

# Ten years since Bush v. Gore: The stolen election of 2000

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Sunday, December 12 marks ten years since the US Supreme Court effectively decided the outcome of the 2000 presidential election, halting the counting of votes in Florida and awarding the White House to George W. Bush. The 5-4 ruling in *Bush v. Gore*, together with the contemptible capitulation of the Democratic Party, constituted a milestone in the decay of American democracy.

In a social and political context in which the debacles produced by the Bush administration loom so large in everyday life, it might be thought that the American media and political opinion makers would devote considerable attention to the tenth anniversary of the event that placed Bush in the White House.

In fact, however, the silence is deafening. Neither the *New York Times* nor the *Washington Post*, the two leading national newspapers, published retrospectives to mark the occasion. Their example was emulated in the regional and local press and on the television networks. Supreme Court Justice Stephen Breyer, one of the four dissenters in *Bush v. Gore*, gave a rare live interview to Fox News Sunday, but the subject never came up.

Only one bourgeois pundit, right-wing columnist George Will, took up the issue, and he dismissed the Supreme Court action as one of little or no lasting significance, asserting that the passions over the decision “dissipated quickly” and that “remarkably little damage was done” by the post-election crisis.

Significantly, however, Will’s cursory rehash of the dispute included flatly antidemocratic assertions—that the votes of those who “cast ballots incompetently” should simply have been discarded and that the fundamental right at stake in the court fight was the “rights of state legislatures” (in Florida’s case, Republican-controlled), which have “plenary power” to determine voting procedures.

Will, of course, agrees with the five-member majority in *Bush v. Gore* that the central issue was not to determine, in as objective a fashion as possible, how the people of Florida actually voted—in other words, to count every vote—but to bring the controversy to a speedy end with the result favored by the political right. This entailed ignoring the result of the popular vote, won by Democrat Al Gore.

The silence of the nominally “liberal” press is a guilty one. They do not wish to revisit the history, not so long ago, in which the Democratic Party and the liberal media surrendered to a right-wing judicial coup d’état, whose effect was to install the most right-wing government in American history.

## The election of November 7, 2000

The events of Election Day 2000, encompassing the night of Tuesday, November 7 and the early morning hours of Wednesday, November 8, are among the most extraordinary in American political history. Yet they

came after a presidential campaign of the most humdrum character, in which no political issues were seriously discussed. The consensus among political pundits and pollsters was that Bush, then governor of Texas, held a narrow but significant lead over his Democratic opponent, Vice President Al Gore.

As in 1998, however, when predictions of major Republican gains in the midst of the impeachment crisis failed to materialize, it appeared as the votes began to be counted that the political establishment had underestimated the popular hostility towards the right-wing program of the Republican Party, founded on tax cuts for the wealthy and the slashing of domestic social spending.

Gore won many of the big industrial states with relative ease, including Michigan and Pennsylvania. The Democrats were sweeping the northeastern states and were expected to win the Pacific Coast, while Bush carried the south and southwest, the Rocky Mountain states and Ohio. It appeared that the election would be decided by Florida’s 25 votes in the Electoral College.

Just before 8 p.m., several US television networks called the outcome in Florida for Gore, based on their exit polls of voters compiled throughout the day. The Bush campaign reacted immediately, breaking with precedent and putting the candidate before television cameras to denounce the network projections and declare his certainty that Florida—where his brother Jeb was governor and the Republicans controlled the machinery of state government—would end up in his column.

The networks backed down, rescinding their call for Gore and declaring the outcome in Florida still undecided. Then, in the early hours of Wednesday, Fox News became the first network to call Florida for Bush, thereby declaring him the victor in the election.

Heading the decision desk, where the network reviewed vote totals and polls to arrive at projections, was John W. Ellis, a first cousin of George W. Bush. Ellis unilaterally called the election for Bush before any determination by the Voter News Service, the consortium of leading newspapers and television networks, after a 2 a.m. telephone discussion with Bush and his brother Jeb.

When the other networks followed suit, pronouncing Bush the winner, Democrat Al Gore telephoned his concession to Bush. But on the way to make his televised concession speech before an audience of supporters in Nashville, Gore received a phone call from campaign aides who advised him that the numbers in Florida showed the race too close to call. Gore telephoned Bush again and retracted his concession.

These events had critical importance for what was to follow. The media coverage, as well as Gore’s premature concession, gave the impression to the public that Bush had “won” Florida—and the national election—by a narrow margin. Throughout the ensuing crisis, the corporate-controlled media largely parroted the official Republican posture that Bush was the presumptive winner. The fact that Gore had won by a sizeable margin in the national popular vote, as much as a half million votes, was dismissed as of no significance.

