

Republic vs. Democracy

by Mark E. Smith

Do you think we have a democratic form of government? Think again! When progressives call for democracy, the response from regressives is often that we do not have a democracy, we have a republic. A republic, we're told, is a representative form of democracy, so many people think that we do at least have a type of democracy. We do not. The republic we have in the USA is not only undemocratic, it is anti-democratic. The reason for this is that while we supposedly have the right to elect our representatives, in reality we do not, as I explain below, and we also lack the power to remove them for refusing to represent us, as many of us have already learned the hard way. Without the power to elect representatives who will protect our interests, and to remove them if they fail to do so, we cannot be said to have a democratic form of government.

Although the right to choose our representatives was granted in Article I, Section 2, of the Constitution, it was taken away by Section 5, which says that, "Each House shall be the judges of the Elections, Returns and Qualifications of its own Members...." I hadn't understood what that meant until Congress swore in a Representative from San Diego 3 weeks before the election was certified and with at least 68,000 votes remaining uncounted. When some of us tried to get a recount to see if he'd actually been elected, the elections officials placed several obstacles in our path and we ended up in court attempting to persuade a judge to order that there be a recount. That's when the

attorney for Congress sent a letter to the judge citing the above passage from Section 5 and explaining that since Congress alone is the sole judge of the elections of its members, no court may order a recount.

The letter did mention that the Constitution provided a remedy, which was for the losing candidate to file a Federal Election Contest with Congress, but in our case the losing candidate, being a Democrat, chose to concede in the tradition established by Al Gore and John Kerry, rather than to fight. In subsequent elections several Democrats have filed election contests with Congress, but since the Democrats won a majority in '06, Democratic Speaker of the House Nancy Pelosi has chosen to swear in the Republican in every case, without bothering to look at the evidence that the election had been stolen. This may or may not have been because Pelosi wanted more Republican votes to help keep impeachment off the table, but in any event it did not serve the interests of the constituents of the districts that had elected a Democrat and wound up with a Republican.

According to Constitutional expert Paul Lehto, if Congress wanted to swear in a representative even before an election had been held, they could also do so. All they would have to do is "judge" that an election had been held, which they could do by means of an unofficial poll or with no basis whatsoever, and once that representative had been sworn in, only Congress itself could unseat them – we the people have no Constitutional recourse whatsoever. But since the advent of electronic voting machines has made elections so

easy to steal, Congress has no reason to preempt elections. They simply let the machines steal the elections and then swear in the "winner." Here in San Diego where our new elections officials are former Diebold spokesperson Deborah Seiler, and Michael Vu of Cuyahoga County, Ohio, election fraud infamy, we have every reason to fear more stolen elections. Let me tell you about Michael Vu.

In the 2004 presidential election, two Cuyahoga County elections officials were caught rigging the recount. The videotape, taken by citizen election activist Kathleen Wynne, was later introduced in court, and the officials, Jacqueline Maiden, the Board of Elections' third highest employee at the time, and ballot manager Kathleen Dreamer, were prosecuted on 4th degree felony and 1st degree misdemeanor charges of mishandling ballots to make the recount match the machine count, pled guilty, and were sentenced to 18 months in prison. Despite the fact that Judge Peter Corrigan told the convicted officials, "Protecting other people, I don't know, it seems unlikely that your superiors didn't know," they chose not to implicate their superior, Michael Vu. Vu then stated publicly that he didn't think that they had done anything wrong, as they had followed the same procedures that had always been used in Cuyahoga County. Vu then resigned from his position in Ohio and was quickly hired as the Assistant Registrar of Voters in San Diego, California. When irate citizens then protested to the San Diego County Board of Supervisors that Vu had stated clearly that he didn't consider felony vote rigging to be anything wrong, and that therefore he couldn't tell right from wrong and

wasn't even competent to stand trial, no less hold public office, County Clerk Walt Eckard replied, "I've listened to you, I disagree, and that's that."

Well, that would have been that, except that last week I got a glossy brochure in the mail from the San Diego Registrar of Voters office which is looking for pollworkers. I phoned them to find out how I could apply to be an election observer, was put through to Deborah Seiler's secretary, Darren Neal, and he told me he'd find out and get back to me by email. His subsequent email said that I'd have to have a face to face interview with Seiler, and to phone him to make an appointment. But when I phoned, I found myself speaking directly with Seiler and we had a lengthy and pleasant conversation until I mentioned that I did not trust Michael Vu and explained why. Seiler said, "That's not true. Those convictions were dismissed and it is as if it never happened."

