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Tyranny of the Majority

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The Kentucky Supreme Court decision upholding a temporary injunction preventing Dana Seum Stephenson from serving as a state senator was welcome relief.

I was beginning to wonder whether the Senate majority was simply going to be allowed to disregard the law, outvote the minority and bend the rules to fit their fancy.

One thing is certain: With a super majority hanging in the balance, a lame court would have produced even more disregarding, outvoting and bending in the Senate. What is troubling, however, was the dissenting opinion of Central Kentucky's Justice James Keller, joined by Eastern Kentucky's justice, Will T. Scott.

Like most citizens, I have come to expect Kentucky's unbridled spirit to create a big mess on the floors of both legislative houses. Political infighting and shenanigans are a part of the legislative process.

But when things get way out of hand -- such as when one party's candidate for state Senate doesn't meet the residency requirement -- most citizens expect the courts to step in.

The separation of powers is a serious issue, and the court's role is not to intrude into legislative remedies. But judges must occasionally say no. Then it is up to our elected representatives to do the right thing. Failing that, it is up to the people of Kentucky to throw them out of office. To exercise that responsibility intelligently, citizens need legal interpretation from the court.

The legislature used its exclusive right to determine its members' qualifications by describing in law the process to be followed whenever there is a dispute. In KRS 118.176, the General Assembly requires that claims must be addressed in "a motion before the Circuit Court of the judicial circuit in which the candidate whose bona fides is questioned resides."

Of course, the issue of whether a member of the state Senate must truly be a Kentucky resident is so fundamental that lawmakers never anticipated that the circuit court of residence would be in another state. The initial action was filed in Jefferson County.

Keller argues that "the fact that the legislature may make a wrong decision is no reason why the judiciary should invade ... the exclusive domain of another department of government."

But is Keller "invading" when he tries to write new law? He states that a challenger must "file such an action sufficiently in advance" -- whatever that means. But the statute doesn't say that. The statute provides that claims against a candidate's bona fides may be brought "at any time prior to the general election." If legislators didn't like the law, they could have changed it, but didn't.

Left unchecked, private interests will always intrude on legislative interests. If a justice fails to

perform the most fundamental function of providing checks and balances, the state suffers. We need a court of justice to assure a government of laws.

I remember when an Alabama governor, supported by the majority, blocked the schoolhouse door. The law and courageous judges helped opened those doors, but they had to assert their constitutional authority to do so.

Are we to suppose that Keller and Scott would have looked the other way?

Keller and Scott are correct about one thing. Politics is, indeed, at work here. Unfortunately, it is the easy politics of abdication to the majority. Under this view, the court is not a co-equal branch. Rather, it passively ignores tyranny by the majority -- something we need a court of justice to prevent.

Instead, Keller argues that "we must assume the Senate in good faith will not knowingly permit violations of other constitutional provisions" -- all evidence to the contrary.

Yes, it is a political question whenever elections are involved, and under Kentucky's constitution, Supreme Court justices are elected, too. This is something we should all remember in the next judicial election.

Caption: - **Richard Day** of Lexington is a retired elementary school principal.

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