

THE THEFT OF THE PRESIDENCY

Beyond the philosophical question of whether George W. Bush represents the voters, there are very real questions that linger about the legitimacy, the constitutionality, even the legality of his election.

On November 7, 2000, a total of 105,405,100 Americans went to the polls and voted in the 2000 general election for president. Of these, 50,999,897 cast a vote for Al Gore, and 50,456,002 voted for George W. Bush. Thus, by a plurality of over a half million, more Americans thought that Vice President Gore would make a better president than Texas Governor Bush. As to which way the voters were leaning, if we add the 2,882,955 votes cast for Ralph Nader to Gore's and the 448,895 cast for Patrick J. Buchanan to Bush's, we find the balance well to the left, with almost three million voters preferring a more liberal approach to the country's problems.*

However, the people do not directly vote for their leader. If they had, Al Gore would have been elected. The president of the United States is the executive of the government formed by the several states, united. Because of the Electoral College system established by the Constitution, each state first determines which candidate won a plurality of votes by the people in that state, then that candidate's electors cast their votes in the Electoral College. Since the number of electoral votes in each state depends upon the number of representatives and senators that state has in Congress, it is possible for a majority of the people to vote for one candidate and for the states to vote for another. This has happened before and it happened in 2000.

At the end of Election Day, it was close, awfully close, and it all came down to Florida, where Bush's little brother, Jeb, was governor. To win, 270 electoral votes are required. Except for

* If Nader and Buchanan had not run, and adding those votes to the totals for Gore and Bush, Gore would have won New Hampshire with four electoral votes and Florida with 25 for a total of 295. Winning either state would have given Gore a majority in the Electoral College.

Florida, Gore was ahead in the states with 266 votes; Bush had 246 votes. Gore was ahead by 20 electoral votes, but if Bush got Florida's 25 votes, he would win 271 to 266 in the Electoral College. Which he did. But how it came to be is a sad and sorry tale.

Casing the Joint

It all started innocently enough. Following allegations of wide-spread fraud in Miami's mayoral election in 1997, in which the deceased voted early and often (as they used to say in Chicago), the Florida legislature passed a law in 1998 to eliminate registrants not entitled to vote because they were deceased, mentally incompetent or had been convicted of a felony. Clearly those pushing up daises or in the slammer shouldn't vote, but what about those "felons" who have successfully completed probation, their jail time, and parole? Only 13 states, including Florida, prohibit such rehabilitated felons from voting. In the remaining 37 states, they automatically regain their rights.⁸⁰ Therein lay fertile ground for sowing mischief.

The reform law required that a list of ineligible voters be compiled and maintained by a private firm. Florida was the only state ever to do this. The Division of Elections under the Republican Secretary of State contracted with Database Technologies, which, following a merger, became the DBT Online subsidiary of Atlanta-based ChoicePoint Inc. (ChoicePoint DBT). One problem with privatization of the process is that the formulas and data involved are commercial secrets, and are not a matter of public record.⁸¹

In Florida, a more fundamental problem with private preparation of the list is that once the state's Elections Division sends the ineligible voter "list" to the county elections supervisors, a presumption of guilt requires the elections supervisors to eliminate these names from their registered voter rolls, unless they "determine that the information provided by the [state elections] division is incorrect."⁸²

Early indications that something was wrong came in a memorandum from the Florida State Association of Supervisors

of Elections in August 1998, warning the Secretary of State that eligible voters were being “capriciously” removed from the rolls.⁸³

In November 1998, Republican Jeb Bush was elected as Governor of Florida and a political crony, Katherine Harris, became the Secretary of State and head of the Division of Elections. The plot thickens. While no smoking gun has ever been found to provide direct evidence of specific intent, there is abundant circumstantial evidence that *someone* must have noticed that felons tend to vote for liberal Democrats more often than for conservative Republicans.

One study estimated that 93 percent of felons of *all races* supported President Clinton in 1996.⁸⁴ Moreover, it has been estimated that 46 percent of convicted felons are African-American, and while it can't be proven that *anyone* in the Jeb Bush administration foresaw the outcome, in fact over 80 percent of registered African-American voters voted in the 2000 Florida election, and 93 percent of them voted for Vice President Gore.⁸⁵ So, it didn't take a genius for *somebody* to figure out that eliminating African-Americans and people with felony convictions would substantially reduce the number of registered Democrats in Florida.

