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Reflections Of Another *Bush V. Gore* Lawyer

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I commend the University of Miami Law Review for its 2009 symposium on election law, *How Far Have We Come Since 2000?* As one of the lawyers involved in the weeks of litigation and recounts that followed the 2000 presidential election, I welcome the opportunity to look back and reflect on what *Bush v. Gore*[1] meant then and what it means today. In the heat of battle, there was scarcely time to consider the dispute in the larger context of our democracy. I now appreciate even more what each of us involved in the process (regardless of the candidate we represented) stood for and what the election officials and many judges who had to make difficult decisions were required to weigh.[2]

The 2000 presidential election was my first exposure to election law, but it was not my last. The experience awakened in me a true sense of what it means "to be part of something larger than yourself." The high stakes, the long hours, the urgency, and the uncertainty of treading through new ground made us all reach deeply for strengths we never knew we had. Thinking three steps ahead to the next turn of events while dealing with the present became habit. Strangers suddenly were thrust together in small conference rooms, hammering out reams of legal briefs or mooting arguments late into the night as they formed a virtual law firm in representation of only one ultimate client—the next Leader of the Free World.

Not an election cycle has gone by since 2000 in which I have not felt the rush of adrenaline on the opening of the first precincts, wondering what will happen. For election professionals and candidates, a boring election day is the best kind of election. But since 2000, it has been difficult to escape from the many things *Bush v. Gore* wrought. The

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1. 531 U.S. 98 (2000).

2. Although I was not directly involved final election contest or the appeal to the U.S. Supreme Court, I was one of the three lead Republican lawyers in the Miami-Dade recount that became one of the central issues in *Bush v. Gore*.

lessons we learned then are still important today. With the perspective of time, and the benefit of experience, I offer some thoughts.

ELECTION INTEGRITY IS ONLY AS GOOD AS OUR VOTERS AND ELECTION ADMINISTRATORS.

Bush v. Gore would not have happened had voters taken time to read and follow instructions. We all know about the chads—pregnant chads, dimpled chads, hanging chads, three-corner chads, and the like. Lawyers for Al Gore argued that the punch-card ballots were to blame, because the booths on which they rested and which collected the punched-out chads from prior elections had not been cleaned, making it impossible for the stylus to penetrate the ballot. What the lawyers and spinmasters failed to mention, however, were the clearly printed instructions facing every voter who approached the voting booth. They warned the voter to make sure they punched through the ballot, checked the back of their ballot and cleared any hanging chads:

> AFTER VOTING, CHECK YOUR BALLOT CARD TO BE SURE YOUR VOTING SELECTIONS ARE CLEARLY AND CLEANLY PUNCHED AND THERE ARE NO CHIPS [sic] LEFT HANGING ON THE BACK OF THE CARD[3]

There it was in plain language! Had a few thousand more voters heeded these basic instructions, the entire recount might have been averted.

The "butterfly ballot" also was blamed for Palm Beach voters who were claimed to have voted for Pat Buchanan instead of Al Gore. Despite the fact that the ballot was made available two weeks before the election, as required by law,[4] without apparent objection from any candidate or party, democratic activists and others persecuted former Palm Beach Elections Supervisor Teresa LePore, blaming her for what ultimately was voter inattention. Had Palm Beach voters checked the boxes they punched against the candidate numbers, they would have avoided inadvertently casting votes for Pat Buchanan and negating their votes for Al Gore.[5]

The Legislature banished the punch-card ballot from Florida the following year and required counties to replace it with either optical scanners or the ATM-like direct recording equipment (DREs as they are

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3. Bush v. Gore, 531 U.S. at 119 (Rehnquist, C.J., concurring) (quoting Brief for Respondent Katherine Harris et al., as Members of the Florida Canvassing Commission at 12, Bush v. Gore, 531 U.S. 98 (2000) (No. 00-949), 2000 WL 1845986). I recall retrieving a similar sign from the Miami-Dade Supervisor of Elections office and recall it said "chads" not "chips."

