



HARVARD Kennedy School

ASH CENTERfor Democratic Governance
and Innovation

Who's in Charge of Congressional Elections?

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This is a resource for government officials, media, civic organizations and all Americans to help them quickly get the facts on the constitutional history and language on the roles and responsibilities for implementing American congressional elections. It is a tool for use by others developed by a bipartisan subgroup of the Ash Center's Harvard Kennedy School Executive Session on Elections and Election Administration. It is meant to help address the problem identified by numerous stakeholders of a widespread lack of understanding of this important civic process with straightforward information.

1. Introduction

The Constitution establishes a clear and deliberate structure for administering federal elections. States and local officials are responsible for running elections, while Congress holds limited supervisory authority to set national standards. The President, however, is not assigned a role in directing or supervising election administration. This resource explains that structure in three parts: first, how the Constitution places primary responsibility for election operations in the states; second, why any federal authority over elections belongs to Congress rather than the Executive

Branch; and third, how existing federal involvement operates through statutes enacted by Congress. It will then conclude by explaining the role of state and local officials in this system and why this structure best protects democratic accountability and the rule of law.

The Constitution gives the primary responsibility for regulating elections to the states, a decentralized approach that incentivizes innovation and the development of robust election policies . . . Policymakers should protect America's decentralized election system and the primary role that states play regulating and conducting elections. American Legislative Exchange Council (ALEC), Statement of Principles of Elections.⁵

Our Constitution is very clear: states are responsible for administering our elections . . . In the federal government, only Congress has the power to set election law. States United Democracy.⁶

Under this framework, state and local officials are charged with administering elections, serving voters, and counting ballots to determine who the people choose to represent them . . . Since officials on the local level are empowered to handle the bulk of election operations, they can adjust procedures based on the needs and capacity of their communities . . . Furthermore, having election officials operate in their own communities creates responsiveness and transparency for voters—the people who serve you at the election office and the polling place are your neighbors who have a real stake in ensuring your community has a chance to be heard. The Brennan Center.⁷

2. The Constitution's Allocation of Election Administration to State Officials

The Constitution divides authority over elections between the states and Congress in a deliberate and carefully balanced way. As a practical matter, elections in the United States are run by state and local officials. That design reflects the Framers' decision to make election administration decentralized, locally responsive, and grounded in state law. Two provisions are central:

Article I, Section 4 (Elections Clause): "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations . . ."

For congressional elections, this clause establishes a structure, where states have primary responsibility for setting and administering election rules on ballot access, voting procedures, vote counting, and certification. Congress retains a supervisory power to "make or alter" those regulations where national interests require intervention.

Article II, Section 1 (Electors Clause): "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors . . ."

For presidential elections, the Constitution again assigns primary authority to the states to determine how electors are chosen. Congress sets the date, but the operations of the elections themselves remain state-based.

The Constitution deliberately adopts a decentralized structure. The Framers assigned primary responsibility for regulating elections to the states, believing they would be more responsive to local conditions, while reserving to Congress a backstop authority to intervene when necessary. The allocation of this authority reflects a careful compromise forged by the Framers.⁸ Federalists worried that states might manipulate or even sabotage federal elections to weaken the national government, while Anti-Federalists feared that unchecked congressional control could be used to entrench federal power and undermine popular accountability. The resulting structure strikes a balance: local administration in the first instance, with limited national oversight by Congress.

3. Federal Election Authority Lies with Congress, Not the President

While the Constitution assigns primary responsibility for election administration to the states, it also makes clear that when the federal government intervenes, that authority belongs to Congress and not the President. We have seen Congress do just that with laws like the Voting Rights Act, the Help America Vote Act, and the Uniform and Overseas Citizens Absentee Voting Act.⁹

Again, the Framers set it up this way deliberately. The Constitution divides authority over congressional elections between the states and Congress and provides no explicit role for the Executive Branch beyond the President's Article II duties to implement the law.

Indeed, there is no mention of the President in the Constitution with respect to the elections

process at all. Only Congress may override or alter state regulations when it determines national uniformity or interests require it, through the passage of a federal law.

Federalist 59 explains this design:

It will not be alleged, that an election law could have been framed and inserted in the Constitution, which would have been always applicable to every probable change in the situation of the country; and it will therefore not be denied, that a discretionary power over elections ought to exist somewhere. It will, I presume, be as readily conceded, that there were only three ways in which this power could have been reasonably modified and disposed: that it must either have been lodged wholly in the national legislature, or wholly in the State legislatures, or primarily in the latter and ultimately in the former. The last mode has, with reason, been preferred by the convention. They have **submitted the regulation of elections for the federal government, in the first instance, to the local administrations**; which, in ordinary cases, and when no improper views prevail, may be both more convenient and more satisfactory; **but they have reserved to the national authority [Congress] a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety.** (emphasis added).

