DEMOCRACY ON THE DOCKET: REFLECTIONS ON *BUSH V. GORE* AFTER 25 YEARS

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INTRODUCTION

Almost 200 years ago, Alexis de Tocqueville observed in his treatise *Democracy in America* that, in the United States, "[t]here is hardly any political question . . . that sooner or later does not turn into a judicial question."[1] Tocqueville's insight, both prescient and enduring, has been borne out time and again—from landmark cases on school desegregation, voting rights, and reproductive freedom, to rulings on

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Although hundreds of scholarly articles have been published analyzing *Bush v. Gore*, few have been authored by individuals directly involved in the case. An exception is former Chief Justice Charles T. Wells, who provided his perspective in his book. *See generally* CHARLEY WELLS, INSIDE BUSH V. GORE (David R. Colburn & Susan A. MacManus, eds., 2013). In addition, several justices, attorneys, and journalists who played roles in the litigation contributed to the fall 2020 edition of the Historical Review, the magazine of the Florida Supreme Court Historical Society, which was dedicated to the 20th anniversary of the case. *See generally* HIST. REV. (Fall/Winter 2020). Recently, Justice Pariente published an article with The Brennan Center on her thoughts related to the issue, twenty years later. *See* Barbara J. Pariente, *Judging Democracy: A Former Justice Reflects on* Bush v. Gore *25 Years Later*, STATE CT. REP. (Dec. 8, 2025), https://statecourtreport.org/our-work/analysis-opinion/judging-democracy-former-justice-reflects-bush-v-gore-25-years-later [https://perma.cc/MFB6-ELLY].

Justice Pariente expresses her gratitude to her former law clerks—Jodi Wilkof, Josh Gardner, and Melanie Kalmanson—for their assistance in preparing this Article. Ms. Wilkof and Mr. Gardner served as Justice Pariente's law clerks during the 2000 election litigation. Ms. Kalmanson served as Justice Pariente's law clerk from August 2016 through Justice Pariente's retirement in January 2019 and assisted with preserving Justice Pariente's papers, including those related to *Bush v. Gore*, when she retired. Ms. Wilkof currently serves as Chief of Staff to a Leon County Commissioner. Mr. Gardner is a litigation partner at DLA Piper. Ms. Kalmanson is a commercial litigation partner at Quarles & Brady LLP.

1. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 441 (Eduardo Nolla ed., James T. Schleifer trans., Liberty Fund, Inc. 2012) (1835).

same-sex marriage and religious liberty. Yet today, I find myself asking a more troubling and contemporary inversion: In our increasingly politically polarized nation, have high-profile judicial decisions become another flashpoint for political dissension and rhetoric?

Twenty-five years ago, I was a justice on the Florida Supreme Court when it became the epicenter of one of the most consequential constitutional controversies: the 2000 presidential election between then-Texas Governor George W. Bush and then-Vice President Al Gore. Only a few hundred of the nearly six million votes cast in Florida would determine not just who would occupy the White House, but how the judiciary would be seen for decades to come—as a protector of democratic principles or as a casualty of political warfare.[2]

From butterfly ballots to hanging chads, Florida's electoral chaos thrust our court into the national spotlight and, ultimately, the pages of history. The dispute that came to be known as *Bush v. Gore* was not just a legal dispute—but a test of the rule of law and the importance of judicial independence in a functioning democracy with three independent branches of government.

The *Bush v. Gore* litigation required unprecedented speed, resources, and judicial coordination. A majority of us were ultimately guided by a shared commitment that every legally cast vote be counted. After a unanimous ruling in the first case,[3] our court rendered a 4–3 ruling in a later case to require a statewide manual recount conducted under uniform standards.[4] This effort to ensure that every legal vote was counted—something that had never occurred during the initial tabulation—came to a halt when the U.S. Supreme Court intervened.[5] In a controversial 5–4 per curiam decision that halted the statewide recount our court had required, the U.S. Supreme Court effectively handed the presidency to George W. Bush. The nation was left with no final count and no closure—only an uneasy lesson about the fragility of democratic legitimacy.[6]

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2. Contemporaneous estimates placed the number of uncounted undervotes between 327 and 930, but the most commonly used number was just over 500, representing .008% of the total vote of almost six million votes cast. Voter Turnout, FLA. DIV. OF ELECTIONS, https://dos.fl.gov/elections/data-statistics/elections-data/voter-turnout/ [https://perma.cc/N7E9-Q9GK] (Jan. 15, 2025); Ron Elving, *The Florida Recount Of 2000: A Nightmare That Goes on Haunting*, NPR (Nov. 12, 2018, 5:00 AM), https://www.npr.org/2018/11/12/666812854/the-florida-recount-of-2000-a-nightmare-that-goes-on-haunting [https://perma.cc/YQW5-ZZF8].

3. Palm Beach Cnty. Canvassing Bd. v. Harris, 772 So. 2d 1220, 1240 (Fla. 2000) (per curiam).

4. Gore v. Harris, 772 So. 2d 1243, 1262 (Fla.), *rev'd sub nom.* Bush v. Gore, 531 U.S. 98 (2000).

5. *Bush*, 531 U.S. at 110.

