



Written by [Steve Byas](#) on February 22, 2021

SCOTUS Dismisses Election Lawsuits, Invites More Distrust in Results

By taking no action Monday on several legal challenges to the election processes as well as the election results themselves in multiple states in the November elections, the U.S. Supreme Court has essentially invited more distrust in the process and more disregard for election law.

The lawsuits involved challenges in swing states, including Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin. The Court offered no explanation for its decision not to hear the cases.

Three justices — Clarence Thomas, Neil Gorsuch, and Samuel Alito — favored hearing the cases, but five others — Chief Justice John Roberts, Elena Kagan, Sonia Sotomayor, Stephen Breyer, and Brett Kavanaugh — opted not to hear them. Amy Coney Barrett was named to the Court after the cases were initiated and therefore recused. Only one more vote was needed to have the Court hear one of the cases, yet they opted to hear none of them.

The basis of some of the lawsuits was that unconstitutional changes were made to election rules by state officials. The U.S. Constitution, in Article II, clearly states that “Each state shall appoint [the electors for president] in such manner *as the legislature thereof may direct*.” (Emphasis added.) Despite this, some state election officials, or state courts, usurped that legislative power and altered election law, ostensibly because of concerns over the coronavirus.

Pennsylvania was perhaps the most egregious case. The Pennsylvania Supreme Court changed, by a vote of 4-3, election rules established by the Pennsylvania Assembly, without any authorized from the Assembly. The Pennsylvania Court extended the deadline for receiving ballots, ordering a presumption of timeliness for non-postmarked ballots. Those suing rightly held that this is a clear violation of the Constitution.

Justice Alito, in his dissent, which was joined by Gorsuch, argued that the Court should take up the case. Alito said that the case presented “an important and recurring constitutional question: whether the Elections or Electors Clauses of the United States Constitution ... are violated when a state court holds that a state constitutional provision overrides a state statute governing the manner in which a federal election is to be conducted. That question has divided the lower courts, and our review at this time would be greatly beneficial.”



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Alito added, “The provisions of the federal Constitution conferring on state legislatures, not state courts, the authority to make rules governing federal elections would be meaningless if a state court could override the rules adopted by the legislature simply by claiming that a state constitutional provision gave the courts the authority to make whatever rules it thought appropriate for the conduct of a fair election.”

Clarence Thomas wrote his own blistering dissent, in which he charged the Court was neglecting its duty by failing to “settle this dispute before the election, and thus provide clear rules. Now we again failed to provide clear rules for future elections.” Thomas added, “By doing nothing, we invite further confusion and erosion of voter confidence. Our fellow citizens deserve better and expect more from us.”

A separate case concerning Pennsylvania was also dismissed without a hearing. Representative Mike Kelly, a Pennsylvania Republican, challenged the mail-in voting policies in the state. Some might contend that the question is now moot — a legal term meaning that it no longer matters — as the issue does not affect the outcome of the 2020 presidential election. But as John Eastman, an attorney for the Trump campaign, told the *Epoch Times*, “There is a well-recognized exception to mootness.” That exception is when there is a chance of the same problem repeating itself. It is quite likely that a similar disregard of the Pennsylvania State Constitution could occur in 2022 or 2024.

“It is invoked quite frequently in election litigation,” Eastman explained. “Our legal issue — whether non-legislative election and judicial officials in the state have the ability to ignore or alter election law in the ‘manner’ of choosing presidential electors violates Article II of the U.S. Constitution, remains important and in need of the Court’s review.”

In his dissent, Thomas openly wondered “what this Court waits for.”

What is especially troubling is the inaction of Chief Justice Roberts and Associate Justice Kavanaugh. One wonders what they are waiting for. Only one of their votes was needed to simply *hear the case*. To these two men, the question of whether the rights of state legislatures and the integrity of state constitutions merit their time is apparently of little concern to them.



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