

IN THE SUPREME COURT OF FLORIDA
CASE NO.SC00-2346

PALM BEACH COUNTY CANVASSING BOARD,

Petitioner,

v.

KATHERINE HARRIS, as Secretary of State of the State of Florida,
and ROBERT A. BUTTERWORTH, as Attorney General of the State of Florida,

Respondents.

**BROWARD COUNTY CANVASSING BOARD'S
REPLY TO KATHERINE HARRIS', GEORGE W. BUSH'S
AND ROBERT BUTTERWORTH'S RESPONSE
TO PETITION FOR EXTRAORDINARY WRIT**

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ARGUMENT

I. THE BROWARD COUNTY CANVASSING BOARD IS NOT BOUND BY ANY OPINION ISSUED BY THE DIVISION OF ELECTIONS.

Katherine Harris' arguments are largely premised on the fact the Palm Beach County Canvassing Board requested and received an opinion from her office, the Division of Elections, and is therefore bound by that opinion.

Critically, the Broward County Canvassing Board never received any opinion from the Division of Elections, and is therefore not bound by any such opinion. Only Jane Carroll, in her capacity as Supervisor of Elections, requested and received an opinion from the Division of Elections. (DE-12). At most, that opinion would bind only Ms. Carroll, not the Broward County Canvassing Board.

The Broward County Canvassing Board has voted to proceed with a county-wide manual recount.¹ In its decision, the Board considered all of the opinions that have issued. Based upon the limited manual recount which preceded its decision, the

¹ The vote was 2-1, with Jane Carroll, the Broward County Supervisor of Elections, dissenting.

Board concluded that an error in vote tabulation existed which could affect the outcome of the election. This is the standard established pursuant to Section 102.166(5), Florida Statutes.

The county-wide manual recount in Broward County began at 2:00 p.m. on November 15, 2000, and is scheduled to continue every day from 8:00a.m. until 6:00 p.m. until all votes are manually counted. While the political parties have continued to battle over the issues in court, the Board remains concerned only with ensuring that the will of the voters in Broward County is accurately and completely determined. The Broward County Canvassing Board can do so if given the necessary time to complete the process established.

II. THIS COURT CAN AND SHOULD EXERCISE JURISDICTION

There have been few if any cases like the one facing this Court, this State, and this Nation. These are extraordinary circumstances and all interested parties require direction from this Court.

If this Court does not take jurisdiction of this matter now, the Court will likely be deprived of the opportunity to exercise jurisdiction in the future, given the small window of time before Secretary Harris intends to declare the voting process at an end in Florida.

If this Court fails to provide expeditious direction to all parties, any subsequent direction from this Court may be too late to permit electors from the State of Florida to participate in the Electoral College's selection of the President, resulting in a complete disenfranchisement of all Florida voters.

The Board seeks nothing more than to accurately determine the will of all Broward County voters without interference from the Secretary of State, and respectfully seeks all appropriate relief from this Court to further that objective.

CONCLUSION

For the foregoing reasons, this Court should accept jurisdiction of the case and resolve the question of which State officer's legal opinion is correct under the laws of Florida.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished to: (1) ROBERT BUTTERWORTH, Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050, (2) KATHERINE HARRIS, Secretary of State, The Capitol, Tallahassee, Florida 32399-0250, and (3) BRUCE ROGOW, Esq., BRUCE S. ROGOW, P.A., Broward Financial Center, 500 East Broward Blvd., Ste. 1930, Fort Lauderdale, Florida 33394; ROBERT M. MONTGOMERY, JR., 1016 Clearwater Place, West Palm Beach, Florida 33401; DENISE D. DYTRYCH, Palm Beach County Attorney, JAMES C. MIZE, JR., ANDREW J. MCMAHON, and GORDON SELFRIDGE, Assistant County Attorneys for Palm Beach County, 301 North Olive Avenue, Suite 601, West Palm Beach, Florida 33401 by facsimile and Airborne Express this 16th day of November, 2000.

EDWARD A. DION