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By Patrick Martin

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Supreme Court fight deepens political crisis surrounding US elections

The death of Justice Ruth Bader Ginsburg, the senior Democratic Party-aligned member of the Supreme Court, has exacerbated political conflicts in the United States, with President Trump and Senate Republican Leader Mitch McConnell threatening to fill the vacancy with an ultra-right nominee before the November 3 election.

Trump announced Saturday that he would nominate a female jurist to the open seat on the Supreme Court, citing as possible choices two ultra-right Catholics who are well-known opponents of the *Roe v. Wade* decision that legalized abortion: Judge Amy Coney Barrett of Indiana and Judge Barbara Lagoa of Florida, a Cuban-American.

White House officials indicated that a nomination could come with extraordinary speed, as soon as Wednesday, in order to meet a timeline for hearings before the Senate Judiciary Committee and a Senate debate and confirmation vote before Election Day.

Democrats complained of the blatant political cynicism of McConnell, who blocked even a hearing in 2016 on President Barack Obama's nomination of Merrick Garland to fill the vacancy created by the sudden death of the leader of the right-wing bloc on the high court, Antonin Scalia.



Senate Majority

Leader Mitch McConnell of Kentucky walks to the Senate floor, September 14, 2020, on Capitol Hill in Washington. (AP Photo/Jacquelyn Martin)

Four years ago, McConnell bloviated about the American people having the right to decide on filling the court vacancy through their votes in the presidential election, which was nine months away. Now, with only six weeks before Election Day, and after early and mail-in voting has already begun, he is pushing for immediate Senate confirmation of a Trump nominee, the people be damned.

There are several considerations involved in the drive to fill the Ginsburg vacancy as quickly as possible. Trump and McConnell calculate that the prospect of assuring a 6-3 ultra-right majority on the court, likely sufficient to reverse the *Roe v. Wade* decision, could mobilize Christian fundamentalist voters behind a Republican election campaign that has been flagging.

Trump trails Democrat Joe Biden in most polls, nationally and in the key “battleground” states that will decide the contest in the Electoral College. Wall Street and much of corporate America have thrown their support to Biden, who has raised far more campaign cash than Trump and is dominating the airways just as early voting begins in many states.

Senate Republicans are also in danger of losing their narrow three-vote majority in the upper house, with Republican incumbents trailing in the polls in Arizona, Colorado, Iowa, North Carolina and Maine, and only narrowly ahead in a half-dozen other states, while only one Democrat, in Alabama, is in serious danger.

The makeup of the high court could play a major role in deciding disputes arising from the election itself. A 6-3 right-wing majority would be a far more favorable arena for Trump if he challenges mail-in ballots or makes some other legal effort, modeled on the 2000 *Bush v. Gore* decision, to shut down vote-counting and have himself declared the winner.

There have already been more than 200 federal lawsuits filed over various aspects of the election in 45 states, and it is widely expected that some of these issues will reach the Supreme Court for decision before November 3. “We cannot let Election Day come and go and with a 4-4 court,” said Republican Senator Ted Cruz of Texas. “We risk a constitutional crisis.”

In addition, just two weeks after the election, the Supreme Court is to hear a challenge to the Affordable Care Act brought by a group of Republican state attorneys general. If Ginsburg is replaced by a conservative justice, the 5-4 decision that upheld the constitutionality of Obamacare in 2012 could well be overturned.

The reactionary and anti-democratic character of the Trump-McConnell effort to establish unchallenged right-wing domination of the Supreme Court has produced widespread popular outrage. Thousands of people flocked to Capitol Hill in Washington to pay their respects to Ginsburg, and opinion polls show overwhelming public opposition to Trump nominating someone for a lifetime position on the court on the eve of an election where he could well be voted out of office.

The response of the Democratic Party leadership in Washington, however, is a combination of cowardice and impotence. They shake their fists at Trump, but they are far more afraid of the consequences of any direct appeal to popular hostility to this hated right-wing government.

This attitude found expression in an unusual Sunday night press conference by Senate Minority Leader Charles Schumer and Representative Alexandria Ocasio-Cortez. The “senator from Wall Street,” as Schumer is known, and the professed democratic-socialist Ocasio-Cortez had never before made common cause.

They came together to denounce McConnell’s plan to hold a confirmation vote on Trump’s nominee to fill the Ginsburg vacancy, warning of a massive threat to the basic rights of the American people. Trump would appoint a justice committed to overturning reproductive rights, labor rights, civil rights, voting rights, the rights of LGBTQ people, including gay marriage, and turn the clock back, they declared.

