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SCOTUS Opinion in Redistricting Case: Unconstitutional and Unnecessary

The U.S. Supreme Court once again usurped unconstitutional authority by granting to state courts power granted exclusively to state legislatures in the U.S. Constitution.

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In its 6-3 opinion in *Moore v. Harper*, the Supreme Court decided it was time to misinterpret another clause in the Constitution. The target of the judicial tyranny this time: Article 1, Section 4. The first clause of that section — known as the Elections Clause — reads, in relevant part:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.

Unlike six of the nine judges sitting on the Supreme Court bench, I cannot find the word "state judiciary" anywhere in that clause. Can you?

No matter. Whether it's there or not there, six black-robed oligarchs have said it is there (likely hiding in those pesky "penumbras" the judges are so fond of finding), so, according to most people, that is now the law.

It isn't. As Cicero once said regarding the acts of government that go beyond its constitutional authority:

> Those who make unjust and wicked statutes for the people, violating their own promises and oaths, do not make laws, rather they enact something not worthy of that name, as laws, to be truly laws, must be just and must be made according to the principles establishing the limits of their authority.

So, the opinion handed down by the Supreme Court Tuesday purporting to put the power of prescribing elections in the hands of state courts is "something not worthy of" being called law.

But, again, the Supreme Court has been ceded the authority of arbiter of all that is law, so let's admire a few of the constitutional contortions of Chief Justice John Roberts, who wrote the majority opinion:

> The Elections Clause does not vest exclusive and independent authority in state legislatures to set the rules regarding federal elections….
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> A state legislature may not "create congressional districts independently of" requirements imposed "by the state constitution with respect to the enactment of laws."…

> State courts retain the authority to apply state constitutional restraints when legislatures act on the power conferred on them by the Elections Clause.…
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> The Elections Clause does not carve out an exception to that fundamental principle. When state legislatures prescribe the rules concerning federal elections, they remain subject to the ordinary exercise of state judicial review.…
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> Although the Elections Clause does not exempt state legislatures from the ordinary constraints imposed by state law, federal courts must not abandon their duty to exercise judicial review. This Court has an obligation to ensure that state court interpretations of state law do not evade federal law.…

And so on and so forth. It is in this case, as it has been in so many others, that a few judges took for themselves the authority to override the will of the representatives of the people and to disregard the constitutional limits of their own power.

It is impossible to believe that any one of the men present during the Constitutional Convention of 1787 or any who participated in the several state ratification conventions would have voted in favor of a government that would grant to a few judges the power to nullify the will of the people and their elected representatives.

The language of the so-called Elections Clause is clear, and the Supreme Court's rewriting of it is not only unnecessary, but unconstitutional.

Consider the following words of warning from Emer de Vattel taken from his immeasurably influential book *Law of Nations* — a book that Benjamin Franklin said in 1775 "has been continually in the hands of the members of our Congress now sitting." In Book II, Chapter 17, §263 of that book, Vattel explained, regarding the interpretation of deeds and contracts:

> The first general maxim of interpretation is, that It is not allowable to interpret what has no need of interpretation. When a [compact] is worded in clear and precise terms, — when its meaning is evident, and leads to no absurd conclusion, — there can be no reason for refusing to admit the meaning which such deed naturally presents. To go elsewhere in search of conjectures in order to restrict or extend it, is but an attempt to elude it. If this dangerous method be once admitted, there will be no deed which it will not render useless. However luminous each clause may be, — however clear and precise the terms in which the deed is couched, — all this will be of no avail, if it be allowed to go in quest of extraneous arguments to prove that it is not to be understood in the sense which it naturally presents.

Is Article I, Section 4 "worded in clear and precise terms?" Yes.

Which part of Article I, Section 4 needs interpreting? None.

In its decision in *Moore v. Harper*, hasn't the Supreme Court simply gone "elsewhere in search of conjectures in order to restrict or extend" the Elections Clause? Yes.

In its decision in *Moore v. Harper*, isn't the Supreme Court going "in quest of extraneous arguments to prove that [the Elections Clause] is not to be understood in the sense in which it naturally presents?" Yes.

Where in the U.S. Constitution is the Supreme Court granted the authority to grant to state courts authority over state legislatures? It isn't.

Sadly, with this opinion, as with so many others, we see coming to fruition these words spoken by Thomas Jefferson:

> To consider the judges as the ultimate arbiters of all constitutional questions: a very dangerous doctrine indeed and one which would place us under the despotism of an oligarchy.

The issue before us now is whether the people of the United States and their elected representatives will allow a handful of unelected, unaccountable, seemingly untouchable judges convert this country into an oligarchy.

I'll give the final word to James Madison, speaking on the issue of the Supreme Court's authority to decide the powers of the states as set out in the U.S. Constitution:

> However true therefore it may be that the Judicial Department, is, in all questions submitted to it by the forms of the constitution, to decide in the last resort, this resort must necessarily be deemed the last in relation to the authorities of the other departments of the government; not in relation to the rights of the parties to the constitutional compact, from which the judicial as well as the other departments hold their delegated trusts. On any other hypothesis, the delegation of judicial power, would annul the authority delegating it; and the concurrence of this department with the others in usurped powers, might subvert forever, and beyond the possible reach of any rightful remedy, the very constitution, which all were instituted to preserve.