U.S. Term Limits v. Thornton

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U.S. Term Limits v Thornton ended congressional term limitations adopted by nearly half of the U.S. states, and in the process, reexamined the nature of the federal union and the priority of the States within it. A divided Court rejected claims of individual State prerogative, instead determining that the Constitution created a single nation.

1 Background

Term limitations—restrictions on the number of terms that a person may serve in a political office—exist for the U.S. president and 36 of the 50 state governors. Between 1990 and 2000, 23 states adopted term limitations for the congressional offices of U.S. Senator and Representative, almost exclusively through citizen initiatives.

In 1992, Arkansas’ citizens passed Amendment 73, the “Term Limitation Amendment”, to amend the state constitution to render ineligible an otherwise eligible candidate to appear on the ballot for congressional office based upon the number of terms already served. In separate suits, Bobbie Hill and Ray Thornton, members of the Arkansas congressional delegation, challenged the term limitations on federal political offices, arguing that the Arkansas law violated elections clause of the U.S. Constitution that laid out the qualifications for Congress. The Arkansas State Supreme Court agreed with the plaintiffs. U.S. Term Limits, an organization supporting legislative term limitations, appealed the decision to the U.S. Supreme Court, arguing that the amendment should stand given Arkansas’ Tenth Amendment rights.
On appeal, the U.S. Supreme Court affirmed the state court’s opinion, striking federal term limitations throughout the country.

The primary constitutional question pertained to the States’ right to extend the qualifications for U.S. Congress as described in Article I, §§2 & 3 of the U.S. Constitution. Do States, via their Tenth Amendment reserved powers, retain the right to alter the qualifications for U.S. Congress within their state? Can it do so by indirect means, such as ballot access restrictions? In a 5-4 decision, the Court held that States, acting individually, may not alter the constitutional qualifications for federal office, nor may they do so by indirect means, such as through a ballot access restriction. Any alteration must be by constitutional amendment.

2 The Majority and Dissenting Arguments

Justice Stevens wrote the opinion of the Court, joined by Justices Souter, Ginsburg, and Breyer, and with a concurring opinion by Justice Kennedy. Stevens invoked *Powell v. McCormack* 395 U.S. 486 (1969), where Congress attempted to exclude an elected member from taking his seat, and the Court determined that the Constitution’s Article I qualifications for Congress are exclusive and cannot be extended by Congress. In *U.S. Term Limits*, Stevens argued that the States also lack that authority. Citing *Storer v. Brown*, 415 U. S. 724 (1974), Stevens pointed out that the elections clause—the Article I, §4 delegation to the states to specify the manner of holding elections—gave the States the authority to regulate the procedures for carrying out an election, not to give individual States the authority to alter the qualifications for office. Stevens rejected the petitioners’ argument that a ballot access restriction did not disqualify candidates as they could be elected via a write-in campaign, arguing that the “sole purpose” of the amendment was to disqualify candidates.

The petitioners also argued that the States retain the right to adjust qualifications under the reserved powers clause. The challenge questioned the essential nature of the federal union: was it a union of people—of one united nation—or of separate peoples, coming together distinctly, through their independent States? The Court argued the former. “The Constitution thus creates a uniform national body representing the interests of a single people.” (822) If states altered the qualifications within their own borders, it would create a “patchwork of state qualifications” inconsistent with the
framers’ vision of uniformity (514 U.S. 779, 807n18, 822). Regarding the application of the States’ Tenth Amendment reserved powers, the Court argued that the states could only reserve powers held prior to the formation of the union.

Kennedy’s concurring opinion underscored importance of the republican nature of the union. “Framers split the atom of sovereignty[,] . . . establishing two orders of government”—“one state and one federal”—“each with its own direct relationship” to the people. (838) The independence of each to the other, and federal government’s obligation to represent the national public, required that the States not interfere with Congress’ national character.

Justice Thomas’ dissent, signed also by Justices Rehnquist, O’Connor, and Scalia, proposed a confederal model of the union. “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.” (846) Interpreting the reserved powers clause, Thomas argued that the Constitution endowed the federal and state governments with different “default” rules: Congress has the powers granted to it within the Constitution, and the States have all powers not granted to Congress or withheld from them. Where the Constitution is silent, the States have authority. Finding no express prohibition within the Constitution, nor a necessary implication, the States are empowered to alter the qualifications for federal office.

3 Implications

In underscoring the States’ authority to determine the procedure for holding elections, this case has been invoked to justify registration rules and voter identification laws. Its discussion of the independence of state and federal governments, particularly the dual sovereignty model laid out in Justice Kennedy’s concurrence, is often used in arguments both for and against states’ rights and to defy attempts by States to give voting instructions to members of Congress. Legal conflict is nearly inevitable under the dual sovereignty model, and the Court has continued to struggle with defining States’ authority under the Tenth Amendment. The case has also been used to justify unequal reallocation of federal tax dollars across the states. For example, States that decline to participate in the federal Medicaid program do not create a constitutional problem, even as their residents contribute to the program through their federal tax dollars.
In the same year that the Court heard this case, the Republican party proposed a reformist platform, the “Contract with America”, that included a promise to propose a federal term limitation constitutional amendment but the effort failed. Despite the continuing popularity of federal term limits—a 2013 Gallup poll suggests that 75% of respondents would support a constitutional amendment to limit congressional terms—the movement has stalled.

The questions raised by *U.S. Term Limits v Thornton* regarding the interpretation of the reserved powers clause remains controversial.

## 4 Suggestions for Further Reading


