IN THE SUPREME COURT OF FLORIDA

CASE NO: SC002376

JULIAN AND LILIAN KATZ, et. al. **v.** **THE ELECTIONS CANVASSING COMMISSION OF THE STATE OF FLORIDA, et al.**

Petitioners/Appellants **Respondents/Appellees**

4TH DCA CASE NO. 4D00-4187

FROM THE CIRCUIT COURT, FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO.:CL 00-11302 AB

PETITIONERS' INITIAL BRIEF OR, IN THE ALTERNATIVE, PETITION FOR WRIT OF MANDAMUS

CHARLES FREDERICK CHESTER
LAW OFFICES OF CHARLES F. CHESTER
51 Monroe Street, Suite 707
Rockville, Maryland 20850
Washington, D.C. Area Office
Telephone (301) 294-2500

301 North Charles Street, Suite 804
Baltimore, Maryland 21201

MICHELLE G.TRCA
MICHELLE G. TRCA, P.A.
Florida Bar No. 0009857
The International Building
2455 East Sunrise Boulevard, Suite 209
Fort Lauderdale, Florida 33304

TABLE OF CONTENTS

TABLE OF CITATIONS

Case Law

Statutes & Other Authorities

STATEMENT OF THE CASE AND OF THE FACTS

Plaintiffs have filed suit challenging the results of the general election for President and Vice President of the United States of America as held in Palm Beach County, Florida. In their Complaint, Plaintiffs have sought, in part, declaration that the "butterfly ballot" utilized in Palm Beach County, Florida violates numerous state statutes in that it was illegal, confusing, or otherwise problematic, thereby resulting in either no votes or an allocation of votes to candidates different than the candidate for whom the voters intended to vote. In fact, approximately 10,000 votes were "under" counted and in excess of 19,000 were completely disregarded.

At a hearing held on November 15, 2000, Plaintiffs in related casees sought to schedule a hearing on the legality of the ballot, alternatively seeking a hearing just on the issue of whether as a matter of law the butterfly ballot violates various statutes, and/or to present evidence in the form of both statistical analysis and voter testimony to support the the claim that the ballot at issue is illegal. Plaintiffs goal was to either establish that the ballot was illegal, or at the very least to lay the necessary factual predicate for an ultimate determination that the ballot was illegal and, therefore, that a new election must be ordered, should it be necessary to do so in short order.[1] The trial court refused to hold a hearing or make a determination as to the legality of the ballot

---

1. Included in the Appendix is an overview or summary of some of the evidence which Plaintiffs intend to ultimately present to the Court. Such evidence includes expert testimony by some of the most respected statisticians in the county which establishes with near absolute scientific certainty that a new election by the voters who voted in Palm Beach County, Florida on November 7, 2000, or a statistical reapportionment of the 3,407 Buchanan votes and the 19,120 discarded ballots, would result in a net gain of at least 7,000 votes for Al Gore. Of course, Plaintiffs/Appellants are also prepared to present the testimony of numerous voters who punched the wrong hole due to the confusing nature of the ballot, voters who spoiled ballots but were refused a replacement ballot, voters who were refused instruction, and other violations of the elections statutes which will establish that thousands of voters in Palm Beach County were denied their constitutional right to a fair vote.

until the court first determined whether the court had the authority to order a new election if the court determined that the ballot was illegal; further, that as a result thereof, the election results are either in doubt or would have been different if the process actually reflected the will of the people. A hearing on the court's authority to order a new election was scheduled by the court for November 17, 2000. At that time, the sole legal issue was the constitutionality of a revote.

On November 20, 2000 the trial court entered an order in which the court found that, regardless of whether the ballot is illegal and without consideration any evidence relevant to the nature and extent of the violations, it was without authority to order a new election or "re-vote" in Palm Beach County for President and Vice President of the United States. The court's ruling was based almost entirely upon federal and state statutes which provide that the general election for President and Vice President should be conducted on the Tuesday after the first Monday in November.

Petitioners respectfully submit that the trial court:

A. Erred first in not ruling on whether ***the ballot*** is illegal as a matter of law, and

B. Further erred in foreclosing the possibility of such a remedy at this juncture as a matter of law, especially before *any* evidence has been considered.

Petitioners appealed the ruling of the Hon. Jorge Labarga and sought immediate certification from the Fourth District Court of Appeal under Rule 9.125, *Fla. R. App. P.* As a matterof record, the Fourth District declined to immediately certify the matter, instead instructing the parties in other cases to submit briefs on an expedited basis and setting oral argument, only to finally decide *en banc,* after those cases were pending for six (6) days, that the case required immediate review by this Court. The case at bar was decided the next day and forwarded to this Court for consideration as well.

Petitioners now submit this Petition/Initial Brief and respectfully submit that the trial court erred in not first determining that the ballot is illegal, and seek a determination from this Court that the ballot is in fact illegal. In addition, the trial court erred in determining it had no authority to order a new election in Palm Beach County, as the overwhelming amount of authority shown herein establishes conclusively that the trial court in fact has the power and authority to order a new election or re-vote if necessary. Finally, the trial court erred in completely eliminating the possibility of a remedy short of a new election, such as a statistical reapportionment of certain ballots cast in Palm beach County or a manual recount involving the counting of indented ("dimple") ballots.