4. FLA. STAT. § 101.20 (2000).

5. The "butterfly ballot" never should have been a reason to protest the election. *See* Nelson v. Robinson, 301 So. 2d 508, 511 (Fla. Dist. Ct. App. 1974) ("[M]ere confusion does not amount to an impediment to the voters' free choice if reasonable time and study will sort it out.").

known in the trade), more commonly known as electronic voting machines.[6] It was not long before some voting advocates and conspiracy theorists collectively sounded the drum-beat that DREs were "bad." One argument was that they could be preprogrammed in favor of a candidate, citing theatrical "hacking events" that ignored the security conditions under which the equipment was stored.[7] Others argued that poor calibration or intentional miscalibration could throw the election in favor of a particular candidate.[8] Still others critics refused to accept any device that did not instantly spit out a "voter verified paper trail" that could be later used to challenge the outcome of the electronic tabulation. One Florida Congressman even sued local election supervisors, claiming that the electronic voting machines were unconstitutional.[9] He lost the battle, but, as we shall see, he won the war.

The most prominent questioned election featuring DREs involved the infamous Florida Congressional District 13 election of 2006. In the end it was nothing more than voters mistakenly skipping over the race that was at the top of the same electronic page where the high profile Governor's race appeared.[10]

The paper trail proponents were never willing to accept that DREs actually could print out a tape in the event of a recount, as they wanted voters to be able to hold that paper in their hands. Never mind that the DREs could warn the voter of an undervote and prevent him or her from ever casting an overvote (the twin-evils of the disgraced punch card ballot). And forget that more than a few voters likely would not have bothered to compare their paper receipt to the electronic screen, much as their punch-card-using predecessors had neglected to check their punch cards for hanging chads or accidental Pat Buchanan votes.

In 2008, the DRE went the way of the punch card ballot, more for political reasons than anything else, as all legal challenges to it in Florida had been dismissed in both state and federal courts.[11] Florida now

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6. *See* Florida Election Reform Act, 2001 Fla. Laws 40 (codified at FLA. STAT. § 101.56042 (2002)).

7. *See* Black Box Voting, Can the Machines be Hacked?, http://www.blackboxvoting.org/presskit.html#hack (last visited Jan. 23, 2010).

8. *See id.*

9. *See* Wexler v. Anderson, 452 F.3d 1226 (11th Cir. 2006) (rejecting equal protection and due process challenges to Department of State's rules for manual recounts of electronic ballots).

10. U.S. GEN. ACCOUNTING OFFICE, ELECTIONS: RESULTS OF GAO'S TESTING OF VOTING SYSTEMS USED IN SARASOTA COUNTY IN FLORIDA'S 13TH CONGRESSIONAL VOTING DISTRICT 33–34 (2008). The GAO noted: "Absolute assurance is impossible to achieve because we are unable to recreate the conditions of the election in which the undervote occurred." *Id.* at 34. The same could be said for any post-hoc attempt to determine what may have caused an undervote or an overvote, as we know from the attempts to determine "voter intent" in the 2000 recount. Nothing much has changed here.

11. *See* supra note 9.

has only one permitted voting technology, the optical scanner, but voters with disabilities still may use DREs.[12]

The optical-scan ballots themselves are not foolproof. Supervisors and election workers may post clear instructions on filling in the bubble, even on the ballots themselves. Voters armed with pens are capable of marking the ballot any number of ways that a scanner will misread as an undervote.[13] Checkmarks, X's, circles, arrows, crossed out or underlined names, "yes," "no," and even numerical rankings can end up on a ballot.[14] In a close election, like *Bush v. Gore*, we may once again see the iconic picture of Broward County Judge Robert Rosenberg, studiously peering at a ballot through a magnifying glass to determine "voter intent." Although the Florida Department of State has adopted a rule of what markings count or do not count as a valid vote, one can foresee an intrepid lawyer arguing to a court that a stray ink mark is the equivalent of a pregnant chad and should be counted![15]

Optical-scan ballots also can be victims of human error by elections administrators. In 2008, a razor-thin margin in a local judicial race led to weeks of litigation.[16] One of the key moments in the case involved the sudden discovery of 3,500 ballots that apparently had been misplaced between the August 26 election and the Labor Day recount.[17]

Regardless of whether either of these late-discovered votes were legitimately counted or not, they illustrate again that human error plays a role in many elections. The error can be either at the election official

12. *See* 2007 Fla. Laws 30 (codified at FLA. STAT. § 101.56075 (2008)). Duval County purchased optical scan machines instead of DREs before they became mandatory statewide. Following a challenge on behalf of the American Association of People with Disabilities, a federal judge in the Middle District of Florida ruled that the Americans with Disabilities Act requires that sight-impaired and other voters with disabilities have a right to cast a secret ballot. *See* Am. Ass'n of People with Disabilities v. Hood, 310 F. Supp. 2d 1226 (M.D. Fla. 2004). Until one can obtain certification of another voting technology that can read the ballot to the voter in privacy, DREs with affixed readers must be provided at every precinct. No one has yet argued that these DREs have caused any problems in close elections.

