CASS R. SUNSTEIN*

THE EQUAL CHANCE TO HAVE ONE'S VOTE COUNT

Does the Constitution create a right to have an equal chance to have one's vote count? Is there an equal protection problem if, for no apparent reason, Linda's vote is more likely to count than Jane's?

I believe that the answer to both questions is "Yes." With this answer, I hope to put the 2000 election entirely to one side, and to mount a qualified defense of the basic holding in *Bush v. Gore*.[1] I suggest that the case is best understood as an initial and properly tentative step toward recognizing a new, but highly appealing, constitutional right. Because of some unusual features in *Bush v. Gore* itself, I will not argue that the case was correctly decided. Nor do I mean to defend the justices who joined the majority opinion, or to suggest that their votes were motivated by the argument I will offer; it is hardly unfair to be suspicious about those justices' surprising enthusiasm for a new and quite aggressive use of the equal protection clause. But I will suggest that the Court's decision is rooted in a principle with both considerable appeal and genuine constitutional status.

In brief, the Court's decision should be taken to suggest a *constitutional right to the equal chance to have one's vote counted.* Indeed, I will suggest that the Court's decision might suggest a still broader constitutionally right, involving an equal chance in the context of many constitutionally protected interests. I will also attempt to support the minimalist character of the opinion in *Bush v. Gore*, suggesting that the Court's narrow opinion can be defended as a sensible response to the Court's lack of information about the

* Karl N. Llewellyn Distinguished Service Professor, Law School and Department of Political Science, University of Chicago. For some sections of this paper, I have drawn on Cass R. Sunstein, *Order Without Law*, 68 U Chi L Rev 757 (2001), which approaches *Bush v. Gore* from a very different angle. I am grateful to Colin Macleod for valuable comments on a previous draft.

[1] 121 S Ct 525 (2000).

Law and Philosophy **21:** 121–135, 2002.

appropriate reach of the principle that it announced. In the process, I hope to cast some new light both on equality in voting and on minimalism as an approach to opinion-writing.

I. THE APPEAL OF *BUSH V. GORE*

A. *Preliminaries: Of Voting and Chances*

Constitutional doctrine provides a range of protections for the right to vote. For example, the poll tax is unconstitutional,[2] and states must obey a principle of "one person, one vote."[3] In the last two decades, courts have moved very little beyond these basic rights. However, it should be clear that there remain numerous disparities in the treatment of both voters and ballots – and hence that existing doctrine fails to exhaust the possible content of an equality principle in the context of voting.

Consider a few illustrations. Some people live in areas that use state-of-the-art technology, making it highly likely that almost all votes in those areas will count. Other people live in areas with far more primitive technology, making it highly likely that some votes in those areas will not count.[4] Some people must use ballots that are confusing, and that will predictably ensure that a number of votes will fail to register; other people, in the same election in the same states, will use ballots that are not confusing, and that will baffle hardly anyone. Presidential elections are national, but voters in Alabama will have very different ballots and very different technologies from voters in New York, and the result will be that some votes will be much more equal than others.

In addressing one or more of these inequalities, courts could easily have built, long ago, on existing cases so as to create a constitutional principle giving each citizen an equal probability of having her vote actually counted in the ultimate tabulation. In fact, it is not easy to see why, before *Bush v. Gore*, some such right was not recognized or even urged. The likely answer is that lawyers and

---

[2] *Harper v. Virginia State Board of Elections*, 383 US 663 (1966).

[3] *Reynolds v. Simms*, 377 US 533 (1964).

[4] Pamela Karlan, The Newest Equal Protection, in *The Vote* 77, 90 (Cass R. Sunstein and Richard A. Epstein eds. 2001).

judges usually think of rights as involving outcomes, rather than probabilities, so that a state would not violate the equal protection clause so long as it offered each citizen the ability to cast a ballot, subject to existing technology and the one person-one vote rule. But in the context of a challenge to an affirmative action scheme, the Court has emphasized that the Constitution creates a right not to an outcome, but to an equal chance.[5] It would not be a huge stretch from this idea to an equal right to the chance to have one's vote actually count. This equal right might well be accompanied by something like a "good chance" to have one's vote actually count, though in most real-world circumstances, the probability would be sufficiently high, and inequality is the serious problem.

