
The Politicization of the U.S. Court System: A Brief Examination of the 2000 U.S. Presidential Election

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Basic Concepts

- Under the U.S. Constitution, all citizens above the age of 18 have the right to participate in the presidential selection process. They do not vote directly for the president; rather they vote for “electors” who in turn select the president (*discussed in more detail below*).
- While the U.S. Constitution establishes the general rules for presidential elections, each of the 50 states (and the District of Columbia) enact their own rules governing the manner by which voting is conducted. This non-uniform balloting process reflects the federal nature of the U.S.

How the U.S. Selects its President under the Constitution

- Each of the U.S.'s 50 states is allocated a number of Electors equal to the number of its U.S. Senators (always 2) plus the number of its U.S. Representatives (or "Congressmen") – the number of the latter in each state may change after the holding of the census, which occurs every 10 years.
- The political parties (or independent candidates) in each state submit to the state's chief election official a list of individuals pledged to their candidate for president equal in number to the state's electoral vote.
- On the first Tuesday in November every four years, voters in each state cast their ballots for the party slate of electors representing their choice for president and vice president (though as a practical matter the ballot seldom lists the electors – rather the ballot will say "Electors for" each set of candidates).
- Whichever set of candidates wins the most votes in a state becomes the state's electors so that in effect, whichever presidential team gets the most votes in a state wins all the electors of that state (with the exception of Maine and Nebraska, where 2 electors are chosen by a statewide-popular vote and the remainder by the popular vote within each congressional district).

How the U.S. Selects its President under the Constitution (continued)

- The candidate for president with the most electoral votes, provided that it is an absolute majority (one over half of the total), is declared president (i.e 270 electoral votes). Similarly, the vice presidential candidate with the absolute majority of electoral votes is declared vice president.
- In the event, that no one obtains an absolute majority of electoral votes for president, the U.S. House of Representatives selects the president from the top 3 contenders, with each state casting only one vote and an absolute majority of states being required to be elected. Similarly, if no one obtains an absolute majority, then the U.S. Senate makes the selection from among the top two contenders for that office.
- At noon on January 20, the duly elected president and vice president are sworn into office.

Principal Justifications for the Electoral College System of Selecting the President

- To serve as a buffer between the (uneducated) population and the selection of the president. The U.S. Constitution was written in 1787. Its authors did not trust the masses (even though at the time it was largely limited to white males over 21 years of age who owned land). They thought that the Electoral College would be a deliberative body capable of wisely resolving disputed elections.
- To reflect our federal system of government, in particular to protect the interests of small states which would largely be ignored if there was direct election of the president.

Prior Close and Disputed Presidential Elections

- 1800 (the 4th Presidential Election) -the Federalist Party nominated John Adams to be President and the Democratic-Republican Party nominated Thomas Jefferson. No candidate received an absolute majority of electoral votes and the election was turned over to the U.S. House of Representatives which on the 36th ballot made Jefferson president.
- 1824 – there were 4 major presidential candidates, John Quincy Adams, Henry Clay William Crawford and Andrew Jackson. Again, no candidate had an absolute majority of the electoral votes. The House of Representatives picked John Quincy Adams as president on the first ballot (Adams appointed Clay Secretary of State).
- 1876 – the Democratic Party nominated Samuel Tilden and the Republicans nominated Rutherford Hayes. Tilden won the popular vote by 250,000 votes out of a total of 8.5 million cast. There were major disputes in 3 Southern states over who would get those states electors (black citizens in many cases were prevented from voting). Congress passed a law establishing a 15 member commission to determine who would be president. Ultimately, a political compromise was reached where Hayes became President in exchange he ended reconstruction (military occupation) of the south by federal troops.
- 1880 – Grover Cleveland, the incumbent president overwhelmingly won the popular vote the majority of his votes came from states with a smaller number of electoral votes and thus lost the electoral vote to Benjamin Harrison (who lost to Cleveland in a rematch 4 years later).
- 1960 – John F. Kennedy won the popular vote by only 100,000 votes over Richard Nixon – there were many allegations of fraud in Illinois (Kennedy won the state by 8,000 votes) and Texas, but Nixon chose not to contest the election.