13. Not every elections supervisor programs the scanner to alert voters to undervoted ballots. Therefore, even with optical scan technology, votes may be "lost" despite a voter's belief that he or she voted for a candidate.

14. FLA. ADMIN. CODE ANN. r. 1S-2.027 (2008) (setting forth the standards for discerning voter intent on election ballots).

15. In such instances, we would revert to the subjective nature of manually discerning "voter intent," an exercise fraught with problems. *See* Gore v. Harris, 772 So. 2d 1243, 1269 (Fla. 2000) (Wells, J. dissenting) ("A continuing problem with these manual recounts is their reliability. It only stands to reason that many times a reading of a ballot by a human will be subjective, and the intent gleaned from that ballot is only in the mind of the beholder.").

16. *See* Jane Musgrave, *Judge Orders Recount and Nov. 4 Revote*, PALM BEACH POST, Sept. 16, 2008, *available at* http://www.palmbeachpost.com/politics/content/local_news/epaper/2008/09/16/0916recount.html (last visited Jan. 24, 2010).

17. *See id.*

level, or at the voter level.[18]

As the Governmental Accounting Office observed in its statement to the Congressional Task Force appointed to consider the challenge to the Florida Congressional District 13 election:

> An election system is based upon a complex interaction of people (voters, election officials, and poll workers), processes (controls), and technology that must work effectively together to achieve a successful election. The particular technology used to cast and count votes is a critical part of how elections are conducted, but it is only one facet of a multifaceted election process that involves the interplay of people, processes, and technology.
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> As we have previously reported, every stage of the election process—registration, absentee and early voting, preparing for and conducting Election Day activities, provisional voting, and vote counting—is affected by the interaction of people, processes, and technology. Breakdowns in the interaction of people, processes, and technology may, at any stage of an election, impair an accurate vote count. For example, if the voter registration process is flawed, ineligible voters may be allowed to cast votes. Poll worker training deficiencies may contribute to discrepancies in the number of votes credited and cast, if voter information was not entered properly into poll books. Mistakes in using the DRE systems could result from inadequate understanding of the equipment on the part of those using it.[19]

Thus, the first lesson of *Bush v. Gore* is that "stuff happens." The election issues that led to the monumental Supreme Court decision play out on a smaller scale every election cycle. Close elections may bring these issues to the fore. They get obscured in landslides.[20] As David Boies pointed out in his symposium address, one of the lasting effects of *Bush v. Gore* is that it "put a spotlight on the electoral process."[21]

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18. I have personal experience with election-day voting problems. During early voting in the 2004 general election, the Personal Electronic Ballot that was programmed into my assigned DRE had the wrong Congressional race on it. Not finding the name of the candidate I intended to vote for, I protested to the elections officials, who deleted the ballot and reprogrammed my DRE with the appropriate ballot. While I confess that I am not a typical voter, my experience highlights the need for voters to take responsibility for knowing who the candidates are and alerting voting officials when something goes wrong. Had I not known my Congressman, I may well have either voted "illegally" in the wrong district, or wasted my vote.

19. U.S. GEN. ACCOUNTING OFFICE, ELECTIONS: RESULTS OF GAO'S TESTING OF VOTING SYSTEMS USED IN SARASOTA COUNTY IN FLORIDA'S 13TH CONGRESSIONAL VOTING DISTRICT 11–12 (2008) (internal footnote omitted).

20. It is said that elections administrators pray for landslides on election day.

21. David Boies, Keynote Address, 64 U. MIAMI L. REV. 425, 428 (2010).

VOTERS HAVE A RIGHT TO A FAIR ELECTION, NOT A PERFECT ELECTION.