Palm Beach County was the only county in Florida to use the two page "butterfly" ballot format. Many voters intended to vote for Vice-President Albert Gore, Jr. ("Gore") and Senator Joseph Lieberman ("Lieberman"), a/k/a the Democratic ticket, who were positioned second on the left hand side of the open book format into which the ballot card was inserted. However, they mistakenly punched the hole on the ballot for the Reform Party candiates, Patrick Buchanan ("Buchanan") and Ezola Foster ("Foster"), which was located as hole number two (no.2). In Palm Beach County, Buchanan and Foster received 3,416 votes, an amount dramatically disproportionate to the votes received by them in other counties. Even Buchanan admitted publicly that it is inexplicable other than as voter error or confusion.

The confusion was so pervasive that the Supervisor of Elections, Theresa LePore, sent a memo to poll workers which stated:

> PLEASE REMIND **ALL** VOTERS COMING IN
>
> THAT THEY ARE TO VOTE TO VOTE FOR ONE (1) PRESIDENTIAL CANDIDATE AND THAT THEY ARE TO PUNCH THE HOLE NEXT TO THE ARROW NEXT TO THE NUMBER NEXT TO THE CANDIDATE THEY WISH TO VOTE FOR. (Emphasis as supplied).

A copy of that Memo is attached to the Second Amended Complaint in the related case of ANDRE FLADELL, ETAL. V. THE ELECTIONS CANVASSING COMMISSION, ET AL. now before this same Court in Case Nos 4D00-4145,6. Unfortunately, the memo was not delivered to the poll workers until sometime during the afternoon of Election Day, far too late to assist those who voted in the morning or to whom this information was never given at all. In addition, there is the problem of many voters who realized their errors but, were refused substitute ballots after voting twice and in some instances, had to attempt to cross off with pen one the wrong vote. Only a manual recount can see these.

In addition, the ballot holes adjacent to Gore and Lieberman (no. 5) and Buchanan and Foster (no. 6) were directly adjacent to the section of the ballot listing Gore and Lieberman. As a result, many voters intending to vote for the Democratic ticket punched two holes in themistaken belief that such holes referred to avote for Gore and Lieberman. **See** allegations of double punching in the Complaint, at paragraph twelve (12).

SUMMARY OF THE ARGUMENT

It is regrettable that, given the extraordinary nature of this case and its far reaching ramifications, a court would prematurely preclude any potential remedy. It is likewise offensive to the constitutional right to a fair and accurate vote that, if an election is tainted by violation of election statutes (or fraud) to such an extent that the results of the original election have been voided, a court presiding over an election contest under Florida law would be powerless to order a new election. Such a conclusion dishonors the Florida public policy supporting any election or election contest - to ensure that the will of the people has been honored. The order under review violates these principles and potentially disenfranchises thousands of voters who were denied

there right to a fair and accurate election by virtue of the form and design of the butterfly ballot and related counting machinery utilized in Palm Beach County.

The trial court erred in ruling, without taking any evidence as to the nature of the violation, that it was without power or authority to order a new election. Judge Labarga ruled that the Presidential Election cannot be contested under Florida state law. See Order, para. !V at p. 15. The court found that the United States Congress had *permitted* the states to enact their own substitute procedures for appointing electoral college electors in the event that a controversy existed after election day. However, in the same breath, the court also pointed out that Florida had not enacted such a law to date. Id., at 15. It did not take notice of the fact that this same Court had already addressed the remedy of at least a recount in the cases filed by the Gore Campaign, including Gore v. Election Canvassing Commission, et al. Case No. SC002446, and in related litigation, the Court is asked to take judicial notice of the denial of the suit to block manual recounts filed by the campaign of George W. Bush in the U.S. Court of Appeals for the 11th Circuit.

The court further erred in not conducting an immediate hearing as to the legality of the butterfly ballot. Given the extremely urgent nature of these proceedings and the need for immediate action, Plaintiffs seek a ruling from this court that the butterfly ballot is illegal, coupled with a reversal of the trial court's order precluding the possibility of a new election. These rulings are necessary to effectuate the will of the voters in Palm Beach County and to reflect that will in the outcome of the certified statewide Presidential election. At this juncture, a remand for an evidentiary hearing may not provide the adequate time to hold the election and to permit the necessary protest period to again lapse. Out of an abundance of caution, this Court is asked to make rulings on the ballot and the election as a matter of law.

(A) **Manual Recount**

As a somewhat related matter, this Court could order a full manual recount in Palm Beach County, including dimple ballots and to have the Secretary of State include those in her certifications. This was a form of alternative relief in the Complaint but, was not addressed in Judge Labarga's order pertaining to the issue of a revote but, may be relevant in light of the Secretary's failure to include these ballots, as permitted in the Gore case, id.