Of course it is not entirely clear what this principle would ultimately be taken to mean. Perhaps the relevant right should be only presumptive, allowing government to show legitimate reasons for any inequalities in the probability of votes actually counting. But if voting qualifies as a fundamental right, as everyone agrees, there does seem to be a constitutional difficulty in any situation in which some people's ballots are more likely to count than others, if no strong reason justifies the difference.

B. The Principle in Bush v. Gore

It is possible to understand *Bush v. Gore* as embodying, in an initial and sensibly limited way, the principle just sketched. Announcing its fundamental motivation, the Court wrote, "The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." Recall that the Florida Supreme Court had asked for a manual recount in four disputed counties, but without specifying how it would be decided whether ballots would count. The Court's concern was that no official in Florida had generated standards by which to discipline the relatively open-ended inquiry into "the intent of the voter." In the Court's view, "Florida's basic command . . . to consider the 'intent of the voter' " was "standardless" and constitutionally unacceptable without "specific standards

[5] *Northeastern Florida Chapter v. Jacksonville*, 508 US 656 (1993).

to ensure its equal application .... The formulation of uniform rules based on these recurring circumstances is practicable and, we conclude, necessary."[6] Without such rules, similarly situated ballots, and hence similarly situated voters, would be treated differently, and for no evident reason.

The Court offered some details on the resulting equality problem. "A monitor in Miami-Dade County testified at trial that he observed that three members of the county canvassing board applied different standards in defining a legal vote."[7] Standards even appeared to have been changed "during the counting process," with Palm Beach County beginning "the process with a 1990 guideline which precluded counting completely attached chads," then switching "to a rule that considered a vote to be legal if any light could be seen through a chad," then changing "back to the 1990 rule," and then abandoning "any pretense of a per se rule."[8] A serious problem was that "the standards for accepting or rejecting contested ballots might vary not only from county to county but indeed within a single county from one recount team to another."[9] This too was not merely speculation. "Broward County used a more forgiving standard than Palm Beach County, and uncovered almost three times as many new votes, a result markedly disproportionate to the difference in population between the counties."[10]

The Court also found a constitutional violation in the unequal treatment of "overvotes" (meaning ballots that machines rejected because more than one vote had been cast) and "undervotes" (meaning ballots on which machines failed to detect a vote, and which had been ordered to be re-examined). The Court objected that "the citizen whose ballot was not read by a machine because he failed to vote for a candidate in a way readable by a machine may still have his vote counted in a manual recount; on the other hand, the citizen who marks two candidates in a way discernable by the machine will not have the same opportunity to have his vote count, even if a manual examination of the ballot would reveal the

---

6 121 S Ct. at 529–530.

7 Id. at 529.

8 Id.

9 Id. at 531.

10 Id.

requisite indicia of intent. Furthermore, the citizen who marks two candidates only one of which is discernable by the machine, will have his vote counted even though it should have been read as an invalid ballot."[11] Here we seem to have an explicit recognition of a constitutional right to have an equal opportunity to ensure that one's vote is actually counted.

To this, the Court added "further concerns."[12] These included an absence of specification of "who would recount the ballots," leading to a situation in which untrained members of "ad hoc teams" would be involved in the process.[13] And "while others were permitted to observe, they were prohibited from objecting during the recount."[14] Thus, the Court concluded that the recount process "is inconsistent with the minimum procedures necessary to protect the fundamental right of each voter in the special instance of a statewide recount under the authority of a single state judicial officer."[15]

C. Minimalism in Action: Shallow and Narrow

This then, is the basic holding of *Bush v. Gore*. If the presidential controversy is bracketed, the holding appears to be quite plausible. To be sure, the Court did break new ground. While previous cases suggested that people could not be deprived of the right to vote, and even that each vote must count as one, no prior decision had suggested that the Constitution required an equal probability that a vote would count. Recognizing the novelty of its approach, the Court seemed well aware that its suggestion, if taken as broadly as possible, could have explosive implications for the future, throwing much of state election law into constitutional doubt. Hence the Court went to great efforts to limit the reach of its holding: "The question before the Court is not whether local entities, in the exercise of their expertise, may develop different systems for implementing elections. Instead, we are presented with a situation where a state court with the power to assure uniformity has ordered a statewide recount

[11] Id.
[12] Id at 531.
[13] Id.
[14] Id.
[15] Id.

with minimal procedural safeguards."[16] Thus, the Court attempted to limit its ruling to the particular problem before it: (a) a statewide recount (b) before a single judge.

