The American Bar Association’s publication of this third edition of *America Votes! Challenges Facing Modern Election Law and Voting Rights*, could not be more timely. In 2016, the United States will elect a new president as well as new members to the Senate and House of Representatives who will affect the ability of whoever is elected president to lead effectively. State and local elections will also take place. And while federal elections in a presidential election year are always declared to be, “the most important ever,” even without making that claim, there can be no doubt that the 2016 elections will be hugely significant, not only for the United States but for the world.

Thus it is important that we explore, as do the authors of the chapters in this book, the administration and technology of elections, voting rights, the access of citizens to the ballot, and redistricting. Specific issues addressed in this edition include how to defeat voter suppression initiatives, the use of census data to prove citizenship in voting rights litigation, the increasing importance of “early voting” in all elections, the administrative challenges presented by recounts and post-election contests and audits, whether the Federal Election Commission is fulfilling its mandate on campaign finance disclosures, and the challenges presented by one-person, one-vote redistricting.

Any discussion of modern election law and voting rights in America will take place in the shadow of major changes to campaign finance laws and voting rights laws as a result of recent decisions by the Supreme Court of the United States. Whether one agrees or disagrees with the holding of the Court in these cases, there can be no doubt that they have transformed the context within which these issues are considered. On the role of large donors in election campaigns, these elections will take place in the shadow of the U.S. Supreme Court’s decision in *Citizens United v. Federal Election Commission*,1 which declared unconstitutional those provisions of the Federal Election Campaign Act of 1971, as amended, and the Bipartisan

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campaign reform act of 2002, which prohibited most corporations and labor unions from making independent expenditures in federal election campaigns on behalf of or in opposition to a candidate or candidates, and from financing electioneering communications in federal elections. prior to citizens united, the supreme court had upheld the ban on corporate independent expenditures in Austin v. Michigan State Chamber of Commerce2 and the ban on corporate spending for electioneering communications in mcConnell v. Federal Election Commission.3 citizens united overturned both Austin and mcConnell.

while campaign finance is not directly addressed in this edition of America Votes!, the importance of money in American elections is significant and creates a context within which issues of election law and voting rights should be considered. for example, in 2012 the top 32 super PAC donors gave an average of $9.9 million each, matching the $313 million that President Obama and Mitt Romney raised from all of their small donors combined. nearly 60 percent of super PAC funding came from just 159 donors contributing at least $1 million. More than 93 percent of the money super PACs raised came in contributions of at least $10,000—from just 3,318 donors, or the equivalent of 0.0011 percent of the U.S. population. for-profit corporations were the second-largest donors to super PACs, accounting for 12 percent of all contributions. Businesses provided a significant portion of the funds for some of the most active super PACs, including 18 percent of Restore Our Future's funds and 52.7 percent of Freedomworks for America's funds.4

On voting rights, in 2013 in Shelby County v. Holder,5 the supreme Court struck down certain provisions of the Voting Rights Act of 1965 as unconstitutional. Section 4 of the Voting Rights Act, originally passed in 1965 and most recently updated by Congress in 1975, determined which states must receive clearance from the Justice Department or a federal court in Washington, D.C., before they made minor changes to voting procedures, like moving a polling place, or major ones, like redrawing electoral districts. Section 5 of the Act, which defines the preclearance requirement, was originally scheduled to expire in five years, but Congress repeatedly extended it: for five years in 1970, seven years in 1975, and 25 years in 1982. Congress renewed the Act in 2006 after holding extensive hearings on the persistence of racial discrimination at the polls, and in doing so extended the preclearance requirement for 25 years. However, it relied on data from the 1975 reauthorization to decide which states and localities were covered. It was reliance that the Court's majority held to be improper, as it bore “no logical relationship to the present day.” The decision in Shelby County struck down section 4 of the Voting Rights Act—which provided the formula that identified which states would be subject to the reporting and preclearance certification requirement of the Act—thereby effectively eliminating the force and effect of section 5. Since this decision was announced, there is evidence to suggest that at least some of the states previously subject to the Act have now moved to utilize voter ID requirements and other strategies to suppress voter turnout from certain communities.6 Of course there are other issues affecting voting rights in America today—for example, the disenfranchisement of convicted
felons after their incarceration has ended—that are not directly impacted by the Shelby case and are addressed in this volume. But both Citizens United and Shelby County remind us of the importance of the electoral process and of voting rights for all Americans.

Thus, there is a real need for this newest edition of America Votes! I commend Benjamin E. Griffith, the editor, and the authors of the different chapters on addressing a host of significant issues affecting one of our most important constitutional rights at an important moment in our nation’s history. This edition will provide guidance and information to lawyers and others who are helping individuals and communities that are seeking to participate fully as voters in our representative democracy.

Notes

5. 133 S. Ct. 2612 (2013).