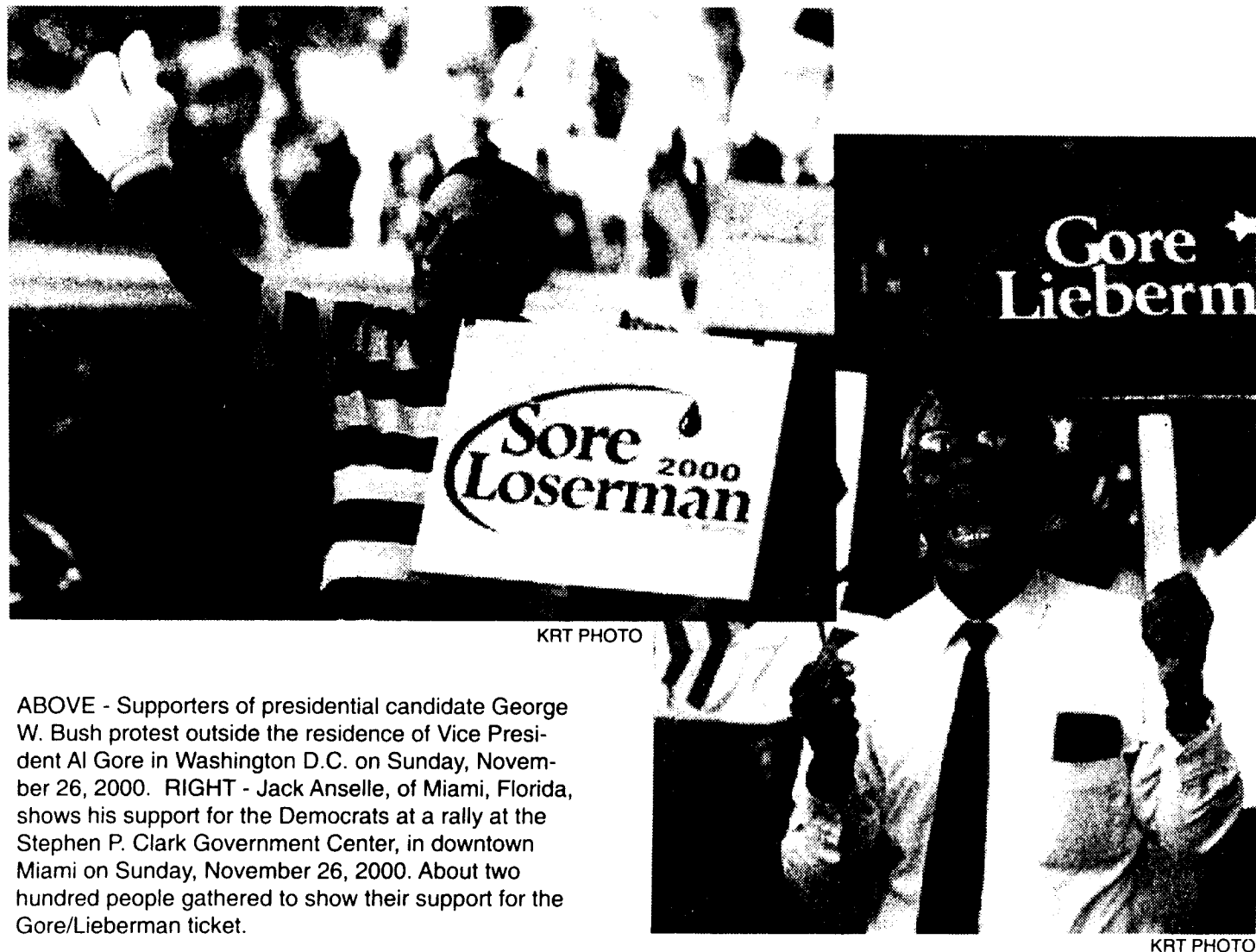


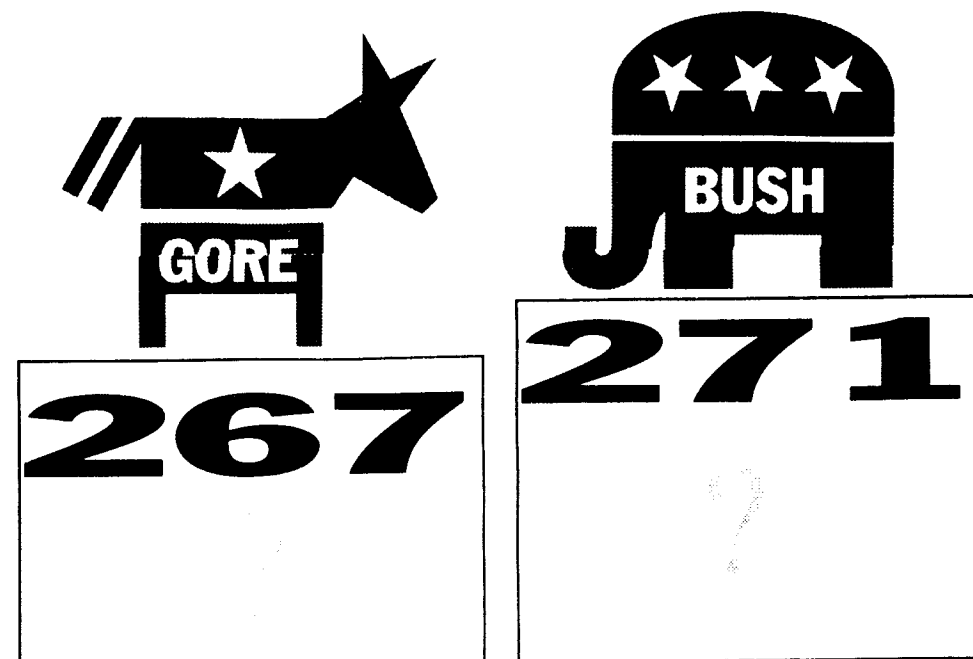
## Sore loser? Or the real winner?



ABOVE - Supporters of presidential candidate George W. Bush protest outside the residence of Vice President Al Gore in Washington D.C. on Sunday, November 26, 2000. RIGHT - Jack Anselme, of Miami, Florida, shows his support for the Democrats at a rally at the Stephen P. Clark Government Center, in downtown Miami on Sunday, November 26, 2000. About two hundred people gathered to show their support for the Gore/Lieberman ticket.



## The Road to the White House



## Legal battle shifts to legislature's power to appoint electors

By Henry Weinstein and David Savage  
Los Angeles Times

Just how much power can the Florida legislature legally assert in the presidential election?

That issue has come into sharp focus as Republican legislators prepare to name their own set of electors pledged to vote for Texas Gov. George Bush.

This week Florida legislators filed a brief in the U.S. Supreme Court — and said during hearings in Tallahassee — that they have broad power to appoint electors of their own choice, even though Florida law says that the state's electors should be decided by popular vote.

Whether that claim withstands scrutiny is important on several fronts.

The legislators' assertion runs headlong into "the belief in our popular culture that every person has a right to vote for presidential electors, a belief that has grown as we have evolved from a Republic to a democracy," said University of California, Davis, law professor Michael J. Glennon, an expert on the electoral college.

Their claim also may put the legislators on a legal collision course with Bush, who has asserted that election rules can't be changed after election day.

While publicly Bush and the legislature are allied, in private, Bush's lawyers have said

they are uncomfortable with the broad position that the legislature has taken.

Legal experts agree that lawmakers are entitled to appoint the state's electors if a deadlock still exists on Dec. 12. That right comes from a specific provision of federal law, which neither side has challenged.

But the Republican majority in the Florida legislature has asserted a much broader power. Citing Article II of the U.S. Constitution and a 19th century Supreme Court decision, the legislature's lead lawyer, Charles Fried, has claimed the legislature has "plenary power" to appoint electors whenever they deem it necessary.

Fried, a Harvard law professor and U.S. Solicitor General in the Bush administration, cites a provision of Article II saying "each State shall appoint, in such manner as the Legislature thereof may direct, a number of Electors." Prior to 1850, presidential electors were chosen directly by legislatures in many states, but over time, all states have passed laws handing that power over to voters.

Fried also cites an 1892 Supreme Court ruling called *McPherson vs. Blacker*. In that case, the only one in which the high court has discussed the issue, the justices upheld the Michigan legislature's decision to allocate electors by district rather than by statewide popular vote.

