

The Law and Politics of the 2018 Elections

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1 CLE Credit

Description: The 2018 national and Minnesota elections are set to be among the most contested and consequential in recent American history. Not only are the political issues significant, but the legal issues they potentially raise too are important, especially as they impact the various legal investigations involving the President Trump, his administration, and associates. This CLE will review both the legal and political context of the 2018 elections, focusing in on how the election will affect issues ranging from current legal investigations involving the president to federal judicial appointments.

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I. Introduction

A. Goals:

1. Understand the political context of the 2018 election
2. Describe some of the potential and major legal issues that may impact the 2018 elections

II. Political Context

A. US Congress

1. House currently is 241-194 Republican/Democrat
 - a. Democrats need to flip 24 seats to take control
 - b. Approximately 39 Republicans and 17 Democrats retiring
2. Senate currently is 51-49 Republican/Democrat (once John McCain's seat is filled by Arizona gubernatorial appointment)
 - a. Democrats need to flip two seats to take control
 - b. 35 seats up for re-election this year
 - c. 26 seats held by Democrats

B. Minnesota Legislature

1. House currently is 77-57 Republican
 - a. Democrats need to flip 11 seats to take control
2. Minnesota Senate

- a. Currently tied 33-33 with a special election to replace former Senator/Lieutenant Governor Michelle Fischbach
- C. State Legislatures
 - 1. As of August 31, 2018, Republicans controlled 56.0 percent of all state legislative seats nationally, while Democrats held 42.5 percent. Republicans held a majority in 67 chambers, and Democrats held the majority in 32 chambers.
 - 2. Many of these seats are up for election this year
- D. Governors
 - 1. 33 Republican, 16 Democrat, 1 independent
 - 2. 36 gubernatorial races this fall (26 currently held by Republicans)
 - 3. Importance of gubernatorial races for the 2020 Census and 2021 redistricting

III. How polarized are we as a nation?

- A. Partisan depictions of Donald Trump and the rival parties
 - 1. Nearly 90% of Republicans have a favorable view of Trump, 90% of Democrats unfavorable
 - 2. 60% disapproval for Trump, 40% approval
 - a. Little change in Trump's approval
 - b. Some estimates are that his "core of his core support" is 18-20% of the electorate.
- B. Pew Research
 - 1. Partisanship, friendship, and dating
 - a. In 2014: "Roughly equal percentages of Democrats (15%) and Republicans (17%) say they would be unhappy welcoming someone from the other party into their family."
 - b. Some estimates is that these percentages have increased.
- C. Two models of US politics
 - 1. The bell curve: Classical model of politics and party
 - a. Party and public convergence toward the center
 - 2. The double bell curve
 - a. A bimodal model of parties and public opinion: a moving away toward polarization

IV. Two nations?: Race, Class, Gender, Region, and Religion.

- A. Public opinion
 - 1. Pew Research Center: Evidence of clear polarization
 - a. <http://www.pewresearch.org/fact-tank/2014/06/12/7-things-to-know-about-polarization-in-america/>
- B. Voting behavior
 - 1. <http://www.cnn.com/election/2014/results/exit-polls>
- C. Congressional voting
 - 1. <https://www.washingtonpost.com/news/monkey-cage/wp/2014/02/13/polar>

ization-in-congress-has-risen-sharply-where-is-it-going-next/

- D. Red State/Blue State
 - 1. Bill Bishop, *The Big Sort*
 - 2. The Minnesota sort
 - 3. The spatial sorting by politics and the problem of gerrymandering and non-competitive races.

V. Generational Issues, Party, and Issues

- A. Generational effects v. age
- B. Pew Research Center
 - 1. <http://www.people-press.org/2015/09/03/the-whys-and-hows-of-generations-research/>
- C. Four Generations in America
 - 1. Silents 1924-1945
 - 2. Baby Boomers 1946-1960
 - a. Early (1946-1955) v Later (1956-1960) Boomers
 - 3. Gen Xers 1961-1981
 - 4. Millennials 1982-2000
 - 5. Digitals 2001-?
- D. Party ID and generational overlay and why it is significant

VI. Voting, Party ID, and Who Shows Up

- A. Political Science research:
 - 1. Best prediction of whether one votes is party ID or partisan affiliation
 - 2. Best prediction of how one votes is voter ID or partisan affiliation
- B. Party breakdown in the USA
 - 1. 38% Democrat
 - 2. 32% Republican
 - 3. 29% independent
- C. CNN 2012 exit polls
- D. Reality is really only about 10% of population is independent/swing
- E. Voter turnout
 - 1. Approximately 52% show up
 - 2. Voter stratified by race, class, income, religion, party, and education

VII. The Minnesota Connection

- A. Minnesota's polarization and political geography
- B. State party breakdown (2016 exit polls)
 - 1. DFL 37%
 - 2. GOP 35%
 - 3. Independent 30%
 - 4. Election day registration about 15% of voters

5. The battle for the suburban swing voter

VIII. Critical Election Law Issues

- A. Trump's Legal Woes
 1. Special Prosecutor's investigation
 - a. Paul Manafort
 - b. Coming report and conclusions
 2. Can a sitting president be indicted for a crime?
 - a. Is impeachment the only remedy?
- B. Michael Cohen
 1. The legal issue and non-disclosure of a political expenditure
 - a. Federal charges (New York federal prosecutor)
 - b. State Charges (Manhattan DA/Attorney general)
- C. Sexual Harassment suits
- D. Trump business dealings

IX. Minnesota Election Law Issues

- A. The Keith Ellison problem.
 1. Minnesota Statutes §204B.13. For a partisan office such as governor, a vacancy in a nomination occurs when a candidate dies or is declared ineligible to run for office by a court. If that occurs, §204B.13 allows for the party according to its rules to substitute a candidate. In the case of a gubernatorial candidate it is replacing, the substitution includes also the lieutenant governor.
 - a. Could DFL sue and claim replacing candidate is an internal party issue that is protected under the First Amendment?
- B. Errors and Omissions
 1. Minn. Stat. §204B.44 Errors and Omissions
 - a. Ballot corrections
- C. Recounts
 1. Mandatory/publicly-funded
 - a. §204C.35 Federal, State, and Judicial Races
 - b. Difference is less than one-half of one percent.
- D. Canvassing Board
 1. General Election is November 6, 2018
 2. State Canvassing Board meets November 27, 2018
- E. Minnesota Election Apparel Law
 1. *Minnesota Voter Alliance v. Mansky*, ___ U.S. ___ (2018)
 - a. What can people wear at the polls and what new challenges are possible?

X. Conclusions and Questions