It was not until the 1820s that election participation rose. A more efficient electoral system, improvements in transportation, and advancements in the dissemination of political news all created more active political parties and, in turn, increased civic engagement. The political movement led by Andrew Jackson's Jacksonian Democrats galvanized the public and brought the masses into the political process. Voter turnout increased from 27 percent in 1824 to 58 percent in 1828. By the 1830s, most states had removed the voting requirement of land ownership, and by 1840, 80 percent of all white males eligible to vote had cast a ballot in that year's election. Voter turnout remained at these high levels for the rest of the 19th century, with voter turnout among white men averaging 77 percent in the 15 elections from 1840 to 1896.

The 15th Amendment, ratified in 1870, finally abolished the race and color voting restrictions. In theory, all males could now legally cast a vote. However, the American South was committed to repressing the Black vote and responded to the 15th Amendment by enacting highly restrictive state voting laws. Restrictions included grandfather clauses, literacy tests, and poll taxes, all with the desired outcome of oppressing Black civic engagement. Although the Supreme Court declared Oklahoma's grandfather clause unconstitutional in *Guinn v. United States*, 238 U.S. 347 (1915), Black voters were still largely disenfranchised throughout the South. In response to *Guinn*, exclusively white primaries rose as the preferred method of restricting the Black vote. These primaries restricted both voting and candidacy in the Democratic party to white males. White primaries effectively crippled the Black vote throughout the South until they were declared unconstitutional in 1944. The prejudicial poll tax would not be outlawed in federal elections until the passage of the 24th Amendment in 1964. Two years later, the Supreme Court ruled poll taxes were unconstitutional in any election in *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966).

With the ratification of the 19th Amendment in 1920, the right to vote could no longer be restricted on the basis of race, color, or sex. In 1971, the 26th Amendment was ratified to lower the voting age from 21 to 18 in light of the hypocrisy of having teenage soldiers—who could not participate in the political arena—fight in the Vietnam War.

Despite the increased diversity and representation in the U.S. electorate over time, the oppressive policies of past years have had a lasting effect on civic engagement. As an example, by 1892, only 6 percent of voting-age Black Americans were registered to vote. Nationally, between 1888 and 1924, voting rates fell from 64 percent to 19 percent in the South and 86 percent to 57 percent in the North and West. Despite the right to vote being codified in the Constitution, the right existed almost only on paper for much of the American public.

Voting Rights Act of 1965

Significant strides toward voter equality did not start to occur until the enactment of the Voting Rights Act of 1965 (VRA). The VRA abolished discriminatory literacy tests and all voting procedures that restricted

an individual's right to vote based on race. Potentially most important, the VRA mandated that states with low voter registration and low voter turnout submit any desired procedural changes to the federal government for approval to ensure that the change would not have a discriminatory effect. These VRA requirements immediately improved southern Black registration rates, with 62 percent of eligible Black voters registering by 1968.

In 1970, the VRA was amended to prohibit requirements of residency longer than 30 days. Congress later expanded the VRA by adding protections for members of language minority groups in 1975 and protections for people with disabilities in 1982. However, in 2013, the Supreme Court in *Shelby County v. Holder*, 570 U.S. 529 (2013), eviscerated the central "preclearance" component of the VRA, removing the vital guardrail that had protected voters from discriminatory restrictions.

National Voter Registration Act of 1993

Even after the passage of the Voting Rights Act of 1965, there still was not exponential improvement in civic engagement. Legislators fought for almost two decades to bring more members of the public into the fold, and in 1993, President Bill Clinton finally signed the National Voter Registration Act (NVRA) into law. The NVRA came to be colloquially known as the "Motor Voter Act."

The NVRA maintains in its "Findings and purposes" that, above all else, "the right of citizens of the United States to vote is a fundamental right." It further states that "it is the duty of the Federal, State, and local governments to promote the exercise of that right." The NVRA's main purpose was thus to "establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office."

The NVRA's most impactful provisions require that each state establish a simplified voter registration procedure by (1) implementing simultaneous voter registration and driver's license renewal applications; (2) adopting national mailing registration forms or alternative state forms that meet federal requirements; (3) providing opportunities to register at designated federal, state, or other non-governmental offices; (4) sending notice to voter applicants of their voter standing; (5) not removing voter's names from the voter roll unless requested or provided by state law; (6) allowing a private legal right of action to those who are aggrieved by a violation of the act; and (7) providing criminal penalties for those found guilty of any type of voter fraud.

Help America Vote Act

In 2002, Congress enacted the Help America Vote Act (HAVA) to expand on the NRVA's groundwork for federal support of voter registration procedures. HAVA was passed in light of widespread problems in election administration revealed by the 2000 presidential election. Section 303(a)(1) of HAVA requires each state implement a "uniform, official, centralized, interactive computerized statewide voter registration list" and establishes standards for when states may remove ineligible or inactive voters. HAVA, unlike NRVA, has not been subject to many constitutional challenges. This could be because Congress' authority to regulate voter registration has already been established in NVRA case law or because, unlike the NVRA, HAVA included federal funding to support states' implementation of its requirements.

Despite the aspirations of the Voting Rights Act, National Voter Registration Act, and Help America Vote Act, voter turnout and civic engagement in the United States is still low. Acknowledging the fact that voter registration is the *initial* barrier to voting, what can be done after voters have been registered to get to them the polls?

How to Get Eligible Voters to the Polls

It goes without saying that the average American is incredibly busy. We're busy with work responsibilities, family obligations, home maintenance, and personal care—if we ever get around to that. It makes sense then that when election season comes around, voting may be at the bottom of the to-do list. Voter disengagement is exacerbated by the reality that our system does not make it particularly easy to vote, allowing a lack of enthusiasm for the candidates, disbelief in the importance of voting, and general disillusionment that voting can make a difference rule the day. While the latter may require a more individualized approach to resolve, the former can be alleviated by addressing some of the systematic barriers to voting: an inability to get off work, the inconvenience of waiting in line for hours, and trouble finding or accessing polling places. To get more eligible voters to actually cast a vote, we must support resolutions that address the barriers to voting that keep people from the polls: time and money.

Voting by Mail

In a 2020 poll by FiveThirtyEight and Ipsos examining voter behavior among U.S. citizens, the most common barriers to voting identified by respondents were waiting in line for more than an hour and an inability to find or access their polling place. Expanding voting-by-mail initiatives can address this obstacle.

Historically, voting by mail was limited to voters temporarily away from their homes. Mail-in voting first arose in the Civil War to allow Union and Confederate soldiers to cast their ballots from their battlefield units. In the 1940s, Congress passed legislation that allowed soldiers stationed overseas to vote by mail. In the 1980s, California became the first state to allow eligible voters to vote by mail for any reason, including for their convenience.

The 2020 pandemic greatly expanded the application of voting by mail, with 28 states and the District of Columbia adopting no-excuse absentee voting laws by 2023. Voting by mail allows individuals to vote more conveniently, removing the barriers of travel time, locating their polling place, or waiting in line. The 2020 Survey of the Performance of American Elections (SPAE) reported that 46 percent of votes were cast by mail in the 2020 election, more than doubling the 21 percent of votes cast by mail in 2016. In tandem, the percentage of votes cast in person on Election Day dropped from 60 percent in 2016 to 28 percent in 2020. Historically, 17 million *more* eligible voters cast a ballot in 2020 than in 2016, suggesting that the flexibility of voting on their own time by mail encourages citizens to cast their ballots.

While some states have since rolled back absentee or mail-in voting initiatives that made voting easier in 2020, other states have expanded ballot access. Now, an unprecedented number of Americans can express their political power from the safety and comfort of their own homes. This particularly safeguards the elderly, people with disabilities, and members of marginalized communities who are historically burdened at the ballot box. Vote-by-mail initiatives should be encouraged nationwide.

Changing Election Day

When looking specifically at respondents to the FiveThirtyEight poll who had rarely or never voted, one finds that these individuals were more likely than other voters to identify the barrier of not being able to get off work. Notably, Black and Hispanic voters were more likely to experience this obstacle than others. The difficulty of getting off work suggests that placing Election Day on a regular weekday exacerbates voter disengagement. To mitigate this issue, national elections in the United States should be held on weekends or alternatively observed as a federal holiday.

Countries that hold elections on the weekends consistently have greater voter turnout than the United States: France (67.3 percent voter turnout), Germany (80.2 percent voter turnout), Thailand (82.1 percent

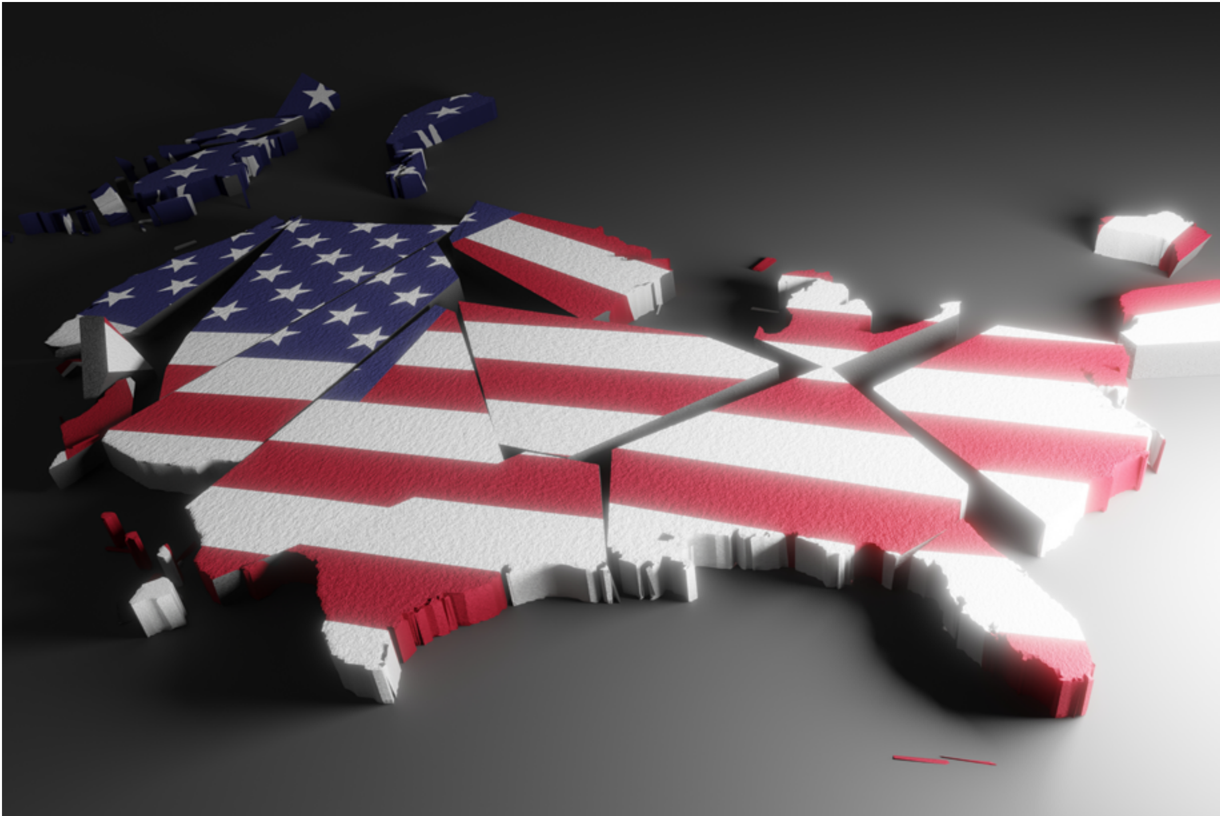
voter turnout), and Japan (68.7 percent voter turnout). Similarly, observing Election Day as a national holiday would allow more individuals to exercise their civic right without the consequence of missing a paycheck. More than half the respondents in the FiveThirtyEight voter behavior poll acknowledged that making Election Day a national holiday would allow more people to cast a ballot.

While private employers are not obligated to observe federal holidays, 30 states and the District of Columbia have laws requiring employers to give their employees time off to vote. Whether the leave is paid or unpaid differs by state. To alleviate the financial burden of taking time off work to vote, all 50 states should implement paid time off to encourage employees to get to the polls on Election Day.

Conclusion

Voter disengagement has been an obstacle to our country's democracy from the birth of the nation. Thankfully, recent initiatives have increased voter turnout and encouraged historic numbers of eligible voters to cast their ballots. Continuing to support voting-by-mail initiatives and state legislation establishing paid time off on Election Day will protect the most marginalized members of our country from disenfranchisement and encourage everyone to bring their political power to the polls.

Katherine Murchison is a New York native. She obtained bachelor degrees in international studies and Spanish from the College of Charleston Honors College in 2018 and received her JD from Washington University School of Law in 2021. Katherine practices commercial litigation at Thompson Coburn LLP and co-founded the grassroots voter engagement organization Power 2 the Polls in 2020, registering voters in Missouri, Illinois, South Carolina, and the District of Columbia. She can be reached via LinkedIn.



Manuel Augusto Moreno via Getty Images

The Electoral College: Two Proposals for Reform

John Hardin Young

America's democratic process for selecting the president and vice president is not based on the direct vote of the people. This is evident when candidates can win the national popular vote but lose because their opponent wins the Electoral College.

The Electoral College has played a crucial role in the election of the president and vice president on five occasions (1824, 1876, 1888, 2000, and 2016), when the president and vice president have been elected without winning the national popular vote.

The Constitutional Basis for the Electoral College

Article 2, Section 1, Clause 2 of the U.S. Constitution provides that the president and vice president are to be chosen by electors in "Each State . . . in such Manner as the Legislature thereof may direct . . . equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress. . . ." The criteria for the electors is left to each state, with the exception that federal officeholders are prohibited from being electors.

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During the Constitutional Convention of 1787, the creation of an electoral college was offered as an alternative to the popular vote and congressional district-based election.

In *Federalists Papers No.* 68, Alexander Hamilton asserted that electors were free agents and that "[a] small number of persons, selected by their fellow citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations." This would change with the growth of the nation and political parties.

By 1836, a statewide winner-take-all choice of electors became the universal practice. The only deviations have been the adoption in 1972 by Maine and in 1992 by Nebraska of district plans where electors are chosen by election in their Congressional districts, as well as two at-large electors assigned to the winner of the statewide popular vote.

After the 1876 election, in which the electoral votes were tied and a political settlement was brokered to elect Rutherford Hayes over Samuel Tilden and end the stationing of federal troops in the South, Congress enacted the Electoral Count Act. The Act was poorly written and would be amended after the 2020 election to define the limited role of the vice president in tallying the electoral college votes.

The Electoral College Process

Electors are on the ballot through their selection by the political parties or the presidential campaigns. They are intended to vote for their nominee. In presidential general elections, voters are officially voting for the political party's slate of electors, not the actual presidential and vice presidential candidates.

The Faithless Elector

The problem of the faithless elector arises when electors selected to support one candidate vote for a different candidate. It arises because there is no expressed provision in the Constitution or federal statute binding an elector's vote. Most state legislation provides that electors are to vote for the popular winner in casting a vote in the Electoral College. Thirty-two states and the District of Columbia mandate that electors vote for the candidate to whom they are pledged. Most states, however, do not enforce this pledge.

In the history of presidential elections, 179 electors have chosen not to vote for the candidate to whom they were pledged: 106 because of a personal preference, 71 because the candidate died before the election, and two because of abstention. Among the faithless electors in 2016 were electors in Washington State and Colorado. Washington fined the faithless electors. Colorado voided the faithless voter's ballot. On July 6, 2020, in a unanimous decision, the U.S Supreme Court in *Chiafalo v. Washington*, 591 U.S. ___ (2020), and *Colorado Department of State v. Baca*, 591 U.S. ___ (2020), held that the states may enforce laws to punish faithless electors. The *Chiafalo* and *Baca* decisions rejected the elector's free agent theory espoused by Hamilton.

Proposals for Reform

Two of the proposals rejected during the constitutional debates merit reconsideration: reliance on the national popular vote and selecting electors by congressional district.

Popular Vote

The 1968 presidential election results show the difference in the methods. Richard Nixon won by a large electoral vote: Nixon received 301 electoral votes (56 percent) to Vice President Hubert Humphrey's 191 electoral votes (35.5 percent), with George Wallace receiving 46 electoral votes (8.5 percent). The popular vote, however, portrayed a different picture: the difference between Nixon and Humphrey was 43.5 percent to 42.9 percent. This disparity caused Representative Emanuel Celler (D-NY) to propose a constitutional amendment for a national popular vote with the winner by a plurality of the votes, provided the winners

received at least 40 percent of the vote. In the case of a candidate not reaching the 40 percent threshold, a run-off was to be held. Senator Birch Bayh (D-IN) became the sponsor in the Senate. On September 30, 1969, President Nixon endorsed the proposal. The proposal died in a Senate filibuster.