6. I have long harbored serious concerns about the U.S. Supreme Court's intervention in *Bush v. Gore*. The majority's opinion criticized Florida for lacking a uniform method of counting votes—despite the fact that many states at the time similarly delegated ballot tabulation procedures to individual counties. In effect, the Supreme Court halted our court's

Although a quarter-century has passed since *Bush v. Gore*, the core issues—the integrity of our elections, the impartiality of our courts, and the significance of the rule of law—are more urgent now than ever. If 2000 was a constitutional crisis resolved through institutional restraint, then recent events—from the storming of the Capitol on January 6, 2021,[7] to the erosion of public trust in judicial rulings,[8] and more recently threats toward sitting judges[9]—suggest that we may be far less prepared to withstand the next constitutional crisis.

As I reflect on those extraordinary days in late 2000, I do so not only as a former justice who was on the front lines, but as a citizen deeply concerned about where we are headed. *Bush v. Gore* was not the end of a story—it was the beginning of a cautionary tale. One that reminds us that democracy does not sustain itself. It must be defended. Vote by vote. Ruling by ruling. Generation by generation.

I. THE FLORIDA SUPREME COURT AT THE TIME

The Florida Supreme Court seal, which is prominently displayed in the rotunda of the court's historic building in Tallahassee, includes the Latin phrase: *Sat cito si recte*—"Soon enough if correct."[10] It is a quiet but solemn reminder that haste must never displace justice, and, even under pressure, courts must act not just swiftly—but correctly. In the fall of 2000, that guiding principle was tested in ways we could scarcely have imagined.

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order that would have ensured a statewide manual recount of undervotes conducted under uniform standards, the very remedy the majority claimed was lacking. What is particularly troubling is the implication, if not the outright assumption, that the Florida Supreme Court acted out of political motivation. That suggestion, in my view, not only mischaracterized our reasoning but also undermined public confidence in the judiciary's capacity to resolve politically consequential cases with impartiality. This critique of the Supreme Court's decision—and its broader implications for judicial legitimacy—has been well explored in legal scholarship. *See, e.g.*, Erwin Chemerinsky, *The Meaning of* Bush v. Gore: *Thoughts on Professor Amar's Analysis*, 61 FLA. L. REV. 969, 977-78 (2009).

7. *E.g.*, Christopher Wray, *Examining the January 6 Attack on the U.S. Capitol*, FBI (June 15, 2021), https://www.fbi.gov/news/speeches-and-testimony/examining-the-january-6-attack-on-the-us-capitol-wray-061521 [https://perma.cc/TQ3E-7C5X].

8. *See, e.g.*, Joseph Copeland, *Favorable Views of Supreme Court Remain Near Historic Low*, PEW RSCH. CTR. (Sept. 3, 2025), https://www.pewresearch.org/short-reads/2025/09/03/favorable-views-of-supreme-court-remain-near-historic-low/ [https://perma.cc/S9M6-9MR7] (reporting that "favorable views [of the Supreme Court] remain close to a three-decade low, according to a Pew Research Center survey of U.S. adults conducted Aug. 4-10, 2025"); *see also* Amy Howe, *In Year-End Report, Chief Justice Defends Judiciary's Independence*, SCOTUSBLOG (Dec. 31, 2024), https://www.scotusblog.com/2024/12/in-year-end-report-chief-justice-defends-judiciarys-independence/ [https://perma.cc/ML6C-J3KJ] (referencing "mounting criticism of the court").

9. Jim Ash, *Judges Grapple with Surge in Online Threats, Doxing, and Harassment*, FLA. BAR (June 9, 2025), https://www.floridabar.org/the-florida-bar-news/judges-grapple-with-surge-in-online-threats-doxing-and-harassment/ [https://perma.cc/CQ4B-P95Q].

10. *Supreme Court Seal*, FLA. SUP. CT., https://supremecourt.flcourts.gov/About-the-Court/Supreme-Court-Seal [https://perma.cc/7RYW-56AR] (last visited Jan. 23, 2026).

The Florida Supreme Court was a collegial seven-member body charged with resolving some of the most complex and high-stakes legal questions in the state—ranging from capital punishment and constitutional interpretation to inter-district conflicts and certified questions from the U.S. Court of Appeals for the Eleventh Circuit.[11] Like all state high courts, we operated within the familiar parameters of appellate procedure: written briefs, oral arguments, internal deliberation, and published opinions.

But nothing about November 2000 was familiar. As we entered our regularly scheduled oral argument week, we were already managing the legal and logistical demands of a pending death warrant.[12] What we did not know—what no one could have foreseen—was that our court would be in the legal epicenter of the presidential election.

The presidential election between Vice President Al Gore and Governor George W. Bush had just taken place. And while the nation slept, Florida's votes were still being counted. I had cast my own absentee ballot in Palm Beach County, where my husband and I resided. As a sitting justice, I had no inkling that the election would end up in our courtroom—let alone in the history books. But by the morning after Election Day, it was clear that a national crisis was unfolding in our state: only several hundred votes out of nearly six million cast in our state would determine who would become the forty-third President of the United States.

The razor-thin margin—and the uncertainty unfolding at the county level—meant that Florida's role in the election was not just pivotal. It was singular. Our legitimacy as individual justices, and the legitimacy of the court as an institution, was suddenly under national scrutiny.

To capture the intensity and surreal quality of the moment, NBC's Tim Russert famously repeated the phrase that soon became synonymous with the centrality of our role: "FLORIDA! FLORIDA! FLORIDA!"[13] It wasn't just a geographic reference. It was a metaphor for the nation's unresolved electoral anxiety—a recognition that

11. *See* FLA. CONST. art. V, § 3.

