Don't Let Judges Jimmy Elections

by Phyllis Schlafly May 12, 2004

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How the votes in this year's November election will be counted broke into the news last week when California Secretary of State Kevin Shelley banned the use of 14,000 touch-screen voting machines because of security and reliability concerns. He "decertified" 28,000 others until steps are taken to upgrade their security.

Shelley declared all touch screens "defective or unacceptable" because they provide no "meaningful recount of the vote" and are unsecure, unstable and technologically demanding for poll workers.

That's quite a slap at the Ninth Circuit U.S. Court of Appeals which ruled 3-0 last year that the California Recall election should be postponed because there was a likelihood that the ACLU could prove in a trial that the new touch-screen voting machines would be more accurate than the system California had used for decades. That's what the judges said, but with the Recall election already underway and absentee ballots being counted, everyone knew that the real reason the court tried to postpone the Recall election was to help save Governor Gray Davis from political liquidation.

To try to justify their decision, the Ninth Circuit judges said the Recall should be suspended in order for the United States to show "our commitment to elections held fairly, free of chaos" at a critical time when we are trying to persuade people of other nations of the value of free and open elections. The implication was that if California didn't postpone the Recall to give time to install touch-screen machines, America would be setting a bad example for Iraq and Afghanistan.

As further justification for this off-the-wall reasoning, the Ninth Circuit judges used some meaningless buzzwords to suggest that California urgently needed a new high-tech voting system. The court's decision stated that "the fundamental right to have votes counted in the special recall election is infringed because the pre-scored punch-card voting systems used in some California counties are intractably afflicted with technologic dyscalculia."

It really was the activist judges who were afflicted with the urge to render a political decision to help the Democrats, and the touch-screen system that was afflicted with the problem of counting the ballots accurately. Shelley said that the touch-screen machines "jeopardized the outcome" of the March 2004 primary because thousands of San Diego voters were turned away from polling places when touch-screen machines malfunctioned.

Fortunately, when this political decision was appealed, the full Ninth Circuit allowed the Recall election to proceed as scheduled. The voters then elected Arnold Schwarzenegger in a fair election with ordinary ballots.

Since the 2000 presidential election, states and counties in California, Florida and elsewhere have spent millions of dollars to go high-tech by buying tens of thousands of expensive touch-screen voting machines. Now they find that the touch-screen machines may have more defects than the systems they are replacing, and those defects can be concealed because there is no paper trail to document the ballots.

In a special election in Florida in January, 134 votes weren't counted, apparently because people didn't use the touch-screen machines properly. But Ellyn Bogdanoff won the race by only 12 votes.

With surveys showing that the 2004 presidential election will be a cliff-hanger, the Democrats are desperately searching for new constituencies they can harvest. For example, giving the franchise to the nation's four million convicted felons could be enough to elect John Kerry.

Realizing that Al Gore could have carried Florida in 2000 if convicted felons had voted, Democratic lawyers and lobbyists hope to give felons the franchise before the November election. They are trying to get activist judges to throw out or rewrite state laws that place restrictions on the ability of convicted felons to vote.

In New York, Democratic officials, labor unions and pressure groups are promoting the outlandish notion of allowing legal immigrants who are not U.S. citizens to vote. New York City has a million legal immigrants of voting age who are not citizens, more than enough to swing any election.

In addition to trying to gather the votes of convicted felons who have been released from prison and of non-citizens, will the Democrats also be trying to round up the votes of prisoners? Six current Supreme Court justices have stated that they will look to foreign courts for guidance in interpreting U.S. laws, so we should be on guard against a possible next step in the Democrats' search for new voting blocs.

In March 2004, the European Court of Human Rights in Strasbourg ruled that laws preventing convicted prisoners from voting in elections are a breach of their human rights. The court ruled that it cannot accept "an absolute bar on voting by any serving prisoner..."

The Republicans are spending tens of millions of dollars to promote their message. It is just as important to prevent activist judges from rewriting our election laws and from interfering with ongoing elections.