

Not So Independent: SCOTUS Upholds State Judicial Review for Elections

June 27, 2023

The U.S. Supreme Court surprised court watchers with a 6–3 decision in *Moore v. Harper*, holding that the elections clause of the U.S. Constitution did not preclude state court review. Chief Justice Roberts wrote the opinion, which was joined by Justices Kavanaugh and Barrett from the conservative side of the court, and Justices Sotomayor, Kagan, and Jackson from the liberal side. Justice Thomas wrote the dissent, joined by Justices Gorsuch and Alito.

This case involved a challenge in North Carolina to a congressional district map. The state legislature adopted a new map following the 2020 census. It was challenged in court as a partisan gerrymander. The state supreme court agreed and held it violated the state’s constitution. The challenge was whether the state supreme court had the power to decide this challenge or whether the federal Constitution’s provision gives the state legislature sole authority within the state:

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 chusing Senators.

While the North Carolina court had overruled its prior opinion before the Supreme Court’s decision in *Moore*, the Supreme Court held that by doing so, it reaffirmed that the North Carolina court retains the authority to review congressional districting plans for compliance with state law — giving the Supreme Court jurisdiction to rule on that issue while not ruling on any particular map from that state.

This is a case in which a cursory reading of the Constitution can lead to one result, while a deeper dive into precedent and the underlying fabric of what inspired the document leads to another result.

The court cited works by James Madison and Alexander Hamilton in its analysis. The court held that it has long rejected the view that legislative action under the elections clause is purely federal in character, governed only by restraints found in the federal Constitution. The concept of separation of powers is key to the “American experiment,” the idea of democratic self-governance through checks and balances. The idea that the writers of the Constitution, ratified in 1789, wanted separation of powers federally, but had removed it at the state level for something as important as elections, was a step that the court refuted, citing Chief Justice Marshall for the concept that judicial review is one of the fundamental principles of our society.

As to the limits of state court authority, the court did not give us a test to handle these issues going forward, instead holding that this area of law is complex and context-specific and “state courts may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections.” Kavanaugh concurred in the ruling but wrote separately about wanting a test in the future. Thomas, with Gorsuch and Alito in part, dissented and objected to the decision on the grounds that it should have been dismissed as moot and expressing a fear that the decision would put federal courts on an uncertain path regarding elections cases in the future.

Authored By



Kenneth A. Tinkler

Related Practices

[Government Law & Consulting](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.

