

SUPREME COURT OF FLORIDA

CASE NOS.: SC00-2346, SC00-2348 & SC00-2349

PALM BEACH COUNTY vs. KATHERINE HARRIS, ETC.,
CANVASSING BOARD ET AL.,

VOLUSIA COUNTY vs. MICHAEL MCDERMOTT,
CANVASSING BOARD ET AL.,

FLORIDA DEMOCRATIC PARTY vs. MICHAEL MCDERMOTT,
ET AL.

Petitioners/Appellants

Respondents/Appellees

RESPONSE TO
INTERVENOR GEORGE W. BUSH'S MOTION FOR
LEAVE TO FILE RESPONSE IN OPPOSITION TO REPLY BRIEF

This is the response of Intervenors/Appellants Al Gore, Jr., and the Florida Democratic Party to the Motion of George Bush for Leave to File a Response to the Reply Brief.

Today's submission by Governor Bush asks this Court to delay the resolution of the issue of the appropriate standard to be employed in manual recounts – while at the same time complaining that the Secretary of State's certification should proceed immediately because any delay may prejudice adequate time for a contest.

The issue of the appropriate standard was squarely raised by Petitioner Broward County Canvassing Board in its brief filed on November 18, 2000 (the day before Governor Bush filed his brief). That brief specifically discussed the “two-corner” rule then applied by the Canvassing Board and Circuit Judge Miller’s oral rejection of that rule as “too restrictive” because “the totality of the ballot must be considered to determine the will of the voter behind each ballot.” Broward County Canvassing Board Br. at 9-10 (fn. omitted). The Board’s brief explicitly stated that “the Board seeks specific direction from this Court as to the validity of the two-corner rule.” Brief at 10. The issue also was discussed in our Initial Brief (e.g., pages 14-15) filed November 18, discussed again in our reply filed November 19, and raised at oral argument by both the Court and the parties on November 20. At no time before today did Governor Bush’s counsel suggest that the issue was not properly before the Court or should not be resolved promptly.

On the contrary, Governor Bush’s counsel (and counsel for the Secretary of State) argued strenuously that the application of different or inconsistent standards raised serious constitutional problems – problems that Governor Bush now asks this Court to ignore.

The issue is one of law appropriate for determination by this court in the All Writs proceeding (Case No. SC 00 -2346), at least. It does not present factual issues. That claim is George Bush's use of the time honored device of "parade of horrors" to avoid this Court addressing this very important issue in the manual recounts. The issue requires the Court to articulate a legal standard to be applied by county canvassing boards. "[S]ubstantial compliance with statutory requirements for marking ballots is ultimately [a] judicial question." *State v. Williams*, 120 So. 310, 311 (Fla. 1929). This is the necessary result of the Court's ultimate duty to "prevent the thwarting of the will of the electors either by fraud or by common mistakes honestly made." *Barber v. Moody*, 229 So. 2d 284,286 (Fla. 1st DCA, 1969). The standard is not only an issue of law but a critical issue requiring final and state wide determination by this Court.

Governor Bush's argument that it is already now too late to file a contest (i.e., that the latest date was yesterday, November 20)

- (a) ignores the ability of the courts to expedite the consideration of any contest in light of the unusual circumstances of the federal deadline, and

- (b) ignores the ability of any party to proceed with a contest as to all previously certified results (i.e., all results except the manually recounted vote changes) now.

We continue to urge the Court that the proper balance between the need to have votes cast properly counted and the need to have Florida's electors selected by December 12 is to order the manual recounts to be completed within a week of this Court's decision and order, to provide a uniform standard for the county canvassing boards to apply, to require the Secretary of State to certify official results that include the results of the manually counted votes, to permit any proper party to contest the returns certified to date (i.e., the November 14 returns of all 67 counties), and to permit the expedited contest of the manually counted votes as soon as they are certified.

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