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IN FOCUS

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Three-Judge District Courts

The Constitution vests federal judicial power in "one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Congress establishes federal courts via legislation and possesses substantial authority to structure courts and set judicial procedures. One way in which Congress regulates judicial proceedings is by providing for consideration of certain cases by a three-judge district court. This In Focus provides an overview of three-judge district courts, then identifies statutes that authorize the use of such courts. It concludes with considerations for Congress related to three-judge district courts.

Overview of Three-Judge District Courts

The federal judiciary is divided into three main levels: trial-level district courts, intermediate courts of appeals (also called circuit courts), and the Supreme Court. Most district court cases proceed before a single judge. In some cases, a jury is also present to make findings of fact. The federal appeals courts generally consider cases in three-judge panels. At the Supreme Court, most matters are presented to the full nine-Justice Court.

Congress has allowed for variation from these general practices in some cases. For instance, the appeals courts have the option to consider cases *en banc*, meaning that a matter is submitted to the full court or, in circuits with more than 15 active judges, a subset of the court that is larger than the usual three-judge panel. If one or more judges or Justices are recused from a matter, a circuit court case may proceed before two judges instead of three, or fewer than the full nine Justices may hear a Supreme Court case.

At the district court level, Congress has provided for certain cases to be heard by a three-judge panel rather than the usual single judge. Congress first created the three-judge district court in 1910 in response to the Supreme Court's decision in *Ex parte Young*, 209 U.S. 123 (1908), which allowed litigants to challenge state laws and policies in federal court by suing to enjoin state government officials. The 1910 statute provided that suits seeking injunctive relief against state laws must be heard by three-judge district courts. In 1937, Congress enacted a law that provided for three-judge district courts to hear constitutional challenges to federal statutes. Both statutes allowed direct appeal to the Supreme Court of certain orders of three-judge panels. Other statutes provided for three-judge district courts in additional categories of cases.

By the 1960s and 1970s, three-judge district courts had begun to attract significant criticism. Critics argued that convening the three-judge panels in hundreds of cases per year imposed a high administrative burden on the lower courts and that the ability to seek mandatory Supreme Court review of certain decisions of three-judge district courts burdened the high court. Defenders of the panels argued that it was preferable to have three judges rather than one hear politically sensitive cases such as civil rights litigation.

In 1976, Congress enacted legislation that significantly limited the types of cases that could proceed before three-judge district courts.

Three-Judge District Court Statutes

Currently, a three-judge district court is available only in certain classes of cases. The main three-judge district court statute, codified at 28 U.S.C. § 2284, provides: "A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body." With respect to procedures for selecting the panel, the statute requires a district judge who receives a request for a three-judge panel to notify the chief judge of the circuit in which he sits, "unless he determines that three judges are not required." The chief judge shall then "designate two other judges, at least one of whom shall be a circuit judge," and the two judges so designated plus the judge who initially received the three-judge court request constitute the panel that hears the case. Thus, while the statute refers to a *district court* of three judges, and the three-judge panel fills the role of a trial-level district court, a panel constituted under the statute actually includes at least one appeals court judge.

In cases where a three-judge panel is appointed, a single judge is authorized to "conduct all proceedings except the trial" and can enter orders, including temporary restraining orders (a form of injunctive relief intended to preserve the status quo until a court can consider whether a longer-lasting injunction is warranted). The full three-judge panel is required to enter final judgment or to consider any application for a temporary or permanent injunction. The statute also provides: "Any action of a single judge may be reviewed by the full [three-judge] court at any time before final judgment."

Many decisions of three-judge district courts are immediately appealable to the Supreme Court under 28 U.S.C. § 1253. Because the statute provides for review on "appeal," rather than via a discretionary petition for a writ of certiorari, the Supreme Court is required to consider such matters. Most federal court cases are potentially subject to three rounds of review—first at the district court level, then by an intermediate appeals court, then discretionary review by the Supreme Court. By contrast, decisions of three-judge district courts may be subject to only two levels of review—first by the three-judge panel, then on mandatory

appeal to the Supreme Court. This means that these cases may reach the Supreme Court after less extensive review than other cases.

