U.S. TERM LIMITS, INC. v. THORNTON

SUPREME COURT OF THE UNITED STATES
514 U.S. 779
May 22, 1995
[5 - 4]

OPINION: Justice Stevens...The Constitution sets forth **qualifications for membership** in the Congress of the United States. Article I, §2, cl. 2...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...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 [Amendment 73 of] 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**. The Arkansas Supreme Court held that the amendment violates the Federal Constitution. We agree...Such a state-imposed restriction is contrary to the "fundamental principle of our representative democracy"...that "the people should choose whom they please to govern them." 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...

[T]he constitutionality of Amendment 73 depends...on...two distinct issues. (1)...[W]hether the Constitution forbids **States** to add to or alter the qualifications specifically enumerated in the Constitution [and] (2)...if...so..., whether the fact that Amendment 73 is formulated as a ballot access restriction rather than as an outright disqualification is of constitutional significance. Our resolution of these issues draws upon our prior resolution of a related but distinct issue: **whether Congress has**

the power to add to or alter the qualifications of its Members.

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, cl.1, 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...

The Issue in Powell

In November 1966, Adam Clayton Powell, Jr., was elected from a District in New York to serve in the United States House of Representatives for the 90th Congress. Allegations that he had engaged in serious misconduct while serving as a committee chairman during the 89th Congress led to the appointment of a Select Committee **to determine his eligibility to take his seat**. That committee found that **Powell met the age, citizenship, and residency requirements set forth in Art. I, §2, cl. 2**. The committee also found, however, that Powell had wrongfully diverted House funds for the use of others and himself and had made false reports on expenditures of foreign currency. Based on those findings, the House...excluded Powell from membership in the House and declared his seat vacant.

Powell and several voters of the district from which he had been elected filed suit seeking a declaratory judgment that the House Resolution was invalid because Art. I, §2, cl.2, sets forth the exclusive qualifications for House membership. We ultimately accepted that contention, concluding that the House of Representatives has **no "authority to exclude any person, duly elected by his constituents, who meets all the requirements for membership expressly prescribed in the Constitution."** In reaching that conclusion, we undertook a detailed historical review to determine the intent of the Framers...[and concluded] that Congress has no power to alter the qualifications in the text of the Constitution.

Powell's Reliance on History

...[W]e viewed the Convention debates as manifesting the Framers' intent that the qualifications in the Constitution be fixed and exclusive. We found particularly revealing the debate concerning a proposal made by the Committee of Detail that would have given Congress the power to add property qualifications. James Madison argued that such a power would vest "an improper & dangerous power in the Legislature," by which the Legislature "can by degrees subvert the Constitution."...

The Framers further revealed their concerns about congressional abuse of power when Gouverneur Morris suggested modifying the proposal of the Committee of Detail to grant Congress unfettered power to add qualifications. We noted that Hugh Williamson "expressed concern that if a majority of the legislature should happen to be 'composed of any particular description of men, of lawyers for

example,...the future elections might be secured to their own body.'" We noted, too, that Madison emphasized the British Parliament's attempts to regulate qualifications, and that he observed: "The abuse they had made of it was a lesson worthy of our attention." We found significant that the Convention rejected both Morris' modification and the Committee's proposal.

We also recognized in *Powell* that the post-Convention ratification debates confirmed that the Framers understood the qualifications in the Constitution to be fixed and unalterable by Congress. For example, we noted that in response to the antifederalist charge that the new Constitution favored the wealthy and well born, Alexander Hamilton wrote:

> "The truth is that there is no method of securing to the rich the preference apprehended but by prescribing qualifications of property either for those who may elect or be elected. But this forms no part of the power to be conferred upon the national government...The qualifications of the persons who may choose or be chosen, as has been remarked upon other occasions, are defined and fixed in the Constitution, and are unalterable by the legislature."

...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.

Powell's Reliance on Democratic Principles

...*Powell* thus establishes two important propositions: first, that the "relevant historical materials" compel the conclusion that, at least with respect to qualifications imposed by Congress, the Framers intended the qualifications listed in the Constitution to be exclusive; and second, that that conclusion is equally compelled by an understanding of the "fundamental principle of our representative democracy...'that the people should choose whom they please to govern them.'"

Powell's Holding

...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...

Source of the Power

Contrary to petitioners' assertions, the power to add qualifications is not part of the original powers of sovereignty that the Tenth Amendment reserved to the States...As Justice Story recognized, "the

states can exercise no powers whatsoever, which exclusively spring out of the existence of the national government, which the constitution does not delegate to them...No state can say, that it has reserved, what it never possessed."

