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Legal Sidebar

Election Law and the Supreme Court in 2026: Pending Cases on Redistricting, Campaign Finance, and Mail-In Ballots

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As the November 2026 congressional elections approach, three cases addressing various aspects of election law are pending at the U.S. Supreme Court. In *Louisiana v. Callais*, the Court is considering the constitutionality of a state creating a second majority-minority congressional district to comply with the Voting Rights Act of 1965, as amended (VRA). In *National Republican Senatorial Committee (NRSC) v. Federal Election Commission (FEC)*, the Court is evaluating the constitutionality of the federal limits on coordinated political party expenditures. In *Watson v. Republican National Committee (RNC)*, the Court is considering whether the federal laws establishing Election Day preempt a state law that permits the counting of mail-in ballots that are cast by Election Day but received afterward. The Court is expected to issue rulings in these cases by the end of June or early July. Depending on the timing and the contours of the Court's rulings, these cases could affect the 2026 congressional elections or future federal elections. These cases may also be of interest to Congress because they each involve federal statutes. Within the bounds of the Constitution, as interpreted by the Supreme Court, Congress has the authority to amend the federal statutes underlying each of the three pending cases. This Legal Sidebar provides an overview of these three pending election law cases, listed alphabetically by case name, and briefly addresses considerations for Congress.

Louisiana v. Callais: Redistricting and the Voting Rights Act

In *Louisiana v. Callais*, the Supreme Court is considering whether a state's "intentional creation of a second majority-minority congressional district" to comply with Section 2 of the VRA violates the Fourteenth or Fifteenth Amendments to the Constitution. *Callais* is the latest, and possibly most consequential, in a line of recent Supreme Court cases that has involved Section 2.

Although the Fifteenth Amendment was ratified in 1870, Congress enacted the VRA to achieve its goal of bringing "an end to the denial of the right to vote based on race." Section 2 of the VRA prohibits discriminatory voting practices or procedures, including those alleged to diminish or weaken minority voting power, known as minority vote dilution. The Supreme Court has interpreted Section 2, under certain circumstances, to require the creation of one or more majority-minority districts in a redistricting

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map. A majority-minority district is one in which a racial or language minority group comprises a voting majority. The Court has determined that the creation of such districts can avoid minority vote dilution by helping ensure that racial or language minority groups are not submerged into the majority and thereby denied an equal opportunity to elect candidates of choice. In recent years, the Court has considered whether societal changes have resulted in some of the VRA's remedial measures no longer withstanding constitutional scrutiny because they do not reflect "current conditions," with some Justices similarly suggesting that the principle may apply to Section 2.

Case Overview

The dispute in Louisiana began when the state legislature redrew its congressional map following the 2020 census and created one majority-minority district out of the six congressional districts apportioned to the state. Voters in the state and civil rights organizations sued in federal district court, arguing that Section 2 required the creation of two majority-minority districts. Following litigation, the Louisiana legislature redrew the congressional redistricting map, creating a second majority-minority district.

In another federal district court, self-described "non-Black voters" in the state sued, arguing that the newly redrawn map was an unconstitutional racial gerrymander. After determining that considerations of race predominated in drawing the second majority-minority district, a divided three-judge federal district court panel applied a strict scrutiny standard of constitutional review, requiring the creation of the district to be "narrowly tailored to achieve a compelling interest." Assuming without deciding that compliance with Section 2 was a compelling interest for the creation of a second majority-minority district, the district court determined that such compliance would be "narrowly tailored" if it comported with the three preconditions articulated by the Supreme Court in *Thornburg v. Gingles*: (1) "the minority group must be sufficiently large and [geographically] compact to constitute a majority in a reasonably configured district"; (2) "the minority group must be able to show that it is politically cohesive"; and (3) the minority group must be able to prove that the majority group "votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." The district court further explained that Supreme Court case law indicates that an aspect of the first *Gingles* precondition—that a district be "reasonably configured"—requires adherence to traditional redistricting criteria, such as being reasonably compact and contiguous. In this case, the district court determined that the challenged majority-minority district did not meet the first *Gingles* precondition because, in view of the "the State's Black population [being] dispersed," the legislature created the district "as a 'bizarre' 250-mile-long slash-shaped district that functions as a majority-minority district only because it severs and absorbs majority-minority neighborhoods from cities and parishes all the way from Baton Rouge to Shreveport." Therefore, the district court held that the map was "an impermissible racial gerrymander" in violation of the Equal Protection Clause and enjoined the State from using the map for any election. The Supreme Court stayed the decision pending an appeal.

