

Court rulings in US election crisis attack democratic rights

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The two court rulings handed down on Monday—from the US Supreme Court and a Florida circuit court—underscore the assault on democratic rights that lies at the heart of the US electoral crisis.

The net effect of both decisions is to block an accurate and fair count of the ballots cast on Election Day in Florida, enabling the Republican campaign of Texas Governor George W. Bush to win the presidency by means of fraud and political usurpation. The essence of the two rulings is to disenfranchise thousands of voters in Florida and challenge the core democratic principle of popular sovereignty.

The question that has been posed since the onset of the electoral impasse is: How far is the ruling elite in the United States prepared to go in installing a president by anti-democratic means? The answer provided by the court rulings is: very far.

The US high court delivered a unanimous ruling vacating the November 21 decision of the Florida Supreme Court that had extended the deadline for certifying the results of the presidential election. The Florida court had ordered the Republican election authorities to allow hand recounts in several counties and include the results in the official tally. The Republican state government, headed by Governor Jeb Bush, the brother of the Republican presidential candidate, had sought to block the manual counts because it knew an accurate tally would erase George W. Bush's miniscule official margin and give the state's 25 electoral votes, and hence the national election, to Democratic candidate Al Gore.

The US Supreme Court stopped short of reversing the Florida high court, and instead remanded the case back to the Florida justices with the instruction that they clarify the grounds on which they had overruled the Republican election authorities and extended the deadline for certification. Most significant was the basis of the US Supreme Court's challenge to the Florida ruling. The US high court singled out for attack the principled, democratic core of the Florida decision—its assertion, based on the Florida constitution's declaration of rights, of the sanctity of the people's right to vote and have their votes counted.

The US justices declared in their decision:

There are expressions in the opinion of the Supreme Court of Florida that may be read to indicate that it construed the Florida Election Code without regard to the extent to which the Florida Constitution could, consistent with Art. II, Section 1, clause 2 [of the US Constitution]

“circumscribe the legislative power.” The opinion states, for example, that “[t]o the extent that the Legislature may enact laws regulating the electoral process, those laws are valid only if they impose no ‘unreasonable or unnecessary’ restraints on the right of suffrage” granted by the state constitution....

The opinion also states that “[b]ecause election laws are intended to facilitate the right of suffrage, such laws must be liberally construed in favor of the citizens' right to vote...”

With these words the US Supreme Court all but declared that the Florida constitution's guarantee of the right of the people to vote for US president was in conflict with the United States Constitution, which, in Article II, gives the state legislatures the power to appoint presidential electors “in the manner they direct.” The US high court was, in effect, ordering the Florida court to rewrite its decision so as to remove its assertion of popular sovereignty.

This is precisely the anti-democratic line of attack taken by the US high court's extreme right-wing faction in last Friday's hearing of the appeal brought by the Bush camp against the Florida court decision. Chief Justice William Rehnquist and Associate Justice Antonin Scalia assailed Gore's lawyer with questions and interjections premised on the assumption that there is no constitutional right of suffrage in the election of the president, and that state legislatures have the legal power to choose presidential electors without recourse to a popular vote.

Aside from the staggering assault on democratic rights embodied in this claim, it is, from a legal and constitutional standpoint, specious. In his brief to the US Supreme Court, the lawyer for the Florida Attorney General, a Democrat, demolished the claim of the Bush camp and its allies on the US court that the Florida court had breached the US Constitution by invoking the right to popular sovereignty spelled out in the Florida constitution. He pointed out that, in keeping with the federal structure of the United States, “[t]he constitutional grant of authority to the state legislature to direct the manner of choosing presidential electors is effectuated in the context of the legislature's power under its state constitution.” He continued: “Here, the Florida Supreme Court's decision interpreting the state's election laws did not violate Article II, section 1, cl.2 of the US Constitution because the Florida

Legislature granted Florida citizens the right to vote for presidential electors by general law...”

Moreover, there is a provision of the US Constitution, enacted after the Civil War and reflective of the enormous impetus to democratic rights that resulted from the defeat of the Southern slave owners, that explicitly provides for the popular election of presidential electors. That provision is laid down in Section 2 of the Fourteenth Amendment, the historic amendment that granted citizenship rights to the freed slaves and barred the states from depriving “any person” of life, liberty or property without due process, or depriving anyone of equal protection of the law.