President Jimmy Carter similarly proposed a national popular vote and abolition of the Electoral College to no avail.

In 2000, Al Gore received approximately 500,000 more votes than George Bush but lost the Electoral College after a recount in Florida resulted in that state's 29 electors going for Bush. In 2016, Hillary Clinton won the national popular vote by almost 3 million votes but lost the Electoral College to Donald Trump.

To jettison the Electoral College in favor of a national popular vote would require an amendment under Article 5 of the U.S. Constitution (requiring a two-thirds congressional vote to propose and three-quarters of the states to approve).

While Article 2 was amended by the 12th Amendment (election process for president and vice president) and the 20th Amendment (death of president before taking office), the Electoral College has remained. An attempt to effectively replace the Electoral College without following the Article 5 process is underway through the promotion of a national popular vote compact. Under this compact, states with a combined total of 270 electors necessary to win the Electoral College would enter into an interstate compact to require their electors to vote consistent with the national popular vote.

Currently, 17 states and the District of Columbia, together possessing 209 electoral votes, have joined the compact. Favoring the idea is Article 2, Section 1, Clause 2 of the Constitution, which grants each state legislature the plenary power to determine how it selects its electors. Opposing the idea is a concern that the compact requires congressional consent under the Compact Clause in Article 1, Section 10, Clause 3, which, under its express terms, prohibits states from entering into "any Agreement or Compact" without the approval of Congress. Further opposition comes from the argument that the Electoral College cannot be written out of the Constitution without going through the constitutional amendment process spelled out in Article 5. The true test will come when the number of states controlling 270 electoral votes have signed onto the compact and attempted to elect a candidate with the most popular votes nationally. The Supreme Court will then need to decide the outcome.

To assess the impact of the idea of the national popular vote determining the outcome of a presidential election, here is a comparison of recent elections:

	Electoral College Winner	**National Popular Vote Winner**
2008	365 Obama/Biden (67.8%)	Obama/Biden (52.9%)
2012	332 Obama/Biden (61.7%)	Obama/Biden (51.1%)
2016	306 Trump/Pence (56.9%)	Clinton/Kaine (48.2%)*
2020	306 Biden/Harris (56.9%)	Biden/Harris (51.3%)

*In 2016, Clinton/Kaine won the national popular vote by 2,868,518 votes but lost the Electoral College.

Congressional District Selection

Closer to the original concept of the founders, states could shift to congressional districts for selecting electors. The concept of counting congressional districts found early support. Constitutional amendments

to use this method were introduced in 1813, 1819, 1820, and 1822. In *McPherson v. Blacker*, 146 U.S. 1 (1892), also relied on in part in *Bush v. Gore*, 531 U.S. 98 (2000), the U.S. Supreme Court in 1892 upheld the employment of the congressional district method in Michigan. As late as 1969, Senator Karl Mundt (R-SD) introduced Senate Joint Resolution 12 in the 91st Congress, calling for a constitutional amendment to convert the electoral college method to a congressional district approach. The Mundt resolution was co-sponsored by 18 other Senators. It did not reach the support level needed by Article 5 of the Constitution.

The current practice in Maine and Nebraska, modified to include the votes of the state's two senators, establishes that this alternative could be adopted by the states without amending the Constitution.

Choosing electors by district, however, increases the importance of redistricting. In this example, one congressional district vote is awarded to the candidate who receives the most popular votes in that district. (Electoral College counting further exploits inequities in the popular vote by relying on the inclusion of the two senators in each state—in a winner-take-two addition—in the count and the impact of differences in district size and state population as part of the whole national popular vote.)

The major flaw in this approach is that Congressional districts are heavily gerrymandered. This approach increases the incentive to gerrymander.

While the Supreme Court in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), limited the federal courts in redistricting, review continues when violations of Section 2 of the Voting Rights Act are alleged. The Supreme Court in *Allen v. Milligan* (2023) held that Alabama violated the Voting Rights Act by failing to create a congressional map that fairly provided at least one additional Black district. In *Moore v. Harper*, 143 S. Ct. 2065 (2023), the Court found that the North Carolina Supreme Court's original decision was correct in holding that the state's congressional district map violated state law.

On the state level, the Pennsylvania Supreme Court decision in *League of Women Voters of Pa. v. Com. of Pa.*, 181 A.3d 1083 (Pa. 2018), struck down the state's congressional redistricting plan as unconstitutional under the state constitution's guarantee of "free and equal elections" clause. The National Conference of State Legislatures reports that 30 states include some form of "free" in their constitutions, and 18 include the words "equal" or "open" in addition to "free."

These cases support the continued attention to electoral fairness in congressional map drawing, which, combined with district selection of electors, could materially change the outcome of future elections.

Looking at the results of recent presidential election shows the following:

	Electoral College Winner	**District-by-District Winner**
2008	365 Obama/Biden (67.8%)	301 Obama/Biden (55.9%)
2012	332 Obama/Biden (61.7%)	274 Romney/McClain (50.9%)
2016	306 Trump/Pence (56.9%)	290 Trump/Pence (53.9%)
2020	306 Biden/Harris (56.9%)	277 Biden/Haris (51.4%)

When we step back to the 2000 contested presidential election, if the delegate method were used, Bush/Cheney would have received 288 electoral votes to Gore/Lieberman's 250 electoral votes. With 25 electoral votes at stake in Florida, a recount would have been still necessary as without Florida in the

delegate count, Bush/Cheney only had 263 of the 270 electoral college votes needed. The final electoral college count (under the current system) was Bush/Cheney's 271 to Gore/Lieberman's 267.

The Gore/Lieberman ticket, however, gained 537,179 more national popular votes, thereby making them the winner if the national popular vote method had been used.

The Need for Reform

The process for selecting the president and vice president is rooted in historical precedents that are no longer applicable to the democratic process. Reform, or complete removal, of the Electoral College is necessary. Two alternatives are possible: popular vote or district-by-district vote. The district method does not, however, assure democratic results because of gerrymandered and unequal districts.

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Operating a Campaign Finance Practice: A Practical Guide for Attorneys

Audrey Perry Martin

How money is spent in politics is controversial and heavily regulated. Because of this, campaign finance law has become an increasingly critical area of legal practice as political campaigns and advocacy efforts grow in complexity and scale while state, federal, and even local laws increase in complexity. This article will attempt to provide a practical guide for attorneys as they navigate the operation of a campaign finance law practice, offering insights into the legal framework, necessary expertise, key services, marketing strategies, and ethical considerations.

The Legal Framework of Campaign Finance

Understanding the legal framework governing campaign finance is foundational to establishing a successful practice. Campaign finance law is shaped by a mix of federal statutes, state regulations, and important court decisions, collectively creating a complex and sometimes controversial regulatory landscape.

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Key Laws and Regulations

At the federal level, the Federal Election Campaign Act (FECA) of 1971, as amended by the Bipartisan Campaign Reform Act (BCRA) of 2002, forms the cornerstone of campaign finance regulation. FECA established disclosure requirements for federal candidates, political parties, and political action committees (PACs), while BCRA, often referred to as the McCain-Feingold Act, introduced more stringent limits on contributions and expenditures, particularly in relation to so-called soft money and issue advocacy ads.

It's crucial for attorneys to be well-versed in both federal and state regulations. This is particularly important when advising clients who operate across different jurisdictions, as state laws vary significantly. Each imposes its own set of rules regarding contribution limits, disclosure requirements, and the operation of state-level PACs and other political committees.

When dealing with a local race, attorneys must check if local rules will apply. Some local jurisdictions are now passing their own campaign finance rules that apply to county or city elections, usually to establish lower contribution limits than those allowed at the state level.

Impact of Significant Court Decisions

Landmark Supreme Court decisions have profoundly influenced campaign finance law. One of the most significant of these is *Citizens United v. Federal Election Comm'n,* 558 U.S. 310 (2010), which ruled that corporate and union expenditures in elections are protected under the First Amendment, allowing for unlimited independent political spending by these entities. This decision has led to the rise of so-called Super PACs, which can raise and spend unlimited amounts of money on behalf of candidates, provided they do not coordinate communications directly with the campaigns. Whether communications are "coordinated" with a candidate requires intensive, fact-specific analysis by attorneys.

Another pivotal case is *Buckley v. Valeo*, 424 U.S. 1 (1976), which upheld contribution limits to prevent corruption but struck down expenditure limits as unconstitutional restrictions on free speech. Understanding the implications of these decisions is crucial for attorneys navigating the complexities of campaign finance law.

Federal vs. State Campaign Finance Rules

While the Federal Election Commission (FEC) enforces federal campaign finance laws, each state has its own regulatory body overseeing state and local elections. The differences between federal and state rules can be substantial, particularly in areas such as contribution limits, reporting requirements, and the regulation of independent expenditures. Attorneys must ensure that their clients comply with the law relevant to the races they are involved in, which may require coordination with and reporting to state regulatory agencies and a deep understanding of state-specific legal nuances.

Building Your Campaign Finance Law Expertise

Given the complexity and constantly evolving nature of campaign finance law, attorneys must develop specialized knowledge and skills to provide effective legal counsel in this area. Building expertise requires a combination of formal education, ongoing professional development, and active participation in the political law community.

Identifying Necessary Legal Skills and Knowledge

A successful campaign finance attorney must possess a strong understanding of constitutional law, particularly the First Amendment and administrative law, given the regulatory nature of campaign finance

oversight. Familiarity with election law, corporate law, and tax law (especially regarding nonprofits) is also essential, as these areas often intersect with campaign finance issues.

Attorneys should be proficient in interpreting and applying complex regulations, advising clients on compliance, and representing clients in enforcement actions or litigation. Strong research and writing skills are necessary for drafting advisory opinions, legal briefs, and compliance manuals, while effective communication skills are critical for educating clients on the intricacies of campaign finance laws, which can appear counter-intuitive, even to seasoned political actors.

Staying Informed about Changes in the Law

Campaign finance law is a rapidly evolving field, with new regulations, court decisions, and legislative changes frequently altering the legal landscape. Attorneys must stay informed about these developments to provide accurate and timely advice to their clients. Subscribing to legal journals, newsletters, and updates from organizations such as the FEC, American Bar Association, and state election boards is crucial for keeping abreast of the latest changes.

Additionally, joining professional associations and attending conferences or webinars on campaign finance law can provide valuable insights and networking opportunities, allowing attorneys to stay connected with other practitioners and experts in the field.

Selecting a Niche Within Campaign Finance Law

Campaign finance law encompasses a wide range of practice areas, including compliance counseling, representation in enforcement actions, litigation, and advisory services for candidates, PACs, Super PACs, and nonprofit organizations. Attorneys should consider selecting a niche within campaign finance law that aligns with their interests and expertise.

For example, some attorneys may focus on advising corporate clients on political contributions and expenditures, while others may specialize in representing candidates and political committees in FEC investigations. Nonprofit organizations and advocacy groups often engage in political activities and issue advocacy and represent a significant client base for campaign finance practitioners.

By selecting a niche, attorneys can differentiate themselves in the market, build specialized knowledge, and target their marketing efforts more effectively.

Establishing Compliance Systems and Protocols

A key aspect of operating a campaign finance practice is ensuring clients comply with federal and state laws. This requires the establishment of robust compliance systems and protocols. Attorneys should develop standardized processes for tracking and reporting contributions and expenditures, filing required disclosures, and monitoring client activities to ensure adherence to legal requirements.

Services in a Campaign Finance Practice

A campaign finance practice typically offers services designed to help clients navigate the complex regulatory landscape of political contributions and expenditures. Understanding the key services clients may require is essential for building a successful practice.

Compliance Counseling for Candidates, PACs, and Corporations

Compliance counseling is at the core of most campaign finance practices. Attorneys advise clients on complying with federal and state campaign finance laws, helping them understand the rules governing contributions, expenditures, and disclosure requirements. This may involve reviewing client activities,

providing guidance on permissible contributions and spending, reviewing campaign advertisements and other communications, and ensuring that clients file accurate and timely reports with the FEC or state regulatory agencies.

Attorneys may also assist clients in setting up PACs or Super PACs and advise them on the legal requirements and best practices for managing these entities. Compliance counseling often includes ongoing monitoring and support to ensure clients remain compliant throughout the election cycle and post-election.

Representation in Investigations and Enforcement Actions

Clients may be subject to investigations or enforcement actions by the FEC or state regulatory bodies. In these situations, attorneys provide representation and defense, helping clients navigate the investigation process, respond to inquiries, and negotiate settlements if necessary.

This aspect of practice requires a deep understanding of the enforcement process and the ability to advocate effectively for clients. Attorneys may need to engage in fact-finding, prepare legal arguments, and represent clients in hearings or negotiations with regulators.

Litigation Related to Campaign Finance Disputes

Litigation is another critical service offered by campaign finance practitioners. Disputes may arise over issues such as alleged violations of campaign finance laws, challenges to regulatory actions, or constitutional challenges to campaign finance regulations.

Attorneys must be prepared to litigate these cases in federal or state courts. This requires strong litigation skills and a thorough understanding of campaign finance and constitutional law. Successful litigation can set important legal precedents and influence the broader regulatory landscape.

Advising on Contributions, Expenditures, and Disclosure Requirements

Campaign finance attorneys also advise clients on the legal requirements for making political contributions and expenditures. This includes ensuring that contributions are within legal limits, advising on the proper use of corporate funds for political activities, and helping clients navigate the complex rules governing independent expenditures and issue advocacy.

Disclosure requirements are another key area of practice, as clients must accurately report their contributions and expenditures to regulatory bodies. Attorneys help clients understand their reporting obligations and comply with all disclosure requirements.

Client Training and Education on Campaign Finance Compliance

Finally, attorneys can provide training and educational resources to help clients understand their obligations under campaign finance law. This may involve conducting workshops, creating compliance manuals, or providing ongoing support and guidance to clients as they navigate the regulatory landscape.

Ethical and Professional Considerations

Operating a campaign finance practice comes with unique ethical and professional challenges. Attorneys must navigate conflicts of interest, maintain client confidentiality, and ensure compliance with professional responsibility rules while providing effective legal counsel.

Managing Ethical Dilemmas and Conflicts of Interest

Given the politically charged nature of campaign finance law, attorneys may encounter ethical dilemmas and conflicts of interest. For example, representing multiple clients with opposing political views or interests can create conflicts that must be carefully managed.

Attorneys should establish clear conflict-checking procedures and consider potential conflicts before accepting new clients. If a conflict arises, attorneys must determine whether it can be waived with informed consent or if they should withdraw from representation.

Ensuring Compliance with Professional Responsibility Rules

Attorneys must adhere to professional responsibility rules, including those related to attorney-client privilege, confidentiality, and the duty of loyalty. Campaign finance practitioners often handle sensitive information, such as financial records and political strategies, that must be kept confidential and secure.

Additionally, attorneys must ensure that their actions align with the ethical standards of their jurisdiction, particularly when advising clients on aggressive legal strategies that push the boundaries of campaign finance law.

Handling Sensitive Information and Maintaining Confidentiality

Confidentiality is paramount in campaign finance practice, where clients may be involved in high-stakes political activities. Attorneys must implement strong security measures to protect client information, including secure communication channels, encrypted data storage, and strict access controls.

Attorneys should also educate clients on the importance of confidentiality and establish clear protocols for handling sensitive information, both within the firm and when sharing information with third parties.

Preparing for Future Challenges

The field of campaign finance law is constantly evolving, with new challenges emerging as technology, regulations, and political dynamics change. Attorneys must be prepared to adapt to these changes and anticipate future developments.

Staying Ahead of Regulatory and Legislative Changes

Campaign finance regulations are subject to frequent changes at both the federal and state levels. Attorneys must stay informed about proposed legislation, rulemaking, and court decisions that could impact their clients. This requires continuous monitoring of legal developments and active participation in professional networks and associations.

By staying ahead of regulatory changes, attorneys can proactively advise clients on potential risks and opportunities, helping them navigate the evolving legal landscape.

The Impact of Social Media and Digital Advertising on Campaign Finance Law

Social media and digital advertising have become central to modern political campaigns, raising new questions about regulation and compliance. Attorneys must be prepared to advise clients on the legal requirements for online political activities, including the use of social media platforms, digital ads, and influencer partnerships.

Issues such as artificial intelligence in political advertisements, the regulation of micro-targeted ads, and the role of foreign influence in digital campaigns are likely to become increasingly important in campaign finance law. Attorneys must stay informed about these issues and develop strategies to help clients navigate the evolving digital landscape.