Democratic lawyers dispute Fried's argument.

Stanford University law professor Pamela Karlan, for example, contends that reliance on the 108-year-old *McPherson* case is misplaced. "That case cites a number of earlier decisions that said there is no right to vote. But since the reapportionment decisions of the 1960s, the Supreme Court has done its level best, without ever explicitly overruling *McPherson*, to give everyone the right to vote, and it has described voting as a fundamental liberty under the 14th amendment."

"If I were the Florida legislature, I wouldn't be puffing myself up like a cat getting ready to pounce," said Karlan, who is a voting rights specialist. "What they are doing now is setting themselves up for voters to bring a lawsuit contending that the Florida legislature has deprived them of their pre-existing right to vote."

Fried's position also appears to conflict with the one Bush's attorneys have put forward in their briefs to the U.S. Supreme Court.

Bush's team cites the Electoral Count Act of 1887, a measure enacted in response to the scandalous electoral swapping that emanated from the Hayes-Tilden presidential election. The law, they say, forbids a state from "changing the rules" on elections after election day.

"Congress intended (that) controversies concerning elections (would be) determined according to rules established and in place

before an election," Bush's attorney Theodore B. Olson said in his brief to the Supreme Court.

According to Harvard Law School professor Laurence Tribe, who represents Vice President Al Gore in the high court, there is "a basic tension" between Olson's argument and the one Fried has advanced on behalf of the legislature.

Congress passed the 1887 law in part because it was "concerned with the situation where a legislature, unhappy with the results of an election, would shift the rules and take over," Tribe said.

University of Southern California law professor Erwin Chemerinsky agreed. On election day, Florida had statutes in place providing three things: Florida voters would pick the state's presidential electors; election results could be contested in court; if the election remained unresolved on Dec. 12, the legislature could intervene.

Florida's Secretary of State, Katherine Harris, has certified Bush as the winner, and the state's governor, Bush's younger brother, Jeb Bush, has sent formal documents to Washington saying the state has picked its electors, Chemerinsky noted.

"That means Florida has picked electors subject to the outcome of the election contest," he said. For the legislature to step in now would be changing the law after the election, he said.

## WHAT IF...?

If a president has not been chosen by Inauguration Day, Speaker of the House Dennis Hastert will become interim president of the United States. This would be the first time in history that such an occurrence will have happened. Inauguration Day has been set for January 20, 2001.

## Fully recognized presidential victory still eludes Bush's grasp

by William E. Gibson  
November 26, 2000  
Knight-Ridder Tribune

Florida officials declared George W. Bush a winner on Sunday, yet a final, definite, fully recognized presidential victory still eludes his grasp.

The state certification cannot be shrugged off as just another disputed episode, nor can it be seen as the climactic end to the presidential election.

Florida's certification essentially established the Republican candidate as the leader at this point in the on-going, post-election period, as court challenges spill into the next few days or weeks. It gave Bush legal and political leverage, a public relations rallying point and a chance to take advantage of the prevailing weariness with the whole recounting process.

Bush seized the occasion to declare victory, launch his transition team and call for national unity.

"Once our elections are behind us, once our disagreements are expressed, we have a responsibility to honor our constitution and laws and come together to do the people's business," he said in a brief speech televised nationally.

Sunday's events put the onus of protracted legal wrangling on Democratic candidate Al Gore, who shows no signs of conceding. Thrown on the defensive, Gore reportedly plans to explain to the public today why he must still contest the count in the courts.

His running mate Joseph Lieberman gave a preliminary response just minutes after the

certification was announced, saying Gore had "no choice" but to challenge the reported Florida returns.

"It is in our nation's interest that the winner in Florida is truly the person who got the most votes," Lieberman said.

Certification brought advantages to Bush but not finality or, in the minds of many Democrats at least, a sense of legitimacy. That has prompted Gore supporters to struggle on.

"If either candidate were to be declared the victor and electoral votes awarded based on the status today, neither candidate would be legitimate," Sen. Bob Graham, D-Fla., said on Sunday in Tallahassee.