The U.S. Political Landscape in 2000

- The Republicans held a majority of seats in both the U.S. Senate and the U.S. House of Representatives.
- Although President Bill Clinton remained popular largely due to personal charisma and a strong economy, a majority of voters was bothered by a lack of personal ethics by President Clinton (e.g. evidenced by the impeachment of Mr. Clinton as a result of the Paula Jones and Monica Lewinsky scandals).
- Vice President Al Gore campaign was not as well organized or financed as was the campaign of Governor George W. Bush (the son of the former President). Mr. Gore (the son of a former Tennessee Senator) was also considered to be a bland personality.

2000 Electoral Outcome

<u>Candidates</u>	<u>Votes</u>	<u>Vote %</u>	<u>States Won</u>	<u>Electoral Votes</u>
Gore	50,996,116	49%	21	266
Bush	50,455,169	48%	30	271
Others (Ralph Nadar – 3rd Patrick Buchanan – 4th).	3,874,040	3%	0	0

Campaign Funds Raised and Spent

<u>Candidate</u>	<u>Raised</u>	<u>Federal Matching Funds</u>	<u>Spent</u>	<u>Cash Remaining</u>
Bush	\$193,088,650	\$67,560,000	\$185,921,855	\$7,201,734
Gore	\$132,804,039	\$83,016,084	\$120,031,205	\$12,72,827
Buchanan	\$38,806,146	\$16,635,624	\$39,162,976	486,460
Nadar	\$8,433,778	\$723,308	\$7,771,117	\$374,801
Browne	\$2,131,301	\$0	\$2,131,301	\$308

The Election Outcome Would Turned on Voting in Florida

- After the preliminary voting returns came in it became clear that the candidate that won Florida's 25 electoral votes would become the next President (without Florida Gore had 260 Electoral Votes and Bush 246).
- George Bush's brother, Jeb Bush, was Florida's governor and the Republicans had majority in the state legislature.
- As the recount began, according to Florida Secretary of State Kathleen Harris (a Republican), Bush led by 1,784 votes, out of approximately 6,000,000 votes cast.
- According to the Associated Press, after the first stage of recounting had been done, Bush's lead was down to 229 votes and there were reports of numerous irregularities, though later tallies projected Bush leading by a bit over 500 votes.
- Nationwide about 2% of ballots are not counted due to some irregularity (in Florida it was much higher, particularly in districts likely to support Gore).

Significant Voting Problems & Irregularities Across Florida Largely Hurt Gore

- Errors in voting in Palm Beach due to elderly voters mistakenly voting for Buchanan rather than Gore due to the so-called “Butterfly Ballot.” Buchanan won more votes in this liberal district than anywhere else in Florida – as many as 20,000 voters may have mis-voted as a result (enough to make Gore the winner in Florida) – ironically the ballot had been designed by a Democrat.
- Voting machines often failed to determine for whom the voter intended to vote resulting in “under-voting.”
- Polls closed early due to technical problems in districts with large black populations likely to vote for Gore (e.g. Broward County) many ballots in largely black districts invalidated for “over-voting” (i.e. both marking the ballot and writing in the candidate’s name)
- Absentee ballots (from military men who tended to favor Bush) were sent to registered Republicans who did not request ballots or arrived late. Television networks declared Gore the winner of Florida before the polls closed, which may have discouraged Bush (or Gore) voters.

The Legal Battle Begins

- The Bush campaign files law suit in federal court to stop recount to avoid the state court system since in Florida judges are elected and the districts which had voting problems or irregularities would most likely have judges who were Democrats.
- Nonetheless, U.S. Federal Judge Middlebrook denied Bush's motion for an injunction that would have stopped a manual recounting of ballots on the grounds that the matter should be resolved by a Florida state court.

The Gore Legal Strategy

- The Gore campaign sought to have a recount only in those precincts where it felt that it had been harmed.
- It argued that the intent of the voter was key – i.e. did the voter intend to vote for Gore.

The Bush Legal Strategy

- The Bush campaign first wanted to stop any recount.
- Failing to bar a recount, it wanted only ballots which were properly voted to count – “it is impossible to determine intent”.
- In addition, it tried to delay the process as much as possible so that a proper recount could not be accomplished within the time arguably allotted by law.

