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Single-Member Districts Are Not Constitutionally Required

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INTRODUCTION

The Constitution is silent on the method for electing representatives, as it only requires the apportionment of seats in the House following the decennial census. Congress and the states determine many of the electoral rules affecting the House, such as the method of apportioning seats, the manner of electing representatives, and the size of the House. As such, Congress, the courts, and state legislatures have become central actors in determining apportionment law that dictates the institutional design and representative nature of the House. After ratification of the Constitution, states experimented with different methods for electing representatives based on representational preferences and needs. It was Congress that ultimately required that states uniformly use single-member districts, creating institutional rules that profoundly affected the composition of the House of Representatives. Article 1, Section 4 stipulates that "Congress may at any time by law make or alter [election] regulations." Does this language include the ability to require states to adopt a uniform method for electing representatives? Can the single-member district requirement be constitutionally justified through an understanding of congressional power to make electoral regulations? These questions are the result of the broad language in the Elections Clause. Given the lack of judicial interpretation on this matter, understanding the constitutional development of single-member districts requires a focus on the constructed meaning of the Constitution that emerged within the political debates over preferred electoral rules.

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Gill v. Whitford is a recent case of the Supreme Court entering the "political thicket" of redistricting. The case centers on Wisconsin's redistricting plan, following the 2010 census, passed by a Republican-controlled legislature in 2011. A district court declared the plan violated the Constitution because it favored one party, while disadvantaging the other—an unconstitutional partisan gerrymander. Voting results in the Wisconsin elections help substantiate this claim because, in 2012 and 2014, Democrats received more votes (just over a majority) than Republicans, yet the Democrats only won 39 of the 99 seats in the state-assembly. Wisconsin Republicans maintained that they did not intentionally create partisan districts, but the disparity emerged because of a natural geographic advantage they have in rural areas, where their voters are evenly distributed, compared to the Democrats, who are clustered in urban areas.[1] In this case, drawing geographical district lines mattered for the partisan composition and representativeness of the state legislature.

While *Gill v. Whitford* focused on state-level redistricting, in 2015, the Court ruled on a case dealing with congressional redistricting and the use of independent redistricting commissions to reduce partisan gerrymandering at the federal level. In *Arizona State Legislature v. Arizona Independent Redistricting Commission*, the Supreme Court considered if a popular initiative could empower an independent commission to draw district lines for the state. State legislatures are constitutionally empowered to determine "the manner of holding elections" for the House, including drawing district lines. Writing for the 5-4 majority, Ruth Bader Ginsburg argued that the "Legislature" in the Elections Clause could also refer to any body capable of making laws, including "the people."[2] According to this understanding, the concept of legislature was expanded, allowing for additional avenues to drawing district lines other than state legislatures, the common practice based on the interpretation of the Elections Clause. Like many previous cases, the Court's ruling constructs an

1. *Gill v. Whitford*, BRENNAN CTR. FOR JUSTICE (Jan. 24, 2018), https://www.brennancenter.org/legal-work/whitford-v-gill.

2. Arizona State Legislature v. Arizona Indep. Redistricting Comm'n, 135 S. Ct. 2652 (2015). *See, e.g.,* Saikrishna Bangalore & John Yoo, *People ≠ Legislature*, 39 HARV. L. REV. 341, 342 (2016) (commenting on the Supreme Court's decision in *Arizona State Legislature* and arguing that "the Court read the word 'Legislature' out of the Elections Clause.").

understanding of Article I, Section 4 and the scope of congressional power under the Times, Places and Manner Clause, specifically related to creating constituencies and determining the nature of congressional representation.

These cases are but two examples of the Court's engagement with the concept of representation and how it is determined through institutional design. Currently, the House of Representatives utilizes a system of single-member districts as the required method for electing members to the House. That is, every state is apportioned representatives based on population, and each state is divided into a corresponding number of geographically based voting districts, with one representative elected from each district. The decision to require single-member districts raises important questions regarding how and where these geographic voting boundaries are drawn. As seen in *Gill v. Whitford*, this matters for who votes, for whom they get to vote, and the electoral connection between voter and representative. When the Court is called upon to adjudicate cases involving redistricting, it primarily addresses the process and outcomes of drawing (or redrawing) district lines. However, the deeper institutional question of the origin and constitutionality of single-member districts is never addressed.

Scholarship on the development of single-member districts in the United States has rightly focused on the 1842 Apportionment Act, which was the first time Congress required states adopt a particular method for electing representatives. This Act was important in the development of Article I, Section 4 because the Whig Party's interpretation of the Times, Manner, and Places Clause shifted power from the states to Congress in determining the manner of electing representatives. Accordingly, research has provided explanations for why the Whigs pursued this particular electoral reform, including arguments from partisanship or self-

interest[3] and concern for representation.[4] These accounts are useful for understanding an important moment in the institutional development of the House of Representatives and the nature of federalism. However, they do not capture subsequent developments beyond the 1840s and how the 1842 understanding of the Election Clause remained settled, even amidst legal challenges that emerged during the "apportionment revolution" of the 1960s.

This article will focus on two separate but interrelated developments: 1) the origin of using single-member districts as a method of representation and 2) how the meaning of the Election Clause was settled to legitimize congressional authority to require states to use single-member districts. The Supreme Court's interpretation of the Election Clause, while important for understanding contemporary voting rights, does not address the broader, historical meaning of the Clause. In other words, relying on the Supreme Court for understanding the Elections Clause provides relatively little guidance for understanding the origin and constitutionality of the congressional single-member district mandate.[5] In this article, we provide a brief historical account of the origin of using single-member districts as a method of political representation, a discussion of the development of the Election Clause and how Congress interpreted it to justify their requirement that states use single-member districts, and an account of how the Supreme Court has yet to address the constitutionality of congressional power over the method of electing representatives. Answering the questions of the origin and constitutionality of the single-member district requirement has important bearing on the concept of representation, as single-

3. *See* CHARLES A. KROMKOWSKI, RECREATING THE AMERICAN REPUBLIC: RULES OF APPORTIONMENT, CONSTITUTIONAL CHANGE, AND AMERICAN POLITICAL DEVELOPMENT, 1770-1870 (2002); ROSEMARIE ZAGARRI, THE POLITICS OF SIZE: REPRESENTATION IN THE UNITED STATES, 1776–1850 (1987); Martin H. Quitt, *Congressional (Partisan) Constitutionalism: The Apportionment Act Debates of 1842 and 1844,* 28 J. EARLY REPUBLIC 627 (2008); Michele Rosa-Clot, *The Apportionment Act of 1842: 'An Odious Use of Authority'*, 31 PARLIAMENTS, ESTATES & REPRESENTATION 33 (2011); Johanna Nicol Shields, *Whigs Reform the 'Bear Garden': Representation and the Apportionment Act of 1842*, 5 J. EARLY REPUBLIC 355 (1985); Bernard Ivan Tamas, *A Divided Political Elite: Why Congress Banned Multimember Districts in 1842*, 28 NEW POLI. SCI. 23 (2006).