The State of Louisiana appealed to the Supreme Court under a provision of federal law permitting direct appeals from district court three-judge panels. In November 2024, the Court noted probable jurisdiction and consolidated *Louisiana v. Callais* with the related case, *Robinson v. Callais*. Oral argument took place on March 24, 2025. On June 27, 2025, the Court ordered the consolidated cases to be reargued and subsequently directed the parties to file briefs addressing the question of "[w]hether the State's intentional creation of a second majority-minority congressional district violates the Fourteenth or Fifteenth Amendments." The Court heard reargument in the case on October 15, 2025.

Although the State of Louisiana defended the constitutionality of the second majority-minority district during the March 2025 Supreme Court argument, on reargument, the State maintains that all "race-based redistricting" is unconstitutional because it violates key principles of equal protection and fails a strict scrutiny standard of constitutional review. "Race-based redistricting" violates the command of the Equal Protection Clause of the Fourteenth Amendment that "the government 'may never use race as a stereotype'" because the three *Gingles* preconditions amount to "government-mandated stereotyping," the

State asserts. In that vein, the State emphasizes how Section 2's requirement of "race-based redistricting" is not time-limited even though the Supreme Court has held that any departure from the equal treatment of racial and ethnic groups "must be a temporary matter." Under a strict scrutiny standard of review, the State argues that Section 2 is not a sufficient "compelling interest" because, among other reasons, (1) Section 2 is different from "the limited contexts" where the Court has sanctioned "race-based action," (2) it has a "framework" that is "too amorphous," and (3) it exceeds the power provided to Congress under the Fifteenth Amendment. According to the State, Congress's authority to legislate under the Fifteenth Amendment requires "a congruence and proportionality between the injury to be prevented . . . and the means adopted to that end," but when last amending Section 2 in 1982, Congress failed to identify the requisite "history and pattern of actual constitutional violations." Similarly, the challengers of the second majority-minority district argue that Section 2 cannot pass "congruence and proportionality review" because, among other reasons, the law "severely burdens" voters and states, and Congress failed to show how the burdens are justified by current conditions. Even assuming that Section 2 could be a constitutional remedy, the challengers maintain that the second majority-minority district fails a strict scrutiny standard of review because absent "evidence of specific, current, intentional discrimination," reliance on Section 2 is not a compelling interest.

Defending its constitutionality, the supporters of the second majority-minority district who initiated the litigation seeking its creation argue that by prohibiting state actions that have a discriminatory result, and not requiring a "subjective" discriminatory intent, Section 2 "is an appropriate method of promoting the purposes of the Fifteenth Amendment," as the Supreme Court stated in *Allen v. Milligan* in 2023. Further, the supporters contend that the "limited scope" of Section 2 ensures that when a state remedies a violation of the law, the state's interest "is sufficiently compelling to withstand constitutional scrutiny." For example, they underscore how both the text of Section 2 and its application under the three *Gingles* preconditions create "additional constraints that limit the use of race for remedial purposes." As to whether the remedies required under Section 2 are time-limited, the supporters proffer that the law contains a "built-in focus on current conditions" that avoids the need for an expiration date and that Section 2-required majority-minority districts have "a natural end point," lasting only until a new census is conducted.

Considerations for Congress

Depending on how the Court rules, the decision in *Louisiana v. Callais* could affect whether or to what degree states can create majority-minority districts in congressional and state redistricting maps going forward. If the Court issues its decision this term, it appears unlikely that most states would have time to redistrict for the 2026 congressional elections, in which primary elections have already begun. In that vein, the Court could delay implementation of the ruling based on "general equitable principles," taking into account the proximity of the election and the complexities inherent in the administration of state election laws. In response to a ruling in *Callais*, within the bounds of the Constitution as interpreted by the Supreme Court, Congress could choose to amend Section 2 of the VRA or pass other legislation establishing standards for congressional redistricting, though a ruling that Section 2 is unconstitutional, either facially or as applied to redistricting maps in the absence of evidence of intentional discrimination, would restrict legislative options that permit the consideration of race in redistricting decisions.

NRSC v. FEC: Campaign Finance

In *NRSC v. FEC*, the Court is evaluating whether the First Amendment to the Constitution prohibits a federal limit on coordinated political party expenditures. A provision of the Federal Election Campaign Act (FECA), codified at 52 U.S.C. § 30116(d), and the relevant FEC regulations, promulgated at 11 C.F.R. § 109.37, governing political party expenditures that are coordinated with a federal candidate, are known as the "coordinated party expenditure limits." Coordinated party expenditures are expenditures

made by political parties in coordination with (i.e., with input from) federal candidates. Such expenditures mostly fund campaign advertising (i.e., party coordinated communications). In a 2001 decision, *FEC v. Colorado Republican Federal Campaign Committee* (known as *Colorado II* to distinguish it from a similarly named case on party expenditures decided earlier), the Supreme Court upheld the facial constitutionality of the coordinated party expenditure limits. According to the Court in *Colorado II*, coordinated party expenditures have "no significant functional difference" from contributions made by a party directly to a candidate, and the Court had earlier held that contribution limits are generally constitutional.

