# Will We Let Judges Fix Elections?

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Al Gore and his allies in the media have popularized the notion that an election loser can use the courts to change the rules. Activist judges have been rewriting laws for many years, but now the trend is for activist state judges to try to rig an election.
This is a very bad idea. Not even banana republics let judges interfere with elections.

U.S. Senator Robert Torricelli (D-NJ) has been facing corruption allegations for several years, and a man who paid him bribes is now in jail. Many thought that Clinton's Department of Justice was going to indict Torricelli, but somehow that never happened.

The Senate Ethics Committee, controlled by Democrats, gave Torricelli a pass. The Democrats closed ranks around him, Senate leader Tom Daschle (D-SD) campaigned for him, and Torricelli easily won renomination in New Jersey's primary this year.

Everything was going smoothly for Torricelli until he dropped dramatically in the polls following a sensational TV interview with his convicted benefactor, David Chang. The Democrats became desperate to save the seat in order to hang on to their one-vote majority in the Senate.

By the time Torricelli announced his intention to drop out, the election had already begun. Ballots had been printed, overseas military ballots had been mailed, some servicemen had already voted, and the legal deadline for substituting another candidate had passed.

New Jersey law clearly states that a name can be substituted on the ballot "in the event of a vacancy, howsoever caused, among candidates nominated at primaries, which vacancy shall occur not later than the 51st day before the general election." But when Torricelli announced his intention to withdraw, it was only 36 days before the election, so the Democrats asked the New Jersey Supreme Court to rewrite the law.

The New Jersey Supreme Court accommodated the Democrats, changed the rules, and simply declared that the change was fair. The court held that it "should invoke its equitable powers in favor of a full and fair ballot choice for the voters of New Jersey."

One has to wonder about the remarkable confidence the Democratic Party had that the New Jersey Supreme Court would maneuver around the clear deadline in the law. Was the fix in before they pressured Torricelli to pull out?

The problem with the court's decision is that no change in the rules during or after an election can ever be fair unless the change is to accommodate an absolutely unforeseen circumstance (such as the World Trade Center collapse). There was nothing sudden about Torricelli's unfitness to be a Senator because news of his criminal associations had been circulating for a long time.

The only way to hold a fair election is to have an agreed-on procedure in advance. Even seemingly fair changes in the rules can unfairly change the outcome of any close election.

In 2000, the Florida Supreme Court had to be stopped from a post- election rewriting of the procedures for counting ballots. It was wholly necessary and proper for the U.S. Supreme Court to preserve the integrity of the presidential election.

The U.S. Supreme Court decision in Bush v. Gore in 2000 stands for the principle that the rules for a federal election must be determined in advance by the legislature, and that the state must stick to those rules. But once again, the Democrats have proved they can get state appellate judges to jimmy an election.

In response to complaints about butterfly ballots, some areas are experimenting with electronic voting machines, but those machines make it easy to substitute a name on the ballot only hours before an election. Should a party be allowed to do that if polls show a candidate is about to lose?

The purpose of the deadline in the law is not merely to allow time for ballots to be distributed. It is also to allow time for the candidates to debate the issues and the voters to become informed.

The New Jersey story gives us a bitter lesson in how Republicans are betrayed by RINOs (Republicans In Name Only). RINO Governor Christine Todd Whitman appointed six out of the seven New Jersey Supreme Court judges, several of whom were Democrats. Two of the judges (plus the spouses of two others) had made political donations to Torricelli.

Whitman selected judges who could be counted on to implement her liberal pro-abortion agenda, and now Republicans can see the fruits of her appointments: violation of election law and possibly the loss of the U.S. Senate. This is the same New Jersey Supreme Court that unanimously ordered the Boy Scouts to change its rules and employ gay scoutmasters (fortunately, reversed by the U.S. Supreme Court).

Elections should follow pre-election rules, whether one side later objects or not. If courts are allowed to manipulate elections by changing the rules in the middle of or after the election, then we can expect crooked elections all over the country.