

The courts, the California recall and the crisis of the US political system

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The ruling by the Ninth Circuit of the U.S. Court of Appeals postponing for five months the Oct. 7 recall election in California has touched off a political firestorm. The recall's right-wing supporters charge that the three judges on the appellate panel—all appointed by Democratic administrations—acted out of political allegiance rather than to uphold the law. The civil rights groups that pushed for the postponement have insisted that their concern was that every vote, and particularly those in counties with large minority populations, is counted.

With the full appeals court expected to announce today whether it will reconsider the ruling, the case may yet wind up in the US Supreme Court. Whatever its final adjudication, the issues raised in this dispute have profound implications for the political system in the United States. Underlying the legal battle are deep-going social conflicts.

The appeals court panel's decision to postpone the recall vote until March 2 was presented in a 64-page ruling that cited a dozen times the US Supreme Court's own December 2000 ruling in *Bush vs. Gore*.

In that utterly cynical decision, the Supreme Court's majority halted the counting of votes in Florida in order to ensure the victory of George W. Bush. Its self-contradictory argument began with the proposition that "the individual citizen has no federal constitutional right to vote," thereby dismissing the Florida state constitution's declaration of rights and legitimizing the disenfranchisement of hundreds of thousands of voters. It went on to concoct a phony equal-protection argument, claiming that there was a danger that hand recounts would result in the disparate treatment of ballots cast in different counties.

Finally, the high court majority shamelessly claimed that its arguments applied only to the specific circumstances in Florida—crafted as they were with the sole aim of installing Bush in the White House.

Nonetheless, the appellate panel in California has used the words—if not the intent—contained in the high court's equal protection arguments to support the position that the use of antiquated voting systems that would lead to a higher undercount, disenfranchising tens of thousands of voters in six predominantly working class California counties, was unacceptable.

If it stands, the ruling will shift the vote to March 2, when error-prone punch-card voting machines are to be replaced statewide. The date is that of the presidential primary, which is expected to draw increased numbers of Democratic voters. This has provoked outrage among the Republican right, which is denouncing notions of "election perfection" and "absolute equality," implicitly repudiating the Republican arguments in the 2000 presidential election.

While the legal and indeed moral arguments underpinning the ruling—that all voters have the right to have their ballots counted in an equal manner—are unassailable, the decision and the intense struggle that it has unleashed are symptomatic of a growing breakdown of the present political system, and a situation in which holding normal elections is becoming ever more problematic throughout the country.

The prospect that the ruling will be cited in other lawsuits aimed at halting elections is a very real one. The US electoral system is rife with irregularities and inequality. Different counties design their own ballots, purchase voting equipment, decide staffing of poll workers and determine voter education budgets. As in California, in every state those jurisdictions that are predominantly working class or minority are more likely to have inferior means of insuring that every vote is counted than exist in more affluent districts.

This was one of the principal arguments advanced by the lawyer for the recall's organizers against the postponement: "Left undisturbed, the panel's decision calls into question every election in every jurisdiction that uses punch-card voting systems, or different voting systems in different counties."

There is however a more critical question underlying the dispute. Can elections be decided and then accepted within the US under conditions in which political life has become sharply polarized and methods of conspiracy and the deliberate disenfranchisement of voters have become the rule?

The past several years have seen a virtually uninterrupted drive by the political right in America to either overturn the results of elections through the use of extraordinary means, halt the counting of ballots or rig the outcome of elections yet to come.

This was clearly the case in California, where Gov. Gray Davis solidly defeated his Republican challenger by a margin of 47 percent to 42 percent last November, only to have the Republicans turn around and organize a recall campaign financed largely by one multi-millionaire congressman, Darrell Issa.

The attempt to overturn the election in California is not an aberration. It follows the 2000 election, in which hundreds of thousands of votes were suppressed in order to place Bush in the White House.

Before that, the Republican right announced from the outset in 1992 that it did not accept the legitimacy of the Clinton election and worked ceaselessly to sabotage the federal government. Sections of the financial elite believed—unjustifiably as it turned out—that Clinton's election posed a threat to the continuation of policies that were designed to guarantee unrestrained accumulation of personal wealth and the systematic dismantling of whatever remained of the liberal reform policies of the New Deal.

They reacted ferociously, attempting to frame up Clinton, first on the Whitewater real estate deal and then on sexual charges, culminating in his impeachment.

