

BUSH v. GORE

FINAL RESULTS:

- Electoral College vote – Bush 271, Gore 266
- Popular Vote – Gore 50,902,900, Bush 50,432,517; DIFFERENCE: Gore +470,383
- Florida (25 Electoral votes) Bush 2,912,790, Gore 2,912,253
DIFFERENCE: 537 out of nearly 6 million votes cast

Key Judicial Decisions from November 17 to December 12, 2000

- November 17 – FLORIDA SUPREME COURT issues an injunction blocking certification of final vote tally
- November 20 – FLORIDA SUPREME COURT holds hearing on Gore’s motion to include late hand-recount totals in official certification
- November 21 – FLORIDA SUPREME COURT extends certification deadline for 5 days, until 5 p.m. Sunday, November 26 (unanimous decision, 7-0)
- November 24 – US SUPREME COURT announces it will hear Bush’s appeal of Florida Supreme Court decision
- November 26 – KATHERINE HARRIS, Florida Secretary of State, certifies the vote giving Bush a 537-vote victory
- November 27 – Gore contests Harris’s decision
- December 1 – US SUPREME COURT hears oral argument on the Florida Supreme Court recount deadline extension decision
- December 4 – US SUPREME COURT vacates and remands the Florida Supreme Court’s certification deadline extension decision
- December 8 – FLORIDA SUPREME COURT orders manual recounts of all counties with significant numbers of undervotes (4-3 decision)
- December 9 – US SUPREME COURT halts the manual recounts and schedules oral argument of the Florida Supreme court’s manual recount order
- December 11 – US SUPREME COURT holds oral argument on Bush’s appeal of the manual recount order
- December 12 – US SUPREME COURT rules for Bush ending the recounts. The individual justices split in their decisions and their reasoning. On the next day after the US Supreme Court’s decision, Vice President Gore conceded defeat. This is pretty weedy but here goes.
- (1) Two justices, Stevens and Ginsburg, would have upheld the Florida Supreme Court’s decision.
 - (2) Seven justices ruled that the process for conducting the manual recount as outlined by the Florida Supreme Court violated the 14th Amendment’s equal protection clause because of the lack of uniform statewide recount standards. BUT two of the seven – Souter and Breyer – believed flaws in the recount process could be corrected expeditiously and therefore generally upheld the Florida

Supreme Court. Thus the bottom line result was five (Rehnquist, Thomas, Kennedy, O'Connor and Scalia) in favor of Bush and four (Stevens, Ginsburg, Souter and Breyer) in favor of Gore. All five of the justices in the majority not only cited the 14th Amendment; they expressed considerable concern about timely resolution of the election. In that regard, they observed the "safe harbor" deadline for states to certify electors was that day, with electors meeting in all 50 states to cast their votes in only six days (December 18th).

- (3) Three justices joined in a separate concurring opinion. Chief Justice Rehnquist wrote it; he was joined by Thomas and Scalia. In addition to the 14th Amendment ground for reversal, Rehnquist argued that the Florida court had violated Article II Section 1 of the Constitution that provided plenary power in selecting presidential electors to the state legislature. A key part of Rehnquist's argument is as follows: "In most cases, comity and respect for federalism compel us to defer to the decisions of state courts on issues of state law... Of course, in ordinary cases, the distribution of powers among the branches of a State's government raises no questions of federal constitutional law, subject to the requirement that the government be republican in character. See U.S. Const. Article IV Section 4. But there are a few exceptional cases in which the Constitution imposes a duty or confers a power on a particular branch of a State's government. This is one of them. Article II Section 1 clause 2, provides that each state shall appoint, in such manner as the *Legislature* thereof may direct, electors for President and Vice President."

This language from Rehnquist represents the origin of the Independent State Legislature Theory that has received a lot of media and expert attention of late. The Supreme Court heard oral argument on December 7 in the case of Moore v. Harper. This case involved a related provision of the Constitution – Article I Section 4 having to do with "The Times, Places and Manner of holding Elections for Senators and Representatives". It will be interesting to see how the Court decides this issue and what impact it may have on rogue state legislatures taking steps to modify or even nullify the will of the state's citizens.