

Voting Rights

Two topics

Drawing electoral districts

Regulating elections

Harkenrider v. Hochul

197 N.E.3d 437 (N.Y. 2022)

If the criticism of the court is that it is doing policymaking, what makes a court redrawing election districts different than administering school funding?

Grisham v. Van Soelen

539 P.3d 272 (N.M. 2023)

“No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws.” N.M. Const. art. II, § 18.

Test from Kagan's *Rucho* Dissent

(1) intent; (2) effects; and (3) causation

Compare

New Mexico Test:

(1) intent; (2) effects; and (3) causation

Pennsylvania Test:

(1) the population of such districts must be equal, to the extent possible;
(2) the district that is created must be comprised of compact and contiguous geographical territory; and (3) the district respects the boundaries of existing political subdivisions contained therein, such that the district divides as few of those subdivisions as possible.

Nature of the alleged constitutional violation

League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania

178 A.3d 737 (Pa. 2018)

Harper v. Hall

886 S.E.2d 393 (N.C. 2023)

Clarke v. Wisconsin Elections Commission

998 N.W.2d 370 (Wis. 2023)

Harkenrider v. Hochul

197 N.E.3d 437 (N.Y. 2022)

Grisham v. Van Soelen

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Voter ID Laws

Federal Backdrop

Indiana law requiring photo identification to vote is not so burdensome to be a constitutional violation.

Crawford v. Marion County Election Board, 553 U.S. 181 (2008)

League of Women Voters of Wisconsin Education Network v. Walker

851 N.W.2d 302 (Wis. 2014)

Electors qualification

Electors. Section 1. Every United States citizen age 18 or older who is a resident of an election district in this state is a qualified elector of that district.

Implementation. Section 2. Laws may be enacted:

- (1) Defining residency.
- (2) Providing for registration of electors.
- (3) Providing for absentee voting.

- (4) Excluding from the right of suffrage persons:
- (a) Convicted of a felony, unless restored to civil rights.
 - (b) Adjudged by a court to be incompetent or partially incompetent, unless the judgment specifies that the person is capable of understanding the objective of the elective process or the judgment is set aside.
- (5) Subject to ratification by the people at a general election, extending the right of suffrage to additional classes.

Art. III. § 2 Wisc. Const.

Milwaukee Branch of the NAACP v. Walker

851 N.W.2d 262 (Wis. 2014)

Martin v. Kohls

444 S.W.2d 844 (Ark. 2014)

Section 1 of article 3 of the Arkansas Constitution provides as follows:

Except as otherwise provided by this Constitution, any person may vote in an election in this state who is:

- (1) A citizen of the United States;
- (2) A resident of the State of Arkansas;
- (3) At least eighteen (18) years of age; and
- (4) Lawfully registered to vote in the election.

Unique State Rights

- Privacy
- Free speech
- Crime victims' rights
- Right to hunt and fish
- Natural or inalienable rights

Privacy

York v. Wahkiakum School District No. 200

178 P.3d 995 (Wash. 2008)

“No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Wash. Const. Art. I, § 7.

Two-part analysis

1. Was this a disturbance of one's private affairs?
2. If so, does authority of law justify the intrusion?

Free Speech

Fashion Valley Mall v. NLRB

172 P.3d 742 (Cal. 2007)

Compare

“Congress shall make no law ... abridging the freedom of speech, or of the press...” U.S. Const. Am. 1.

“Every person may freely speak, write and publish his or her statements on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.”
Cal. Const., Art. I, § 2.

Rule is viewpoint neutral but not content neutral.

What's the difference?

Justify the difference under *Fashion Valley*

Protestors want to crowd out the entrance to a store, intimidating people from shopping there and costing the store \$10,000 in revenue. It is constitutional for Fashion Valley to force the protestors to protest elsewhere.

Protestors want to distribute leaflets near the store, discouraging people from shopping there and costing the store \$10,000 in revenue. It is unconstitutional for Fashion Valley to force the protestors to protest elsewhere.

State v. Stummer

194 P.3d 1043 (Ariz. 2008)

“Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.” Ariz. Const. Art. II, § 6.

What is “secondary effects” regulation of free speech?

State v. Stummer test for constitutionality of content-based secondary effects regulation

Phase One: Does intermediate scrutiny apply?

1. Challenger demonstrates that provision interferes with free speech.
2. To qualify for intermediate scrutiny, State must demonstrate regulation directed at secondary effects, not speech suppression.

Phase Two: To survive intermediate scrutiny, state must show regulation does not sweep too broadly. Court must examine

1. the importance of the government interest
2. whether regulation furthers that interest
3. whether the regulation unduly burdens speech