



THE CARTER CENTER

ASK AN EXPERT

U.S. ELECTION **2020**
★ ★ ★ ★



KEVIN JOHNSON

HOW CONGRESS POLICES ITSELF

News coverage of the controversial comments and social media posts of newly elected Georgia Congresswoman Marjorie Taylor Greene has brought attention to the question of how the House and Senate discipline their members. Let's dive into this issue and the related topic of the chambers' role in deciding election winners.

What options do the House and Senate have, and how often do such steps occur?

Article 1, Section 5 of the United States Constitution gives the Senate and the House of Representatives the power to expel any member by a two-thirds vote. Expulsion from either house is rare, and most expulsions came about in response to members siding with the insurrection against the United States during the Civil War.

Fifteen senators and five representatives have been expelled in U.S. history; all but three during the Civil War. Nineteen of the 20 expelled members were Democrats.

The first expulsion was in 1797, for treason. The rare modern instances have involved corruption and bribery scandals. In 1980, the Democrat-controlled House voted to expel Rep. Michael Meyers, a Democrat from Pennsylvania, following his conviction in the Abscam bribery scandal. In 2002, with the House then under Republican control, Democrat James Traficant of Ohio was expelled following his conviction on 10 counts, including bribery, conspiracy to defraud the United States, corruption, obstruction of justice, tax evasion, and racketeering.

Both chambers have less severe measures with which to discipline members. The Senate, with a simple majority vote, may censure members to express disapproval of their conduct. The House has a similar censure mechanism, along with a lower form of punishment called a reprimand, which does not require the member to stand in the well of the House to hear the reading of the resolution.

Twenty-three representatives and nine senators have been censured in U.S. history, and 12 representatives have been reprimanded. While the majority of recent censure and reprimand cases have involved financial or legal improprieties, some have arisen in response to political statements. For example, Republican representative Joe Wilson was reprimanded for shouting out “You lie!” during President Barack Obama’s 2009 State of the Union address; members of the House divided on the reprimand vote almost entirely along party lines.

The response by the House to Marjorie Taylor Greene introduces a disciplinary mechanism not used previously. The House voted on Feb. 4 to remove her from two committees she had been assigned to by Republican House leaders – the Budget Committee and Education and Labor Committee. In 2019, Steve King was removed from committee assignments for comments that implied support for white supremacy, but that vote was taken by the Republican caucus, not by the House.

What about disputed elections? Do the House and Senate have a role there?

Few people know that the Constitution actually gives to each house of Congress the responsibility to “judge the elections, returns and qualifications of its own members.” In other words, if a Senate race is very close, the Senate itself can conduct an investigation and determine the winner, as can the House of Representatives for House races.

This provision is rarely invoked, however. Most House and Senate races are not close, and with the outcome clear, losers typically concede, preempting the need for further assessment. For elections that are close, states have procedures for recounts and for formal legal challenges, and these are usually used to determine who won.

When a new session of Congress begins, the House and Senate recognize the state-certified election winners, and the new members usually are seated without an actual vote. For example, Raphael Warnock and Jon Ossoff, the two winners of the recent Senate runoffs in Georgia, were seated on Jan. 20 following the certification of the results by the Georgia secretary of state and the formal transmission of those results to the Senate by Governor Brian Kemp.

There had been concerns that the seating of the Georgia Democratic winners could be held up by calls for a Senate investigation of the widespread, though unsubstantiated, claims of fraud in Georgia's close presidential election. But both opposing candidates conceded, removing such concerns.

The few times that election disputes have reached Congress, the process has often been problematic because of the desire of the party in control to back its own candidate regardless of the facts.

One legendary and bitter instance of the House investigating an election occurred in 1984. The Democratic majority in the House voted to seat one of their own, Frank McCloskey of Indiana, despite the state-certified victory of his Republican challenger, Richard McIntyre. Selective acceptance of evidence by the majority Democrat investigating committee produced a four-vote win for McCloskey and led to a Republican walkout in protest. Subsequent investigations by journalists made clear McCloskey should not have been declared the winner.

Perhaps in retaliation, the GOP-controlled Senate in 1997 agreed to investigate claims of fraud against Democrat Mary Landrieu of Louisiana, brought by her Republican opponent, Woody Jenkins. The case against Landrieu soon broke down amid charges of witness tampering, but the GOP Senate leadership allowed the investigation to drag on for months before charges were dropped and Landrieu was allowed to take up her Senate duties.

Are there disputed 2020 races that either House will investigate?

This election cycle, the House of Representatives has agreed to investigate claims brought by Democratic candidate Rita Hart of Iowa, who is seeking to overturn her six-vote loss in the state's 2nd District to Republican Mariannette Miller-Meeks. Hart has been criticized for bypassing procedures established in the state for legal election challenges and instead appealing directly to the House. The investigation will be conducted by the House Administration Committee, which has seven Democratic members and three Republicans. Mariannette Miller-Meeks has been seated pending the outcome of the investigation.

It is possible that the very close and hotly contested election between Republican Claudia Tenney and Democrat Anthony Brindisi in New York's 22nd Congressional District, now in court in New York, will ultimately be decided in the House of Representatives as well.

Why does our Constitution include this clause?

The idea behind making the House and Senate judge of their own elections is based on the principle of the separation of powers, according to which each branch of government is independent of the other and should not become involved in decisions that affect the composition of the other branches.

At the beginning of the world's long democracy learning curve, the founders believed political parties could be kept out of governing institutions, and so they did not anticipate how a political party could use a role in deciding election disputes to partisan advantage.

France and the United Kingdom both had systems similar to ours but changed course in response to abuses by controlling parties. France for example, in its Fifth Constitution, ratified in 1958, established a Constitutional Court as the definitive source of judgment on all national elections.

Over time, U.S. courts have become increasingly involved in election disputes. But the constitutional provision remains in place, creating the possibility of a legislative role, and for the potential partisan abuses such a role entails.

[Kevin Johnson is a senior member of the Carter Center's U.S. Election Expert Study Team. He also is the founder and executive director of Election Reformers Network and has 20 years' experience in election reform programming, including 10 years as a board member of Common Cause Massachusetts and seven years at the National Democratic Institute.]