12. *See* HIST. REV. 40 (Fall/Winter 2020) [hereinafter 2020 HISTORICAL REVIEW] (including article about the warrant-related litigation pending at the court during *Bush v. Gore* litigation). Edward Castro was executed on December 7, 2000. *Execution List: 1976-Present*, FLA. DEP'T CORR., https://www.fdc.myflorida.com/institutions/death-row/execution-list-1976-present [https://perma.cc/5K4X-8HHM] (last visited Jan. 23, 2026). To read more about the death warrant process and the strain it puts on litigants and the court generally, see Melanie Kalmanson, *Somewhere Between Death Row and Death Watch: The Procedural Trap Capital Defendants Face in Raising Execution-Related Claims*, 5 U. PA. J.L. & PUB. AFFS. 413 (2020).

13. *See, e.g.*, *Florida! Florida! Florida!: Presidential Elections and the Sunshine State*, UNIV. FLA. (Sept. 11, 2024), https://sasc.uflib.ufl.edu/2024/09/11/florida-florida-florida-presidential-elections-and-the-sunshine-state/ [https://perma.cc/8GZB-LTD7].

Florida had become the linchpin in a global drama about democracy, law, and power.

Inside the court, our charge remained the same: to interpret the law and apply it fairly. We were diligent in doing so without influence from the outside. But outside, the world was watching—and waiting. News reporters and cameras and the public swarmed the streets and steps outside the court building.[14]

II. THE FLORIDA SUPREME COURT'S DECISIONS

The Florida Supreme Court's role in the 2000 presidential election was nothing short of historic. In the span of just a few weeks, our court issued two of the most scrutinized and consequential decisions in modern election law. First, in a unanimous 7–0 per curiam opinion, we ordered the Secretary of State to delay certification of the vote to allow counties time to complete recounts—a ruling grounded in the fundamental principle that no legally cast vote should be discarded for lack of time.[15] Second, in a deeply divided 4–3 decision, we mandated a statewide manual recount of undervotes under uniform standards, reflecting our solemn judicial conclusion that a democracy cannot claim legitimacy if it refuses to count votes that machines have failed to recognize but human eyes could plainly discern.[16]

These were not abstract exercises in statutory interpretation. They were immediate, high-stakes decisions rendered under extraordinary pressure—decisions that reverberated not only throughout the state but across the nation and the world. Both cases were heard in televised oral arguments, broadcast live in an unprecedented moment of transparency that drew millions of viewers and global media attention to a court that, until then, had largely operated outside the political spotlight.[17]

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14. *See* 2020 HISTORICAL REVIEW, *supra* note 12, at 1, 6, 7, 24, 29, 34 (depicting photos of news reporters, cameras, and the public gathering outside of the court).

15. *See* Palm Beach Cnty. Canvassing Bd. v. Harris (*Harris I*), 772 So. 2d 1220, 1240 (Fla. 2000).

16 *See* Gore v. Harris (*Harris II*), 772 So. 2d 1243, 1261-62 (Fla.), *rev'd sub nom.* Bush v. Gore 531 U.S. 98 (2000).

While not the focus of this Article, it should be noted that there were numerous lawsuits filed and also some issues that we rejected that could have tilted the election in favor of Vice President Al Gore. The one case that stands out has been referred to as the "butterfly ballot" case, arising out of Palm Beach County, where the design of the ballot confused voters intending to vote for Al Gore and instead voting for conservative commentator Pat Buchanan. The solidly democratic voters in South Florida condominium communities would never have intentionally voted for Pat Buchanan. A criticism of this court's failure to address this disparity opinion was the subject of a law review article co-authored by Mitch Berger, an attorney for Al Gore. *See* Mitchell W. Berger & Candice D. Tobin, *Election 2000: The Law of Tied Presidential Elections*, 26 NOVA L. REV. 647, 710-11, 710 n.344 (2002).

17. Aside from the legal and political significance of the *Bush v. Gore* litigation, our court was also a trailblazer on access to courts during this same time. The Florida Supreme

From mid-November onward, the Florida Supreme Court became the epicenter of the presidential election. While we were mindful of the importance and impact of our decisions, we focused on the task at hand, which was to expeditiously interpret ambiguous and, in some instances, conflicting provisions of Florida election law. Of course, it was never contemplated that these provisions would come into play in determining the outcome of a national election, let alone the presidential election.

Under normal conditions, appellate review in our court follows a carefully structured pace: thorough record preparation, extended briefing schedules, methodical oral argument preparation, and weeks—if not months—of internal deliberation.[18] But in these cases, deadlines were measured in hours, not weeks. Records were transmitted as quickly as possible. Legal teams filed briefs overnight. Oral arguments were scheduled with unprecedented speed. Justices, law clerks, and central staff worked around the clock to analyze, draft, revise, and issue decisions. Our obligation was clear: to interpret the law faithfully, to protect the integrity of the electoral process, and, ultimately, to ensure that every lawful vote was counted.

I sat shoulder-to-shoulder with my colleagues as we approached that responsibility. I can attest—without qualification—that each justice approached these decisions with gravity, independence, and deep respect for the law. We were not blind to the political implications of our rulings, but we were not driven by them.

