ited access to the ballot to the electors of the two major parties. In the Court's view, the system violated the Equal Protection Clause of the Fourteenth Amendment because it favored some and disfavored others and burdened both the right of individuals to associate together to advance political beliefs and the right of qualified voters to cast ballots for electors of their choice. For the Court, Justice Black denied that the language of Clause 2 immunized such state practices from judicial scrutiny.[77] Then, in *Oregon v. Mitchell*,[78] the Court upheld the power of Congress to reduce the voting age in presidential elections[79] and to set a thirty-day durational residency period as a qualification for voting in presidential elections.[80] Although the Justices were divided on the reasons, the rationale emerging from this case, considered with *Williams v. Rhodes*,[81] is that the Fourteenth Amendment limits state discretion in prescribing the manner of selecting electors and that Congress in enforcing the Fourteenth Amendment[82] may override state practices that violate that Amendment and may substitute standards of its own.

Whether state enactments implementing the authority to appoint electors are subject to the ordinary processes of judicial review within a state, or whether placement of the appointment authority in state legislatures somehow limits the role of state judicial review, became an issue during the controversy over the Florida recount and the outcome of the 2000 presidential election. The Supreme Court did not resolve this issue, but in a remand to the Florida Supreme Court, suggested that the role of state courts in applying

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[77] "There, of course, can be no question but that this section does grant extensive power to the States to pass laws regulating the selection of electors. But the Constitution is filled with provisions that grant Congress or the States specific power to legislate in certain areas; these granted powers are always subject to the limitation that they may not be exercised in a way that violates other specific provisions of the Constitution . . . . [It cannot be] thought that the power to select electors could be exercised in such a way as to violate express constitutional commands that specifically bar States from passing certain kinds of laws. [citing the Fifteenth, Nineteenth, and Twenty-fourth Amendments]. . . . Obviously we must reject the notion that Art. II, § 1, gives the States power to impose burdens on the right to vote, where such burdens are expressly prohibited in other constitutional provisions." 393 U.S. at 29.

[78] 400 U.S. 112 (1970).

[79] The Court divided five-to-four on this issue. Of the majority, four relied on Congress's power under the Fourteenth Amendment, and Justice Black relied on implied and inherent congressional powers to create and maintain a national government. 400 U.S. at 119–24 (Justice Black announcing opinion of the Court).

[80] The Court divided eight-to-one on this issue. Of the majority, seven relied on Congress's power to enforce the Fourteenth Amendment, and Justice Black on implied and inherent powers.

[81] 393 U.S. 23 (1968).

[82] *Cf.* Fourteenth Amendment, § 5.