The Decision of the Florida Supreme Court

On December 8, 2001, the Florida State Supreme Court composed of a majority of persons appointed by Democratic Governors held:

Partial results from the Miami-Dade manual recount should be included in the certified total (168-172 net gain for Gore).

215 net Gore votes from Palm Beach should be included, even though that recount was not completed until after the Sunday November 26 “deadline.”

The approximately 9,000 under-voted Miami-Dade ballots that were not counted when Miami-Dade suspended its recount should be tabulated immediately; and significantly.

All under-voted ballots in other Florida counties that have yet to be recounted now should be recounted to identify any uncounted legal votes.

The BUSH CAMPAIGN IMMEDIATELY APPEALED THE FLORIDA SUPREME COURT’S DECISION TO THE U.S. SUPREME COURT.

The U.S. Supreme Court Votes 5-4 to Stop the Recount

- In a contentious split decision, the majority of the court ruled principally that:
 - (i) the “intent of the voter” standard sounds good in principle, but lacks specific standards to ensure equal application.
 - (ii) The Florida Supreme Court used varying standards in ordering recount in only certain counties.
 - (iii) The implementation of the Florida Supreme Court ruling would require untrained teams of counters to tally votes.
 - (iv) substantial additional work would be needed to do a proper recount, including development of standards, testing of tabulating equipment and further judicial review.
 - (v) Argued that given the December 12, 2000 deadline, there was no time to implement a constitutionally sound recount.

Principal Arguments of the 4 Dissenting Justices

- The U.S. Supreme Court should have remanded the case to the Florida Supreme Court to articulate standards to be applied during the recount.
- The case should not have been heard by a federal court – it was a question of state law.
- Differing counting rules were necessary due to differing methods of voting and problems with the voting machines.
- 170,000 votes not properly counted and it is impossible to assume that such votes could not be counted before the meeting of the Electoral College.

Can The 5-4 Supreme Court Vote in Bush v. Gore Be Explained Solely on the Basis of Politics

- Generally, the Republican Supreme Court justices favor more limited federal powers and the protection of states' rights. They frequently oppose the federal courts from intervening in matters not expressly assigned to them by the U.S. Constitution.
- All of the 5 judges who voted in favor of the Bush position were appointed by Republican Presidents (Kennedy [Bush], O'Connor [Reagan], Rehnquist [Nixon], Scalia [Reagan], and Thomas [Bush]).
- All of the remaining judges were either appointed by Democratic Presidents (Breyer [Clinton] and Ginsburg [Clinton]) or by Republican Presidents at a time when the Democrats controlled the U.S. Senate – Stevens [Ford] or Souter [Bush] – the latter 2 justices are important to study since all Supreme Court justices are nominated by the President before they are decided upon by the Senate. Therefore although Ford and Bush were Republicans, since the Democratic Party held a majority of seats in the Senate at the time, the Republicans nominated moderate judges.