Preparing for Increased Scrutiny and Public Interest in Campaign Finance

Campaign finance has become a topic of significant public interest, with increasing scrutiny of political spending and its influence on the democratic process. Attorneys must be prepared for the potential reputational risks associated with representing clients in this high-profile area of law.

This includes advising clients on strategies for managing public relations and media inquiries, as well as preparing for the possibility of litigation or enforcement actions that could attract public attention. By anticipating these challenges and proactively managing risks, attorneys can help their clients navigate the complexities of campaign finance law with confidence.

The Challenges and Opportunities of Campaign Finance Law

Operating a campaign finance practice offers attorneys the opportunity to engage in a dynamic and impactful area of law. By building expertise, establishing a focused practice, and offering a range of specialized services, attorneys can provide valuable legal counsel to clients involved in the political process.

As the legal and political landscapes continue to evolve, campaign finance practitioners must remain adaptable, ethical, and informed, ensuring that they can effectively navigate the challenges and opportunities that lie ahead. In doing so, they will play a critical role in upholding the integrity of the democratic process and protecting the rights of individuals and organizations to participate in the political arena.

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Cimmerian via Getty Images

Corporate Political Strategies: Navigating the Intersection of Business and Public Policy

Chris Gober and Eric Wang

Recognizing the impact that legislation and government regulations have on their bottom line, many corporations have long recognized the need to influence public policy through politically related activities. Historically, these activities have taken a variety of forms, including joining and supporting trade associations, lobbying, the hiring of former public officials, and direct campaign contributions by executives and corporate political action committees (PACs).

In addition to these traditional activities, corporations are increasingly using more innovative avenues to shape public opinion and influence public policy, such as non-electoral issue advocacy, grassroots and "grasstops" lobbying, and the utilization of Super PACs following the U.S. Supreme Court's decision in *Citizens United v. Comm'n*, 558 U.S. 310 (2010). That decision, which effectively struck down a 1947 federal law and other state laws aimed at limiting the clout of corporations in elections, has permitted corporations to engage in the political process in a more robust manner.

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Even when a company's survival does not hinge on the passage of a single piece of legislation or the outcome of any one election, the reality is that new challenges emerge in the corporate sphere every day, whether they involve public policy, customer relations, labor issues, or a variety of other exigencies that can impact a business's success. Thus, any corporation that is not employing or at least contemplating a robust political activities program as part of its overall corporate strategy may be missing opportunities to increase its bottom line or, at the very least, protect it. With that said, there is no denying the reality that at all levels of government, and increasingly within the boardroom itself, corporations must acknowledge the myriad rules and restrictions that govern such activities.

Below is a non-exhaustive list of common political activities conducted by corporations, including a summary of accompanying compliance issues that arise from each effort.

Making Campaign Contributions and Bundling

In some state and local jurisdictions, corporations can make political contributions directly to candidates and officeholders using the corporation's general treasury funds. However, corporations are prohibited from doing so at the federal level and in many other state and local jurisdictions. Rather, corporations must first form a political action committee (PAC), raise voluntary personal (i.e., after-tax) contributions from executives and employees, and then make the political contributions from the PAC's proceeds.

Although corporations cannot use corporate resources to engage in fundraising activities under federal law, company executives often engage in "bundling," where an individual affiliated with the company collects contributions from multiple donors and presents them as a package to a candidate or political committee. This can amplify the influence of the company, as the bundled contributions can significantly increase the total amount given to a candidate, thereby gaining more access and influence.

Personal Political Activities of Executives

Many corporate executives are tuned in to the need to influence public policy through politically related activities, and they often agree to host fundraising events at their homes, call friends and business associates to drum up support and contributions for particular candidates, and make contributions from their personal funds. These types of activities do not occur in a vacuum and frequently involve the use of corporate resources, such as the company telephone, customer lists, and staff.

The scope of permissible and prohibited activities will vary depending on the applicable federal, state, or local laws, but corporations need to understand that such activities can violate a ban on corporate contributions or directly impact their business contracts. For example, violating a gift law could cause a corporation to be disqualified from obtaining government contracts. Making a political contribution (even using an executive's personal funds) to certain state or local officials could cause a corporation to be "timed out" from managing a public pension fund or barred from doing business with state and local agencies.

Hosting Elected Officials and Candidates

An effective way of garnering and generating support for public officials and candidates, as well as increasing their awareness of the corporation, is to invite them for a site visit or to speak at a company meeting or event. Of course, such appearances should be structured carefully and vetted to ensure they do not violate any gifts laws, conflicts of interest laws, ethics rules, or campaign finance regulations. These restrictions could apply regardless of whether the person is an elected member of or a candidate for federal, state, or local office.

The rules for such events vary at a threshold level depending on whether someone is invited in an official or campaign capacity. Events featuring elected officials in their official capacity are treated as constituent events and are generally less regulated, although ethics rules still apply. By contrast, fundraising and other campaign events are generally more regulated.

At the federal level, corporations are broadly permitted to sponsor campaign events for federal candidates and officials with the corporation's so-called "restricted class"—generally, executives, other higher-level personnel, and stockholders. Corporate-sponsored events with employees beyond the "restricted class" are subject to more regulation, such as a requirement that opposing candidates be given a similar opportunity to appear. Lastly, corporate-sponsored events open to those who are neither employees nor part of the "restricted class" are subject to the most regulation and generally must be paid for either by the candidate's campaign or another permissible source (e.g., the corporation's PAC or individual donors). The Federal Election Commission (FEC) also has quirky rules for the time frame in which different types of items (e.g., food versus personnel and meeting spaces) must be reimbursed.

Direct Lobbying

The word "lobbyist" can be taboo in many circles, with a connotation of smoke-filled back rooms and shady deals, but the dictionary definition from Merriam-Webster paints a much milder picture. "To lobby: to conduct activities aimed at influencing public officials and especially members of a legislative body on legislation."

Even if a corporation does not hire a lobbyist or have a government affairs division, the fact remains that many different types of employees and company representatives interact with government officials, including local officials. And because many states and local jurisdictions take a very broad view of what constitutes lobbying and regulate activity that you would not ordinarily think of as lobbying, many corporations unknowingly implicate lobbying regulations.

For instance, some states regulate any attempt to gain the "goodwill" of a legislator, a subjective standard that can encapsulate innocuous interactions. Some states consider a company's salespeople to be "lobbyists" if the company sells products to the government, and others will deem an individual who testifies at a legislative hearing on behalf of their company or industry to be a lobbyist.

The registration thresholds are more lenient under the federal Lobbying Disclosure Act. However, in-house employees may be required to register even under federal law if they make more than one lobbying contact and spend more than 20 percent of their work time and more than $14,000 in compensated time during a calendar quarter on lobbying activities.

In other words, it is extremely important for corporations to recognize that the definition of "lobbying" is what the applicable statute says, not what it means colloquially. By focusing on the specific legal definition, corporations will better understand how their various activities (as well as the activities of their employees and representatives) could be considered lobbying and avoid inadvertently tripping applicable laws.

Grassroots and Grasstops Lobbying

Corporations are increasingly engaging in grassroots and grasstops lobbying to influence public policy and shape public opinion.

Rather than conveying a message to legislators directly through traditional lobbying, grassroots lobbying entails identifying and mobilizing constituents to contact their elected officials concerning an issue. A

successful grassroots lobbying effort can result in tens of thousands of telephone calls being placed to elected officials and thousands of individualized contacts with legislative offices to advocate regarding an issue.

Grasstops lobbying, on the other hand, entails identifying and mobilizing prominent community leaders to be an effective constituent-based advocacy group concerning an issue. For example, a common grasstops lobbying tactic is to ask such individuals to write an op-ed advocating the issue in their local newspaper. A goal of grasstops lobbying is to identify and mobilize the individuals to whom a public official cannot say "no."

While these forms of indirect lobbying are not regulated under federal law, grassroots lobbying may trigger registration and/or reporting requirements in certain states and municipalities for sponsors of such campaigns. The regulation of grasstops lobbying is far rarer, but there are also certain jurisdictions whose lobbying laws may cover this practice.

Providing Gifts, Travel, and Entertainment

Corporations often consider giving valuable items to public officials when meeting with them. These items can range from something de minimis, such as a cup of coffee or company swag, to something more substantial, such as paying for a public official's travel expenses to visit a corporate facility.

Bribery of public officials (i.e., giving something of value as a quid pro quo for official action) is universally and strictly prohibited at all levels in the United States. By contrast, providing unsolicited gifts, travel, and entertainment to public officials unconnected to any official action is generally permitted but subject to extensive regulation.

Federal, state, and local laws generally set different limits on the dollar value of items that may be given to government officials and employees. These laws also provide for different exceptions, such as for meals, refreshments, entertainment, travel, and lodging. Each jurisdiction can prescribe different circumstances under which such exceptions apply and even the specific types of food items and refreshments that can be given. Different restrictions also may apply depending on whether the person or entity giving the gift is a lobbyist, lobbyist employer or client, or government contractor.

Beyond restrictions on what may be given, reporting requirements may also be triggered. Public officials are commonly required to file personal financial disclosure reports, and companies that provide gifts should weigh the optics of showing up on officials' personal financial disclosures if those gifts must be reported. Some jurisdictions also require the person or entity providing gifts to public officials to file their own reports separately. Companies with registered lobbyists are also frequently required to disclose gifts they provide to public officials on lobbying reports.

Making Independent Expenditures and Super PAC Contributions

In 2010, the U.S. Supreme Court issued the landmark *Citizens United* decision that fundamentally altered the political landscape by providing new opportunities for corporations to participate in campaigns. In the case, the Court held that the First Amendment guarantees all corporations the right to spend unlimited amounts of money from their general treasuries on independently produced advertisements and communications that expressly advocate the election or defeat of candidates. The case has often been credited for the creation of so-called Super PACs.

According to the Center for Responsive Politics, as of August 15, 2024, Super PACs and other outside groups have poured about $1.1 billion into the 2024 election cycle—nearly twice what similar groups

spent over the same period in the 2020 presidential election cycle, when independent expenditures hit an all-time record.

While such Super PACs have provided corporations an additional avenue to influence public policy through politically related activities, corporations that are considering contributing to a Super PAC should first understand the legal constraints placed on the entity, the disclosure laws that apply to the contribution, and the potential adverse impact such a contribution could have on customer and shareholder relations.

Utilizing 501(c) Nonprofit Organizations

Corporations donate to 501(c) nonprofit organizations to influence public policy and elections indirectly. These nonprofits include:

- **501(c)(3) charitable/educational organizations.** These organizations are prohibited from engaging in any political campaigning but can educate the public and policymakers on issues relevant to the corporation. So-called think tanks are a common 501(c)(3) vehicle through which corporations seek to influence policy.
- **501(c)(4) social welfare organizations.** These organizations can engage in political activities, provided they are not the organizations' primary activity. They can also accept unlimited contributions without disclosing donors, making them attractive for corporate influence.
- **501(c)(6) trade associations.** These associations represent industries and can engage in lobbying and political advocacy on behalf of their members, including corporations.

Creating a Favorable Environment

Through these diverse strategies, corporations can play a significant role in shaping public policy and the political process. Their influence extends from direct financial contributions to more subtle forms of advocacy and lobbying, all aimed at creating a favorable environment for their business interests.

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RyanKing999 via Getty Images

What Makes Super PACs “Super”? A Legal Primer

Eric Wang

“Super PACs” have become a fixture on the American political landscape over the last 14 years. Some Super PACs, such as “Right to Rise USA” and “Never Back Down Inc.,” have featured so prominently in elections that they were almost synonymous with the campaigns of the candidates they supported (Jeb Bush and Ron DeSantis, respectively).

While most voters may have heard of Super PACs, seen their advertising, and even met their canvassers, there is still little understanding of what a Super PAC is among those who aren’t seasoned political operatives and campaign finance attorneys. This article will attempt to demystify this relatively new feature of American politics.

Legal Background

Although Super PACs first emerged in 2010, when the Federal Election Commission (FEC) issued a pair of advisory opinions formally recognizing them, their legal underpinnings trace back to 1976.

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In 2010, the U.S. Supreme Court issued its landmark decision in *Citizens United v. Federal Election Comm'n*, 558 U.S. 310 (2010). The *Citizens United* case did not specifically address Super PACs; rather, the Court held that corporations may not be prohibited from making expenditures on candidate advocacy so long as they do so independently of candidates and their campaigns (so-called independent expenditures).

Citizens United relied on the reasoning of another landmark Supreme Court case, *Buckley v. Valeo*, 424 U.S. 1 (1976), which upheld and invalidated major provisions of the modern-day federal campaign finance statute. Relevant to *Citizens United* and Super PACs, *Buckley* held that, under the First Amendment, the government may not impose monetary caps on independent expenditures. While campaign finance laws may be enacted to combat corruption, *Buckley* held (and *Citizens United* reaffirmed) that speech that is not coordinated with candidates and their campaigns is not corrupting.

Shortly after *Citizens United*, the U.S. Court of Appeals for the D.C. Circuit applied the Supreme Court's logic to the case *SpeechNow.org v. Federal Election Comm'n*, 599 F.3d 686 (D.C. Cir. 2010). At issue in *SpeechNow* was the $5,000 annual limit on how much any individual donor may give to a political action committee (PAC). Traditionally, PACs collected money from donors to then give to candidates, subject to the PAC's own per-election limit on how much it may give to any candidate. *SpeechNow* held that the $5,000 limit on contributions to PACs was unconstitutional for PACs that make only independent expenditures.

After applying the *Citizens United* and *SpeechNow* rulings, the FEC formally recognized what it called "independent expenditure–only political committees." Reporter Eliza Newlin Carney is credited with coining the more colloquial term "Super PAC" for these entities.

How Is a Super PAC Different from a PAC?

In short, a Super PAC is a PAC that is permitted to collect contributions beyond the PAC contribution limits and outside of the prohibition on corporations and labor unions making political contributions (which otherwise still applies even after *Citizens United*). As a condition for being freed from these shackles that apply to conventional PACs, Super PACs are not permitted to make any contributions to candidates or their campaigns.

What Are the Restrictions on a Super PAC's Spending?

The ban on Super PACs contributing to candidates includes not only making monetary contributions directly to candidates and campaigns but also making so-called "in-kind contributions" (i.e., providing goods or services).

For Super PACs, the ban on in-kind contributions primarily applies to coordination, and specifically the coordination of advertising. At the federal level, the FEC has a well-developed rule on "coordinated communications" that determines whether a Super PAC's paid advertising qualifies as permissible independent expenditures or prohibited in-kind contributions. The rule is comprised of a "payment prong," a "content prong," and a "conduct prong." A coordination violation occurs when all three prongs are tripped.

The payment prong, which asks whether a third party has paid for the ad, is always triggered when a Super PAC pays for the ad. Within the content and conduct prongs, additional "standards" must be met for each of these prongs to be triggered. For example, ads that "expressly advocate" for or against a candidate, that qualify as "electioneering communications," or that refer to candidates within certain pre-election time windows will satisfy a content standard and, therefore, trigger the content prong.

Conversely, if an ad does not satisfy any of the *content* standards, then it does not violate the coordinated communications rule, even if a Super PAC otherwise has engaged in coordinated *conduct* with a candidate's campaign.

The final prong asks whether certain conduct has occurred. For example, a candidate, campaign, or its agents making a "request or suggestion" to a Super PAC, having "material involvement" or "substantial discussions" concerning a Super PAC's ads, or sharing a "common vendor" with a Super PAC will satisfy a conduct standard and therefore trigger the conduct prong.

Until 2024, conventional wisdom had been that, in addition to being prohibited from coordinating communications with candidates and their campaigns, PACs are also generally prohibited from coordinating most other activities. However, the FEC issued an advisory opinion in 2024 permitting candidates and their campaigns to collaborate with others—including Super PACs—on door-to-door canvassing. The FEC opinion was based on some very technical language in the agency's rules and precedents that essentially leave unregulated certain "communicative" activities such as canvassing. At the same time, "non-communicative" activities, such as transporting voters to the polls, may still be subject to the FEC's separate "coordinated expenditure" rule. Super PACs are still prohibited from making coordinated expenditures.

Outside the coordination rules, there are other general prohibitions that could apply to a Super PAC's spending. For example, foreign nationals are prohibited from spending money in connection with U.S. elections. This includes directing the political spending of others. Therefore, Super PACs must ensure that no foreign nationals are involved in any of the PAC's decision-making.

Another important prohibition is that any entity "established, financed, maintained, or controlled" by a federal candidate, officeholder, or any agent thereof may not be involved in soliciting or spending funds in connection with an election unless the funds are subject to a traditional PAC's so-called hard-money limits and prohibitions. In effect, this means that, aside from the coordination restrictions, federal candidates and officeholders are also generally prohibited from involvement in a Super PAC's spending and other activities. For example, a U.S. senator may not form or operate a Super PAC to support a colleague running for president.

