

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CYNTHIA McCAULEY,

Appellant,

v.

CASE NO.: SC00-2462

DCA CASE NO.: 1D00-4825

Circuit Court Case No.: CV00-2802

MARC NOLEN, et al.,

Appellees.

APPELLEES', MARC NOLEN, RICHARD STEWART, THE HONORABLE THOMAS WELCH, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE BAY COUNTY CANVASSING BOARD, SUGGESTION OF MOOTNESS

Appellees, MARC NOLEN, RICHARD STEWART, THE HONORABLE THOMAS WELCH, in their official capacities as members of THE BAY COUNTY CANVASSING BOARD (hereinafter referred to as "BAY COUNTY CANVASSING BOARD"), pursuant to Rule 9.300, Florida Rules of Appellate Procedure, hereby file this suggestion of mootness regarding Appellant's, CYNTHIA McCAULEY, Initial Brief, and state:

1. On November 28, 2000, CYNTHIA McCAULEY filed an Amended Complaint, wherein she alleged that: (1) a Republican Party mailing misled voters into believing that the State of Florida permitted and encouraged absentee voting as a matter of convenience and the mailing included a removable pre-

addressed absentee ballot request form, (2) the Supervisor of Elections, in violation of §101.647, Fla. Stat. (1998), accepted absentee ballots from people who delivered more than two absentee ballots to the Supervisor of Elections and who did not return the absentee ballots with the appropriate written authorization, (3) contrary to the misleading letter sent by the Republican Party, §101.64 requires absentee voters to swear or affirm that he or she is unable to attend the polls on election day. It should be noted that the Amended Complaint did not name the Supervisor of Elections for Bay County as a party-defendant.

2. The remedy requested in the Amended Complaint was that (1) the Court declare that the Supervisor of Elections issued absentee ballots to voters who were able to attend the polls and therefore were not eligible for absentee ballots, (2) the Court declare that the Supervisor of Elections improperly accepted absentee ballots from unidentified individuals who were not authorized by the absentee voter, in writing, to deliver ballots on their behalf, (3) the Court declare that the Supervisor of Elections improperly accepted ballots from

individuals other than the person who cast the ballot in excess of the number authorized by Florida Statute, (4) the Court issue an order directing the BAY COUNTY CANVASSING BOARD to amend its certification to include only those votes legally cast for President and Vice President of the United States and direct the State Election Canvassing Commission to accept the amended return, (5) the Court investigate and correct any wrongdoing, order injunctive relief, invalidate certain or all absentee ballots, and grant such other relief as the Court deems just and proper.

2. Appellant, CYNTHIA McCAULEY, appeals from an Order of the Honorable Ralph Smith, Circuit Judge in and for Leon County, Florida, dated December 7, 2000, wherein the Court granted Appellees' Motions to Dismiss with prejudice.

3. On December 12, 2000, at approximately 7:40 p.m., the Florida Supreme Court issued an order directing Appellees to file their answer briefs on or before 2:00 p.m. on Wednesday, December 13, 2000.

4. Subsequently, the United States Supreme Court issued its opinion in GEORGE W. BUSH, et al., v. ALBERT GORE, Jr., et

al., Case No. 00-949; 2000 WL 1811418 (U.S. Dec. 12, 2000).

5. In Bush v. Gore, the United States Supreme Court stated as follows:

"The Supreme Court of Florida has said that the legislature intended the State's electors to 'participate fully in the federal electoral process,' as provided in 3 U.S.C. § 5. - So.2d, at - (slip op. at 27); see also Palm Beach Canvassing Bd. v. Harris, 2000 WL 1725434, *13 (Fla. 2000). That statute, in turn, requires that any controversy or contest that is designed to lead to a conclusive selection of electors be completed by December 12. That date is upon us, and there is no recount procedure in place under the State Supreme Court's order that comports with minimal constitutional standards. Because it is evident that any recount seeking to meet the December 12 date will be unconstitutional for the reasons discussed, we reverse the judgment of the Supreme Court of Florida ordering a recount to proceed." Bush v. Gore, 2000 WL 1811418, *7. [Emphasis added].

6. If successful, the Appellant would probably obtain a ruling from this Honorable Court which would reverse Judge Smith's order and this matter would be remanded to the trial court for further proceedings.

7. The BAY COUNTY CANVASSING BOARD respectfully submits

that Appellant's contest is solely designed to lead to an amended certification of Bay County's voting results. We are beyond the December 12, 2000, deadline and the U.S. Supreme Court's decision in Bush v. Gore, supra, renders this action moot.

BURKE & BLUE, P.A.

/s Michael S. Burke
TIMOTHY M. WARNER
Florida Bar No. 0642363
MICHAEL S. BURKE
Florida Bar No. 0133851
P.O. Box 70
221 McKenzie Avenue
Panama City, FL 32401
(850) 769-1414
Attorney for Appellees,
MARC NOLEN, RICHARD
STEWART, THE HONORABLE
THOMAS WELCH, IN THEIR
OFFICIAL CAPACITIES AS
MEMBERS OF THE BAY COUNTY
CANVASSING BOARD

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by facsimile transmission this 13th day of December,

2000, to the following:

Hon. Jon S. Wheeler
Clerk, First DCA
301 Martin Luther King, Jr. Blvd.
Tallahassee, FL 32399-1850
(copy mailed at Clerk's request)

Hon. L. Ralph Smith, Jr.
Leon County Courthouse, Room 365J
Tallahassee, FL 32301
Fax # (850) 922-0327

Hon. Dave Lang
Clerk Leon County
301 S. Monroe Street
Tallahassee, FL 32301
Fax # (850) 922-4310

Mitchell W. Berger
Berger Davis & Singerman
350 E. Las Olas Blvd., Ste 1000
Ft. Lauderdale, FL 33301-4215
Fax # (954) 525-9900

Seann M. Frazier
Barry Richard
Greenberg Traurig
101 East College Avenue
Tallahassee, FL 32301
for Governor Bush
Fax #(850) 681-0207

Craig Meyer
Agriculture & Consumer Services
The Capitol, Plaza Level 10
Tallahassee, FL 32399-0800
Fax #(850) 488-7585

Deborah Kearney, General Counsel
Florida Department of State
400 South Monroe Street, PL 02
Tallahassee, FL 32399
for Secretary Katherine Harris &
the Elections Canvassing Committee
Fax #(850) 922-5763

Alvin L. Peters
McCauley & Peters
36 East Oak Avenue
Panama City, FL 32401
Attorneys for Cynthia McCauley
Fax #(850) 785-5124

John W. Little, III
Donna E. Blanton
Steel Hector & Davis
215 South Monroe Street, Suite 601
Tallahassee, FL 32301-1804
for Secretary Katherine Harris &
the Elections Canvassing Committee
Fax #(850) 222-8410

Ben R. Patterson
315 Beard Street
P.O. Box 4289
Tallahassee, FL 32315
Fax #(850) 222-7438

Benjamin L. Ginsberg
State Republican Headquarters
420 West Jefferson Street
Tallahassee, FL 32301
For the Republican Party
Fax #(850) 681-0184

Andrew J. McMahon
Palm Beach Co Attorney's Office
301 N. Olive Avenue, Ste. 601
West Palm Beach, FL 33401-4705
Fax # (561)355-4234

L. Clayton Roberts
Division of Elections
400 S. Monroe Street
Tallahassee, FL 32399
Fax #(850) 487-2214

BURKE & BLUE, P.A.

/s Michael S. Burke
TIMOTHY M. WARNER

Florida Bar No. 0642363