

BACKGROUND ESSAY

BUSH V. GORE (2000)**Nov. 7,
2000**

On the evening of November 7, 2000, many Americans went to sleep believing they knew who would be President of the United States for the next four years. But they woke up to find themselves, along with the rest of the nation, in a kind of limbo which would last more than a month. Who had won the election of 2000: Texas Governor George W. Bush, or Vice President Al Gore?

News stations projected Gore as the winner of Florida by 8pm. But by 10pm, those same stations took back their projections. By 2am, Bush was in the lead in Florida, and the television networks declared him the winner. But not long after that, Florida changed to “too close to call” with Bush leading Gore by 1,784 votes (2,909,135 to 2,907,351).

Nationally, Bush had won 246 electoral votes; Gore had won 260. The number of electoral votes needed to win the election is 270. Florida’s twenty-five electoral votes hung in the balance. The outcome of the election would depend on how Florida voted.

The Recounts Begin

Florida election law called for an automatic machine recount when the margin of victory was less than one half of one percent. After the machine recount, Bush’s lead was down to 327 votes.

As allowed under Florida law, Gore requested hand recounts of ballots in Palm Beach, Broward, Miami-Dade, and Volusia counties. About 1.8 million votes had been cast in these heavily Democratic counties.

Florida Law

Florida law permitted the manual recounts. The law also required counties to deliver their results to the Florida Secretary of State by November 14. Some counties said this was not enough time.

To further complicate things, Florida had two statutes about late vote counts which seemed to contradict each other. One statute said the Secretary of State “shall” ignore late returns; the other statute said the Secretary “may” ignore late returns.

Florida Secretary of State Katherine Harris—who was also the co-chairman of Bush’s Florida campaign—said she would not take results submitted after the legal deadline. Gore filed suit to force Harris to accept the late returns. Bush and Secretary of State Harris asked the Florida Supreme Court to block the recounts, but the Court refused. The Florida Supreme Court ordered Harris not to certify the state’s election results until an emergency hearing could take place.

The Florida Supreme Court

The Florida Supreme Court ruled (7-0) that the recounts should continue. Further, the Court ordered that the votes had to be counted in the state’s totals despite the deadline in Florida law. The Court set a deadline of 5pm on November 26 for counties to submit their totals.

Florida Governor Jeb Bush—brother of George W. Bush—asked the US Supreme Court to review the Florida high court’s ruling. In *Bush v. Palm Beach County Canvassing Board*, the Supreme Court unanimously held that there was “considerable uncertainty as to the precise grounds for the decision.” The Supreme Court sent the case back to Florida with questions for the state Supreme Court.

Miami-Dade County officials stopped their manual recount, leaving 9,000 votes not counted; Palm Beach County had about 1,000 votes left to count by the 5pm deadline on November 26. Harris turned down the county’s request for an extension and rejected the partial vote count that had been submitted by the deadline.

**Nov. 13,
2000****Nov. 21,
2000****Nov. 26,
2000**

Gore Contests the Election

On November 26, the deadline set by the Florida Supreme Court, Harris certified the results of the election: Bush had won Florida and, therefore, the Presidency. With the election results now certified, Gore officially contested the Florida election results. He challenged the results in Palm Beach and two other counties.

While all these arguments were taking place in the court system, the Florida legislature called a special session to consider whether to appoint the state's electors itself. It did not do so.

**Dec. 8,
2000**

The Florida Supreme Court reasoned that accuracy was more important than finality, and ordered a statewide manual recount. The vote was 4-3. Neither Bush nor Gore had asked for a state-wide recount. The state-wide recount was halted the next day by the US Supreme Court, which issued a stay (an order to stop until a hearing can take place). The case would go before the US Supreme Court on December 11—a week before the Electoral College was set to cast its votes. The question before the US Supreme Court would be: Did the Florida Supreme Court exceed its authority by ordering a state-wide manual recount? And, would such a recount be constitutional?

**Dec. 11,
2000**

The Constitutional Arguments

George W. Bush argued that a statewide manual recount would violate the United States Constitution's Fourteenth Amendment. The Fourteenth Amendment says that "no state shall ... deny to any person within its jurisdiction the equal protection of the laws." Since counties were using different standards to decide which votes would count, Bush argued that Florida was not treating all its citizens equally under the law.

Gore argued that there was a uniform standard for re-counting votes. The standard, as stated in Florida statute, was that a vote would count if the clear intent of the voter was reflected in the ballot. Gore also pointed out that there were five times as many "undervotes" (votes where machines registered no vote for President) in punch-card counties than in counties with optical voting machines. Therefore, he argued, the recount standard would actually be more uniform than the standards applied on Election Day.

The Supreme Court agreed with Bush and ruled (5-4) to halt the manual recounts. Therefore, the Florida results as certified by the Secretary of State were final, and George W. Bush became the forty-third President of the United States, taking the oath of office on January 20, as specified in the Twentieth Amendment.

