



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
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FEDERAL COURTS PLAY ESSENTIAL BUT SECONDARY ROLE IN ELECTIONS

The very essence of representative democracy is holding free and fair elections in which the people get to make their choices through voting. No one needs a reminder that November is voting month. Our televisions are inundated with political commercials. Our mailboxes are filled with political circulars touting one political candidate or another. On our tablets, cellphones, and laptops, we see online political ads. November is undoubtedly the season for voting.

Voting for state and local candidates or on political issues can take place at any time throughout the year. However, elections for federal officials must take place in November. The Constitution only requires that the election of members of the U.S. House of Representatives take place every two years, which in practice falls in even-numbered years. The Constitution also provides that a third of the U.S. Senate is elected every other year. Elections for the President and Vice President occur every four years. But all of these federal elections take place on the first Tuesday after the first Monday in November because of a law Congress passed in 1845 establishing that day as the national day for federal elections.

Regulation Of Voting Is Done Mostly at The State and Local Level.

Federal elections generate the most attention, but by far the most candidates for election are state and local officials. In addition, the Constitution states that the “Times, Places and Manner” of federal congressional elections are left to state legislatures unless the U.S. Congress sets different standards. The administration of voting is also in the hands of state and local officials. There are local election boards, boards of elections, election commissions, and the like. The rules for voting are also largely a state function. Preparing voting ballots, voting locations, absentee voting, voting by mail, the start of voting, qualifications to vote, removing people from the voting rolls, and staffing voting locations are all decided by state law. Candidates’ eligibility and qualifications are also largely a matter of state law. States decide the mechanism for accepting votes, tabulating them, and announcing the results. That is why voting rules vary from state to state. In some states the candidate with the most votes wins. In other states the winner must receive a majority of the votes.

Because states and local municipalities play the primary role in voting, most lawsuits contesting election matters are brought in state courts.

The Federal Courts Play a Secondary but Critical Role in Voting.

Although the states have primary responsibility for voting and the procedures that govern voting, the federal courts do have an important role to play in election matters if a constitutional question or a federal statute is involved. Numerous federal courts have acknowledged that there is no authority absent a constitutional claim or a federal statutory basis for federal courts to oversee the administrative details of state or local elections. But in the 2006 case of *Purcell v. Gonzalez*, the Supreme Court admonished lower courts to avoid deciding election matters close to elections to avoid the disruption and confusion that can come from last-minute changes to the rules.

The Federal Courts' Role in Claims Under the U.S. Constitution.

Federal courts apply the U.S. Constitution in cases where someone claims state laws or practices violate the Constitution. Perhaps the most prominent instance is the 1962 decision in *Baker v. Carr*, in which the Supreme Court, applying the Equal Protection Clause of the Fourteenth Amendment, declared the "one person one vote" rule. A local example is *McDaniel v. Paty*, a 1978 Supreme Court decision in favor of Chattanooga Pastor Paul A. McDaniel's argument that Tennessee's constitutional provision prohibiting clergy from holding elected office was unconstitutional under the Free Exercise Clause of the First Amendment.

The Federal Courts' Role in Federal Statutory Claims.

Congress also passes laws from time to time that govern voting or elections. The most prominent example may be the Voting Rights Act of 1965. This law prohibited racial discrimination in state and local elections. A more recent example is the National Voter Registration Act of 1993 (also known as the "NVRA" or "motor voter law"). The NVRA established national standards for voter registration in federal elections and for removing voters from the rolls. And of course, Congress provides the states with money related to voting so long as those funds are spent in accordance with Congress's desires. Congress has also established the Federal Election Commission, which does not cover voting at all but rather administers certain laws and rules pertaining to federal campaign finance laws. Cases involving these laws may be brought in federal court.

Conclusion.

This November offers us another Election Day and another opportunity to fulfill one of our responsibilities as citizens. Through the exercise of our right to vote, we engage in the collective exercise of governing this great nation of ours. By doing so we are living up to Abraham Lincoln's aspiration that our government will be "of the people, by the people, for the people."

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