Given this opportunity for mischief, the Florida election was rigged every way from Sunday right from the get-go, resulting in the elimination of thousands of eligible voters and the legitimate votes they should have been able to cast. First the obvious, later the more insidious. Since the voting rights of convicted felons in 37 states are automatically restored, the Full Faith and Credit Clause of the U.S. Constitution requires Florida to allow those who move to Florida to vote without interference, as the Florida Court of Appeals ordered in the case of *Schlenther v. Florida Department of State* in June 1998. However, when Governor Jeb Bush took office until as late as September 18, 2000, his Office of Executive Clemency gave the following orders to the Division of Elections: “Any individual whose civil rights were restored automatically by statute in the state of conviction and does not have a written certificate or order, would be

required to make application for restoration of civil rights in the State of Florida.”

Since civil rights are *automatically* restored in the majority of states, there are no “written certificates or orders.” Thus, all rehabilitated felons moving into the State had to apply for executive clemency from, guess who, Bush’s little brother, Jeb. Given the large number of persons moving into Florida and basic demographics, it has been estimated that this scheme denied thousands of eligible citizens their opportunity to ever register to vote in the first place.⁸⁶

The Division of Elections provided ChoicePoint DBT with a list of registered Florida voters, and selected which states to include in its research to identify registered voters as convicted felons. Following Florida’s criteria, ChoicePoint DBT computers generated a list of ineligible Florida voters that erroneously included the names of 2,000 persons, convicted in Ohio and Illinois, whose civil rights had been restored.

Then, in May 2000, 8,000 names were erroneously added to the list from another state. These Florida voters were not even felons; they had only been convicted of misdemeanors. Guess which state provided those names? You got it. Texas, governed by Jeb’s big brother, George.⁸⁷ After an outcry, there was some attempt to correct these blatant errors before the election, but nonetheless, hundreds, if not thousands, of eligible voters were illegally prevented from voting.

Now for the more insidious gaming of the system. Remember that Florida was the only state that contracted privately for the list to be prepared. The \$2,317,800 bid submitted by ChoicePoint DBT was the highest (the company that initially had the contract had only charged \$5,700).⁸⁸ For this, ChoicePoint DBT promised to rely upon its 1,200 data bases to process and cross reference a total of 273,318,667 records. More importantly, the contract required ChoicePoint DBT to conduct “manual verification using telephone calls and statistical sampling.”

Since any grown-up computer can crunch the numbers, it appears that what the people of Florida were paying all this

extra money for was a hands-on follow-up effort to make sure that innocents were not included on the list of ineligible voters. However, *somebody* in the Jeb Bush administration made the decision that all these extra efforts were not really necessary. On the State's copy of the contract is the notation "*don't need,*" and ChoicePoint DBT confirms that it never made any telephone calls to verify the accuracy of the list of ineligible voters it produced.

Even though ChoicePoint DBT later notified the State (as required by the contract) that its statistician had certified the list as 99.9 percent accurate, the reality was far different. Depending upon the criteria, it is possible to reduce the error rate to approximately one percent. For example, if the name, date of birth, address and social security number all had to be exactly the same, the error factor would be quite low. However, Florida first requested only a 10 percent error factor. Thus, a hypothetical "Alex Smyth" was deemed to be the same as "Alex Smith," etc. Then, Florida upped the allowable error factor to 20 percent and instructed ChoicePoint DBT to ignore identifiers such as middle names, initials, and "Jr." and "Sr." The company later confirmed that Florida actually wanted the list to include "more names than were actually verified as being a convicted felon."⁸⁹

Now, it really gets slimy. Florida is one of the few states that require voters to provide their race when registering. Even though ChoicePoint DBT did not use race as a factor in its search criteria, it did provide race on its list, and the county election supervisors could use it as a match criteria in trying to determine if a person on the list was the same as someone in their registration files. In other words, if the other data was less than a perfect match (such as John vs. Johnny), but they were both black?⁹⁰ Well, you get the picture.

