

### Discussion 1: Introduction

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**Constitutional Law**—2 components: structural and rights

Structural: composed of

**Federalism:** division of power between federal and state government,

**Separation of Powers:** separation of power between judicial, legislative, and executive branches of government

**Judicial Review:** power of courts to determine if actions of state bodies are consistent with federal law

Rights: based on the protections afforded by constitution. Mainly focuses on Bill of Rights, but also other Amendments affording rights to citizens and extensions of the Bill of rights.

Main takeaways of class—develop a good understanding of constitutional law, its development, history, and applications going into the future

Areas of exploration: wartime constitutional law, major areas of civil rights law including free speech, religion, establishment, association, discrimination, etc. After midterm, will move into criminal procedure, fundamental rights, cruel and unusual punishment, immigration, welfare and poverty, marriage, political participation

### BUSH V. GORE DISCUSSION

Considerations in the case—5 to 4 decision

**It has been argued that the decision was partisan**

Of 4 justices dissenting, 3 were appointed by Democrats. The fourth, Souter, was appointed by George Bush. The 5 justices voting in the majority were appointed by Republicans.

**Decision was idiosyncratic**

The opinion is written PER CURIAM (of the court), a rare form of opinion intended to convey consensus among the court's justices. The differing opinions came in the remedy.

**Decision Framework:**

Every case has to determine A) Is there a constitutional violation? and B) what is the remedy for the violation?

**Outcome:**

At least seven justices agreed that there was a constitutional violation. Five agreed that there was no remedy that could be afforded in time for the electoral college meeting. The dissenters proposed extending the electoral college meeting and allowing the recount to continue until a winner is determined.

**Other Issues:**

- There is no right to vote for president given in the Constitution. Each state has a right to determine how the electors are chosen. So long as the method for choosing electors does not violate equal protection, any method for determining who these electors are is arguably constitutional under Article II, Section I of the US Constitution.

- Court's opinion is limited to equal protection violations in the electoral process. The opinion states that the Court is only addressing this specific issue, not equal protection law generally.

### **How does a case get to the Supreme Court?**

- Steps for reaching Supreme Court
  - file a lawsuit or allow yourself to be sued in a court with original jurisdiction of the matter
  - appeal the decision to an appellate court; followed by...
  - file a petition for a writ of certiorari; 4 justices must approve for Court to hear case
- Typically cert petitions are not granted, but if there are conflicting opinions in different federal circuit courts, then the Supreme Court may elect to grant a petition to resolve the legal conflict
- To hear a case, Supreme Court must have jurisdiction; 2 general kinds: subject matter jurisdiction, meaning that some aspect of federal law must be at issue in the case; federal courts cannot simply re-interpret state laws even if they think the state court interpreted them incorrectly.
- Diversity jurisdiction: constitution permits citizens of different states to sue one another in federal courts