US Supreme Court hearing highlights state conspiracy against democratic rights

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Friday's proceedings before the US Supreme Court demonstrated the extent to which a major section of the American ruling elite, and its agents at the highest levels of the state, have broken with the most basic principles of democracy.

The nine high court justices heard arguments on the appeal by Republican presidential candidate George W. Bush of last month's ruling by the Florida Supreme Court. On November 21 the Florida court ordered state election authorities to allow manual recounts of presidential ballots and include the results of the recounts in the official tally.

Democratic presidential candidate Al Gore is seeking recounts in several south Florida counties, in accord with state election laws, because the official margin for Bush is only 537 votes and thousands of presidential votes did not register in the initial machine tabulation and have never been counted.

George W. Bush, Florida's Republican Governor Jeb Bush (his brother), and the Republican-controlled state legislature are determined to block a hand recount, since they know a full and accurate tally of the votes would give Gore the state's 25 electoral votes and the margin of victory nationally.

The fundamental issue before the US Supreme Court is the right of citizens to vote and have their vote counted. Should the high court side with Bush, it will officially sanction the imposition of a president by anti-democratic means.

Most commentators expect the court to issue a ruling within the next several days. But whatever the outcome, the hearing itself has already revealed that the most right-wing faction on the court is hostile to the very notion of popular sovereignty and democratic rule.

In the course of the exchanges between the justices and the lawyers on both sides, Chief Justice William Rehnquist and Associate Justice Antonin Scalia, who, together with Associate Justice Clarence Thomas, comprise the extreme right wing on the court, advanced the argument that the Florida high court had no right to override the decisions of the state election authorities. They did so on the grounds that there is no provision in the US Constitution for the people in each state to choose, through a popular vote, the presidential electors. (According to the arcane provisions of the US Constitution, it is the electors who formally elect the president.) Instead, they argued, it is the prerogative of the state legislatures to choose the electors from each state by any means they see fit.

Rehnquist and Scalia cited Article II, Section 1 of the US Constitution, which says: “Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors...” In their attack on the Florida Supreme Court's ruling, they focused on its democratic core—the assertion that the Florida constitution guarantees the right of universal suffrage, which must not be compromised by statutory deadlines or other legal technicalities. Rehnquist and Scalia asserted that the Florida high court, by basing its decision on the right of the people of Florida to vote for the president, was infringing on the prerogative of the state legislature as laid down in Article II of the federal Constitution.

Rehnquist began the attack along this front and Scalia drove it home. In an exchange with Gore's attorney, Laurence Tribe, the chief justice declared: “It seems to me a federal question arises if the Florida Supreme Court in its opinion rather clearly says that we're using the Florida Constitution to reach the result we reach in construing the statute.”

Shortly thereafter Scalia intervened, citing the Florida Supreme Court decision: “‘The right to vote. The text of the Florida Constitution begins with a declaration of

rights.' And [the Florida Supreme Court ruling] goes on to say that to the extent the legislature may enact laws regulating the electoral process, those laws are valid only if they impose no ‘unreasonable or unnecessary' restraints on the rights of suffrage contained in the constitution.

“In other words, I read the Florida court's opinion as quite clearly saying, having determined what the legislative intent was, we find that our state constitution trumps that legislative intent. I don't think there's any other way to read it. And that is a real problem, it seems to me, under Article II [of the US Constitution], because, in fact, there is no right of suffrage under Article II. There's a right of suffrage in voting for the legislature, but Article II makes it very clear that the legislature can, itself, appoint the electors.”

With this argument, Rehnquist and Scalia have not only given a green light for the Florida legislature to proceed with its plan to appoint its own slate of presidential electors—so it can ignore the will of the voters in the event the courts declare Gore the victor—they have gone further. They have declared that any state legislature can do the same, and the people will have no recourse under the Constitution. This is nothing less than a pseudo-legal justification for the disenfranchisement of the American people and the imposition of dictatorial rule.

The attorney for Bush, Theodore Olson, in summary remarks made after the exchange between the justices and Laurence Tribe, adopted entirely the arguments of Rehnquist and Scalia. “It seems to me,” he began, “that it's very difficult to read the Florida Supreme Court decision as saying anything else other than the Florida Constitution, in their view—in that court's view, is trumping everything else.” He continued, disparagingly, “The second paragraph of the conclusion says, ‘Because the right to vote is the preeminent right in the declaration of rights of the Florida Constitution' and so forth. This opinion is full of language...”

Olson went on to declare that the Florida Supreme Court “was allow[ing] itself to insert itself or the Florida constitution above what is required by Article II, Section 1 of the Constitution.”

The moderate-to-liberal faction on the court, consisting of Associate Justices John Paul Stevens, David Souter, Ruth Bader Ginsburg and Stephen Breyer, indicated from their questions and interjections that they were skeptical at best of the validity of Bush's case against the Florida high court ruling. But neither they, nor Gore's lawyer Laurence Tribe, attacked the authoritarian arguments of Rehnquist and Scalia. While the latter openly assailed the principles of popular sovereignty and suffrage, their liberal opponents were virtually silent on the core issues of democratic rights.

The best Tribe could manage was to stutter, “The disenfranchising of the people, which is what this is all about—disenfranchising people isn't very nice.”

This is not the time to mince words. The stench of conspiracy was palpable in the Supreme Court chamber on Friday. Two of the chief protagonists have a long record of conspiring against the democratic rights of the American people. Rehnquist got his political start as a right-wing Republican operative in Arizona, where he opposed school desegregation and worked to prevent minority workers from exercising their right to vote. He played a key role in the impeachment conspiracy against Bill Clinton, appointing the ultra-right judge who fired the first Whitewater independent counsel and replaced him with Kenneth Starr.

Olson, a leading member of the Federalist Society, an organization of right-wing lawyers, was also deeply involved in the political conspiracies of the far right against Clinton. He is a close friend and long-time associate of Starr, and his wife, Barbara Olson, worked for the House Republicans in the impeachment campaign.

The Supreme Court hearing has underscored the far-reaching decay of bourgeois democracy in the US. The working class must take heed—its most basic rights are in danger. They cannot be defended through the Democratic Party or through reliance on the courts. The working people must build their own political party to defeat the intrigues of the right wing and defend their basic rights.