The second lesson of *Bush v. Gore* is that the familiar mantra the Democrats chanted "make every vote count" was a fallacy.[22] As one scholar has asked, "how would we know if the voting process functions properly?"[23] Any number of factors can intervene before, during, and after the election to disenfranchise eligible citizens from voting, permit ineligible persons to vote, or ignore or miscount votes.[24]

A goal of our political leaders and elections administrators should be to enhance the elections process to increase the probabilities that all eligible citizens can register to vote as provided by state law, that only eligible citizens register, that voters obtain timely and clear information regarding their polling places and election-day procedures, that only eligible voters vote, that votes are cast only once, that all legal votes are counted, and that the counting is done under conditions that can be objectively verified. We also should strive for administrative convenience, certainty, and finality. The challenge for legislators and elections officials is balancing the former with the latter. The Constitution requires that legislators and elections officials do not create inordinate burdens on the right to vote while enacting laws to ensure that elections are fair, honest, and efficient.[25]

If our system falls short on occasion, does this mean that the election was unfair or a violation of constitutional rights? I submit that elections that are the result of random, good faith errors—even systemic errors that do not result from dishonesty, gross negligence, improper influence, coercion, or fraud in the balloting and counting process[26]—are not unfair and that the postelection litigation that pretends to "count all the votes" does nothing to increase the fairness of the election.[27] This leads to the third lesson of *Bush v. Gore.*

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22. Nor was it what Gore actually pursued in Florida. In his election contest complaint against Secretary of State Katherine Harris, he asked only that undervotes from four counties in the state (Broward, Miami-Dade, Palm Beach, and Volusia) be counted. *See* Gore v. Harris, 772 So. 2d 1243, 1258 n.16 (Fla. 2000) (noting that Gore's request for a recount was made on November 9, 2000).

23. Edward B. Foley, *The Analysis and Mitigation of Electoral Errors: Theory, Practice, Policy*, 18 STAN. L & POL'Y REV. 350, 351 (2007).

24. *Id.* at 351–52.

25. *See* Burdick v. Takashi, 504 U.S. 428, 433 (1992).

26. *See* infra Note 31.

27. *See* Bush v. Gore, 531 U.S. 98, 121 (Rehnquist, C.J., concurring) ("[I]n the late afternoon of December 8th—four days before this deadline—the Supreme Court of Florida ordered recounts of tens of thousands of so-called "undervotes" spread through 64 of the State's 67 counties. This was done in a search for elusive—perhaps delusive—certainty as to the exact count of 6 million votes.").

JUDICIAL INVOLVEMENT IN DECIDING ELECTIONS CAN LEAD TO UNFAIR RESULTS.

Perfection in elections, as we all know, is unattainable.[28] Yet, in a close election, the losing side will look for ways to convince the courts to "do justice" by remedying election errors that may have contributed to the margin of loss and changing the outcome of the election. The question arises: in an election, what does it mean to "do justice?"

In *Bush v. Gore*, four of the seven justices of the Florida Supreme Court who decided the underlying case, *Gore v. Harris,* thought this meant a selective recount of only undervotes,[29] and, earlier, all seven thought it required a judicial alteration of the statutory deadline for certifying the votes.[30] The Florida Supreme Court reached these conclusions notwithstanding the lack of a finding below that election officials deliberately had disenfranchised voters, had spoiled ballots, or had altered the counts.[31] Nor was there any allegation of fraud or wrongdoing by any campaigns or their volunteers that could be said to have prevented legal

28. *See* Foley, supra note 23, at 356 ("One must resist the temptation to say that any Electoral Error is unacceptable. Politicians sometimes pronounce that one disenfranchised voter, or one lawful ballot included in the count, is one too many. Despite the rhetorical attractiveness of this assertion, it is untenable as a realistic standard by which to evaluate the performance of a state's voting system."); *see also* Edward B. Foley, *The Legitimacy of Imperfect Elections: Optimality, Not Perfection, Should be the Goal of Effective Election Administration*, July 22, 2006, *available at* http://moritzlaw.osu.edu/faculty/articles/foley_imperfect_elections.pdf (last visited Jan. 24, 2010).