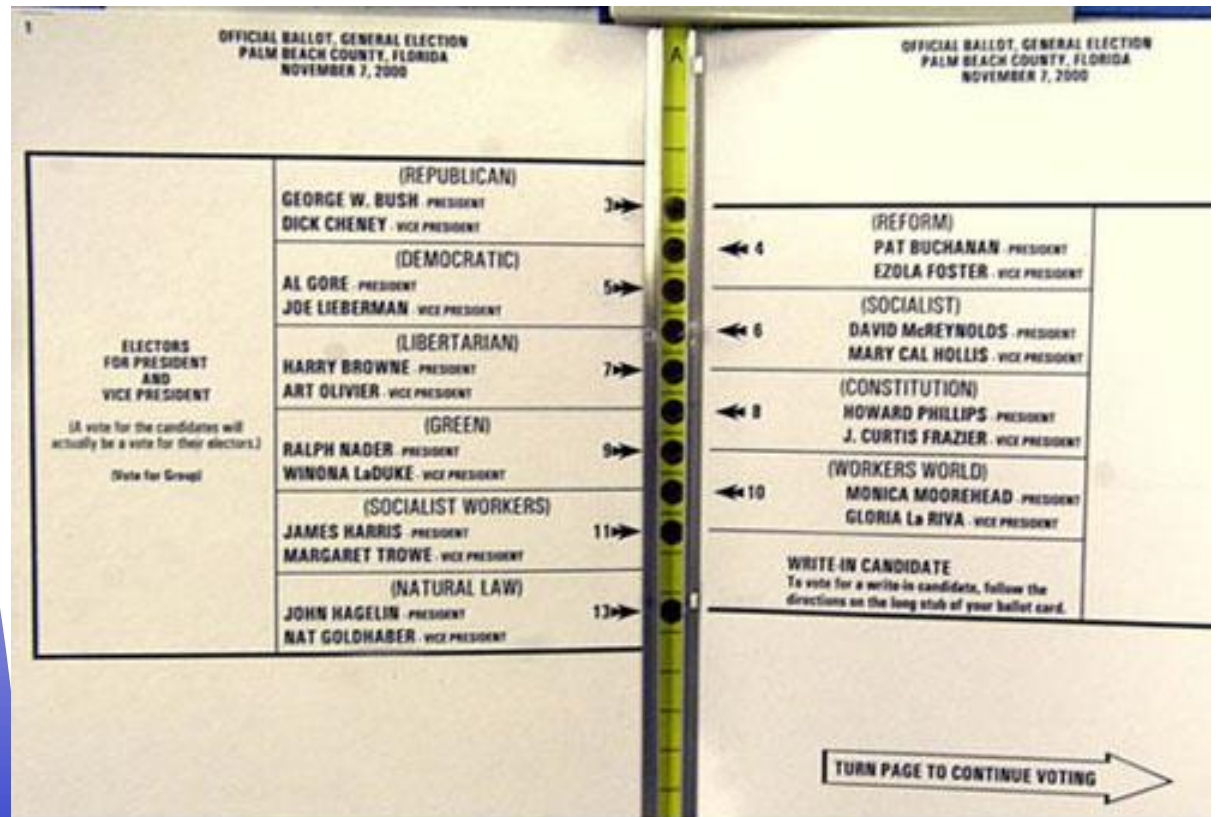
The Power of Hindsight

- Gore should have immediately called for a recount of the entire state, not merely counties where he thought he would have won since he probably had more votes than Bush in Florida.
- If Gore had merely carried his home state Tennessee, he would have won the election, irrespective of Florida.
- Gore did not spend all of his money on the campaign – and barely lost New Mexico and West Virginia -- if he had won both states, he would have won the election.
- Gore considered picking Senator Graham of Florida as his running mate, which might have helped him win the state.
- Just as many people did not vote for Kennedy in 1960 since he was Catholic, Gore may have been harmed by picking Senator Lieberman of Connecticut, who is Jewish, as his Vice Presidential candidate.

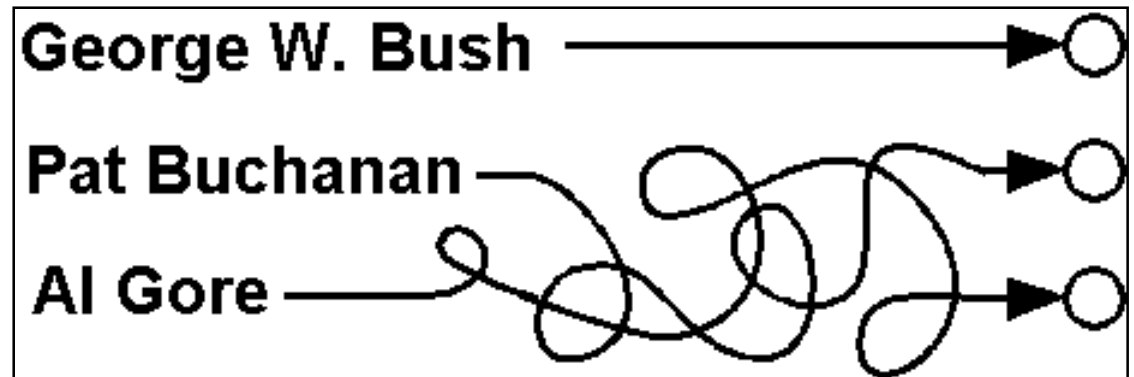
Any Positive Consequences for Gore & the Democrats?

