

When SCOTUS Is Wrong

Not if, but when. There have been times in history when a decision from the Supreme Court is wrong. Citizens United may be one of the worst decisions in the history of this country. The Citizens United may be the worst because it can lead to the loss of democracy. (A few links to bad decision web pages are at the end of this post.)

The injection of huge amounts of money into elections by corporations and by a few very wealthy persons is now degrading democracy.

Per our current constitution there is no authority superior to the Supreme Court. The founders did not consider the problem of a court run amuck. There currently exist three solutions. One, impeach one or more justices. This is a problem because it is a majority that made the wrong decision. The removal of a single individual, or maybe more, may not result in the needed change. Second is to endure the situation and wait for a majority of the justices to die. This also is a bad solution. Third is to amend the Constitution. An extremely high hurdle and is out of proportion to a single bad decision.

In other words, there are no effective checks and balances upon the Supreme Court.

We need a Constitutional Amendment that creates some checks and balances. We need one or more processes that can declare a specific Supreme Court ruling is wrong and require the Court to revisit the ruling and change their position. From that time forward, the Court must abide by such a requirement. There are several ways this might be implemented.

The Appellate Courts

There are 13 Appellate Courts, the last step before the Supreme Court. Some number of the Appellate Courts, maybe two-thirds, should have the authority to declare that a SCOTUS ruling is wrong. Presume that they write and agree that a specific judgement is wrong. The Supreme Court is then required to immediately revisit the decision, and change their ruling to be in accordance with that of the Appellate Courts.

These Appellate Court rulings must be subject to a requirement that they must not contradict any part of the Constitution. This concept must apply to each suggested method of overruling the Supreme Court.

For an example consider the Citizens United decision. Presume that the appellate courts write an opinion that that only U.S. Citizens, eligible to vote, may take any action to affect the election or appointment of any government official. Note that the Constitution does not grant corporations any legal standing regarding elections and appointments. SCOTUS would be required to immediately revisit the Citizens United decision. Further, if any SCOTUS judge

refuses to abide by the appellate decision, the appellate courts should have the authority to remove that justice from the court.

Congress

Another parallel path is for Congress to declare a ruling unconstitutional. This should require more than a simple majority. How much more needs discussion to prevent it from being too difficult. In these times of extreme political polarity, the importance of such a threshold is apparent.

The States

The legislatures of the states can pass a bill that specifically proclaims a ruling, such as Citizens United, is incorrect. When some number of states have passed this legislation, the Court must make the appropriate changes.

The Citizens

When some number of citizens have requested a public vote, the topic is to be put on a national ballot. If approved, the Court must abide by the decision. Again, some threshold beyond a simple majority should be used.

References

Here are a few links from the search phrase: worst decisions of supreme court

<https://www.findlaw.com/legalblogs/supreme-court/13-worst-supreme-court-decisions-of-all-time/>

This site lists their nine worst decisions with Citizens United being last. I put it first because it is playing a huge role in the destruction of democracy. Citizens Unites sells elections to the highest bidder.

<https://moneyinc.com/worst-supreme-court-decisions/>

The 10 Worst Supreme Court Decisions of All-Time

<https://www.thetoptens.com/history/worst-supreme-court-decisions/>

A list of 41 decisions

The reader is strongly encouraged to perform additional searches and comment on your findings.