



P E R S P E C T I V E S

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Abortion is not the Issue

The way to St. Helena

Hard to believe though it is, the leaked draft opinion of Justice Samuel Alito is one of the most radical decisions in Supreme Court history. The proposed majority opinion striking down *Roe v. Wade* is not going to be remembered for its doctrinaire, misogynistic, didactic, and insensitive tone, nor for its incredulous conclusions. No, it will be remembered as the “Waterloo” moment of the fundamentalist Christian Right’s five-decade crusade to capture the US Supreme Court.

This decision is about far more than abortion, and the fundamentalist Christian agenda is about much more than the “right to life”. All along, their agenda has more appropriately been expressed as a right to compel birth. That same agenda has no problem with taking life through state executions (which even the Pope condemns) and is not overly willing to support mothers and children with food stamps or other childhood benefits designed to support well-being.

Fundamentalist Christians used “right to life” issues to band together with other major economic forces (e.g., the Koch brothers) and capture this nation’s government to “rule” with a small minority. That minority doesn’t really want people of color to vote, doesn’t want immigration that would threaten the white majority, doesn’t like interracial marriage, and wants their personal religious beliefs to govern us all, even if we don’t share that religion!

That minority would be just as pleased if there were no issues decided that they couldn’t control—even the right to control women’s bodies. They have been organizing and pushing a broad judicial activism agenda to finally impose the narrowest of views held by a small portion of the American population (25-35 percent) on the rest of us (65-75 percent). In the process we, the vast majority, have been subjected to the increasing restraints of minority rule in the US.

This time, they have gone too far. They have stirred up a powerful resistance movement to their incessant campaign to impose their religious views on the rest of us.

Is this their Waterloo?

After being defeated at the Battle of Leipzig, Napoleon Bonaparte was exiled to the Island of Elba in 1814, where he was allowed to keep his Emperor title and to rule that small island. He wasn’t satisfied by this diminution of his reign, however, and he escaped exile in 1815 to seize control of France once again. He didn’t stop there, and he resumed his conquest of Europe. Finally defeated by the Duke of Wellington at the battle of Waterloo, Napoleon was banished to his place of permanent imprisonment on the remote island of St. Helena, where he died at the age of 51.

Right-wing factions of the Republican party seized control of the “base” in 2020 even in the face of Donald Trump’s loss of the House, the Senate, and the Presidency. Had they stopped there, one would rationally assume that gerrymandering and outright voter suppression would have permanently locked in minority Republican/Trumpian rule for a decade or more.

Trump has cynically purported that who counts the votes is more important than who casts them. In response, Republican-controlled swing states enacted legislation providing sweeping authority to the Republican Party, assuring election success in all seven of these states. No matter how many people voted, and no matter how few of them voted for Republicans, the vote counting was assured to guarantee Republicans won all the major races for Congress and the Senate.

By 2024 those same seven states would be able to tilt the Electoral College, and the impulses driving the January 6th Insurrection would then have achieved full victory. It was a masterful and remarkably effective way to enshrine minority rule for a very long time, and most likely would have led to an autocratic takeover of the US by Trump and his followers. Yes, folks, we were in fact about to lose our Democratic Republic after 250 years.

And, on the verge of that victory, Alito went too far.

Alito's draft opinion revealed deep flaws in how we have allowed a Supreme Court majority, appointed by Presidents who failed to achieve a majority vote victory in their general elections, to become a political force that has begun stripping away all manner of civil rights protections. As many commentators have already observed, Roe's legacy has provided the legal underpinnings on all manner of personal privacy rights (gay marriage, contraception) and other civil liberties. All will fall if Alito's opinion becomes law.

What makes this a Waterloo moment is the incredible overreach. The opinion's clear political bias and overtly twisted logic attacks the validity of the Fourteenth Amendment. It also endangers anything that the five Catholics on the Court deem to be against their personal religious values. This, despite their sworn duty to uphold the Constitution in a secular country. In so doing, the opinion will catalyze a new level of activism from a vast cross-section of Americans and might, just might, result in a tsunami of voters going to the polls in 2022.

If in fact Alito has scared us into a groundswell of civic unrest we might, just might, take the country back from minority rule. In this space we've previously outlined how the Court itself should be reformed (See Perspectives piece ["Reform is Better than Revolution"](#)). No need to repeat it here. We've also previously written about reforming the Electoral College (see ["A Plea for One 'man', One vote"](#)), and voter suppression (see ["Every Citizen's Vote Deserves to be Counted"](#)), gerrymandering (see ["Ending Gerrymandering"](#)) the allocation of US Senatorial seats by state rather than by population (see ["Escaping Minority Rule: The US Senate"](#)); and the outdated, segregationist-motivated filibuster rule (see ["Escaping Minority Rule: The Filibuster"](#)). All those other ways to enforce minority rule are now well known. What wasn't appreciated is whether anything would get the majority off their collective chairs and out to reclaim their democracy. It looks like Alito may have done it!

The sleeping giant, the majority of Americans, forgot that the price of liberty is constant vigilance. America, the first and oldest modern democracy was organized around an idea—not an ethnicity or common cultural heritage. It is a simple idea: "We the people" have the ultimate power. A minority can only take that from us if we let them.

Alito has now lit the fuse that might, just might, cause us to turn out in such numbers that we reclaim our democracy and exile minority rule to the metaphoric island of St. Helena – where Napoleon was finally banished never to return again.

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