Relatedly, this prohibition bans federal candidates and officeholders from raising money for Super PACs in amounts and from sources that a Super PAC otherwise would be permitted to accept (e.g., a $1 million contribution or a corporate contribution). Technically, federal candidates and officeholders may make specific requests from individual donors of no more than $5,000 on behalf of a Super PAC. An FEC rule also permits federal candidates and officeholders to attend a Super PAC's fundraising event as a "special guest" or "featured speaker," so long as they limit any solicitations to "hard money" amounts and sources or do not make any solicitations at all.

Are There Any Restrictions on Contributions to a Super PAC?

Unlike other PACs and candidate and political party committees at the federal level, Super PACs may accept contributions from corporations and labor unions. However, several other so-called source restrictions still apply to them.

First, foreign nationals are prohibited from making any political contributions. This prohibition does not apply to non-citizen permanent residents (also known as green card holders), even though they are still prohibited from voting in American elections. Foreign nationals also include foreign corporations, which are defined as corporations that are organized under the laws of a foreign country or have their

principal place of business in a foreign country. Additionally, the FEC has articulated several restrictions on foreign national involvement in a U.S. corporation's political contributions and other activities, as well as contributions by U.S. subsidiaries of foreign corporations. Therefore, corporations contemplating contributing to a Super PAC must be on the lookout for these issues if they have any key personnel who are foreign nationals or if they have a foreign parent entity.

Another important prohibition that has ensnared a number of corporate Super PAC contributors in recent years is the ban on political contributions by federal government contractors. Several FEC commissioners have questioned the constitutionality of this ban when it is applied to contributions to Super PACs. However, until a court rules that the ban cannot be applied to contributions to Super PACs, the FEC continues to enforce the ban and has collected some hefty penalties from federal contractors.

The federal contractor ban does not apply to individual employees, executives, directors, or shareholders of a federal contractor who make personal contributions to a Super PAC. Affiliated, parent, and subsidiary entities may also be permitted under FEC precedents to contribute to a Super PAC even if one entity within a corporate family holds federal contracts.

Another important prohibition that has ensnared some donors to Super PACs is the prohibition against so-called straw contributions, which the statute refers to as "contributions in the name of another." Specifically, this prohibits one person or entity from giving funds to another person or entity to give to a Super PAC and not informing the Super PAC of the original source of the funds. Such straw contributions would result in only the intermediary and not the original source of funds being reported on FEC reports as the contributor, which frustrates the goal of campaign finance reporting requirements. If a contribution to a Super PAC is made from an entity, the entity must not be a mere pass-through. Rather, the entity must have its own revenues to make the contribution.

A related concern is contributions from limited liability companies (LLCs). LLC contributions to Super PACs are permitted. However, under FEC rules, contributions from LLCs taxed as partnerships must be attributed to all the partners in proportion to how the contribution will reduce their share of the profits, and those partners must be reported accordingly as sources of the contribution. No further attribution is required for contributions from LLCs taxed as corporations.

What Is a Hybrid PAC?

A hybrid PAC is so named because it is essentially two PACs in one. A hybrid PAC has two bank accounts: a "contributions" account and a "non-contributions" or "independent expenditures" account. Like a traditional PAC, the contributions account is used for making contributions to federal candidates, other traditional PACs, and political party committees. Donors are limited to giving no more than $5,000 per calendar year to the contributions account, and corporate and union funds are prohibited. By contrast, the non-contributions account operates like a Super PAC; it may accept contributions in unlimited amounts and from corporate and union donors to make independent expenditures.

State-Level Super PACs

Up to this point, this article has focused on the rules that apply to federal Super PACs. Federal campaign finance law applies to activities to influence elections for federal offices and entities that engage in such activities. Each state has its own campaign finance law that applies to activities to influence elections for state office and entities that engage in such activities. Even some municipalities have their own campaign finance ordinances governing campaign activities in elections for local office.

Super PACs are now universally recognized at the state and local levels. However, there may be some differences in how federal, state, and local laws address certain issues. For example, the ban on federal contractor contributions only applies to contributions to federal Super PACs. State laws also may use different terminology for Super PACs, such as "unlimited committees" (Oklahoma) and "independent committees" (New York).

Importantly, insofar as Super PACs must operate independently of the candidates that they support, each state also regulates coordination differently. The FEC's intricate coordinated communication and coordinated expenditure rules and precedents discussed above do not apply to state-level Super PACs. Therefore, anyone who is involved in state-level political activities must carefully consult the relevant state laws to determine what is permissible for Super PACs in a given state.

Super but Still Regulated

While this article hopefully has demystified what Super PACs are, it has still only scratched the surface. As the *Citizens United* decision observed, PACs, in general, are subject to "burdensome" and "extensive regulations" and "onerous restrictions." While Super PACs are freed from some of those restrictions—namely, contribution limits and certain source prohibitions—they are still subject to complex and obscure rules, some of which have been described in this article. These regulations illustrate why a practice area has developed around political law as this area of the law itself has developed over the last half century.

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Black Men and the Power of Voting

Michael Anderson

Sixty years ago, Malcolm X took the stage in Cleveland, Ohio, and told the audience, “1964 threatens to be the most explosive year America has ever witnessed.” On that night, Malcolm X announced that there existed only two options for Black Americans: the ballot or the bullet. At a time when most Black Americans were being denied their right to vote, the power of the Black vote was being brought front and center for the first time.

Repression and the Power of the Black Vote

The power of the “Black vote” is not lost among Black Americans, neither is it lost among political leaders and strategists. Those who are in and those who seek power are aware that with a single finger, Black Americans have and can change the political landscape in this country. Black Americans, with the press of a button, have the ability to take power from those so desperate to keep it and prevent those who seek it from obtaining it.

Throughout the 1950s and 1960s, southern states used every tactic possible to disenfranchise Black voters. The use of literacy tests and poll taxes prevented many African Americans from even having the

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opportunity to register to vote. Fear was also an everyday tool deployed to prevent southern Blacks from changing the way of life in the South. Threats of loss of employment, violence, and death were used to stop Black people from exercising their rights as American citizens.

Today, we are seeing new attempts to suppress Black voters along with other minority groups. That same fear that was present in the 1960s is very much alive in today's political climate. States are enacting election laws that are aimed at targeting minority voters. Stricter voter ID laws disproportionately affect Black and Latino voters. Black voters have even been purged from voting rolls at higher rates than white voters. Mail-in ballots submitted by Black voters are more likely to be rejected. Black people also experience longer lines at polling locations on Election Day than white Americans. There have even been attempts to roll back the protections of the Voting Rights Act. These continued acts of voter suppression motivate many to run to the polls while it sends others fleeing.

The Ballot or the Bullet

The history of voter suppression in this country has always targeted the Black community, often leaving them with only two choices: vote or die. Many Americans are now finding themselves in a space usually only reserved for Black voters in America. They are now faced with the charge to vote or die—to vote or see the rights and privileges that they enjoy be stripped away. This is a year that carries with it the choice of the ballot or the bullet. The ballot is a symbol of unity, power, and freedom. The bullet, on the other hand, is a representation of the failed promises of government leaders, the loss of freedom and opportunity, and death at the pull of the trigger.

Today, we are seeing ourselves in the same space as Malcolm X saw the year 1964. Sixty years later, 2024 is a year that looks to replace 1964 as the most explosive year in American history. No matter the outcome of the presidential election, one way or the other, history will be made. This county will either elect the first woman president or reelect a convicted felon. Many, particularly Black Americans, see this election as one that will carry them forward or set them back. Black Americans, more than ever, are in a race for their lives.

This election season is putting Black men in a space that they often encounter during these periods. Black men are a key demographic that those vying for office look to tap into. Black men are those swing votes a candidate needs to win office. The candidates vying for these votes look to their inner circle on how to win over the Black male demographic. Often, this advice is not coming from a Black man, or it comes from one no longer connected to the Black community. During each election cycle, Black men find themselves in a familiar space with candidates seeking office. This all-too-familiar space brings out the frustrations that are voiced by some Black American men. For those not inside this space, if you look closely, you will find candidates who choose to pander to Black men as if Black men are not able to see through their performance. There are promises that most know are filled with only lies and deceit. There, you can also find guilt placed on those who choose not to vote and shame for those who choose not to support the candidate that the Black community has endorsed as their choice.

This heavy power, and sometimes burden, that African American men possess with the ballot is sometimes overshadowed by the bullet. Black men often feel forgotten after casting their ballots for a candidate who will often neglect their needs and concerns once in office. This is a frustration that is echoed by the Black men who choose not to vote because they feel as if they are only being used for a vote. This frustration is echoed by the Black men who choose to vote and feel forgotten by those they help put in office. Younger Black men often voice concerns that there is no hope in a government that does not seem to want them to succeed. Those younger Black men often choose the bullet because they question if their vote even matters or makes a difference. They are stuck in a place to wonder if there is any point in voting when they do

not see the changes that those on the campaign trail promised they would see. The Black men who have chosen the bullet feel as if there is no hope or unity in America. The men who have chosen the bullet are often those who have been cast aside and see no way back on the track.

The Black men who have chosen the ballot are not without their own concerns. They are often discouraged by the effort put forth to gain their trust. These Black men wonder why their own needs and concerns are not accurately addressed by candidates. They wonder why those they help to elect are not out fighting for their rights. They question where the concern is when they are the victims of police brutality, harassment, and discrimination. Black men who have chosen the ballot are seeking to be heard and appreciated. They are seeking to bring their issues to the table and have them adequately addressed.

Bringing More Black Voters to the Polls

This year, in particular, the men who have chosen the ballot have made it their mission to bring the men who have chosen the bullet to the polls. Black men have formed their own collective groups to encourage those who have lost hope to register and vote in this upcoming election. Now more than ever, Black men are seeing that this is not the time to let anything overshadow their responsibility to vote. Collective groups of Black men are meeting and forming on national and local levels. They are meeting in barbershops, churches, and schools, and they are even bringing their missions to street corners to meet men where they are.

Black men find these groups as safe spaces where they are able to freely discuss how they feel about the political process without the fear of judgment and being misunderstood. These groups allow Black men to express themselves among those who understand them, think like them, and, most importantly, look like them. In these collective groups, you will find unity, love, and respect. The men in these groups share one common goal, and that goal is to make their voices heard and their contributions to the political process acknowledged and respected.

Many have asked how it is possible for Donald Trump to be on the Republican ticket for president as a convicted felon. This is a question that most Americans want answered because most states have some type of law that restricts the voting rights of people with felony convictions. While most Americans are scratching their heads trying to figure out the answer, Black men in America see this more as irony than an actual question. Black men are more likely to be targeted by law enforcement for the same crimes as their white counterparts. They are more likely to be arrested for those same crimes. They are more likely to be prosecuted for those crimes. They are more likely to receive harsher sentences for the same crimes as their white counterparts. Those crimes are more likely to result in a felony conviction. Those felony convictions lead to the loss of certain rights, including the right to vote. Felony convictions not only limit voting rights but also employment, housing, and government programs that are aimed at getting a person back on their feet. Black men and women are often turned down for jobs if they have the slightest criminal history. They will often be denied affordable housing and educational opportunities. Felony convictions for Black men and women will limit their possibilities and will make it harder to start over and move away from their past mistakes. The Black community sees Trump's candidacy as another example of white privilege. While a Black man will be turned down for a job because of his criminal history, Donald Trump is allowed to seek the highest office in this country not just with a felony conviction but with additional pending cases against him.

This irony has caused many Black men who would normally choose not to vote to instead make this the year they choose the ballot. This is the year that these Black men have decided that their voices will be heard, that their votes will matter, and that they will make a difference, not just for themselves, but for future generations. Collectively, Black men have decided that their voices will no longer be silenced. They

have taken the charge to bring other men to the polls with them. Black men see it as their mission to protect Kamala Harris from the attacks that she is enduring. They are calling out other Black men who are fighting against them. This year, Black men have made it clear that pandering, lies, and misinformation will no longer be accepted in the spaces that they inhabit. Black men have decided that it is time to put an end to the frustrations that they have voiced for decades. Black men have taken the stand that the ballot, now and forever, will be their only choice.

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Free Speech and Free Press in the Age of Disinformation

Bobby Desmond

The First Amendment's protections of religion, speech, the press, assembly, and petition are not only essential to the pursuit of happiness by each person, individually, but also to the proper functioning of a republic governed by the people as a whole.

Admittedly, speech can have negative consequences. The following is a non-exhaustive list of concerns commonly raised by lobbyists and legislatures when attempting to restrict speech:

- The unintentional spread of false information, also known as "misinformation."
- The intentional use of false information to mislead, also known as "disinformation."
- The intentional weaponization of false information to cause harm, known as "defamation."
- The unintentional disclosure of private information, such as data leaks.
- The intentional and unauthorized access of private information, such as data breaches and intrusion upon seclusion.
- The intentional disclosure of private information to cause harm, such as nonconsensual

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dissemination of intimate images and public disclosure of private facts.

- The intentional and unauthorized use of name, image, and likeness rights and intellectual property.
- The use of speech that is integral to illegal activities such as extortion, conspiracy, and solicitation.
- The recordation of illegal activities such as child sexual abuse materials.
- The disclosure of government secrets.
- The incitement of or threatening to engage in imminent violence, such as urging a mob to attack a nearby building or threatening the life of an elected official.
- The intentional obstruction of government actions such as filing false elector certifications.

Undoubtedly, in some instances, the government may have a compelling interest to use the least restrictive means necessary to prevent the harms of certain historically unprotected areas of speech. In other instances, the government should more finely distinguish between thought, expression, and action to carve out suitable space where only specific criminal activities are prosecuted, while the mere exercise of religion and speech rights is left uninhibited. It is the government's constitutional obligation to ensure that its means are sufficiently narrowed, its interests sufficiently compelling, and its restraints sufficiently distinguishable and clear.

As citizens of this great nation, it is our civic duty to take whatever additional measures may be necessary to further reduce the adverse influences of false information and other forms of harmful speech on our own lives rather than relying on the government to constrain protected speech that we disagree with or otherwise disfavor. It is high time that we return to the principled doctrine of counter-speech and resume curtailing misinformation, disinformation, and other harmful speech by speaking our piece rather than by passing laws that require others to hold their peace. Speech should never be compelled or confined if further discourse would expose falsehoods or otherwise remedy the harm caused by that speech.

The Spread of False Information by Traditional Media

It is no secret that false information is often included in print, online, broadcast, and cable news—whether by accident, mistake, misunderstanding, negligence, recklessness, or intention.

In an ideal world, the news would be completely objective, and there would be a clear delineation between reporters, commentators, and entertainers. However, people are deeply flawed and inherently imperfect. Even the most skilled reporters inadvertently omit crucial details that provide necessary context or color their stories with a shade of subjectivity that leads to false or misleading representations. Further, both capitalism and politicking incentivize the blurring of news, opinion, and entertainment and cause consumers to misinterpret the speaker's objectives. Nevertheless, these justifications are insufficient to support governmental restrictions on a free press.

Proponents of statutory limitations on the press believe the general public often lacks the knowledge, skill, and resources necessary to effectively shift through the noise and confirm the veracity of reporting. Opponents of such limitations, on the other hand, appropriately acknowledge that transparent public discourse in a free marketplace of ideas is the best-known method of uncovering the truth. While a better method may exist, it has not yet been discovered. Of course, fairness is not innate in the free marketplace of ideas, and the government has a compelling interest in discouraging the injustices caused by defamation.

Defamation law currently provides a reliable (though not always satisfactory) check when reporting includes misinformation or disinformation. For example, defamation claims have been successfully brought in recent years against (1) InfoWars host Alex Jones for his lies about the Sandy Hook shootings; (2) Fox News for the lies of its anchors, reporters, and pundits about the reliability of certain voting

machines in the 2020 election; and (3) CNN for its portrayal of high school student Nicholas Sandmann engaged in a March for Life rally as a racist.

Proving the elements of a defamation claim for disinformation is fairly straightforward because the false information is published with the intention to mislead. A defamation claim for misinformation is somewhat harder to prove because the false information is spread unintentionally, but the elements may still be proven by showing a lesser mens rea. Most plaintiffs must show that the speaker was at least negligent as to the falsity of the statement, but public figures must show that the speaker had actual malice—that is, knowledge of or reckless disregard for the falsity of the statement.

