Republicans to convene Florida legislature to impose Bush electors

Patrick Martin
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The Republican leadership of the Florida state legislature is convening a special session on Friday, December 8 to discuss appointing a slate of 25 presidential electors. The extraordinary decision was announced Wednesday evening by Florida Senate President John McKay and Florida House Speaker Tom Feeney.

This action is an unprecedented and unconstitutional attempt to overturn the decision on presidential electors made by Florida's voters on November 7 and to intimidate the Florida Supreme Court. It amounts to a threat to impose electors for Republican presidential candidate George W. Bush in defiance of the will of the people and regardless of the legal findings of the state's highest court.

The Republican leaders announced the session on the eve of a hearing before the state Supreme Court on Vice President Al Gore's suit seeking to compel the counting of 14,000 votes in Miami/Dade and Palm Beach counties which both parties expect would tip the Florida vote total to the Democratic candidate and give him the presidency.

The ballots remain uncounted one month after the election. On Monday, Leon County Circuit Judge N. Sanders Sauls issued a harshly worded decision rejecting a bid by the Gore campaign to count these votes and upholding in every respect the position of the Bush campaign, which sought to deprive Gore of his right to contest the certification of the Florida vote. Lawyers for the two candidates are to present oral arguments to the state Supreme Court at 10 a.m. Thursday in Gore's appeal of Judge Sauls' ruling.

The Republican Party, with a 77-43 majority in the lower house and a 25-15 majority in the state senate, is threatening to intervene and give its sanction to the Bush slate if the state Supreme Court upholds Gore's appeal and orders a more extended recount.

Both McKay and Feeney claimed that they were concerned that the protracted legal proceedings could delay the final determination of Florida's electors past December 12, when the state government is expected to notify the federal government of the official outcome of the vote.

The two Republican leaders said that they were concerned that Florida's electors might be challenged and the state deprived of its electoral votes if the deadline was missed.

McKay declared, “My primary objective is simple: To assure that the voters of Florida are not disenfranchised.” Feeney added, “I believe deeply ... that we have a duty to protect Florida's participation in the Electoral College.”

This claim is a transparent sham. December 12 is not a constitutionally or legally mandated deadline. Under an 1887 federal law, if the selection of electors is concluded by that date, six days before the electors are to cast their votes for president, the state's electors cannot be challenged by Congress when it meets January 5 to count the Electoral College vote. If a Bush slate is eventually declared victorious, no such challenge is to be expected, since Congress remains under Republican control.

The Florida legislators are in fact preparing to override any court action that might result in a Gore victory, by pre-selecting the Bush slate, using the threat to Florida's electoral votes as a fig leaf for a blatant political power play. The leader of the Democratic minority in the state house of representatives, Lois Frankel, denounced the special session as “a blatant attempt to go around the will of the voters.”

A group of 37 prominent constitutional law scholars signed a petition to the Florida legislature urging them not to hold the special session, and warning that the legislature cannot legally “nullify the popular vote.” The act would violate the Florida state constitution, which prescribes a popular vote as the basis for selecting presidential electors, as well as state election laws that the Republicans have been claiming to uphold.

The Bush campaign cynically declared that the Florida legislature “made this decision on its own.” Bush spokesman Dan Bartlett said, “It's a separately elected body. We have not participated in their making their decision.”

However, the first prominent figure to call for such action was Bush's chief Florida spokesman, former Secretary of State James Baker, in response to the November 21 decision by the state Supreme Court authorizing manual recounts in three south Florida counties. Both McKay and Feeney are

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Bush electors on the slate certified November 26 by Republican Secretary of State Katherine Harris.

Feeney was the running mate of Bush's brother Jeb in his unsuccessful 1994 campaign for the Florida governorship. During that campaign, incumbent Democratic Governor Lawton Chiles criticized Feeney as “spooky” and “sort of the David Duke of Florida politics.”

In the legislature Feeney is a member of an ultra-right fundamentalist caucus which has been dubbed the “God Squad.” He sought to compile a government database profiling women who had abortions, and last year pushed through legislation adding the anti-abortion slogan “Choose Life” to Florida license plates. He tried to outlaw the teaching of yoga in public schools and once made a public speech denouncing hand puppets, which he claimed were being used to “hypnotize” children.

This modern-day Know-Nothing is intervening into the election of the president of the United States at the urging of powerful sections of the American ruling elite, spearheaded by the right-wing majority on the US Supreme Court and the fascist-minded editorialists of the *Wall Street Journal*.

The unanimous order issued by the US high court on Monday, which vacated the Florida Supreme Court's first ruling on hand recounts and sent the issue back to the Florida court for re-evaluation, contains an important passage which presents the state legislature as the ultimate arbiter of the presidential contest in Florida.

This order was based on a legally and historically ludicrous interpretation of Article II of the US Constitution, and a tendentious interpretation of the 1887 law, first advanced by Justice Antonin Scalia and Chief Justice William Rehnquist during the oral arguments before the Supreme Court last Friday.

Scalia, the leader of the extreme-right faction on the court, claimed that Article II vests absolute power in the state legislators to select presidential electors. He maintained that the Florida Supreme Court was wrong to cite the Florida state constitution's guarantee of the right to vote as a basis for its decision authorizing the hand recounts. “There is no right of suffrage” in relation to presidential electors, he declared.

The implications of this position are truly staggering. Under Scalia's theory, any state legislature in the country would be entitled to disregard the vote of the people and award its state's electoral votes to the presidential candidate of its choice.

Scalia and Rehnquist also embraced the contention of Bush's lawyers that the Florida Supreme Court's ruling, by establishing a new deadline for certifying the presidential vote in the state, had rewritten the state's election laws. The Florida court, for its part, said the new deadline was an attempt to reconcile two conflicting provisions in the election law, one setting a seven-day deadline, the other permitting manual recounts at the request of any candidate or party.

On this basis, Scalia and Rehnquist claimed that the Florida court was in danger of violating a provision of the 1887 law that exempts state electors from a congressional challenge if they are chosen under a method decided on before the election. The post-election change in the state's certification deadline might jeopardize the state's electoral votes and give the legislature a reason to intervene and select its own slate, they said—a broad hint to the Florida legislature to take the action announced two days later.

The *Wall Street Journal* lauded Scalia's diatribe against democracy in an editorial Tuesday, pointing out the significance of the Supreme Court's reference to the powers of the state legislature and expressing the hope that Senate President McKay, who initially dragged his feet on a special session, would get a “backbone transplant” from the high court.

Citing the legal language of the court's order, the newspaper declared: “In plain English, the court is saying that the Florida legislature and Congress outrank judges in choosing a state's electors. Both can be skeptical toward, and may overrule, any slate of electors chosen because the Florida Supreme Court changed the election rules after Election Day. This is bad news for Mr. Gore, whose last Presidential hope is that Florida judges award him Florida's electors and then that the GOP-controlled legislature lacks the nerve to respond.”

This lineup of the *Wall Street Journal*, Scalia and Feeney speaks volumes about the social forces that are lying in wait behind the Bush campaign. Just as in impeachment, but on a higher level, extreme right-wing elements are seeking to carry out a pseudo-constitutional coup d'etat and install the most reactionary government in American history, based on the denial of the democratic rights of the American people.

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