

Proffer of Dr. William A. Niskanen

By Dr. William A. Niskanen

This is the proffer submitted to Leon County Circuit Court Judge N. Sanders Sauls by the Bush legal team on behalf of Cato Chairman William A. Niskanen. Niskanen was on hand in Florida to offer oral testimony concerning how hand recounts in selective Democratic counties would statistically bias statewide results in favor of Al Gore.

Dr. Niskanen would testify concerning the effect on the state-wide results on the November 7, 2000 Presidential election in Florida of hand counts only in selective counties. Dr. Niskanen is an economist and the chairman of the Cato Institute, a leading Washington policy institute. His undergraduate degree is from Harvard University and his doctoral degree is from the University of Chicago. One of his professional skills is statistical analysis, and the focus of much of his research is the economic analysis of politics. He was the author, for example, of one of the first studies of the economic and fiscal effects on popular vote for the President and of a recent study of the effects of the Perot vote on the balance of the votes for the major party candidates for President in 1992 and 1996. He has been a professor at the University of California at Berkeley and Los Angeles and has been the president of two professional associations. Biographical data for Dr. Niskanen is attached hereto.

Dr. Niskanen volunteered to testify in this case because of his concern about the integrity of the electoral process. Briefly, he would testify as to his opinion that a hand recount of only those votes in heavily Democratic counties, even if conscientious and scrupulously impartial, would bias the statewide votes in favor of Gore. For the same reason, a hand recount of only those votes in heavily Republican counties would bias the statewide votes in favor of Bush.

Dr. Niskanen first became concerned about this issue on November 12, on learning of the focus of the hand recounts and the magnitude of the estimated "undervotes" in the affected counties. On November 13, he circulated a brief article in an online news service about the potential effects of a selective hand recount in counties dominated by one major party. On that same day, an article by a Harvard economist on leave at the Brookings Institution made the same general point and was published in the *Wall Street Journal*.

Dr. Niskanen's article presented an estimate that a hand recount limited to Miami-Dade County, Palm Beach County, and Broward County might increase the net vote for Gore by about 5600 votes if ALL of the undervotes were allocated to Gore and Bush in proportion to their relative votes in the machine count. After learning at this trial on December 2 that the preferences of only 8 percent of the undervotes were determined in Palm Beach County and only 24 percent in Miami-Dade County, Dr. Niskanen estimated that including the hand recount from these two counties (the hand recounts from Broward County having been included in the vote certified on

November 19) would increase the net vote for Gore by about 370 votes and he was prepared to testify to that effect. He would also testify that he could have made the same type of estimates of the effects of hand recounts in the heavily Republican counties if that had been an issue in this case.

A second reason for Dr. Niskanen's concern about this issue was irritation with the position of former Secretary James Baker that the hand recounts should be dismissed on the basis that a determination of voter preferences on the undervotes is somewhat subjective and vulnerable to partisan mischief. That may be so, but it begs the question and impugns the diligence and motives of those conducting the recount. Dr. Niskanen's impression is that most of those involved in the hand recount were quite conscientious and that the process protected against a gross impartiality. The primary problem of the hand recounts is NOT a bias by those conducting the recount, but the bias of conducting the most impartial recount only in those counties dominated by one party or the other.

Dr. Niskanen does not consider himself qualified to make a judgment on the legal issues in this case. But, as an economist who is concerned about the integrity of our electoral process, he concludes that a hand recount only in those counties dominated by one or the other major party violates his concept of equal treatment under the law.