29. Gore v. Harris, 772 So. 2d 1243, 1260–62 (Fla. 2000).

30. Palm Beach County Canvassing Bd. v. Harris, 772 So. 2d 1220, 1240 (Fla. 2000) (per curiam) (*Harris I*). The U.S. Supreme Court (9-0) vacated this ruling to permit the Florida court to remove the "considerable uncertainty" that accompanied its decision. *See* Bush v. Palm Beach County Canvassing Bd., 531 U.S. 70, 78 (2000) (quoting Minnesota v. Nat'l Tea Co., 309 U.S. 551, 555 (1940)). The Florida Supreme Court later reinstated its court-extended deadline while its opinion in *Bush v. Gore* was being reviewed. *See* Harris v. Palm Beach County Comm'n, 772 So. 2d 1273, 1289 (Fla. 2000) (*Harris II*). Despite the U.S. Supreme Court's instruction to consider whether the Florida constitution circumscribed legislative authority to determine the selection of electors and to consider its ruling in light of the deadline set by 3 U.S.C. § 5, the Florida Supreme Court gave scant attention to either question. Notably, the state court's decision in *Harris I* created the very infirmity that required reversal in *Bush v. Gore*. By delaying the certification date, it also delayed the filing of the election contest so that the federal deadline prevented adequate time for remanding the *Gore v. Harris* decision for development of appropriate standards for a manual recount. *Cf.* Harris II, 772 So. 2d at 1290 n.22 ("We add that we did not extend the deadline for completion of the manual recounts but made clear only that the date for certification must be set within a reasonable time to allow for the election contest provisions of section 102.168. As always, it is necessary to read all provisions of the elections code in pari materia. In this case, that comprehensive reading required that there be time for an elections contest pursuant to section 102.168, which all parties had agreed was a necessary component of the statutory scheme and to accommodate the outside deadline set forth in 3 U.S.C. § 5 of December 12, 2000.").

31. *See* Gore v. Harris, 772 So. 2d at 1264 (Wells, C.J., dissenting) ("[A]fter an evidentiary hearing, the trial court expressly found no dishonesty, gross negligence, improper influence, coercion, or fraud in the balloting and counting processes based on the evidence presented. . . . Historically, this Court has only been involved in elections when there have been substantial

votes from being counted or resulted in illegal votes being counted that affected the outcome of the election.

The Florida Supreme Court's decision was a recipe for chaos that would have led to constitutional crisis as well as threatening the rights of the state's six million voters.[32] First, the Court directed the immediate inclusion of partial recount results of undervotes from only two counties.[33] Second, it directed only undervotes from all counties be recounted, not all ballots, or even ballots that registered overvotes.[34] Third, it provided no objective standards by which the recount should take place.[35] Fourth, it created a situation where either no Floridian's vote would count (due to the inability to complete the recount before the federal deadline) or where only some Floridians' votes would be counted if their ballots happened to be taken up earlier in the process.[36] Fifth, it directed the trial court immediately to use the Leon County Supervisor of Elections and his designees to perform the recount of the 9,000 Miami-Dade County undervoted ballots.[37] Far from overstepping its bounds in halting the Florida Supreme Court's ill-advised recount,

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allegations of fraud and then only upon a high threshold because of the chill that a hovering judicial involvement can put on elections.").

32. *See id.* at 1270 (Wells, C.J. dissenting) ("This case has reached the point where finality must take precedence over continued judicial process. I agree with the view attributed to John Allen Paulos, a professor of mathematics at Temple University, who was quoted as saying, 'The margin of error in this election is far greater than the margin of victory, no matter who wins.' Further judicial process will not change this self-evident fact and will only result in confusion and disorder. Justice Terrell and this Court wisely counseled against such a course of action sixty-four years ago. I would heed that sound advice and affirm Judge Sauls.'") (footnotes omitted).

33. Those counties in which the Court directed immediate inclusion of recount results from ballots in which the machines read undervotes were Miami-Dade and Palm Beach. *Id.* at 1260, 1262.

34. *See id.* at 1261–62. Chief Justice Wells, in dissent, took issue with the majority's decision in *Gore v. Harris* to direct only the recount of undervotes. *See id.* at 1264 n.26 (Wells, C.J., dissenting) ("Also problematic with the majority's analysis is that the majority only *requires* that the "under-votes" are to be counted. How about the "over-votes?" . . . The underlying premise of the majority's rationale is that in such a close race a manual review of ballots rejected by the machines is necessary to ensure that all legal votes case are counted. . . . It seems patently erroneous to me to assume that the vote-counting machines can err when reading under-votes but not err when reading over-votes.").

35. *See id.* at 1262. This ultimately was the basis on which the U.S. Supreme Court reversed. *See* Bush v. Gore, 531 U.S. 98, 105–09 (2000).

