

Assuming that you were a member of the Supreme Court of the United States

What would you have ruled?

The Supreme Court is an extremely creative invention in U.S. political history--nine reputable experts in the law elected for life to play the role of final appeal and thereby to unite a politically divided nation when strongly contended issues relative to the existing legal order come into play.

Even though we may disagree about the decisions of such a court, we, as citizens of this national covenant, can, for the sake of operative social order, consent to abide by its rulings.

This does not, however, end the debate over how that court should have ruled. I have written my own ruling for the recent Bush versus Gore case. My "opinion" was written after listening to the Supreme Court hearing but before the Supreme Court announced its official ruling. Here is my (somewhat ordinarily languaged) opinion:

The court finds the plaintiff's case that the Florida Supreme Court has overstepped its bounds to be unconvincing. While we may disagree about the rulings of the Florida Court, as did members of the Florida Court itself, this court agrees that the Florida Court operated within its prerogatives to interpret the laws of the Florida legislature as those laws applied to the issues in question.

Thus the decisions of the Florida court remain in effect and the process of counting the contested ballots remains to be done.

This court does feel concern, however, about the generality of the standard "clear intent of the voter" especially as that standard is variously applied to punch-card ballots; however, since no other standard has been set by the legislature of the State of Florida and no further specificity can be ruled at this time without changing the laws established by the Florida legislature, the rulings of the Florida Supreme Court are not found to be defective.

Nevertheless, disparity between the treatment of voters in the various counties of the same state remains a concern of this court. Not only varying standards of counting, but also the use of voting devices in one county that are significantly inferior to voting devices in another county might be ruled a violation of the equality of voter principle established in U.S. law. In future elections of the president and vice-president any state using widely varying voting devices and/or widely varying standards for counting those votes risks having their electors rejected on the grounds of this inequality. To apply that standard across the entire United States at this time, would be unduly disruptive of current electoral process, but such practices will not be so easily tolerated in future elections.

Concerning the December 12th deadline, this provision was made in U.S. law to enable the Congress to ascertain that it had by December 18th received the certified votes of the states. This provision was made in a time when six days were needed for confirming communications across great distances. In our time of electronic communications, the spirit of this provision means that the Congress of the United States must have final clarity on the states certification by the 18th of December when the electors meet to inform Congress of their choice. Contested ballots that have not been counted by the 18th of December or any other contests still in operation at that time do not affect this final certification of electors.

On the 18th of December, the candidates with the most votes (as certified by the courts of Florida) shall be awarded the electoral certifications of Florida. If some further contesting of votes still continues at this time, this does not mean that Florida has not selected its electors. No further action is required by any of the institutions of Florida. Protests after the 18th are made to the Congress of the United States, and the constitutionality of that body's decisions may be reviewed by this court.

As to the official ruling, the majority of the court expressed concern about the varying counting standards used from county to county. A fully consistent ruling on the topic of voting equality

might have negated the entire Florida election because of its use of inferior voting devices in the poorer counties. This, however, would have negated elections in other states as well, so such a ruling would certainly have been drastic. Nevertheless, this vast inequality in voting devices makes the majority of the court's concern about the relatively unequal standards of counting the under-votes hypocritical.

Also hypocritical was their concern about the December 12th deadline. Had the Supreme Court stayed out of the case altogether, that deadline would have been met without difficulty. Furthermore, the 18th of December was the only hard and fast deadline that had to be met.

The third hypocrisy in this ruling was the ease and promptness with which five Supreme Court justices who claimed dedication to states rights found it permissible to override the decisions of a state court which was interpreting state law. Would they have performed such activism had it benefited a Democratic candidate for president? Would they have performed such activism had the election of a president who supported their ideology not depended upon their ruling?

As Judge Stevens indicated in his minority ruling, "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 law." This does not mean, as some news pundits allow, that irreparable damage has been done to the institution of the Supreme Court. The fact that we had this institution of nine supposedly impartial judges assigned to oversee our democracy kept the truth from being completely clouded in partisan arbitrariness. What this entire civics lesson does mean is that all governmental institutions are imperfect, as are their members; therefore, citizens need to be vigilant in making these fabrics function well.