In addition to the general three-judge district court statute, the following statutes provide for the use of a three-judge district court in certain cases, often in accordance with the procedures established in 22 U.S.C. § 2284:

- 2 U.S.C. § 8 applies to any action for declaratory or injunctive relief to challenge an announcement by the Speaker of the House "that vacancies in the representation from the States in the House exceed 100."
- 2 U.S.C. § 922 applies to certain actions raising claims related to emergency powers to eliminate budget deficits.
- 3 U.S.C. § 5 applies to any action brought by an aggrieved candidate for President or Vice President that arises under the Constitution or laws of the United States with respect to the issuance of a certificate of ascertainment of appointment of electors.
- 18 U.S.C. § 3626 applies to prisoner release orders in "any civil action in Federal court with respect to prison conditions."
- 26 U.S.C. §§ 9010, 9011 apply to actions for declaratory or injunctive relief by the Federal Election Commission under the Presidential Election Campaign Fund Act.
- 42 U.S.C. § 247d–6d applies to "motions to dismiss, motions for summary judgment, and matters related thereto" in certain actions for death or serious physical injury related to pandemic and epidemic products and security countermeasures.
- 42 U.S.C. § 2000a–5 applies to actions by the Attorney General alleging a pattern or practice of discrimination in public accommodations, upon request by the Attorney General "accompanied by a certificate that, in his opinion, the case is of general public importance."
- 42 U.S.C. §2000e–6 applies to actions by the Attorney General alleging a pattern or practice of employment discrimination, upon request by the Attorney General "accompanied by a certificate that, in his opinion, the case is of general public importance."
- 45 U.S.C. § 719 applies to judicial review of the final system plan adopted by the U.S. Railway Association.
- 47 U.S.C. § 555 applies to any civil action challenging the constitutionality of 47 U.S.C. §§ 534 or 535, which require cable operators to carry certain television stations.
- 52 U.S.C. §§ 10101, 10303, 10304, 10306, 10504 apply to certain proceedings related to voting rights, literacy tests, changes to voting qualifications, or poll taxes.
- 52 U.S.C. § 10701 applies to actions by the Attorney General to enforce the Twenty-Sixth Amendment.

The foregoing list does not include provisions related to three-judge district courts included in notes to the *U.S. Code*, which may allow for review by a three-judge panel in more limited circumstances. *See, e.g.*, 47 U.S.C. § 223 note.

Considerations for Congress

While a three-judge district court is available only in specific categories of cases, litigants continue to bring lawsuits under the foregoing statutes, and some high-profile Supreme Court cases began before three-judge district courts. For example, the 2019 partisan gerrymandering case *Rucho v. Common Cause*, 139 S. Ct. 2484, was heard by a three-judge district court pursuant to 28 U.S.C. § 2284. The Eighth Amendment case *Brown v. Plata*, 563 U.S. 493 (2011), was subject to 18 U.S.C. § 3626. And the separation-of-powers case *Bowsher v. Synar*, 478 U.S. 714 (1986), fell under 2 U.S.C. § 922.

In recent years, commentators and lawmakers have proposed sending various additional types of cases to three-judge district courts. The three-judge court provision of 3 U.S.C. § 5, cited above, was added by the Electoral Count Reform Act of 2022, a provision of the Consolidated Appropriations Act, 2023, P.L. 117-328.

A proposal from the 118th Congress, the Protecting Our Democracy Act (H.R. 5048), would allow the House of Representatives or the Senate to bring a civil action against certain officeholders who accept foreign emoluments without the consent of Congress before a three-judge panel in the U.S. District Court for the District of Columbia.

Multiple other proposals from the 118th Congress would provide for a three-judge district court to hear certain cases related to redistricting. *See* John R. Lewis Voting Rights Advancement Act of 2024 (S. 4); Redistricting Reform Act of 2024 (S. 3750); Fair Representation Act (H.R. 7740); and FAIR MAPS Act (H.R. 7910).

The Constitutional Election Integrity Act (S. 3588) from the 118th Congress and H.R. 1405 from the 117th Congress proposed to have a three-judge district court hear challenges to a candidate's eligibility to hold office under Section 3 of the Fourteenth Amendment.

Three-judge district courts have also been proposed as a way to combat forum shopping. For instance, Judge Gregg Costa of the U.S. Court of Appeals for the Fifth Circuit suggested in a 2018 essay that requests for nationwide injunctions should be heard by three-judge district courts.

Congress has the discretion to decide which cases should proceed before three-judge district courts as part of its expansive authority to regulate the lower federal courts. Lawmakers may wish to consider whether potential benefits of three-judge district courts, such as providing for initial consideration of a case by more than one judge and possibly reducing the impact of forum shopping, outweigh the practical burdens of constituting three-judge panels.

Joanna R. Lampe, Legislative Attorney

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