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Elections and Campaign Finance: Policy and Legal Background for Congress

Traditionally, the federal government's role in campaigns and elections primarily includes regulating campaign finance, protecting voting rights, and supporting states in election administration. Congress approved substantial amendments in these policy areas between 2002 and 2009. Recent Congresses provided funding to support states and territories responding to election administration challenges, and the House and Senate have continued to consider other legislative changes. This CRS In Focus provides a brief background for Members of Congress and staff as they prepare for legislative and oversight duties related to elections and campaigns.

Federal Role and Constitutional Framework

Although congressional and presidential elections have a national impact, they are primarily administered according to state laws. Article I, Section 4, clause 1 of the Constitution (*Elections Clause*) gives the states the initial and principal authority to administer the “Times, Places and Manner” of congressional elections within their jurisdictions, as “prescribed in each State by the Legislature thereof.” This decentralized authority results in states varying significantly in how they administer the federal voting process and elections. At the same time, the Elections Clause provides Congress with the authority to “override” such state laws. Under that authority, Congress has enacted laws such as the Help America Vote Act (HAVA) and the National Voter Registration Act (NVRA), which dictate how states must administer certain aspects of the federal election process. Congress has also enacted laws setting the time for elections for the Senate and House of Representatives. (2 U.S.C. §§ 1, 7).

Another key constitutional provision, the Fifteenth Amendment, provides that the right of citizens to vote “shall not be denied or abridged ... on account of race, color, or previous condition of servitude,” and authorizes Congress to enact enforcement legislation. Under the authority of the Fifteenth Amendment, Congress enacted the Voting Rights Act of 1965 (VRA).

Policy Area Overview

Congress has enacted at least 10 major statutes regulating aspects of federal elections. Federal statutes, and proposed amendments, generally fall into three broad areas: campaign finance, election administration, and voting rights. In addition, Congress has enacted and considered legislation addressing the redistricting process, which determines district boundaries for the House.

Campaign Finance

Congress most recently substantially amended campaign finance law in 2002, with the Bipartisan Campaign Reform Act (BCRA). BCRA amended the Federal Election Campaign Act (FECA; 52 U.S.C. §§ 30101-30146), which contains most federal campaign finance statutory provisions. Federal campaign finance policy is organized around three major themes: (1) prohibitions on contributions or expenditures from certain sources (e.g., foreign nationals); (2) limits on contributions from permissible sources; and (3) disclosure and disclaimer requirements designed to provide identifying information about financial transactions and attribution for campaign-related communications. FECA also established the Federal Election Commission (FEC).

In a series of rulings, the Supreme Court has invalidated several FECA provisions under the First Amendment, thereby informing Congress as to the constitutional parameters of campaign finance regulation. For example, in 2010, the Court invalidated a FECA provision that banned corporate and labor union independent expenditures and electioneering communications. Most recently, in 2022, the Court invalidated a FECA provision establishing a limit on campaign contributions that can be used to repay candidates for personal loans.

Election Administration

States are primarily responsible for election administration and voter registration. HAVA (52 U.S.C. §§ 20901-21145) and the NVRA (52 U.S.C. §§ 20501-20511) address aspects of both issues. Enacted in 1993, the NVRA is noted primarily for requiring states to offer voter-registration opportunities when eligible citizens apply for driver's licenses and during specified other interactions with state agencies. The act also specifies “list maintenance” requirements for updating state voter rolls.

HAVA, enacted in 2002, primarily addresses election administration. HAVA sets minimum standards for voting systems; requires provisional ballots subject to verification; and mandates statewide voter registration databases. It authorized grants for states to upgrade election equipment after the 2000 presidential election and otherwise support election administration. HAVA also established the Election Assistance Commission (EAC). Congress also has authorized grants separately to support state and territorial election administration.

Voting Rights

The VRA (52 U.S.C. §§ 10101-10702) prohibits discrimination in all aspects of voting based on race, color, or membership in certain language minority groups. Section

2 of the VRA applies nationwide and has mostly been invoked in challenges to redistricting maps. In 2013, the Supreme Court invalidated the VRA's coverage formula, rendering the preclearance requirements inoperable. Prior to the ruling, certain jurisdictions were required under the VRA to preclear all proposed changes to voting laws. For the first time, in 2021, the Court interpreted Section 2 in the context of state voting procedures, rather than in terms of redistricting, and established "certain guideposts" for courts to evaluate such claims.