And yet, despite our best efforts to uphold the constitutional ideal of inclusive democracy, we could not finish the judicial work with which we were tasked. On December 12, 2000, the U.S. Supreme Court issued its ruling in *Bush v. Gore*, halting the recount our court had ordered.[19] At that moment, only 537 votes separated the two candidates in a state where nearly six million votes had been cast.[20]

The Florida Supreme Court's two major decisions—the first issued on November 21 in *Palm Beach County Canvassing Board v. Harris*,[21] often referred to as *Harris I*, and the second issued on December 8 in *Gore v. Harris*,[22] often referred to as *Harris II*—now serve as legal and

Court was the first appellate court in the United States to broadcast its oral arguments on television and stream them over the internet, marking a significant advancement in judicial transparency. Of course, that transparency allowed for the public, and indeed, the world, to witness our oral arguments in the *Bush v. Gore* litigation. For a detailed account of how this innovation emerged—and the role public communication played during the *Bush v. Gore* litigation—see Robert Craig Waters & Thomas D. Hall, *How* Bush v. Gore *Changed Courts Across the World*, HIST. REV. 35, 35, 37-38 (Fall/Winter 2020).

18. *See generally* Fla. R. App. P. (2000); Sup. Ct. Fla. Manual Internal Operating P. (2000).

19. 531 U.S. 98 (2000).

20. *See supra* note 2.

21. 772 So. 2d 1220.

22. 772 So. 2d 1243.

historical touchstones. Though formally cited under their state law captions, they are collectively known as part of the national saga we reference colloquially as *Bush v. Gore*. And with good reason: They marked a rare moment when a state court was asked to resolve a question with global consequences—and to do so in real time with the U.S. presidency hanging in the balance.[23]

Looking back, those days were more than a judicial test. They were a test of the legitimacy of democratic institutions, of legal process under pressure, and of the judiciary's capacity to hold the line between law and politics. Whether that line ultimately held is a question that academics still debate today, twenty-five years later—especially as we confront new challenges to election integrity, judicial independence, and democratic norms in today's increasingly polarized climate. But this much remains clear: especially when the votes of millions hang in the balance, the rule of law is not a theoretical ideal.

A. Harris I *(Nov. 21, 2000): 7–0 Per Curiam Decision*

The first of our major rulings in the 2000 presidential election litigation was *Harris I*, issued on November 21. The question before the Florida Supreme Court was extremely narrow and one that involved principles of statutory construction: Had the Secretary of State acted prematurely in certifying Florida's election results before recounts in several counties had been completed?[24]

On November 14, Secretary of State Katherine Harris declared that she intended to certify the vote tallies—despite the fact that several counties were still in the midst of lawfully conducted manual recounts.[25] The legal dispute centered on the interplay between various provisions of Florida's election statutes—some mandating certification deadlines, others authorizing local canvassing boards to recount ballots when errors or anomalies were suspected.[26]

In a unanimous 7–0 per curiam decision, our court held that the Secretary's certification was premature and failed to give appropriate weight to Florida's statutory commitment to ensuring that every legally cast vote is counted.[27] We approached the issue not as policymakers, but as jurists charged with interpreting a dense and sometimes ambiguous statutory framework. Applying well-established Florida case law and canons of statutory construction—which establish that the specific prevails over the general, the more recent over the older,

23. *See supra* note 16.

24. *See generally Harris I*, 772 So. 2d 1220.

25. Secretary Harris was a Republican appointed by Governor Jeb Bush as Secretary of State of Florida and as a co-chair of George W. Bush's Florida presidential election campaign. See *Harris, Katherine*, HIST. ART & ARCHIVES, https://history.house.gov/People/Detail/15566 [https://perma.cc/4YU6-GTBD] (last visited Jan. 23, 2026).

26. *See generally Harris I*, 772 So. 2d 1220.

27. *Id.* at 1239-40.

and statutes should be read harmoniously whenever possible—we concluded that the relevant statutes provided sufficient flexibility to delay certification when necessary to avoid the disenfranchisement of voters.[28]

Importantly, we did not invoke constitutional principles in *Harris I*. Our decision rested on statutory interpretation. We held that Florida's election code, particularly section 102.141(4), permitted local canvassing boards to continue their recounts in order to determine the voter's intent—a standard the Legislature itself had endorsed.[29] We directed that certification be postponed until November 26 to allow the counties time to complete recounts under the voter-intent standard.[30] Our reading of the statute was reinforced by sections 102.111 and 102.112, which contain timing provisions but do not override the duty to count all legally cast votes.

Our decision in *Harris I* was not about politics, although, many George W. Bush supporters would disagree. In our view, it was about the careful application of statutory law, even in the face of intense political pressure and national scrutiny. It was a reaffirmation of what courts are designed to do: ensure that the rule of law—not expediency, not partisanship—guides the administration of justice.[31]

B. Harris II *(Dec. 8, 2000): A Divided Court, 4–3 Decision*

If *Harris I* was a statement of unanimity and restraint, *Harris II* was an inflection point for our court. Gore's trial team had filed an election contest case in Leon County, arguing "that the results certified by the Canvassing Commission included 'a number of illegal votes' and failed to include 'a number of legal votes sufficient to change or place in doubt the result of the election.' "[32] Ultimately, we determined that the inquiry should not be selectively cherry-picked only for counties deemed solidly democratic. Rather, the issue we decided was whether there should be a uniform, statewide manual recount of undervotes to ensure that each vote was counted under equal standards.[33]

In a 4–3 per curiam decision, the court ordered just that: a uniform manual recount to be conducted across all counties that had not yet

28. *Id.*

29. *Id.*

30. *Id.* at 1240.