36. *See* Gore v. Harris, 772 So. 2d at 1272 (Harding, J., dissenting). This gave an immediate advantage to Gore, who had cherry-picked the counties where he sought the canvassing board recounts, focusing on counties where he had the electoral advantage.

37. *Id.* at 1262. All the other county canvassing boards in the state could be ordered to conduct their own recounts. I have found no commentators who noted the irony that the Supervisor from a county that switched from punch card ballots to optical scan ballots in 1992 would be designated to develop a methodology for determining voter intent on punch card ballots. Here, the court created yet an even worse standard-less directive. Moreover, given Miami-Dade's large minority population and its status pursuant to a consent order as a "pre-clearance" county for changes in election procedures, it is open to debate whether singling out Miami-Dade voters for

the U.S. Supreme Court in *Bush v. Gore* prevented the Florida Supreme Court from overstepping *its* authority and, in the process, voiding or diluting the already counted and valid votes of nearly six million Floridians.

It could be said that the Florida Supreme Court acted unfairly when it earlier changed the election deadlines established by duly elected officials. It also can be said that it acted unfairly when it dictated a vote-counting methodology it fashioned out of whole cloth. Changing the rules of the game midstream goes against what we call "fair play" in America. "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."[38]

Elections essentially are political in nature.[39] The judicial system is ill equipped to engage in the balancing of interests that political decision-making requires. When it oversteps its bounds, it weakens our democracy. Then Chief Justice Wells, in his *Gore v. Harris* dissent, said it best:

> Judicial restraint in respect to elections is absolutely necessary because the health of our democracy depends on elections being decided by voters—not by judges. We must have the self-discipline not to become embroiled in political contests whenever a judicial majority subjectively concludes to do so because the majority perceives it is "the right thing to do." Elections involve the other branches of government. A lack of self-discipline in being involved in elections, especially by a court of last resort, always has the potential of leading to a crisis with the other branches of government and raises serious separation-of-powers concerns.[40]

CONCLUDING THOUGHTS

The U.S. Supreme Court's decision in *Bush v. Gore* was consistent with the principle that elections must be fair and that courts ought to exercise self-restraint against the temptation to insert their subjective views about "the right thing to do" into the elections process. While some would argue the decision federalized election law, I suggest that

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disparate treatment in the recount created further constitutional infirmities, or at least problems under the Voting Rights Act.

38. *Id.* at 1272 (Harding, J. dissenting).

39. By "political" I do not mean "partisan." Rather, I mean that the decisions are achieved by making policy judgments, balancing interests and executing the law. *See* Bush v. Gore, 531 U.S. at 116 (Rehnquist, C.J., concurring) (quoting Boardman v. Esteva, 323 So. 2d 259, 268 n.5 (Fla. 1975)) ("The election process . . . is committed to the executive branch of government through duly designated officials all charged with specific duties. . . . [The] judgments [of these officials] are entitled to be regarded by the courts as presumptively correct . . . .").

40. Gore v. Harris, 772 So. 2d at 1264 (Wells, C.J., dissenting).

the decision stands for a more basic principle that need not lead to a general federalization of election laws. The majority opinion instructs the lower courts that they cannot fashion election remedies for some voters that dilute or eliminate the rights of other voters.[41] And although only three justices relied on this reasoning, it also stands as a warning to courts that they must respect their limited role in the elections process and defer to the judgment of the political branches, be they legislators or county canvassing boards who are acting in good faith.[42] In short: don't change the rules in the middle of the game.

41. *See* Bush v. Gore, 531 U.S. at 109 ("When a court orders a statewide remedy, there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied.").

42. *Id.* at 122 (Rehnquist, C.J., concurring). My reading is concededly more expansive than the concurring opinion's rationale. Chief Justice Rehnquist restricted his opinion to presidential elections, where the legislature's determination must be paramount pursuant to Article II, section 1, clause 2 of the United States Constitution. *See id.* at 114 (Rehnquist, C.J., concurring) ("In any election but a Presidential election, the Florida Supreme Court can give as little or as much deference to Florida's executives as it chooses, so far as Article II is concerned, and this Court will have no cause to question the court's actions. But, with respect to a Presidential election, the court must be both mindful of the legislature's role under Article II in choosing the manner of appointing electors and deferential to those bodies expressly empowered by the legislature to carry out its constitutional mandate.").