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Federal Appeals Court Misinterprets Constitution and State Sovereignty

The federal judiciary has had a chip on its shoulder ever since Alexander Hamilton described it as the "weakest of the three departments of power." From Marbury v. Madison and McCulloch v. Maryland through to its present day progeny, federal judges consistently misinterpret the Constitution and misinterpret the powers assigned to them therein. In fact, for decades the district courts, courts of appeal, and the Supreme Court have gone out of their way to show that they can obliterate the Constitution just as powerfully as their sister branches.

One of the latest examples of the federal courts' disregard for the black letter of Constitutional law is found in the Ninth Circuit Court of Appeals' decision in the case of *Gonzalez v. Arizona* (2010). Handed down in October of this year, the reasoning set forth in the majority opinion written by Judge Sandra S. Ikuta is remarkably unsound, especially so in light of the concurrence of former Supreme Court Justice Sandra Day O'Connor (Justice O'Connor heard this case pursuant to the prerogative exercised pursuant to 28 U.S.C. §294(a)).

Proposition 200 was passed in November 2004 when 56% of citizens of the State of Arizona voted in favor of it. The initiative was drafted by the Protect Arizona Now (PAN) Coalition with the support of the Federation for American Immigration Reform (FAIR) and basically it requires individuals to produce proof of citizenship before they may register to vote or apply for public benefits in Arizona. The proposition also makes it a misdemeanor for public officials to fail to report persons unable to produce documentation of citizenship who apply for these benefits, and allows citizens who believe that public officials have given undocumented persons benefits to sue for remedies.

In the Ninth Circuit's opinion, Ikuta and O'Connor held that the measure fails Constitutional muster for violating the intent of the legislature as manifest in the National Voter Registration Act of 1993 (NRVA). The decision in the case states that the "central purpose is to increase voter registration by streamlining voter registration procedures." Therefore, as the NRVA does not require proof of citizenship as established under the provisions of Proposition 200, the state of Arizona is preempted from passing a law that illegally burdens the pre-existing federal statute.

While the court may have correctly interpreted the NRVA, it has failed to read the law in light of the powers granted to the Congress by the Constitution with regard to the regulation of elections and voting standards. Nowhere in the Constitution is Congress authorized to dictate to the states whom may be proscribed from voting. Furthermore, the plain language of Article I, Section 2 of the Constitution expressly reserves such powers to the states.

The relevant clause of Article I, Section 2 states:

> The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Clearly, the power of qualifying electors is reserved to the states. Support for this proposition is provided by the authors of the *Federalist Papers*:

> The first view to be taken of this part of the government relates to the qualifications of the electors and the elected. Those of the former are to be the same with those of the electors of the most numerous branch of the State legislatures. The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the States, would have been improper for the same reason; and for the additional reason that it would have rendered too dependent on the State governments that branch of the federal government which ought to be dependent on the people alone. To have reduced the different qualifications in the different States to one uniform rule, would probably have been as dissatisfactory to some of the States as it would have been difficult to the convention. The provision made by the convention appears, therefore, to be the best that lay within their option. It must be satisfactory to every State, because it is conformable to the standard already established, or which may be established, by the State itself.

That is to say, it is with the states and the people thereof that the right of establishing voter qualifications resides. The national legislature is specifically proscribed from establishing a nationwide "uniform rule" as such would contradict the will of the people as already expressed in the state constitutions.

Since the ratification of the Constitution in 1789 various amendments have been appended to it, many of which have addressed the issue of suffrage. The relevant amendments have restricted the right of states to deny suffrage to any citizen on account of race (15th Amendment); gender (19th Amendment); failure to pay tax (24th Amendment); or age for citizens over 18 years old (26th Amendment). Outside of these very specific federal bright line standards, states retain absolute sovereignty over the conditions they wish to set for voter qualification.

The second flank of the federal court's attack on the states' power to establish voter qualification standards comes from a wresting of the so-called Elections Clause. Article I, Section 4 reads in relevant part:

> 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.

Again, a quick reference to the Federalist clarifies the already very plain text of the Constitution. In *Federalist No. 60*, Alexander Hamilton explained that setting voter qualifications:

> forms no part of the power to be conferred upon the national government. Its authority would be expressly restricted to the regulation of the TIMES, the PLACES, and the MANNER of elections. The qualification of the persons who may choose or be chose, as has been remarked upon other occasions, are defined and fixed in the Constitution, *and are unalterable by the legislature*.

(emphases in the original)

That is to say, the national legislature may meddle with voting only in the setting of the times, places, and manners of holding elections. Not a single syllable of our Constitution permits Congress to dictate to the qualifications they require of those seeking to vote.

Finally, the opinion handed down in the case of *Gonzalez v. Arizona* is another in a long, shameful line of similar rulings that misinterpret the Constitution and by so doing unlawfully encroach upon the sovereignty of the states by ignoring the principle of reserved powers. Article I and the relevant sections are disregarded so that that other sections may be unjustly expanded and so that power over the privilege of suffrage may be usurped by the national government.

The holding in this particular case purposefully changes the text of the Constitution to fit their ends. "Times, Places, and Manner" for example, is changed by the majority opinion to "mechanics of federal elections" and "regulations" and the right to "oversee the states' procedures related to national elections."

And, on page 19, the judges assert that:

"…the authority to regulate national elections 'aris[es] from the Constitution itself,' and is therefore 'not a reserved power of the States.'"

As the foregoing analysis reveals, such a claim is patently false and inexplicably contrary to the plain language of the Constitution and the Founders' explications thereof.

Readers are encouraged to read the applicable articles and sections of the Constitution and the *Federalist Papers* wherein three of the principal framers explain the science and history behind those principles. Doing so will illuminate the egregious alterations being carried out by designing judges of the American federal judiciary.