In this way, the Court ensured that its decision was narrow rather than wide – narrow in the sense that it covered the problem at hand without also covering other, apparently similar problems. The narrow ruling ensures that *Bush v. Gore* is an illustration of the kind of judicial minimalism that characterizes the current Court.[17] If narrowness is a plausible response to ignorance about the consequences of a wider ruling, the Court's effort to settle the case, without ruling on much more, is not so hard to understand. Of course skeptics might urge that the narrowness of the judgment shows that the Court did not take its own principle very seriously. This may be true; the future will tell. All I mean to suggest is that a narrow ruling makes a certain sense. I will return to this point below.

At the same time, the Court's opinion was shallow rather than deep, in the sense that it lacked much in the way of theoretical ambition. The Court simply asserted that a manual recount, without a clear standard for determining the intent of the voter, was constitutionally unacceptable. It said little about what the equality principle should be taken to mean, in the context of voting or elsewhere, and relied instead on what it apparently took to be ordinary intuitions. The Court was therefore able to produce an "incompletely theorized agreement" on its equal protection ruling, attracting support from seven justices; the broad support for that ruling seems attributable, at least in part, to the fact that the Court did not offer a deep or contentious argument on its behalf. If incompletely theorized agreements have their virtues,[18] then the minimalism of the Court's approach is not hard to defend.

D. A Thought Experiment: The Problem Without the Context

To see the appeal of the Court's approach, on the issue of principle and scope, let us put aside the context of a hotly contested presidential election, and imagine that in a relatively obscure and colorless election – involving, say, Iowa's Attorney General – a state court

[16] Id.

[17] See Cass R. Sunstein, *One Case At A Time* (1999).

[18] As urged in Cass R. Sunstein, *Legal Reasoning and Political Conflict* (1996).

required a manual recount. Suppose that the state court also failed to provide standards to determine what would be counted as enough to show the "intent of the voter," and that in the recount, it was alleged that similar ballots were being treated altogether differently. In a case of this kind, it is easy to imagine that a federal court might be convinced to rule that the absence of standards was constitutionally defective.

If the equal protection ruling has some appeal in the context of the election of the Attorney General of Iowa, it is also possible to see why a court might want to limit the reach of its holding, even to make the underlying judgment as narrow as possible. In any state, similarly situated voters are, much of the time, being treated differently. As the Florida controversy shows, voters in different counties will often use different ballots. The difference may mean that some voters will be confused, and their intended vote will fail to count, simply because of the particular ballot selected by their county. Recall too that because of the different quality of different technologies, some ballots are less likely to count than others. Are these inequalities unconstitutional? To say the least, an affirmative answer would place courts in a difficult managerial position. In some situations, there might be special reasons to allow the inequalities to continue. For example, a judicial requirement of equality might require poor areas to purchase and use expensive technology, and this requirement might divert limited resources from other domains, involving food and shelter. Because the litigants are unlikely to raise these issues in advance, a court might take steps to narrow the reach of its decision, and to leave other questions undecided.

Of course a narrow decision might be challenged as insufficiently principled. Perhaps it could be thought that if there is a constitutional right to have an equal chance to have one's vote count, then the Court should simply say so. But judge-made law typically operates through narrow, case-specific rulings, and for good reasons. Judges are not philosopher-kings; they have limited time and capacities; they lack the information that would permit them to know, at the time of one ruling, about the appropriate reach of the principle that governs the case at hand.[19] What I am suggesting is that a ruling

[19] These points are elaborated in id. and Cass R. Sunstein, *One Case At A Time* (1999).

in the Iowa case, and the decision in *Bush v. Gore*, can be seen as an initial stage toward the recognition of a principle whose precise contours should be determined only through confrontation with a wide range of contexts.

II. PROBLEMS AND DEFECTS

My hope is that the discussion thus far has been sufficient to establish the plausibility of the equal protection ruling in *Bush v. Gore* and of the Court's effort to ensure that its decision did not extend far. (Recall that I am not saying anything about the motivations of the justices who joined the majority opinion.) But there are two problems with this effort to defend *Bush v. Gore*. Taken together, the problems suggest that if (as I am urging) there is a right to an equal chance to have one's vote count, the Court's decision might well have compromised that right more severely than a manual recount would have done. The appropriate solution was to remand the case to Florida to continue the recount under sufficiently specific standards. I emphasize this point not to criticize the Court, but to obtain a better understanding of the right on which I am focussing: the right to have an equal chance to have one's vote counted.