Some county election supervisors made telephone calls, sent certified letters and published the names in the newspapers trying to make sure the right individual was targeted. In at least one county, the election supervisor herself got a letter notifying her that she was not entitled to vote because she was a felon. Another county that includes Tallahassee went to some effort to

verify that the 694 individuals named on the list as felons were the same as on its rolls. It could only verify that 34 were the same. Applying the percentage of error in this sample to the state as a whole, it is estimated that as many as 52,000 of the 66,000 names provided by ChoicePoint DBT may have been wrongly included on the list and were denied their legitimate right to vote.⁹¹

What does this mean in an election won by Jeb's big brother, George, by 537 votes, one in which thousands and thousands of eligible voters were kept from voting? It means that *somebody* in Jeb's administration gamed the system in advance, and it certainly appears *they* got away with it. How would you feel if your name coincidentally showed up on such a list? You're not stupid! Get the truth.

The Heist

On November 7, 2000, the votes of 5,963,110 individuals for president were counted in Florida. However, 179,855 votes were not counted, and the reason these votes were not counted depended, in large measure, upon the race of the voter. In those counties that used optically scanned paper ballots, the machines could be programmed to either reject or retain ballots that were erroneously marked. For example, if someone voted for both Bush and Gore, the reject mechanism, *if activated*, would return the ballot to the voter to correct his or her error. However, in those counties with the greatest percentage of African-American voters, the reject mechanism *was not activated* and the voting machine retained the erroneously-marked ballot and it was not counted. In those counties with the greatest percentage of white voters, the reject mechanism *was activated*, and the ballot was returned to the voters to correct their errors.

Thus, 12 percent of the votes in Gadsden County with 52 percent African-Americans were not counted, while only one percent of the votes in Citrus County with two percent African-Americans were not counted.⁹² Since it is statistically certain that a substantial majority of these 179,855 voters wanted to, intended to, and thought they had cast a vote for Vice President Gore, what would have been the result if all the machines had

been set the same? But, what the hey, a miss is as good as a mile, and close only counts in horseshoes. The only votes that could be counted were the ones that made it through all the hoops.

On November 7, 2000, 2,912,790 Florida citizens' votes were counted for Bush and 2,912,253 for Gore, a difference of 537 votes. Because the count was so close, the Division of Elections ordered a recount on November 8, 2000, as mandated by Florida law. Most counties ran the ballots through the machines again; however, 18 counties only verified their tallies and did not reprocess the ballots. The partial recount lowered Bush's margin to 327 votes.⁹³

Several major problems with the election quickly became apparent. In Palm Beach, the use of a strange "butterfly" ballot resulted in thousands of voters casting erroneous votes. Because of the design of the ballot, many ended up voting for both Gore and Buchanan, and others voted for Buchanan when they thought they were voting for Gore. In a county where his own Florida coordinator reported that Buchanan only had 300 to 500 supporters, Buchanan received 3,407 votes. Bush, speaking through his later Press Secretary, Ari Fleischer, claimed that Palm Beach was a Buchanan stronghold.

Using the reverse lie perfected in the campaign, Fleischer said, "It's important that no party to this election act in a precipitous manner to distort an existing voting pattern in an effort to misinform the public." Even Buchanan himself said, "I do believe a number of those votes cast for me were clearly intended for Al Gore." Several major news outlets later concluded that the "butterfly" ballots probably deprived Gore of between 6,000 and 9,000 votes.⁹⁴ However, once the errors were made, the intent of anonymous voters marking "butterfly" ballots could not be reconstructed, and we can only wonder how it could have been different.

But there were "rejected" ballots, thousands and thousands, that could be manually examined to determine the voter's intent. Approximately 60 percent of Florida counties used punch-card ballots that required the voters to use a stylus to punch out a perforation in the ballot for machine counting. The voter's intent could be determined by visually examining the ballots to

determine if there was a “dimple” in the perforation or if the “chad” was incompletely pushed out. These became known as the “undercounted” ballots. To compel a manual recount in four counties where he had the greatest support, Gore filed a lawsuit against Katherine Harris, the Florida Secretary of State (who also co-chaired Bush’s Florida campaign). Bush could have done the same thing in counties where he had the greatest support, but he decided to stand pat.⁹⁵

On November 15, 2000, Bush stated, “We have a responsibility to make sure that those who speak for us do not poison our politics. And we have a responsibility to respect the law, and not seek to undermine it when we do not like its outcome.”⁹⁶ Let us see if his deeds follow his words.