LEGAL ARGUMENT

This Court held only two years ago that, "if a court finds substantial noncompliance with statutory election procedures and also makes a factual determination that reasonable doubt exists as to whether a certified election expressed the will of the voters, then the court in an election contest brought pursuant to Section 102.168, Florida Statutes (1997), is to **void** the contested election even in the absence of fraud or intentional wrongdoing." Beckstrom v. Volusia County Canvassing Board, 707 So.2d 720, 725 (Fla. 1998). The circuit court in this case disregarded this fundamental principle of Florida law and summarily found it inapplicable.

I) THIS COURT SHOULD ACCEPT JURISDICTION UNDER ARTICLE V, SECTION (b)(5) OF THE FLORIDA CONSTITUTION

The Fourth District Court of Appeal has certified this case as being one of great public importance which requires immediate resolution by this Court pursuant to Rule 9.125, *Fla. R. App. P.* That certification was a wise one, and this Court should immediately accept jurisdiction over this case due to the important state and national implications and ramifications of this case, and due to the exigent nature of the primary relief sought in the form of a potential new election or re-vote in Palm Beach County, Florida.

Section 102.168 Florida Statutes, sets forth various grounds for contesting election results, including but not limited to:

> (c) Receipt of a number of illegal votes or ***rejection*** of a number of legal votes sufficient to ***change or place in doubt*** the result of the election.....(emphasis added)
>
> (e) Any other cause or allegation which, if sustained, would show that a person other than the successful candidate was the person duly nominated or elected to the office in question or that the outcome was contrary to the result declared by the canvassing board or election board.

In this instance, the Petitioners know that there were many thousands of rejected ballots that place the election results in doubt and/or suggest that a person other than the certified winner, Republican George W. Bush, actually won. Thus, the contest statutes are more than relevant and this Court is asked to consider the underlying grounds for these contentions, as well as the appropriate remedy.

As part of their underlying grounds for the relief sought and as will be more fully set forth below, this case represents a challenge to the butterfly ballot utilized in Palm Beach County, Florida. Without first determining that the ballot violates Florida law, the trial court determined that it had no authority to order a new election if it in fact determined that the ballot was illegal and that illegality permeated the entire election in Palm Beach County, Florida such that the will of the people was not reflected in the election results. This Court is intimately familiar with the Presidential elections conducted in Florida and has already reviewed numerous cases arising therefrom, each time granting immediate review. This case is no different and, in fact, may be in more emergent need of immediate resolution given the time constraints involved should a new election be ordered.

Acceptance of pass through jurisdiction in this case would be consistent with the earlier 2000 Presidential election cases, and is likewise consistent with earlier Florida precedent. For example, in Harden v. Garrett, 480 So. 2d 409 (Fla. 1986), Harden filed an election contest under Section 102.168, *Fla. Stat.*, challenging the election of James Ward to the District 5 seat of Florida's house of representatives. The Harden case, like this one, involved an election which was "fraught with manifest election law irregularities.", id. This Court accepted jurisdiction under Article 5, Section 3(b)(5) of the Florida Constitution and Rule 9.125, *Fla. R. App. P.* Likewise, in McPherson v. Flynn, 397 So. 2d. 665 (Fla. 1981), another case involving an election contest for state representative, this Court again accepted jurisdiction under Article 5, Section 3(b)(5), as a case of great public importance requiring immediate resolution by this Court. Consistent with that precedent and the precedent established in the 2000 Presidential election cases, this Court should likewise accept jurisdiction of this case as a case of great public importance requiring immediate resolution by this Court.

Petitioners are not unmindful of the incredible amount of attention and public scrutiny which has been cast upon these election cases and upon this Court in particular. Certainly, there is a great deal of interest in all of these cases as the entire country is waiting the results of the election in Florida. However, Petitioners are confident that this Court will examine the issues carefully and Petitioners reject the completely unjustified and legally incorrect criticisms being directed at this Court by unsuccessful litigants desiring a quick end to the election process when millions of votes were cast for all the candidates and a mere few hundred separate them at this juncture. To the contrary, Petitioners request that this Court exercise its discretion and the performance of its vital constitutional role of accepting for review matters of great public importance which require

immediate resolution. This, in fact, will only help to expedite a fair and accurate resolution. With the election of the President hanging in the balance, this case certainly meets that definition.

Indeed, as Justice Adkins once said, "[I]t is incumbent upon this Court to maintain the independence of the judiciary so that every county court judge, circuit judge, and appellate judge may make judicial and administrative decisions without thought or fear of possible retribution or reprisal....In expressing my sincere belief that all judges should conduct their court without any possibility of outside intimidation, I have some idea of the emotional and practical problems facing John Adams as he defended the British soldiers accused in the Colonial court for their involvement in the Boston massacre. Devotion to the betterment of the judicial system by insulating the independence of the judiciary should not be determined, swayed, or guided by public opinion or political pressure." The Florida Bar v. McCain, 330 So.2d 712 (Fla. 1976). Likewise, the United States Supreme Court has held that courts, "Insulated as they are from political pressures, and charged with the duty of enforcing the Constitution, courts are in the strongest position to insist that unconstitutional conditions be remedied, even at significant financial cost." Rhodes, Governor of Ohio v. Chapman, 452 U.S. 337, 101 S. Ct. 2392 (1981).[2] This Court has already shown that it is mindful of these principles and has exhibited an admirable fealty to the law and the Court's role in our constitutional structure, and Petitioners are confident it will continue to do so.

