Abstract: A pivotal clause of our Constitution suffers from uncertainty and neglect. The result has scrambled the law of contested congressional elections. These high-stakes disputes turn on questions of procedure, and in particular on questions of forum. Yet across the country, an unpredictable and ad hoc set of regimes governs these fundamental questions. The culprit behind the confusion is Article I, Section 5 of the United States Constitution, which states that “Each House shall be the Judge of the Elections . . . of its own Members.” This command may seem straightforward, if a bit unsettling—it allows Congress to decide who has won its own elections. Despite its effect on the outcome of congressional elections, and notwithstanding its potential to influence the partisan makeup of each House, the provision is beset by dangerous and unrecognized ambiguity. It provides no guidance as to whether, or how, courts should assist each House of Congress in adjudicating these congressional election contests. No federal authority has fully entered the debate, much less ended it, and states have taken diametrically opposing views. The result is cacophony. Some states adjudicate electoral disputes, while others refuse. Still others warp their courts’ procedures in response. The only consistent element of congressional election procedure is inconsistency.

This Article is the first to expose the interpretive vacuum, the current state of the law, and the harm it all inflicts. It recognizes that precisely because there is no centralized body of law on which scholars and political actors can focus, this area has been plagued by an absence of scholarship, as well as an absence of doctrine—and this Article responds to both. It reveals the patchwork procedural landscape as it currently exists, arguing that the ad hoc system poses serious threats to democratic governance and legitimacy. It then offers a novel theory of Article I, Section 5—a theory that could help to mitigate some of the harmful practical effects that plague the current regime. It concludes by calling on Congress to enact the procedural reforms this Article proposes. Such reforms are necessary to promote and safeguard democratic ideals in contested congressional elections.