**THE SUPREME COURT AND POLICY**

[Slide 1]

* Some say the Court should only settle disputes, but it is clear that it does much more than that
	+ It is clearly more than this
* The Question of Judicial Activism
	+ Acts that go beyond simple interpretation, to creating laws
	+ (The Problem on the term, JUDICIAL ACTIVISM: There are two parallel understandings of judicial activism; one refers to a derogatory way the justice thinks or acts or; the other referring to a court going beyond simply interpreting the law to creating the law or ordering some particular action.)
		- Judicial Review
			* Started with Marbury vs. Madison
				+ JUDICIAL ACTIVISM comes on its own during the 20th century (It says that the court can direct or would force Madison to appoint Marbury)
* Aggressively reviewing and overturning Federal or Congressional Statutes

[Slide 2]

* Judicial Review
	+ Overturning old supreme court cases
		- Plessy vs. Ferguson and Brown vs. Board of Education
	+ Political Issues
		- Bush versus Gore
	+ Remedies
		- The Court ordering some action to right a governmental wrong
		- Actually forcing people to do things in order to fix a problem
		- Court requiring other government agencies to do something

[Slide 3]

* BUSH versus GORE
	+ Background
		- The 2000 presidential election was really close
			* Really Really close
			* I’m not kidding.
			* Here’s how the Popular Vote broke down:
				+ BUSH: 50,456,002 votes
				+ GORE: 50,999,897 votes

Two things become apparent

Notice Gore actually won more popular votes (3rd time in history)

For comparison, in 2012

OBAMA: 65,899,660 votes

ROMNEY: 60,932,152 votes



[Slide 4]

Picture: How each individual country voted in the 2000 elections (Bush vs. Gore)

\*The darker the red, the higher percentage of Republican votes (rural areas)

\*The darker the blue, the higher percentage of Democratic votes (major cities, metropolitan cities)

[Slide 5]

BUSH VERSUS GORE

* Essentially the election was going to come down to Florida
	+ In 2000, Florida had 25 electoral votes, and getting Florida would push either candidate above the necessary 270 (If the candidate does not get Florida, the candidate loses)
	+ Florida was even closer!
		- Bush was determined to have won Florida, but only by 1,784 votes
			* A vote this close was required to have a recount, since it is much smaller than the margin of error
		- This is where things start to get a bit crazy.
			* Florida automatically recounts ballots by machine
				+ Al Gore requests that certain key counties recount ballots by hand (He is allowed to do this under Florida State Law)
			* After some confusion, 7 days later Florida declares that Bush won Florida and thus the presidency.
			* Then everyone sues everybody else.
				+ Al Gore’s supporters (supposedly without Gore’s knowledge) sues the State of Florida and Bush supporters
				+ Bush supporters countersue

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BUSH VERSUS GORE

* This went first to the Florida Supreme Court (It takes the case up immediately)
	+ Then quickly to the US Supreme Court
* The Florida Supreme Court ordered a manual recount
	+ Recount all the votes in a few countries by hand (The FL Supreme Court chooses the counties instead of Al Gore)
		- Look at rejected ballots again (Ballots were punch card ballots)
	+ The US Supreme Court stopped this and took up the case themselves.
* Fundamental Questions:
	+ Was the recount constitutional?
		- If not, how do we pick a president?
* Decisions
	+ The Florida recount violated the 14th amendment (Standard of Equal Protection of the Law)
		- Can’t treat some votes as if they are more special than others
		- The only thing the Supreme Court has is the original decision by Florida, which we have to go by. Bush wins the election.
	+ They also made a *per curiam* decision
		- It only applies for this one case. Does not become precedent.

[Slide 7]

SUPREME COURT and INTERPRETATION

* The Debate over Interpretation
	+ How should you look at the Constitution? (The Constitution is quite vague)
		- Original Intent/Strict Constitutionalism
			* Guide interpretation by what the intent of the founders were and what the text says (Strictly, literally)
		- Opponents/Judicial Activism
			* We should reconcile the fundamental principles of the Constitution with the changing conditions of America (The principles are more important and should be used in guiding the decision, not the wording)
		- How should we proceed?

[Slide 8]

THE SUPREME COURT and OUTSIDERS

* Social movements
	+ Most get things done In the Supreme Court
		- Test Case – a case designed to test the constitutionality of a law (Organic cases on the other hand, is another type of case that originates in original or real disputes)
	+ Friends of the Courts (People outside the courts can influence the court in providing opinions)
		- Help courts keep track of public opinion
		- Public Opinion
			* Courts are still swayed by public opinion even though they are designed to be insulated from it