31. Judicial independence is not a partisan ideal but a fundamental cornerstone of our democracy. *See* John G. Roberts, Jr., *2024 Year End Report on the Federal Judiciary*, SUP. CT. U.S. (Dec. 31, 2024).

32. *Harris II*, 772 So. 2d at 1247 (quoting Fla. Stat. § 102.168(3)(c) (2000)), *rev'd sub nom. Bush*, 531 U.S. 98.

33. *See generally id.*

completed such a review, pursuant to section 102.166.[34] By then, the consensus that had anchored *Harris I* had fractured.

Chief Justice Charles T. Wells issued a strongly worded dissent, warning that the majority's ruling amounted to judicial overreach—a rewrite, in his view, of the Legislature's carefully constructed electoral framework.[35] Justice Harding, joined by Justice Shaw, wrote a separate dissent, which took a practical point of view and expressed that there was no time left for the remedy the majority opinion directed.[36]

Yet the per curiam majority opinion, which I joined, was rooted in a central principle: equal protection under law requires that votes be counted under consistent and uniform standards. The facts were indisputable: discrepancies in machine-tabulated results across Florida's sixty-seven counties had produced confusion, unequal treatment, and the disenfranchisement of thousands of voters. Ballots that might have counted in one county were discarded in another. In Miami-Dade County, the recount had been halted due to intimidation of the Canvassing Board by protestors supporting George W. Bush.[37]

To remedy this constitutional disparity, we ordered that manual recounts proceed in counties that had not yet undertaken them. Ballots displaying a "clear indication of voter intent" should be deemed valid, as permitted by section 101.5614(5).[38] We did not invent any novel legal doctrine—we interpreted the Legislature's own voter-intent standard in a uniform and consistent manner. In our view, this was not judicial innovation; it was judicial fidelity to democratic
principle.

C. Harris III *(Dec. 22, 2000): The Clock Ran Out*

Harris III marked the solemn conclusion of Florida's role in the 2000 presidential election dispute. In a terse but weighty per curiam opinion, issued just ten days after the U.S. Supreme Court's decision in *Bush v. Gore*, our court acknowledged that, in light of the U.S. Supreme Court's ruling and the federal safe harbor deadline, no further judicial relief was available to the appellants, Vice President Gore and Senator Lieberman.[39]

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34. *See generally id.* at 1246.

35. *Id.* at 1262-70 (Wells, C.J., dissenting).

36. *Id.* at 1272-73 (Harding, J., dissenting).

37. *See* Dexter Filkins & Dana Canedy, *Counting the Vote: Miami-Dade County*; *Protest Influenced Miami-Dade's Decision to Stop Recount*, N.Y. TIMES (Nov. 24, 2000), https://www.nytimes.com/2000/11/24/us/counting-vote-miami-dade-county-protest-influenced-miami-dade-s-decision-stop.html [https://perma.cc/ED6A-4QWM].

38. *See generally Harris II*, 772 So. 2d 1243, *rev'd sub nom. Bush*, 531 U.S. 98.

39. *See generally* Gore v. Harris (*Harris III*), 773 So. 2d 524 (Fla. 2000). In hindsight, it could have been argued that although the "safe harbor" statutory deadline provided for the

What had begun in *Harris I* as an effort to ensure the lawful completion of county-level recounts—and evolved in *Harris II* into a statewide judicial mandate to correct unequal tabulation standards—ended in *Harris III* with a reluctant but necessary recognition: the clock had run out. And with it, the legal avenues for further review had closed.

The U.S. Supreme Court had reversed our *Harris II* decision on Equal Protection grounds.[40] While it accepted the "intent of the voter" standard in the abstract,[41] the Court concluded that the lack of specific, uniform standards for implementing that standard across Florida's counties rendered the recount unconstitutional under the Fourteenth Amendment's Equal Protection Clause.[42] Moreover, the Supreme Court majority declared that any recount must be completed by December 12, under 3 U.S.C. § 5—the so-called "safe harbor" for states seeking to ensure that their electors would be counted by Congress.[43]

That deadline, of course, had already passed by the time the U.S. Supreme Court issued *Bush v. Gore*. And so, in *Harris III*, we were compelled to concede the obvious: even if we were to revisit or refine the recount process, there was no longer sufficient time or lawful authority to act. As our opinion plainly stated: "In light of the time of the release of the Supreme Court opinion, these tasks and this deadline could not possibly be met."[44]

In my concurring opinion in *Harris III*, I quoted *Boardman v. Esteva*,[45] and I revisit it today to reaffirm its enduring truth. At every stage of the 2000 election litigation, it became increasingly clear that the individuals whose rights hung in the balance were not the candidates whose names appeared in the case captions. It was the voters themselves. The real parties in interest—though unnamed in the procedural sense—were the citizens of Florida who had gone to the polls expecting that their voices would be heard and their choices counted. The voters possessed the ultimate interest in the integrity of the process, and it was their inclusion, not the resolution of political rivalry, that our judicial efforts were meant to secure. When courts are called upon to interpret election laws, the question must always be not what benefits the contestants, but what honors the sovereign will of the people.

December 12th date to ensure Florida's electors would be recognized, Congress would have had discretion to allow our electors in time for the certification of electors on January 6th.

40. *See Bush*, 531 U.S. 98, 110-11.

41. *Id.* at 105-06.