Indeed, defamation law as a deterrent and enforcement mechanism against misinformation and disinformation has its flaws. For example, both InfoWars and Fox News were able to repeat their lies for years, and Alex Jones has gone to significant lengths to evade paying damages to his victims. CNN settled the Sandmann defamation case one year after it was filed and did not engage in repeated publication of the allegedly defamatory statements. Even after hefty judgments against or settlements by these defendants, millions of Americans still fundamentally believe the false information at the core of those cases. Plus, defamation law cannot be used to prevent the publication of defamatory materials, as such an order would be an unconstitutional prior restraint. Thus, it is the responsibility of other members of the press to correct the record, and the responsibility of consumers to consult multiple sources.

Exercising Free Speech Rights on Social Media

Social media is not a haven for free speech. While the First Amendment prohibits the government from restricting speech, social media platforms can freely choose (1) what speech to solicit or ban, (2) what posts to promote or demote, and (3) whether to allow or deactivate comments on, monetization of, and other engagements with those posts. More broadly, platforms are given free rein to determine whether certain users should be (1) included in lists of suggested accounts, (2) given access to the platform without special promotion, or (3) deplatformed entirely.

Many prominent influencers have criticized various platforms for making purportedly discriminatory moderation decisions based on political viewpoint and for being notoriously opaque in their decision-making and appeals processes. Advocates of government regulations for social media platforms often support plans that require (1) political neutrality by moderators, (2) conspicuous disclosure of the platform's content policies, and (3) a fair and transparent appeals process. For example, the Supreme Court recently remanded *Moody v. NetChoice* and *NetChoice v. Paxton*, 603 U.S. ___ (2024), because the lower courts failed to properly analyze the First Amendment concerns with similar laws in Florida and Texas.

Some skeptics of such regulations argue that platforms should be free to cater to certain political ideologies, as any such regulation would amount to unconstitutionally compelled speech. These skeptics often proclaim that the Internet bubbles that develop on these platforms are safe spaces whereby reasonable people can freely associate to debate their beliefs in good faith while excluding those who vehemently disagree with their claims and engage in name-calling and bullying but refuse to articulate an argument on the merits. Other skeptics propose that increased transparency in the enforcement of content policies provides bad faith actors with the tools necessary to violate the spirit but not the letter of the platform's rules.

The mere fact that the censor is a corporate entity rather than a governmental body does not eliminate the deleterious effects of the censorship on the marketplace of ideas, but private censorship is less impactful than government censorship because it narrowly applies to a specific platform rather than to the overall

marketplace. Even if censorship is widespread across many platforms, speakers can easily make their speech heard on less restrictive platforms or, if they have the resources, start their own platforms, as Donald Trump did. Unlike the finite public airwaves, which operate under an equal-time rule for political advertising on the lucky few with radio or television licenses, the Internet is not so limited a resource that the imposition of an equal access rule is necessary on social media. Less restrictive means are readily available to further the government's interests in this setting.

While not constitutionally required to do so, general-purpose platforms such as Facebook and Reddit should strive to employ only the least restrictive means of regulating protected speech because the marketplace of ideas is greatly hindered when such platforms broadly restrict large categories of protected speech, such as hate speech or sexually oriented speech. For example, many general-purpose platforms allow users to create their own forums, such as Groups and Subreddits, and to freely control the admission of members and the rules of posting to that specific forum. User-moderated forums allow users to have valuable conversations about tough topics such as race, gender, and religion, to express taboo thoughts, and to explore their sexual desires and sexuality without pushing that speech into the feeds of users who may be harmed by or are otherwise uninterested in that speech. However, frequenting such forums may drive the user into an information silo that leaves a false impression that the range of opinions held on any given topic is limited to those expressed by the members of the forum. If left unchecked, these forums may also morph from a place for discussing radical ideas into a place for planning illegal activities. Conversely, defenders argue that these forums act as safety valves that permit users to engage in hate speech so that they do not act out violently. To safeguard against these risks, platforms must take an active role in enforcing their broader content policies in these forums while leaving the enforcement of forum-specific rules to the users who manage those forums.

Even as many platforms aggressively moderate user-generated content to limit the undesirable impacts of free speech, many naysayers assert that current levels and methods of moderation are insufficient because the platforms struggle to prevent users from sharing pirated content, nonconsensual intimate images, child sexual abuse materials, government secrets, leaked and hacked private information, and other harmful speech. Recent advances in artificial intelligence are preventing the publication of some types of harmful speech, but this software often makes mistakes and over-moderates protected speech. Many platforms are also experimenting with new means of diminishing the destruction caused by harmful speech. For example, the Community Notes feature on X allows users to fact-check or otherwise add context to another user's tweet.

In other instances, the blame falls squarely on the speech or activities of the platform itself. For example, recent lawsuits allege that algorithms used by Meta, Google, and TikTok result in radicalization and influence users to join terrorist causes or take up eating disorders. Restrictions on platform speech run many of the same risks previously discussed in this article.

The Special Case of Sexually Oriented Speech

In recent years, there has been a resurgence of legislative constraints and coordinated political attacks on websites that allow users to post sexually oriented speech. Often, these laws and movements are led by conservative Christian groups and right-leaning members of the traditional media who frame their motive as a desire to end human trafficking. While their stated ends are undoubtedly noble, their means typically result in overbroad and vague laws and corporate policies that are hard to enforce, are ineffective at achieving their goals, and violate free speech ideals.

Most notably, the passage of FOSTA (Allow States and Victims to Fight Online Sex Trafficking Act) and SESTA (Stop Enabling Sex Traffickers Act) in 2018 was intended as a path to prosecuting operators of

websites where sex trafficking occurs. The law's existence has had a massive chilling effect on protected speech. Many of the world's most popular sites, such as Tumblr and Craigslist, chose to preemptively ban sexually oriented speech rather than risk criminal prosecution and civil liability, and numerous forums dedicated to discussing sexuality and gender issues shuttered.

In 2021, payment processors began requiring website operators to execute strict age, identity, and consent verification before allowing a user to post sexually oriented speech. This form of private censorship is more troublesome than platform-specific censorship, as it broadly applies to all platforms that accept credit card payments. Rather than submit to these new policies, a few adult platforms have chosen to transact solely in cryptocurrency.

More recently, nearly half of the states across America have passed laws that require website operators to verify the age of all users before granting access to sexually oriented speech. The Supreme Court is expected to review the constitutionality of Texas's age verification law in fall 2024.

While these laws and policies may seem commonsense on the surface, civil rights organizations have been quick to point out that these rules greatly confine anonymous speech, subject users to having their personal information (including intimate details about their gender identity, sexual orientation, and romantic history) hacked, and potentially give the government and other nefarious actors a way to track the public's sexual activities.

Conclusion

Politics are inarguably creating a schism across the country, and our ideological differences are undisputedly magnified by the traditional media we consume and the social media platforms we visit. Nonetheless, Americans soundly agree that a thriving democracy requires freedom of thought, freedom of expression, freedom of association, and freedom of the press. While we celebrate our founding fathers for enshrining protections of these rights in the First Amendment, we also continue to elect legislatures that pass laws that drastically and unconstitutionally limit these rights in a variety of ways and for a plethora of reasons. Instead, we must challenge such laws, encourage a free and fair marketplace of ideas, and make adjustments in our personal lives to account for changes in media and technology.

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stevanovicigor via Getty Images

Election Law, Artificial Intelligence, and Alternative Facts

Kim Wyman and Carah Ong Whaley

"Alternative facts" was a phrase coined by Kellyanne Conway, U.S. counselor to the president, during a *Meet the Press* interview on January 22, 2017, when she was asked to defend a false statement about the attendance numbers of Donald Trump's inauguration as president of the United States. With the rapid proliferation of accessible artificial intelligence (AI) tools that generate realistic text, audio, and images, it's not just false statements we have to worry about. The rapid deployment of AI, particularly generative capabilities such as deepfake creation, is cheaper, easier, and more likely to manipulate public perceptions, posing unprecedented threats to our information ecosystem with grave implications for informed participation in democracy. These tools have the potential to undermine election integrity in the United States and around the world, with the 2024 campaign potentially becoming the election of artificial facts.

Artificial Intelligence: Potential Benefits, Potential Threats

Generative artificial intelligence (GenAI) technologies are just tools and can also be used as a force for good in elections. For a challenger running on a tight budget without the funds for ads, campaign

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materials, a professionally crafted slogan, or a team of volunteers to reach out to voters online or by phone, AI could provide a chance to level the playing field against better-funded incumbents. For election officials looking to boost communication with voters, streamline resource allocation, catch fraud or irregularities in voting, or verify signatures on mail-in ballots, AI could also be a powerful tool to help them do their jobs more effectively. But without regulation, the same technologies can also be deployed to manipulate voters and undermine confidence in elections.

GenAI technologies give any actor, including foreign adversaries, the ability to systematically create hyperrealistic content, generating copies and impersonations of faces and voices that can be nearly impossible to distinguish from real life. In combination with personal data, such tools can also be used as part of a political strategy to confuse voters about rules and to discourage voting among particular demographics or within specific geographic areas or communities. What's more, they can also be used as part of malign influence operations to further sow divisions among the electorate and destabilize domestic politics. In addition to increasing the risk of the public believing false information, the use of AI to generate and share content also erodes public trust in authentic content.

The challenge also extends to election administration: AI can be used to generate malware to attack election infrastructure, target election offices, and automate the harassment of election workers. Given the decentralized nature of U.S. elections, the burden of addressing this unprecedented issue falls on state and local officials. Recently, Grok, an AI chatbot operated by X (formerly known as Twitter), disseminated false information regarding ballot laws in nine states. Urging the platform to respond, Minnesota Secretary of State Steve Simon and four other secretaries of state wrote a letter to X owner Elon Musk, urging him to correct the misinformation. The letter highlights the broader challenges posed by AI models that often fail to provide accurate voting information and suggests a simple, proactive solution: directing users to resources provided by election officials, such as CanIVote.org.

Deepfakes

Deepfakes are videos, photos, or audio recordings that seem real but have been manipulated with AI. They allow any actor—domestic or foreign, state or nonstate—to invent or reshape reality in the form of images, audio, and video. The underlying technology can replace faces, manipulate facial expressions, and synthesize faces and speech. Deepfakes can depict someone appearing to say or do something that they, in fact, never said or did. The technology can be used to depict or share events that never happened or to recontextualize events that did.

There are already examples of this type of manipulation by domestic actors that have impacted the 2024 election, from synthetic robocalls of President Joe Biden encouraging voters to skip the primaries in New Hampshire, to deepfaked images of President Donald Trump used to propel "inside job" conspiracy theories about the first assassination attempt on his life, to pro-Kremlin propagandists using AI-generated audio as evidence for false claims in articles that Barack Obama suggested that the Democratic Party was behind this failed assassination attempt against Donald Trump.

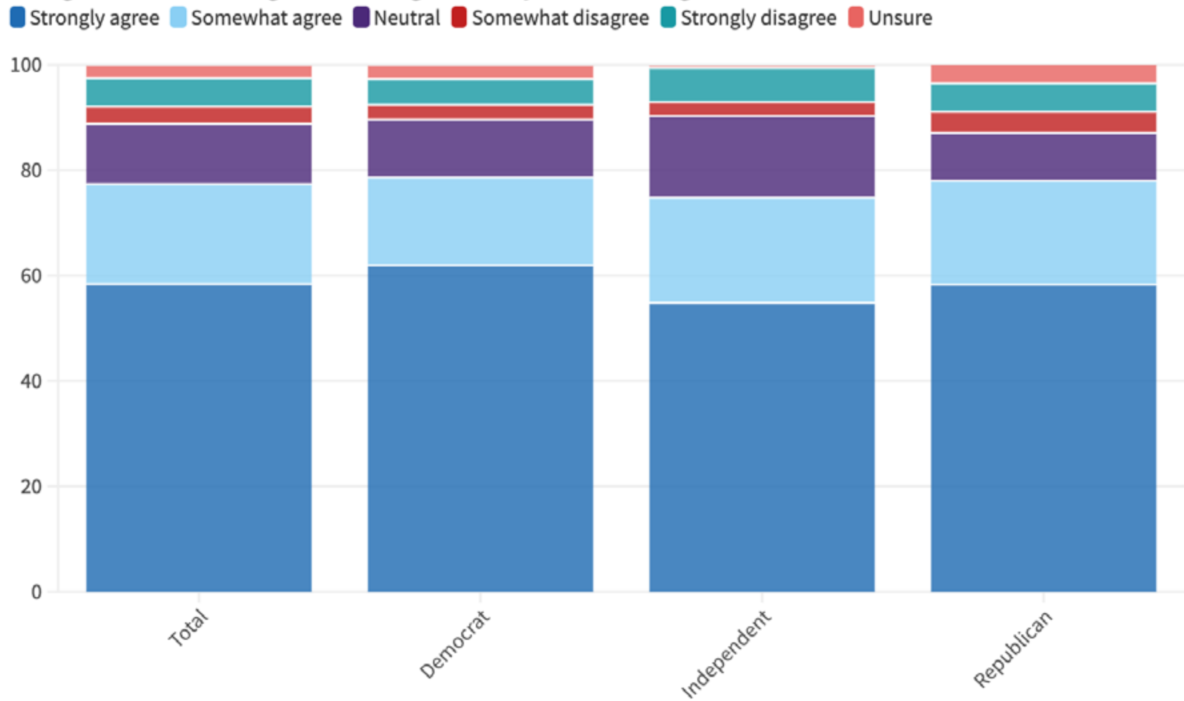
AI technologies and the ways they are used are continuously improving and evolving. As a result, it is less expensive, easier, and faster to produce new content or "synthetic media," including convincing but false images of public figures and events.

Use of AI by Foreign Nations to Disrupt Democracy

Research shows that some countries—including Russia, China, Iran, and Venezuela—are purposefully experimenting with GenAI to manipulate the information ecosystem and undermine democracy. These countries have used AI technologies to disrupt democratic elections around the world. Intelligence

agencies have repeatedly warned that the United States must be prepared to address the threats posed by the use of AI for malign purposes in U.S. elections. For example, in its 2024 annual report, the Office of the Director of National Intelligence warned that Russia, China, and Iran are “growing more sophisticated in digital influence operations that try to affect foreign publics’ views, sway voters’ perspectives, shift policies, and create social and political upheaval.” The range of strategies and tools they use for malign influence efforts have both improved and expanded to leverage all elements of the information space, including ownership of online media outlets and tech platforms, business and advertising pressure, and traditional censorship techniques, as well as deepfakes, bot armies, and microtargeting.

Furthermore, large language models (LLMs) and synthetic media generators that can convert text to image, text to audio, and text to video present additional critical challenges to the information environment broadly that can be applied to elections specifically. Previously, it was feasible to identify foreign inauthentic accounts through their misuse of the English language. However, LLMs have made it possible to translate content from any language into nearly flawless English. Suppressing the votes of marginalized communities, including language-minority citizens, is a very old political strategy, but AI tools can translate text and audio across languages, greatly reducing the time and resources previously required to target language groups. Bad actors may also dub or subtitle an official news source with false information in order to confuse voters. In addition, LLMs can be used to rapidly generate automated and persuasive propaganda that can be scaled up and distributed widely across a range of digital platforms.



Issue One Survey with Citizen Data, May 2024. N = 1,001 registered voters; margin of error is +/- 3.1%.

Can We Create Safeguards in Time?

Federal Safeguards

A majority of Americans agree: Federal action is needed to curb the use of fake images and videos generated by AI in elections and political campaigns (see chart on previous page). At the federal level, the AI Transparency in Elections Act (S. 3875), the Protect Elections from Deceptive AI Act (S. 2770), and the Preparing Election Administrators for AI Act (S. 3897) are bipartisan, vetted legislation that build necessary safeguards against the negative effects of this rapidly developing technology. While more must be done to buttress our election infrastructure, particularly through congressional appropriation of robust and consistent federal election security grants, these bills would enable some initial necessary safeguards. The Biden administration also issued an executive order requiring the "watermarking," or clear labeling, of AI-created content.

The Federal Election Commission (FEC) has been dragging its feet on a process to potentially regulate AI-generated deepfakes in political ads ahead of the 2024 election, and as of this writing (late summer 2024), it appears it will fail to do so. Intentional misrepresentations of voting rules are already a felony, but the FEC ought to use its authority to clarify how existing federal law against "fraudulent misrepresentation" in campaign communications applies to AI-generated deepfakes. However, even if the FEC miraculously acts to clarify the law on fraudulent misrepresentation, it wouldn't enable the agency to require outside groups, such as political action committees (PACs), to disclose when they imitate a candidate using AI technology. So, loopholes remain.