- In 2001, the U.S. enacted new legislation on campaign funding reform and appropriated money for improved voting machines.
- The Democrats (and Gore) can blame the Republicans for the downturn in the U.S. (and global) economy.
- Increased voter turnout in the future by poorer, less educated voters generally favor Democratic candidates.
- The public is better educated about the presidential election process.

The Infamous “Butterfly Ballot” of Palm Beach



The Butterfly Ballots Confused Elderly Voters of Palm Beach

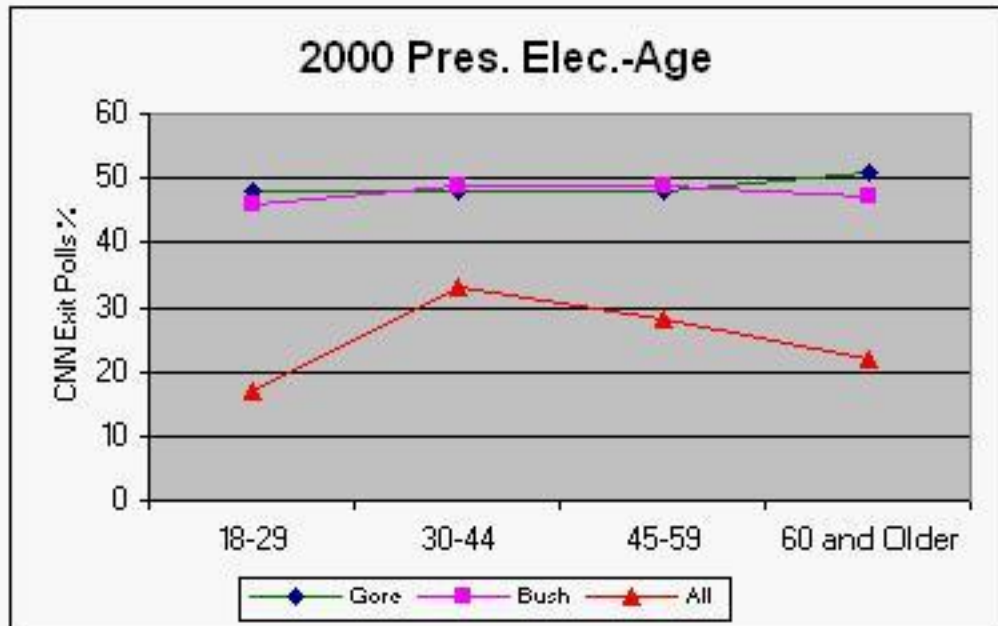


Geographic Stratification

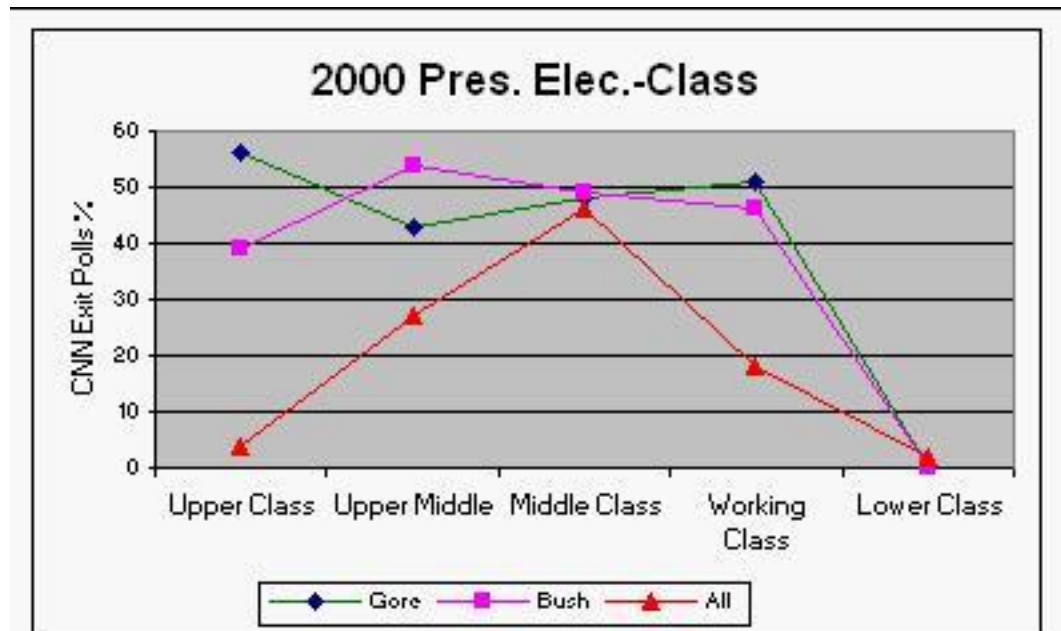
ELECTORAL MAP



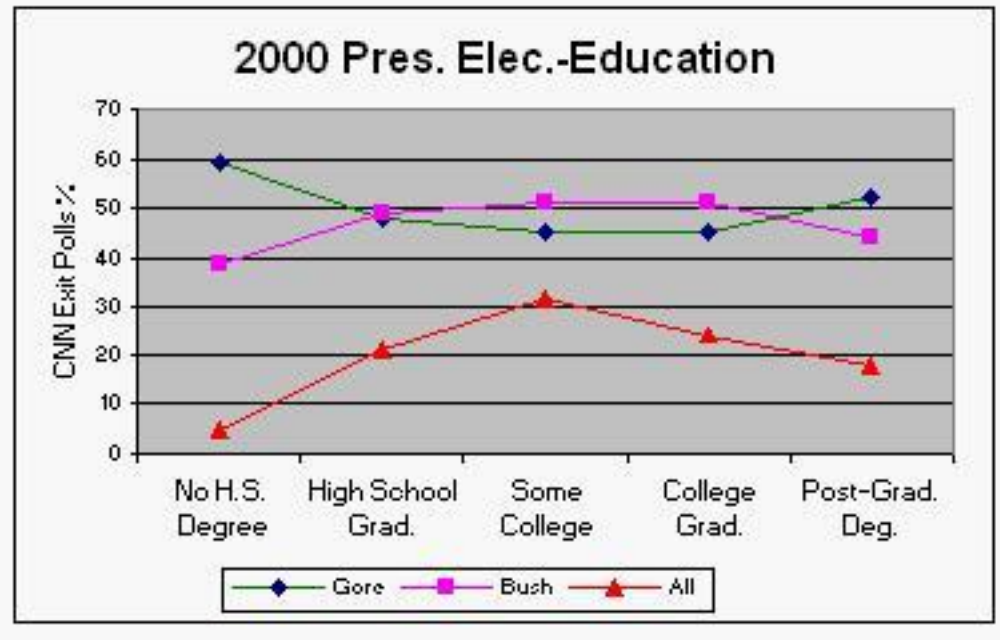
Age of Voter Proved Not to be a Factor (according to CNN exit polls)