## **The struggle in Florida**

Gore retracted his concession phone call to Bush because of reports flowing in to his campaign about numerous and widespread irregularities in the Florida voting, including measures to suppress the Democratic vote by arbitrarily barring black voters. It emerged that in a single county, Palm Beach, some 19,000 votes cast for president were invalidated because the voters, confused by the layout of the ballot paper, had chosen more than one candidate. Thousands more in Palm Beach, in heavily Jewish precincts, had inadvertently cast ballots for the ultra-right independent candidate Patrick Buchanan.

In Miami-Dade, there were numerous reports of ballots being distributed in Haitian immigrant precincts that were pre-punched for Bush. In Duval County, which includes the city of Jacksonville, nearly half the “spoiled” ballots came in four of the county’s 14 districts—those which were largely black and had gone heavily for Gore. In some black precincts the rate of supposed spoilage rose to 31 percent.

The first recount of voting machines, required by Florida law, cut Bush’s supposed margin from 1,725 to 327 votes, but there were tens of thousands of ballots still uncounted, concentrated in four major metropolitan counties—Miami-Dade, Broward, Volusia and Palm Beach—where there was a substantial Democratic majority. Local officials began hand recounts in each of these areas.

The Republican-controlled state government stepped in to block this vote counting. Florida Secretary of State Katherine Harris, co-chairman of the Bush campaign in Florida and a Bush elector, first ordered the counting stopped. When reversed in court, she said she would not extend the November 14 deadline for reporting final totals, even though her own actions, in initially halting the count, made it impossible for three of the four counties to finish their recounts in time.

This arrogant opposition to demands that all votes be counted typified the stand of the Bush camp from the beginning. It was combined with misinformation and lies. The chief of the Bush recount team, former secretary of state James Baker, declared that machine counts were more reliable than hand counts, although hand counts are accepted as the highest standard in most states, and Bush had signed a Texas state law to that effect.

Bush spokesmen continually declared that the votes in Florida had been counted multiple times, each time showing the Republican the winner, although there were tens of thousands of ballots that were never counted at any time. The purpose of such lies was to cover up the basic fact that a Bush election victory required the suppression of votes cast in Florida.

The response of the Democratic Party and the Gore campaign to this procedural coup d’état was belated and halfhearted. The Gore campaign went to court against Harris’s decision, but sought a recount only in the four large metropolitan counties rather than statewide. In contrast to the ferocious partisanship and aggressiveness of the Bush campaign, Gore put his Florida recount effort under the direction of former secretary of state Warren Christopher, a corporate lawyer who was hostile to a court fight and rejected making any appeal to the democratic sentiments of the American population.

## **The issue of the right to vote**

On Friday, November 17 the issue came to a head when a local judge in

Tallahassee, Florida ordered a halt to all vote recounts, only to be overturned hours later by the Florida state Supreme Court, which barred Harris from declaring Bush the winner of the state’s electoral votes and reinstated the vote counting in Miami-Dade, Broward and Palm Beach counties, although for a limited period.

Four days later, the court issued a decision compelling state officials to accept and certify the hand recounts, based on the right of Florida citizens to vote and to have their votes counted. Citing the Florida state constitution, the seven justices wrote, “The right of suffrage is the preeminent right contained in the Declaration of Rights, for without this basic freedom all others would be diminished.”

The purpose of election laws was not to arbitrarily exclude voters who failed some technical requirement, but to “facilitate and safeguard the right of each voter to express his or her will in the context of our representative democracy.”

The Bush campaign responded with a vitriolic denunciation of the court, a legal appeal to the US Supreme Court, and frenzied efforts to counter the state court’s decision by any means necessary, including violence.

There were calls for the Republican-controlled state legislature to intervene with legislation that would award Florida’s 25 electoral votes to Bush, regardless of the will of the voters. Florida state legislators began preparations for such action, using as a pretext the December 12 deadline for states to submit the list of electors to Washington. In the US capital, leaders of the Republican-controlled Congress suggested they would refuse to accept Democratic electors from Florida when the electoral votes were officially tabulated in January.

The Bush campaign also made an open appeal to the military to intervene. They claimed that the Gore campaign and the Florida Democratic Party were seeking to exclude absentee ballots cast by military personnel overseas. Bush spokesman Marc Racicot declared, “I am very sorry to say but the vice president’s lawyers have gone to war, in my judgment, against the men and women who serve in our armed forces.”

The day after the court ruling, a mob of Bush supporters besieged the Miami-Dade County board of canvassers, grabbing a Democratic lawyer and threatening to assault those involved in manually recounting the ballots. A few hours later the Democratic-controlled board announced it was abandoning its recount, effectively disenfranchising hundreds of Gore supporters whose votes were not registered in the original machine tally.