"We are now going through a frustrating period, a period of inconvenience and anxiety," Graham said, pleading for patience. "But that is nothing compared to what this country would go through if we had an illegitimate president, or a president who had to live with the title of illegitimacy for his full term in his office."

Many Republicans, already quite satisfied with their candidate's legitimacy, hope to seize the momentum created by the long-awaited certification to foster a sense of finality. Almost immediately after the certification, several high-profile Republicans called for closure and an end to legal wranglings. They are hoping certification will put pressure on Democrats to either abandon further challenges or suffer the brunt of the public's impatience.

"At some point, there must be closure," a smiling James Baker, former secretary of state, said on Bush's behalf. "At some point,

the law must prevail and the lawyers must go home. We have reached that point."

Neutral observers said the contest is far from over, that court challenges over the next few days or weeks could alter the outcome. But they said the Florida certification clearly boosted Bush's credentials in the public mind.

"I'm assuming it will be a public-relations coup of sorts for Bush to get the certification," said Robert Huckshorn, former chairman of the Florida Elections Commission and now an administrator at Florida Atlantic University. "People have gotten to the point where they don't care who wins, they just want to get it over with."

I sense most people think. "This has gone too far, let's get it done."

In the court of public opinion, Gore's advocates have made his case for continued recounts on the basis that he got a plurality of the popular vote nationwide and -- if you set aside the disputed Florida count -- holds the lead in electoral votes as well.

If the Florida recounts had brought in a tide of new votes for Gore, the public attitude could have shifted in favor of continued legal challenges. But as of late Sunday, the recounts still left Bush with a lead, though it had shrunk to minuscule 0.01 of a percentage point out of about 6 million votes cast.

This lead, however slim, combined with the state certification, have put Gore under pressure to concede or face a possible public backlash from moderate voters -- independent-minded and less-partisan Americans who are targeted by both political parties and tip the balance in most elections.

"What you've got with voters are three

groups: the hard-core Republicans, who think that Al Gore is a bad loser; the hard-core Democrats, who think Al Gore got robbed; and the folks in the middle, who have every reason to worry about the mood under which the next president takes office," Stephen Craig, professor of political science at the University of Florida, said on Sunday.

"For a while, that segment in the middle said, 'Let's count the votes.' But not now. It's not so much that this segment of the public rejects the possibility that the count is inaccurate, they are just growing tired of the process. They are ready to see it resolved, one way or other, but resolved."

"Both sides are wrapped up in their cocoons and utterly tone-deaf to what the public wants. It's just that Bush appears to have the cards and Gore doesn't. That's where we're at."

After campaigning hard for nearly two years, Gore clearly is not yet ready to fold his cards.

Momentum in the exceedingly close presidential race has shifted many times, both before and after the election. The inconclusive outcome, wavering results on election night and the partisan split in the country have made both candidates reluctant to give up the fight, step aside and hope for satisfaction in the future.

Rarely have defeated candidates regained their party's nomination and gone on to victory. The parade of losers over the years prompted the old saying that there are no second acts in American politics. Richard Nixon defied this rule, winning an extremely close election in 1968 after losing an even closer

one in 1960. But Nixon's experience was exceptional.

"To me, the loser of this presidential race is the winner. I'm not sure I'd want to be president under these circumstances," observed Richard Semiatin, an expert on presidential elections at American University in Washington. "But both candidates look at it as their only chance to win the presidency."

"If your whole adult life is geared to winning the presidency, it's hard to let go," Semiatin said. "This might be your one shot at the brass ring. It's like they are two pugilists still slugging it out after the referee rules the bout a draw."

The image of a bloodied survivor seems fitting for whoever becomes president. All this partisan punching nearly three weeks after Election Day already has delayed the usual healing process.

Bush, if he finally prevails, would come to office not only with less than a plurality of votes nationwide but dogged by questions about the legitimacy of 2000 election results that are likely to be debated well into the future.

"I think it's over. It should be over. Maybe that's the important word 'should,'" said Bob Crawford, a Democrat on the state board that certified the election. "We have a winner and it's time we move on. The one thing I'm sure of is that both sides have enough legal talent to keep this tied up through Christmas, but there's one thing the lawyers can't do for us and one thing the courts can't do for us, and that's bring this country together again."

It's going to take both candidates to do that, he said.