

# IN THE SUPREME COURT OF FLORIDA

Case No. SC00-2431

---

ALBERT GORE, JR., Nominee of the Democratic Party of the United States for  
President of the United States, and JOSEPH I. LIEBERMAN, Nominee of the  
Democratic Party of the United States for Vice President of the United States,

Plaintiff, Appellant

v.

KATHERINE HARRIS, as SECRETARY OF STATE, STATE OF FLORIDA, ET AL.,

Respondent, Appellee

---

On Writ of Certiorari As A Matter Of Great Public Importance From The Court  
of Appeal Of The First District Of Florida

Lower Tribunal, Circuit Court Of The Second Judicial Circuit, In  
And For Leon County, Florida, Case No. 00-2808

---

**BRIEF OF INTERVENORS GLENDA CARR,  
LONNETTE HARRELL,, TERRY RICHARDSON,  
GARY H. SHULER, KEITH TEMPLE, AND MARK A.  
THOMAS**

---

WILLIAM KEMPER JENNINGS  
Florida Bar No. 142570  
P.O. Box 1256  
DeFuniak Springs, Florida 32435  
(850) 892-1300

TABLE OF CONTENTS

TABLE OF CONTENTS ..... 1

TABLE OF AUTHORITIES ..... 2

INTERVENORS BRIEF ..... 3

INTERVENORS BRIEF ..... 3

I.Application Of Florida Statute Urged By Vice President Gore And  
Senator Lieberman Violates The Due Process and Equal  
Protection Clauses Of United States Constitution.3

CONCLUSION ..... 8

CERTIFICATE OF SERVICE ..... 8

TABLE OF AUTHORITIES

CASES

*Gore v. State of Florida, et al.*, (2d Fla.Cir.Ct. 2000) ..... 4, 5

*Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362 (1964) ..... 5, 6, 7

STATUTES AND CONSTITUTIONS

Chapter 102, Florida Statutes ..... 3

U.S. CONST. amend V ..... 3, 4, 5, 7

U.S. CONST. amend XIV ..... 3, 4, 5, 7

## INTERVENORS BRIEF

Intervenors are registered voters in their respective counties who voted for the electors of Governor George W. Bush for the office of President of the United States. They reside and voted in counties which were not subject to any manual recount after the election of November 7, 2000. They are:

GLEND A CARR, a resident of Duval County, Florida;  
LONNETTE HARRELL, a resident of Okaloosa County, Florida;  
TERRY RICHARDSON, a resident of Bay County, Florida;  
GARY H. SHULER, a resident of Calhoun County, Florida;  
KEITH TEMPLE, a resident of Duval County, Florida; and  
MARK A. THOMAS, a resident of Leon County, Florida.

These voters were allowed to intervene on the basis of their allegations and in their Petition For Declaratory Decree that the manual recount provisions of Chapter 102, Florida Statutes, were facially or in their application in the November 7, 2000 presidential election violative of the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments of the United States Constitution . Importantly, these Intervenors did not waive the claims asserted in such petition or herein because the manual recount provisions do not permit a voter who is not a candidate to seek a manual recount.

I. Application Of Florida Statute Urged By Vice President Gore And Senator Lieberman Violates The Due Process and Equal Protection Clauses Of United States Constitution.

Plaintiffs on behalf of Vice President Gore and Senator Lieberman, the Democratic candidates for the offices of the President and Vice President of the United States, have urged for a third recount, by hand, in selected counties of the State of Florida. A manual recount has not been urged in the other counties within Florida. This application of the Florida statutes would violate the Equal Protection Clause of the United States Constitution. Prior to the hearing below, the Florida Attorney General, Robert Butterworth, had advised that such procedure could be violative of constitutional provisions. The trial court in its Order, quoted

from Attorney General Butterworth's comments:

SAULS: Furthermore, with respect to the standards utilized by the board in its review and counting processes, the court finds that the standard utilized was in full compliance with the law and review under another standard would not be authorized, thus creating a two-tier situation within one county, as well as with respect to other counties.

The court notes that the attorney general of the state of Florida enunciated his opinion of the law with respect to this in a letter dated November 14, 2000, to the Honorable Charles E. Burton, chair of the Palm Beach County Canvassing Board, which in part is as follows: "A two-tier system would have the effect of treating voters differently depending upon what county they voted in. A voter in a county where a manual count was conducted would benefit from having a better chance of having his or her vote actually counted than a voter in a county where a hand count was halted."

As the state's chief legal officer, I feel a duty to warn that if the final certified total for balloting in the state of Florida includes figures generated from this two-tier system of differing behavior by official canvassing boards, the state will incur a legal jeopardy under both the United States and state constitutions.

This legal jeopardy could potentially lead Florida to having all of its votes, in effect, disqualified, and this state being barred from the Electoral College's selection of a president.

Court Ruling Transcript, December 4, 2000, Case No. CV 00-2808, *Gore v. State of Florida, et al.*, (2d Fla.Cir.Ct. 2000). [Emphasis added]

There is serious doubt as to whether the statutory provisions calling for manual recount are meant to apply to a statewide election contest, and even if a manual recount were applicable, the selective use is unconstitutional under both the Due Process and Equal Protection Clauses of the United States Constitution. It is incumbent upon the Petitioners to seek the proper remedy for a losing candidate under the United States Constitution which would be a request for a statewide recount using the same standards as were in place prior to the election. Petitioners have sought only selective and limited application of the manual

recount provision in a manner plainly designed to weigh heavily in favor of the Vice President. The court below recognized this issue as well:

Further, this court would further conclude and find that the properly stated cause of action under Section 102.168 of the Florida statutes to contest a statewide federal election, the plaintiff would necessarily have to place an issue and seek as a remedy with the attendant burden of proof a review and recount of all ballots in all the counties in this state with respect to the particular alleged irregularity or inaccuracy in the balloting or counting processes alleged to have occurred.