While the FEC has been slow to action, the Federal Communications Commission (FCC) has proposed rules including both on-air disclosures and written disclosures in broadcasters' political files when AI-generated content is used, especially to create deceptive deepfakes. The FCC's proposed rules are especially important because broadcasters do not interpret current rules as requiring disclosure of AI-generated content, and, in fact, broadcasters may go so far as to interpret current FCC rules as prohibiting broadcasters from requiring disclosure. The proposed FCC rules would extend the disclosure requirements to both candidate and issue advertisements, which is important for recognizing the broad impact of AI-generated content and ensuring that all political messaging is subject to the same transparency standards. Finally, the proposed FCC rules would apply the disclosure requirements to all pertinent content carriers, which would ensure that all major content platforms under the FCC's jurisdiction are covered at the local, state, and federal levels. However, as previously noted, a wide range of actors use AI, and while the FCC's rules would address political campaigns, they are no panacea.

State Safeguards

Many states have also enacted measures to address the use of generative AI in elections, including Alabama, Arizona, California, Colorado, Delaware, Florida, Hawaii, Idaho, Indiana, Michigan, Minnesota, Mississippi, New Hampshire, New Mexico, New York, Oregon, Texas, Utah, and Wisconsin. Other states, including New Jersey, Massachusetts, and Virginia, are considering such laws.

When it comes to the use of generative AI in political ads, many states have adopted a straightforward solution: requiring clear disclosures. The idea is to let people know when they're seeing or hearing content that's been crafted by AI. Most states with laws on this issue simply ask for a disclosure—whether it's an audio or text note—stating that the ad includes AI-generated content.

Utah, for example, requires disclosures depending on what the AI is used for. If the ad only features AI-created visuals, viewers will see a message like "This video content generated by AI." If it's just audio that's synthetic, listeners will hear a statement like, "This audio content generated by AI." Florida has

also adopted a similar approach with regard specifically to the use of GenAI in elections. If an ad shows someone doing something they didn't actually do with the intention to injure a candidate, Florida law requires a disclosure: "Created in whole or in part with the use of generative artificial intelligence (AI)." Failing to include this warning doesn't result in just a slap on the wrist—it's a first-degree misdemeanor for anyone who funds, sponsors, or approves the ad.

While disclosures are an important first step, they may not go far enough to prevent harm. It's possible that viewers or listeners may not see or hear disclosures, for example.

Not all states merely require disclosures. Texas, for instance, has taken a tougher stance. They've made it a crime to publish a "deepfake" video within 30 days of an election "with intent to injure a candidate or influence the result of an election." However, there's already been some pushback—one Texas court ruled that this law was unconstitutional because it wasn't narrowly focused on a compelling state interest. Arizona's law stops people from impersonating a candidate or someone on the ballot, but it doesn't cover other types of impersonations, such as a fake news anchor talking about a candidate.

In addition, it is still very difficult to detect and trace the origin of GenAI content, and enforcing statutes and policies poses myriad challenges. Take, for example, social media companies, which have largely failed to address the threats posed by the spread of disinformation. Most companies have severely cut back content moderation teams and shelved fact-checking and tracking tools.

What to Do: Touch Grass

The metaphor "touch grass" is used when someone is spending too much time online and needs to spend time outside, disconnect from technology, and engage with the physical world. Surveys show that the majority of Americans are concerned that AI will be used to manipulate the outcome of the 2024 elections. And they are right to be concerned. Voters need to be aware that bad actors might spread false information using AI tools to create highly personalized and interactive content that misleads people about conditions at voting sites, voting rules, or whether voting is worthwhile. Voters should also know that they may be targeted with false content that is highly specific or personal. False content may come to them in texts, messaging apps, and phone calls. We all need to "touch grass" by acting only on election information from official and credible sources and always double-checking any information about a polling location by contacting the local elections office or visiting a state's election website.

Lawyers can "touch grass" by getting involved with the American Bar Association's Democracy Task Force, whose mission, in part, is to "bolster voter confidence in elections by safeguarding the integrity and non-partisan administration of elections, and by providing support for election workers and officials." Lawyers can also help address the dangers posed by AI technologies by being at the forefront of efforts to enact legislation at the federal level and in states that have yet to do so. They can also contribute their expertise on the enforcement side to ensure those who violate laws are held accountable.

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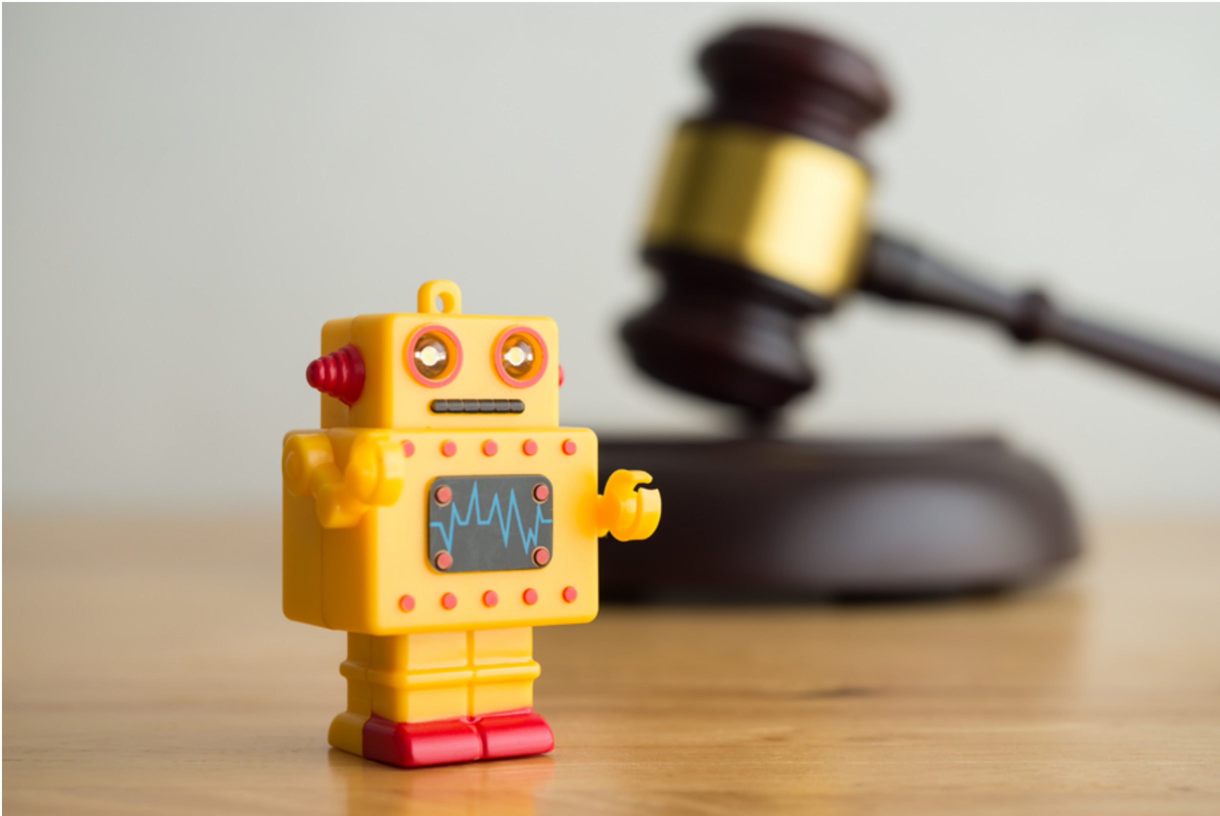

Pla2na via Getty Images

Artificial Intelligence Tools for Lawyers

Mathew Kerbis

The legal profession is undergoing a profound transformation driven by the rapid advancement and integration of artificial intelligence (AI) technologies. This evolution presents both unprecedented opportunities and significant challenges for legal practitioners. Those of us who want to improve our practice and better serve the public must learn to use AI, which is a daunting task in light of the vast array of novel tools on the market. To help you get there, let's explore the AI landscape, examining various tools, applications of such tools, and the implications for the legal profession.

General-Purpose AI Tools

The advent of powerful general-purpose AI tools has had a significant impact across industries, including law. Large language models (LLMs) such as OpenAI's GPT series, Anthropic's Claude, and Google's Gemini have demonstrated remarkable capabilities in natural language processing and generation. These models have limitations but can assist lawyers with a wide range of tasks, from initial nonlegal research to drafting non-confidential documents and even analyzing complex legal scenarios (as long as you omit sensitive or confidential information from the input).

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Microsoft's integration of AI into its Office suite through Copilot represents another significant development. This tool enhances productivity by offering AI-powered assistance directly within familiar applications such as Word, Excel, and PowerPoint. For lawyers, this can mean more efficient document creation, data analysis, and presentation preparation. Turning written briefs into demonstrative exhibits for trial or research/opinion memos into presentations with graphics and charts is as easy as prompting Copilot in PowerPoint (and iterating for improvements).

Writing assistants such as Grammarly have evolved beyond simple spell-checking to offer sophisticated grammar and style suggestions powered by AI. These tools can help lawyers improve the clarity and professionalism of their written communications, from client emails to court filings.

Adobe's incorporation of AI into its PDF and e-signature platform is particularly relevant for legal professionals who frequently work with PDFs in Adobe. The AI assistant can help with tasks such as document summarization and information extraction, and new features are being added, streamlining document management processes.

Design platforms such as Canva and Beautiful.ai have integrated AI to simplify the creation of visual content. While visual presentations are not traditionally a focus for lawyers, their increasing importance in courtrooms and client communications makes these tools valuable for modern legal practice. These tools are particularly useful for law firm owners (such as this author) in marketing and business development.

Perhaps one of the most intriguing developments is the emergence of AI-powered answer engines such as Perplexity. Unlike traditional search engines, Perplexity synthesizes information from multiple web sources to provide concise, cited answers to queries. For lawyers, this can offer a rapid way to gain initial insights into unfamiliar legal topics or to quickly gather background information on cases or clients before pursuing traditional or AI-powered legal research.

Legal-Specific AI Tools

There are dozens of AI tools specifically catering to legal professionals. Each one warrants a deep dive, and this article will not attempt to explain all of them in great detail. Instead, a broad overview will be presented so you can see which category of tools is most useful for your practice, thereby narrowing your search and reducing your time spent doing follow-up research. There are far more tools than can be listed in this article, as the market is changing rapidly. By all means, do not limit your follow-up research to the tools listed below.

General Legal AI Assistants

These tools are the closest thing to one-stop shops for legal AI. Some of these do it all, and some do it better than others or in ways more preferable to you. Just like flavors of ice cream, there's one for everyone's preference. That said, some of these use the same ingredients, while others have proprietary ingredients and/or toppings that help differentiate themselves. While these tools might also fit into the narrower categories listed below in subsequent sections, they will be omitted there for the sake of brevity. Leading examples of general legal AI assistants include the following:

1. Paxton AI. This comprehensive legal AI assistant offers document analysis, drafting, and research capabilities. Its ability to understand legal context and terminology makes it particularly powerful for law firms of all sizes. Paxton is the only listed tool (at least at the time I wrote this article) to have its own proprietary legal large language model. This author uses Paxton as his primary AI tool.
2. LawDroid. Offering customizable AI chatbots and automation platforms, LawDroid allows law firms to streamline client interactions and internal processes. It can handle tasks from initial client

intake to document generation, freeing up lawyers' time for more complex work.

3. GC AI (General Counsel AI). Designed specifically for in-house legal teams, GC AI addresses the unique needs of corporate counsel, including contract management, regulatory compliance, and risk assessment.
4. Centari. Focused on transactional law, Centari offers specialized assistance for contract review, due diligence, and related tasks.
5. Legalyze.ai. This practice area–agnostic AI tool aims to assist with various legal tasks across different specialties.

Legal Research

These tools not only speed up the research process but also have the potential to uncover relevant precedents or arguments that might be missed via traditional research methods. They can analyze vast amounts of legal data, identifying patterns and connections that can inform legal strategies. Leading examples include the following:

1. Vincent AI (vLex). Leveraging vLex's extensive legal database, Vincent AI offers advanced search and analysis features for case law and legal documents.
2. Responsiv. Focused on legal research for in-house legal teams, Responsiv offers AI-driven research tailored to corporate legal needs.
3. Lexis+ AI. LexisNexis's AI-powered platform enhances its traditional legal research offerings with features such as natural language querying and predictive analytics (with mediocre results).
4. Co-Counsel (Thomson Reuters). Recently acquired by Thomson Reuters, Co-Counsel integrates AI capabilities into the Westlaw ecosystem, offering research and analysis tools (with worse-than-average results compared to other listed tools).

Document Analysis and Management

These tools can significantly reduce the time spent on document review and analysis, allowing lawyers to focus on higher-level strategic work. They can also help ensure consistency in contract interpretation and reduce the risk of overlooking important clauses or provisions. Leading examples include the following:

1. Henchman. Offering AI-driven contract analysis and management, Henchman helps lawyers quickly extract key information, identify potential issues, and draft documents based on these contacts. Henchman was recently acquired by Lexis, but at the time of writing, its features have not been revealed within the Lexis platform.
2. LegalOn. Initially focused on non-disclosure agreements, LegalOn has expanded to offer AI analysis for various types of legal documents.
3. Callidus. This tool provides AI-powered contract review and analysis with a focus on improving efficiency in due diligence processes.
4. Clearbrief. Using AI to analyze legal briefs and memoranda, Clearbrief provides insights into argument strength and citation accuracy.
5. Trellis. With a focus on state court data, Trellis offers AI-driven analytics to inform litigation strategies.

Litigation Support

These litigation-focused AI tools can help lawyers prepare more effectively for trial, identify key evidence, and develop stronger arguments. They can also assist in case valuation and settlement negotiations by providing data-driven insights. Leading examples include the following:

1. Parrot and Skribe. Both tools focus on deposition analysis, using AI to transcribe, summarize, and

extract key information from depositions.

2. EvenUp. This tool specializes in medical record analysis and settlement recommendations, which is particularly useful for personal injury and medical malpractice cases.
3. Filevine. A practice management platform that incorporates AI features, Filevine includes tools specific to immigration law, among other AI features.
4. Briefpoint. This tool specializes in AI-powered drafting of discovery propounding and responses.

Drafting

These tools can significantly reduce the time spent on routine drafting tasks, allowing lawyers to focus on more complex aspects of document preparation. They can also help ensure consistency across documents and reduce the risk of errors or omissions. Leading examples include the following:

1. Gavel. Offering AI-powered document automation, Gavel helps lawyers create standardized documents more efficiently.
2. Hyperdraft. Focusing on AI-assisted drafting from scratch, Hyperdraft helps lawyers create custom documents tailored to specific needs.
3. The Contract Network. This tool provides AI-powered contract collaboration, negotiation, and drafting, potentially streamlining complex transactional work.
4. SixFifty. A document database and automation platform for human resources and in-house corporate teams, SixFifty uses AI to update custom documents with changes in law to maintain compliance.
5. Spellbook. This tool offers AI-powered drafting of contracts and litigation documents.

Intellectual Property Tools

These tools can help IP lawyers navigate the vast landscape of existing patents and trademarks, identify potential infringement issues, and develop more effective IP strategies for their clients. Leading examples include the following:

1. Patented AI. Offers AI-driven patent search and analysis.
2. Husky. Provides AI-assisted trademark search and clearance.
3. Tradespace. Uses AI for trademark portfolio management.
4. Solve Intelligence. Offers AI-powered patent drafting.
5. RPX Empower. Provides AI-driven patent risk assessment, analytics, and litigation intelligence.
6. PatSnap. Offers IP analytics powered by AI.

Best Practices for AI Integration in Legal Practice

As lawyers begin to incorporate AI tools into their practice, several best practices emerge:

1. **Treat AI as a powerful assistant.** Interact with AI tools as you would with highly capable associates or staff, providing clear instructions and context.
2. **Use simple, natural language.** Most modern AI tools are designed to understand and respond to conversational language, so there's no need for specialized interfacing.
3. **Maintain clean, organized data.** The effectiveness of AI analysis often depends on the quality and organization of the underlying data. Implementing strong data management practices can significantly enhance AI tool performance, particularly for law firms that are larger and have more data.
4. **Consider AI as a client benefit.** Explore offering AI-powered tools as a value-added service for clients, potentially differentiating your services in a competitive market. Instead of a chatbot for potential clients, consider an AI-powered subscriber benefit for actual clients to interact with when you are not available, which will be helpful for clients while stopping just short of giving legal advice

(not that AI is capable of doing so in the first place). When you return, you can pick up where the AI left off and have more productive asynchronous communications with clients.

5. **Leverage AI for non-billable tasks.** Using AI for administrative and organizational tasks can increase overall firm productivity. You may also find that AI reduces traditional billable tasks, which brings us to the next point. . . .
6. **Explore alternative billing models.** As AI increases efficiency, firms should reconsider traditional hourly billing models in favor of subscription, value-based, and/or flat-fee pricing.