The result of the recounts in Palm Beach and Broward cut Bush’s statewide lead to only 537 votes. It was more than likely that if Miami-Dade, the state’s largest county, and heavily Democratic, had conducted a similar recount, the tiny Bush lead would have been erased. As it was, the capitulation of the Democrats in Miami-Dade enabled Katherine Harris to certify Bush as the winner of the state’s electoral votes on November 26.

## **The Supreme Court steps in**

A federal appeals court, with a top-heavy majority of Republican appointees, refused to take jurisdiction over the Florida recount, as demanded by the Bush campaign, citing the right of the Florida state Supreme Court to interpret and make final rulings on state law. The Bush campaign appealed to the US Supreme Court, which scheduled a hearing on Friday, December 1.

The three most right-wing justices, Chief Justice William Rehnquist, Justice Antonin Scalia and Justice Clarence Thomas, took the lead in the hearing, suggesting that the Florida state Supreme Court, by elevating the right to vote as the highest principle, was violating Article II of the US Constitution, which delegates to state legislatures the decision on how to

choose electors. There was no constitutional right to vote for president, Scalia said.

Neither the four members of the moderate-to-liberal faction, nor Gore's lawyer Laurence Tribe made any direct attack on this authoritarian argument. The best Tribe could manage was to sputter, "The disenfranchising of the people, which is what this is all about—disenfranchising people isn't very nice."

On Monday, December 4 the US Supreme Court issued a unanimous ruling remanding the case back to the Florida Supreme Court, with instructions that the Florida justices clarify the grounds on which they had overruled the Republican state authorities. The opinion of the unanimous ruling included the Article II argument made by Rehnquist, Scalia and Thomas.

The Florida Supreme Court revisited the arguments made by the Bush and Gore campaigns, as well as lower court rulings against the recounts in various counties. On Friday, December 8 it ordered a recount of all "undervotes" (ballots where punch card readers failed to detect the vote) in all Florida counties, so that in all cases where the voter's intention could be determined by evidence, the vote would be counted.

The majority affirmed basic principles of popular sovereignty: "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," the majority wrote. "We are dealing with the essence of the structure of our democratic society."

The Bush campaign immediately appealed this decision to the US Supreme Court, and a day later, as election officials throughout Florida were beginning the recount, the Supreme Court issued an emergency order to stop. The 5-4 ruling found that "irreparable harm" would be done to the petitioner, George W. Bush—i.e., he would be deprived of the presidency by a valid count of the votes.

While the four-member liberal minority argued that the federal courts had traditionally deferred to state courts in the interpretation of state constitutions and state election laws, the five-member majority discarded their usual posture of support for "states' rights" when it came into conflict with the interests of the Republican Party and its ultra-right backers.

Three days later, the same 5-4 majority handed down its final ruling, declaring, in a perfect Catch-22, that the delay in the recount—caused by its own order—had made it impossible to complete a recount in time to meet the December 12 deadline for certifying electors. Accordingly, the decision of the Republican-controlled state government, awarding the electors to Bush, was upheld.

Because the three ultra-right members could not obtain agreement from two other conservatives, Sandra Day O'Connor and Anthony Kennedy, to base the decision on Scalia's Article II claim that the American people have no constitutional right to vote for president, the court majority found an entirely new legal argument to support its predetermined outcome: putting Bush in the White House.

They ruled that the Florida Supreme Court's decision that election officials in the 64 counties should set the standards for determining voter intent was a violation of the Fourteenth Amendment's requirement of "equal protection of the law." With unparalleled cynicism, Rehnquist, Scalia and Thomas, invariably hostile to "equal protection" arguments when made by plaintiffs who were black, Hispanic, female, poor or otherwise politically disadvantaged, embraced the argument on behalf of the millionaire son of a former president.

Justice John Paul Stevens, in his dissent for the minority, wrote: "Although we may never know with complete certainty the identity of the winner of this year's presidential election, the identity of the loser is perfectly clear. It is the nation's confidence in the judge as an impartial guardian of the rule of law."

## **The capitulation of the Democrats**

The submission of the Gore campaign to the transparently biased and antidemocratic Supreme Court majority was evident at the hearing held on December 11, the day before the final ruling was issued. Gore's lead attorney, David Boies, made no mention of the frontal assault on democratic rights embodied in the position of Scalia and sought to appeal to the two "swing" justices, O'Connor and Kennedy, with legalistic quibbling.

Public spokesmen for the Gore campaign and the Democratic Party repeatedly declared their full confidence in the impartiality and fairness of the high court and their determination to abide by whatever result was handed down. When the ruling was issued, Gore went on national television to publicly declare his capitulation and embrace the presidency of George W. Bush as legitimate.

This capitulation was foreshadowed by the entire conduct of the Gore campaign, even before the Florida crisis. Gore selected as his running mate Senator Joseph Lieberman, perhaps the most right-wing Senate Democrat, largely because of his early public denunciation of President Bill Clinton during the Monica Lewinsky sex scandal.