42. *Id.* at 106.

43. *Id.* at 110-11.

44. *Harris III*, 773 So. 2d at 526.

45. *Id.* at 531 (Pariente, J., concurring) (quoting Boardman v. Esteva, 323 So. 2d 259, 262-63 (Fla. 1975)).

Our constitutional tradition, both state and federal, guarantees the people the right to take part in self-government. For most Americans, that participation takes the form of voting—an act that is both expressive and constitutive. To vote is to speak; to be counted is to be acknowledged as part of the political community. And so the right to vote is not exhausted at the point of casting a ballot—it encompasses the full chain of events that must occur for that vote to be recognized, recorded, and effectuated. To interrupt that chain is not simply a procedural misstep—it is an injury to the democratic order. A vote uncounted is a voice unheard, and a voice unheard is a citizen unseen.

When those voices go unheard—not because of malfeasance, but because of institutional rigidity or judicial retreat—the act of voting is reduced to ritual rather than right. The legitimacy of our institutions depends not on form alone, but on the fulfillment of their democratic promise: that every lawful vote will carry political consequence.

Ultimately, however, if *Harris I* was about process, and *Harris II* about principle, *Harris III* was about finality. It brought no resolution to the substantive question—who won the most votes in Florida—because that was no longer a judicially answerable question. The U.S. Supreme Court's ruling did not settle the debate; it simply recognized that, under federal constitutional authority and statutory deadlines, and despite everyone's feverish efforts, the time for litigation had passed.

In a system committed to both the rule of law and the democratic ideal that every vote should count, *Harris III* stands as a sobering reminder of the fragility of that balance. It teaches that legal correctness and democratic completeness are not always aligned, and courts, however well-intentioned, are sometimes constrained by forces beyond their control.

I remain steadfast in the belief that every vote legitimately cast in a democracy should be counted. This should not be a controversial view. Yet in 2000, the absence of statewide uniformity in ballot design and vote tabulation revealed the cracks in Florida's decentralized electoral infrastructure. Each of Florida's sixty-seven counties operated under its own procedures, equipment, and discretion—administered by sixty-seven independent Supervisors of Elections. The result? Dramatic inconsistencies that meant a vote in Miami-Dade County might be treated differently than the same vote in Leon County or Palm Beach County.

Ironically, the U.S. Supreme Court's majority opinion in *Bush v. Gore* later cited this lack of uniformity as the central Equal Protection violation warranting federal intervention.[46] Yet it was precisely that violation our court sought to remedy in our second opinion by tasking

46. 531 U.S. 98, 109 (2000).

a single trial judge with overseeing the statewide recount.[47] And as Justice John Paul Stevens eloquently noted in dissent—joined by Justices Ginsburg and Breyer—the Florida Supreme Court did not rewrite the law. We applied it:

> Finally, neither in this case, nor in its earlier opinion in [*Harris I*, 772 So. 2d 1220 (2000)], did the Florida Supreme Court make any substantive change in Florida electoral law. Its decisions were rooted in long-established precedent and were consistent with the relevant statutory provisions, taken as a whole. It did what courts do—it decided the case before it in light of the legislature's intent to leave no legally cast vote uncounted. In so doing, it relied on the sufficiency of the general "intent of the voter" standard articulated by the state legislature, coupled with a procedure for ultimate review by an impartial judge, to resolve the concern about disparate evaluations of contested ballots. If we assume—as I do—that the members of that court and the judges who would have carried out its mandate are impartial, its decision does not even raise a colorable federal question.
>
> What must underlie petitioners' entire federal assault on the Florida election procedures is an unstated lack of confidence in the impartiality and capacity of the state judges who would make the critical decisions if the vote count were to proceed. Otherwise, their position is wholly without merit. The endorsement of that position by the majority of this Court can only lend credence to the most cynical appraisal of the work of judges throughout the land. It is confidence in the men and women who administer the judicial system that is the true backbone of the rule of law. Time will one day heal the wound to that confidence that will be inflicted by today's decision. One thing, however, is certain. 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 rule of law.[48]

Whatever one's position on the legal theories advanced in *Bush v. Gore*, a sobering truth remains: not every vote intended to be cast for a presidential candidate in Florida was counted. In some counties, manual recounts were completed, and undervotes—ballots where voting machines had failed to register a presidential choice—were carefully inspected. But in at least fifteen counties, those undervotes were never reviewed manually. Citizens who took the time to vote—all of whom, of course, believed their votes would be counted—were effectively erased from the final tally.

This was not an abstraction. The certified margin of victory for Bush in Florida was only 537 votes out of over six million votes cast.[49] In a democracy built on the principle of one person, one vote, that number matters. In addition, the U.S. Commission on Civil Rights

47. *Harris II*, 772 So. 2d at 1262, *rev'd sub nom. Bush*, 531 U.S. 98.

48. *Id.* at 127-29 (Stevens, J., dissenting) (footnotes omitted).

49. *See supra* note 2.

