

United States Supreme Court Issues Major Election Law Decision Limiting State Power Over Federal Elections

Article

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On Tuesday, the United States Supreme Court issued a major election law decision in *Moore v. Harper*, No. 21-1271 that limits the power of state legislatures in handling federal elections. In a 6-3 opinion written by Chief Justice John Roberts, the Court ruled that the power granted within the Constitution to state legislatures for regulating federal elections is subject to judicial review by state courts.

The issue arose from a challenge to a congressional voting map adopted by the North Carolina Legislature, with opponents claiming that the map was a clear example of partisan gerrymandering (i.e., drawn to favor one political party over the other). Initially, a Democratic-controlled North Carolina Supreme Court struck down the map as violating the state constitution ensuring free elections. A later Republican-controlled state supreme court reversed course, holding that it lacked power to review the voting map. Meanwhile, state Republicans challenged the state supreme court's initial ruling which lead to the case before the United States Supreme Court.

The case turned on the issue of the "independent state legislature" theory. Under the theory, the grant of power to state legislatures by the Constitution's Election Clause cannot be challenged by other areas of state government, such as governors or election administrators. Most importantly, this also precludes judicial review by state courts of federal elections decisions by state legislatures – including congressional voting maps.

Justice Roberts writing for the majority, joined by Justices Sonia Sotomayor, Elena Kagan, Brett Kavanaugh, Amy Coney Barrett, and Ketanji Brown Jackson rejected the theory. In affirming that federal elections decisions by state legislatures are subject to judicial review in state court, the Supreme Court highlighted that election law is no exception to the practice of state courts invalidating unconstitutional state laws. However, Justice Roberts

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cautioned that “state courts do not have free reign” to strike down state legislature federal elections decisions but have merely “an obligation to ensure that state court interpretations of the law do not evade federal law.”

Justice Clarence Thomas dissented, joined by Justices Samuel Alito Jr. and Neil Gorsuch. In his dissent, Justice Thomas would have dismissed the case as moot after the Republican-controlled North Carolina Supreme Court later reversed its own decision, stopping short of ruling on the “independent state legislature” doctrine. Further, Justice Thomas expressed worry over the implications of state court judicial review on elections, which included worries over mixing large amounts of state constitutional law with federal issues in federal courts.

While many opponents of the “independent state legislature” doctrine see the decision as a win against unchecked political influence in elections, others worry the decision shifts more election decisions and oversight to federal court. The practical implications remain to be seen as courts begin to grapple with the delicate balance of judicial review affirmed in the Supreme Court’s decision.

**Davis Dykes, a summer law clerk, assisted with this article.*