

Florida Supreme Court ruling: right to vote at center of US election crisis

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With the Florida Supreme Court decision ordering a hand count of tens of thousands of ballots across the state, the basic issue in the US election crisis has been thrust to the foreground. That issue is the democratic right of the people to vote and have their votes counted.

By reversing an anti-democratic lower court ruling and insisting that the official result of the presidential election in Florida—and therefore nationally—reflect the will of the voters, the majority on the state's high court has forced the camp of Republican presidential candidate George W. Bush to reveal the real motive underlying its machinations of the past month—a determination to suppress legal votes and thereby steal the election.

The majority decision of the Florida high court affirmed basic principles of popular sovereignty: “The election should be determined by a careful examination of the votes of Florida's citizens and not by strategies extraneous to the voting process. This essential principle, that the outcome of elections be determined by the will of the voters, forms the foundation of the election code enacted by the Florida Legislature and has been consistently applied by this Court in solving election disputes...We are dealing with the essence of the structure of our democratic society.”

Within hours of the Florida court's announcement late Friday afternoon, lawyers for the Texas Republican filed an appeal with the US Supreme Court coupled with an emergency filing in the 11th Circuit Court of Appeals in Atlanta asking for an injunction to block the counting of votes.

The Bush forces are desperate to prevent the implementation of the Florida court's decision, which ordered the “immediate” launching of a hand count of an estimated 45,000 undervotes (ballots which did not register a vote for president in the machine tabulation). The reason is obvious to everyone involved in the election struggle—the Bush camp, the campaign of Democratic candidate Al Gore, the courts, the media and the teams of lawyers on both sides: once such a count begins, Bush's paper thin margin will vanish and it will become clear to the American people that thousands more Florida voters cast ballots for Gore than for Bush.

The anti-democratic essence of the Republican effort was underscored by the Republican-controlled state legislature,

which convened a special session Friday to override the popular vote and appoint its own pro-Bush slate of presidential electors, an act of political usurpation unprecedented in US history.

Symptomatic of the mutinous mood within the right-wing circles that have rallied behind the Bush campaign was the action of Florida Circuit Court Judge N. Sanders Sauls, whose sweeping ruling against Gore's appeal for a recount was reversed by the Florida high court. The Florida Supreme Court handed over the responsibility for organizing the recount process to Saul's court, but the judge refused to make an appearance, and later recused himself from the recount. This was not only an act of personal defiance, but an attempt to stall the recount and thereby facilitate Republican efforts to block it altogether through federal court action.

A profile of Sauls published in Friday's *New York Times* provided a graphic picture of the type of corrupt and reactionary judge upon which the right wing relies to suppress democratic rights. A registered Democrat, Sauls is notorious as a “law-and-order” zealot who rides roughshod over the civil liberties of working class defendants. According to the *Times*, Sauls is “popular with local prosecutors” and warmly regarded by the police, but has been reversed by higher courts more than any other judge in the Leon County Circuit Court. “He has been reversed for punishing defendants too harshly, for misinterpreting statutes, sustaining convictions without adequate proof... [and] for improperly throwing out lawsuits brought by poor people, prison inmates and plaintiffs who don't have lawyers,” wrote the *Times*.

In overturning Sauls' decision the Florida Supreme Court split four-to-three. The majority ruled that Sauls had applied too high a burden of proof for the Gore lawyers to surmount, and had erred in refusing to examine the most important evidence before his court—the disputed ballots. The majority ordered a hand count of 9,000 disputed ballots in Miami-Dade County, and further ordered all other counties with undervotes that had not already carried out a hand count of such ballots to do so. It instructed that Bush's official margin be reduced by the net gain in votes for Gore that had been recorded from the hand count of ballots in Palm Beach County and the partial count carried out in Miami-Dade. As a result, Bush's official lead was reduced from 537 to 154 votes.

