

2001

## Bush v. Gore: Protecting Equal Protection

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### Recommended Citation

Ross, Glory (2001) "Bush v. Gore: Protecting Equal Protection," *University of Florida Journal of Law & Public Policy*. Vol. 13: Iss. 1, Article 12.

Available at: <https://scholarship.law.ufl.edu/jlpp/vol13/iss1/12>

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## COMMENT

### CONSTITUTIONAL LAW: PROTECTING EQUAL PROTECTION

*Bush v. Gore*, 531 U.S. 98 (2000)

*Glory Ross\**

The 2000 election was unlike any other that the United States had seen before. The intent of the voters in Florida was at issue, and it took the U.S. Supreme Court to determine who would receive Florida's electoral votes and thus who would become the next President. Respondents filed a complaint contesting the certification of the results of the State of Florida's presidential election.<sup>1</sup> Respondents alleged that a number of legal votes, sufficient to change or place in doubt the result of the election, were improperly rejected.<sup>2</sup> The circuit court denied relief and held that respondents had failed to meet their burden of proof.<sup>3</sup> Respondents appealed to the First District Court of Appeal, which certified the matter to the Florida Supreme Court.<sup>4</sup> The Florida Supreme Court affirmed in part and reversed in part.<sup>5</sup> The Florida Supreme Court held that there were legal votes within the uncounted votes that were sufficient to place the results of the election in doubt, therefore allowing respondents' cause of action to stand.<sup>6</sup> In response, the Florida Supreme Court ordered a manual recount of the uncounted votes in one of the counties at issue.<sup>7</sup> In addition, the Florida Supreme Court held that the circuit court could order the appropriate officials in all counties that had not yet conducted a manual

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\* Editor's note: This case comment received the Huber C. Hurst Award for the outstanding case comment for Spring 2001.

1. *Bush v. Gore*, 531 U.S. 98, 101 (2000). Respondents were Vice President Albert Gore, Jr. and Senator Joseph Lieberman, Democratic Candidates for the offices of President and Vice President of the United States during the 2000 elections. *Id.* at 100.

2. *Id.* at 101. Respondents filed their complaint pursuant to Florida Statutes section 102.168(3)(c) (2000) which provides for a cause of action based upon "receipt of a number of illegal votes or rejection of a number of legal votes sufficient to change or place in doubt the result of the election." *Id.*

3. *Bush v. Gore*, 531 U.S. at 101.

4. *Id.*

5. *Id.*

6. *Id.* at 102.

7. *Id.* The uncounted votes at issue in this case are referred to as "undervotes." An undervote is a ballot on which no vote for president was detected by the counting machines. *Id.*

recount to do so.<sup>8</sup> Petitioners filed an emergency application for a stay of the mandate issued by the Florida Supreme Court.<sup>9</sup> The U.S. Supreme Court granted the application and treated it as a petition for a writ of certiorari.<sup>10</sup> The Florida Supreme Court's decision violated the Equal Protection Clause of the U.S. Constitution by failing to identify and require uniform standards for state officials to use in manual recounts that were necessary to protect each voter's right to have his or her vote counted equally.<sup>11</sup>

The U.S. Constitution assigns to the states the power to determine the manner of selecting presidential electors.<sup>12</sup> Congress's power is limited to determining the date on which the electors must cast their votes.<sup>13</sup> Traditionally, the states have retained exclusive power and jurisdiction over issues dealing with the appointment of electors.<sup>14</sup>

In *McPherson v. Blacker*, the U.S. Supreme Court first dealt with the issue of federal court jurisdiction over state issues arising from the appointment of presidential electors.<sup>15</sup> The petitioners alleged that an act passed by the Michigan's legislature was unconstitutional.<sup>16</sup> The act determined that voting for electors would take place by geographical districts.<sup>17</sup> Citizens in each district could vote for one elector and one

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8. *Id.* The Florida Supreme Court first stated these holdings in a decision decided on December 8, 2000. That decision was vacated and remanded by the U.S. Supreme Court. The U.S. Supreme Court sent the case back to the Florida Supreme Court so that it could better explain the legal basis for its ruling. The Florida Supreme Court responded to the remand and upheld its earlier holdings on the issues. It was after this second Florida Supreme Court decision that petitioners filed an application for a stay of the mandate. *Id.* at 100-01.

9. *Id.*

10. *Id.*

11. *Id.* at 108-10.

