

Law School 101

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2019 Visiting Day

Visiting Day Sample Case

U.S. Term Limits v. Thornton

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U.S. TERM LIMITS v. THORNTON
514 U.S. 779 (1995)

JUSTICE STEVENS delivered the opinion of the Court.

The Constitution sets forth qualifications for membership in the Congress of the United States. Article I, § 2, cl. 2, which applies to the House of Representatives, provides: “No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.” Article I, § 3, cl. 3, which applies to the Senate, similarly provides: “No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.”

Today’s cases present a challenge to an amendment to the Arkansas State Constitution that prohibits the name of an otherwise-eligible candidate for Congress from appearing on the general election ballot if that candidate has already served three terms in the House of Representatives or two terms in the Senate. *** Such a state-imposed restriction is contrary to the “fundamental principle of our representative democracy,” embodied in the Constitution, that “the people should choose whom they please to govern them.” *Powell v. McCormack* (1969) (internal quotation marks omitted). Allowing individual States to adopt their own qualifications for congressional service would be inconsistent with the Framers’ vision of a uniform National Legislature representing the people of the United States. If the qualifications set forth in the text of the Constitution are to be changed, that text must be amended.

At the general election on November 3, 1992, the voters of Arkansas adopted Amendment 73 to their State Constitution. Proposed as a “Term Limitation Amendment,” its preamble stated: “The people of Arkansas find and declare that elected officials who remain in office too long become preoccupied with reelection and ignore their duties as representatives of the people. Entrenched incumbency has reduced voter participation and has led to an electoral system that is less free, less competitive, and less representative than the system established by the Founding Fathers. Therefore, the people of Arkansas, exercising their reserved powers, herein limit the terms of the elected officials.” ***

II

Twenty-six years ago, in *Powell v. McCormack* (1969), we reviewed the history and text of the Qualifications Clauses in a case involving an attempted exclusion of a duly elected Member of Congress. The principal issue was whether the power granted to each House in Art. I, § 5, to judge the “Qualifications of its own Members” includes the power to impose qualifications other than those set forth in the text of the

Constitution. In an opinion by CHIEF JUSTICE WARREN for eight Members of the Court, we held that it does not. *** We concluded that, during the first 100 years of its existence, “Congress strictly limited its power to judge the qualifications of its members to those enumerated in the Constitution.” *** We thus conclude now, as we did in *Powell*, that history shows that, with respect to Congress, the Framers intended the Constitution to establish fixed qualifications.

In *Powell*, of course, we did not rely solely on an analysis of the historical evidence, but instead complemented that analysis with “an examination of the basic principles of our democratic system.” We noted that allowing Congress to impose additional qualifications would violate that “fundamental principle of our representative democracy *** ‘that the people should choose whom they please to govern them.’”

III

Our reaffirmation of *Powell* does not necessarily resolve the specific questions presented in these cases. For petitioners argue that whatever the constitutionality of additional qualifications for membership imposed by Congress, the historical and textual materials discussed in *Powell* do not support the conclusion that the Constitution prohibits additional qualifications imposed by States. In the absence of such a constitutional prohibition, petitioners argue, the Tenth Amendment and the principle of reserved powers require that States be allowed to add such qualifications. ***

Petitioners argue that the Constitution contains no express prohibition against state-added qualifications, and that Amendment 73 is therefore an appropriate exercise of a State’s reserved power to place additional restrictions on the choices that its own voters may make. We disagree for two independent reasons. First, we conclude that the power to add qualifications is not within the “original powers” of the States, and thus is not reserved to the States by the Tenth Amendment. Second, even if States possessed some original power in this area, we conclude that the Framers intended the Constitution to be the exclusive source of qualifications for members of Congress, and that the Framers thereby “divested” States of any power to add qualifications. ***

Even if we believed that States possessed as part of their original powers some control over congressional qualifications, the text and structure of the Constitution, the relevant historical materials, and, most importantly, the “basic principles of our democratic system” all demonstrate that the Qualifications Clauses were intended to preclude the States from exercising any such power and to fix as exclusive the qualifications in the Constitution.

