
Dow Jones Newswires**US Supreme Court's Hearing On Fla. Recount Concludes**

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WASHINGTON -(Dow Jones)- Weighing a historic appeal that could decide the presidency, several U.S. Supreme Court justices Monday seemed skeptical of a Florida court ruling that ordered the recount of thousands of contested Florida election ballots.

Some justices worried that the recount standards varied from county to county and expressed concern that ballots might be treated differently depending on where a voter lived.

"That's bothering a lot of us here," said Justice David H. Souter, who's often aligned with the court's more liberal jurists.

Still, it was far from clear how the justices will decide the case. Souter and Justice Stephen Breyer early on in the session wondered aloud whether the case could be returned to the Florida courts with instructions to adopt a uniform ballot counting standard.

Attorneys for Texas Governor George Bush and Vice President Al Gore sought to make their respective cases during 90 minutes of oral argument, the second time this month that the nation's high court has met in an extraordinary session to consider disputed presidential ballots.

At issue is a decision from the Florida Supreme Court, which on a 4-3 vote Friday ordered statewide manual recounts of thousands of presidential ballots. Barely 24 hours later, the U.S. Supreme Court halted the counting and announced it would hear a Bush challenge to the state court ruling.

Bush's attorney, Theodore Olson, argued that Florida's high court ruling ran afoul of the U.S. Constitution and federal law when it ordered statewide recounts. David Boies, who represents Gore, urged the justices to allow the hand counts to resume.

A ruling in the case, Bush vs. Gore, 00-949, could come quickly.

Arguing for the Texas governor, Olson told the justices that the state high court "issued a new, wholesale, post-election revision of Florida election law" when it ordered statewide recounts.

Federal law provides a "safe harbor" that protects state electors appointed under laws in existence prior to election day. And Article II, Section 1 of the U.S. Constitution says that each state shall appoint its electors "in such a manner as the legislature thereof may direct."

Justice John Paul Stevens wondered aloud whether the Florida Supreme Court did indeed make significant changes to state election law.

Souter suggested that the Florida court may have simply been interpreting the statute. If that was the case, "than I don't see how you can find an Article II violation," he told Olson.

Justice Anthony M. Kennedy said he was troubled by the possibility that the court changed the election law after Nov. 7. He said that the Florida justices effectively shortened the period under which ballots could be "contested."

"Seems to me that the legislature could not have done that by a statute without it being a new law," he told Boies, suggesting that the Florida Supreme Court couldn't either. "I'm troubled by that."

Perhaps the most interesting scenario suggested during Monday's extraordinary session was the possibility that the high court could craft ballot-counting standards and order the recount to continue.

The Bush camp has argued that the existing standard - based on figuring out a voter's "intent" - is far too subjective.

Breyer asked Bush attorney Olson what standards would be fair.

"Penetration of the ballot card would be required," Olson responded.

Souter asked whether the Leon County Circuit Court - where this case was originally heard and which hears election contests in the state - could formulate uniform recount rules.

"That would be feasible, wouldn't it," he asked.

"I think it would be feasible," Olson said.

Justice Ruth Bader Ginsburg suggested that the "voter intent" standard was valid because "at least those words come from the legislature." But Justice Sandra Day O'Connor said voters should have followed the rules in the first place and made sure their ballots were completely punched.

"Why isn't the standard the one that voters are instructed to follow, for heaven's sake," O'Connor asked.

Boies, Gore's attorney, argued that the Florida Supreme Court ruled properly when it ordered the recount. The court's decision, he said, didn't rewrite state election law.

Boies faced uncertain prospects during the 45 minutes he was allotted to argue Gore's case. Five of the high court's nine justices voted Saturday to halt the recount, with Justice Antonin Scalia saying that the majority "believe that the petitioner (Bush) has a substantial probability of success."

There was little sign from Monday's questioning that their positions had changed.

Scalia was joined by the court's more conservative leaning justices: Clarence Thomas, Kennedy, O'Connor and Chief Justice William H. Rehnquist.

Stevens, Souter, Breyer and Ginsburg dissented.

"The Florida court's ruling reflects the basic principle, inherent in our Constitution and our democracy, that every legal vote counts," Stevens wrote.

Watching Monday's argument was an assortment of Capitol Hill lawmakers and former White House cabinet officials. Children of Gore and Richard Cheney, the Republican vice presidential candidate, were also on hand.

The serious mood in the courtroom was broken on a couple of occasions when Miami attorney Joseph Klock twice misidentified justices to whom he was directing remarks. At one point, Scalia jumped in with a question, prefacing it by saying, "Mr. Klock, I'm Scalia." The courtroom erupted with laughter.

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