---

2. In discussing the possibility of overruling *Roe v. Wade,* the Court in *Planned Parenthood of Southeastern Pennsylvania, et. al. v. Casey*, 505 U.S. 833, 844; 112 S. Ct. 2791 (1992), stated that "**Liberty finds no refuge in a jurisprudence of doubt."** The Court further held that, "Some cost will be paid by anyone who approves or implements a constitutional decision where it is unpopular, or who refuses to work to undermine the decision or to force its reversal. The price may be criticism or ostracism, or it may be violence. An extra price will be paid by those who themselves disapprove of the decision's results when viewed outside of constitutional terms, but who nevertheless struggle to accept it, because they respect the rule of law." Id., at 867-868.

II) THE CIRCUIT COURT ERRED IN DECIDING THAT, REGARDLESS OF THE WRONG COMMITTED IN THIS ELECTION, THERE CAN BE NO REMEDY

At the hearing held on November 15, 2000, the trial court held a hearing that affected all the currently filed re-vote cases and over the objections of counsel, "bifurcated" the issues raised by Plaintiffs' Complaints. Under the lower court's "bifurcated" procedure, the court first considered "only the question of the legality of permitting a re-vote or new election for the Presidency and Vice Presidency of the United States." (Appendix Ex. A - November 20, 2000 Order at 2). The court contemplated that, if it were determined that a re-vote or new election was legally permissible, an evidentiary hearing would then be held in order to decide whether there was substantial noncompliance with statutory election procedures and "reasonable doubt" that the election expressed the voters' will. This bifurcated procedure was legally inappropriate on two distinct grounds: first, the lower court should never have foreclosed any remedy without first having determined that an election law violation had occurred; and second, the existence of substantial noncompliance can and should be decided in this case as a matter of law, without the necessity of an evidentiary hearing.

Before addressing the merits of the trial courts decision and procedure, Petitioners first will address a practical concern which may have been a driving force behind the trial court's decision - that is, whether a new election or "re-vote" could be conducted in Palm Beach County in sufficient time to tabulate the results, allow for a contest and assign the results for consideration by the electoral college. Attached as Appendix Exhibit C is an affidavit by a reputable accounting firm member attesting to the fact that, as of November 28, 2000, an election could be conducted via paper ballot and the results counted and tabulated by December 1, 2000. Such a short time frame, if started promptly, would provide sufficient time for a contest under Section 102.168, *Fla. Stat.*, and consideration and accreditation of the results by the Electoral College.

A. The Circuit Court Should Have Decided Whether A Wrong Has Been Committed Before Deciding on an Appropriate Remedy

The lower court's procedure in this case was reversed from what it should be. Under *Beckstrom*, the question of whether an election should be voided arises only **after** the court has determined two predicate questions: (1) whether there was substantial noncompliance with statutory election procedures; and (2) whether there is "reasonable doubt" that an election expressed the will of the voters. The existence of a remedy becomes an issue only after a court has decided that there is a legally cognizable wrong. Once a wrong has been found, the law encourages judicial flexibility and creativity by mandating that **"[f]or every wrong there is a remedy."** Holland v. Mayes, 19 So.2d 709, 711 (Fla. 1944). In bypassing the existence of a wrong and proceeding directly to the constitutionality of one particular remedy, the circuit court turned the legal process inside out. To the extent that this Court determines that mandamus would be appropriate and declines to decide here the legality of the ballot, Petitioners request that this Court order the trial court to immediately schedule a hearing on the legality of the ballot. Should the court find that there exists a substantial noncompliance with election laws which permeated the entire Presidential election in Palm Beach County it logically flows that there could be a just remedy in the form of a new election.

B. The Legality of the Butterfly Ballot Must Be Decided as a Matter of Law

Given the national implications of this case, and the fact that a determination by the trial court as to the legality of the ballot is a matter of law that this could review *de novo*, Petitioners seek a ruling from this Court that the butterfly ballot is illegal as a matter of law. Certainly it is unique that an issue would be decided in the first instance on appeal, but again, given the extreme importance of this issue, and important deadlines which are fast approaching, the Court

is presented with a situation where the interests of justice compel this court to determine the legality of the ballot in this appeal, with a concomitant ruling as to the legality of a new election or a remand to the trial court for a determination as to the appropriate remedy, including the possibility of a new election. Such a ruling would be consistent with a long line of cases which hold that upon acceptance of a case of great public importance requiring immediate resolution by this Court, the Court is free to consider any error in the record. Leisure Resorts, Inc. v. Frank J. Rooney, Inc., 654 So. 2d 911 (Fla. 1995); Lawrence v. Florida East Coast Railway Co., 346 So. 2d 1012 (Fla. 1977)

Voting methods and procedures in this state are extensively already regulated by statutory law. Chapter 101 of the Florida Statutes contains provisions governing virtually every aspect of an election, including the form and design of ballots, instructions for electors and poll workers, the placement and use of ballot boxes and voting booths, and many other issues. Sections 101.5601 through 101.5615, *Fla. Stat.*, represent more recent additions to Chapter 101 and deal with electronic and electromechanical voting systems. Electronic and electromechanical voting systems are systems of capturing votes by the use of devices which allow votes to be tabulated on automatic tabulating equipment or data processing equipment. When such equipment is used, section 101.5609(2) requires that the information contained on the ballot "shall, as far as practicable, be in the order of arrangement provided for paper ballots."