The available affirmative evidence indicates the Framers’ intent that States have no role in the setting of qualifications. *** The provisions in the Constitution governing federal elections confirm the Framers’ intent that States lack power to add qualifications. The Framers feared that the diverse interests of the States would

undermine the National Legislature, and thus they adopted provisions intended to minimize the possibility of state interference with federal elections. *** In light of the Framers' evident concern that States would try to undermine the National Government, they could not have intended States to have the power to set qualifications. ***

The dissent nevertheless contends that the Framers' distrust of the States with respect to elections does not preclude the people of the States from adopting eligibility requirements to help narrow their own choices.***

We also find compelling the complete absence in the ratification debates of any assertion that States had the power to add qualifications. In those debates, the question whether to require term limits, or "rotation," was a major source of controversy. The draft of the Constitution that was submitted for ratification contained no provision for rotation. In arguments that echo in the preamble to Arkansas' Amendment 73, opponents of ratification condemned the absence of a rotation requirement, noting that "there is no doubt that senators will hold their office perpetually; and in this situation, they must of necessity lose their dependence, and their attachments to the people." Even proponents of ratification expressed concern about the "abandonment in every instance of the necessity of rotation in office." At several ratification conventions, participants proposed amendments that would have required rotation.

The Federalists' responses to those criticisms and proposals addressed the merits of the issue, arguing that rotation was incompatible with the people's right to choose. ***

In short, if it had been assumed that States could add additional qualifications, that assumption would have provided the basis for a powerful rebuttal to the arguments being advanced. The failure of intelligent and experienced advocates to utilize this argument must reflect a general agreement that its premise was unsound, and that the power to add qualifications was one that the Constitution denied the States. ***

Our conclusion that States lack the power to impose qualifications vindicates the same "fundamental principle of our representative democracy" that we recognized in *Powell*, namely that "the people should choose whom they please to govern them."

As we noted earlier, the *Powell* Court recognized that an egalitarian ideal—that election to the National Legislature should be open to all people of merit—provided a critical foundation for the Constitutional structure. This egalitarian theme echoes throughout the constitutional debates. *** Additional qualifications pose the same obstacle to open elections whatever their source. The egalitarian ideal, so valued by the Framers, is thus compromised to the same degree by additional qualifications imposed by States as by those imposed by Congress.

Similarly, we believe that state-imposed qualifications, as much as congressionally imposed qualifications, would undermine the second critical idea

recognized in *Powell*: that an aspect of sovereignty is the right of the people to vote for whom they wish. Again, the source of the qualification is of little moment in assessing the qualification's restrictive impact.

Finally, state-imposed restrictions, unlike the congressionally imposed restrictions at issue in *Powell*, violate a third idea central to this basic principle: that the right to choose representatives belongs not to the States, but to the people. ***

Consistent with these views, the constitutional structure provides for a uniform salary to be paid from the national treasury, allows the States but a limited role in federal elections, and maintains strict checks on state interference with the federal election process. The Constitution also provides that the qualifications of the representatives of each State will be judged by the representatives of the entire Nation. The Constitution thus creates a uniform national body representing the interests of a single people.

Permitting individual States to formulate diverse qualifications for their representatives would result in a patchwork of state qualifications, undermining the uniformity and the national character that the Framers envisioned and sought to ensure. Such a patchwork would also sever the direct link that the Framers found so critical between the National Government and the people of the United States.

Petitioners attempt to overcome this formidable array of evidence against the States' power to impose qualifications by arguing that the practice of the States immediately after the adoption of the Constitution demonstrates their understanding that they possessed such power. One may properly question the extent to which the States' own practice is a reliable indicator of the contours of restrictions that the Constitution imposed on States, especially when no court has ever upheld a state-imposed qualification of any sort. But petitioners' argument is unpersuasive even on its own terms. At the time of the Convention, "[a]lmost all the State Constitutions required members of their Legislatures to possess considerable property." *** The contemporaneous state practice with respect to term limits is similar. At the time of the Convention, States widely supported term limits in at least some circumstances. The Articles of Confederation contained a provision for term limits.³⁶ As we have noted, some members of the Convention had sought to impose term limits for Members of Congress. In addition, many States imposed term limits on state officers, four placed limits on delegates to the Continental Congress, and several States voiced support for term limits for Members of Congress.⁴⁰ Despite this widespread support, no State sought to impose any term limits on its own federal representatives. Thus, a proper assessment of contemporaneous state practice provides further persuasive evidence of a general understanding that the qualifications in the Constitution were unalterable by the States. *** In sum, the available historical and textual evidence, read in light of the basic principles of democracy underlying the Constitution and

³⁶ *** ("[N]o person shall be capable of being a delegate for more than three years in any term of six years").