"conducted an extensive public investigation of allegations of voting irregularities during the 2000 presidential election in Florida."[50] "The investigation, utilizing the Commission's subpoena power, included three days of hearings, more than 30 hours of testimony, 100 witnesses, and a systematic review of more than 118,000 pages of pertinent documents."[51] The Commission ultimately found:

> Perhaps the most dramatic undercount in Florida's election was the uncast ballots of countless eligible voters who were turned away at the polls or wrongfully purged from voter registration rolls.
>
> While statistical data, reinforced by credible anecdotal evidence, point to widespread disenfranchisement and denial of voting rights, it is impossible to determine the extent of the disenfranchisement or to provide an adequate remedy to the persons whose voices were silenced in this historic election by a pattern and practice of injustice, ineptitude, and inefficiency.
>
> Despite the closeness of the election, it was widespread voter disenfranchisement, not the dead-heat contest, that was the extraordinary feature in the Florida election. The disenfranchisement was not isolated or episodic. And state officials failed to fulfill their duties in a manner that would prevent this disenfranchisement.[52]

IV. THE AFTERMATH AND IMPACT

In the wake of *Bush v. Gore*, Florida faced a hard reckoning. The decentralized, inconsistent, and error-prone systems that had marred the 2000 presidential election became the focus of substantial reform. Over the next several years, the state implemented sweeping changes: uniform voting systems across all sixty-seven counties, standardized recount protocols, and post-election audit procedures—all designed to correct the fragmented practices that had led to chaos, uncertainty, and the loss of public confidence.[53]

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50. *See* U.S. COMM'N ON CIV. RTS., VOTING IRREGULARITIES IN FLORIDA DURING THE 2000 PRESIDENTIAL ELECTION, at Ch. 9 (2001).

51. *Id.*

52. *Id.*

53. Gerrymandering continues to be an issue around the country where legislators draw districts to benefit themselves and not the voter. Gerrymandering in Florida was outlawed in Florida by constitutional amendments on redistricting passed in 2010 and incorporated into the Constitution as article III, sections 20 and 21 (Fair Districts Amendments). The text of section 21 reads as follows:

> No apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice.

FLA. CONST. art. III, § 21. I authored many of the opinions from 2012 through 2019 giving teeth to the redistricting amendments. *See, e.g.*, League of Women Voters of Fla. v. Detzner, 172 So. 3d 363 (Fla. 2015); *In re* Senate Joint Resol. of Legis. Apportionment 1176, 83 So. 3d 597 (Fla. 2012). But most recently in *Black Voters Matter Capacity Building Institute v.*

Today, Florida is often among the first states to report comprehensive results on election night—an ironic reversal given its previous reputation as a symbol of electoral dysfunction. But that transformation did not happen automatically. It was the result of concerted legislative and administrative effort, and a bipartisan acknowledgment that the legitimacy of democracy depends on the fairness and accuracy of its elections.

In numerous speeches following the 2000 election, I reminded audiences that despite the high-stakes drama, there were no bullets, no barricades, no tanks in the streets. Outside the Florida Supreme Court, there were impassioned but peaceful protests. Inside, we did our work. And when the U.S. Supreme Court rendered its final ruling, Vice President Al Gore conceded.[54] He did so not because he agreed with the decision, but because he understood that the peaceful transfer of power is the lifeblood of constitutional democracy.[55]

That moment gave many of us reason to hope. The rule of law had held. Institutions had endured. Democracy had been tested, but had not broken.

That fragile hope, forged in the restraint and rule-following of the 2000 presidential election, unraveled in the aftermath of the 2020 presidential contest. On January 6, 2021, the world watched in disbelief as a sitting president's supporters stormed the U.S. Capitol, attempting to halt the lawful certification of electoral votes.[56] It was the first time in American history that followers of an incumbent chief executive used force in an effort to overturn a democratic election outcome.

The individual occupying the highest office in the land had spent weeks amplifying falsehoods about a stolen election—assertions made without evidence and in direct contradiction to overwhelming proof, including judicial rulings, bipartisan election audits, and sworn testimony.[57] Even after the violence unfolded, he insisted the riot was "peaceful"—a claim decisively refuted by extensive video footage, eyewitness accounts, and hundreds of criminal indictments.

Secretary of State, the current Florida Supreme Court completely eviscerated the Fair District Amendments, concluding they constituted a violation of equal protection. 415 So. 3d 180 (Fla. 2025).

54. HISTORY.COM Editors, *Al Gore Concedes Presidential Election*, HIST. (May 28, 2025), https://www.history.com/this-day-in-history/december-13/al-gore-concedes-presidential-election [https://perma.cc/BJ5Z-YK9R].

55. *See id.*

56. *See* HISTORY.COM Editors, *U.S. Capitol Riot*, HIST. (May 28, 2025), https://www.history.com/this-day-in-history/january-6/january-6-capitol-riot [https://perma.cc/LTY5-YB3M].

57. *See, e.g.*, Eric Tucker, *Trump Repeats False Claims Over 2020 Election Loss, Deflects Responsibility for Jan. 6*, AP NEWS (Sept. 11, 2024, 8:21 AM), https://apnews.com/article/jan-6-trump-capitol-riot-debate-harris-trump-election-walz-vance-144e136901013ddc9c8fab6a1d2bdf07 [https://perma.cc/U33V-JXDH].

The scenes of bloodshed and shattered windows in the Capitol[58] stood in stark, painful contrast to the peaceful protests and institutional order that prevailed in Florida two decades earlier.

But the damage went far beyond the physical. The breach of the Capitol was not just a physical attack on a building—it was a symbolic assault on electoral legitimacy and democratic norms. And yet, far from retreating from this moment of national trauma, we have seen further deterioration.

In 2024, the presidency returned to the individual at the center of the post-2020 election turmoil—this time through a lawful and certified electoral process. But the political climate in which President Trump's 2024 reelection occurred has left many Americans deeply unsettled about the strength of our democracy.

