

Weather

Today: Mostly sunny, warm afternoon. High 82. Low 60. Wind southeast 5-10.
Wednesday: Mostly sunny, warm. High 86. Low 63. Wind south 7-14.
Yesterday: Temp. range: 58-77.
AQI: Moderate-55. Details on Page B2.

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TUESDAY, 1

Congressional Term

THE MAJORITY OPINION



"Permitting individual States to formulate diverse qualifications for their representatives would result in a patchwork of state qualifications, undermining the uniformity and the national character that the Framers envisioned and sought to ensure."

—Justice John Paul Stevens

JOINED BY:

- Justice Anthony M. Kennedy
- Justice David H. Souter
- Justice Ruth Bader Ginsburg
- Justice Stephen G. Breyer

Supreme Court's 5-4 Ruling

5/23/95
By Joan Biskupic
Washington Post Staff Writer

The Supreme Court ruled yesterday that states could not set term limits for members of Congress, saying American democracy was built on the principle that individual voters choose who governs and for how long.

In a 5 to 4 decision, the court found that the states do not have the constitutional authority to regulate the tenure of federal legislators. The ruling effectively overturns term limits laws in 23 states and makes amending the Constitution the only sure means of restricting incumbency.

"Allowing the several states to adopt term limits for congressional service would effect a fundamental change" in the Constitution, Justice John Paul Stevens wrote for the

court. "Any such change must come not by legislation adopted either by Congress or by an individual state, but rather . . . through the amendment procedures."

He said a "patchwork" of state tenure qualifications would undermine the uniformity and national character of the Congress that the Founding Fathers sought. The Constitution lists only three qualifications for members of Congress, relating to age, citizenship and residency.

Although the merits of term limits have been debated since the nation's beginning, this was the first time the issue had come before the Supreme Court. The decision seems likely to refocus and reinvigorate one of the most contentious political debates of recent years.

House Republicans made term limits a prominent feature of their

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MAY 23, 1995

B

Prices May Vary in Areas Outside
Metropolitan Washington (See Box on A2)

25¢

Limits Struck Down

Upsets Laws in 23 States

"Contract With America" in the 1994 elections. In March, however, the House defeated four different versions of a constitutional amendment for term limits as veteran Republican lawmakers joined Democrats in opposition.

A constitutional amendment requires a two-thirds vote in each chamber of Congress and approval by three-fourths, or 38, of the states.

None of the state laws mandating congressional term limits—all of which were passed since 1990—has ever been enforced, and yesterday's ruling essentially invalidates them all. The decision, however, will not affect state laws limiting the tenure of state legislators.

The case decided yesterday involved an amendment to the Arkansas state constitution that would have prohibited a candidate from ap-

pearing on an election ballot after serving three terms in the House of Representatives and two terms in the U.S. Senate. Such veteran officeholders could only have been elected as write-in candidates.

Expressing the often angry tone of the term limits advocates, the preamble to the Arkansas rule asserts that "entrenched incumbency . . . has led to an electoral system that is less free, less competitive, and less representative than the system established by the Founding Fathers."

Arkansas officials and U.S. Term Limits, a lobbying group that intervened on the state's side, argued that a constitutional provision that gives states authority to regulate the time, place and manner of congressional elections provides broad leeway for ballot restrictions on in-

See COURT, A6, Col. 1

THE DISSENT



"The Constitution is simply silent on this question. And where the Constitution is silent, it raises no bar to action by the States or the people."

— Justice Clarence Thomas

JOINED BY:

- Chief Justice William H. Rehnquist
- Justice Sandra Day O'Connor
- Justice Antonin Scalia

States Barred From Regulating Congressional Tenure

COURT, From A1

cumbents. They also asserted that states have broad authority to regulate elections under the 10th Amendment, which says that powers not delegated to the federal government in the Constitution "are reserved" for the states.

The case brought by Bobbie E. Hill, a member of the League of Women Voters, countered that the age, citizenship and residency qualifications specifically delineated in the Constitution for members of Congress are exclusive.

Trying to put the best face on yesterday's defeat, Arkansas Attorney General J. Winston Bryant compared the nationwide term limits movement and its grass-roots support to women's suffrage. "That took a number of years to come to fruition, and I believe the same will happen with term limits," he said.

John G. Kester, representing U.S. Term Limits, added, "We came within one vote of winning the whole war."

Yesterday's ruling surprised lawyers on both sides of the case with its close vote and the strikingly different views of state power that it reflected.

At the end of his 61-page majority opinion, Stevens acknowledged that "rotation" in office "may provide for the infusion of fresh ideas and new perspectives, and may decrease the likelihood that representatives will lose touch with their constituents." But Stevens said the merits of that debate could only be left to the people and the amendment process.

He was joined by three other liberal-leaning justices—David H. Souter, Ruth Bader Ginsburg and

Stephen G. Breyer—and by Justice Anthony M. Kennedy.

Kennedy signed Stevens's broadly written opinion and wrote a separate statement emphasizing how the Arkansas term limits statute challenged the "distinctive character" of a national government.

He wrote, "There can be no doubt, if we are to respect the republican origins of the Nation and preserve its federal character, that there exists a federal right of citizenship, a relationship between

"We came within one vote of winning the whole war."

—John G. Kester, lawyer for U.S. Term Limits

the people of the Nation and their National Government, with which the states may not interfere."

Dissenting were Chief Justice William H. Rehnquist and Justices Antonin Scalia, Sandra Day O'Connor and Clarence Thomas, to whom Rehnquist assigned the dissenting opinion.

"It is ironic that the court bases today's decision on the right of the people to 'choose whom they please to govern them,'" Thomas wrote, because it then invalidates "a provision that won nearly 60 percent of the votes cast in a direct election and that carried every congressional district in the state." The Arkansas provision was adopted in 1992 as an amendment to the state constitution.

U.S. Term Limits Inc. v. Thornton tested two key sections of Article I of the Constitution: one

part setting congressional qualifications and referring only to age, citizenship and residency; and another part giving states power over "times, places and manner" of elections.

In rejecting the arguments of Arkansas and U.S. Term Limits, Stevens relied heavily on the court's 1969 ruling *Powell v. McCormack*, in which the justices ruled that the House of Representatives could not exclude elected Rep. Adam Clayton Powell (D-N.Y.) because of personal misconduct as long as he met the constitutionally outlined qualifications.

Stevens said the founders wanted the Constitution to have fixed qualifications that could not be altered by Congress. He said the Powell case also stands for the basic democratic proposition "that the people should choose whom they please to govern them."

Stevens wrote, "We believe that state-imposed qualifications, as much as Congressionally imposed qualifications, would undermine . . . [that] aspect of sovereignty."

The power to add candidate qualifications cannot be "reserved" to the states by the 10th Amendment, Stevens argued: "As we have frequently noted, the states unquestionably do retain a significant measure of sovereign authority. They do so, however, *only to the extent that the Constitution has not divested them of their original powers* and transferred those powers to the federal government."

In his 88-page dissent, Thomas said states implicitly have the authority to add qualifications for their members of Congress. "Nothing in the Constitution deprives the people of each state of the power to prescribe eligibility requirements. . . ." Thomas said. "The Constitution is simply silent on this question."