⁴⁰ [During the ratification debates] at least three states proposed some form of constitutional amendment supporting term limits for Members of Congress.

recognized by this Court in *Powell*, reveal the Framers’ intent that neither Congress nor the States should possess the power to supplement the exclusive qualifications set forth in the text of the Constitution. ***

V

The merits of term limits, or “rotation,” have been the subject of debate since the formation of our Constitution, when the Framers unanimously rejected a proposal to add such limits to the Constitution. The cogent arguments on both sides of the question that were articulated during the process of ratification largely retain their force today. Over half the States have adopted measures that impose such limits on some offices either directly or indirectly, and the Nation as a whole, notably by constitutional amendment, has imposed a limit on the number of terms that the President may serve.⁴⁹ ***

We are, however, firmly convinced that allowing the several States to adopt term limits for congressional service would effect a fundamental change in the constitutional framework. Any such change must come not by legislation adopted either by Congress or by an individual State, but rather—as have other important changes in the electoral process⁵⁰—through the Amendment procedures set forth in Article V. The Framers decided that the qualifications for service in the Congress of the United States be fixed in the Constitution and be uniform throughout the Nation. That decision reflects the Framers’ understanding that Members of Congress are chosen by separate constituencies, but that they become, when elected, servants of the people of the United States. They are not merely delegates appointed by separate, sovereign States; they occupy offices that are integral and essential components of a single National Government. In the absence of a properly passed constitutional amendment, allowing individual States to craft their own qualifications for Congress would thus erode the structure envisioned by the Framers, a structure that was designed, in the words of the Preamble to our Constitution, to form a “more perfect Union.” ***

JUSTICE KENNEDY, concurring. [omitted]

JUSTICE THOMAS, with whom THE CHIEF JUSTICE, JUSTICE O’CONNOR, and JUSTICE SCALIA join, dissenting.

It is ironic that the Court bases today’s decision on the right of the people to “choose whom they please to govern them.” Under our Constitution, there is only one State whose people have the right to “choose whom they please” to represent Arkansas in Congress. The Court holds, however, that neither the elected legislature of that State nor the people themselves (acting by ballot initiative) may prescribe any qualifications for those representatives. The majority therefore defends the right of

⁴⁹ See U.S. Const., Amdt. 22 (1951) (limiting Presidents to two 4-year terms).

⁵⁰ See, e.g., Amdt. 17 (1913) (direct elections of Senators); Amdt. 19 (1920) (extending suffrage to women); Amdt. 22 (1951) (Presidential term limits); Amdt. 24 (1964) (prohibition against poll taxes); Amdt. 26 (1971) (lowering age of voter eligibility to 18).

the people of Arkansas to “choose whom they please to govern them” by invalidating a provision that won nearly 60% of the votes cast in a direct election and that carried every congressional district in the State.

I dissent. Nothing in the Constitution deprives the people of each State of the power to prescribe eligibility requirements for the candidates who seek to represent them in Congress. The Constitution is simply silent on this question. And where the Constitution is silent, it raises no bar to action by the States or the people.

I

Because the majority fundamentally misunderstands the notion of “reserved” powers, I start with some first principles. Contrary to the majority’s suggestion, the people of the States need not point to any affirmative grant of power in the Constitution in order to prescribe qualifications for their representatives in Congress, or to authorize their elected state legislators to do so.

