

An hourglass-shaped graphic with a globe of the Earth inside. The top bulb is dark blue, and the bottom bulb is light blue. The hourglass is centered on the page.

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*The Unconstitutionality of State Congressional Term Limits:
An Overview of U.S. Term Limits, Inc. v. Thornton (Sup.
Ct. Doc. No. 93-1456)*

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Abstract. On May 22, 1995, the U.S. Supreme Court in *U.S. Term Limits, Inc. v. Thornton* (Sup. Ct. Doc. No. 93-1456) in a 5-4 decision held that Arkansas' constitutional amendment, Section 3 of Amendment 73, providing for limitations on congressional terms of office was unconstitutional in that it established an additional qualification for congressional office in violation of Article I, Sections 2 and 3 setting forth the three basic qualifications of age, citizenship and inhabitancy for Members of Congress.

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The Unconstitutionality of State Congressional Term Limits: An Overview of U.S. Term Limits, Inc. v. Thornton (Sup. Ct. Doc. No. 93-1456)

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Summary

On May 22, 1995, the U.S. Supreme Court in *U.S. Term Limits, Inc. v. Thornton* (Sup. Ct. Doc. No. 93-1456) in a 5-4 decision held that Arkansas' constitutional amendment, Section 3 of Amendment 73, providing for limitations on congressional terms of office was unconstitutional in that it established an additional qualification for congressional office in violation of Article I, Sections 2 and 3 setting forth the three basic qualifications of age, citizenship and inhabitancy for Members of Congress. The Court affirmed the 1994 decision of the Arkansas Supreme Court which had ruled that Amendment 73 to the Arkansas Constitution limiting the terms of Members of Congress was unconstitutional in violation of the Qualifications Clauses of Article I because state term limits imposed an impermissible additional qualification on congressional candidates (See the Arkansas Supreme case, *U.S. Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W. 2d 349, 355-56 (1994)). The Court also rejected Arkansas' argument that it had the power under the Elections Clause of Article I, Section 4, Clause 1 to restrict congressional incumbents' access to the ballot by imposing state term limitations. (See also, e.g., *Bryant v. Hill*, Sup. Ct Doc. No. 93-1828, consolidated with *U.S. Term Limits, Inc. v. Thornton*, *supra*).

U.S. Term Limits, Inc. v. Thornton, May 22, 1995

On May 22, 1995, the Supreme Court, relying on the 1969 decision in *Powell v. McCormack* (395 U.S. 486, 540), concluded that the power granted to each House of Congress to judge the qualifications of its Members does not include the power to alter or to add to their constitutional qualifications. (*U.S. Term Limits*, slip op. at 15-18). The Court rejected the Petitioners' argument that the States had power over congressional qualifications as part of the original powers reserved to them under the Tenth Amendment providing that "...[The] powers not delegated to the United States by the Constitution...are

reserved to the States...." According to the Court, the power to add to or amend congressional qualifications is not within the States' pre-Tenth Amendment original powers; the Framers intended that the Constitution would be the exclusive source of congressional qualifications and thus divested the States of any power to alter such qualifications. (*Id.*, 22-26; 27-36). The Court noted that, if individual States were to be permitted to provide diverse qualifications for their Members of Congress, this would have resulted in a patchwork of congressional qualifications which would have been inconsistent with the Framers' concept of a uniform Congress representing the people. (*Id.*, 44).

Furthermore, the Court rejected the Petitioners' argument that the Arkansas Amendment 73 was valid because it was merely an electoral ballot access law prohibiting certain congressional candidates from appearing on the ballot while allowing them to run as write-in candidates with a slim chance of success and serve if elected. However, the Court invalidated Amendment 73 noting that it was an indirect attempt to evade the Qualifications Clauses' requirements of Article I of the Constitution. (*Id.*, 50-52). Also, Amendment 73 is not a permissible exercise of state powers under the Elections Clause of Article I, § 4, Cl. 1 to regulate the "Times, Places and Manner of holding Elections...." Thus, Petitioners' broad construction of the Elections Clause was held to be basically inconsistent with that of the Framers' since the Clause was intended to allow States authority to protect the integrity and regularity of the federal election process and not to provide for additional qualifications for congressional candidates. (*id.*, 54-55).

The Court concluded that Arkansas Constitutional Amendment 73 cannot constitutionally stand since the Framers of the Constitution determined that the qualifications for congressional office be fixed in the Constitution and be uniform throughout the United States. In the absence of a properly passed federal constitutional amendment under Article V to allow individual States to determine their own qualifications for congressional office, state constitutional amendments as well as statutory provisions would thus erode the structure envisioned by the Framers to form a "...more perfect Union." (*Id.*, 60-61).

Conclusion

The Supreme Court's decision on May 22, 1995 finding state imposed congressional term limits unconstitutional would likewise call into question the constitutionality of the other term limit measures in 23 States which have them. Consequently, any change in the term limitations for Members of Congress can only constitutionally occur by the passage and ratification of a constitutional amendment in accordance with Article V of the Constitution. (*Id.*, 50, 61). The prescribed constitutional qualifications for Members of Congress are paramount and exclusive and cannot be amended, changed, diminished, altered, or added to by the States or even by the Congress except by the constitutional amendment process. (*Powell v. McCormack, supra* at 543-47).

In a dissenting opinion written by Justice Clarence Thomas and joined by three other Justices, it was argued that there are no federal constitutional provisions which would deprive the people of each state to prescribe eligibility for congressional candidates since these were "reserved" powers of the States. (Slip dissenting op. at 1-2).