

## Sec. 4—Elections

## Cl. 1—Times, Places, and Manner

scribed in each State by the Legislature thereof; but Congress may at any time make or alter such Regulations, except as to the Place of chusing Senators.

**LEGISLATION PROTECTING ELECTORAL PROCESS**

By its terms, Art. I, § 4, cl. 1 empowers both Congress and state legislatures to regulate the “times, places and manner of holding elections for Senators and Representatives.” Not until 1842, when it passed a law requiring the election of Representatives by districts,<sup>365</sup> did Congress undertake to exercise this power. In subsequent years, Congress expanded on the requirements, successively adding contiguity, compactness, and substantial equality of population to the districting requirements.<sup>366</sup> However, no challenge to the seating of Members-elect selected in violation of these requirements was ever successful,<sup>367</sup> and Congress deleted the standards from the 1929 apportionment act.<sup>368</sup> In 1866, Congress was more successful in legislating to remedy a situation under which deadlocks in state legislatures over the election of Senators were creating vacancies in the office. The act required the two houses of each legislature to meet in joint session on a specified day and to meet every day thereafter until a Senator was selected.<sup>369</sup>

The first comprehensive federal statute dealing with elections was adopted in 1870 as a means of enforcing the Fifteenth Amendment’s guarantee against racial discrimination in granting suffrage

<sup>365</sup> 5 Stat. 491 (1842). The requirement was omitted in 1850, 9 Stat. 428, but was adopted again in 1862, 12 Stat. 572.

<sup>366</sup> The 1872 Act, 17 Stat. 28, provided that districts should contain “as nearly as practicable” equal numbers of inhabitants, a provision thereafter retained. In 1901, 31 Stat. 733, a requirement that districts be composed of “compact territory” was added. These provisions were repeated in the next act, 37 Stat. 13 (1911), there was no apportionment following the 1920 Census, and the permanent 1929 Act omitted the requirements. 46 Stat. 13. *Cf.* *Wood v. Broom*, 287 U.S. 1 (1932).

<sup>367</sup> The first challenge was made in 1843. The committee appointed to inquire into the matter divided, the majority resolving that Congress had no power to bind the states in regard to their manner of districting, the minority contending to the contrary. H. REP. NO. 60, 28th Congress, 1st sess. (1843). The basis of the majority view was that while Article I, § 4 might give Congress the power to create the districts itself, the clause did not authorize Congress to tell the state legislatures how to do it if the legislatures were left the task of drawing the lines. L. SCHMECKEBIER, *CONGRESSIONAL APPORTIONMENT* 135–138 (1941). This argument would not appear to be maintainable in light of the language in *Ex parte Siebold*, 100 U.S. 371, 383–86 (1880).

<sup>368</sup> 46 Stat. 13 (1929). In 1967, Congress restored the single-Member district requirement. 81 Stat. 581, 2 U.S.C. § 2c.

<sup>369</sup> 14 Stat. 243 (1866). Still another such regulation was the congressional specification of a common day for the election of Representatives in all the states. 17 Stat. 28 (1872), 2 U.S.C. § 7.