Arguably, partisanship was never more evident than in the Supreme Court's *Bush v. Gore* (2000) decision that blocked a manual recount of the Florida presidential vote in 2000, thereby assuring the election of the Republican nominee, George W. Bush.[34] The five justices in the majority—Chief Justice William Rehnquist and associate justices Sandra Day O'Connor, Anthony Kennedy, Antonin Scalia, and Clarence Thomas—were all Republican appointees and were the same justices who in previous decisions had deferred to state authority and had opposed new applications of the Fourteenth Amendment's equal protection clause. Yet they rejected the authority of the Florida high court, which had ordered a statewide manual recount of the vote. They also employed a never-before-used application of the equal protection clause, ruling that the recount could not go forward because no uniform standard for counting the ballots existed. Justice John Paul Stevens, who thought the Florida high court had acted properly in ordering a recount, accused the Court's majority of devising a ruling based on their partisan desires rather than on the law. Stevens noted that different standards for casting and counting ballots are used throughout the country, even within the same state. Stevens argued that the Supreme Court's majority had ignored "the basic principle, inherent in our Constitution and our democracy, that every legal vote should be counted."[35] Some observers suggested that if Bush had been trailing in the Florida vote, the Court's majority would have come up with reasons why a recount was required.

DEBATING THE ISSUES

SHOULD ALL THE FLORIDA BALLOTS HAVE BEEN COUNTED?

In *Colegrove v. Green* (1946), Justice Felix Frankfurter warned the Supreme Court about getting involved in election politics, saying that it "ought not to enter this political thicket." In 2000, the Court thrust itself into the thorniest political thicket of all—a presidential campaign. In *Bush v. Gore*, the Court by a narrow majority blocked a statewide manual recount of uncounted ballots in Florida, thereby settling the election in favor of Republican George W. Bush. His Democratic opponent, Al Gore, had argued that all the Florida votes—not just those that could be read by machine—should count. Bush supporters retorted that a manual recount would be inherently subjective and open to mischief. These opposing views also existed within the Supreme Court, as the following opinions show.

YES Florida law holds that all ballots that reveal the intent of the voter constitute valid votes. . . . [The Florida Supreme Court] decided the case before it in light of the legislature's intent to leave no legally cast vote uncounted. In so doing, it relied on the sufficiency of the general "intent of the voter" standard articulated by the state legislature, coupled with a procedure for ultimate review by an impartial judge, to resolve the concern about disparate evaluations of contested ballots. If we assume—as I do—that the members of that court and the judges who would have carried out its mandate are impartial, its decision does not even raise a colorable federal question. . . . What must underlie petitioners' 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. . . . 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

NO 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. . . . 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 with minimal procedural safeguards. . . . It is obvious that the recount cannot be conducted in compliance with the requirements of equal protection and due process without substantial additional work. It would require not only the adoption (after opportunity for argument) of adequate statewide standards for determining what is a legal vote, and practicable procedures to implement them, but also orderly judicial review of any disputed matters that might arise. . . . The Supreme Court of Florida has said that the legislature intended the State's electors to "participat[e] fully in the federal electoral process." That statute, in turn, requires that any controversy or contest that is designed to lead to a conclusive selection of electors be completed by December 12. That date is upon us, and there is no recount procedure in place under the State Supreme Court's order that comports with minimal constitutional standards.