Simultaneously, a wave of legislation has swept across the country, often under the banner of "election integrity." Proponents argue that such measures are necessary to ensure that only eligible citizens vote. But critics—including voting rights advocates, some constitutional scholars, and civil liberties groups—warn that these laws risk becoming modern barriers to the ballot box. They argue that rather than protecting elections, these restrictions may suppress turnout, especially among racial minorities, low-income communities, and elderly voters, who may lack access to the required documentation.

We must recognize these efforts for what they often are: solutions in search of a problem, wrapped in the language of legitimacy. The evidence of widespread voter fraud is virtually nonexistent. But the evidence that these laws make it harder for some Americans to vote is overwhelming.[59]

CONCLUSION

Those November and December days in Tallahassee in 2000 were unlike anything else I experienced as a jurist. They were fraught with constitutional tension, political uncertainty, and immense responsibility—for Floridians, for the judiciary, and for the country. But when the

58. *E.g.*, *Harrowing Scenes from the Jan 6 U.S. Capitol Attack Four Years Ago*, REUTERS (Jan. 6, 2025, 7:24 AM), https://www.reuters.com/pictures/harrowing-scenes-jan-6-us-capitol-attack-four-years-ago-2025-01-06/ [https://perma.cc/7HYB-4KJ6].

59. Another significant impediment to full electoral participation—though beyond the primary scope of this Article—is the growing number of statutory barriers that disproportionately affect minority voters. These include laws imposing strict voter ID requirements, limitations on vote-by-mail access, and reductions in early voting periods. For example, Florida's Senate Bill 90 implemented restrictions on drop boxes, added identification requirements for mail ballot requests, and limited who may return a completed mail ballot on behalf of a voter. S.B. 90, 2021 Leg., Reg. Sess. (Fla. 2021); *see also* FLA. DIV. OF ELECTIONS, FLA. DEP'T OF STATE, CHAPTER 2021-11, LAWS OF FLORIDA (2021). Such measures have drawn widespread criticism from civil rights organizations, which argue that they disproportionately burden voters of color, low-income communities, and individuals with disabilities, making it more difficult for many eligible citizens to cast their ballots.

dust settled, we believed we had emerged intact—not only with our democracy preserved, but with renewed faith in its strength, in the rule of law, and in the peaceful transfer of power.

Twenty-five years later, I am no longer so certain. And yet, despite the darkness, I remain hopeful. But hope is not passive. It requires action.

The belief that our democratic institutions are self-sustaining has been tested—and, I fear, found wanting. We now live in a time of hyper-partisanship, weaponized misinformation, and institutional fragility. The very forces that once sought to pressure the judiciary to rule a certain way have, in some cases, escalated into efforts to discredit the judiciary altogether. And the combination of these forces could once again bring us to the brink of another judicial crisis, one in which the system may not hold.

This raises profound and pressing questions: Can we still trust the courts to protect the fundamental right to vote? And perhaps more ominously, will those in power obey the courts when they do?

In recent years, we have witnessed troubling efforts to undermine the authority of courts that issue decisions unfavorable to the executive branch. When a sitting president and his allies openly question the legitimacy of judicial rulings[60]—or suggest that obedience to court orders is optional[61]—the damage is not just institutional. It is existential.

Many legal scholars and historians now warn that we are "sleepwalking into autocracy."[62] I do not use that phrase lightly. But I share their concern. The erosion of public trust in our democratic processes is not happening overnight. It is happening in increments, as foundational norms are eroded and civic apathy takes root.

We must never be silent in the face of injustice. We must call out attempts to undermine democratic institutions and suppress the vote. We must encourage principled individuals—across the political spectrum—to seek public office, and we must support them when they do.

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60. *See, e.g.*, Geoff Bennett et al., *As Trump Lashes Out Against Courts, Calls Grow for Judges to Control Their Security Force*, PBS (May 27, 2025, 6:30 PM), https://www.pbs.org/newshour/show/as-trump-lashes-out-against-courts-calls-grow-for-judges-to-control-their-security-force [https://perma.cc/H8NG-GGRL]; *In His Own Words: The President's Attacks on the Courts*, BRENNAN CTR. FOR JUST., https://www.brennancenter.org/our-work/research-reports/his-own-words-presidents-attacks-courts [https://perma.cc/7EDZ-RWUF] (Feb. 14, 2020).

61. *See, e.g.*, William Roberts, *Trump Versus the Judiciary*, INT'L BAR ASS'N (July 23, 2025), https://www.ibanet.org/Trump-versus-the-judiciary.

62. This phrase—"sleepwalking into autocracy"—has been invoked by numerous observers to describe the United States' contemporary drift toward authoritarian norms. *See, e.g.*, Kim Lane Scheppele & Norman Eisen, *Are We Sleepwalking into Autocracy?*, N.Y. TIMES (Jan. 15, 2025), https://www.nytimes.com/2025/01/15/opinion/trump-democracy-autocracy.html [https://perma.cc/5QVU-957N].

We must defend the independence of our courts, even when their rulings are unpopular. And most of all, we must vote—not only as a civic duty, but as a declaration of belief in the democratic project.

The lesson of *Bush v. Gore* was not simply about recounts, deadlines, or judicial interpretation. It was about the fragility of democracy and the obligation of each generation to protect it.

The courts can only do so much. The rest is up to us.