4. Robert E. Ross, *Recreating the House: The 1842 Apportionment Act and the Whig Party's Reconstruction of Representation*, 49 POLITY 408 (2017).

5. Jamal Greene, *Judging Partisan Gerrymanders under the Elections Clause*, 114 YALE L. J. 1021 (2005).

member districts often fail to provide representation to political and ethnic minority groups.[6] It also has implications for understanding the political process by which constitutional meaning is constructed absent judicial interpretations.[7]

I. ORIGIN OF SINGLE-MEMBER DISTRICTS

After independence from Britain was declared, states began developing their own constitutions, and, following English Whig political thought (and John Locke), many of them limited the prerogatives of the governor and ensured the legislatures reigned supreme because it embodied the people. American legislatures were to be the government, and the people were empowered through legislative bodies and their representatives. The nature and scope of representation was perhaps the most important political controversy leading up to the revolutionary war and after. The concept of representation emerged from the impossibility of convening the whole people to make legislative decisions, particularly in areas that were both demographically and geographically dispersed. The challenge became designing a constitutional system that translated the voice of the people to the legislative body through representation, one that could not be based on English institutional design.

A system of representation could not be derived from experience with English representation. If anything, the American system of representation needed to learn from the failures of the English model. The British system of representation was designed to accommodate limited geographic and social mobility and a constituency that was relatively small and static. Geographically based representation, then, was utilized to represent geographically distinct communities.[8] During

6. *See, e.g.*, DOUGLAS J. AMY, REAL CHOICES/REAL VOICES: THE CASE OF PROPORTIONAL REPRESENTATION ELECTION IN THE UNITED STATES (1993) (arguing that proportional representation where multiple legislators are elected from a district is a fairer, more representative approach to democratic elections); LANI GUINIER, THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY (1991) (arguing for proportional voting as a means for increasing the representation of historically underrepresented communities).

7. *See, e.g.*, KEITH E. WHITTINGTON, CONSTITUTIONAL CONSTRUCTION: DIVIDED POWERS AND CONSTITUTIONAL MEANING (1999) (exploring the history of constitutionalism and how non-judicial bodies have understood and applied the principles of the constitution).

8. ANDREW REHFELD, THE CONCEPT OF A CONSTITUENCY: POLITICAL REPRESENTATION, DEMOCRATIC LEGITIMACY, AND INSTITUTIONAL DESIGN 69 (2005).

the seventeenth century, as the population increased and mobilized, England's existing system of representation derived from community-based district lines no longer sufficed. Although England used a form of electoral districts, the problem of rotten boroughs and a small number of those choosing representatives created systematic inequalities in representation. The English House of Commons, the branch of Parliament intended to represent the people, had become so unequal, irregular, and inadequate in its representation that by the middle of the eighteenth century, it hardly reflected the voice of the people and was separated from the interests of those it was supposed to represent.[9] The House of Commons represented interests, not people, and if interests were not adequately represented, the English system of representation failed. The rallying cry preceding the American Revolution of "no taxation without representation" was an indictment of English constitutionalism and the importance of connecting legislative powers to a system of representation. If representation was to be constructed using electoral districts, they would have to be created using more systematic and equal criteria.

Creating institutions of representation took place on two levels, national and state. At the national level, the Articles of Confederation created a system of representation that was more political than geographical.[10] Under the Articles, state legislatures elected representatives instead of having communities or districts elect them. Representation was not proportionally allocated because each state was allowed to send no less than two and no more than seven representatives. On legislative matters, each state was given one vote and nine of thirteen votes were required to pass legislation. This fundamentally established representation of states as political bodies over representing people, a form of representation that continued in the Senate under the new Constitution. The lack of representing people or local communities would have to be addressed in the institutional design of the House.

At the state level, five states, New Jersey, Pennsylvania, New York, Vermont, and South Carolina, utilized electoral districts for representative purposes. For example, the 1776 New Jersey

9. GORDON S. WOOD, THE CREATION OF THE AMERICAN REPUBLIC, 1776–1787 165 (1998).

10. REHFELD, *supra* note 8, at 78.

Constitution stipulated that counties choose representatives to the Assembly. The 1777 New York Constitution established representation for the various counties based on population, with a census taken every seven years and alterations to the number of representatives made based on population changes. This is to say, these state constitutions contained specific language requiring periodic adjustments to representation based on changes in population to maintain a system of proportionate and equal representation.[11] The decision to use single-member districts with the number of representatives adjusted based on a decennial census was not something early Americans borrowed from English political thought and practice. As Jay K. Dow argued, "in the colonial era there was nothing that looked like the single-member district system for the representation of individuals."[12] The manner of understanding and constructing a system of representation in the House was not inherited from the British, but the result of American political and constitutional development based on the ambiguous language of Article I, Section 4.

Single-member districts were not universally utilized by all states before or after ratification of the Constitution. While the idea and practice of using electoral districts occurred in many states prior to ratification, single-member districts coupled with the plurality rule was not formally adopted until decades later. At the national level, the idea of single-member districts emerged as a product of debates over representation, particularly in the House of Representatives. The manner of election determines the type of representative and manner of representation. During founding debates, both the Federalists and Anti-Federalists were aware of how electoral rules would determine representation and the objectives of government. The Federalists' vision of representative government recommended representative be elected using a plurality rule through large, heterogeneous, single-member districts. The Anti-Federalists preferred electing representatives through majority rule in smaller, more homogenous, single-member districts.[13] Both the Federalists and Anti-Federalists agreed that single-member districts were the

11. WOOD, *supra* note 9, at 172.

12. JAY K. DOW, ELECTING THE HOUSE: THE ADOPTION AND PERFORMANCE OF THE US SINGLE-MEMBER DISTRICT SYSTEM 13 (2017).

13. *Id*. at 25.

preferred electoral configuration. However, they differed greatly on the details of district creation and election rules. The Constitution does little to resolve this debate because it does not provide specifics related to the manner of electing representatives.