...With respect to setting qualifications for service in Congress, no such right existed before the Constitution was ratified. The contrary argument overlooks the revolutionary character of the Government that the Framers conceived. Prior to the adoption of the Constitution, the States had joined together under the Articles of Confederation. In that system, "the States retained most of their sovereignty, like independent nations bound together only by treaties." After the Constitutional Convention convened, the Framers were presented with, and eventually adopted a variation of, "a plan not merely to amend the Articles of Confederation but to create an entirely new National Government with a National Executive, National Judiciary, and a National Legislature." In adopting that plan, the Framers envisioned a uniform national system, rejecting the notion that the Nation was a collection of States, and instead creating a direct link between the National Government and the people of the United States...In that National Government, representatives owe primary allegiance not to the people of a State, but to the people of the Nation. As Justice Story observed, each Member of Congress is "an officer of the union, deriving his powers and qualifications from the constitution, and neither created by, dependent upon, nor controllable by, the states...Those officers owe their existence and functions to the united voice of the whole, not of a portion, of the people." Representatives and Senators are as much officers of the entire union as is the President. States thus "have just as much right, and no more, to prescribe new qualifications for a representative, as they have for a president...It is no original prerogative of state power to appoint a representative, a senator, or president for the union."

We believe that the Constitution reflects the Framers' general agreement with the approach later articulated by Justice Story. For example, Art. I, §5, cl. 1, provides: "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members." **The text of the Constitution thus gives the representatives of <u>all</u> the people the final say in judging the qualifications of the representatives of <u>any one State</u>**. For this reason, the dissent falters when it states that "the people of Georgia have no say over whom the people of Massachusetts select to represent them in Congress."

Two other sections of the Constitution further support our view of the Framers' vision. First, consistent with Story's view, the Constitution provides that the salaries of representatives should "be ...paid out of the Treasury of the United States," **Art. I, §6,** rather than by individual States. <u>The salary provisions reflect the view that representatives owe their allegiance to the people, and not to the States</u>. Second, the provisions governing elections reveal the Framers' understanding that powers over the election of federal officers had to be delegated to, rather than reserved by, the States. It is surely no coincidence that the context of federal elections provides one of the few areas in which the Constitution expressly requires action by the States, namely that "the Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof." **Art. I, §4, cl. 1**. This duty parallels the duty under Article II that "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors." Art. II,

§1, cl. 2. These Clauses are express delegations of power to the States to act with respect to federal elections...

In short, as the Framers recognized, electing representatives to the National Legislature was a new right, arising from the Constitution itself. The Tenth Amendment thus provides no basis for concluding that the States possess reserved power to add qualifications to those that are fixed in the Constitution. Instead, any state power to set the qualifications for membership in Congress must derive not from the reserved powers of state sovereignty, but rather from the delegated powers of national sovereignty. **In the absence of any constitutional delegation to the States of power to add qualifications to those enumerated in the Constitution, such a power does not exist...**

The Convention and Ratification Debates

The available affirmative evidence indicates the Framers' intent that States have no role in the setting of qualifications. In Federalist Paper No. 52, dealing with the House of Representatives, Madison addressed the "qualifications of the electors and the elected." Madison first noted the difficulty in achieving uniformity in the qualifications for electors, which resulted in the Framers' decision to require only that the qualifications for federal electors be the same as those for state electors. Madison argued that such a decision "must be satisfactory to every State, because it is comfortable to the standard already established, or which may be established, by the State itself."...

Madison emphasized this same idea in The Federalist No. 57:

> "Who are to be the objects of popular choice? Every citizen whose merit may recommend him to the esteem and confidence of his country. No qualification of wealth, of birth, of religious faith, or of civil profession is permitted to fetter the judgment or disappoint the inclination of the people."

The text of The Federalist No. 52 belies the dissent's reading. First, Madison emphasized that "the qualifications of the elected...were more susceptible of uniformity." His emphasis on uniformity would be quite anomalous if he envisioned that States would create for their representatives a patchwork of qualifications. Second, the idea that Madison was in fact concerned that States would open the doors to national service too widely is entirely inconsistent with Madison's emphasizing that the Constitution kept "the door...open to merit of every description, whether native or adoptive, whether young or old, and without regard to poverty or wealth, or to any particular profession of religious faith." The Federalist No. 52.