**Dec. 12,
2000**

Comprehension and Critical Thinking Questions

1. What state was at the center of the presidential election controversy in 2000?
2. What was the significance of the November 26 deadline set by the Florida Supreme Court?
3. What did the Florida Supreme Court order in response to Gore's challenge of the Florida election results?
4. What was Bush's argument before the Supreme Court? What was Gore's argument?
5. How did the Supreme Court rule in *Bush v. Gore* (2000)?

DOCUMENT A

United States Constitution, Article II, Section 1 (1789)

Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors...

- 1. Which branch of state governments has the power to direct the appointment of presidential electors?**

DOCUMENT B

The Fourteenth Amendment (1868)

No state shall ... deny to any person within its jurisdiction the equal protection of the laws.

- 1. Rephrase this section of the Fourteenth Amendment in your own words.**

DOCUMENT C

FL Stat. Title IX ch.101.5614(5) Canvass of Returns (2000)

...No vote shall be declared invalid or void if there is a clear indication of the intent of the voter as determined by the canvassing board.

- 1. What does this Florida statute say about declaring votes invalid?**

DOCUMENT D

Florida Statute Title IX, Chapter 102: 102.168(8) Contest of Election (1999)

The circuit judge to whom the contest is presented may fashion such orders as he or she deems necessary to ensure that each allegation in the complaint is investigated, examined, or checked, to prevent or correct any alleged wrong, and to provide any relief appropriate under such circumstances.

- 1. What does this Florida statute empower judges to do in election contests?**

DOCUMENT E

Florida Statutes Title IX, Chapter 102: Deadline for submission of county returns to the Department of State (2000)

102.111

If the county returns are not received by the Department of State by 5 p.m. of the seventh day following an election, all missing counties shall be ignored...

102.112

Returns must be filed by 5 p.m. on the 7th day following the...general election... If the returns are not received by the department by the time specified, such returns may be ignored...

- 1. What date was “the seventh day following an election” in 2000?**
- 2. How do these two statutes differ?**
- 3. Why was the difference in the statutes’ wording important in the contested Florida election?**

DOCUMENT F

Florida Supreme Court Decision (7-0) in *Palm Beach County Canvassing Board v. Katherine Harris*, November 21, 2000

Because the right to vote is the pre-eminent right in the Declaration of Rights of the Florida Constitution, the circumstances under which the Secretary of State may exercise her authority to ignore a county’s returns filed after the initial statutory deadline are limited....

We must invoke the equitable powers of this Court to fashion a remedy that will allow a fair and expeditious resolution ... Accordingly, ... amended [vote] certifications must be filed ... by 5pm on Sunday, November 26, 2000 and the Secretary of State ... shall accept any such amended certifications...

- 1. How did the Florida Supreme Court interpret the statutes in Document E?**
- 2. Was the Florida Supreme Court’s action consistent with powers given to the courts in Document D?**
- 3. What did the Florida Supreme Court order the Secretary of State to do?**

DOCUMENT G

Gore v. Harris, Majority Opinion (4-3), Florida Supreme Court, December 8, 2000

The need for accuracy must be weighed against the need for finality.... we must do everything required by law to make sure that the legal votes that have not been counted are included in the final election results....

Only by examining the contested ballots, which are evidence in the election contest, can a meaningful and final determination ... be made.

Claims have been made that ... because this is a statewide election, statewide remedies would be called for. ...We agree....

In tabulating the ballots and in making a determination of what is a “legal” vote, the standard to be employed is that established by the Legislature in our Election Code which is that the vote shall be counted as a “legal” vote if there is “clear indication of the intent of the voter.”

- 1. What “remedy” did the Florida Supreme Court order in this decision?**

DOCUMENT H

Election Workers Check Ballots in Broward County, Florida



- 1. Describe the manual recount process as depicted in this photograph.**

DOCUMENT I

Oral Arguments (Bush), *Bush v. Gore* (2000)

Mr. Olson (representing Bush): The Florida Supreme Court...changed statutory deadlines, severely limited the discretion of the state's chief election officer, changed the meaning of words such as "shall" and "may" into "shall not" and "may not," and authorized extensive, standardless, and unequal manual ballot recounts...

- 1. What objections does Bush's attorney make to the Florida Supreme Court rulings?**

DOCUMENT J

Oral Arguments (Gore), *Bush v. Gore* (2000)

Mr. Boies (representing Gore): The standard is whether or not the intent of the voter is reflected by the ballot. That is the uniform standard throughout the state of Florida. ...Some states have made specific criteria their law. Other states, ten or eleven of them ... have stuck with this very general standard.

- 1. What argument does Gore's lawyer make about the standard used in Florida manual recounts?**

DOCUMENT K

MAJORITY OPINION



Bush v. Gore (2000)

Equal protection applies ... to the manner of [the right to vote]. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another.

Much of the controversy seems to revolve around ballot cards designed to be perforated by a stylus but which, either through error or deliberate omission, have not been perforated with sufficient precision for a machine to count them. In some cases a piece of the card—a chad—is hanging, say by two corners. In other cases there is no separation at all, just an indentation.