II. SINGLE-MEMBER DISTRICTS AND CONSTITUTIONAL DEVELOPMENT

The requirement that states utilize a uniform method for selecting representatives first came from the 1842 Apportionment Act. In the process of reapportioning representatives in the House, a Whig-controlled Congress also stipulated that representatives be elected by single-member districts. Prior to this, states widely experimented with different methods of electing members to the House. The two most prominent methods were single-member districts, or a general ticket election wherein voters voted for an entire slate of representatives with as many names as there were seats. Some states, like New York and Pennsylvania, used multi-member districts in urban areas to provide additional representatives for the higher population. At the time of the 1842 apportionment, congressional power to require states use single-member districts was a major constitutional question, one that was the subject of extensive debate in Congress and elicited the first presidential signing statement of consequence when President Tyler questioned the constitutionality of the single-member district requirement.[14] It is within these debates that political actors established the constitutionality of single-member districts through a more expansive construction of the Times, Places, and Manner Clause in Article I, Section 4.

Article 1, Section 4 of the Constitution contains the Times, Places, and Manner Clause, which reads:

> 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, except as to the Places of chusing Senators.

This Clause stipulates that state legislatures are the primary agents for regulating congressional elections within their state.

14. *Id*. at 111.

Congress, following their power to make or alter regulations, has intervened on certain occasions, but there is no clear constitutional text establishing the scope of congressional power within this political arena. Is congressional power to require single-member districts constitutionally justified by such phrases as "Times," "Places," or "Manner"? This question, and the meaning of the Times, Places, and Manner Clause, were central to the debates over the 1842 Apportionment Act and the congressional mandate that states utilize single-member districts.

Beginning with the initial understanding of the Election Clause is necessary to fully understand the extent to which the Whig Party constructed new constitutional meaning to justify the congressional mandate for single-member districts.[15] At the constitutional convention and during the ratification process, the Times, Places, and Manner Clause was understood to be a necessary, albeit limited means of ensuring the states did not disrupt or subvert the national government by failing to hold congressional elections. Critics of the Constitution feared the Clause was too ambiguous, and this ambiguity allowed Congress to assume power at the expense of the state governments. Two interrelated constitutional issues emerged during debates over the Times, Places, and Manner Clause: ensuring adequate representation and balancing power within a federal system. This section discusses the constitutional development of the Election Clause by explaining when and how Congress assumed power over federal elections and prohibited any election method other than single-member districts, as well as the Supreme Court's position on Article I, Section 4 and electoral questions.

A. Constitutional Convention and Ratification

Delegates at the constitutional convention did not discuss the Election Clause at great lengths because it was introduced towards the conclusion of the convention. Initially, the language addressing legislative power was relatively broad, and very few specific details emerged. For example, the "Virginia Plan" empowered the legislative branch "to enjoy the Legislative Rights vested in Congress by the Confederation & moreover to legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by

15. Ross, *supra* note 4, at 416–417.

the exercise of individual Legislation."[16] Charles Pinkney and John Rutledge opposed this proposal because the word "incompetent" was extremely vague and could potentially vest Congress with indefinite powers.[17] Despite opposition, the proposition was quickly adopted two days later. This broad language, however, did not survive the Committee of Detail that was formed towards the conclusion of the Convention.

On 6 August, once the delegates reconvened after an adjournment, the Committee of Detail replaced the broad grant of congressional powers with a list of enumerated powers. Among the powers was the Times, Places, and Manner Clause that initially read: "The times and places and manner of holding elections of the members of each House shall be prescribed by the Legislature of each State; but their provisions concerning them may, at any time be altered by the Legislature of the United States."[18] In the subsequent days, the delegates immediately began considering the Committee's provisions and wasted no time debating each enumerated power now granted to the legislative branch, including the Times, Places, and Manner Clause.

On 9 August, the preliminary Times, Places, and Manner Clause was addressed, and discussion proceeded by separating it into its two parts: 1) the power granted to state legislatures to "prescribe" the times, places, and manner of holding elections and 2) the power granted to the national government to alter the election provisions made by the states. Debate over the Clause centered on the nature of federalism under the new Constitution. Charles Pinkney and John Rutledge defended the states' power and role in the election process by proposing to eliminate the entire second part of the Clause. They believed the states "could & must be relied on in such cases." Conversely, Nathaniel Gorham defended the national legislature's ability to alter state election law, comparing the proposed power with that of the British Parliament. Building on Gorham's position, Madison challenged Pinckney and Rutledge's supposition by expressing his own reservations about relying on the states for election purposes. The "necessity of a Gen Gov," he argued, "supposes that the State Legislatures will sometimes fail to refuse to consult the common

16. JAMES MADISON, NOTES OF DEBATES IN THE FEDERAL CONVENTION OF 1787 31 (1987).

17. *Id*. at 43.

18. *Id*. at 387.

interest at the expence [sic] of their local conveniency [sic] or prejudices."[19] To substantiate his position, Madison connected the mode of selecting members of Congress with the nature of representation and its relation to policy preferences in the House. If a state legislature had a particular policy preference, it could manipulate electoral rules to favor particular candidates, and any inequalities in representation at the state level would be transferred to the national legislature. Without a safeguard on state power, state legislatures could influence representation in the House by manipulating the times, places, and manner of holding elections. In other words, the House would become more representative of the state legislatures rather than representative of the people.

After addressing the danger of giving plenary power to the states over elections, Madison explained how the institutional design of the proposed Congress would make power over elections safe at the national level. There would be no danger in giving Congress power to alter state election laws because of the members of Congress. Under the proposed system, senators were elected by state legislature and members of the House elected by the same people who elected members of the state legislatures. If those who advocated for state authority, like Pinkney and Rutledge, had confidence in the state legislatures to not abuse the power of regulating elections, then they must also have confidence that those same people would elect individuals to the Senate who would likewise not abuse the power granted to the national legislature. Therefore, reasoned Madison, congressional power over the times, places, and manner of elections to Congress was both necessary and safe.

Following Madison's defense of the Clause, Rufus King and Gouverneur Morris made final arguments for the propriety of granting the national legislature power over elections by raising further concerns about states abusing their power. In particular, they both expressed concern that the states would disrupt the election process by making "false returns and then make no provisions for new elections." In this way, their concern was slightly different from Madison's. Madison feared that, without the intervention of Congress, states could manipulate the election for their own policy purposes; King and Morris feared that states

19. *Id*. at 423.

could disrupt the election process to subvert the national government's power and eliminate the entire House of Representatives by not electing members to it. In light of these arguments, the motion to eliminate congressional power over elections did not prevail, as even those who had "sufficient confidence in the State Legislatures" believed "it might be best to retain the clause."[20] The delegates only made minor adjustments to the Clause's language after deciding to maintain the two sections. The new Clause was understood to remedy both Madison's and King and Morris's concerns in that the national government was capable of altering state election provisions only in the case of electoral manipulations or refusal to hold elections. With these minor alterations, the new Clause passed unanimously. From this accepted language, states were initially understood to have more control over federal elections, and there was no constitutional language or identifiable preference for the use of single-member districts.