*Id.*

There is even a far more serious constitutional issue in reference to the purported challenge by the Plaintiffs in this action. Governor Bush and Vice President Gore are not running for an office in Florida and are not elected to any office by the citizens of the State of Florida. Plaintiffs have totally ignored the constitutional provisions regarding presidential electors. This issue has been addressed by Intervenor Thrasher, a currently certified Republican elector. The present Intervenors adopt and concur in the Motion to Dismiss as presented by Intervenor Thrasher which we respectfully submit is a threshold issue. Should this Court reject the position of Intervenor Thrasher, we respectfully urge for the reasons that follow that the Court may not grant the request of Vice President Gore and Senator Lieberman because it would offend the Due Process and Equal Protection Clauses.

Determining that the methods by which Vice President Gore sought a manual recount in the three (3) counties he selected violates the Equal Protection and the Due Process Clauses of the United States Constitution is dispositive of all issues raised by Petitioners before the Court. In other words, the results presented to the Secretary of State either on November 14<sup>th</sup> or at the extended deadline established by this Court, both of which gave Governor Bush a plurality in Florida, would be final results since the selective manual recount sought by Vice

President Gore is unconstitutional.

Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.

*Reynolds v. Sims*, 377 U.S. 533, 561, 84 S.Ct. 1362, 1381 (1964).

The United States Supreme Court has dealt with the question of equal protection of voter rights under many guises where a disparity exists or could exist between representation afforded to a citizen in one part of a state versus that afforded to a citizen in another part of the state. In the instant case the Intervenors contend that a two tiered system vote counting violates the Equal Protection clauses. A similar problem develops in reapportionment cases and the rule of *Reynolds* and other reapportionment cases could not be more clear:

The fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a state.

*Reynolds*, at 561.

The specific allegation in *Reynolds* was that that voters in one part of the State of Alabama had greater representation per person in the State Legislature than voters in another part of the Alabama. The Supreme Court concluded:

A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution's Equal Protection Clause. This is an essential part of the concept

of a government of laws and not men. This is at the heart of Lincoln's vision of 'government of the people, by the people, (and) for the people. The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races.

*Reynolds* at 568.

In the present case, the statutory provisions providing for a manual recount as urged by Vice President Gore are not reasonably related to the plain legislative purpose of allowing a losing candidate to seek determination of the true result of all the votes in the subject election. These provisions of Florida law as argued by Plaintiffs would permit a candidate who loses the statewide popular vote but wins in some counties, often overwhelmingly, to choose only those counties for the purpose of a recount. Such application would impermissibly allow the state-wide loser to undermine the weight and value of the votes in those counties where such candidate lost, often overwhelmingly. This misapplication of Florida election law therefore does not provide for a more accurate reflection of the will of the voters but in fact allows for an unfair distortion of the statewide vote.<sup>1</sup> Thus, the

---

<sup>1</sup> There were other counties in the State of Florida that employed similar or identical “votematic” machines where substantial amount of “undervotes” occurred. Many of these counties were carried by the Bush electors in overwhelming numbers. For example, Duval County results indicate an approximate 55% majority for Governor Bush; Collier County results showed approximately 66% for Governor Bush; Indian River County showed approximately 59% for Governor Bush; and Marion County showed approximately 55% for Governor Bush. There were many other counties with the “votematic” system carried by Governor Bush which also had “undervotes.” Moreover, because Governor Bush carried fifty one (51) of the sixty seven (67) counties in Florida, there were many other counties using different election equipment, and some of these counties also had substantial “undervotes.”



application of the statute proposed by the Vice President violates the Due Process Clauses, the Equal Protection Clause, and the constitutional protection of each individual's right to vote under the provisions of the United States Constitution, Amendments V and XIV. Plaintiffs application of Florida election law would travel well down the path to making Attorney General Butterworth's warning of disenfranchising all the voters in Florida a reality.

Although Intervenors have found no precedent with the exact circumstances presented by the application of the manual recount provisions urged by the Vice President, the United States Supreme Court's decisions establishing the "one man, one vote" rule are controlling. See *Reynolds*. No election system established or applied under state law may give the votes for a particular candidate or political party more weight than the votes for the other candidates or parties. Exactly as the long-rejected schemes of gerrymandering created election advantages for a particular party or candidate, the misapplication of the Florida manual recount statutes, Chapter 102, by the Vice President has diluted the votes of the Intervenors and all the other voters in counties where a manual recount was not effected. This discrimination violates the Due Process and Equal Protection Clauses of the Fifth and Fourteenth Amendments of the United States Constitution.

### CONCLUSION

The application of the manual recount statutes as proposed by Vice President Gore, therefore, creates a "two tiered" system of counting votes and, thereby, as Attorney General Butterworth has warned, threatens the disenfranchisement of all Florida voters in the electoral college.

---

This information was provided by the Exhibits submitted into evidence by the Secretary of State and by the testimony of the statistical experts.

WHEREFORE Intervenor urge this Court to deny Petitioner's requested relief of requiring the manual recount of votes in their selected counties. As discussed above, to grant such relief would apply the Florida manual recount provisions in a manner violative of Intervenor rights to Due Process and Equal Protection under law as guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution.

WILLIAM KEMPER JENNINGS  
Florida Bar No. 142570  
P.O. Box 1256  
DeFuniak Springs, Florida 32435  
(850) 892-1300

CERTIFICATE OF SERVICE

This is to certify that the above document has been served upon all of the Parties and Intervenor herein on this \_\_\_\_\_ day of December 2000.

WILLIAM KEMPER JENNINGS