Finally the dissent argues that "Madison could not possibly have been rebuking the States for setting unduly high qualifications for their representatives in Congress" and suggests that Madison's comments do not reflect "an implicit criticism of the States for setting unduly high entrance barriers." We disagree. Though the dissent attempts to minimize the extensiveness of state-imposed qualifications by focusing on the qualifications that States imposed on delegates to Congress and the

age restrictions that they imposed on state legislators, the dissent neglects to give appropriate attention to the abundance of property, religious, and other qualifications that States imposed on state elected officials. As we describe in some detail, nearly every State had property qualifications, and many States had religious qualifications, term limits, or other qualifications. As Madison surely recognized, without a constitutional prohibition, these qualifications could be applied to federal representatives. We cannot read Madison's comments on the "open door" of the Federal Government as anything but a rejection of the "unduly high" barriers imposed by States.

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. For example, to prevent discrimination against federal electors, the Framers required in **Art. I, §2, cl. 1,** that the qualifications for federal electors be the same as those for state electors. As Madison noted, allowing States to differentiate between the qualifications for state and federal electors "would have rendered too dependent on the State governments that branch of the federal government which ought to be dependent on the people alone." The Federalist No. 52. Similarly, in **Art. I, §4, cl. 1,** though giving the States the freedom to regulate the "Times, Places and Manner of holding Elections," the Framers created a safeguard against state abuse by giving Congress the power to "by Law make or alter such Regulations." The Convention debates make clear that the Framers' overriding concern was the potential for States' abuse of the power to set the "Times, Places and Manner" of elections. Madison noted that "it was impossible to foresee all the abuses that might be made of the discretionary power." Gouverneur Morris feared that "the States might make false returns and then make no provisions for new elections." When Charles Pinckney and John Rutledge moved to strike the congressional safeguard, the motion was soundly defeated. As Hamilton later noted: "Nothing can be more evident than that an exclusive power of regulating elections for the national government, in the hands of the State legislatures, would leave the existence of the Union entirely at their mercy."...

The Framers' discussion of the salary of representatives reveals similar concerns. When the issue was first raised, Madison argued that congressional compensation should be fixed in the Constitution, rather than left to state legislatures, because otherwise "it would create an improper dependence." **George Mason** agreed, noting that "the parsimony of the States might reduce the provision so low that...the question would be not who were most fit to be chosen, but who were most willing to serve."

For basketball fans, **George Mason** University (in Virginia) advanced to the Final Four (ranked 11th in their bracket) in 2006 before losing to Florida who won it all by beating UCLA.

When the issue was later reopened, Nathaniel Gorham stated that he "wished not to refer the matter to the State Legislatures who were always paring down salaries in such a manner as to keep out of offices men most capable of executing the functions of them." Edmund Randolph agreed that "if the States were to pay the members of the National Legislature, a dependence would be created that

would vitiate the whole System." Rufus King "urged the danger of creating a dependence on the States" and Hamilton noted that "those who pay are the masters of those who are paid." The Convention ultimately agreed to vest in Congress the power to set its own compensation. See **Art. I, §6.**

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. Indeed, one of the more anomalous consequences of petitioners' argument is that it accepts federal supremacy over the procedural aspects of determining the times, places, and manner of elections while allowing the States carte blanche with respect to the substantive qualifications for membership in Congress.

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. As the dissent concedes, however, the Framers were unquestionably concerned that the States would simply not hold elections for federal officers, and therefore the Framers gave Congress the power to "make or alter" state election regulations. Yet under the dissent's approach, the States could achieve exactly the same result by simply setting qualifications for federal office sufficiently high that no one could meet those qualifications. In our view, it is inconceivable that the Framers would provide a specific constitutional provision to ensure that federal elections would be held while at the same time allowing States to render those elections meaningless by simply ensuring that no candidate could be qualified for office. Given the Framers' wariness over the potential for state abuse, we must conclude that the specification of fixed qualifications in the constitutional text was intended to prescribe uniform rules that would preclude modification by either Congress or the States.

We find further evidence of the Framers' intent in **Art. 1, §5, cl. 1**, which provides: "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members." That **Art. I, §5,** vests a federal tribunal with ultimate authority to judge a Member's qualifications is fully consistent with the understanding that those qualifications are fixed in the Federal Constitution, but not with the understanding that they can be altered by the States...

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...[O]pponents 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.** As we noted above, Robert Livingston argued:

> "The people are the best judges who ought to represent them. To dictate and control them, to tell them whom they shall not elect, is to abridge their natural rights. This rotation is an absurd species of ostracism."

Similarly, Hamilton argued that the representatives' need for reelection rather than mandatory rotation was the more effective way to keep representatives responsive to the people, because "when a man knows he must quit his station, let his merit be what it may, he will turn his attention chiefly to his own emolument."