On 14 September, towards the end of the convention, The Times, Places, and Manner Clause was changed one more time before the final version was accepted. As the delegates voted on the final version of the proposed constitution, the phrase, "except as to the places of choosing Senators" was unanimously added to "exempt the seats of Govt in the States from the power of Congress."[21] Otherwise, Congress could determine where state legislatures could meet and where states could locate their capitals. During the Virginia ratifying convention, Madison further explained the necessity of this addition:

> [I]f Congress could fix the *place* of choosing the senators, it might compel the state legislatures to elect them in a different place from that of their usual sessions, which would produce some inconvenience, and was not necessary for the object of regulating elections. But it was necessary to give the general government a controul over the time and manner of choosing the senators, to prevent its own dissolution.[22]

The exemption of "place" for senatorial elections coincided with the federal intention of the Clause. The House of Representatives was designed to "derive its powers from the

20. *Id*. at 424.

21. *Id*. at 635.

22. *Debate in the Virginia Convention* (June 14, 1788), *in* 3 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 311 (Max Farrand ed., 1911).

people of America;" the Senate would "derive its powers from the States, as political and coequal societies."[23] Again, the Times, Places, and Manner Clause, ensured House elections did not become creatures of the state legislatures, disrupting the "national" character of the House. The additional phrase also ensured the Senate would be elected by state legislatures, which maintained the "federal" character of the Senate.

While there was little debate throughout the convention, during the ratification process, The Times, Places, and Manner Clause, was a source of contention. The Anti-Federalists and the Federalists both addressed the ambiguities of Article I, Section 4, with the Anti-Federalists providing a more comprehensive critique of the Times, Places, and Manner Clause than what was given at the convention. For the Anti-Federalists, the Clause exemplified aspects of the Constitution that could be broadly interpreted to subvert state sovereignty and eliminate federalism from the proposed system. *Federal Farmer* constructed a critique of the Clause that mirrored Madison's defense of it at the convention. Madison had argued for the necessity of the Clause based on his fear the state legislatures would manipulate electoral laws to their advantage in selecting members to the House. The Anti-Federalist author, however, inverted the argument: "The branches of the legislature are essential parts of the fundamental compact, and ought to be so fixed by the people, that the legislature cannot alter itself by modifying the election of its own members."[24] And, because of Article I, Section 4's vagueness, "the general legislature may . . . evidently so regulate elections as to secure the choice of any particular description of men."[25] Given the broad language in the Clause, the general Anti-Federalist charge centered on the danger to their understanding of representation in that the national government could manipulate election laws so as to prohibit the people, particularly the "people who live scattered in the inland towns," from electing representatives. There was a fear that Congress could constitutionally establish electoral laws that only allowed "a few men in a city" to be represented. That is, the Anti-Federalists

23. THE FEDERALIST NO. 39, at 243–44 (James Madison) (Robert Scigliano ed., 2000).

24. Federal Farmer, *No. 3* (1787), *reprinted in* 2 THE FOUNDERS' CONSTITUTION 249 (Philip B. Kurland & Ralpher Lerner eds., 1987).

25. *Id.*

feared Congress would make the House more aristocratic rather than democratic.

This concern over representation and the Times, Places, and Manner Clause was repeated by *Brutus*. Fearing that Congress would "alter itself by modifying the election of its own members at will and pleasure," he argued that the Clause was dangerous to equality and representation in that "[w]hen a people once resign the privilege of a fair election, they clearly have none left worth contenting for." The result of these unfair elections would lead to a "weakness of the representation" because the ambiguous power granted in the Clause would allow Congress to "make the whole state one district, and direct, that the capital (the city of New-York, for instance) shall be the place for holding the election; the consequence would be, that none but men of the most elevated rank in society would attend, and they would as certainly choose men of their own class . . . ." Representation in the House would not be representative of the people but "one tenth of part of the people who actually vote."[26] The Anti-Federalists believed the Constitution should limit the new national government, and the Times, Places, and Manner Clause dangerously empowered the government at the expense of equality and fair representation.

For the Anti-Federalists, Article I, Section 4 was a key to institutionalizing fair congressional representation, as they were acutely aware that electoral laws would determine the nature of representation in the House of Representatives. They proposed that the Constitution require states use a district system to ensure equal and fair representation. As *Federal Farmer* described:

> To secure a representation from all parts of the community, in making the constitution, we ought to provide for dividing each state into a proper number of districts, and for confining the electors in each district to the choice of some men, who shall have a permanent interest and residence in it; and also for this essential object, that the representative elected shall have a majority of the votes of those electors who shall attend and give their votes.[27]

Brutus likewise argued for the district system: "Provision should have been made for marking out the states into districts, and for choosing, by a majority of votes, a person out of each of

26. *Id*.
27. Federal Farmer, *supra* note 24.

them of permanent property and residence in the district which he was to represent."[28] On 12 January 1788, *Federal Farmer* again challenged the "ambiguous and very defective" article and proposed the Constitution provide for representation based on small, single-member districts with representatives chosen by a majority rather than plurality of voters. Otherwise, "we have no security against deceptions, influence and corruption."[29] The only way to secure fair representation was to "fix elections on a proper footing, and to render tolerably equal and secure the federal representation, but by increasing the representation, so as to have one representative for each district, in which the electors may conveniently meet in one place, and at one time, and chuse by a majority."[30] For the Anti-Federalists, the proposed Constitution did not provide adequate or explicit means of securing fair representation of the people in the House of Representatives.

The Anti-Federalists' appealed less to state sovereignty and more to explicit constitutional constructions for a solution to the problem of electoral rules and representation in the House. In particular, *Federal Farmer* advocated for a stricter delineation in power between the national and state government. Keeping with the federal spirit of Article I, Section 4, he argued Congress should be given the enumerated power to establish electoral districts within a state and to "regulate, from time to time, the extent of the districts so as to keep the representatives proportionate to the number of inhabitants in the several parts of the country."[31] Moreover, because not all regulations related to elections can be enumerated, those incapable of being fixed by the Constitution should be left to the states, reserving powers to them. Finally, Congress should be given expressed powers to regulate the elections laws reserved to the states only when the state neglects to make them. In this way, the federal spheres of constitutional powers would be further defined and clarified, minimizing the prospect of abuse by both the national government and state governments.

28. Brutus, *No. 4*, (1787), *reprinted in* 2 THE FOUNDERS' CONSTITUTION 251 (Philip B. Kurland & Ralpher Lerner eds., 1987).

29. THE ANTI-FEDERALIST WRITINGS OF MELANCTON SMITH CIRCLE 105 (Michael Zuckert & David Webb eds., 2009).

30. *Id*. at 107.

31. *Id*. at 111.