Other federal statutes address voting protections for elderly and disabled voters (Voting Accessibility for the Elderly and Handicapped Act; 52 U.S.C. §§ 20101-20107) and uniformed servicemembers and overseas citizens (Uniformed and Overseas Citizens Absentee Voting Act; 52 U.S.C. §§ 20301-20311).

Congressional Redistricting

Redistricting is the drawing of district boundaries within each state from which voters elect their representatives to the U.S. House of Representatives. In addition to complying with applicable state laws, congressional redistricting maps must comport with the U.S. Constitution and federal law, as interpreted by the Supreme Court. For example, the Supreme Court has interpreted the Constitution to require each congressional district within a state to contain an approximately equal number of persons and to conform to the Fourteenth Amendment's Equal Protection Clause. Congress enacted a statute that requires the establishment of single-member congressional districts (2 U.S.C. § 2c) and Section 2 of the VRA, prohibiting racial vote dilution, which is the diminishing of minority voting power. (52 U.S.C. § 10301).

Partisan gerrymandering is "the drawing of legislative district lines to subordinate adherents of one political party and entrench a rival party in power." In 2019, the Supreme Court ruled that claims of unconstitutional partisan gerrymandering are nonjusticiable, that is, not reviewable in federal courts.

In 2024, the Supreme Court further clarified that while the U.S. Constitution permits *partisan* gerrymandering, the Fourteenth Amendment's Equal Protection Clause prohibits *racial* gerrymandering. The Court held that when the race and partisan preferences of citizens are closely correlated, reviewing courts must assume that the state legislature acted in good faith when it created a map and require challengers to "disentangle race and politics" to show that the legislature was primarily motivated by race rather than by politics.

For the October 2024 term, the Supreme Court may consider another potentially consequential congressional redistricting dispute. In *Louisiana v. Callais*, the Court may seek to clarify when a congressional redistricting map that has been created to comply with Section 2 of the VRA violates the Fourteenth Amendment's Equal Protection Clause. The Court in this case has been asked to address whether claims of unconstitutional racial gerrymandering are nonjusticiable.

In response to these and other Supreme Court redistricting decisions, Congress could decide to consider legislation establishing additional federal statutory standards for congressional redistricting. Any legislation proposing to regulate congressional redistricting would need to comport with the Constitution, as interpreted by the Supreme Court.

Latest Congressional Action

The 118th Congress has not enacted major changes to federal election law, but has amended some specific provisions. For example, P.L. 118-26 extended authority for an FEC administrative enforcement program. P.L. 118-106 requires states to permit access for designated congressional observers in House and Senate elections. Congressional committees also have held more than 20 hearings on topics such as artificial intelligence; foreign interference in, or funding for, U.S. elections; and preparations for the 2024 election cycle.

The 118th Congress has organized much of its legislative work on elections around omnibus bills spanning multiple policy issues. In particular, some House Members have emphasized the American Confidence in Elections (ACE) Act (H.R. 4563). The Committee on House Administration ordered the ACE Act reported after a series of hearings; the House also considered some provisions from the ACE Act as stand-alone legislation. Other Members have concentrated their efforts on the Freedom to Vote Act (H.R. 11; S. 1) and the John R. Lewis Voting Rights Advancement Act (H.R. 14; S. 4).

Congressional Committee Roles

Most legislative and oversight activity on campaign finance, elections, and voting issues occurs in four committees: two in the House and two in the Senate. The Committee on House Administration and the Senate Rules and Administration Committee have primary jurisdiction over campaign finance and federal elections. These committees also oversee the EAC and the FEC. The House and Senate Judiciary Committees have primary jurisdiction over constitutional and voting rights issues, including oversight of the Department of Justice (DOJ), which enforces some aspects of federal election statutes. Other committees also consider elections issues within their jurisdictions (e.g., the House Homeland Security Committee on election security). Recent Congresses have appropriated EAC and FEC funds through Financial Services and General Government and consolidated or omnibus appropriations measures. Recent Congresses have provided DOJ funding through Commerce, Justice, Science and consolidated or omnibus appropriations bills. Congress also oversees and appropriates funds to some other agencies that support elections in addition to their primary duties on other issues (e.g., DHS).

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