

United States: The Supreme Court and Elections

Tuesday 5 July 2022, by [MIAH Malik](#) (Date first published: 3 July 2022).

Rep. Alexandria Ocasio-Cortez of New York City warned that the country is “witnessing a judicial coup in process” and is in the midst of a “Constitutional crisis” after the Supreme Court announced on Thursday, June 30, that it will take up a case in its fall term that could upend current US election law in its next session.

“If the President and Congress do not restrain the Court now, the Court is signaling they will come for the Presidential election next,” the New York Democrat on the left of the party tweeted. “All our leaders - regardless of party - must recognize this Constitutional crisis for what it is.”

The Supreme Court will hear the case out of North Carolina challenging the state Supreme Court’s ability to strike down new congressional and legislative maps passed by the state legislature, for being unfairly gerrymandered in favor of Republicans.

The petitioner, North Carolina Speaker Tim Moore, is asking the court to weigh in on not just the maps, but to adopt a once-fringe legal theory known as the independent state legislature doctrine which would monumentally reshape election law and make it much harder for courts to strike down voting maps or provide judicial review on election laws.

The theory, which didn’t enter the mainstream until 2020, claims that the Elections Clause of the US Constitution only gives state legislatures and no other authorities, like courts or executive officers, authority over redistricting and election laws.

It has been one of the main arguments of Donald Trump and his supporters who call for the overturn of the 2020 presidential election.

In presidential elections, the president is not elected by popular vote, but by electors from each state. It is true that the Constitution says the state legislatures elect the electors, but has long been established by the state legislatures that the popular vote in each state elects the electors.

Not even Republicans dare to change that.

If the Supreme Court adopts the independent state legislature theory, it has far-reaching implications beyond redistricting, including for the 2024 election.

Illinois Republican Rep. Adam Kinzinger, a member of the January 6 Committee investigating the Republicans’ attempt to prevent certification of the 2020 presidential election, tweeted after the Supreme Court’s taking the case: “After the attempted coup, this cannot happen.”

The decision to take the North Carolina case shows that the six ultra right Justices intend to restructure the Constitution and its interpretation of a democratic Republic. The people who will suffer the greatest harm are Black and Brown people, and low-income workers.

The far-right agenda has been well known since the 1970s after the victories of the civil rights movement. Most importantly, the 1965 Voting Rights Act took the Court 50 years to gut in 2013. Chief Justice Roberts wrote that decision.

The 1970s and 80s also saw more expansion of democratic rights for other people of color, gay and lesbian people and the disabled. The far right Republicans want this expansion of democratic rights reversed too.

The new Court majority are not spearheading the conservative antidemocratic movement. They are partisans doing the hard rights' bidding.

The full implications of the overthrow of *Roe vs Wade*—and other decisions like on climate change—are just beginning to be understood.

It is a de facto coup by the Supreme Court, against the the majority of the people on what are considered fundamental democratic and human rights.

The Court majority openly states that the Court does not care what the people want. It intends to impose the extreme right wing agenda, which is already happening in Republican states, to the entire country.

Popular resistance is the only tactic to let the ruling class know that the fight is just beginning and will not wait until the high court and other institutions reverse course.

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