12. U.S. Const. art. II, § 1, cl. 2 provides that, "[E]ach State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress."

13. See *McPherson v. Blacker*, 146 U.S. 1, 35 (1892). Congress enacted 3 U.S.C. § 5 to assure finality of a State's determination if made pursuant to state law in effect before the election. It provides that the State's selection of electors shall be conclusive, and shall govern in the counting of the electoral votes, if the electors are chosen under laws enacted prior to election day, and if the selection process is completed six days prior to the meeting of the electoral college. The electoral college votes on December 18th. Therefore the states' results must be determined by December 12th. 3 U.S.C. § 5 (2000).

14. See *McPherson*, 146 U.S. at 35; see also *Burroughs v. United States*, 290 U.S. 534, 544 (1934) (holding that the power to appoint electors is an exclusive state power and that the Federal Corrupt Practices Act did not interfere with that power and therefore was a valid exercise of federal power).

15. See *McPherson*, 146 U.S. at 23.

16. *Id.*

17. *Id.* at 24.

alternative to represent that district.<sup>18</sup> The petitioners argued that the act was contrary to the power granted to the states by the U.S. Constitution and violated citizens' rights to equal protection under the Fourteenth Amendment.<sup>19</sup>

In *McPherson*, the respondent argued that the U.S. Supreme Court did not have jurisdiction to hear the case since the power to determine how electors were chosen was originally granted to the states, and therefore, the Court should be bound by the decision of the supreme court of the state.<sup>20</sup> However, the Court held that it had the right to hear the case since the judicial power of the United States extends to all cases in law or equity arising under the U.S. Constitution.<sup>21</sup> The petitioners had alleged that the state's act violated the U.S. Constitution and that therefore, the issue was properly before the Court.<sup>22</sup> The Court affirmed the decision of the Michigan Supreme Court and held that the act was valid and did not violate the Fourteenth Amendment.<sup>23</sup> In *McPherson*, the Court's holding recognized that citizens do not have a federal constitutional right to vote for electors.<sup>24</sup> The U.S. Constitution granted the state legislatures the authority to determine how electors were chosen.

However, once a state grants to its citizens the right to vote for electors on equal terms, the state may not later value one voter over another by arbitrary and disparate treatment.<sup>25</sup> In *Reynolds v. Sims*, citizens of Alabama alleged that the existing election apportionment provisions had become unconstitutional because of recent population growth in urban areas.<sup>26</sup> The district court held that the provisions violated the Equal

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18. *Id.*

19. *Id.* at 38. Prior to the act, each citizen of Michigan could vote for all fourteen electors to represent the state and after the act, each citizen could only vote for two. Petitioners argued that this abridged the citizens' fundamental right to vote. *Id.*

20. *Id.* at 23.

21. *Id.* The U.S. Supreme Court reasoned that it had jurisdiction to re-examine the final judgment in any suit in the highest court of a state where the validity of a state statute was in question and it was alleged that it was repugnant to the Constitution and laws of the United States. *Id.*

22. *Id.* at 23-24.

23. *Id.* at 42. When discussing application of the Fourteenth and Fifteenth Amendments to the right to vote, the U.S. Supreme Court stated, "The right to vote in the states comes from the states, but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the [C]onstitution of the United States, but the last has been." *Id.* at 38.

24. *See id.* at 42. The U.S. Supreme Court reasoned that the U.S. Constitution does not provide that the appointment of electors should be by popular vote, but instead it recognized that people act through their representatives in the legislature and gave to the legislature the exclusive power to define the method of choosing electors. *Id.* at 27.

25. *See Reynolds v. Sims*, 377 U.S. 533, 559 (1964).

26. *Id.* at 537. The U.S. Supreme Court noted that under the existing provisions, only 25.1%

Protection Clause by allowing citizens of rural counties to have disproportionately stronger vote than citizens in urban counties.<sup>27</sup>

The U.S. Supreme Court determined that it had jurisdiction over the issue since plaintiffs had alleged a violation of their right to equal protection, a federally protected right.<sup>28</sup> The Court affirmed the decision of the lower court and held that there was an equal protection violation.<sup>29</sup> The Court reasoned that the U.S. Constitution protects the rights of all qualified citizens to vote which includes the right to have one's vote counted.<sup>30</sup> The Court stated that the Equal Protection Clause required that a state make a good faith effort to establish practical standards that would ensure equal protection of voting rights.<sup>31</sup>

In *McPherson* and *Reynolds*, the U.S. Supreme Court found that it had jurisdiction to review the state courts' decisions because both plaintiffs alleged that the state statute or practice at issue violated constitutional rights.