Case Overview

In *NRSC v. FEC*, the challengers—the senatorial and congressional committees of the Republican Party, along with then-Senator JD Vance and former Representative Steve Chabot (as federal office candidates)—sued the FEC, arguing that the coordinated party expenditure limits violate the First Amendment. The challengers also argued that the Supreme Court's 2001 ruling in *Colorado II* is no longer binding because of subsequent Supreme Court precedent, exemptions to the limits that Congress added in 2014, and "the rise of unlimited spending by political action committees." The en banc U.S. Court of Appeals for the Sixth Circuit (Sixth Circuit) upheld the limits, determining that the *Colorado II* decision was binding precedent. Nonetheless, the Sixth Circuit characterized the holding in *Colorado II* as "questionable," emphasizing that the Supreme Court's recent campaign finance decisions have applied a different approach when evaluating the constitutionality of such laws.

The challengers appealed the Sixth Circuit ruling, and the Supreme Court heard oral arguments on December 9, 2025. The question presented to the Supreme Court is: "Whether the limits on coordinated party expenditures in 52 U.S.C. § 30116 violate the First Amendment, either on their face or as applied to party spending in connection with 'party coordinated communications' as defined in 11 C.F.R. § 109.37."

After prevailing in its defense of the coordinated party expenditure limits in the Sixth Circuit, the federal government in a "rare" occurrence has changed its position and now argues before the Supreme Court that the limits are unconstitutional. In view of the federal government's decision to no longer defend the constitutionality of the limits, the Supreme Court has appointed an amicus curiae to brief and argue the case in support of the Sixth Circuit ruling. As a threshold matter, the amicus argues that the Court lacks jurisdiction to reach the merits in the case because it is moot as a result of the federal government's decision to no longer defend the law. That is, according to the amicus, the challengers no longer face potential enforcement of the limits because the government now maintains that the limits are unconstitutional. On the merits, the amicus contends that the limits should be upheld because, as the Supreme Court held in *Colorado II*, they are "closely drawn" to serve a "sufficiently important" governmental interest of avoiding quid pro quo corruption by preventing donors from circumventing FECA's contribution limits to candidates. Further, the amicus argues that *Colorado II* is binding precedent and overruling that decision "would massively destabilize campaign-finance law" by jeopardizing the constitutionality of other key provisions of FECA and unsettling the Court's campaign finance jurisprudence.

In response, the federal government disputes the assertion that by changing its position the case has been rendered moot, because the challengers still "face a credible threat" that the limits could be enforced against them. On the merits, the federal government maintains that although the Supreme Court in *Colorado II* upheld the limits, subsequent "legal, statutory, and factual developments have so undermined it that it is no longer good law." For instance, the government observes that while the Court in *Colorado II* determined that Congress can constitutionally limit campaign funds to lessen "undue influence," subsequent Court rulings have held that Congress may seek only to ameliorate *quid pro quo* corruption and its appearance.

Considerations for Congress

The Court's ruling in *NRSC* could be consequential for the system of federal campaign finance during the 2026 congressional midterm elections or for future elections, depending on when the Court's ruling takes effect. For example, one media report predicts that if the coordinated party expenditure limits are overturned, parties could "pour unlimited amounts into ads in competitive races across the country, making it easier for campaigns to benefit from that spending." As the media report explained, coordinated party expenditures are often used to buy television advertising, which is less expensive when bought in concert with a candidate's campaign, so if the limits are eliminated, political parties "would dramatically accelerate their purchase of ad time."

As a case of constitutional interpretation, a Supreme Court ruling in *NRSC* may provide guidance regarding the constitutional parameters of any campaign finance legislation that Congress might choose to enact. If the Court rules that the limits are unconstitutional, lawmakers disagreeing with that outcome would be limited to seeking a constitutional amendment to overturn the effects of the decision, as some Members of Congress introduced in response to the Supreme Court's 2010 ruling in *Citizens United v. FEC*.

