

Who really lost the election?

Commentary by Adam Torgerson

Copy Editor

It is likely that no one will ever be able to say with certainty whom the people of Florida intended to be the next U.S. President. Undoubtedly the debate over intent, butterfly ballots and pregnant chads will continue for a long time to come.

There have been positive effects from this controversial election. Otherwise inattentive Americans immersed themselves as debates raged across the country on the hot issue of the day. People are already preparing for the next election, sporting bumper stickers such as "Re-elect Gore in 4" and "Don't blame me, I voted for both of them!" Regardless of what happens in the future, Bill Clinton pointed out the most positive aspect of the closest election in history, "No American will ever be able to seriously say again my vote doesn't count."

For the Supreme Court, the election delivered a blow to their reputation. The Court has enjoyed a level of legitimacy unequalled by the other branches of the government. The high court was generally perceived by the public to be non-partisan guardians of the ideals embodied in the Constitution. When they made a decision it was accepted, albeit grudgingly at times. With the rare exception, the Supreme Court's decision (at least to the general public) was final. Their latest decision may have revealed the polarization that has always existed among the nine justices.

Aside from the written Bush v. Gore decision, the justices authored five separate pieces, one concurrence and four dissents. CNN's Senior Correspondent Charles Bierbauer called the decision complex and divisive; headlines around the nation proclaimed that the Supreme Court was as unsure of the decision as the rest of America.

There has been perhaps nothing else that the current court has decided more consistently in the last two decades than states' rights. The Supreme Court has allowed states much greater discretion in interpreting the constitution, even refusing to hear cases when DNA evidence excluded people sentenced to death in state courts. If the state acted within reason, the high

court would not interfere.

The five-justice majority relied on the Fourteenth Amendment's due process clause to justify their reversal of the Florida Supreme Court's decision. The U.S. Supreme Court also found, during their emergency injunction of the vote re-count, that there was a likelihood of irreparable harm in counting the votes, a notion that much of the country had difficulty understanding. The final five-to-four vote and

“

THE SUPREME COURT HAS ALLOWED STATES MUCH GREATER DISCRETION IN INTERPRETING THE CONSTITUTION, EVEN REFUSING TO HEAR CASES WHEN DNA EVIDENCE EXCLUDED PEOPLE SENTENCED TO DEATH IN STATE COURTS.

”

multitudinous writings proved that the Supreme Court was split. The five traditionally conservative justices decided against the state's authority for self-governance, effectively deciding the election for the conservative candidate.

This decision exposed the Supreme Court to a scrutiny usually reserved for the other two branches of the government. Many people felt that the court was wrong, first preventing the counting and subsequently declaring that there

was not enough time to properly count the disputed ballots.

This sentiment was echoed in Justice Stevens dissent, including this passage that will likely be printed in future history books alongside the description of the 2000 election:

"What must underlie [Bush's] 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."

It remains to be seen whether the public will allow the highest court to retreat into relative quiet or whether this decision will cause the public to have less faith in the Supreme Court and greater scrutiny for their future decisions.

GET YOUR CAREER IN GEAR!

Career Options in Allied Health

Thursday, February 8, 2001
2 p.m. – 3 p.m., Willamette Room, WUC

If you have a documented disability that may require an accommodation to participate in this program, please contact Career Services at (503) 838-8432 V/TTY. Reasonable notice must be given.

Career Services
WESTERN OREGON
UNIVERSITY
Your success is our mission.