In Texas and Colorado, meanwhile, state legislators, backed by the national Republican leadership, are now riding roughshod over normal procedure in order to gerrymander US Congressional districts and assure safe majorities for their party's candidates. In Texas, the dispute grew so bitter that state police were ordered to arrest Democrats on sight and attempts were made to enlist the Homeland Security Department in tracking them down and detaining them.

During the immediate postwar period, elections were generally accepted as an approximation of the popular will. Changes in the parties controlling the White House brought about relatively minor shifts in social and economic policies, with Republicans from Eisenhower to Nixon essentially upholding the social welfare measures that had been introduced in the period preceding the war.

During that period, the existence of discrepancies in the vote count did not provoke the same level of tension. In the 1960 Kennedy-Nixon election, or the even closer Nixon-Humphrey vote of 1968, there were no doubt greater anomalies—and even outright fraud—but both parties tended to rule by consensus.

By contrast, the current administration in Washington, having lost the popular vote, governs as if it had the mandate of the overwhelming majority of the population for a radical right-wing agenda that serves the interests of only a relative handful at the top.

What is to account for this breakdown of the most basic function of a supposedly democratic system—the ability to hold and enforce the results of elections? In the cases of the Clinton impeachment, the 2000 election and the present California recall, a right-wing layer that is determined to push through its political agenda has utilized the methods of conspiracy backed by vast amounts of money.

In the legal wrangling over how this recall vote is to be organized there is the implicit question posed by the Supreme Court ruling in 2000—should the broad masses be allowed to participate, or should their influence be minimized, in a process that has been initiated with the aim of seizing power for a small, privileged minority.

The increasing inability of the US political system to find any democratic means of adjudicating political questions is bound up with the unprecedented stratification between wealth and poverty and the intensification of the social conflict in America. With the top 1 percent of the population controlling 40 percent of the wealth, and the policies of both major parties directed toward the financial elite, the very possibility of a consensus policy has disappeared.

The US today is socially and politically polarized to an extent that has no precedent since the Civil War. Recent elections have exposed sharp fault lines separating urban and rural areas and manifesting stark regional divisions resembling those between the North and South 140 years ago.

What might have seemed relatively innocuous electoral anomalies in earlier periods are inevitably viewed with immense suspicion. Millions of people in this country know that a continuation of the present administration in office means a continuation of the attacks on their living standards and democratic rights and the ever-present threat of war. Many hold the mistaken belief that the victory of the Democrats would reverse this situation.

Underlying the legal battles over the right to have votes counted is a growing class conflict in the United States. The explosive potential of this conflict is all the greater to the extent that its overt political expression has been largely suppressed. The Democratic Party has

discarded its adherence to even minimal reforms, while the AFL-CIO bureaucracy has systematically destroyed the union movement as a vehicle for social struggle.

In America, more than any other country, major social questions have been regularly decided by the courts. Over the past half century, desegregation, civil rights, abortion and a host of other matters that have sharply divided the country have wound their way through lawsuits, appeals and finally US Supreme Court decisions.

The courts' function as arbiter of social conflict is magnified by the suppression of the class struggle and the absence of any political party representing the interests of the vast majority of the working people.

The social pressures generated by these conflicts, however, have grown too immense for the courts to handle. Moreover, the nakedly partisan and fabricated character of the Bush v. Gore decision in 2000 has fatally undermined the credibility of the high court.

The dispute in California constitutes a serious warning. It is a foretaste of the explosive conflicts that will inevitably arise in the US as the 2004 election approaches. The question is objectively posed: will an administration that gained power by fraud and has ruled by conspiracy and deception accept being removed by a popular vote?

A legal remedy to the process that has been exposed in the California recall is inadequate. There is no way forward in defeating the retrograde social agenda of those promoting the recall campaign, and indeed the nationwide drive to transfer wealth from the vast majority of working people to the corporate elite, outside of building a mass political movement independent of both the Democratic and Republican parties and fighting against the profit system that they both defend.

The Socialist Equality Party has intervened in the California recall election to fight for the emergence of such a movement. Our party has opposed the right wing's push for recall while at the same time calling for a vote for John Christopher Burton, a civil rights lawyer and SEP supporter, who is advancing a socialist alternative to the two parties of big business.



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