
DOWJONES | Newswires**Sharp Divide Over Election Worries Some US Justices**

619 words

13 December 2000

13:37

Dow Jones News Service

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WASHINGTON -(Dow Jones)- When the U.S.'s Supreme Court speaks on the big issues, it prefers to do so with one voice. Unanimity - or at least something close to it - brings legitimacy, an air of institutional credibility.

Some justices felt that credibility slip Tuesday night when the court announced its 5-4 ruling in the case of George W. Bush vs. Albert Gore Jr.

"We do risk a self-inflicted wound," Justice Stephen Breyer wrote in dissent, "a wound that may harm not just the court, but the nation."

The sharply divided U.S. Supreme Court declared that Florida's top court erred when it ordered the recount of thousands of presidential ballots in Florida, a ruling that gives the keys to the White House to Bush.

Seven justices found constitutional concerns with the recount, worrying that hanging, dimpled or otherwise scarred chads would be tallied differently in different counties.

But two of those, Breyer and David H. Souter, said Florida could fix the problem. The recount should proceed, they said. Ruth Bader Ginsburg and John Paul Stevens also dissented.

That left a five-member majority - a conservative-leaning voting bloc made up of Chief Justice William H. Rehnquist and Justices Antonin Scalia, Clarence Thomas, Anthony M. Kennedy and Sandra Day O'Connor - to conclude that time for a proper recount had run out.

"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," Justice John Paul Stevens wrote in a blistering dissent.

"It is the nation's confidence in the judge as an impartial guardian of the law."

Some lawmakers were also quick to criticize. Sen. Robert Torricelli, D-N.J., told CBS on Wednesday morning that he was "surprised and disappointed in the way the justices treated each other in the court."

Sen. John Breaux, a moderate Democrat from Louisiana, whose name is mentioned as a potential Bush cabinet member, said the ruling could affect future Supreme Court nominations.

"What I think you'll probably see is more questions being asked about what potential justices think about the separation of powers when it comes to deciding elections," he said on NBC's "Today" show.

"No one ever thought the Supreme Court would uniquely, by a one-vote decision, decide the next president of the United States."

Republicans said that seven of the nine justices agreed that the recount ordered by the Florida court posed constitutional hazards.

"The decision was not as close in some sense as might first appear," said Republican Sen. Susan Collins of Maine.

Five-four votes aren't at all uncommon, but the justices strive for unanimity on the tough, politicized questions that can divide a nation.

U.S. vs. Nixon was decided 8-0 in 1974. Twenty years earlier, a unanimous court declared unconstitutional separate public schools for black and white students in Brown vs. Board of Education.

The high court majority justices, in their unsigned ruling Tuesday, suggested that they didn't want to get in the middle of the election mess in the first place. The case was, they said, "our unsought responsibility."

Still, the split decision runs the risk of undermining public confidence in the high court, Breyer argued.

"That confidence is a public treasure," he wrote. "It has been built slowly over many years, some of which were marked by a Civil War and the tragedy of segregation. It is a vitally necessary ingredient of any successful effort to protect basic liberty and, indeed, the rule of law itself."

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