Two dissenting opinions were issued. That of Chief Justice Charles T. Wells echoed the anti-democratic arguments advanced by Bush lawyers and the ultra-right faction on the US Supreme Court that is headed by Chief Justice William Rehnquist and Associate Justice Antonin Scalia. Wells strongly suggested that the majority ruling constituted a change in the state election laws—one of the main contentions of the Bush camp and its allies on the US high court—and declared that the order for a manual recount violated Article II, Section 1 of the US Constitution, the other major claim of the Bush forces. This latter assertion, proclaimed by Scalia in last week's US high court hearing and placed at the center of the ruling issued by the US Court on December 4, amounts to a declaration that the American people have no constitutional right to vote for the US president, and that at any time any state legislature can decide to appoint presidential electors instead of holding a popular election.

Having made his legalistic obeisance to the US Court's right wing, Wells moved on to the heart of his dissent, declaring: "The prolonging of judicial process in this counting contest propels this country and this state into an unprecedented and unnecessary constitutional crisis... this contest simply must end."

In other words, for the sake of stability the court should sanction the theft of the election and the trashing of democratic rights, and cave in to the right-wing provocateurs and bullies who are setting out to gain the White House by means of fraud.

In responding to the Florida high court ruling, Bush's chief spokesman, former Secretary of State James Baker, seized on Wells' dissent and its denunciation of the Florida Court majority for precipitating a constitutional crisis. Baker resorted to the technique that he and the rest of the Bush camp have employed since Election Day—the big lie. Having publicly encouraged the Florida legislature to defy the Florida Supreme Court and appoint Bush electors, Baker turned around and accused the court of creating a situation that "could ultimately disenfranchise Florida's votes in the Electoral College."

He employed a basic tactic of the Bush disinformation campaign, insisting that a hand count was an immense undertaking that could only result in delaying the certification of the state's presidential electors and jeopardizing their ratification by the US Congress. This is a fraudulent argument on two counts. First, a hand count of undervotes could be organized and carried out in a matter of days, provided it was allowed to proceed without Republican sabotage and provocation. Second, there is only one plausible scenario for a US congressional rejection of Florida's certified electors—one that is already being prepared for by Republican leaders in the House and Senate—and that is a scenario arising from the certification of a pro-Gore slate resulting from the court-ordered recount. Thus, Baker's warnings about a constitutional crisis amount to a thinly veiled ultimatum—certify Bush electors, or we (the Republican Congress) will refuse to ratify

the Florida slate.

Baker declared, "This is what happens when for the first time in modern history a candidate resorts to lawsuits to try to overturn the outcome of an election for president." It was Baker who announced the launching of the first law suit in the post-election crisis, when only days after the November 7 election he told the press that the Bush camp was filing a suit in federal court to halt recounts in several counties that had been initiated in accordance with state election laws.

That was only one of the first of an endless series of maneuvers on the part of the Bush campaign in Texas and the Republican administration in Florida, headed by Jeb Bush, the Republican candidate's brother, to delay and ultimately sabotage efforts to accurately count the votes. It was Bush and his cronies who flouted the law in their attempt to hijack the election, thereby preventing a resolution prior to the December 12 date for the certification of the state's presidential electors.

Finally, Baker said the injunction to count the votes had made it "a sad day" for Florida, the nation and "our democracy." According to the twisted logic of the Republican right, vote-rigging, voter intimidation, fraud and the suppression of votes cast for one's opponent constitute "democracy," while an actual count of the votes cast is tantamount, in the terminology of Friday's *Wall Street Journal* editorial, to "chaos."

Following Baker's remarks, one reporter directly asked what was wrong with counting the votes to decide the winner. Flustered, Baker could only repeat the Bush camp mantra—and lie—that the votes have all been counted once, twice, three times, etc.

It is remarkable—and a measure of the profound decay of the institutions of American democracy—that the elementary democratic axiom that all votes be counted has aroused ferocious opposition from the highest echelons of the state and the political establishment, including the Republican Party, the mass media and the US Supreme Court. No less stark has been the weak and half-hearted resistance to this overt assault on democratic rights from the Democrats and liberals.

The Florida court's ruling not only took the Bush camp by surprise, it also shocked Gore and his backers. According to media reports, Gore's closest advisers, Commerce Secretary William Daley and former Secretary of State Warren Christopher, were pressing the vice president to concede within hours of an expected rejection of their appeal to the Florida high court. Leading Democratic congressmen had advised Gore that if he did not quickly give way to Bush, they would publicly call on him to do so.



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