A. Inequalities Everywhere

Why was the Florida Supreme Court concerned about allowing a manual recount? The best explanation would emphasize the possibility that such a recount would count votes that machines fail to register. Under the conditions in Florida, the very refusal to have a manual recount would compromise, and did compromise, the right to have an equal probability that one's vote will count. Indeed, the Court's decision might well have created a problem of inequality even more severe than the problem that it attempted to solve. There are a number of complexities here; political scientist Henry Brady summarizes the evidence with the suggestion that "by any reckoning, the machine variability in undervotes and overvotes exceeds the volatility due to different standards by factors of ten to twenty.

Far more mischief, it seems, can be created by poor methods of recording and tabulating votes than by manual recounts."[20]

More particularly, there were several inequalities in the certified vote in Florida. Under that vote, some machines counted votes that were left uncounted by other machines, simply because of different technology. Where optical scan ballots were used, for example, voters were far more likely to have their votes counted than where punch-card ballots were used. In Florida, fifteen of every one-thousand punch-card ballots showed no presidential vote, whereas only three of every one-thousand optically scanned ballots showed no such vote. In all likelihood, these disparities would have been reduced with a manual recount. If the principle of *Bush v. Gore* is taken seriously, manual recounts might even seem constitutionally compelled. But the Court's decision, forbidding manual recounts, ensured that the relevant inequalities would not be corrected.

There were other problems. In the recount that produced the certified vote, some counties merely checked the arithmetic, whereas others put ballots through a tabulating machine. The result is a significant difference in the effect of the recount. In any case, the manual recount was picking up many votes that machines failed to include. As Pamela Karlan has written, the Court "never really confronted the magnitude of the inequalities produced in the first instance by Florida's use of different voting technologies in different parts of the state. The Broward County recount discerned votes on about 20 percent of the undervoted ballots, while the Palm Beach County recount, using a more stringent standard, recovered votes on about 10 percent of the undervoted ballots."[21]

If the constitutional problem consists of the different treatment of the similarly situated, then it seems entirely possible that the manual recount, under the admittedly vague "intent of the voter" standard, would have made things better rather than worse – and that the decision of the United States Supreme Court aggravated the problem of unjustified inequality. Now perhaps the best response is that, what particularly concerned the Court was not the fact of inequality, but

[20] Henry E. Brady, *Equal Protection for Votes* (unpublished manuscript, Dec. 11, 2000).

[21] See Pamela Karlan, The Newest Equal Protection, in *The Vote* 77, 90 (Cas R. Sunstein and Richard A. Epstein eds. 2001).

the combination of inequality and process failure, through a manual recount that seemed to have due process-type problems. Indeed, the Court did speak in due process terms on several points. But its holding was based on unjustified inequalities, and on that count, the certified vote had formidable problems. This does not mean that there was no problem with the manual recount, but it bears directly on the issue of remedy, to which I now turn.

B. Remedy

If the equality principle requires an equal chance for votes to count, and if a manual recount would thus be unconstitutional without clear standards, what is the appropriate federal response? There are questions here of both Florida law and federal constitutional law.

The Supreme Court halted the manual recount for one simple reason: The Court thought it clear that the Florida Supreme Court would interpret Florida law so as to halt the process. As the Court wrote, "The Supreme Court of Florida has said that the legislature intended the State's electors to 'participate[ ] fully in the federal electoral process . . . . Because it is evident that any recount seeking to meet the December 12 date will be unconstitutional for the reasons we have discussed, we reverse the judgment of the Supreme Court of Florida ordering a recount to proceed."[22] Thus, the Court concluded that as a matter of Florida law, a continuation of the manual recount "could not be part of an 'appropriate' order authorized by" Florida law.[23]

Especially if there is a constitutional right to an equal chance to have one's vote count, this seems to have been a blunder. The Florida courts had never been asked to say whether they would interpret Florida law to require a cessation in the counting of votes, if the consequence of the counting would be to extend the choice of electors past December 12. In fact, the Florida Court's pervasive emphasis on the need to ensure the inclusion of lawful votes would seem to indicate that if a choice must be made between the safe harbor and the inclusion of votes, the latter might have priority. Notwithstanding what I have said here, it is hard to justify the United States Supreme Court's failure to allow the Florida Court to consider

[22] *Bush v. Gore*, 121 S Ct at 533.

