

Table of Contents

How to Use This Book
Acknowledgments

xvii
xix

PART I. THE LEGISLATIVE PROCESS

Chapter 1	How a Bill Becomes a Law: From <i>Schoolhouse Rock</i> to Vetogates and Unorthodox Lawmaking	3
1.1	Introduction: How a Bill Becomes a Law	3
1.2	Formal Requirements for Federal Legislation	6
1.2.1.	Bicameralism and Presentment (including the Enrolled Bill Rule and Origination Clause)	6
1.2.2.	The Veto Power (including the Line-Item Veto)	14
1.3	Details of the Formal Federal Legislative Process	19
1.3.1.	Rules for Consideration of Bills in the House of Representatives	19
1.3.2.	Rules for Consideration of Bills in the Senate, Including Filibuster Rules	22
1.4	Theories of the Legislative Process	25
1.4.1.	Positive Theories	25
1.4.2.	Normative Theories	27
1.5	The Modern Federal Legislative Process: Majority Power, Political Polarization, and the Decline of Regular Order	29
Chapter 2	Regulating Legislators	35
2.1	Qualifications for Office, Term Limits, and Punishment	35
2.2	Legislative Deliberation	46
2.2.1.	Speech or Debate Clause Issues	46
2.2.2.	Single Subject Rules and Logrolling	52
2.2.3.	Due Process of Lawmaking	55

Table of Contents

Chapter 3	Lobbying, Bribery, and External Legislative Influence	59
3.1	Lobbying	59
3.1.1.	How Lobbying Works	59
3.1.2.	Lobbying Disclosure Rules	64
3.1.3.	Other Lobbying Regulations	71
3.2	Bribery and Related Offenses	76
3.2.1.	The Elements of Bribery	76
3.2.2.	More on Intent to Influence: Campaign Contributions as Bribes	79
3.2.3.	Related Offenses	86
3.3	Ethics and Gift Rules	88
Chapter 4	Direct Democracy	91
4.1	Direct Democracy as “Hybrid Democracy”	91
4.2	The Single Subject Rule and Other Content Restrictions on Initiatives	97
4.3	Petitioning Rules and Financing Ballot Qualification Drives	105

PART II. STATUTORY INTERPRETATION

Chapter 5	Theories and Practice of Statutory Interpretation	113
5.1	Introduction: The Holy Trinity Church Problem . . . or “The Food Stays in the Kitchen”	113
5.2	Theories of Interpretation: Intentionalism, Purposivism, Textualism, and Dynamic Interpretation	119
5.3	The Great Debate over Legislative History and the New Textualism	122
5.4	<i>Stare Decisis</i> and Statutory Interpretation	129
Chapter 6	Canons of Statutory Interpretation	133
6.1	Why Canons?	133
6.2	Textual Canons	140
6.3	Substantive Canons	153

Table of Contents

Chapter 7	Legislative History	163
7.1	Committee Reports, Floor Statements, and Other Types of Legislative History	163
7.2	Legislative Silence or Failure as Legislative History	173
7.3	Other Statutes	179
Chapter 8	Agency Interpretation: Statutory Interpretation in the Administrative State	183
8.1	Why Is Agency Interpretation Different?	183
8.2	Chevron Deference	189
8.3	Other Types of Agency Deference	198

PART III. VOTING RIGHTS AND REPRESENTATION

Chapter 9	The Right to Vote, Representation, and Redistricting	209
9.1	Who (Decides Who) Votes?	209
9.1.1.	Introduction: Three Questions About Literacy Tests	209
9.1.2.	Voting as a Fundamental Right for Citizen, Adult, Non-felon Residents	213
9.2	Vote Dilution and the One Person, One Vote Rule	220
9.2.1.	Baker, Reynolds, and the Emergence of the One Person, One Vote Rule	220
9.2.2.	One Person, One Vote: Extensions and Complications	228
9.3	Special Purpose Election Districts	232
9.4	Introduction to Redistricting	237
Chapter 10	Political Parties, Partisan Gerrymandering, and Political Competition	241
10.1	Why Parties? Political Competition in Political Science and Law	241
10.2	Partisan Gerrymandering	247
10.3	Obligations and Associational Rights of Political Parties	254
10.4	Minor Parties and Independent Candidates	260

Table of Contents

Chapter 11	The Voting Rights Act, Race, and Redistricting	265
11.1	Origins of the Voting Rights Act and the Workings of Section 5 Preclearance	265
11.2	Shelby County and the End of Section 5 Preclearance	273
11.3	Section 2 of the Voting Rights Act: Redistricting and Beyond	280
11.3.1.	Section 2 and Redistricting	280
11.3.2.	Section 2 Beyond Redistricting	288
11.4	Racial Gerrymandering Claims and the Future of the Voting Rights Act	292
Chapter 12	Election Administration	297
12.1	Introduction: Florida 2000 as the Modern Start of the Voting Wars	297
12.2	The Fight over Voter Identification Laws, and Broader Disputes over Election Administration Laws Since 2000	303
12.3	NVRA, HAVA, UOCAVA, and Limits on the Federal Power to Regulate Elections	312
<hr/>		
PART IV. CAMPAIGN FINANCE		
Chapter 13	Introduction to Campaign Finance: Spending Limits from <i>Buckley</i> to <i>Citizens United</i>	319
13.1	Introduction	319
13.2	The <i>Buckley v. Valeo</i> Framework	322
13.2.1.	Before <i>Buckley</i> : The History of U.S. Campaign Finance Law	322
13.2.2.	<i>Buckley</i> 's Major Holdings on Contributions and Expenditures	329
13.3	Spending Limits After <i>Buckley</i>	333
13.3.1.	Before <i>Citizens United</i>	333
13.3.2.	<i>Citizens United</i> and Beyond	337
Chapter 14	Campaign Contribution Limits from <i>Buckley</i> to <i>Citizens United</i> and Beyond	347
14.1	The Path from <i>Buckley</i> to Deference	347
14.2	New Skepticism About Contribution Limits	351
14.3	The Rise of Super PACs and Other Outside Groups	361

Table of Contents

Chapter 15. Campaign Finance Disclosure	367
15.1 The Path from Buckley to McIntyre	367
15.2 After McIntyre: Broad Disclosure Laws and a Narrow Harassment Exemption	372
15.3 The Rise of 501(c) Organizations and the Failures of Federal Disclosure Law	381
Chapter 16. Public Financing	385
16.1 Why Public Financing?	385
16.2 Constitutional Issues with Public Financing Plans	388
16.2.1. Discrimination Against Minor Parties and Voluntariness	388
16.2.2. Impermissibility of Matching Funds Tied to Others' Campaign Spending	394
<i>Correlation Table</i>	<i>401</i>
<i>Table of Books and Articles Cited</i>	<i>405</i>
<i>Table of Cases</i>	<i>413</i>
<i>Index</i>	<i>419</i>