However, in *Fiore v. White*,<sup>32</sup> the U.S. Supreme Court held that the issue was a matter of state law jurisdiction, and therefore, deferred judgment and certified the question to the state supreme court.<sup>33</sup> The defendant brought a federal habeas corpus petition seeking the court to apply an earlier interpretation of a statute that the same court had applied in his co-defendant's appeal.<sup>34</sup> The Court held that it must apply the state

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of the State's total population resided in districts represented by a majority of the members of the Senate and only 25.7% lived in counties which elected a majority of the members of the House of Representatives. *Id.* at 545.

27. *Id.* at 545.

28. *Id.* at 566. The U.S. Supreme Court reasoned that when a state exercises power wholly within the domain of the state, it is insulated from federal judicial review. *Id.* But when state power is used as an instrument for circumventing a federally protected right, the U.S. Supreme Court has judicial review. *Id.*

29. *Id.* at 587.

30. *Id.* at 554.

31. *Id.* at 577; see also *Moore v. Oglivie*, 394 U.S. 814, 819 (1969) (applying the reasoning in *Reynolds v. Sims* and holding that the procedures and standards at issue discriminated against the residents of the populous counties in favor of rural sections and therefore violated the Fourteenth Amendment).

32. 528 U.S. 23 (1999).

33. *Id.* at 29-30.

34. *Id.* at 25. The U.S. Supreme Court granted jurisdiction to determine whether the Fourteenth Amendment's Due Process Clause required the Defendant's conviction to be set aside. *Id.* at 28.

supreme court's interpretation of the state's statute as the applicable law.<sup>35</sup> The Court reasoned that the state court's interpretation determined the correct state law predicate for the constitutional questions at issue.<sup>36</sup>

In the instant case, the U.S. Supreme Court relied on the *McPherson* and *Reynolds* decisions and determined that although the U.S. Constitution granted the states the power to determine how the people chose its electors, the Court had jurisdiction to hear the case because of the alleged equal protection violations.<sup>37</sup> The Court reasoned that the issue in *Bush v. Gore* was not whether the State had the authority to develop different procedures for determining electors, which it clearly did, but whether those procedures created violations of constitutionally protected rights.<sup>38</sup>

The Florida legislature granted the voters the right to elect the presidential electors through direct election.<sup>39</sup> The U.S. Supreme Court again followed the decision in *Reynolds* and held that once the legislature had given that right to the citizens, it could not be taken away in an arbitrary or discriminatory fashion.<sup>40</sup> Respondents alleged that the Florida Supreme Court's decision allowing the manual recount arbitrarily affected some of the voters, and therefore, violated equal protection.<sup>41</sup> The Court followed the reasoning in *Reynolds* that the right to vote is protected both in its allocation and in the manner in which it is exercised.<sup>42</sup>

The *Bush v. Gore* Court criticized the Florida Supreme Court for failing to clearly define what constituted a "legal vote" or the standards necessary to ensure that each vote was treated equally.<sup>43</sup> The Court noted that standards for accepting or rejecting contested ballots varied between

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35. *Id.* at 29.

36. *Id.*

37. *Bush v. Gore*, 531 U.S. 98, 102 (2000).

38. *Id.* at 109. In a concurring opinion, Chief Justice Rehnquist reasoned that the issue before the U.S. Supreme Court was whether the Florida Supreme Court departed significantly from the statutes established by the state legislature. *Id.* at 114. He believed that the lower court's interpretation of the state election laws violated the grant of power given to the state legislature by the U.S. Constitution and therefore the U.S. Supreme Court had jurisdiction to determine if the lower court's decision had a basis in the statute and prior case law. *Id.* He also believed that the U.S. Constitution required the U.S. Supreme Court to undertake an independent, if still deferential, analysis of state law. *Id.*

39. *Id.*

40. *Id.* at 530; *see also* *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 665, 670 (1966) (holding that "once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause" and that the U.S. Supreme Court must apply a strict scrutiny standard to alleged violations of Equal Protection).

41. *Bush v. Gore*, 531 U.S. at 104-05.

42. *Id.* at 105.