In response to the Anti-Federalists' publications, Hamilton discussed and defended the Times, Places, and Manner Clause in three separate articles written for *The Federalist*.[32] In general, he believed no other article in the Constitution was "more completely defensible" than this one because it provided Congress with "the means of its own preservation" and "every just reasoner will at first sight, approve an adherence to this rule, in the work of the Convention; and will disapprove every deviation from it."[33] Similar to discussion in the constitutional convention, Hamilton argued the power to regulate elections was essential, and the real question to be discussed was where to position this power. He defended placing power over elections with the national government rather than giving it solely to the states. The propensity to abuse such power was much greater if given to the states than the national government because "it is more rational to hazard [abuses of power] where the power would naturally be placed, than where it would unnaturally be placed."[34] More to the point, if the power over elections was a necessary means of self-preservation for the national government, propriety dictated that the national government be entrusted with the power for its own preservation rather than granting it to the care of the states.

Like the Anti-Federalists, Hamilton focused on the House of Representatives as the primary target for attempts to abuse the power over elections. Because of institutional design, the Senate was insulated from abuse due to the rotation of elections as the entire senate was never up for election. As a result, "a temporary combination of a few states, to intermit the appointment of Senators, could neither annul the existence nor impair the activity of the body." The House of Representatives, however, was susceptible because if the "State Legislatures were to be invested with an exclusive power of regulating these elections, every period of making them would be a delicate crisis in the national situation."[35] There was more at stake than just the danger of states disrupting the House by electing representative. Without the Clause, the national character of the House of Representatives was also in question because the "scheme of separate

32. *See* THE FEDERALIST NOS. 59, 60, 61 (Alexander Hamilton).

33. THE FEDERALIST NO. 59, at 378 (Alexander Hamilton) (Robert Scigliano ed., 2000).

34. *Id*. at 380.

35. *Id*. at 381.

confederacies, which will always multiply the chances of ambition, will be a never failing bait to all such influential characters in the State administrations as are capable of preferring their own emolument and advancement to the public weal."[36] The Clause was necessary to ensure the House of Representatives maintained its national character and represent, as Madison described in *Federalist* No. 39, the individual citizens in their individual capacities.[37] The Clause was an important protection of federalism within the newly proposed system because it would protect the national character of the House and provide for national representation in Congress to balance the state based equal representation in the Senate.

Similar arguments were made in ratification debates throughout the states. In general, if any alterations to Article I, Section 4 were suggested, they primarily sought to make Congress's power over elections more limited and explicit by adding language that would only allow Congress to exercise their power when states failed to hold elections.[38] After ratification debates, no official alterations were made to the Clause, and the dominant understanding was settled on the presumption that Congress would only exercise its limited power over elections in instances of self-preservation.

This understanding that emerged from ratification debates changed during the 1800s, as political actors attempted to create a uniform system for electing representatives through constitutional amendment. These efforts were often tied to the Electoral College and the method of allocating votes. Under the proposed amendments, members of the House would be elected using the district method, representatives and Electoral College electors would be selected from the same district, with the remaining two electors selected using the same method as electing senators. John Nicholas, a Democratic-Republican from Virginia, introduced the first of these proposals in 1800. His resolution went

36. *Id*. at 382.

37. *See* THE FEDERALIST NO. 39, at 244 (James Madison) (Robert Scigliano ed., 2000).

38. *See, e.g.*, PAULINE MAIER, RATIFICATION: THE PEOPLE DEBATE THE CONSTITUTION, 1787–1788 (2010). Meier points out that, in the Virginia ratifying convention, Madison "had defended the provision as it stood and suggested that it already gave Congress the power that Massachusetts and New Hampshire wanted to make explicit. Apparently, he saw no need to change Article I, Section 4, even to remedy the discontent it had caused in many state conventions" *Id.* at 448–49.

to a committee, which rejected and returned the proposal and it never went to chamber for debate. The committee's recommendation for rejection assumed the resolution superfluous because Congress already had the power to regulate congressional elections. As early as 1800, understanding of the Elections Clause had changed, and it was assumed Congress had power to determine the method of electing representatives.[39] Throughout the 1810s and 1820s, multiple attempts at amending the Constitution to require districts and prohibit general ticket elections passed the Senate but died in the House.[40] The lack of congressional amendment meant that the meaning of the Election Clause was still unsettled, and any understanding of congressional power that required states to adopt a particular electoral system never translated to a legislative outcome.[41]

The meaning of the Times, Places, and Manner Clause was not seriously contested again until 1842. With the adoption of the Constitution, the Clause was understood to provide Congress with regulatory power over elections in the event of states failing to hold them. However, this initial constitutional understanding was challenged and a new constitutional construction was developed that expanded the role of Congress in determining state election law. For the first time, Congress interpreted its power in Article 1, Section 4 as a grant of power requiring states to use single-member districts in elections for the House of Representatives.

B. CONGRESSIONAL POWER AND THE 1842 APPORTIONMENT ACT

After the 1840 Census, the Select Committee on the Apportionment of Representatives set a ratio of one representative for every 68,000, which reduced the total number of representatives in the House. While this reduction was unprecedented, a later amendment was added that required states to adopt single-member districts for House elections. Like the reduction in representatives, this was the first time Congress proposed to require that states adopt a uniform system for electing representatives to the House. The districting requirement became Section 2 of the Apportionment Act, producing debate

39. DOW, *supra* note 12, at 113.
40. *Id.* at 113–16.
41. *See, e.g.*, ZAGARRI, *supra* note 3.

over the meaning of the Times, Manner, and Places Clause and the constitutionality of Section 2.[42]

Quickly after Section 2 was introduced, representatives questioned the constitutionality of requiring that states utilize a particular method for electing representatives. Rep. Joseph R. Underwood (W-Ky) believed Section 2 "proposed to Congress to do that which it had no constitutional power to do, viz: direct the State Legislatures how to act in the matter of State elections to Congress."[43] William L. Goggin (W-Va), in addressing the constitutionality of Section 2, read extensively from Madison's notes at the Constitutional Convention and relied on the interpretation that Article 1, Section 4 was "intended only to be used in the last resort, in case the States should neglect or refuse to act, in order that the wheels of the General Government might not stop."[44] Rep. Walter T. Colquitt (D-Ga) denounced the constitutionality of Section 2 by emphasizing how the districting requirement conflicted with other aspects of the Constitution. Section 2 did not relate to "time" and "places" in Article I, Section 4, only "manner." However, Section 2 unconstitutionally added qualifications to members of the House because it requires representatives to live in the districts from which they are to be elected. "Manner" cannot be construed to mean this. The qualifications for members of the House was already established in Article I, and Section 2 unconstitutionally adds to these qualifications. Section 2 also unconstitutionally abridged voting rights because the Constitution states that representatives are to be chosen by the people of the state, and each voter is allowed to vote for every representative within a state. If the districting plan were adopted, representatives represented only a fraction of the state, and suffrage rights were limited to only voting for one representative rather than the full slate allotted to the state.[45] "Certainly it must be a far-fetched construction," Rep. Colquitt argued, "to say that the *manner of holding* an election, gives power to say who shall be the voters at the election, where they shall live, and how many they may legally support!"[46] Opponents of Section 2 relied on a limited reading of Article I, Section 4 that

42. *Id.* at 124.
43. *Cong. Globe*, 38th Cong., 2nd Sess. 445 (1842).
44. *Id*. at 447.
45. *Id*. at 446.
46. *Id*. at 447.

lodged power over elections primarily with the states rather than Congress.

