

Handout 3: How did a candidate win the popular vote but lose the electoral votes?

A Supreme Court Decision over a Presidential Election: Bush V. Gore

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 U.S. Supreme Court to reverse the Florida court's order. The question before the U.S. Supreme Court was:

- Did the Florida Supreme Court exceed its authority by ordering a state-wide manual recount?
- 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 "under votes" (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.

Source: Bill of Rights Institute (2016). Bush V. Gore and the Presidential Election retrieved from: <http://billofrightsinstitute.org/educate/educator-resources/lessons-plans/presidents-constitution/bush-v-gore/>