With respect to these ballots, Florida Statutes section 101.151(3)(a) provides in pertinent part as follows:

> "Beneath the caption and preceding the names of the candidates shall be the the following words : "To vote for a candidate whose name is printed on the ballot, place a cross (X) mark ***in the blank space at the right of the name*** of the candidate for whom you desire to vote...."The ballot shall have headings under which the names of the offices and names of duly nominated candidates for the the respective offices in the following order: the heading "Electors for President

and Vice-President" and thereunder the names of the candidates....." (Emphasis added).

In addition, the statute goes on to require:

"The names of the candidates of the party which received the highest number of votes for Governor in the last election in which a Governor was elected shall be placed first.....**the names of the candidates of the party which received the second highest vote for Governor shall be second under each heading...."**.id, at (4).

The ballot used in Palm Beach County, Florida violated the above quoted provision in at least three (3) respects. First, the ballot did not provide a space for recording the vote to the right of some of the candidates name. Instead, punch holes appear to the right of some names and to the left of others. Second, the ballot did not identify the offices at issue with the required headings at the top of the page but, rather to the far left. Third, the candidates were not listed in the correct order, as the Court can take judicial notice that Democrats received the second highest amount and that their ballot hole position should have been second, instead of third after Mr. Buchanan, whose party did not come close to second in that election. [3]

As we demonstrate above, on their face the "butterfly ballots" used in Palm Beach County violate numerous provisions of Florida statutory law.[4] However, Petitioners will now address this issue in greater detail. In total, the county ballot did not have the format designed and mandated by Florida law. These illegalities represent purely matters of law which this court can consider now in the first instance, much like a *de novo* review, and rule upon accordingly.

III) THE BUTTERFLY BALLOT IS ILLEGAL

[3] In addition, the advanced copies of the ballot made available to the public did not reflect the difficulty of this location and the website for the board does not show the location of the holes at all. Further, the instructions indicated that the voter is to "punch straight down through the hold to the right of the candidate or issue of your choice."

4. A copy of the butterfly ballot is attached to this brief as Exhibit 1.

Chapter 101, *Fla. Stat.*, governs voting methods and procedures, and contains provisions for nearly every aspect of an election, including the form and design of ballots, instructions for electors and poll workers, regulation of the ballot boxes, and voting booths, and numerous other issues. Sections 101.5601 – 101.5615, *Fla. Stat.*, represent more recent additions to Chapter 101, *Fla. Stat.*, and deal with electronic voting systems. Electronic or electromechanical voting systems are systems of capturing votes by the use of voting and marking devices and the counting of ballots with automatic tabulating equipment or data processing equipment. However, under Section 101.5609(2), *Fla. Stat.*, even ballots to be utilized as part of an electronic or electromechanical voting system are required to be in the order of arrangement **provided for paper ballots**, as far as practicable. Moreover, Section 101.5609(1), *Fla. Stat.*, references the use of paper ballots in connection with the electromechanical voting systems. The reference to paper ballots in Section 101.5609, *Fla. Stat.*, brings into play all other provisions of Chapter 101 concerning ballots, including Sections 101.011, 101.151 and 101.191, *Fla. Stat.*

Initially, paper ballots were marked by a voter with an "X" placed after the name of the candidate of the voter's choice. However, Section 101.011(2), *Fla. Stat.*, provides that no paper ballot shall be voided or declared invalid by reason of the fact that the ballot is marked other than with an "X," thereby allowing other marks, including the hole punch method. So long as there is a clear indication on the ballot to election officials that the person making such ballot **has made a definite choice**, and provided further that the mark placed on the ballot with respect to any candidate by any such voter is located in **the** blank space on the ballot opposite the candidates name, the ballot is valid. As shown in the Exhibit, the butterfly ballot used in Palm Beach County

did not give voters a fair opportunity to make a definite choice for President and Vice President, and their use violates numerous other provisions of Florida statutory law.