This passage makes clear that election authority was deliberately placed in legislatures, with state legislatures acting first and Congress retaining ultimate oversight. While some argue that the appropriate balance between state legislatures and Congress is still unsettled, the

role of the President has not been considered an open question.¹⁰ The Executive is limited to executing the laws passed by Congress. The Constitution does not authorize the Executive Branch to independently direct state election officials, alter state election procedures, or supervise federal elections. While the President can direct executive branch agencies in the exercise of their existing authorities, the President's orders must not conflict with federal law or the Constitution. This structure ensures that national standards are adopted through the legislative process rather than unilaterally imposed.

4. Federal Statutory Authority in Election Administration

There are three main ways in which the federal government engages in national election administration, almost all of which must be carried out pursuant to acts of Congress.

First, there are times when federal agencies, in accordance with laws duly passed by Congress, appropriately provide for greater capacity and assistance to the states in areas where they cannot fulfill the function on their own. For example, federal agencies work with states by coordinating information sharing about foreign intelligence threats to elections and pursuing violations of federal civil and criminal laws that pertain to elections.

Second, previous administrations have issued a small handful of executive orders pertaining to elections that either had no binding legal effect, sought to more effectively implement existing laws, or directed agencies to perform actions pursuant to their statutory authorization. For example, President Obama issued an executive order to create a bipartisan commission to study election administration. Moreover,

both Presidents Clinton and Biden issued executive orders instructing federal agencies to assist in the administration of the National Voter Registration Act of 1993. They did not seek to compel states to perform any particular acts, supplant state functions, nor replace or reinterpret any law passed by Congress.

Finally, pursuant to Congressional statutes authorizing these actions,¹¹ state governors have activated their National Guard members for *support roles* under *state active-duty* authority, for example for assistance during the COVID-19 pandemic.¹² But the National Guard cannot be used by the federal government on its own with respect to the elections process.

5. The Role of State and Local Election Officials and Rule of Law

State and local election officials are tasked with administering elections for a good reason—they are professionals in their field who live in the communities they serve, know how to effectively operate elections, and are trained and required to follow all relevant laws when doing so. How they go about their jobs is primarily governed by state laws passed by state legislatures. Over the years, Congress has passed laws to protect voters' rights and freedoms in accordance with the Constitution, and election officials are bound to follow those rules as well.

Local election officials hold executive positions; they do not create laws, they implement them. This is true in every state in the country. While there may be strong disagreements with the practices they choose or options they expand and limit, local officials have the duty to follow those rules to the best of their legal

ability. Again, it is the people closest to the citizenry of the voting jurisdiction who are responsible for carrying out the duties necessary for a fair, effective, and safe election. By design, they are neighbors and friends who are easily accessible to the people they serve. For the federal government or any outside actor to ask them to act in ways that are contrary to state law violates the rule of law necessary for a functioning and healthy democracy.

6. Looking to the Future

Though there have been strong disagreements about election policies and procedures since the founding of the country to today, this basic structural arrangement has served our democracy well. The Framers and other leaders since then have consistently recognized that people working at the local level, with training and experience in their jobs and as members of their communities, are best suited to take on the operational administration of our election system, with appropriate legal checks in place. Future elections should continue to be conducted in this manner.

Notes

1. Former Secretary of State, Commonwealth of Kentucky (R)
2. Secretary of State, State of Maine (D)
3. Former Secretary of State, State of Washington (R)
4. Former County Recorder, Maricopa County, Arizona (R)
5. <https://alec.org/model-policy/statement-of-principles-on-elections/>
6. <https://statesunited.org/resources/facts-about-elections/>
7. <https://www.brennancenter.org/our-work/analysis-opinion/states-not-president-run-elections-america>
8. See <https://constitution.heritage.org/essays/a1-s4-c1/>
9. <https://www.archives.gov/milestone-documents/voting-rights-act>; <https://www.congress.gov/bill/107th-congress/house-bill/3295/text>; <https://www.justice.gov/crt/uniformed-and-overseas-citizens-absentee-voting-act>
10. See <https://constitution.heritage.org/essays/a1-s4-c1/>
11. [32 U.S.C. § 101 et seq.](#)
12. <https://statesunited.org/wp-content/uploads/2020/10/National-Guard.pdf?>

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