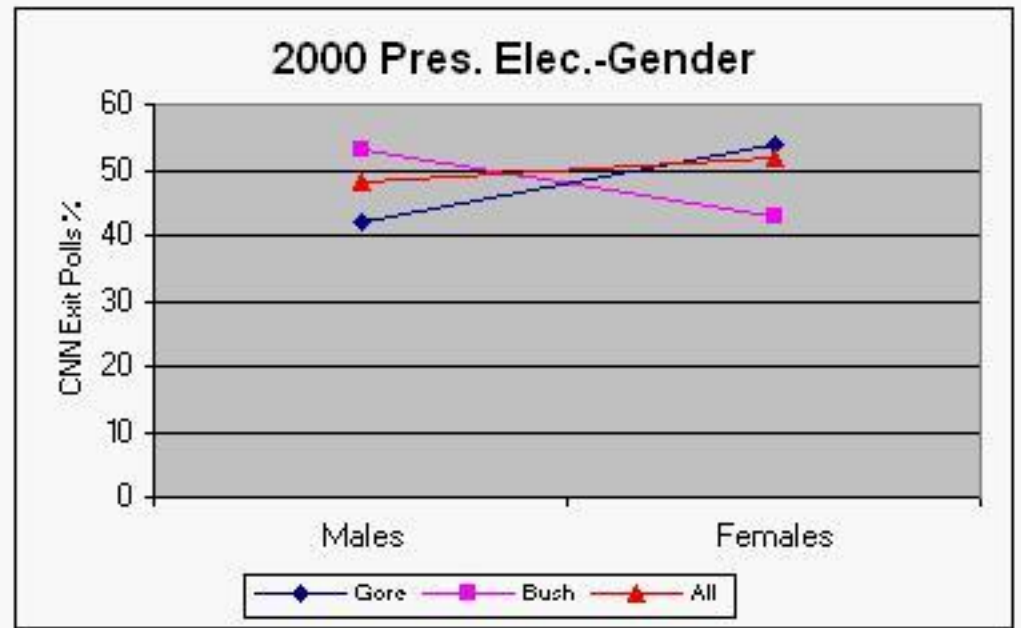
Class Self-Identification Did Not Play a Decisive Role in Voting Preference (according to CNN exit pollings)



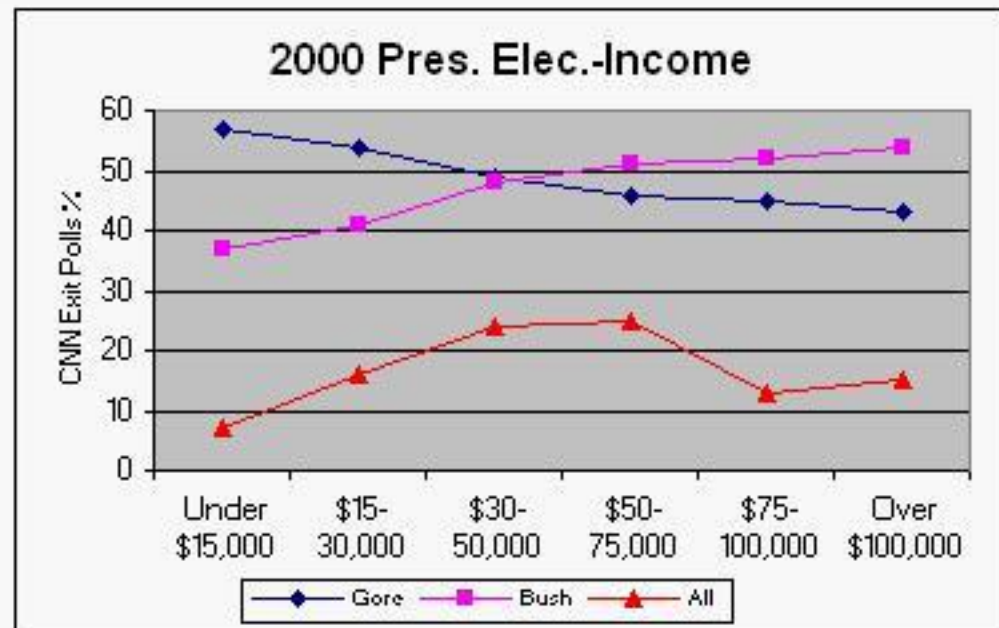
Education Levels Played A Minor Role in Voting Preferences (according to CNN exit polls)