All this is perfectly true, but what the two Democrats actually proposed to do about it was ... nothing. They urged those watching to call, write and email their senators, particularly Republican senators in contested states.

McConnell commands a 53-47 majority in the Senate, and two Republicans have already announced their opposition to a confirmation vote before the election. “We only need two more senators,” Schumer said. “We need to tell Mitch McConnell he is playing with fire,” Ocasio-Cortez added.

“If Leader McConnell and Senate Republicans move forward with this, then nothing is off the table for next year,” Schumer said. “Nothing is off the table.” This bluster is revealing. Schumer threatens consequences in 2021, effectively conceding that nothing can be done before the election and the installation of a new Congress and president, except to appeal to a handful of “persuadable” Republican senators.

If the Democrats issued a call for a mass demonstration in Washington to oppose the Trump-McConnell effort to fill the Supreme Court vacancy on the eve of the election, they know very well that masses of people would turn out. That is, of course, exactly why they don’t do it. They are far more afraid of the social forces that would be unleashed by such an appeal than of any attacks Trump and the Republicans make on the democratic rights of working people.

Particularly significant is the subservient role of Ocasio-Cortez, a member of the Democratic Socialists of America, who has been glorified by the pseudo-left groups as proof that their policy of pushing the Democratic Party to the left can transform this right-wing capitalist party into an instrument for progressive social change.

One reporter asked Ocasio-Cortez about impeaching Trump a second time in an effort to block the Senate confirmation vote (under Senate rules, an impeachment vote by the House forces a Senate trial that takes precedence over all other business). She replied meekly that impeachment is “up to the Democratic leadership,” i.e., Nancy Pelosi and Steny Hoyer, both die-hard defenders of big business and the US political establishment.

The performance of the Democrats has been so pathetic that even one of their usual media acolytes, CNN legal analyst Jeffrey Toobin, was aghast. He commented Sunday night that even if the Democrats win control of the Senate and take the White House, the question is,

“will they still be McConnell’s patsies?” That has been their role since Trump took office, he conceded.

The enumeration by Schumer and Ocasio-Cortez of the rights that would be endangered if Trump is allowed to proceed with his third nomination of a Supreme Court justice only underscores the extremely attenuated character of American democracy. How is it possible that the rights of tens of millions of people—workers, blacks, gays, women, immigrants—can be threatened by one judge, or two senators, or even a president?

These rights were won in struggles carried out over many decades and involving millions upon millions of working people. Yet now, the Democrats admit, they hang by a thread.

The blatant effort by Trump and McConnell to rig the Supreme Court underscores the fraudulent character of American democracy. Trump himself occupies the White House only because of the anti-democratic Electoral College system, having lost the popular vote by more than three million.

The Senate is itself thoroughly anti-democratic, with California (population nearly 40 million) and Wyoming (population under 600,000) having two senators apiece. McConnell’s Republicans hold a 53-47 majority, but Republican senators represent barely 40 percent of the US population.

And then there is the Supreme Court itself: nine unelected justices, holding seats for life, all from upper-class Ivy League colleges, all chosen through a process that insures that every single one is a die-hard defender of the capitalist system and American imperialism.

The intensity of the conflict raging within the US ruling elite, and the open attacks on democratic principles and constitutional legality by Trump in particular, have led even bourgeois media commentators to express concern. Thus Dan Balz of the *Washington Post* wrote Sunday: “Depending on the outcome of the election and of the resolution of who fills the Ginsburg seat, the battle could easily expand to an even more charged debate over whether the high court speaks for and represents the views of a majority of Americans or even whether the democratic system of government more broadly has become undemocratic.”

Underlying the disintegration of American democracy is the deepening social crisis. Tens of millions are out of work as a result of the pandemic, which has infected seven million and killed 200,000 Americans. One million people face foreclosure imminently. Millions have been cut off from federal extended unemployment benefits and face a complete cutoff of all income support.

Neither capitalist party speaks for the working people who are the vast majority of the population. The Democrats hail the unions, the corrupt industrial police of the corporations, as though they represented working people. Trump dispenses with that pretense, offering himself as an American *Führer* who supposedly will uphold the interests of working people by waging economic warfare against China, Mexico and Europe.

The alternative for the working class is to fight against the real source of all the attacks on jobs, living standards and democratic rights—the capitalist profit system. This means a break with the capitalist two-party system and the building of a mass independent political movement of workers to fight for a socialist program. This is the policy advanced by the Socialist Equality Party and our 2020 presidential and vice-presidential candidates, Joseph Kishore and Norissa Santa Cruz.

pitalistischen Gesellschaft zeichnete.

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