Throughout the Florida crisis, Lieberman acted as a virtual Republican asset, opposing any serious campaign against the efforts to suppress vote counting and hijack the election, and making public statements that frequently echoed the arguments from the Bush camp.

Gore himself, however, set the tone, initially restricting the recount to four counties, opposing efforts to mount a public political campaign that would mobilize working-class supporters in favor of an exclusive focus on the courts. At one point, when the question arose of absentee ballots cast improperly by overseas military personnel, Gore insisted on dropping the issue, declaring that he could not become president over the opposition of the military.

## **The record of the WSWS**

The *World Socialist Web Site* recognized immediately the fundamental issues of democratic rights at stake in the 2000 election crisis. As socialists, opposed on principle to both big business parties, we did not give political support to Gore or the Democratic Party. But we intransigently opposed the effort of the Bush campaign and the ultra-right to steal the election, and we warned that the success of this effort would have devastating implications for the American people.

In the very first statement published by the WSWS after Election Day 2000, we wrote: "The crisis of the 2000 elections reflects the growth of social contradictions to such a point of intensity that they can no longer be adjudicated within the existing political and constitutional framework... Most fundamental is the enormous growth of social inequality, which has reached proportions not seen in the US since the 1920s. The division of America between a fabulously rich upper crust and the vast majority of the population is, in the end, incompatible with democratic forms of rule."

Only a few days before the Supreme Court ruling, in an address to a public meeting in Sydney, Australia, WSWS International Editorial Board Chairman David North said: "What the decision of this court will reveal is how far the American ruling class is prepared to go in breaking with traditional bourgeois-democratic and constitutional norms. Is it prepared to sanction ballot fraud and the suppression of votes? Is it prepared to

install in the White House a candidate who has attained that office through blatantly illegal and antidemocratic methods?"

North said that unlike the unserious middle-class "left" organizations, which declared the Florida crisis a tempest in a teapot and dismissed its significance, the Marxist movement based its analysis on an understanding of how the political crisis arose from and gave expression to the intensifying class conflicts in America.

He explained that the United States was now the most unequal of the advanced capitalist countries, and that social tensions had reached an extreme pitch, notwithstanding the lack of open class conflict on the surface of society: "Indeed, within the context of the extremes of social inequality, the absence of a politically conscious class struggle testifies, above all, to the intensity of the social oppression of the American working class."

North concluded that the crisis over the 2000 election was not merely an American crisis, but a world crisis, because it represented the political destabilization of American imperialism, the bulwark of world capitalism throughout the 20th century.

"The basic article of faith, for all those who have doubted or denied the viability of Marxism, is that, ultimately, no matter what problem capitalism faces in any part of the world, Uncle Sam will always bail it out," North said. "The events now taking place in America signify the end of that long period where the affairs of world capitalism could rest securely under the leadership of US imperialism. The United States will no longer be able to play that role. However protracted it proves to be, the 2000 presidential election marks a new stage in the crisis of American and, therefore, world capitalism."

Throughout this crisis, the WSWS warned that a government installed by methods of lying and provocation, against the will of the people, would necessarily conduct itself in the same way in both foreign and domestic policy. These warnings have been vindicated again and again in the decade that has ensued: two illegal wars of aggression, in Afghanistan and Iraq; the buildup of the police powers of the federal government, on the pretext of the struggle against terrorism but in actuality directed against the democratic rights of the American people; and in the ever-widening social gulf in America between the financial elite and the working people, culminating in the Wall Street crash of 2008 and the ongoing slide into the worst economic crisis since the Great Depression.

## FURTHER READING

*For the address given by David North, editorial chairman of the WSWS, at a meeting in Sydney, Australia on the eve of the Supreme Court decision, see:*

Lessons from history: the 2000 elections and the new "irrepressible conflict"

*To review the day-by-day analysis of the 2000 election crisis on the World Socialist Web Site, the author recommends the following articles and editorial board statements:*

The 2000 US election results: the constitutional crisis deepens

From impeachment to a tainted election: The conspiracy against democratic rights continues

The Bush campaign and the rise of the political underworld

Court slows Bush grab for power: America at the knife-edge

The Republican right prepares for violence

Court rulings in US election crisis attack democratic rights

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

Supreme Court halts Florida vote count: A black day for American

democracy

Supreme Court overrides US voters: a ruling that will live in infamy

Gore concession speech: Democrats capitulate to right-wing attack on voting rights

*For an overview of the historical decay of American democracy and the meaning of the US election crisis for world politics, see this report to a meeting of the WSWS International Editorial Board by Barry Grey:*

The world historical implications of the political crisis in the United States

*For an analysis of the 1998-99 impeachment crisis and its implications for democracy in America, see this statement of the Editorial Board:*

The impeachment of President Clinton: Is America drifting towards civil war?



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