A. The names of the candidates appeared in the wrong order

Section 101.151, *Fla. Stat.*, provides specifications for general election ballots, including the order for listing of candidates by party, and is made applicable by virtue of Section 101.5609(2), *Fla. Stat.* Under Section 101.151(4), *Fla. Stat.,* the names of candidates are to be listed in the following order: the names of candidates of the party which received the highest number of votes for governor in the last election in which a governor was elected shall be placed first under the heading for each office, together with an appropriate abbreviation of party name; and the names of candidates of the party which received the second highest vote for governor shall be second under the heading for each office, together with an appropriate abbreviation for the party name. The statute goes on to provide: "Minor political candidates and candidates with no party affiliation shall have their names appear on the general election ballot following the names of recognized political parties, in the same order as they were certified." §101.151(5), *Fla. Stat.* On its face, the butterfly ballot violates these statutory provisions. While the names of the Republican candidates (the candidates of the party receiving the highest number of votes for Governor) appear first on the ballot, the names of the Democratic candidates (the party receiving the second-highest number of votes) do not appear second; instead, the names of the Reform Party candidates appear second on the ballot. Moreover, the Reform Party candidates (candidates nominated by a "minor" political party) obviously do not "follow" the names of the recognized political parties. The public record shows that these very deficiencies caused massive voter confusion in Palm Beach County.

B. The voting boxes appear on alternate sides of the candidates' names

As noted earlier, Section 101.5609(2), *Fla. Stat.*, mandates that, as far as practicable, ballot information contained on machine-tabulated ballots shall be "in the order of arrangement provided for paper ballots." So that there would be no doubt or confusion as to the form of the ballot, the legislature enacted Section 101.191, *Fla. Stat.*, which is entitled "Form of General Election Ballot." The statute on its face applies regardless of whether the "old fashioned" paper ballots or the newer electromechanical voting systems are utilized. The statute provides that the general election ballot shall be in the **substantially the form shown in the statute**, and expressly provides that voting marks shall appear to the "RIGHT" of the candidates' names. It must be noted here that the Secretary of State ("Secretary") sent approved ballot forms to the counties in the weeks prior to the election, but for some unexplained reason Palm Beach County is the only one of 67 counties in Florida which decided to forego the Secretary of State's ballot for the butterfly ballot (*see, infra*). Yet, the Secretary certified the election based upon a machine, and not manual, count of these same ballots, which were designed by THERESA LAPORE, elections supervisor, who exercised a form of discretion well outside of the statutory requirements.

Section 101.5609(6), *Fla. Stat.*, relaxes this requirement slightly in connection with machine-tabulated ballots, providing that voting squares "may be placed in front of or in back of the names of candidates." None of these provisions, either singly or collectively, authorize a ballot in which the voting squares for **some** candidates appear to the right of the candidate's name and the voting squares for **other** candidates appear to the left—the situation created by the butterfly ballot here. Very simply, Palm Beach County could have utilized a ballot with all voting squares appear to the right or **all** voting squares appear to the left, but not both used alternatively. This error was especially compounded by the use of instructions which told voters

to place **a mark to the right of the name of the candidate** for whom they intended to vote. This ballot form unquestionably violates Florida law.

C. The butterfly ballot is not the ballot mandated by the Secretary of State

Section 101.151(8), *Fla. Stat.*, ensures state-wide uniformity in ballot format by providing that "[n]ot less than 60 days prior to a general election, the Department of State shall mail to each supervisor of elections the format of the ballot to be used for the general election." In this case, the Department of State mailed to each county supervisor, including the Supervisor for Palm Beach County, a ballot format in which the names of the candidates appear in a single linear list and in which voting boxes appear to the **right** of each candidate's name.[5] The Supervisor of Elections for Palm Beach County violated this statute by replacing the ballot mandated by the Secretary with a flawed and illegal butterfly ballot. In essence, there was a systemic problem with the entire election and the system itself failed the voters. instead of facilitating the voting process. Yet, the Secretary certified the election results after a machine, and not manual, count or recount.

In short, the circuit court should have first determined as a matter of law that the butterfly ballot is inconsistent with Florida law, and then conducted an evidentiary hearing to determine whether there is "reasonable doubt" that the election expressed the will of the voters. Only after both of those questions had been answered should the court have considered the question of an appropriate remedy. When there is no question that, if the court were to find both "substantial noncompliance" and "reasonable doubt," a new election or a re-vote is a constitutionally permissible remedy. Beckstrom v. Volusia County Canvassing Board, 707 So.2d 720 (Fla.1998).

IV) FLORIDA LAW SPECIFICALLY PROVIDES FOR THE SETTING

ASIDE OF AN ELECTION AND ORDERING A NEW ELECTION OR RE-VOTE

This action was filed under Section 102.168, *Fla. Stat.*, which allows for the contest of elections. Section 102.168(8), *Fla. Stat.*, provides that the circuit judge to whom a contest lawsuit is presented "may fashion such orders as he or she deems necessary to ensure that each allegation in the complaint is investigated, examined or checked, to prevent or correct any alleged wrong, **and to provide any relief appropriate under such circumstances."** Indeed, this provision is consistent with Article I, Section 21 of the Florida Constitution which deals with access to the courts and which provides that the court shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay. Again, in Florida the law provides that "for every wrong there is a remedy." *Holland v. Mayes, supra.* Thus, not only does the election contest statute give the trial court discretion to "provide any relief appropriate under such circumstances," the Florida Constitution has been interpreted to provide that for every wrong there must be an appropriate remedy.

