



## PRESIDENTS AND THE CONSTITUTION

### *GEORGE W. BUSH AND THE CASE OF BUSH V. GORE (2000)* MONDAY, MAY 11, 2009

#### OVERVIEW

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The Presidential election of 2000, between major party candidates Governor George W. Bush of Texas and Vice President Al Gore of Tennessee, was one of the closest in our history. This E-lesson focuses on the events leading up to the Supreme Court ruling by which the election was decided, and the constitutional reasoning of that decision.

#### RESOURCES

- [http://www.oyez.org/cases/2000-2009/2000/2000\\_00\\_949/](http://www.oyez.org/cases/2000-2009/2000/2000_00_949/)
- <http://www.npr.org/news/national/election2000/>
- <http://election2000.stanford.edu/>

#### NARRATIVE

The Presidential election that took place on November 7, 2000, was so close that no one knew for more than a month who had won the election of 2000: Texas Governor George W. Bush (R), or Vice President Al Gore (D). 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.

Bush led Gore in Florida by 1784 votes. The machine recount required by Florida law in extremely close elections narrowed Bush's lead. As allowed under state law, Gore requested hand recounts in four heavily Democratic counties. Not all of the four counties were able to complete their recounts by the legal deadline, even after the Florida Supreme Court extended it. The deadline passed, and Florida's Secretary of State declared that Bush had won Florida, and therefore, the Presidency.

Gore officially contested the Florida election results. The Florida Supreme Court said that accuracy was more important than finality, and ordered a statewide manual recount. This was not part of Florida law. This was also something neither Bush nor Gore had asked for.

Bush asked the US Supreme Court to reverse the Florida court's order. The question before the US Supreme Court was: Did the Florida Supreme Court exceed its authority by ordering a state-wide manual recount? And, would such a recount be constitutional?

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 in fact 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.

Federal law required that any controversy regarding the selection of electors must be settled by December 12. On December 12, the Supreme Court agreed with Bush and ruled (5-4) to halt the manual recounts. The Court reasoned, "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....There must be at least some assurance....of equal treatment and fundamental fairness...." Furthermore, it would be impossible for any recount plan to meet the December 12 deadline. The Florida results were final, and George W. Bush would be the forty-third President of the United States.

#### QUESTIONS

1. Who were the two major party candidates in the presidential election of 2000? Why was the Florida result critical to the outcome of the election?



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2. What was the Florida Supreme Court's reasoning for ordering a state-wide manual recount?
3. Why did Bush ask the US Supreme Court to halt the state-wide manual recount?
4. What was Gore's argument for allowing it to continue?
5. Do you believe the US Supreme Court ruled correctly? Why or why not?

#### EXTENSION

Have students review the majority opinion and the dissenting opinions from the US Supreme Court's ruling in this case. What were the most persuasive points made by each side regarding the Florida contest? How do students think the election should have been decided? What practices would students implement to prevent such controversies in the future?

<http://www.law.cornell.edu/supct/html/00-949.ZPC.html>



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### ANSWERS

1. Governor George W. Bush of Texas and Vice President Al Gore of Tennessee. Florida's twenty-five electoral votes were enough to close the gap in the electoral vote tally between the two candidates and make either one the winner—whoever won Florida would win the Presidency.
2. The Florida Supreme Court reasoned that accuracy was more important than finality.
3. Bush argued that the Florida court had exceeded its authority by ordering a state-wide recount, and that using different standards in different counties would violate the Fourteenth Amendment's Equal Protection Clause.
4. Gore argued that there was in fact a uniform standard, and that the standard of the “clear intent of the voter” would actually correct unequal treatment of voters caused by different voting machines in different counties.
5. Accept reasoned answers.