[23] Id.

this issue of Florida law. The more natural remedy would have been to say that a manual recount could continue, but only pursuant to standards that would ensure against unjustified inequality.

All this leaves some simple conclusions. It was plausible for the *Bush v. Gore* Court to recognize a constitutional right to an equal chance to have one's vote count. The Court was quite correct to see that this right raises serious questions about a standard-free recount, especially when the record shows that the absence of standards will result in genuine inequality. But the Court was wrong to focus myopically on the problems introduced by the standardless recount, without seeing that similar problems of inequality existed under the certified vote, and could be cured by a standard-governed recount. The correct remedy was therefore to remand to Florida for such a recount. On this count, the Court's decision cannot be justified.[24]

With each passing day, the remedy issue is becoming ancient history. For the future, what matters is not the remedy, but the underlying right. What is its nature? What is its ultimate reach? I offer a few speculations here.

III. RIGHTS TO PROBABILITIES?

A. *Voting*

In *Bush v. Gore*, the Court attempted, in conventional minimalist fashion, to limit the reach of its decision. But it should be clear that the attempt might not prove successful. To know whether *Bush v. Gore* should be taken as unique or instead as the initial step in a long line of cases, we need to know whether other situations, also involving an apparent violation of the as-yet-undefined right, can be meaningfully distinguished. Consider the following cases, given in descending order of closeness to *Bush v. Gore* itself:

1. A statewide recount is called, but it is run by separate judges in separate counties, and no single judge oversees the entire process.
2. Poor counties have old machinery that successfully counts 97 percent of votes; wealthy counties have newer machinery that

[24] I discuss this point in more detail in Sunstein, *Order Without Law*, supra note*.

successfully counts 99 percent of votes. Those in poor counties mount a constitutional challenge, claiming that the difference in rejection rates is a violation of the Equal Protection Clause.

3. Same as the immediately preceding case, except the division does not involve poor and rich counties. It is simply the case that some areas use machines that have a near-perfect counting rate, and others do not. The distribution of machines seems quite random.
4. Ballots differ from county to county. Some counties use a version of the controversial "butterfly ballot"; most do not. It is clear that where the butterfly ballot is used, an unusual number of voters are confused, and do not successfully vote for the candidate of their choice. Does this violate the equal protection clause?
5. It is a national election. Citizens in Alabama use different machinery from that used by citizens in New York. The consequence is that citizens in Alabama are far more likely to have their votes uncounted than citizens in New York. Do they have a valid equal protection claim? What if the statistical disparity is very large?

The *Bush v. Gore* Court's suggestion that ordinary voting raises "many complexities" is correct; but how do those complexities justify unequal treatment in the cases just given? The best answer would point to three practical points: logistical considerations, which can make it hard to provide uniformity; budgetary considerations, which can make it difficult for some areas to provide the same technology as others; and the tradition of local control, which makes federal judges reluctant to mandate similar treatment of people in different areas. In case (1), logistical considerations are the only distinguishing feature from *Bush v. Gore*, and it is hard to argue that those considerations should be decisive. It is certainly feasible, in case (1), to ensure a degree of uniformity.

In case (2), no recount is involved, and it would of course be unusual for federal courts to require different counties to have the same technology. Wealthy counties might prefer to purchase more expensive machinery, whereas poorer communities might devote their limited resources to other problems. Perhaps judicial caution in cases (2), (3) and (5) can be justified in this way. But this is far from

entirely clear. Case (2) involves a form of wealth discrimination, and it therefore seems a stronger case for judicial involvement than case (3), where the inequality does not place poor voters at a comparative disadvantage. But can the randomness be justified? On what grounds? It is not clear that the tradition of local control should be sufficient. In case (4), budgetary considerations do not seem in play, and it would be easy to imagine a plausible constitutional attack if voters in one area are subject to confusing ballots not used in other counties. Case (5) is the least likely setting for judicial involvement, simply because of the longstanding practice of state control over ballots and technologies, and because a constitutional attack on that practice would place courts in an uncomfortable managerial role.