Never happened? Shocked, I shot an email off to Kathleen Wynne, who contacted an activist in Cuyahoga County, and we learned that even though there had been no new evidence in the case, and there was therefore no legal basis for a retrial, the perps had been granted a new trial anyway. But there was no actual trial. This time the fraudsters pled "no contest," which means that they neither admitted nor denied guilt, and on November 5th, 2007, the new judge issued a ruling of "no finding," which meant that not only was there no trial, his ruling cannot be appealed. He then ordered the felons to be released from prison and sentenced instead to a 6-month diversion program, after the successful

completion of which, their convictions would be expunged and could no longer be used against them in court. The problem here is that the Cuyahoga County diversion program is designed to rehabilitate 1st-time offenders who have admitted their crimes and taken responsibility for what they did. In this case the criminals neither admitted nor denied their crimes (although they had previously pled guilty to the same charges), and their counsel stated that they took no responsibility for their actions. A suspicious person might conclude that this was their reward for not implicating their boss, but that is mere conjecture. In any event, Seiler was either misinformed or lied to me, as it is not "as if it never happened." The videotaped evidence of the Cuyahoga elections officials rigging the recount is proof that it did happen, and although it cannot be used against them in court again, it can be used for any other purpose, such as public forums and documentary films to prove that they rigged the recount. And in case you're wondering, both elections officials are Democrats and the beneficiary of the recount that they rigged was Republican George Bush. Starting to see a pattern?

Speaking of Democrats, you may have heard that California's Democratic Secretary of State, Debra Bowen, has decertified the voting machines. That isn't exactly what happened either. Bowen's to-to-bottom review of voting machines used in California found that none of them could be secured against fraud and therefore none of them could be certified. But since elections officials in California have spent a lot of taxpayer money on those machines, there was strong pressure on Bowen to allow them to continue to be

used. So Bowen issued a strange document entitled, "Decertification and Conditional Recertification" of the voting machines. While many election reform activists with ties to the Democratic Party took this to mean that the voting machines had been decertified and would not be used in future elections, I understood it to mean that the machines had been recertified and would be used.

The vendors and elections officials interpreted it the same way I did, and during our phone conversation, Seiler assured me that the machines would be used for the three elections to be held in San Diego in 2008. Since the machines cannot be secured against fraud, they will not be sent home with pollworkers prior to the elections, as they were in the past, and they will not be used in the precincts, except for one machine per precinct to accommodate the disabled. Instead, San Diegans will vote by mail or at the polls on paper ballots, and the paper ballots will then be taken to the office of the Registrar of Voters where a large room with a hundred optical scan machines will be set up. The paper ballots will be fed into the machines by pollworkers and elections officials, and then the memory cards will be removed from the optical scan machines and fed into the GEMS central tabulator for a final tally. The results will then be announced, transmitted to the Secretary of State, and broadcast over the media. For all intents and purposes the election is then over, and anything past that point will be shrugged off as the futile attempts of sore losers and conspiracy theorists to undo what has already been done and cannot be undone. But to satisfy SOS Bowen's conditions for the use of voting machines, some

mandatory spot checks in the form of partial hand recounts will be performed afterwards, possibly the next day, or however soon the elections officials find it practical.

So I asked Seiler what the chain-of-custody of the ballots and the protocols for their security would be between the end of the machine count and the beginning of the recount. Seiler assured me that the ballots would be kept in locked cages at election headquarters with guards. Therefore the only people who would have access to them overnight would be Seiler and.....wait for it....Michael Vu! In supporting his hiring, San Diego officials had said that Vu was "battle tested." Indeed he is. This time there won't be any pesky video cameras around to record how the recounts are rigged.

To a casual observer it might appear that California's Secretary of State and local elections officials have bent over backwards to give election activists what they want. There will be paper ballots. Voting machines will not go home unattended with pollworkers the way they did previously. Observers will be allowed to watch the elections and the recounts. But of course since the human eye cannot read what is on the memory card of an optical scan machine, or what is going on inside a GEMS central tabulator as it counts or miscounts the votes, there really won't be anything to see. And since any ballot-rigging to make the hand recounts match the machine counts will be done secretly, overnight, at election headquarters, that will also be undetectable by observers.

And, as usual, once Congress swears somebody in, no action by the people can unseat them. All we can do is keep begging our representatives to represent us (and wondering why they don't), and waiting for the next rigged election, and the next rigged election, and the next rigged election, in hopes of voting them out (and wondering why their replacements aren't any better).

In a direct democracy, the people can vote directly on issues that effect them and on leaders to represent them. They can also remove leaders who fail to represent them or misrepresent them. In a republic like ours, we can vote for representatives, but we do not have the final say in who those representatives are, and we cannot remove them if they fail to represent us or misrepresent us. So it is incorrect to say that our republic is a form of representative democracy. It is not a democracy at all, it is an enemy of democracy. Some of us have learned this the hard way because we've been in the trenches on the other side of those battles that Michael Vu was tested in. And we lost.

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