Rep. William L. Goggin (W-Va), although opposed to Section 2, provided arguments for the constitutionality of congressional power to district. During his reading of Madison's notes to oppose Section 2, he conceded that "in strictness, Congress did possess the power to district the states," but exercising this power was an "odious use of authority."[47] Thomas Arnold (W-Tn) likewise interpreted Madison as an authoritative source that established congressional control over the subject of districting. Garrett Davis (W-Ky) granted Congress power to district states based on the language of Article 1, Section 4. The ability to require districts surely is within the powers prescribed to Congress by the words "make" and "alter." If the states, under Article I, Section 4, may decide to utilize either the general ticket system or the district system, Congress is well within its power to "totally and wholly" make and alter state regulations. Sampson Butler (D-SC) addressed arguments that congressional power over the "manner" of elections did not extend to requiring states adopt a particular electoral method. Since the Constitution grants congressional power over the time, place, and manner of elections, "what plain, unsophisticated man, reading [Article I, Section 4], would for a moment doubt the power of Congress to control the whole subject, whenever, in its discretion, it shall see fit to do so?"[48] This meaning of the text is so unambiguous "so as to silence all caviling."[49]

The Whig majority in both the House and the Senate narrowly passed the Apportionment Act with Section 2, then only needing President Tyler's signature. President Tyler, however, questioned the constitutionality of the districting amendment and attached a signing statement to the passed legislation. Despite questioning its constitutionality, Tyler opted for a signing statement rather than vetoing the bill because of an overarching doubt that the "Chief Magistrate ought to outweigh the solemnly pronounced opinion of the representatives of the people and of

47. *Id*.
48. *Cong. Globe*, *supra* note 43, at 319.
49. *Id.*

the states."[50] Regarding the districting amendment, Tyler explained that the question of congressional power "to alter State regulations respecting the manner of holding elections for Representatives is clear, but its power to command the States to make new regulations or alter their existing regulations is the question upon which I have felt deep and strong doubts."[51] The 28th Congress faced controversy because of the districting requirement, as four states, Georgia, Missouri, Mississippi, and New Hampshire continued to elect representatives using the general ticket system. However, by the 30th Congress, all states with more than one representative utilized single-member districts for elections.

Throughout debates on the 1842 Apportionment Act, both sides utilized arguments from founding and ratification debates to substantiate their claims regarding the constitutionality of Section 2. The general consensus during founding debates favored states exercising power over elections with the national government only intervening in the event states failed to hold elections. However, this constructed understanding shifted towards Article I, Section 4 being understood as granting Congress power over elections, even at the expense of state authority over the matter. This constitutional construction favoring congressional power underlined the passage of the 1842 Apportionment Act, and it established precedent for Congress taking a more active role in the making and altering election law.

C. POST-1842 DEVELOPMENTS

After the 1842 Apportionment Act, Congress continued to exercise its power over House elections. The 1850 Apportionment Act did not include the districting requirement. However, this exclusion was not because the power to require districts was in question. The requirement was again added to the 1862, 1872, 1882, 1891, 1901, and 1911 Apportionment Acts, with Congress including additional requirements to the districting process, such as districts being composed of contiguous and compact territory and the population of districts being as equal as possible. Throughout the debates over these apportionment acts,

50. John Tyler, *Special Message* (Jun. 25, 1842), *in* THE AMERICAN PRESIDENCY PROJECT (Gerhard Peters & John T. Woolley eds.), http://www.presidency.ucsb.edu/ws/index.php?pid=67545.

51. *Id.*

congressional power to require districts was never challenged. Rather than discussing the meaning of "times, places, and manner," Congress exercised their extensive powers over elections by establishing further requirements for drawing single-member districts. Following the 1842 Apportionment Act, congressional power to require a specific electoral system was seemingly settled because there were no serious objections to districting mandate and subsequent prescriptions for drawing districts.

During the 1920s, controversy over apportionment emerged leading to the Supreme Court's involvement with constitutional questions related to reapportionment. No apportionment act was passed following the 1920 census on account of two important developments, population shifts from rural to urban areas and World War I. For the first time in history, the census revealed that more individuals lived in urban areas than rural. This caused great concern over rural representation if the equal population requirement had to be met, as rural districts would be consolidated to allow for an increase in the number of urban districts. The War also skewed census data because much of the population was away from their home states in support of war efforts, often concentrated in the larger, industrial cities of the country.[52] Congressional failure to pass apportionment legislation meant the 1911 Apportionment Act remained in effect. In anticipation for the 1930 census, Congress passed the Reapportionment Act of 1929 that shifted apportionment power from Congress to the executive and retained the districting requirement without the regulations for how to draw districts. That is, the Act was silent on drawing districts that were compact, contiguous, and of equal population, meaning it did not specifically repeal their use.[53]

The absence of any constitutional requirements or congressional districting standards meant states varied in their practice of drawing districts. Voters in Mississippi filed suit, objecting to a gerrymandered and malapportioned district. In *Wood v. Broom*, petitioners argued that Mississippi had not conformed to the requirements that districts be of contiguous and compact territory, as well as of equal population. However, these

52. DOW, *supra* note 12, at 160.
53. *Id*. at 175.

requirements were based on the 1911 Apportionment Act, not the 1929 Act. The question before the Supreme Court was if the requirements from previous apportionment acts were still in effect, even if not specified in subsequent legislation. The Court reasoned that apportionment requirements expired once a new census was taken and only apply to the reapportionment "to which they expressly related."[54] Importantly, Justice Holmes reasoned that "[i]t was manifestly the intention of the Congress not to reenact the provisions as to compactness, continuity, and equality in population with respect to the districts to be created pursuant to the reapportionment under the Act of 1929." There was no question regarding congressional authority in requiring states adopt a particular electoral method. Congress had the power to require states to utilize the districting method and adhere to particular requirements for districts. If the 1929 Apportionment Act failed to specify requirements, "the omission was deliberate;" if Congress had power to make requirements, they also had power to omit them.[55] Based on this decision, the Court maintained congressional power over elections, reaffirming the constitutional construction developed in 1842.