Ethical Considerations and Challenges

The integration of AI in legal practice raises several important ethical considerations:

1. **Competence.** ABA Model Rule 1.1, Comment 8, requires lawyers to maintain competence in relevant technology. This extends to understanding the capabilities and limitations of AI tools used in practice.
2. **Confidentiality and data security.** Lawyers must ensure that client data remains protected when using AI platforms; this requires careful vetting of vendors and robust data protection measures.
3. **Supervision and responsibility.** While AI can assist with many tasks, the ultimate responsibility for legal work remains with the human attorney. Lawyers must carefully review and validate AI-generated content.
4. **Bias and fairness.** AI systems can potentially perpetuate or amplify biases present in training data. Lawyers must be aware of this possibility and work to ensure fair and unbiased use of AI tools.
5. **Transparency.** When using AI tools, lawyers may need to disclose this use to clients and, in some cases, to the court, at least until the technology becomes ubiquitous.

The Future of AI in Legal Practice

As AI technologies continue to evolve, we can expect to see even more sophisticated applications in the legal field. Potential future developments include:

1. More advanced predictive analytics for case outcomes and judicial decisions.
2. More sophisticated AI-driven contract negotiation tools.
3. Further enhanced natural language processing for legal research and document analysis.
4. Integration of AI with blockchain for smart contracts and secure document management.
5. Better AI-assisted legal reasoning and argument development.
6. Law firm–specific AI chatbots trained on your interactions with clients that can help clients without giving legal advice when you are not available.

A Paradigm Shift

The integration of AI in a legal practice represents a paradigm shift in how legal work is conducted. From research and drafting to document analysis and practice management, AI tools offer the potential to significantly enhance the efficiency and quality of legal services. However, AI adoption requires careful consideration of ethical obligations, data security, and the fundamental role of the lawyer.

As the AI landscape continues to evolve, we must stay informed and critically evaluate which tools best suit our practice needs. By responsibly incorporating AI into our workflows, we can not only increase our efficiency but also expand our services and better serve our clients more affordably and scale to serve more clients, thereby reducing the access-to-justice gap.

The key to successful AI integration lies in striking a balance between leveraging the power of these new technologies and maintaining the essential human elements of legal services: judgment, empathy, and

ethical reasoning. As AI tools become more prevalent, the most successful lawyers will be those who can effectively combine technological proficiency with communication and interpersonal skills, using AI to augment and enhance their practice rather than replace core legal competencies.

Oh, and in case you were wondering, yes, this article was enhanced with the help of AI. Not using AI to enhance writing is like only using maps for directions instead of using GPS. Sure, it's useful to be able to read a map, but would you not use GPS with live traffic information just because you can read a map? Is GPS perfect? Of course not! We've all heard stories of people getting lost because of GPS errors, but that doesn't mean people don't use GPS. They just use it cautiously and don't blindly rely on it. Now, you, too, can use AI cautiously without blindly relying on it to significantly improve your law practice.

Mathew Kerbis is The Subscription Attorney and a daily user of AI. He is a James I. Keane Award winner and was recognized as one of the ABA Young Lawyers Division's Top 40 Young Lawyers. His law firm is Subscription Attorney LLC (https://subscriptionattorney.com), and he often discusses how AI will change the legal profession on his podcast, Law Subscribed (https://www.lawsubscribed.com), and at speaking engagements (https://mathewkerbis.com).

READY RESOURCES

Ready Resources in Election Law

Searching for additional resources in election law? Take a look at the ABA publications below, and check out the helpful links to website resources hosted by the GPSolo Division and the ABA. To order any of the products listed below, call the ABA Service Center at 800/285-2221 or visit our website at shopaba.org.

America Votes! Challenges to Modern Election Law and Voting Rights, Fourth Edition
Edited by Benjamin E. Griffith and John Hardin Young (ABA Section of State and Local Government Law; 2019; 5330249; $99.95; member price $79.96)
The authors challenge us to think of a political system in new ways with a focus on our founders' goal of a more perfect union. This book is a must-read for anyone concerned about our political future.

The Election Law Primer for Corporations, Sixth Edition
By Jan Witold Baran (ABA Business Law Section; 2015; 5070694; $79.95; member price $59.95)
This book covers the fast-changing landscape of campaign finance and lobbying laws. It begins with a discussion about campaign finance rules, political action committees (PACs), and campaign communications and activities by and at the corporation. Also addressed are lobbying laws, tax considerations, and enforcement.

Lawyer, Activist, Judge: Fighting for Civil and Voting Rights in Mississippi and Illinois
By Martha A. Mills (ABA Book Publishing; 2015; 5310443EBK; $47.95; member price $38.36)
This book is an inside look at one woman's struggle for civil and voting rights in Mississippi and Illinois in the 1960s and 1970s. In this engaging description of a life spent breaking down barriers, Martha Mills describes living and working in an ardent segregationist culture fraught with danger and filled with both heroes and villains.

Resolving Gerrymandering: A Manageable Standard
By Robert Schafer (ABA Judicial Division; 2021; 5230303; $59.95; member price $47.95)
This book proposes a manageable standard for resolving gerrymandering without the entanglements of justiciability and political questions, focusing on the mechanism by which gerrymandering operates, not on the outcome.

Women's Voices: Global Perspectives on the Right to Vote
Edited by Linda Strite Murnane, Renee Dopplick, and Caryl Ben Basat (ABA International Law Section; 2022; 5210313; $59.95; member price $47.95)
This book celebrates a century of progress for women's voting rights and offers thought leadership on challenges and opportunities for fully realizing gender equality and women's empowerment, particularly their full and meaningful inclusion in political life and leadership.

GPSolo Division Links

Resource page for starting and running a law firm

Solo/Small Firm Forms Library

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Other Links from the ABA
ABA Standing Committee on Election Law

ROAD WARRIOR

aquatarkus via Getty Images

Handling Your Digital Assets

Jeffrey Allen

We all have accumulated a surprising amount of digital assets. These assets include a tremendous amount of information about us and may, in some cases, have economic value. In addition to those things common to most, if not all, people, lawyers have special assets associated with their practice. The question of dealing with digital assets affects all of us, personally and professionally. Among lawyers, the nomadic nature of the work style for road warriors makes the question of dealing with digital assets even more important. Digital assets for lawyers include an extensive array of electronic resources integral to the operation and success of their practice.

Types of Digital Assets

We can broadly categorize digital assets into several types:

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Personal Categories

1. **Emails, contacts, calendars, and social media accounts.** These assets can contain valuable information, such as personal messages, business contacts, appointments, and online reputation. They can also have sentimental value, such as memories shared online.
2. **Photos, videos, music, e-books, and podcasts.** These assets can represent your hobbies, interests, and passions. They may generate income, such as royalties, advertising, and donations. They can also have emotional value, such as family albums, travel logs, photos, videos, and favorite playlists.
3. **Documents, spreadsheets, presentations, and databases.** These assets can contain important data, such as personal records, financial statements, legal documents, and research findings. They can also be evidence of your work, achievements, and skills. They can have intellectual value, such as creative writing, academic papers, and business plans.
4. **Online banking, investment, and cryptocurrency accounts.** These assets can represent your wealth, savings, and assets. They can also generate or reflect income, such as interest, dividends, and profits. They can also represent monetary value, such as cash, stocks, bonds, and digital currencies.
5. **Online shopping, gaming, and subscription accounts.** These assets can reflect your lifestyle, preferences, and habits. They can also include sources of entertainment, enjoyment, and relaxation. Some may have economic value, such as rewards, points, credits, and memberships. Many have saved financial information, such as a credit card number, for billing.
6. **Domain names, websites, blogs, and online portfolios.** These assets can showcase your identity, brand, and reputation. They can also include sources of exposure, recognition, and influence. Some may have entrepreneurial value, such as traffic, followers, and customers.
7. **Intellectual property, such as patents, trademarks, copyrights, and trade secrets.** These assets can protect your inventions, creations, and innovations. They can also be sources of revenue, licensing, and partnerships. They can also have legal value, such as ownership, rights, and remedies.

Professional Categories

1. **Client records and case files.** Perhaps the most critical professional digital assets for any lawyer, these assets include client correspondence, legal documents, contracts, pleadings, and other materials related to ongoing and past cases. Attorneys often store this information digitally in case-management software or cloud-based storage systems.
2. **Email accounts and communication tools.** Lawyers rely heavily on email and other digital communication tools to interact with clients, courts, and other legal professionals. These tools often contain sensitive information and are linked to various professional networks.
3. **Legal research databases.** Subscriptions to legal research databases such as Westlaw or LexisNexis provide vital tools for lawyers, containing vast amounts of legal precedents, statutes, and case law. Access to these databases generally requires a digital credential. A lawyer's history in using such a database may reveal confidential information.
4. **Financial and billing systems.** Digital records of billing, payments, and financial transactions facilitate and reflect the management of a legal practice. Often linked to digital accounting software, these systems track client invoices, payments received, expenses incurred, and payments made.
5. **Social media and online presence.** A lawyer's professional social media profiles (LinkedIn, Twitter, etc.) and law firm website serve as platforms for marketing, networking, and engaging with the broader legal community as well as present and potential clients.
6. **Proprietary legal tools and templates.** Many lawyers develop or purchase proprietary software, legal templates, or document automation tools that streamline their work and have an economic value.
7. **Other online accounts.** These might include cloud storage services (e.g., Google Drive, Dropbox),

virtual meeting tools (e.g., Zoom, Microsoft Teams), and any other online platforms used as a part of the attorney's daily operations.

Protecting and Securing Digital Assets

We all should take steps to secure our personal and professional digital assets and protect them from the bad guys. Lawyers have legal and ethical obligations that require them to take such steps. Lawyers must protect and secure digital assets related to their practice to maintain client confidentiality, comply with legal regulations, and safeguard their professional reputation. That obligation continues, and we need to address it both while we practice actively and after we stop practicing, whether due to death, illness, or retirement. Here's a deeper dive into the key security measures:

1. **Strong passwords.** Using strong passwords can help you prevent hackers, cybercriminals, and identity thieves from accessing your digital assets. You should use long, complex, and unique passwords for each account.
2. **Biometric authentication.** Consider using a form of biometric authentication, such as a fingerprint scan, instead of a password to access your accounts.
3. **Password managers.** Use a password manager or a digital vault that can generate, store, and autofill your passwords and other credentials. You will need a master password or biometric authentication to access your password manager or digital vault. Prefer biometric authentication as you won't have to memorize anything and won't have anything to record somewhere that might get discovered.
4. **Encryption.** As to our personal information, all of us should, and, at least as to client information, lawyers *must* encrypt sensitive data, both in transit and at rest. Encryption involves converting data into a protected code to prevent unauthorized access. Emails containing confidential information should use encrypted email services, and we should store files in encrypted drives or cloud storage.
5. **Hardware encryption.** Devices such as laptops, smartphones, and external drives should have full-disk encryption enabled to protect data if the device is lost or stolen. This functions as a recommendation for personal information and a requirement for devices containing confidential client data.
6. **Strong authentication** (recommended for all but required for attorneys respecting confidential client data).
   - **Multifactor authentication (MFA).** Beyond just a password, MFA requires additional verification, such as a text message code, biometric scan, or hardware token, to access accounts. This significantly reduces the risk of unauthorized access resulting from compromised passwords.
   - **Password management.** Use password managers to generate and store complex passwords securely. Regularly updating passwords and avoiding reuse across multiple accounts further reduces vulnerability.
7. **Regular backups.**
   - **Automated backups.** Implement automated backup solutions that regularly save copies of all digital assets to a secure location, such as an encrypted cloud service or an off-site physical server. This ensures the ability to quickly restore data in case of a cyberattack, accidental deletion, or hardware failure.
   - **Backup verification.** Regularly test backup systems to verify the ability to successfully restore data. Backup systems should also maintain version histories to recover previous versions of files if needed.
8. **Access control.**
   - **Role-based access control (RBAC).** Implementing RBAC allows the lawyer to restrict access to digital assets based on a person's role within the law firm. For example, paralegals might have access to certain client files but not to financial records or case management software.
   - **Audit trails.** Maintain detailed logs of who accessed which digital assets and when. This helps monitor for unauthorized access and ensures that any potential security breaches can be quickly identified and addressed.

9. **Cybersecurity awareness.**
    - **Training programs.** Regularly obtain cybersecurity training for yourself and conduct or make it available to all staff, focusing on recognizing phishing attempts, securing personal devices, and maintaining best practices for password management and data handling. At a personal level, take steps to ensure that you have such information and that you maintain currency in your knowledge.
    - **Incident response plan.** Develop and regularly update an incident response plan that outlines the steps to take in case of a cybersecurity breach. This plan should include procedures for containing the breach, notifying affected clients, and expeditiously restoring services.
10. **Regular updates.** Regularly update your software and antivirus programs to avoid malware and hacking. This can help you protect your digital assets from viruses, worms, ransomware, and other malicious software. You should update your software and antivirus programs regularly to fix any bugs, vulnerabilities, or security issues. You should also regularly scan your devices and accounts for any malware and hacking attempts.
11. **Regular review of settings.** Regularly review the privacy and security settings of your accounts and platforms. This can help you control who can access, view, or use your digital assets. You should review the privacy and security settings of your accounts and platforms to adjust your permissions, preferences, and notifications. You should also opt out of any unwanted or unnecessary features, services, or sharing.
12. **Awareness of social engineering attacks.** Avoid phishing, spam, and suspicious links or attachments designed to trick you into revealing your personal or financial information or downloading malware or ransomware. You should also report any suspicious or fraudulent activity to the relevant authorities or platforms.
13. **Secure disposal of devices and accounts.** Dispose of your old devices and accounts securely by wiping or deleting your data. This can help you prevent your digital assets from being accessed, used, or acquired by others. You should also recycle or donate your devices responsibly. You likely comply with your ethical obligations by securely wiping and reformatting the hard drive, but we prefer the more conservative approach of removing and destroying the drive and donating the equipment without a hard drive or installing a new drive. Note that "wiping" and reformatting the hard drive or solid-state drive (SSD) differs from deleting the contents. Simple deletion of the contents generally means that the system removed the directory entries so that it cannot locate the data still found on the drive. Wiping and reformatting the drive means the removal of all data from the drive and writing over it with zeroes.
14. **Legal compliance.**
    - **Data protection regulations.** Lawyers must ensure compliance with data protection regulations such as the General Data Protection Regulation (GDPR) in Europe or the California Consumer Privacy Act (CCPA) in the United States. This includes obtaining explicit consent from clients for the processing of their data and ensuring that data is stored securely and only for as long as necessary.
    - **Ethical obligations.** Lawyers must adhere to the ethical guidelines established by bar associations and other regulatory bodies, which often include specific rules on the protection and confidentiality of client information.

Planning for Digital Assets upon Death

In today's world, we should all plan for the disposition of our digital assets upon our death. For lawyers, such planning respecting their law practice's data is crucial for ensuring the continuity of their firm's practice and protecting their clients' interests. Here's a more detailed look at the steps involved:

1. **Inventory your digital assets.**
    - **Comprehensive listing.** Create a detailed inventory of all digital assets, including account names,

URLs, login credentials, security questions, and recovery options. This inventory should also note any subscriptions or licenses associated with these assets. You should also categorize your digital assets by type, value, and priority. Always store this inventory securely in an encrypted and password-protected form.
- **Regular updates.** Regularly review and update your inventory to reflect any changes in digital assets, such as new accounts created, passwords changed, or services discontinued or added.

2. **Decide what happens to your digital assets after your death.** Address questions such as who will inherit them or take responsibility for them, what gets deleted, and what gets memorialized. This can help you express your wishes and intentions for your digital assets for your heirs as well as protect your clients' confidentalities. You should consider the legal, financial, and emotional implications of your decisions.
3. **Check the terms of service and policies of your service providers and platforms.** Find out what options and limitations they have imposed on transferring or deleting your digital assets. This can help you understand and comply with the rules and regulations of your service providers and platforms for your digital assets. Look for features or tools that can help the management of your digital assets after your death, such as legacy contacts, inactive account managers, or memorialization settings.
4. **Appoint a digital executor.**
   - **Selection criteria.** Identify someone trustworthy and tech-savvy to serve as your digital executor. If your digital estate includes practice and/or client-related data, you will also want someone knowledgeable about the legal field. Think about a colleague within your law firm, a trusted family member, or a professional fiduciary. You can use more than one (for example, by allocating personal assets to one and client information to another).
   - **Duties and powers.** Clearly define the digital executor's duties, such as accessing digital accounts, securing client files, and managing the transfer or closure of online accounts. The digital executor should also have the legal authority to act on behalf of the deceased, which may require specific legal provisions in your will.
5. **Formalize legal instructions in a will.**
   - **Authorization.** Include provisions in the will that authorize the digital executor to access, manage, erase, and transfer digital assets. This might include specific instructions on handling client files, closing or transferring online accounts, and distributing any valuable digital assets (e.g., proprietary software or intellectual property). Make sure your digital will or executor complies with applicable law.
   - **Confidentiality.** Ensure that instructions in the will comply with your ethical duty of confidentiality as a lawyer. This might involve requiring the destruction of certain digital assets or transferring them to another licensed attorney to maintain client confidentiality.
6. **Establish client notification and transfer protocols.**
   - **Advance planning.** Develop protocols for notifying clients of your death and the steps to transfer your cases. This should include identifying another attorney or law firm that can take over the representation if necessary.
   - **Client consent.** Where possible, obtain advance written consent from clients regarding the transfer of their files to another attorney in the event of your death. You can include this consent as a part of the initial retainer agreement or add it later as part of ongoing client communications.
7. **Review and update the plan.**
   - **Regular review.** Review the plan for managing digital assets at least annually or whenever significant changes take place, such as adopting new technology, changing the structure of the law firm, or updating legal obligations.
   - **Incorporating new technologies.** As technology evolves, the plan should incorporate new tools and practices for securing and managing digital assets. This might include transitioning to more

secure cloud storage options, adopting new encryption standards, or integrating artificial intelligence tools into case management systems.