Our system of government rests on one overriding principle: all power stems from the consent of the people. To phrase the principle in this way, however, is to be imprecise about something important to the notion of “reserved” powers. The ultimate source of the Constitution’s authority is the consent of the people of each individual State, not the consent of the undifferentiated people of the Nation as a whole. ***

These basic principles are enshrined in the Tenth Amendment, which declares that all powers neither delegated to the Federal Government nor prohibited to the States “are reserved to the States respectively, or to the people.” *** All powers that the Constitution neither delegates to the Federal Government nor prohibits to the States are controlled by the people of each State. ***

II

[JUSTICE THOMAS indicates the “Qualifications Clauses are merely straightforward recitations of the minimum eligibility requirements that the Framers thought it essential for every Member of Congress to meet,” discusses “the democratic principles that contributed to the Framers’ decision to withhold this power from Congress do not prove that the Framers also deprived the people of the States of their reserved authority to set eligibility requirements for their own representatives,” and argues that “the historical evidence refutes any notion that the Qualifications Clauses were generally understood to be exclusive.”]

This conclusion is buttressed by our reluctance to read constitutional provisions to preclude state power by negative implication. The very structure of the Constitution counsels such hesitation. After all, § 10 of Article I contains a brief list of express prohibitions on the States. *** The majority responds that “a patchwork of state qualifications” would “undermin[e] the uniformity and the national character that the Framers envisioned and sought to ensure.” Yet the Framers thought it

perfectly consistent with the “national character” of Congress for the Senators and Representatives from each State to be chosen by the legislature or the people of that State. The majority never explains why Congress’ fundamental character permits this state-centered system, but nonetheless prohibits the people of the States and their state legislatures from setting any eligibility requirements for the candidates who seek to represent them.

*** Although the Qualifications Clauses neither state nor imply the prohibition that it finds in them, the majority infers from the Framers’ “democratic principles” that the Clauses must have been generally understood to preclude the people of the States and their state legislatures from prescribing any additional qualifications for their representatives in Congress. ***

The majority never identifies the democratic principles that would have been violated if a state legislature, in the days before the Constitution was amended to provide for the direct election of Senators, had imposed some limits of its own on the field of candidates that it would consider for appointment. Likewise, the majority does not explain why democratic principles forbid the people of a State from adopting additional eligibility requirements to help narrow their choices among candidates seeking to represent them in the House of Representatives. ***

The majority appears to believe that restrictions on eligibility for office are inherently undemocratic. But the Qualifications Clauses themselves prove that the Framers did not share this view; eligibility requirements to which the people of the States consent are perfectly consistent with the Framers’ scheme. *** When the people of a State themselves decide to restrict the field of candidates whom they are willing to send to Washington as their representatives, they simply have not violated the principle that “the people should choose whom they please to govern them.” ***

As the majority concedes, the first Virginia election law erected a property qualification for Virginia’s contingent in the Federal House of Representatives. See Virginia Election Law (Nov. 20, 1788). What is more, while the Constitution merely requires representatives to be inhabitants of their State, the legislatures of five of the seven States that divided themselves into districts for House elections added that representatives also had to be inhabitants of the district that elected them. Three of these States adopted durational residency requirements too, insisting that representatives have resided within their districts for at least a year (or, in one case, three years) before being elected. ***

III

It is radical enough for the majority to hold that the Constitution implicitly precludes the people of the States from prescribing any eligibility requirements for the congressional candidates who seek their votes. This holding, after all, does not stop with negating the term limits that many States have seen fit to impose on their Senators and Representatives. Today’s decision also means that no State may

disqualify congressional candidates whom a court has found to be mentally incompetent, who are currently in prison, or who have past vote-fraud convictions. Likewise, after today's decision, the people of each State must leave open the possibility that they will trust someone with their vote in Congress even though they do not trust him with a vote in the election for Congress. ***

Notes and Questions

Opinions often rely on several different kinds of arguments about the meaning of the Constitution, including arguments based on text, history, precedent, the structure of the Constitution, and the practical effects of an interpretation. How do the majority and the dissenters rely on these kinds of arguments in *Term Limits*?

SELECTED PROVISIONS OF THE UNITED STATES CONSTITUTION

Art. I, Section 2.

The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Art. I, Section 3.

The Senate of the United States shall be composed of two Senators from each state, chosen by the legislature thereof...*

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

Art. I, Section 4.

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 choosing Senators.

Art. I, Section 5.

Each House shall be the judge of the elections, returns and qualifications of its own members....

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

* Amendment XVII (1913) provides: “The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof...”