Wood v. Broom was only the beginning of the Court dealing with electoral issues and the meaning of Article I, Section 4, especially as it related to the Fourteenth Amendment. *Colegrove v. Green* was similar to *Wood*, with voters challenging the constitutionality of Illinois' disproportionally populated districts. The state legislature had not redistricted for 40 years, despite large differences in populations that were shown in multiple censuses. The petitioners challenged that these disproportionate districts violated the equality of their votes. The Court, however, rejected this argument and affirmed the state's authority to not redistrict and congressional powers over the political process of reapportionment. Writing for the majority, Justice Frankfurter adopted the position of judicial restraint in the realm of electoral issues:

> The remedy for unfairness in districting is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress. The Constitution has many commands that are not enforceable by courts because they clearly fall

54. Wood v. Broom, 287 U.S. 1, 7 (1932).
55. *Id.*

> outside the conditions and purposes that circumscribe judicial action.[56]

However, in his dissent, Justice Black argued that the substantially unequal populations in each district reduced the effectiveness of individual votes in the more populated districts, which violated the Constitution and the Fourteenth Amendment. Without the equal population requirement, the average population deviation between states dramatically increased, and there was little incentive for members of Congress to reinstate the requirement if it meant losing their seat due to malapportioned districts.[57] Malapportioned districts would not be addressed until the judiciary created the redistricting revolution.

Baker v. Carr[58] and *Wesberry v. Sanders*[59] marked a shift for the Supreme Court from Justice Frankfurter's reliance on Congress to deal with these political questions to Justice Black's argument that malapportionment violating the Fourteenth Amendment. In *Baker v. Carr*, the argument focused on how a lack of redistricting in Tennessee led to a "debasement of their votes" for candidates in the state assembly under the Due Process and Equal Protections Clauses of the Fourteenth Amendment.[60] The Court's rejection of the lower court's decision, which dismissed the case based on justiciability, provides insight into the justices' desire to establish jurisdiction in the realm of electoral questions. To do so, the Court established a list of factors that determine if a case constitutes a nonjusticiable political question. However, considerations of state sovereignty and federalism, prominent aspects of previous debates over the meaning of Article I, Section 4, were absent from the list of factors. Building on the decision in *Baker*, in *Wesberry v. Sanders*, the Court extended the right to an equally weighted vote through equal apportionment to federal congressional districts, forcing Georgia to reapportion its House districts. Writing for the majority, Justice Black argued Article 1, Section 2's requirement that the "People of the Several States" elect members to the House meant that each individuals vote must carry the same weight relative to other

56. Colegrove v. Green, 328 U.S. 549, 556 (1946).

57. *See* ERIK J. ENGSTROM, PARTISAN GERRYMANDERING AND THE CONSTRUCTION OF AMERICAN DEMOCRACY 150–58 (2013).

58. Baker v. Carr, 369 U.S. 186 (1962).

59. Wesberry v. Sanders, 376 U.S. 1 (1964)

60. *Baker*, *supra* note 58, at 188.

voters. Justice Harlan dissented, following Justice Frankfurter's *Colegrove* position that malapportionment was a political matter better left to Congress. He also invoked Article I, Section 4 in that Congress is given power to apportion representatives, while states are empowered to determine the manner of drawing districts. Importantly, although the Court asserted its jurisdiction over electoral questions, these cases did not question congressional authority to require single-member districts.

The Court went a step further in *Reynolds v. Sims*, when it upheld a district court's order to place a temporary redistricting plan into effect when the Alabama legislature failed to provide a plan that fit the court's order. The Supreme Court declared that all legislative districts had to be apportioned according to population, striking down Alabama's plan to give every county at least one state representative and one state senator no matter the population. Although the question in *Reynolds* concerned equal representation under the Fourteenth Amendment, the Court referenced single- and multi-member districts in a neutral manner while building a hypothetical situation:

> Single-member districts may be the rule in one state, while another State might desire to achieve some flexibility by creating multi-member or floterial districts. Whatever the means of accomplishment, the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State.[61]

Reynolds merely required that legislatures make a substantial effort to reapportion using equal population districting. This hypothetical situation included state discretion over the method of electing representatives.

Following 1911, apportionment acts did not include the requirement for single-member district elections. This absence allowed states to use alternative methods. In 1932, Missouri, Kentucky, Virginia, Minnesota, and North Dakota elected members to the House using at-large elections. From 1942-1946, Arizona used at-large elections, as did New Mexico and Hawaii in 1942, and New Mexico, Hawaii, and Alabama elected at-large representatives in 1962.[62] With the Court determining

61. Reynolds v. Sims, 377 U.S. 533, 579 (1964).
62. CONG. Q., *Guide to US Elections* 1170–72 (1975).

apportionment cases were judiciable, in 1967, as in 1842, Congress once again exercised their power under Article I, Section 4 to address the manner of electing representatives by passing legislation that prohibited at-large and multi-member district elections, thereby establishing single-member districts as the preferred electoral method. Unlike 1842, there was very little debate over the districting mandate and relatively no questions of congressional power under the Constitution to do so. The only major discussion involved the logistics of applying the requirement to Hawaii and New Mexico, the only states not using single-member districts. Senator Howard Baker (R-TN) expressed hope that the districting mandate would "effectuate the principles of one man, one vote," and "the concept of single-member districts . . . has been a nonpartisan undertaking by Members on both sides of the aisle."[63] Returning to the requirement first established in 1842, he further argued, provided "maximum protection of the rights of all people and maximum responsiveness to their needs."[64] The 1967 district requirement can be understood as an extension of the 1965 Voting Rights Act, as there was concern that southern states would utilize at-large elections to dilute minority voting.[65] The development of the Supreme Court's malapportionment decisions and Congress's power over the manner of elections produced the prohibition of alternative election methods other than single-member districts.

After the 1967 requirement for single-member districts, the Court continued to strengthen the doctrine of equal population apportionment without addressing the use of alternative election methods. Responding to discriminatory voting requirements against African Americans in the south, *Allen v. State Board of Elections* extended the Fourteenth Amendment's protection of voting to include "all action necessary to make a vote effective."[66] Importantly, in his dissent, Justice Harlan argued that the Court's reliance on the text of the Voting Rights Act provided no guidance for determining the constitutionality of different electoral methods, including single-member districts. During the

63. 133 CONG. REC. 34,037 (1967).

64. *Id.* at 34, 366.

65. *See* QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT, 1965–1990 (Chandler David & Bernard Grofman eds, 1994).

66. *See* Allen v. State Board of Elections, 393 U.S. 544, 563–70 (1969) (reviewing the statutory language of the Voting Rights Act and applying it to states through the Fourteenth Amendment).

