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# Elections and Voting: Policy and Legal Issues for the 118<sup>th</sup> 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 to these policy areas between 2002 and 2009. Recent Congresses also provided funding to support states and territories responding to election administration challenges concerning election security and the COVID-19 pandemic. This CRS In Focus provides brief background for Members of Congress and staff as they prepare for legislative and oversight duties in the 118<sup>th</sup> Congress.

## Federal Role and Constitutional Framework

Although congressional and presidential elections have 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. (*Arizona State Legislature v. Arizona Independent Redistricting Commission* (2015)). 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 to the Senate and House of Representatives. (2 U.S.C. §§ 1, 7).

A parallel provision addressing presidential elections—Article II, Section 1, clause 2 of the Constitution (*Electors Clause*)—provides that “[e]ach state shall appoint” electors for President and Vice President in the manner “as the Legislature thereof may direct.” Further, Article II, Section 1, clause 4, provides Congress with the power to determine when the states choose their electors, which Congress has set in statute. (3 U.S.C. § 1).

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.

Over the years, the Supreme Court has defined the scope of Congress’s authority to regulate aspects of federal elections and interpreted certain federal election-related statutes. For example, the Court has issued pivotal rulings in the context

of campaign finance (*Citizens United v. FEC* (2010)), congressional redistricting (*Rucho v. Common Cause* (2019)), and voting rights (*Shelby County v. Holder* (2013)).

## Policy Area Overview

Based on the constitutional provisions noted above, Congress has enacted at least nine 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. Each addresses unique but potentially related topics. Because policy issues are not necessarily mutually exclusive, how to classify various bills could be a matter of debate.

### 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 Free Speech Clause of the First Amendment, informing Congress as to the constitutional parameters of campaign finance regulation. For example, most recently, the Court invalidated a FECA provision establishing a limit on campaign contributions that can be used to repay candidates for personal loans. (*FEC v. Ted Cruz for Senate* (2022)).

### 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 drivers 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 issues. Among other requirements, 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 Voting Rights Act of 1965 (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. For the first time, in *Brnovich v. Democratic National Committee* (2021), the Supreme Court interpreted Section 2 in the context of state voting procedures and established “certain guideposts” for courts to evaluate such claims. In *Shelby County v. Holder* (2013), the Court invalidated the VRA’s coverage formula, rendering the preclearance requirements inoperable. Prior to the *Shelby County* ruling, certain jurisdictions were required under the VRA to preclear all proposed changes to voting laws.

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 services members and overseas citizens (Uniformed and Overseas Citizens Absentee Voting Act; 52 U.S.C. §§ 20301-20311).

### Latest Congressional Action

The 117<sup>th</sup> Congress did not enact any “stand-alone” changes to federal statutes regulating campaign finance, election administration, or voting rights. In December 2022, the House and Senate included Electoral Count Act (ECA; 3 U.S.C. §§5-6, 15-18) amendments in the FY2023 Consolidated Appropriations Act (P.L. 117-328). The ECA establishes procedures for a joint session of Congress to count and announce the presidential and vice-presidential electoral votes. The enacted ECA amendments originated as the Electoral Count Reform and Presidential Transition Improvement Act (S. 4573). The FY2023 appropriations law also included \$75 million for grants supporting improved state and territorial election administration and security. Congress appropriated the same amount in FY2022 (P.L. 117-103). Congress also extended certain grant eligibility to the Commonwealth of the Northern Mariana Islands and the American Indian consortium (P.L. 117-182) and directed the Department of Homeland Security (DHS) to undertake additional coordination regarding cybersecurity to state, local, tribal, and territorial (SLTT) governments, as well as election officials (P.L. 117-150).

The 117<sup>th</sup> Congress considered other policy changes that did not become law. The House passed three bills related to campaign finance, elections, or voting rights: H.R. 1, the For the People Act; H.R. 4, the John R. Lewis Voting Rights Advancement Act (VRAA); and H.R. 5314, the Protecting Our Democracy Act. In addition, a House-passed

appropriations bill (H.R. 4502) contained funding for elections grants to states. Also during the first session, the Senate did not invoke cloture on the motion to proceed to versions of the For the People Act (S. 2093; see also S. 1); the VRAA (S. 4); the Freedom to Vote Act (S. 2747); and the DISCLOSE Act (S. 4822). Early in the second session, on January 13, 2022, the House approved the Freedom to Vote: John R. Lewis Act and sent it to the Senate in the form of an amendment between the houses on an unrelated bill (H.R. 5746). On January 19, 2022, the Senate did not agree to a cloture motion on the text. The legislation combines elements of some of the bills noted above and addresses aspects of campaign finance, election administration, and voting rights.

### Congressional Committee Roles

Most congressional 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 issues. 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 elections and voting 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).

### Pending Supreme Court Cases

During its current term, the Supreme Court is considering two potentially consequential election law cases. On October 4, 2022, the Court heard oral argument in *Merrill v. Milligan*, a case that could affect standards that reviewing courts apply in determining when a redistricting map violates Section 2 of the VRA. On December 7, 2022, the Court heard oral argument in *Moore v. Harper*, where the Court is evaluating the scope of a state court’s authority under the Elections Clause to overturn laws enacted by a state legislature that regulate congressional elections based on state constitutional provisions. The Court’s decision in *Moore* could clarify under what circumstances state legislatures have the authority to establish laws that regulate federal elections—including congressional redistricting maps—without review by state courts.

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