The remedy of a new election or re-vote is sought in this case because of the numerous statutory violations with regard to the use of the butterfly ballot shown above. As briefly mentioned above, the seminal case in Florida jurisprudence on the issue of election contests or protests is Beckstrom, id. In many ways, *Beckstrom* is factually analogous to the case at bar. *Beckstrom* involved the dispute over the county's absentee ballots, which were critical in that the plaintiff received the majority of votes in the precincts but the incumbent received a sufficient majority of the absentee votes to overcome the plaintiff's precinct vote margin of victory. This Court held that a finding of fraud is not necessary to set aside the results of an election. Rather, where a court in an election contest under Section 102.168, *Fla. Stat.*, finds "....substantial noncompliance with the statutory election procedures and also makes a factual determination that reasonable doubt

exists as to whether a certified election expresses the will of the voters, **then the court in an election contest brought pursuant to Sect. 102.168 Fla. Stat. (1997) is to void the contested election** even in the absence of fraud or intentional wrongdoing." Beckstrom, 707 So. 2d at 725 (emphasis added). This Court went so far as to specifically disapprove of a statement made by the trial court that it did not "have jurisdiction to set aside this election." *Id.* at 727.

The Court had issued a similar decision in Bolden v. Potter, 452 So. 2d 564 (Fla. 1984). Again, the Court reviewed unlawful election practices regarding absentee ballots and the sale of votes. The Court held that where fraud or wrongdoing has occurred which clearly affects the sanctity of the ballot and the integrity of the election process, **"courts must not be reluctant to invalidate those elections to ensure public credibility in the electoral process."** *Bolden*, 452 So. 2d at 566. The Court did not require proof of mathematical certainty of the effect that misconduct may have had on the outcome of the election, but merely required a showing that the misconduct in the case was not inconsequential and was so blatant that it permeated the entire election process. The Court held that where such misconduct occurs "the election must be declared void." *Id*. at 567. This holding was based on the longstanding principle that **a fair election is the paramount consideration whenever there is an election contest.** *Id.* at 566, citing Boardman v. Esteva, 323 So. 2d 259, 269 (Fla. 1975).

This Court spoke with obvious conviction in Beckstrom and Bolden about the need to invalidate or void elections when certain misconduct or statutory violations have occurred. If the results of an entire election, as opposed to just some ballots, are to be voided or set aside, there reasonably can be only one remedy – a new election. This appears to be what this Court contemplated in Beckstrom and Bolden, as it is hard to imagine any fairer remedy. For example,

if an incumbent committed fraud such that he or she was able to retain an elected position, and the results of that entire election were voided, no reasonable person would argue that the candidate committing the fraud should be rewarded by that activity such that they would keep their seat by default, without having to at least face another election or a re-vote. Indeed, such a reward to the benefactor of fraud was commented upon by the Third District Court of Appeal in the Miami mayoral race case (*See,* In Re: the Matter of the Protest of Election Returns and Absentee Ballots in the November 4, 1997 Election for the City of Miami, 707 So. 2d 1170 (Fla. 3d DCA 1998)). Although in Bolden this Court spoke of instances of fraud, in Beckstrom the Court clarified the issue by holding that intentional misconduct or fraudulent activity need not be proved in order to set aside an election. Rather, if a court finds substantial noncompliance with the statutory election procedure and also finds that reasonable doubt exists as to whether a certified election expresses the will of the voters, the court must void the contested election. Given the constitutional principle that for every wrong there must be remedy, and this Court's mandate that elections must be voided where a substantial noncompliance with voting statutes has occurred, there really can be no dispute that a Florida trial court has within its powers the ability to order a new election or a re-vote.

In fact, the Florida legislature has authorized trial courts to order a re-vote in certain instances. As mentioned above, Section 102.168(8), *Fla. Stat.*, provides that the circuit judge to whom a contest lawsuit is presented "may fashion such orders as he or she deems necessary to ensure that each allegation in the complaint is investigated, examined or checked, to prevent or correct any alleged wrong, **and to provide any relief appropriate under such circumstances."** The term "any relief" was not limited or clarified in any way, thus indicating authority for a new election. Chapter 101 of the Florida Statutes deals with general, primary and

special elections. Under Section 101.111(5), *Fla. Stat.*, the legislature has provided that "in the event of **unforeseeable circumstances** not contemplated in the general election laws concerning the calling and holding of special primary elections and special elections resulting from court order or other **unpredictable circumstances**, the Department of State shall have the authority to provide for the conduct of orderly elections." This statutory provision is far-reaching and certainly describes the current state of affairs. The rule clearly indicates a broad range of discretion regarding the remedies where "unforeseeable circumstances not contemplated in the general election laws" occur, and where relief is necessary to deal with "other unpredictable circumstances." Of course, county officials did not foresee or predict the circumstances with which we are now faced by virtue of the use of the butterfly ballot, and the aforementioned statute clearly provides authority for a special election to deal with such circumstances. These circumstances include a very close election in which the outcome has been "changed" or at least, "is in doubt" due to the "rejection" of a substantial amount of ballots. Fl. Stat. 102.168 (3)(c).

