sult of the resolution of the peoples of the separate states to create the National Government. The conclusion to be drawn from this was that the peoples in the states agreed to surrender only those powers expressly forbidden them and those limited powers that they had delegated to the Federal Government expressly or by necessary implication. They retained all other powers and still retain them. Thus, "[w]here the Constitution is silent about the exercise of a particular power—that is, where the Constitution does not speak either expressly or by necessary implication—the Federal Government lacks that power and the States enjoy it."[346] The Constitution's silence as to authority to impose additional qualifications meant that this power resides in the states.

The majority's views were radically different. After the adoption of the Constitution, the states had two kinds of powers: reserved powers that they had before the founding and that were not surrendered to the Federal Government, and those powers delegated to them by the Constitution. It followed that the states could have no reserved powers with respect to the Federal Government. "As Justice Story recognized, 'the states can exercise no powers whatsoever, which exclusively spring out of the existence of the national government, which the constitution does not delegate to them. . . . No state can say, that it has reserved, what it never possessed.'"[347] The states could not before the founding have possessed powers to legislate respecting the Federal Government, and, because the Constitution did not delegate to the states the power to prescribe qualifications for Members of Congress, the states did not have any such power.[348]

Evidently, the opinions in this case reflect more than a decision on this particular dispute. They rather represent conflicting philosophies within the Court respecting the scope of national power in relation to the states, an issue at the core of many controversies today.

Clause 3. [Representatives and direct Taxes shall be apportioned among the several States which may be included within

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[346] 514 U.S. at 848 (Justice Thomas dissenting). *See generally* id. at 846–65.

[347] 514 U.S. at 802.

[348] 514 U.S. at 798–805. *See also* id. at 838–45 (Justice Kennedy concurring). The Court applied similar reasoning in Cook v. Gralike, 531 U.S. 510, 522–23 (2001), invalidating ballot labels identifying congressional candidates who had not pledged to support term limits. Because congressional offices arise from the Constitution, the Court explained, no authority to regulate these offices could have preceded the Constitution and been reserved to the states, and the ballot labels were not valid exercise of the power granted by Article I, § 4 to regulate the "manner" of holding elections. See discussion under Legislation Protecting Electoral Process, *infra*.