

# The US Supreme Court is Now a Front for Christian Nationalist Minority Rule

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[Editors' note: The Women's March has called for demonstrations on May 14th in Washington DC and nationwide in support of abortion rights, saying BANS OFF OUR BODIES, and demanding that elected officials take action before the Court gets the chance to overturn *Roe v. Wade*.]

The leaked draft majority opinion published by *Politico* on March 2<sup>nd</sup> suggests that the U.S. Supreme Court is poised to overturn *Roe v. Wade*. This is proof of what the court has become - an institution through which an extremist minority of Christian nationalists seek to rule America through the back door.

The above statement might seem incendiary, but it is time to be real. Yet still some centrist Democrats seem just as likely to attack Bernie Sanders supporters or Jill Stein's 2016 voters than face up to their own failures. Conservative positions on abortion and LGBT rights are unpopular: moderates will be better served by attacking them rather than progressives.

The Supreme Court has become a farce. Last year, Justice Amy Coney Barrett had the gall to suggest in a speech that the Supreme Court was not "politically driven." Barrett was speaking at an event hosted by Republican minority leader Mitch McConnell at the McConnell Centre of all places. The veil has well and truly slipped - there is not even a creditable attempt to pretend to protect the legitimacy of the Supreme Court's reputation.

Barrett is a good example. She was nominated by a President who lost the popular vote by almost three million votes. She was confirmed by Republican senators who represented 14.8 million less Americans than those opposed to her confirmation. She seems set to join a judicial majority enacting a decision recent polls suggest only 30% of Americans support.

People will talk about voting as a solution to what is an attack on the rights of women, ongoing attacks on the LGBTQ+ community and children's education, and likely will continue to attack the

rights of more and more people. But Chief Justice Roberts, and Justices Alito, Gorsuch, Kavanaugh, and Barrett were all nominated by either President Trump or Bush Jr - two presidents who were elected in the first place despite losing the popular vote. It would be foolish to pretend that voting will automatically change the direction of travel. After all, this is happening under a Democratic trifecta.

Justice Alito's draft opinion contains his typical inflammatory rhetorical flourishes. My humble academic opinion is that it is one of the most self-indulgent, poorly argued, judicial opinions I have read in my career. If this is how the court ultimately rules, the decision in all likelihood will in time join a list of the Court's gravest aberrations, alongside *Plessy v. Ferguson* which established the "separate but equal" doctrine and *Hammer v. Dagenhart* which struck down a Congressional ban on the worst horrific excesses of child labor.

In the draft opinion, Alito contends that some non-constitutionally guaranteed rights can be protected in an exceptional circumstance where they have historically proven non-controversial and have in essence become part of the nation's fabric, identity, and culture. This means there is an open door to strike down almost anything where a vocal minority set their mind and money to it. Alito in practice asserts that if something was not recognized as a fundamental right beforehand it cannot become one, and that no history has happened since 1972. This is utterly ludicrous, even if it can be argued with a certain amount of selective interpretation and legal gymnastics.

The vital question now is where will this Supreme Court stop? It is a partisan institution, with a majority of Christian nationalists committed to imposing their will on America. If *Roe* falls, what could fall next? Same sex marriage, the right to contraception, and the federal minimum wage could very quickly land on this Court's chopping block as could protection from racial segregation. Like abortion rights, all those have had their vociferous opponents in recent history and are thus susceptible to Alito's reasoning.

There is a very real prospect that this generation of American children will have fewer rights than their parents. Democratic leaders need to use the powers they have, act now and act decisively. Centrism and appeasement are not viable options.