My goal here is to give a flavor of the relevant questions, not to resolve them. But at the very least, *Bush v. Gore* plainly suggests the legitimacy of both state and national action designed to combat disparities of this kind. It is for this reason that the Court's decision, however narrowly intended, set out a rationale that might well create an extremely important (and appealing) innovation in the law of voting rights. Perhaps legislatures will respond to the invitation if courts refuse to do so.

B. Beyond Voting: Equal Chances

In fact, the Court's rationale might extend more broadly still. Outside the context of voting, governments do not impose the most severely imaginable constraints on official discretion, and the result is to deprive people of equal probabilities of facing constitutionally significant burdens and receiving constitutionally significant benefits. Because discretion exists, the similarly situated are treated differently.[25]

In the abstract, the question might seem fanciful; but related constitutional challenges are hardly unfamiliar. In the 1960's and 1970's,there was an effort to use the Due Process and Equal Protection Clauses to try to ensure more rule-bound decisions, in such contexts as licensing and admission to public housing.[26] Plaintiffs

[25] This is the basic theme of Kenneth Culp Davis, *Discretionary Justice: A Preliminary Inquiry* (Louisiana State 1969).

[26] *Hornsby v. Allen*, 326 F2d 605 (5th Cir 1964); *Holmes v. NYCHA*, 398 F2d 262 (2d Cir 1968).

argued that without clear criteria to discipline the exercise of discretion, there was a risk that the similarly situated would not be treated similarly, and that this risk was constitutionally unacceptable. But outside of the most egregious settings, these efforts failed,[27] apparently on the theory that rule-bound decisions produce arbitrariness of their own, and courts are in a poor position to know whether rules are better than discretionary judgments. Does *Bush v. Gore* require courts to extend the limited precedents here?

Perhaps not. Perhaps it can be suggested that because the choice between rule-bound and more discretionary judgments is difficult in many cases, judicial deference is generally appropriate – but not when fundamental rights, such as the right to vote, are at risk. If so, *Bush v. Gore* has a limited scope. But the scope is still quite large. Perhaps the most obvious example is the "beyond a reasonable doubt" standard for criminal conviction, a standard that different juries will inevitably interpret in different ways. Is this unacceptable? A possible answer is that no more rule-bound approach would be better, all things considered. This is a difference from *Bush v. Gore*, where it was easy to imagine a rule-bound approach that would add constraints on discretion without sacrificing any important value. But does this mean that methods must be in place to ensure against differential treatment of those subject to capital punishment? To life imprisonment? I cannot resolve these questions here. But for better or for worse, the rationale in *Bush v. Gore*, sympathetically viewed, appears to make it necessary to consider these issues anew.

CONCLUSION

In this essay, I have attempted to defend two aspects of the Court's opinion. First, I have urged that the equal protection clause is plausibly read to create an equal chance to have one's vote actually count – and that the context of a manual recount, before a single judge, is an exceedingly strong one for the initial recognition of that right.

[27] For examples of unsuccessful attempts to challenge unconditioned discretion violative of Equal Protection in these contexts, see *Phelps v. Housing Authority as of Woodward*, 742 F2d 816 (4th Cir 1984); *Atlanta Bowling Center, Inc v. Allen*, 389 F2d 713 (5th Cir 1968).

Second, I have urged that the minimalist character of the Court's opinion also makes a great deal of sense, because in a single case, let alone one decided under such pressure, it is simply too difficult to decide the reach of the equal protection holding. If we put together the equal protection principle with some enthusiasm for judicial minimalism, we will be well on the way toward a sympathetic understanding of much of the opinion in *Bush v. Gore*.

At the same time, I have urged that the defense of the outcome ultimately fails. The decision to stop the manual recount created equal protection problems at least as great as those that the Court attempted to prevent. There was no sufficient reason not to remand the case to permit votes to be counted under a properly disciplined process. But in a way, these qualifications are a matter of detail. Once the Presidential Election of 2000 is put to one side, it is possible to see that in the domain of voting, as in many other contexts, the right to an equal chance has large and inadequately appreciated possibilities.

University of Chicago Law School
1111 East 60th Street
Chicago, IL 60637
USA