Regardless of which side has the better of the debate over rotation, it is most striking that nowhere in the extensive ratification debates have we found any statement by either a proponent or an opponent of rotation that the draft constitution would permit States to require rotation for the representatives of their own citizens. If the participants in the debate had believed that the States retained the authority to impose term limits, it is inconceivable that the Federalists would not have made this obvious response to the arguments of the pro-rotation forces. The absence in an otherwise freewheeling debate of any suggestion that States had the power to impose additional qualifications unquestionably reflects the Framers' common understanding that States lacked that power...

Congressional Experience

...Congress first confronted the issue in 1807 when it faced a challenge to the qualifications of William McCreery, a Representative from Maryland who allegedly did not satisfy a residency requirement imposed by that State. In recommending that McCreery be seated, the Report of the House Committee on Elections noted:

> "The committee proceeded to examine the Constitution, with relation to the case submitted to them, and find that qualifications of members are therein determined, without reserving any authority to the State Legislatures to change, add to, or diminish those qualifications; and that, by that instrument, Congress is constituted the sole judge of the qualifications prescribed by it, and are obliged to decide agreeably to the Constitutional rules..."

The Chairman of the House Committee on Elections elaborated during debate:

> "The Committee of Elections considered the qualifications of members to have been unalterably determined by the Federal Convention, unless changed by an authority equal to that which framed the Constitution at first; that neither the State nor the Federal Legislatures are vested with authority to add to those qualifications, so as to change them."

As we noted in *Powell*, the congressional debate over the committee's recommendation tended to focus on the "narrow issue of the power of the States to add to the standing qualifications set forth in the Constitution." The whole House, however, did not vote on the committee's report, and instead voted only on a simple resolution: "Resolved, That William McCreery is entitled to his seat in this House." That resolution passed by a vote of 89 to 18.

Though the House Debate may be inconclusive, commentators at the time apparently viewed the seating of McCreery as confirmation of the States' lack of power to add qualifications. For example, in a letter to Joseph Cabell, Thomas Jefferson noted the argument that "to add new qualifications to those of the Constitution would be as much an alteration as to detract from them"; he then added: "And so I think the House of Representatives of Congress decided in some case; I believe that of a member from Baltimore."

...The Senate experience with state-imposed qualifications further supports our conclusions. In 1887, for example, the Senate seated Charles Faulkner of West Virginia, despite the fact that a provision of the West Virginia Constitution purported to render him ineligible to serve. The Senate Committee on Privileges and Elections unanimously concluded that "no State can prescribe any qualification to the office of United States Senator in addition to those declared in the Constitution of the United States." The Senate Committee on Rules and Administration reached the same conclusion in 1964 when faced with a challenge to Pierre Salinger, who had been appointed to serve as Senator from California. ("It is well settled that the qualifications established by the U.S. Constitution for the office of U.S. Senator are exclusive, and a State cannot, by constitutional or statutory provisions, add to or enlarge upon those qualifications").

Democratic Principles

...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...[T]he Framers...conceived of a Federal Government directly responsible to the people, possessed of direct power over the people, and chosen directly, not by States, but by the people. The Framers implemented this ideal most clearly in the provision... that calls for the Members of the House of Representatives to be "chosen every second Year by the People of the several States." **Art. I, §2, cl. 1.** Following the adoption of the Seventeenth Amendment in 1913, this ideal was extended to elections for the Senate. The Congress of the United States, therefore, is not a confederation of nations in which separate sovereigns are represented by appointed delegates, but is instead a body composed of representatives of the people. As Chief Justice John Marshall observed: "The government of the Union, then,...is, emphatically, and truly, a government of the people. In form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit." *McCulloch v. Maryland*.[1] Ours is a "government **of the people, by the people, for the people**." **A. Lincoln, Gettysburg Address (1863).**

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[1]Case 1-7 on this website.

...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.

State Practice

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, "almost all the State Constitutions required members of their Legislatures to possess considerable property." Despite this near uniformity, only one State, Virginia, placed similar restrictions on Members of Congress, requiring that a representative be a "freeholder." Just 15 years after imposing a property qualification, Virginia replaced that requirement with a provision requiring that representatives be only "qualified according to the constitution of the United States." Moreover, several States, including New Hampshire, Georgia, Delaware, and South Carolina, revised their Constitutions at around the time of the Federal Constitution. In the revised Constitutions, each State retained property qualifications for its own state elected officials yet placed no property qualification on its congressional representatives.

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. 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. 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 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.

Petitioners argue that, even if States may not add qualifications, Amendment 73 is constitutional because it is not such a qualification, and because Amendment 73 is a permissible exercise of state power to regulate the "Times, Places and Manner of holding Elections." We reject these contentions.