8. **Seek professional guidance.**
   - **Legal and IT consultation.** Consider consulting with a professional IT expert and an estate planning attorney to ensure adequate protection of digital assets and the legal soundness of the plan for their disposition upon death.
   - **Bar association resources.** Many bar associations offer resources and guidelines on managing digital assets, particularly concerning ethical obligations and client confidentiality. Lawyers should take advantage of these resources to ensure they follow best practices.

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SAILING SOLO

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Three Steps for Launching a Strong Law Firm Brand

Kimberly Russell

As law firm owners, most of us live in constant stress due to the scarcity of time. Our to-do lists never end, and there is always something else we need to do or learn in order to grow our practice. It quickly becomes a balancing act. We pick and choose what will be best for our bottom line in real time.

Unfortunately, one mistake that many law firms make is placing their branding and marketing on the back burner. In today's competitive and accessible legal market, law firm owners cannot afford to overlook the importance of a clear and compelling brand. Your brand is your reputation. It is what attracts, retains, and keeps clients coming through your door. Branding is the key to expanding and scaling your practice. But because marketing doesn't have the same legal implications as other business priorities (such as taxes or accounting), it is far too tempting for practice managers to procrastinate the hard, creative work of defining and clarifying their firm's brand and marketing.

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In this column, I will walk you through three critical steps to help identify and clarify your firm's brand. The first step is identifying your customer, the second is reaching that customer, and the third is retaining that customer. We'll also explore key DIY resources and strategies that firms can implement. I'll also go over the outsourcing "tipping point" for marketing by showing you just how much time, money, and effort you can save by partnering with experts.

Step 1: Identify Your Customer

The foundation of your brand lies in visualizing your ideal clients. What do they look like? Are they an individual or a corporation or an agency or a family? How old are they? What are their biggest priorities? Where do they go to find information and resources?

If you are having trouble answering these questions, then there is an even more fundamental step you need to take. You must define your firm's services. This was the most important step I have taken since starting The Russell Law Firm. Many practitioners or new firms lean toward the everything-to-everyone approach. It is a wonderful safeguard for initial business, but there is no quicker way to get lost and overwhelmed. Failing to identify your core services prevents you from developing your brand voice and will absolutely halt any business development. Creating a business plan is easy, and you can find a lot of great resources for free, such as this free workbook from the Washington, D.C., Bar Association.

Once I had a solid grasp of my services, I was able to clearly see my ideal customers—almost like they were sitting in front of me. I thought through their pain points, the kind of information they want to know, and where they'd be looking for it. This exercise not only clarified my brand but helped me tailor my services to meet my clients' needs.

Resources for Identifying Your Customers

To refine your target audience, you can use a variety of resources, including client surveys, demographic research, or even online forums such as Facebook groups. Engaging with potential clients through these channels helps you understand their challenges, preferences, and needs. From there, you can fine-tune your services and marketing messages.

For law firms, demographic research tools such as Nielsen or U.S. Census data can provide insights into potential client populations. Additionally, joining professional groups on LinkedIn and attending industry-specific conferences can further inform your understanding of who your ideal client is and what they care about.

Step 2: Reach Your Customer

Once you've identified your ideal client, the next step is figuring out how to reach them. Marketing your law firm is not as simple as creating a website and hoping clients come to you. I'm not saying to forego a beautiful website. Instead, think of your firm's website as your virtual law office. That is where your clients go once they are ready to sign up with you.

Before a client even knows to walk through your door (or visit your website), they need to know *why* they need you. To do that, you have to meet potential customers where they are—whether that's online, at industry events, or through local networking.

When I started marketing my services, I thought about where my target clients would be looking for information. For attorneys, LinkedIn has been the most effective platform for reaching referral business. Google Ads and Google Local Service Ads are invaluable for clients actively searching for attorneys. For

others, attending trade associations and conferences might be more effective. The key is knowing your clients' habits and being present in those spaces—whether that's physically or digitally.

Tools for Reaching Your Customers

To help firms efficiently reach their clients, there are several tools available:

- **Google Ads and Google Local Service Ads.** These platforms allow you to geographically target potential clients who are searching for specific services.
- **Birdeye or other online directory services.** A great SEO tool helps ensure your firm's information is updated across multiple directories, boosting your visibility.
- **Social media platforms.** Maintaining an active social media presence on platforms such as LinkedIn or even Instagram can help law firms connect with their audience. It's also crucial to register and regularly update your Google Business Profile.

Step 3: Retain Your Customer

After setting the stage in identifying and reaching your clients, your firm needs to convert those clients into retainers. It's a lot of hard work to do the first two steps, and it all goes to waste if you are not prepared to manage business leads as they enter your inbox. Often, clients will see your value, go out of their way to learn about your firm and services, but still take some time to finally sign that engagement agreement. Sometimes, engaged clients have wandering eyes. Effective communication and consistent outreach are key to building lasting client relationships.

In my own firm, I use multiple touchpoints to stay engaged with clients—whether it's through phone calls, email newsletters, or social media. By offering valuable insights and remaining accessible, you keep your firm top of mind for clients whenever they need your legal services.

Resources for Client Retention

Tools such as Clio Manage and Clio Grow are essential for automating client correspondence and tracking your engagement. These platforms streamline the entire client relationship process, ensuring that no leads fall through the cracks and that your clients feel valued at every step of their journey. Clio also offers great free resources on starting your firm, developing a business plan, and creating streamlined processes for client management.

Keep customers engaged by sending out regular newsletters through platforms such as MailChimp with content that provides value to their lives. Beware: Newsletters have become so gratuitous because they are so easy to produce. You can quickly lose the goodwill of a client or potential client by clogging their inboxes with information that does not provide value.

Retaining customers also means paying attention to client feedback. Using tools such as SurveyMonkey or even sending out informal surveys through email can help gauge client satisfaction and areas where your firm can improve.

The Value of Professional Marketing Services

Now, I just outlined three steps of the many that create impactful marketing. Each step takes a lot of time and talent to do correctly. Skilled marketing professionals are just like talented lawyers: They make quality service look easy, like anyone could do it. Regardless, a lot of businesses think that marketing is easy enough to handle on their own. It's similar to accounting or tax services. All these business practices are essential, and the DIY approach might work just fine when starting out. But in the long term, doing your own marketing, taxes, and accounting creates costly mistakes, wastes valuable attorney or paralegal time, and slows growth for the firm. A great way to mitigate these costs is to hire a professional service.

See these services as an investment in your firm's future that will pay off exponentially. Marketing experts analyze your brand, assess your competitors, and implement strategies that are proven to deliver results. At my legal marketing firm, LegalEase, everything we do is data driven, and we analyze our approach every month to see how to tailor efforts to your goals. We also customize packages to fit firms (and budgets) of various sizes and offer free resources for firms still in the DIY stage to get them started on building a brand identity and creating a solid social media page.

Marketing itself is often misunderstood as something anyone can do with a few social media posts or a basic website. In reality, it's the cornerstone of your firm's growth and survival in a competitive landscape. Law firms are quick to hire professionals for accounting, taxes, or IT services—but they often overlook the need for expert marketing advice.

Branding Is Essential

Creating a strong brand for your law firm is essential for attracting and retaining clients in a competitive market. By identifying your target audience, using the right tools to reach them, and investing in long-term relationships, you can position your firm for success. Partnering with a marketing expert allows you to focus on what you do best—providing legal services—while ensuring your brand reaches the clients who need you most.

Kimberly Russell is an attorney and legal marketing expert in Washington, D.C. Her marketing agency, LegalEase (http://www.yourlegalease.com), assists lawyers in finding their brand voice, reaching more clients, and becoming industry leaders. She also owns The Russell Law Firm (http://www.russellatlaw.com), which focuses on the intersection of technology and government. Russell has litigated on behalf of injured kids and shaped policy for families since 2019. Before law school, she was a news producer in Tulsa, Oklahoma.

MAC USER

TommL via Getty Images

Electing the Best System Settings for Your Mac

Brett Burney

Voting is a right and a privilege, especially when it comes to the technology you use every day. It's important to choose the options and functions that best meet your particular needs, including on your reliable (and nonpolitical) ol' Mac.

Fortunately, there are several elective settings in macOS that you can consider before picking the choice that makes the most sense for you. While I can't hand you an "I voted" sticker, people might notice a boost in your productivity when you make your choice. The good news is that you're welcome to jump across the aisle at any time and choose the other side if something isn't working quite right for you.

Light or Dark Mode

This might be one of the more divisive options when you talk with Mac users. Most computers display documents with black text on a white background because that's how we typically read printed text on paper. Naturally, computers mimicked that color scheme from the paper world and applied it to

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everything on a digital screen. But there were always some folks who preferred a reversed view, with white text on a black background, which actually hearkens back to the days of ancient monochrome screens.

Today's modern-day macOS now allows you to choose between Light and Dark modes. Fair warning: The Dark mode can be quite unsettling just because it's such a stark difference. You can try it out for yourself by going to your Mac's System Settings (under the Apple menu at the upper left) and clicking Appearance in the left sidebar. There, you'll see graphical representative images for Light, Dark, and Auto. Clicking the Dark mode option will immediately blacken your entire interface. You can stay there or immediately click the Light mode so everything goes back to normal.

Going to Dark mode doesn't mean that your Mac turns everything black—you'll still see hints of color and other small adjustments to give you the best experience. Choosing Dark mode may be a generational difference, as I personally have to stay in the Light while my children have all gone over to the Dark side. It's worth checking out this setting to see if you can get comfortable with your vote.

Stage Manager or Mission Control

Another choice you have on your Mac is how you view all your open apps and switch between them. For many years, macOS has offered Mission Control, which temporarily puts all your open apps into miniature windows so you can see everything that's open and running. Clicking on a particular app brings it front and center.

If you're using a Mac laptop or an Apple keyboard, you can tap the F3 key to engage Mission Control. You can also swipe up on a Trackpad with three or four fingers (depending on your settings).

More recently, macOS integrated Stage Manager, which is a different take on the same idea but shows your current and recently used apps on the left side of your screen. The window you're currently working on is front and center, but you can swap to another app or choose to arrange several apps into a group.

The Stage Manager idea came from the iPad, where I believe it works much better; I don't think it translates well to the Mac. You can easily turn Stage Manager on and off, so I recommend you try it and see if it works for you. If you go to Settings and click Desktop & Dock on the left panel, you'll see a toggle for Stage Manager. Even easier, you can click Control Center in your Menu Bar and select the toggle option from there.

Always Show Dock or Autohide

Out of the box, all Macs have the Dock permanently stationed at the bottom of the screen. The Dock is an excellent tool for launching apps and switching between running apps, among other things, but it takes up more room than it should. The Dock steals half an inch from the bottom of your screen—this could be close to 10 percent of your entire screen real estate. On a huge monitor, that's not a big deal, but I cringe every time I see a Mac laptop relinquishing so much crucial working space.

There are certainly Mac users who like having constant and convenient access to the Dock at all times, but you could be making much better use of that space. All you have to do is go into Settings, select Desktop & Dock on the left panel, and tap "Automatically hide and show the Dock." This option automatically hides the Dock and gives you back that valuable space, but you can quickly bring the Dock back by simply moving your mouse cursor down to the bottom of the screen (which is what you would be doing anyway to select an app on the Dock). When you move your cursor back up on the screen, the Dock graciously gets out of your way.

Tap or Click the Trackpad

A mouse was designed to be "clicked," and so were trackpads. But when you're using a Mac laptop, you can choose to "tap" the trackpad instead. It's a small change, but it can make a huge difference.

By default, trackpads on Mac laptops require you to do a full click with your finger, but if you go to Settings and select Trackpad, you will see an option to turn on "Tap to Click." Now, instead of having to click all the way down on the trackpad when selecting a file or pressing a button, you can simply tap. If you've never done this before, there might be a slight learning curve if you're tap-happy, but try it so you can decide what works best for you.

Finder Views: Icons, List, or Columns

For our last vote, we have three candidates when it comes to viewing your files in Finder. You don't have to stay fiercely loyal to your initial selection—one view might work better for specific folders versus others, and it's an easy switch.

The three options can be found by clicking View in the Finder menu at the upper left of the screen. There is also a separate button for each of these views at the top of your Finder window, which allows you to easily switch between views depending on what you're currently working on.

First, you can view your files as what Apple calls Icons, but I think of them more as "thumbnails," similar to how we view our photo roll. If it's a document, you'll see a tiny visual representation of the first page. You can make these thumbnails bigger or smaller with the little slider in the bottom right corner.

Next is List view, which, as you can probably surmise, offers a simple list of your files, but here you can add or remove columns and then sort your files based on one of those columns.

Last, we have the Column view, which is what I usually recommend for folks because it allows you to easily navigate through multiple folders. You click a folder in the leftmost column, and subfolders appear in the next column; you can continue all the way down to the file you need. Once you select a file, you'll see all the pertinent information about that file in the rightmost panel. It's a really helpful way to get a big picture of your files as well as easily navigate where you need to go.

There is actually a fourth option for viewing your files called Gallery, which is excellent for viewing photos but not the best for content-rich files that legal professionals usually deal with.

Cast Your (Virtual) Ballot

So, this election season, remember that you have a right to vote on what Mac system settings work best for you above the fruited plains of Apples!

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GP MENTOR

Ignatiev via Getty Images

Running for Political Office for the First Time

Lynae A. Tucker-Chellew

"I think you should run." Those five words shook my world in March 2024. Surrounded by flashing lights, loud music, and paper petitions reflecting desire for change on every table, I heard those five words as if the room had fallen silent. "I think you should run."

In today's political climate, now is the time our communities need leaders with burning passion, palpable legal reasoning, and a vision that unites. Breaking into the political realm may seem unrealistic, as if the doorway is veiled in secrecy. In fact, the opposite is true. Take it from a first-time political candidate: That doorway is waiting for you to saunter through like you own the place. As you climb the steps up to the proverbial doorway of a political campaign, I hope you can rest easy on three personal truths I have learned to light my way.

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1. There Is Never a Right (or Wrong) Time to Run for Office

Running for political office can easily become a full-time job. Not every role requires door-knocking every day and twice on Sundays. If you want to dip your toes in the political waters, consider a down-ballot race where the time and financial competition between candidates is less intense. Down-ballot races, such as those for municipal districts or transportation boards, often have tangible community impact despite being overlooked sometimes as lesser than their more advertised counterparts.

2. Authenticity Creates Momentum

When I decided to run for office, I met a group of like-minded female candidates who were also rookie candidates. Each spoke highly of another female candidate in our local area who had run multiple times and had some wins, but mostly losses, under her belt. When I asked her what the difference was between a successful campaign and an unsuccessful one, her response was "momentum." In my experience in a down-ballot race, I have found momentum through authentic conversations with my constituents. The engagement I have received via texting campaigns and social media blasts is dramatically different based on the level of personalization my message has. Authenticity is key in today's political races.

3. Never Run Alone

The advice given to athletes training for long-distance runs is the same advice I would give other new political candidates: Never run alone. Part of running for political office is becoming more exposed to the general public than you may have ever been before. Your phone number, address, and finances all become matters of public discourse. Your spouse may lose their anonymity. When that lack of privacy begins to weigh on you, having a support system with firsthand knowledge in navigating those challenges is invaluable. Don't shy away from finding organizations that dedicate their time and energy to helping you get your campaign off the ground. Go to local meetings for either or all political parties. Meet other politically inclined individuals and then ask for help. In your campaign, as in so much else, there is strength in numbers.

Now, it's your turn. I think you should run.

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