43. *Id.*

counties and even within counties.<sup>44</sup> These varied standards used by the counties resulted in arbitrary and disparate treatment of the voters.<sup>45</sup> The Court reversed the Florida Supreme Court's order and held that any recount done in time to meet Congress's deadline would not satisfy the minimum equal protection standards necessary to treat each vote equally.<sup>46</sup>

By reversing the Florida Supreme Court's order, the U.S. Supreme Court asserted its jurisdiction to decide this matter.<sup>47</sup> The Court found that the state court's decision, interpreting its own statutes, violated constitutional rights, and therefore, the Court had jurisdiction to hear the case.<sup>48</sup> This holding is very significant. On only a few occasions has the U.S. Supreme Court asserted its jurisdiction over a matter within the state's jurisdiction.<sup>49</sup> On each previous occasion, the Court found that the state's decision was such a severe violation of a constitutional right that the Court had to step in and overrule the state court.<sup>50</sup>

In a strong dissent in *Bush v. Gore*, four of the Justices argued that the U.S. Supreme Court did not have jurisdiction over these issues since the U.S. Constitution granted this authority to the state legislatures.<sup>51</sup> The dissent applied the reasoning in the *Fiore* case and asserted that the Court should have accepted the decision of the Florida Supreme Court<sup>52</sup> in

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44. *Id.* at 106-07. One county that used a more lenient standard uncovered almost three times as many new votes as another county that used a stricter standard. *Id.*

45. *Id.* at 106.

46. *Id.* at 110. The U.S. Supreme Court noted that "(T)he 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." *Id.* at 106.

47. *Id.* at 104-05.

48. *Id.* at 108-10.

49. *Id.* at 139-40 (Ginsburg, J., dissenting).

50. *See generally* NAACP v. Alabama *ex rel.* Patterson, 357 U.S. 449, 455 (1958) (holding that the U.S. Supreme Court had jurisdiction to hear a case based on state law matters due to the importance of the constitutional questions at issue); Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966) (holding that a state in enforcing voter requirements, may be violating the Equal Protection Clause, and any violation of the Equal Protection Clause should be strictly scrutinized by the U.S. Supreme Court).

51. *See* Bush v. Gore, 531 U.S. at 123. *See generally* Roudebush v. Hartke, 405 U.S. 15, 24 (1972) (holding that the U.S. Constitution gave to the Senate the exclusive jurisdiction over the elections, returns, and qualifications of its members and therefore the U.S. Supreme Court is without power to alter the Senate's judgment).

52. *See* Palm Beach County Canvassing Bd. v. Harris, 772 So. 2d 1273 (Fla. 2000). The Florida Supreme Court analyzed the Florida Election Code using traditional rules of statutory construction to determine the guidelines and boundaries of the rights given to the citizens by the legislature regarding electing presidential electors. *Id.* at 1281. The Florida Supreme Court found that the statutes authorized the use of a manual recount for any "error in the vote tabulation" and that the standard as provided in the statute for a "legal vote" was one in which there was a clear indication of the intent of the voter. *Id.* at 1283. The Florida Supreme Court concluded that the county canvassing boards had the authority to order countywide manual recounts using the standard

interpreting Florida Statutes that define the standards required in a manual recount.<sup>53</sup> It is a core principle of federalism that courts defer to the highest court of the state's interpretation of state law.<sup>54</sup>

In addition, the dissent reasoned that the possible disparate treatment of voters because of varying standards was not enough of a constitutional violation to give the U.S. Supreme Court jurisdiction.<sup>55</sup> The dissent distinguished the violation in *Reynolds*, where officials weighed individual votes in the same state unequally. It argued that the Court had never granted jurisdiction to cases involving a state's substantive standard in determining the definition of a legal vote.<sup>56</sup> The dissent argued that the state had exclusive jurisdiction to determine what is a legal vote.<sup>57</sup>

Since this area is traditionally a matter of state jurisdiction, the state courts should decide how a legal vote is defined through statutory construction, and the U.S. Supreme Court should give extreme deference to the highest state court's interpretation of state law as long as it has engaged in permissible construction.<sup>58</sup> The Florida Supreme Court in the instant case utilized traditional rules of statutory construction to analyze the ambiguities in the state statutes regarding election procedures.<sup>59</sup> Therefore, another possible reason on which the Court could have based

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as provided in the statute. *Id.* at 1284. The Florida Supreme Court was very policy driven and reasoned that the manual recount provision was intended to safeguard the integrity and reliability of the electoral process and therefore should be applied in the instant case since the integrity of the results were at issue. *Id.* at 1285. The Florida Supreme Court also analyzed an ambiguity in the statutes regarding accepting results of manual recounts after the deadline. *Id.* at 1287. The Florida Supreme Court again looked to the intent behind the statutes and held that the department had the discretion to ignore late returns, but that discretion was significantly limited. *Id.* at 1288-89. In coming to these conclusions, the Florida Supreme Court reasoned that it had not developed new law, only participated in a narrow reading and clarification of the statutes. *Id.* at 1290.

