

of such Delegates and Resident Commissioners depends on the statute authorizing such representation. For example, when the Philippines was a territorial possession of the United States, it was represented for a time by two Resident Commissioners. Currently, there is one nonvoting Delegate or Resident Commissioner per jurisdiction having such representation in the House.⁽³⁶⁾

As with legislation related to the census, legislation relating to apportionment enjoys no special privilege in the House, and must be considered under the rules for ordinary (nonprivileged) measures.⁽³⁷⁾ Pursuant to clause 1(1)(3) of rule X, the Committee on the Judiciary has jurisdiction over “Apportionment of Representatives.”⁽³⁸⁾ This same provision has been interpreted to encompass state redistricting standards as well.⁽³⁹⁾

§ 2. Districting and Redistricting

The process of apportioning Representatives to the states should be distinguished from the process of dividing the states into districts to elect those Representatives. As described above, the apportionment process occurs at the Federal level, via the gathering of census data and the use of statutory formulas to allocate Representatives. The states themselves have no role in apportionment. By contrast, the districting (or redistricting) process occurs primarily at the state level, via the enactment of state laws that divide the state into districts whose constituencies elect their Representatives.

Although the states are primarily responsible for the districting process, the Constitution grants Congress the authority to enact laws that supersede state procedures.⁽¹⁾ Over the course of the 19th century, Congress would periodically pass laws mandating that certain principles be adhered to when the states exercise their authority to create congressional districts. The first such Federal law was enacted in 1842,⁽²⁾ and required states to use single-

36. Statutes authorizing nonvoting Delegates or Resident Commissioners to the House have been codified as follows: 48 U.S.C. §§ 891–894 (Resident Commissioner from Puerto Rico); 2 U.S.C. § 25a (Delegate from the District of Columbia); 48 U.S.C. §§ 1711–1715 (Delegate from Guam); 48 U.S.C. §§ 1711–1715 (Delegate from the U.S. Virgin Islands); 48 U.S.C. §§ 1731–1735 (Delegate from American Samoa); and 48 U.S.C. §§ 1751–1757 (Delegate from the Northern Mariana Islands).

37. See Deschler’s Precedents Ch. 8 §§ 1.2, 2.4. See also 6 Cannon’s Precedents § 48.

38. *House Rules and Manual* § 729 (2021).

39. See Deschler’s Precedents Ch. 8 § 3.2.

1. U.S. Const. art. I, § 4 (“The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations.”).

2. 5 Stat. 491.

Member districts only.⁽³⁾ It further required that each district be composed of continuous territory.⁽⁴⁾ In 1872, another law required that districts be created such that each district in the state would have approximately the same population.⁽⁵⁾ Another law, enacted in 1901, required districts to be as compact as possible.⁽⁶⁾ The Reapportionment Act of 1911 consolidated these three principles (compact, single-Member districts, of roughly equal population) into a single law articulating Federal standards for state districting.⁽⁷⁾

The Reapportionment Act of 1929 substantially revised the 1911 law, retaining the overall total of 435 Members, but instituting an automatic process for apportioning Representatives based on the method of “equal proportions.” In revising the apportionment laws, the act of 1929 failed to reiterate the earlier Federal standards for state redistricting processes. In a 1932 case,⁽⁸⁾ the Supreme Court confirmed that these Federal standards were no longer applicable. Over the ensuing decades, the issue of authority over state districting standards was extensively litigated in the courts. In 1946, the Supreme Court declined to enter the “political thicket” of state districting, declaring that such issues were nonjusticiable political questions.⁽⁹⁾ The seminal case of *Baker v. Carr* in 1962 essentially reversed this analysis, articulating new standards for determining whether a nonjusticiable political question exists.⁽¹⁰⁾ Relying on the Equal Protection Clause of the 14th Amendment, the Court held that the malapportioned state legislative districts violated the principle of “one person, one vote.” Two years later, the issue of congressional districting came directly before the Court in the case *Wesberry v. Sanders*.⁽¹¹⁾ In that case, the Court held that a Georgia districting law that allowed for wide disparities in population among districts was unconstitutional (effectively reinstating the earlier statutory requirement that congressional districts within a state be roughly equal in population).⁽¹²⁾ Subsequent case law articulated factors that a court may consider

3. See Deschler's Precedents Ch. 8 § 3. The single-Member district requirement was repealed in 1850 (9 Stat. 428), but reinstated in 1862 (12 Stat. 572).