That Rehnquist, Scalia and their ally on the extreme right, Associate Justice Clarence Thomas, should overlook the Fourteenth Amendment comes as no surprise, since they have been relentless in their assault on fundamental democratic rights. The fact, however, that this ultra-right faction was able to obtain a unanimous ruling challenging the principle of popular sovereignty testifies to the cowardice and lack of principle on the part of the Court's liberal wing.

Significantly, it was a Clinton appointee, Ruth Bader Ginsburg, who proposed at last Friday's hearing the rotten compromise—or more accurately, capitulation—that was, in the end, carried out. Refusing to challenge the anti-democratic assertions of Rehnquist and Scalia, she suggested that the Court remand the Florida ruling back to the state Supreme Court.

It is likely that Rehnquist and Scalia had a five-to-four majority for an outright reversal of the Florida high court ruling, but were reluctant to issue a split decision for fear of discrediting the US Supreme Court in the eyes of broad sections of the population. Rather than forcing the extreme right-wingers to expose their authoritarian aims, and countering with a defense of democratic rights, the liberals on the Court caved in and provided Scalia and company with a cover of unanimity.

The US Supreme Court ruling was a shot across the bow of the Florida high court, intended to intimidate that body from issuing further rulings favorable to the Gore camp. Its timing, coming only minutes before Florida Circuit Court Judge N. Sanders Sauls was due to issue his ruling in Gore's suit for a hand count of disputed ballots in Miami/Dade and Palm Beach counties, suggests that Rehnquist, Scalia and company were sending a message in that direction as well.

Any such effort proved to be superfluous. In a ruling reeking of contempt for democratic rights Sauls swept aside all of Gore's contentions and handed the Bush camp a total victory. Sauls made the absurd claim that Gore's lawyers had failed to demonstrate that there was a “reasonable probability” that a manual recount would alter the results of the statewide vote.

This assertion was belied by the simple fact that Bush and his Republican cronies in Florida have devoted the past three weeks to a non-stop effort to prevent a full count of ballots in the majority-Democratic counties contested by the Gore campaign.

It also stood in flagrant contradiction of the results of partial recounts already carried out which have reduced Bush's initial official lead by more than two-thirds. It flew in the face of statistical studies published over the past several days showing that a full tally of presidential ballots that did not register in the

machine tabulation would give Gore a statewide margin of thousands of votes.

Sauls moreover ignored the testimony of a key witness for the Bush camp—a designer of the punch-card voting machines used in Miami/Dade and Palm Beach—who was confronted at trial with his own patent application decrying the inadequacies of the machines used in these counties, and ended up acknowledging that only a hand count could provide an accurate result.

Even more damning, Sauls issued his judgment without examining a single one of the 14,000 contested ballots that had been shipped to Tallahassee from southern Florida, although, according to Florida election laws, disputed ballots constitute the primary evidence in a legal contest of an election.

The response of Gore and the Democrats to these court rulings makes it clear that they are preparing to wind up their challenge to the hijacking of the election—sooner rather than later. Even before Monday's decisions, Gore gave an interview on CBS News' *Sixty Minutes* program in which he pledged to rally behind an eventual Bush administration, and on Monday, following Judge Sauls' ruling, Gore's lead attorney, Dave Boies, declared that the Gore camp would accept as final the results of its appeal to the Florida Supreme Court of Sauls' decision, and predicted that the issue would be settled by the end of the week.

For the first time in history the American people are witnessing the installation of a president based on fraud and court rulings that are openly hostile to democratic rights. At the summit of the judiciary the tone is set by Scalia, who argues like a mob lawyer in robes. The lower courts are packed with hacks who issue the type of rulings one would expect to find in a police state. What is being revealed in this sordid spectacle is the deep-going corruption of the traditional institutions of bourgeois rule in America.

The underlying oligarchic character of American society—in which a small elite monopolizes an ever-greater proportion of the national wealth—is finding its reflection in the growth of authoritarian tendencies in all of the institutions of the state. Within the ruling circles there is a substantial faction that is overtly antagonistic to basic democratic rights, and another faction, reflected in the Democratic Party, that is largely indifferent.

The democratic rights of the American people are increasingly endangered so long as they remain subordinated to the political parties of big business. The critical lesson to be drawn from the events of the past month is the need for the working class to build its own mass party to defend its rights on the basis of a democratic and socialist program.



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