1970s, the Court also extended the requirement of equal population apportionment to overturn partisan gerrymandering because it resulted in excessive population deviations between districts.[67] The justices further strengthened the equal representation standard in *Karcher v. Daggett* by requiring that redistricting consist of more than just equal apportionment of populations. The Court struck down New Jersey's congressional redistricting plan that clearly favored Democrats. Although the districts had almost equal populations, the Court stated that the state bore the burden of proving that the districts had been drawn in "good-faith", which required that any differences in populations between districts were shown by the state to be necessary.[68] During this line of cases, the justices did not explicitly question the accepted practice of using single-member districts in regards to providing adequate representation of various interests.

In 1986, the Supreme Court was presented with *Thornburg v. Gingles*, which addressed racially motivated gerrymandering at the state level in areas with multi-member districts. The North Carolina General Assembly had apportioned its seats using both single and multi-member districts strategically to fracture the African-American vote. This apportionment scheme was challenged under the Voting Rights Act and overturned. Relying on the text of the Voting Rights Act, the Court argued it was necessary to look at the "totality of circumstances" and found that the use of multi-member districts had in effect denied African Americans the ability to vote as a cohesive bloc.[69] Despite the opportunity to affirm or deny the constitutionality of both multi- or single-member districts, the Court relied on text of the Voting Rights Act to declare that the use of multi-member districts was aimed at discrimination against African-Americans and thus was struck down. That is, the justices neither affirmed nor questioned the state's general use of both single- and multi-member districts for elections to the state legislature. The constitutionality of multi-member districts was only challenged when combined with questions of equality of voting and racial gerrymandering. Absent issues of racial vote dilution, the Court provided no indication as to the constitutionality of alternative election methods.

67. *See, e.g.,* Gaffney v. Cummings, 412 U.S. 735 (1973).
68. *See* Karcher v. Daggett, 462 U.S. 725 (1983).
69. *See* Thornburg v. Gingles, 478 U.S. 30 (1986).

The Court was later presented with an opportunity to affirm the constitutionality of single- or multi-member districts in *Holder v. Hall*, when voters defeated a petition to expand a county commission to five members elected from single-member districts and a chairman elected at large. The National Association for the Advancement of Colored People (NAACP) challenged that this expansion was necessary because African-American votes were diluted under the current structure, while a larger commission would allow for the election of an African-American commission member. The Court ruled against the NAACP, claiming that racially motivated gerrymandering required strict scrutiny, which the NAACP's argument did not meet. In the process of this case, the justices reaffirmed the Court's neutrality on the constitutionality of single- and multi-member districts when Justice Clarence Thomas in his concurring opinion cited Justice Harlan's dissent in *Allen v. State Board of Elections*:

> [T]he Voting Rights Act supplies no rule for a court to rely upon in deciding, for example, whether a multimember at-large system of election is to be preferred to a single-member district system; that is, whether one provides a more "effective" vote than another.[70]

Justice Thomas continued by citing a dissent by Justice Felix Frankfurter in *Baker v. Carr*, stating that the choice between single- and multi-member districts is "inherently a political one." However, he also questioned preferences for using single-member districting as an electoral method because the Constitution does not explicitly recognize this practice:

> It should be apparent, however, that there is no principle inherent in our constitutional system, or even in the history of the Nation's electoral practices, that makes single-member districts the "proper" mechanism for electing representatives to governmental bodies or for giving "undiluted" effect to the votes of a numerical minority.[71]

Further cases continued to focus on the constitutionality of racial gerrymandering while not addressing the general use of a particular voting method, with the Court overturning multiple

70. Holder v. Hall, 512 U.S. 874, 896 (1994).
71. *Id*. at 897.

attempts to create African-American majority districts while relying on the use of minority packed single-member districts.[72]

Despite the multiple different electoral, redistricting, and gerrymandering cases that the Supreme Court has heard, never once have the justices declared the constitutionality single-member districts and congressional power to require states to adopt a particular method for electing representatives. Although the Court asserted its jurisdiction over questions of racial and political gerrymandering, it has thus far sidestepped the issues of whether or not single-member districts are constitutional. This may be because the Court has never seen a direct challenge to their constitutionality, or it may be because the Court prefers to maintain a neutral stance. Overall, the Supreme Court has never addressed the question of alternative voting systems[73] and left unanswered the question concerning the constitutionality of single-member districts, which raises the possibility that future cases may address this glaring hole in judicial jurisprudence concerning electoral issues. Reliance on the Supreme Court's jurisprudence, however, limits our ability to fully understand the relationship between single-member districts and Article I, Section 4 because the broader historical meaning, development, and political application of the Election Clause emerged within Congress, not the courts.

CONCLUSION

Members of the House of Representatives are elected using single-member districts and the plurality rule, and these electoral rules have become deeply entrenched in American politics. This institutional feature, however, is not mandated by the Constitution. The decision to utilize this electoral arrangement was ultimately decided by Congress. The congressional process of accepting this configuration had substantive effects on the concepts of federalism and representation. Members of Congress constructed constitutional meaning related to the Times, Places, and Manner Clause in the process of legitimizing the single-member district requirement during debates over the 1842

72 *See, e.g.,* Miller v. Johnson, 515 U.S. 900 (1995); Shaw v. Hunt, 517 U.S. 899 (1996); Bush v. Vera, 517 U.S. 952 (1996); *and* Easley v. Cromartie, 532 U.S. 234 (2001).

73. Samuel Issacharoff, *Supreme Court Destabilization of Single-Member Districts*, 1995 U. CHI. LEGAL F. 207 (1995).

Apportionment Act. During this process, the Clause was understood broadly, allowing Congress to require states adopt a particular method of electing representations and settling the meaning of Article I, Section 4. Subsequent political developments firmly lodged this power over elections with Congress at the expense of a decentralized process that allowed states to determine the method of electing representatives.

The Supreme Court has decided, and continues to decide, important cases involving single-member districts and the process of drawing congressional districts. Yet, the Court has never established the constitutionality of a particular electoral voting system. This leaves the use of single-member districts as the accepted form of electing representatives deeply entrenched with Congress and the political process by which the meaning of the Elections Clause was constructed. This article attempts to fill an important void in constitutional development left by the Court's lack of jurisprudence by focusing on the origin and constitutionality of single-member districts in American political development. As the Court currently reassesses the constitutionality of processes for drawing district lines, it may be time to also reassess the use of single-member districts in general and Congress' power to require a specific electoral method for selecting representatives, especially if the representation provided by a system of single-member districts is deemed unsatisfactory and insufficient. The continued use of the single-member districts system is ultimately a political choice, a choice that can be reconsidered by the states, Congress, or through constitutional amendment.