Watson v. RNC: Mail-In Ballots

In *Watson v. RNC*, the Supreme Court is considering whether federal laws that establish Election Day preempt a state law that permits the counting of mail-in ballots that are cast by Election Day but received within a period of time afterward. Federal statutes, codified at 2 U.S.C. § 7, 2 U.S.C. § 1, and 3 U.S.C. § 1 (hereafter "the Election Day federal laws"), establish the Tuesday after the first Monday in November in certain years as the day of election for federal offices. Similar to some other state laws, Mississippi law permits mail-in ballots to be counted by election officials if they are received within five days after Election Day.

Case Overview

During the COVID-19 pandemic, Mississippi changed its election laws to permit the counting of mail-in ballots "postmarked on or before the date of the election and received by the registrar no more than five (5) business days after the election." In 2024, Mississippi amended the law to apply to mail-in ballots transmitted by, in addition to the U.S. Postal Service, common carriers. In response, the Republican National Committee (RNC), the Mississippi Republican Party, and others (hereafter "the challengers") filed suit against the Mississippi Secretary of State and other state officials (hereafter "State of Mississippi") in federal district court, arguing that the Election Day federal laws preempt the state law by establishing "a uniform day" for electing Members of Congress and appointing presidential electors. The district court granted the State of Mississippi's motion for summary judgment in July 2024 and the challengers appealed to the U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit).

In October 2024, a three-judge panel of the Fifth Circuit unanimously determined that with enactment of the Election Day federal laws, Congress established "a singular day for the election" of Congress and the appointment of presidential electors. Based on the text of those federal laws, court precedent, and historical practice, the court concluded that Election Day is when "ballots must be both *cast* by voters and *received* by state officials." Therefore, the court held that by allowing ballots to be counted if received up to five days after Election Day, the Mississippi law was preempted by the Election Day federal laws. Accordingly, the Fifth Circuit vacated the district court's grant of summary judgment and remanded.

The State of Mississippi appealed the Fifth Circuit ruling, and the Supreme Court heard oral arguments on March 23, 2026. The question presented to the Supreme Court "is whether the federal election-day

statutes preempt a state law that allows ballots that are cast by federal election day to be received by election officials after that day."

Before the Supreme Court, the challengers focus on the text of the Election Day federal laws, maintaining that contemporary dictionaries define the term "election" to mean the process "of selecting officers" that concludes when the state *receives* a ballot, not when a voter casts a ballot. Further, the challengers emphasize how historical practices in the United States support their position because, dating back to the Civil War, states have not counted ballots that were received after Election Day. The challengers also rely on the Supreme Court's 1997 ruling in *Foster v. Love*, holding that Louisiana's open primary laws, which allowed for the election of a candidate before Election Day, were preempted by the Election Day federal laws. According to the challengers, *Foster* stands for the proposition that an "election must be 'concluded' and 'consummated' on election day through a 'final selection.'"

In response, the State of Mississippi argues that an "election" is when there has been a "conclusive choice of an officer" and that choice is concluded when voters cast their ballots. As Mississippi law requires that choice to occur by Election Day, the State concludes that its law comports with the Election Day federal laws. Similarly, the State counters that history confirms that the Election Day federal laws were enacted to address the challenges arising from states holding elections on various days and not because there was a problem with the date when ballots were received. In addition, the State contends that Mississippi's law comports with the Supreme Court's ruling in *Foster* in that "the conclusive choice of an officer" takes place by Election Day, because "all voters must cast ballots by election day, so the 'voters' 'combine[ ]' with 'officials' on that day to take the 'actions' 'meant to make a final selection of an officeholder.'"

Considerations for Congress

If the Supreme Court decides that the Election Day federal laws preempt the Mississippi law that permits the counting of mail-in ballots received after Election Day, similar laws in other states could likely also be held preempted. As a result, in federal elections, states would be permitted to count only those mail-in ballots received by Election Day. Although a preemption ruling in the case would affect only federal election ballots, at least one scholar has predicted that states, as a matter of administrative practicality, would likely decide to count ballots for state and federal elections under the same rules.

Whether the Election Day federal laws preempt certain state mail-in ballot laws involves a question of statutory interpretation. Therefore, Congress could decide to either maintain the Supreme Court's interpretation of the laws in *Watson v. RNC* or amend the laws to either permit or prohibit states from counting mail-in ballots that are received after Election Day. The Election Day federal laws for House and Senate elections were enacted under Article I, Section 4, clause 1 of the Constitution, known as the Elections Clause, which confers upon the states the initial and principal authority to establish "[t]he Times, Places and Manner of holding Elections for Senators and Representatives," but provides Congress with the authority "at any time by Law [to] make or alter such [laws]." The Election Day federal law for the appointment of presidential and vice-presidential electors was enacted under Article II, Section 1, clause 4 of the Constitution, which provides that Congress "may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States."

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