53. See *Bush v. Gore*, 531 U.S. at 139-40 (Ginsburg, J., dissenting).

54. *Id.* at 142.

55. *Id.* at 124 (Stevens, J., dissenting). "[T]here is no reason to think . . . the 'intent of the voter' standard is any less sufficient—or will lead to results any less uniform—than, for example, the 'beyond a reasonable doubt' standard employed everyday by ordinary citizens in courtrooms across this country." *Id.*

56. *Id.*

57. *Id.*

58. *Id.* at 135-40.

59. See *Palm Beach County Canvassing Bd. v. Harris*, 772 So. 2d 1273, 1282 (Fla. 2000). See generally *Pullen v. Mulligan*, 561 N.E.2d 585, 589 (Ill. 1990) (recognizing that courts have no inherent power to hear election contests, but may do so only when authorized by statute and in the manner dictated by statute).

its decision would have been that the Florida Supreme Court did not engage in permissible interpretation of its own statutes when it ordered the manual recount without establishing additional standards to be applied.<sup>60</sup>

However, the U.S. Supreme Court relied mainly upon the alleged constitutional violation of equal protection in asserting its jurisdiction and did not discuss the issue of impermissible statutory construction.<sup>61</sup> The Court reasoned that the need for equal protection as it applied to the right to vote was such an important right that the Court had to ensure its protection.<sup>62</sup> Therefore, the real issue before the Court was determining the measures needed to protect each vote equally.<sup>63</sup> The Florida Supreme Court held that the recount was necessary to accomplish this task.<sup>64</sup> The Court disagreed and reasoned that consistent standards were needed to ensure equal protection and that the need for these standards outweighed any benefit of a recount without them.<sup>65</sup> The ultimate holding of the Court rests on the reasoning that an adequate recount, with the minimum standards necessary, could not be completed within the necessary time limit.<sup>66</sup> While the Court recognized and agreed that the Florida Statutes permit a manual recount, it was the issue of time that heavily influenced its decision.<sup>67</sup>

The legal arguments driving the parties are in effect very similar; both sides expressed a desire to have every person's vote count equally and to maintain the integrity and legitimacy of the election process.<sup>68</sup> The U.S. Supreme Court's decision was really a determination of the proper remedy to achieve this goal under the circumstances.<sup>69</sup> The Court also considered

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60. See *Bush v. Gore*, 531 U.S. at 114-19 (Rehnquist, J., concurring). Petitioners' arguments in front of the U.S. Supreme Court focused primarily on these grounds and the allegation that the Florida Supreme Court had infringed upon the legislature's authority. *Id.* at 114-15.

61. *Id.* at 104-06.

62. *Id.* at 104-05.

63. *Id.* at 109.

64. *Palm Beach County Canvassing Bd. v. Harris*, 772 So. 2d at 1273, 1285.

65. *Bush v. Gore*, 531 U.S. at 110-11.

66. *Id.* Pursuant to federal law, the electoral college votes on December 18th. 3 U.S.C. § 7 (2000). The instant case was decided on December 12th. *Bush v. Gore*, 531 U.S. at 98.

67. *Id.* at 110. The dissent noted that the majority opinion states, "[a] desire for speed is not a general excuse for ignoring equal protection guarantees" and argued that the statement is contradictory to the majority's final holding. *Id.* at 127 (Stevens, J., dissenting).