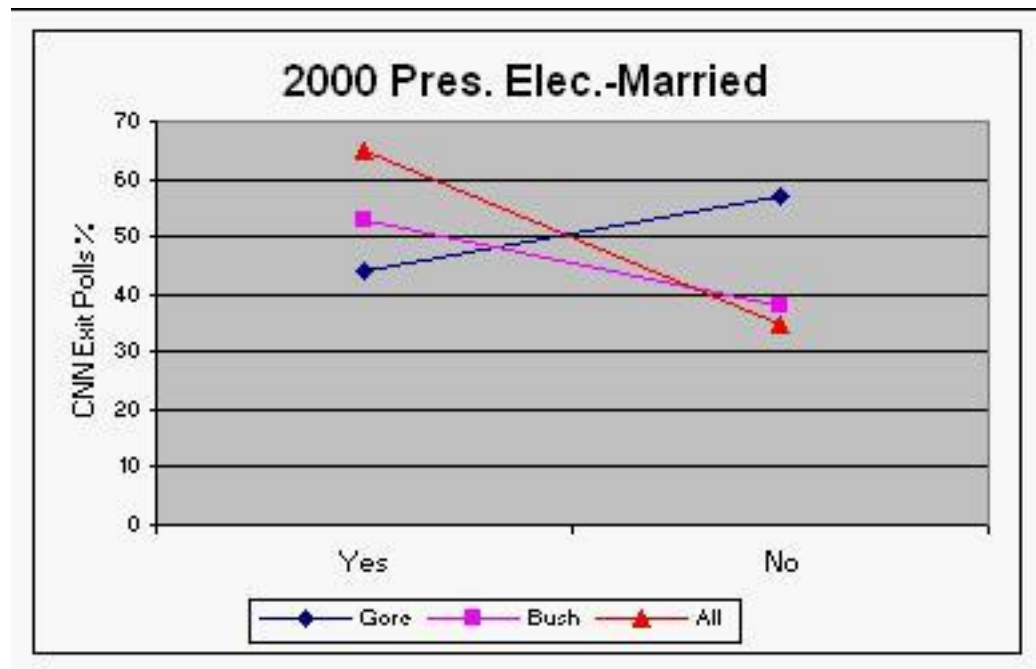
Gore was Supported by a Majority of Female Voters (according to CNN exit polling)



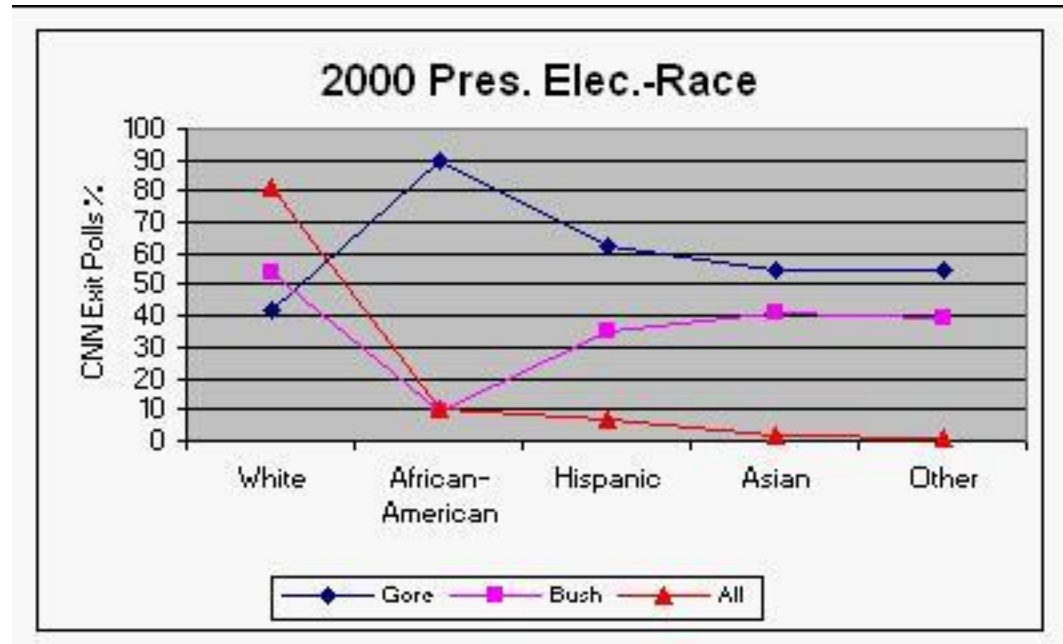
The Wealthy Tended to Favor Bush (according to CNN exit polls)



Bush held the Advantage with Married Voters (according to CNN exit polls)



Bush Received a Majority Only of White Voters (according to CNN exit polls)



Only Protestant Voters Tended to Favor Bush, With Gore Winning the Votes of Members of Other Faiths (according to CNN exit polls)