...§3...provides that certain Senators and Representatives shall not be certified as candidates and shall not have their names appear on the ballot. They may run as write-in candidates and, if elected, they may serve. Petitioners contend that only a legal bar to service creates an impermissible qualification, and that Amendment 73 is therefore consistent with the Constitution...

In our view, an amendment with the avowed purpose and obvious effect of evading the requirements of the Qualifications Clauses by handicapping a class of candidates cannot stand. To argue otherwise is to suggest that the Framers spent significant time and energy in debating and crafting Clauses that could be easily evaded. More importantly, allowing States to evade the Qualifications Clauses by "dressing eligibility to stand for Congress in ballot access clothing" trivializes the basic principles of our democracy that underlie those Clauses. Petitioners' argument treats the Qualifications Clauses not as the embodiment of a grand principle, but rather as empty formalism...

Petitioners make the related argument that Amendment 73 merely regulates the "Manner" of elections, and that the amendment is therefore a permissible exercise of state power under Article I, §4, cl. 1 (the Elections Clause), to regulate the "Times, Places and Manner" of elections. We cannot agree.

A necessary consequence of petitioners' argument is that Congress itself would have the power to "make or alter" a measure such as Amendment 73. Art. I, §4, cl. 1...That the Framers would have approved of such a result is unfathomable...[T]he Framers were particularly concerned that a grant to Congress of the authority to set its own qualifications would lead inevitably to congressional self-aggrandizement and the upsetting of the **delicate constitutional balance**. Petitioners would have us believe, however, that even as the Framers carefully circumscribed congressional power to set qualifications, they intended to allow Congress to achieve the same result by simply formulating the regulation as a ballot access restriction under the Elections Clause. We refuse to adopt an interpretation of the Elections Clause that would so cavalierly disregard what the Framers intended to be a fundamental constitutional safeguard.

...**The Framers intended the Elections Clause to grant States authority to create procedural regulations, not to provide States with license to exclude classes of candidates from federal office.** During the Convention debates, for example, Madison illustrated the procedural focus of the Elections Clause by noting that it covered "whether the electors should vote by ballot or viva voce, should assemble at this place or that place; should be divided into districts or all meet at one place, should all vote for all the representatives; or all in a district vote for a number allotted to the district." Similarly, during the ratification debates, proponents of the Constitution noted: "The power over the manner only enables them to determine how these electors shall elect -- whether by ballot, or by vote, or by any other way."...

The Elections Clause gives States authority "to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved."...In short, we have approved of state regulations designed to ensure that elections are "fair and honest and...that some sort of order, rather than chaos,...accompanies the democratic

processes."...

We do not understand the dissent to contest our primary thesis, namely, that if the qualifications for Congress are fixed in the Constitution, then a state-passed measure with the avowed purpose of imposing indirectly such an additional qualification violates the Constitution. The dissent, instead, raises two objections, challenging the assertion that the Arkansas amendment has the likely effect of creating a qualification and suggesting that the true intent of Amendment 73 was not to evade the Qualifications Clause but rather to simply "level the playing field." Neither of these objections has merit.

...[W]e hold that a state amendment is unconstitutional when it has the likely effect of handicapping a class of candidates and has the sole purpose of creating additional qualifications indirectly. Thus, the dissent's discussion of the evidence concerning the possibility that a popular incumbent will win a write-in election is simply beside the point.

As to the second argument, we find wholly unpersuasive the dissent's suggestion that Amendment 73 was designed merely to "level the playing field." As we have noted, it is obvious that the sole purpose of Amendment 73 was to limit the terms of elected officials, both state and federal, and that Amendment 73, therefore, may not stand.

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...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. Term limits, like any other qualification for office, unquestionably restrict the ability of voters to vote for whom they wish. On the other hand, such limits may provide for the infusion of fresh ideas and new perspectives, and may decrease the likelihood that representatives will lose touch with their constituents. It is not our province to resolve this longstanding debate.

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 process -- through the amendment procedures set forth in Article V**...The judgment is affirmed.

CONCURRENCE: Justice Kennedy...**Federalism was our Nation's own discovery.** The Framers split the atom of sovereignty. It was the genius of their idea that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other. The resulting Constitution created a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship...to the people who sustain it and are governed by it...

There can be no doubt, if we are to respect the republican origins of the Nation and preserve its federal character, that there exists a federal right of citizenship, a relationship between the people of the Nation and their National Government, with which the States may not interfere. Because the Arkansas enactment intrudes upon this federal domain, it exceeds the boundaries of the Constitution.

The Dissent authored by Justice Thomas (joined by Justices Rehnquist, O'Connor and Scalia) is extraordinarily lengthy and is not provided.