On December 8, 2000, the Florida Supreme Court ruled that the totals certified by the Secretary of State should include between 168 and 176 votes picked up for Gore in the Miami-Dade County recount and 215 votes for Gore picked up in the Palm Beach recount, even though it was not completed until after the November 26th statutory cutoff date. Moreover, the Court ruled that the approximately 9,000 votes remaining to be examined when Miami-Dade County suspended its recount should be tabulated and included in the certified tally, and that all other Florida counties should recount all undervoted ballots to identify any uncounted legal ballots. The court directed that a vote was legal if there is a “clear indication of the intent of the voter.”⁹⁷

How did those who “spoke” for Bush respond to this very sensible ruling to let the clear intent of the voters govern the result? They lied, naturally. Fleischer said, “What’s happening in Palm Beach is exactly why our nation switched from hand counting ballots to the more precise, less subjective counts done by precision machines.”⁹⁸ True? Not at all. Experts at the very companies that manufacture voting machines conceded that, “It is totally reasonable that the most accurate way to do it is a carefully run recount,” and that “a manual recount can be extremely accurate.” Two officials of the Association for Computing Machinery recommended that all the Florida votes be recounted manually as being “the only fair course.”⁹⁹

Did Bush gracefully accept the Florida decision and avoid “undermining it when [he] didn’t like the outcome?” Of course not. He immediately filed a lawsuit in federal court to stop the true will of the Florida voters from being determined. Bush’s complaint alleged that the manual recount would be less accurate and more subjective, resulting in a dilution of the votes in the rest of the state. He complained that the standards used in determining the validity or intent of the ballots were arbitrary and could result in an inconsistent treatment of identical ballots from two different counties.¹⁰⁰ Is this true?

In 1997, Governor George W. Bush signed a Texas law requiring manual reviews in close elections. It stated “A manual recount shall be conducted in preference to an electronic recount.” The law required a vote to be counted if “an indentation on the chad from the stylus or other object is present and indicates a clearly ascertainable intent of the voter to vote.”¹⁰¹ How is this different from what the Florida Supreme Court ordered?

No matter the well-reasoned opinion by the Florida Supreme Court or the rights of the Florida voters to express their clear intent, the United States Supreme Court in a “*per curiam*” and highly curious opinion joined in by Chief Justice Rehnquist (appointed by Reagan) and Justices Scalia (appointed by Reagan), Thomas (appointed by Bush Sr.), Kennedy (appointed by Reagan), and O’Connor (appointed by Reagan) ruled in *Bush v. Gore* on December 12, 2000, in favor of the Republican candidate George W. Bush.* Surprise? The Court found that the “intent of the voter” standard may sound good in principle, but it lacked specific standards to ensure equal application. The final lie of the campaign.

Do you agree that the will of the people prevailed in the 2000 presidential election? You’re not stupid! Get the truth.

* Remember this lineup of justices later when you read about their association with the Federalist Society.

80. Palast, *op. cit.*, p. 31.
81. *Ibid.*, p. 23.
82. *Ibid.*, p. 27.
83. *Ibid.*, p. 38.
84. *Ibid.*, p. 37.
85. *Ibid.*, pp. 23, 32.
86. *Ibid.*, pp. 35, 40, 41, 43, 69-71.
87. *Ibid.*, pp. 30, 31.
88. *Ibid.*, p. 44.
89. *Ibid.*, pp. 57, 58.
90. *Ibid.*, p. 60.
91. *Ibid.*, p. 46.
92. *Ibid.*, pp. 62, 63.
93. Corn, *op. cit.*, p. 54.
94. *Ibid.*, p. 55.
95. *Ibid.*, p. 56.
96. *Ibid.*, p. 60.
97. Tony Sutin, ed., "Presidential Election Law/The Recount,"
<http://jurist.law.pitt.edu/election/electiontime.htm>
98. Corn, *op. cit.*, p. 57.
99. *Ibid.*, pp. 57, 58.
100. Sutin, *op. cit.*
101. Corn, *op. cit.*, pp. 58, 59.