



EXPLAINER

Moore v. Harper : May State Laws Concerning Federal Elections Be Subject to State Judicial Review ?

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The Government Law Center's explainers concisely map out the law that applies to important questions of public policy.

Among the most important cases the Supreme Court of the United States will hear this term is Moore v. Harper. The issue squarely presented is whether state courts have the authority to consider any claim relating to an action taken by a state legislature that concerns federal elections. The decision might also

ts. The case eventually reached the North Carolina Supreme Court. On that court invalidated the new districts because it found that they violated of the state constitution.

This denial of the stay application was followed by an application for certiorari, which was granted on June 30, 2022. Thus, the case will be heard during the current term of the Court. Argument has been scheduled for December 7, 2022.

The issue to be argued is based on what is sometimes called the “independent state legislature” theory. It is premised on Article I, Section 4 of the federal constitution, which provides that “ 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...” The appellants argue that this provision precludes any entity in a state government other than its legislature from involvement in federal election law. Thus, according to this theory, changes to any laws enacted by a state legislature may be reviewed only by Congress.

If the Court accepts this argument, a state legislature would be free to enact any law related to a federal election without being subject to state judicial review regarding its adherence to the provisions of its state constitution or other restrictions on its authority. The concept of judicial review, first established by the Supreme Court in *Marbury v. Madison*,⁴ would no longer apply within the states in any case in which an issue concerning legislative action related to a federal election is presented to a state court. In addition, if accepted, this argument might well preclude the governor from any participation in the electoral process, thereby eliminating the usual executive power to approve or veto