

IN THE SUPREME COURT OF FLORIDA
CASE NOS. SC00-2346, SC00-2348 & SC00-2349

PALM BEACH COUNTY
CANVASSING BOARD, ET AL.

vs.

KATHERINE HARRIS, ETC.,
ET AL.

VOLUSIA COUNTY
CANVASSING BOARD

vs.

MICHAEL McDERMOTT,
ET AL.

FLORIDA DEMOCRATIC
PARTY

vs.

MICHAEL McDERMOTT,
ET AL.

PETITIONERS/APPELLANTS

RESPONDENTS/APPELLEES

**PETITIONER BROWARD COUNTY CANVASSING BOARD'S
REPLY BRIEF**

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CERTIFICATE OF FONT SIZE AND STYLE

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REPLY

As an initial matter, the Broward County Canvassing Board (the “Board”) has decided to use a new standard for review of ballots since its initial brief was filed on November 18, 2000. In that brief, the Board notified this Court that it was using the “two-corner” rule to determine voter intent in the manual recount of the ballots underway in Broward County. Pursuant to that rule, only ballots with at least two corners of the chad detached from the ballot were being counted in the tabulations. As the Board indicated in its brief, that standard had been called into question by the Circuit Court in Broward County in the case of *Florida Democratic Party et al. v. Jane Carroll, et al.* 17th Judicial Circuit Court Case No. 0019324(07).

The Broward County Canvassing Board now notifies this Court that on November 19, 2000, by a 3-0 vote, the standard being used to determine voter intent was changed by the Board. The Board is now determining voter intent by examining each ballot and determining, based on examination of the totality of each ballot, whether the intent of the voter can be ascertained. The two-corner rule is no longer being applied to restrict the Board’s determination of voter intent.

In reply to the answer brief of Governor Bush (the “Bush Answer Brief”) and the answer brief of the Secretary of State (the “Harris Answer Brief”), the Board states the following:

1. The Harris Answer Brief accurately states that the method by which the Board is reviewing ballots to determine the intent of voters has not been the subject of any lower court ruling. This is a purely legal issue. No facts are in dispute. Because of the significant time restraint, the Board respectfully requests that this Court consider this issue presently rather than wait until the 17th Judicial Circuit and 4th District Court of Appeal have ruled.

2. Despite the assertion of the answer briefs, the Board has proceeded as expeditiously as possible given the conflicting opinions of two Florida Cabinet officers and the sheer number of ballots cast in Broward County. The Bush Answer Brief fails to address the significant reasons why the Broward County recount has been delayed. Those reasons were communicated to the Secretary of State in a letter which was attached to the Board’s initial brief.

3. The Bush Answer Brief further seeks to oppose manual recounts by asserting that the statutory design of Chapter 102 permits counties the ability to fully recount prior to November 14, 2000. Pursuant to §102.112(1), the Board is not required to certify election results until 5:00 pm on the seventh day following the general election

(November 14). Pursuant to 102.166(4)(b), a manual recount can be triggered by a request filed just prior to the time the Board certifies the result. As such, the Board would have been required to consider a request for a manual recount filed only minutes prior to the 5:00 pm deadline. Of course, under those circumstances, a full manual recount could not be completed by what the answer briefs assert is the statutory deadline.

4. Additionally, adherence to the strict time lines advanced by the answer briefs will disproportionately affect counties with larger populations, such as Broward County. This increases the risk of substantial disenfranchisement and the risk that manual ballot review may be conducted with undue haste.

CONCLUSION

The Broward County Canvassing Board respectfully requests that this Court permit the Board to complete its statutorily mandated manual recount pursuant to the standard of ballot review it has adopted.

Respectfully submitted,
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CERTIFICATE OF SERVICE

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