68. *Id.* at 128. The dissent argued that preventing the recount would cast a cloud on the legitimacy of the elections. *Id.* Justice Scalia in his concurring opinion in *Bush v. Gore*, 531 U.S. 1046 (2000), argued that the counting of votes that are of questionable legality would cast a cloud on the legitimacy of the election process. *Id.* "Count first, and rule upon legality afterwards, is not a recipe for production election results that have the public acceptance democratic stability requires." *Id.*

69. See *Bush v. Gore*, 531 U.S. at 110-11. In a concurring opinion, Chief Justice Rehnquist argued that the remedy proscribed by the Florida Supreme Court cannot be deemed an appropriate

the important need for finality in this particular issue, because of the deadline established by Congress.<sup>70</sup> Much of the Court's reasoning illustrated a balancing test between the need for accuracy and the need for finality. In contrast, the dissent argued that time was not an adequate justification for denying the State the opportunity to attempt to complete the manual recount in the time remaining.<sup>71</sup>

In an earlier decision on these issues,<sup>72</sup> the Florida Supreme Court reasoned that a manual recount was the proper remedy and stated that failing to count a voter's ballot because of the inability of the machine to read it, in the original count, would promote the procedures at the expense of the end result.<sup>73</sup> The Florida Supreme Court reasoned that its goal should be to count as many votes as substantively possible and that the form or procedures used to count those votes was secondary to the vote itself.<sup>74</sup> The U.S. Supreme Court disagreed with that reasoning.<sup>75</sup> The U.S. Supreme Court chose form over substance and reasoned that the equality inherent in the form was the proper goal to protect.<sup>76</sup>

*Bush v. Gore* will probably be seen as the most significant voting rights case in recent history. One certain effect of this decision is that states will look at their own election processes and establish uniform standards that could withstand future judicial scrutiny.<sup>77</sup> Another possible effect could be

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one. *Id.* at 122 (Rehnquist, J., concurring). He reasoned that the Florida Supreme Court's actions significantly departed from what was allowed under the state statutes and enabled ongoing recounts which could not provide a clear resolution in the time remaining. *Id.*

70. *Id.* at 108-10.

71. *Id.* at 135.

72. *See Palm Beach County Canvassing Bd. v. Harris*, 772 So. 2d 1220 (Fla. 2000).

73. *Id.* at 1238. The Florida Supreme Court's reasoning followed prior Florida case law that had emphasized the importance of ascertaining the intent of the voter despite procedural errors in marking the ballot. *Id.*; *see Boardman v. Esteve*, 323 So. 2d 259, 269-70 (Fla. 1975) (holding that substantial compliance with the voting statute was all that was needed to give legality to the ballots); *see also State ex rel. Carpenter v. Barber*, 198 So.49, 163-64 (Fla. 1940) (holding that Florida courts should apply a liberal construction to the election statutes in favor of the citizen and look to determine the intent of the voter as evidenced on the ballot, despite any errors in marking the ballot correctly).

74. *See Palm Beach County Canvassing Bd. v. Harris*, 772 So. 2d at 1238; *see also State ex rel. Chappell v. Martinez*, 536 So. 2d 1007, 1008 (Fla. 1988) (holding that the electorate's effecting its will through its balloting is the object of holding an election and therefore substantial compliance, not strict compliance with the statutes is all that is necessary).

75. *See Bush v. Gore*, 531 U.S. at 105-06.

76. *Id.*; *see also Gore v. Harris*, 772 So. 2d 1243 (Fla. 2000). "We are a nation of laws, and we have survived and prospered as a free nation because we have adhered to the rule of law. Fairness is achieved by following the rules." *Id.* at 1272 (Harding, J., dissenting). When discussing the final result, the dissent quoted football coaching legend Vince Lombardi "We didn't lose the game, we just ran out of time." *Id.* at 1273.

77. As of the date of the decision, thirty-three states were using a similar "clear intent of the voter" standard. *See Bush v. Gore*, 531 U.S. at 125 n.2 (Stevens, J., dissenting).

federal standardization of local elections. Any federal effort to establish clear standards and procedures also would take away the independence that the states have traditionally held in this area.

Upon analysis, both the U.S. Supreme Court and the Florida Supreme Court agreed on the significant policy issues. They agreed that the policy driving their decisions should be to uphold the integrity of the voting process and protect each individual's vote. They only disagreed as to the means that would most adequately protect the votes. The Court did not hold that the Florida Supreme Court did not have the right to authorize a manual recount. It simply held that the Florida Supreme Court authorized a manual recount that would not ensure equal protection, which should be the driving purpose behind the manual recount provision.<sup>78</sup> Unfortunately, time was the constraining factor in this decision.<sup>79</sup> If time had not been an issue, the U.S. Supreme Court may have remanded the decision to the Florida Supreme Court to establish more detailed standards by which to conduct the recount. Had that been the case, the final outcome is unclear. This is a decision that has truly affected history.

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78. *See id.* at 110-11.

79. *Id.* at 110.