

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

**PALM BEACH COUNTY
CANVASSING BOARD**

**vs. KATHERINE HARRIS, ET
AL.**

**VOLUSIA COUNTY
CANVASSING BOARD**

**vs. MICHAEL MCDERMOTT,
ET AL.**

FLORIDA DEMOCRATIC PARTY

**vs. MICHAEL MCDERMOTT,
ET AL.**

FROM THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

RESPONSE IN OPPOSITION TO REPLY BRIEF

MICHAEL A. CARVIN
COOPER, CARVIN & ROSENTHAL, PLLC
Washington, DC

BARRY RICHARD
Florida Bar No. 0105599

BENJAMIN L. GINSBERG
PATTON BOGGS LLP
Washington, DC

GREENBERG TRAUIG, P.A.
Post Office Drawer 1838
Tallahassee, FL 32302
Phone (850) 222-6891
Facsimile (850) 681-0207

ALEX M. AZAR II
WILEY, REIN & FIELDING
Washington, DC

R. TED CRUZ
BUSH-CHENEY RECOUNT
COMMITTEE

GEORGE J. TERWILLIGER, III
TIMOTHY E. FLANIGAN
WHITE & CASE LLP
Washington, D.C.

Austin, TX

Counsel for Intervenor
George W. Bush

Petitioner Al Gore, Jr., and Florida Democratic Party filed a Reply Brief at 3:00 p.m. on Sunday, November 19, 2000, which raised for the first time entirely new issues regarding the setting of standards for the counting of ballots by County Canvassing Boards. This issue is not raised in either of the cases in the consolidated appeal. No factual record exists on this issue, and we have had no opportunity to respond to this question.

The Court is without power to decide this question of ballot standards because there is no case before them raising the question. Moreover, this is an intensely fact-bound question, and there is no existing Florida law on this question. It would thus be particularly inappropriate to decide this question in this legal and evidentiary vacuum. At a minimum, if the Court does proceed, we request an opportunity to be heard on this question.

In addition, as the Court's repeated inquiries during oral argument made clear, there is an extremely tight timeframe for consideration of these issues. As the Court recognized, the State of Florida must conclusively select its electors by December 12, 2000, or risk not having its electors participate in the election of President. See 3 U.S.C. § 5. Florida law provides by right that an unsuccessful candidate may contest the certification of election. Section 102.168, Florida Statutes, provides that such contestant shall have 10 days after the last county canvassing board certifies its election result or 5 days after the last county canvassing board certifies the

results of a particular election following a protest. Section 102.168(6), Florida Statutes, further provides that the defendant to such contest shall have 10 days after the complaint has been served to file an answer admitting or denying the allegations on which the contestant relies. There is then a statutory provision for an evidentiary hearing with the taking of testimony, § 102.168(7), Fla. Stat., and any ruling by the circuit judge would be subject to appeal. Even on an expedited basis, it is difficult to believe that such legal proceedings could take less than at least 7 days. Thus, Florida statutory law at the very minimum provides for a 22 to 27 day period for contesting an election. Counting back from December 12, 2000, this would require that the certification of election be completed by November 20, 2000, at the very latest.

BARRY RICHARD

Florida Bar No. 0105599

Greenberg Traurig, P.A.

Post Office Drawer 1838

Tallahassee, FL 32302

Phone (850) 222-6891

Facsimile (850) 681-0207

Counsel for Intervenor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been
furnished to the following on this _____ day of November, 2000.

W. DEXTER DOUGLASS

Douglass Law Firm
211 East Call Street
Tallahassee, FL 32302
Fax (850) 224-3644

DAVID BOIES

Boies, Schiller & Flexner, LLP
80 Business Park Drive, Ste. 110
Armonk, New York 10504
Fax (914) 273-9810

MITCHELL W. BERGER

Berger, Davis & Singerman
350 East Las Olas Boulevard, Ste. 100215 South Monroe Street, Ste. 705
Ft. Lauderdale, FL 33301
Fax (954) 523-2872

JOHN D.C. NEWTON, II

Berger, Davis & Singerman
Tallahassee, FL 32301
Fax (850) 561-3013

BRUCE ROGOW,

DENISE D. DYTRYCH

BEVERLY A. POHL

Bruce A. Rogow, P.A.
Broward Financial Centre
500 East Broward Blvd., Ste. 1930
Ft. Lauderdale, FL 33394

Palm Beach County Attorneys

JAMES C. MIZE, JR.

ANDREW J. McMAHON

GORDON SELFRIDGE
301 North Olive Avenue, Ste. 601
West Palm Beach, FL 33401

KAREN GIEVERS

Karen A. Gievers Prof. Ass'n
524 East College Avenue
Tallahassee, Florida

(850) 222-2153

LYN UTRECHT

ERIC KLEINFELD

Ryan, Phillips, et al
1133 Connecticut Avenue, N.W., Suite
300

Washington, D.C. 20036

Fax: (202) 778-4007

ANDREW J. PINCUS

RONALD A. KLAIN

c/o Gore/Liberman Recount Committee
430 South Capital Street

KATHERINE HARRIS, Sec. of State

DEBORAH KEARNEY, Gen. Coun.

Florida Department of State
The Capitol, PL-02

Washington, D.C. 20003
Fax: (202) 383-5414

Tallahassee, FL 32399-0250
Fax (850) 487-2214

JOSEPH P. KLOCK, JR.

ROBERT A. BUTTERWORTH,
Attorney General
The Capitol, PL-01
Tallahassee, FL 32399-1050
Fax (850) 410-2672

DONNA E. BLANTON
Steel, Hector & Davis
215 South Monroe Street, Ste. 601
Tallahassee, FL 32301
Fax (850) 222-8410

EDWARD A. DION
ANDREW J. MEYERS
TAMARA M. SCRUDDEES
JOSE ARROJO
Broward County Attorneys
Government Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
(954) 357-7641

SAMUEL S. GOREN
MICHAEL D. CIRULLO, JR.
Josias, Goren, et al.
3099 East Commercial Boulevard
Fort Lauderdale, Florida 33308
Fax (954) 771-4923

BARRY RICHARD

Courtesy copies have been provided to the following counsel by fax, and *pro se* litigant, involved in related litigation:

Cecile Dykas, Assistant Attorney General	(954) 712-4707
Kendall Coffey, Esq., for Florida Democratic Party	(305) 285-0257
William R. Scherer, Esq. and Mark Wallace for Florida Republican Party	(854) 463-9244
Gary M. Farmer, Jr., Esq. for Rogers plaintiffs	(954) 771-9880
Henry B. Handler, Esq., for Fladell plaintiffs	(561) 997-5280
Marcos D. Jimenez, Esq., for Siegel plaintiffs	(301) 358-5744
Benedict P. Kuehne, for Florida Democratic Party plaintiff	(305) 789-5987
Patrick W. Lawlor, Esq., for Elkin plaintiffs	(954) 481-3631
Mark A. Cullen, Esq., for Horowitz plaintiffs	(954) 989-9660
Andrew Meyers, Chief Appellate Counsel for Broward County	(954) 357-7641
Lawrence A. Gottfried, <i>pro se</i>	

1121 S. Military Trail, Apt. #1224, Boynton Beach, FL 33436 By U.S. Mail

TALL/RICHARDB/140182/305y01!.DOC/11/21/0/99999.645006