The Florida Supreme Court has ordered that the intent of the voter be discerned from such ballots.... Florida's basic command for the count of legally cast votes is to consider the "intent of the voter." This is unobjectionable as an abstract proposition and a starting principle. The problem [is] in the absence of specific standards to ensure its equal application....

The standards for accepting or rejecting contested ballots might vary not only from county to county but indeed within a single county from one recount team to another.

When a court orders a statewide remedy, there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied....

[Federal law says that] any controversy or contest that is designed to lead to a conclusive selection of electors [must] be completed by December 12. That date is upon us, and there is no recount procedure in place under the State Supreme Court's order that comports with minimal constitutional standards. Because it is evident that any recount seeking to meet the December 12 date will be unconstitutional for the reasons we have discussed, we reverse the judgment of the Supreme Court of Florida ordering a recount to proceed....

- 1. Why did the US Supreme Court stop the statewide manual recount?**
- 2. Why was the date of December 12 important?**

DOCUMENT L

Bush v. Gore (2000), Dissenting Opinion, Justice Stevens

The Constitution assigns to the States the primary responsibility for determining the manner of selecting the Presidential electors. When questions arise about the meaning of state laws, including election laws, it is our settled practice to accept the opinions of the highest courts of the States as providing the final answers....

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.

- 1. What objection does Justice Stevens make to the majority's ruling?**

DOCUMENT M

Bush v. Gore (2000), Dissenting Opinion, Justice Breyer

By halting the manual recount, and thus ensuring that the uncounted legal votes will not be counted under any standard, this Court crafts a remedy out of proportion to the asserted harm. And that remedy harms the very fairness interests the Court is attempting to protect. The manual recount would itself redress a problem of unequal treatment of ballots.

- 1. What objection does Justice Breyer make to the majority's ruling?**

DOCUMENT N

Stu's Views, 2002

Stu's Views

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1. What is the cartoonist's point of view?

ORGANIZING DOCUMENTS

Directions: Read each document and decide whose attorney would be most likely to use it when arguing before the Supreme Court. Then put an “X” in the appropriate column. If the document supports both sides, put an “X” in both boxes. If it supports neither, leave both boxes blank.

DOCUMENT	SUPPORTS BUSH	SUPPORTS GORE
A United States Constitution, Article II, Section 1, 1789	<input type="checkbox"/>	<input type="checkbox"/>
B The Fourteenth Amendment, 1868	<input type="checkbox"/>	<input type="checkbox"/>
C FL Stat. Title IX ch.101.5614(5) Canvass of Returns (2000)	<input type="checkbox"/>	<input type="checkbox"/>
D Florida Statute Title IX, Chapter 102: 102.168(8) Contest of Election (1999)	<input type="checkbox"/>	<input type="checkbox"/>
E Florida Statutes Title IX, Chapter 102: Deadline for submission of county returns to the Department of State (2000)	<input type="checkbox"/>	<input type="checkbox"/>
F Florida Supreme Court Decision (7-0) in <i>Palm Beach County Canvassing Board v. Katherine Harris</i> , November 21, 2000	<input type="checkbox"/>	<input type="checkbox"/>
G <i>Gore v. Harris</i> , Majority Opinion (4-3), Florida Supreme Court, December 8, 2000	<input type="checkbox"/>	<input type="checkbox"/>
H Election Workers Check Ballots in Broward, Florida	<input type="checkbox"/>	<input type="checkbox"/>
I Oral Arguments (Bush), <i>Bush v. Gore</i> , 2000	<input type="checkbox"/>	<input type="checkbox"/>
J Oral Arguments (Gore), <i>Bush v. Gore</i> , 2000	<input type="checkbox"/>	<input type="checkbox"/>
K United States Supreme Court, Majority Opinion (5-4), <i>Bush v. Gore</i> , 2000	<input type="checkbox"/>	<input type="checkbox"/>
L Dissenting Opinion, <i>Bush v. Gore</i> (2000), Justice Stevens	<input type="checkbox"/>	<input type="checkbox"/>
M Dissenting Opinion, <i>Bush v. Gore</i> (2000), Justice Breyer	<input type="checkbox"/>	<input type="checkbox"/>
N Stu’s Views, 2002	<input type="checkbox"/>	<input type="checkbox"/>

INTERVIEW QUESTIONS

Directions: Interview a parent, older sibling, or friend who is old enough to recall the events of the 2000 election. You may wish to ask:

1. Where were you on Election Day, 2000? _____
2. How did you get your news that day? Newspapers? Television? Internet? Other sources?

3. If you were watching when TV stations began retracting their projections of the winner of the election, how did that make you feel? How did you feel as the evening's drama progressed?

4. What were the issues involved in the Florida controversy? Do you believe you understood them?

5. Did you understand the arguments at the state and federal level as you remember them?

6. For the time period when it was unclear who was going to be the next President, were you ever worried that violence would break out in Florida or elsewhere? Why or why not?

7. Did you ever become impatient with the process? Why or why not?

8. Did you believe the correct outcome was reached? Why or why not?

