nial of effective representation to be justiciable, the standards are so high that neither voters nor minority parties have yet benefitted from the development.[304]

## VOTER (ELECTOR) QUALIFICATIONS

It was the original constitutional scheme to vest the determination of qualifications for voters or "electors" in congressional elections[305] solely in the discretion of the states, save only for the express requirement that the states could prescribe no qualifications other than those provided for voters for the more numerous branch of the legislature.[306] This language has never been expressly changed, but the discretion of the states—and not only with regard to the qualifications of congressional electors—has long been circumscribed by express constitutional limitations found in various constitutional amendments[307] and by the Equal Protection Clause.[308] And, since the right to vote for United States Representatives is conceptually derived from the Federal Constitution,[309] Congress has the power under Article I, § 4, to legislate to protect that right against both official[310] and private denial.[311]

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[304] The principal case was Davis v. Bandemer, 478 U.S. 109 (1986), a legislative apportionment case, but congressional districting is also covered. *See* Badham v. Eu, 694 F. Supp. 664 (N.D. Cal. 1988) (three-judge court) (adjudicating partisan gerrymandering claim as to congressional districts but deciding against plaintiffs on merits), *aff'd*, 488 U.S. 1024 (1988); Pope v. Blue, 809 F. Supp. 392 (W.D.N.C. 1992) (three-judge court) (same), *aff'd*, 506 U.S. 801 (1992); Vieth v. Jubelirer, 541 U.S. 267 (2004) (same); League of United Latin American Citizens v. Perry, 548 U.S. 399 (2006) (same). Additional discussion of this issue appears under Amendment 14, The New Equal Protection, Apportionment and Districting.

[305] The clause refers only to elections to the House of Representatives, of course, and, inasmuch as Senators were originally chosen by state legislatures and presidential electors were chosen as the states directed, it was only the qualifications of voters for the House with which the Constitution was originally concerned.

[306] Minor v. Happersett, 88 U.S. (21 Wall.) 162, 171 (1875); Breedlove v. Suttles, 302 U.S. 277, 283 (1937). *See* 2 J. Story, Commentaries on the Constitution of the United States 576–585 (1833).

[307] The Fifteenth, Nineteenth, Twenty-fourth, and Twenty-sixth Amendments limited the states in the setting of qualifications in terms of race, sex, payment of poll taxes, and age.

[308] *E.g.*, Carrington v. Rash, 380 U.S. 89 (1965) (member of the armed services who entered service while residing in a different state); Kramer v. Union Free School Dist., 395 U.S. 621 (1969) (requirement that individual own or rent taxable real property within a school district, be a spouse of a property owner or lessor, or be the parent or guardian of a child attending a public school in the district); City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970) (real property owners).

[309] "The right to vote for members of the Congress of the United States is not derived merely from the constitution and laws of the state in which they are chosen, but has its foundation in the Constitution of the United States." *Ex parte* Yarbrough, 110 U.S. 651, 663 (1884). *See also* Wiley v. Sinkler, 179 U.S. 58, 62 (1900); Swafford v. Templeton, 185 U.S. 487, 492 (1902); United States v. Classic, 313 U.S. 299, 315, 321 (1941).

[310] United States v. Mosley, 238 U.S. 383 (1915).

[311] United States v. Classic, 313 U.S. 299, 315 (1941).