

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).

practice, this concurrent jurisdiction over House elections has been resolved in favor of the states with respect to the administration of the elections themselves and the procedures for conducting them, while the House has maintained the authority to review (and in some cases override) actions by the states. Ultimately, the House has plenary authority, under the Constitution,⁽²⁾ to judge which individuals have been properly elected to its membership.

The Supreme Court has held that Congress's power to prescribe regulations for the conduct of congressional elections is "comprehensive" and that it is within the power of Congress to provide "a complete code for congressional elections."⁽³⁾ Despite this vast authority to regulate elections to the House, the House has traditionally deferred to the states with respect to the administration of such elections (including the validity of ballots, recount procedures, and similar matters). Ultimately, the House has the ability to refuse to seat Members—elect where state election procedures are considered deficient.⁽⁴⁾

Under the Constitution, voters in House elections must meet the qualifications that the state requires for elections to the "most numerous branch" of the state legislature.⁽⁵⁾ In the earliest years of the republic, states would often mandate property requirements as a qualification for voting, but such conditions have long since been eliminated. Although courts have held that states may restrict the franchise in certain ways (for example, by requiring the absence of a criminal record to vote), states do not have unfettered discretion in this area, and must abide by other voter qualification provisions of the Constitution. For example, the 15th, 19th, 24th, and 26th amendments to the Constitution each impose restrictions on the ability of states to limit the franchise.⁽⁶⁾

In addition to these constitutional protections regarding the right to vote, Congress has enacted a variety of civil rights laws designed to safeguard the ability of citizens to exercise the franchise.⁽⁷⁾ These laws provide Federal

2. U.S. Const. art. I, § 5 ("Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members . . .").

3. *Smiley v. Holm*, 285 U.S. 355, 366 (1932).

4. For more on election contests generally, see Deschler's Precedents Ch. 9; and Precedents (Smith) Ch. 9.

5. U.S. Const. art. I, § 2.

6. The 15th Amendment states that the right to vote may not be denied or abridged based on "race, color, or previous condition of servitude" of the citizen. Similar language in the 19th Amendment eliminated restrictions based on sex, while the 26th Amendment expanded the franchise to anyone 18 years of age or older. The 24th Amendment prohibited denying the right to vote for failure to pay a poll tax.

7. See, e.g., the Civil Rights Act of 1870 (16 Stat. 140); the Civil Rights Act of 1957 (P.L. 85–315, 71 Stat. 634); the Civil Rights Act of 1964 (P.L. 88–352, 78 Stat. 241); and the Voting Rights Act of 1965 (P.L. 89–110, 79 Stat. 437).

remedies for individuals whose right to vote was impeded or denied by their state or local governments. For example, section 5 of the Voting Rights Act of 1965⁽⁸⁾ required covered jurisdictions to obtain preclearance from either the Attorney General or U.S. District Court for the District of Columbia before implementing any changes to state voting procedures, in order to ensure that such changes were not made to discriminate against particular groups of voters. In recent decades, laws such as the Help America Vote Act⁽⁹⁾ have been enacted to provide states with Federal assistance in conducting their elections, particularly technical assistance with electronic voting equipment and other resources to help secure the integrity of the electoral process.

Virtually all states require eligible voters to first register and be placed on the voting rolls before being permitted to cast votes.⁽¹⁰⁾ At the Federal level,⁽¹¹⁾ Congress enacted the National Voter Registration Act⁽¹²⁾ in 1993 to require greater access to registration services (for example, by requiring states to provide voter registration materials at social service agencies). That act also permits registration via Federal form and prohibits removing voters from registration lists in certain circumstances.⁽¹³⁾

Congress has also enacted statutes designed to improve accessibility, both in the registration process and at state polling places. The Voting Accessibility for the Elderly and Handicapped Act, originally passed in 1984, requires states to provide accommodations at polling sites and registration locations for disabled or elderly voters.⁽¹⁴⁾ Assistance and support for citizens overseas (particularly members of the military) to exercise their right to

8. 52 U.S.C. § 10304. In 2013, the Supreme Court held that the coverage formula in section 4 of the Voting Rights Act was unconstitutional, resulting in the inability to enforce the preclearance requirements of section 5. *Shelby County v. Holder*, 570 U.S. 529 (2013).

9. 52 U.S.C. §§ 20901 *et seq.*

10. North Dakota is the only state that does not require voters to register for Federal or state elections. Many states provide for automatic registration, and/or the ability to register on the same day as the election.

11. For jurisdiction over voter registration in Federal elections, see Deschler's Precedents Ch. 8 § 6 ("congressional authority to preempt state regulation extends to the registration process").

12. 52 U.S.C. §§ 20501 *et seq.*

13. See *Federal Role in Voter Registration: the National Voter Registration Act of 1993 and Subsequent Developments*, CRS Report R45030 (May 11, 2022).

14. 52 U.S.C. §§ 20101 *et seq.* The Americans with Disabilities Act (42 U.S.C. §§ 12101 *et seq.*), while not directly concerned with voting procedures, has been interpreted by Justice Department regulations as encompassing accessibility issues at polling places. The Justice Department routinely publishes an "ADA Checklist for Polling Places" to assist states with compliance.

vote is provided by the Uniformed and Overseas Citizens Absentee Voting Act (most recently amended in 2009 by the Military and Overseas Voter Empowerment Act).⁽¹⁵⁾

Federal regulation of state election procedures extends beyond general elections to encompass party primaries as well.⁽¹⁶⁾ As with state laws regarding the general election, Congress typically defers to the states to establish appropriate procedures for the conduct of primary elections. However, Congress has the authority to make laws that supersede such procedures.

Where Congress has asserted its role in regulating elections administered by the states, it has typically been to ensure that states conduct elections in compliance with their own procedures or to standardize procedures across states where necessary.⁽¹⁷⁾ Ultimately, the House's sole authority to judge who has been properly elected to its membership provides a mechanism by which a state's administration of an election may be reviewed. Election contests may be brought in the House, either pursuant to its inherent authority under the Constitution or pursuant to the procedures of the Federal Contested Elections Act.⁽¹⁸⁾ Investigations made while evaluating a contested election may involve an examination of the conduct of state election administrators, state election statutes, and state judicial opinions interpreting such statutes.⁽¹⁹⁾

With respect to nonvoting Delegates or Resident Commissioners who represent nonstate areas of the United States, the election of such individuals proceeds according to the statutes that create those positions.⁽²⁰⁾ There is no constitutional provision conferring jurisdiction over such elections to the territories, commonwealths, or districts themselves—only statutory provisions that may be altered by law at any time. As a result, Congress has a greater ability to impose specific requirements for the election of Delegates and Resident Commissioners than it does for the election of Members.⁽²¹⁾

15. 52 U.S.C. §§ 20301 *et seq.*

16. See Deschler's Precedents Ch. 8 §§ 7.2–7.5.

17. See Deschler's Precedents Ch. 8 § 5 (“ . . . congressional regulation [of congressional elections] has been directed largely towards the failure of the states to ensure the regularity of elections under their own state laws.”).

18. See Precedents (Smith) Ch. 9.

19. *Id.*

20. See 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).

21. *Parliamentarian's Note*: The statutes creating the different Delegate and Resident Commissioner positions typically provide some amount of discretion to the territory or commonwealth to administer the election as it chooses. The House will generally defer to