4. See Deschler's Precedents Ch. 8 § 3.

5. 17 Stat. 28.

6. 31 Stat. 733.

7. *Parliamentarian's Note*: Although these Federal standards for state districting were established in law, the House demonstrated considerable reluctance to reject the seating of Members who had been elected via procedures that did not meet these standards. See, e.g., 1 Hinds' Precedents § 310 (Member-elect from an at-large district allowed to take his seat). See also Deschler's Precedents Ch. 8 §§ 3, 3.7. For more on election contests generally, see Deschler's Precedents Ch. 9; and Precedents (Smith) Ch. 9.

8. *Wood v. Broom*, 287 U.S. 1 (1932).

9. *Colegrove v. Greene*, 328 U.S. 549 (1946).

10. 369 U.S. 186 (1962).

11. 376 U.S. 1 (1964).

12. *Parliamentarian's Note*: Due to the mathematical impossibility of creating districts exactly equal in population, the Supreme Court has struggled with the degree to which

in determining whether a state's districting plan meets constitutional muster. Such factors include: the compactness of the districts, the contiguity of the districts (*i.e.*, whether they are composed of continuous territory), and whether the districts cross geographic or political/municipal boundaries.⁽¹³⁾

With respect to the issue of whether states could provide for at-large or multi-Member districts, Congress affirmatively reinstated the requirement of single-Member districts only via the enactment of a new statute in 1967.⁽¹⁴⁾ The law provides that states with more than one Representative must create "a number of districts equal to the number of Representatives to which such State is so entitled" and that no district may elect more than one Representative.⁽¹⁵⁾

B. Time, Place, and Regulation of Elections

§ 3. State and Federal Jurisdiction over House Elections

The U.S. Constitution divides jurisdiction over elections to the House between the House and the states. Article I, section 4, clause 1, provides: "The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations."⁽¹⁾ In

a congressional district map may deviate from the theoretical ideal. For subsequent cases addressing those questions, see, *e.g.*, *Kirkpatrick v. Preiser*, 394 U.S. 526 (1969); *Mahan v. Howell*, 410 U.S. 315 (1973); and *Karcher v. Daggett*, 462 U.S. 725 (1983). The Court has also addressed the issue of which individuals should be counted in determining the population of a district. See *Evenwel v. Abbott*, 578 U.S. ____ (2016).

13. See, *e.g.*, *Reynolds v. Sims*, 377 U.S. 533 (1964). The courts have also been responsive to claims that improper districting by states has resulted in the denial or dilution of voting rights of minority populations. See, *e.g.*, *United Jewish Organizations, Inc. v. Carey*, 430 U.S. 144 (1977); *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Shaw v. Reno*, 509 U.S. 630 (1993); *Shaw v. Hunt*, 517 U.S. 899 (1996); *Easley v. Cromartie*, 532 U.S. 234 (2001); and *Shelby County v. Holder*, 570 U.S. 529 (2013). The extent to which districts may be drawn to favor one political party has also been the subject of litigation, though majority opinions announcing clear standards have been rare. See, *e.g.*, *Davis v. Bandemer*, 478 U.S. 109 (1986); *Vieth v. Jubelirer*, 541 U.S. 267 (2004); *LULAC v. Perry*, 548 U.S. 399 (2006); *Gill v. Whitford*, 585 U.S. ____ (2018); *Lamone v. Benisek*, 588 U.S. ____ (2019); and *Rucho v. Common Cause*, 588 U.S. ____ (2019).
14. P.L. 90-196, 81 Stat. 581. This law has been codified at 2 U.S.C. § 2c. See also Deschler's Precedents Ch. 8 § 3.3
15. 2 U.S.C. § 2c.
 1. *House Rules and Manual* §§ 42-44 (2021).