The power to order a new election or a re-vote was recognized and applied by a trial court judge in Leon County, Florida. In Craig v. Wallace, 2 Fla. L. Weekly S517a (2d Jud. Cir., Leon County, September 27, 1994) (Appendix Exhibit B), election officials and/or poll workers breached their statutory duty to provide all eligible voters their right to vote in a primary by failing to provide pages containing the description of a race in numerous voting booths where eligible voters were directed to vote. Because the margin of victory was so slim, the trial court found that the deprivation of these voters' rights permeated the entire the election process and effected the integrity and sanctity of the election. The court further found that both the voters and the losing candidate would be irreparably harmed absent injunctive relief requiring a new election.

Therefore, the trial court set aside the results of the election in the particular precincts at question and ordered a new vote.

V) THE FEDERAL STATUTES WERE MISCONSTRUED BY THE TRIAL COURT, AND FEDERAL AND STATE LAW SPECIFYING THE DATE OF THE PRESIDENTIAL ELECTION IS CONSISTENT WITH THE COURT'S AUTHORITY TO ORDER A RE-VOTE OR OTHER POST-ELECTION DAY REMEDY

A. The Statutes and Constitutional Provisions Relied Upon by the Trial Judge Pertain Only to the Electoral College

The trial court misinterpreted Article II, Section 1, Clause 4 of the United States Constitution, when it interpreted the language therein to mean that "it was the clear and unambiguous intention of the framers of the Constitution of the United States that the presidential elections be held on a single day throughout the United States". While the election is now scheduled the first Tuesday following the first Monday in November, the clause does not require that an election can only be held on that day. nstead, it requires that the day on which the members of the electoral college meet to vote be uniform throughout the United States. That date is now the first Monday after the second Wednesday in December, pursuant to 3 U.S.C. Section 7.

In fact, for the first half-century of the republic, in fact, there was no uniform election day, but there has always been a single day on which the members of the electoral college meet and cast their ballots. The Constitution requires nothing more, and in no way restricts a court's ability to fashion a re-vote remedy.

First, the Constitution reads, "The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States." The last clause, beginning "which Day" refers back to the previous instance of the word "Day" as "the Day on which they shall give their votes." The word "they"

refers to "the Electors" (members of the electoral college), meaning that the electors, meeting as the electoral college, must all vote on the same day. It is only the first clause which refers to the popular election, as the date of "chusing the electors," but its language is permissive and not mandatory. Congress has the power to set a uniform national election day for the popular election, but there is no constitutional requirement that it do so.

Second, it should be apparent that there is no constitutional requirement of a single election day from the fact that, beginning with our very first national election, elections were held on various days throughout the various states. Indeed, many of the states did not even have elections for presidential electors; members of the electoral college were chosen by state legislatures, and those legislatures met on different days.

Congress' own contemporaneous interpretation of the Constitution should be entitled to great weight in this respect. In fact, the 1792 statute regulating presidential elections required that states hold their processes for appointing presidential electors "within thirty-four days preceding the first Wednesday in December". Act of March 1, 1792, ch. 8, §1. The act further provided that the "electors shall meet and give their votes on the said first Wednesday in December . . . ." *Id.* §2. If Congress had thought that the recently-drafted Constitution required a uniform election day, then it would have provided for one; instead, it provided for a flexible 34-day window for election days and one uniform day for the electoral college only.

Finally, when Congress codified the uniform national election day of the first Tuesday following the first Monday in November, it specifically provided for the possibility that a state might not choose its electors on that date, and therefore *permitted* the states to have a supplemental mechanism. The trial court in the case at bar identified this supplemental mechanism in its opinion, and took note of the fact that the State of Florida had not created such a supplemental

mechanism. This represents a matter of statutory construction, but the Constitution nowhere prohibits the state from having a second election or re-vote in the event of a controversy such as a runoff, voided election or otherwise. The statute simply said that "when any State shall have held an election for the purpose of choosing electors, and shall fail to make a choice on the day aforesaid, then the electors *may* be appointed on a subsequent day in such manner as the State shall by law provide." Act of Jan. 23, 1845, ch.1. (emphasis added). The debates in the Congress on the adoption of this statute support this conclusion as well. This provision is now codified at 3 U.S.C. Section 2 but should be read in tandem with section 5 that clearly provides for appointment "if" there is a previously elected legal mechanism for doing so.

B. Even if the Foregoing Applies to the Date of the Popular Election, the Trial Court Erred in Determining that Election Tuesday is the Only Date Upon Which a Presidential Election May be Held

The trial court's decision was predicated almost entirely upon a very literal reading of Section 103.11, *Fla. Stat.*, which governs the timing of the presidential election in Florida. Federal law contains a similar provision in 3 U.S.C. Section 1. Analysis of these provisions makes clear that they control simply the date of the election **intended** to result in the final selection of presidential electors, and do not interfere with a trial court's authority to order post-election day relief necessary to correct violations of state law and fairly reflect the "will of the voters." Beckstrom*, supra*.

The state statute cited above and referred to by the trial court follows federal directives. 3 U.S.C. Section 1, like Section 103.11, *Fla. Stat.*, designates the Tuesday following the first Monday in November for the presidential election. But federal law goes on specifically to authorize each state to resolve "any controversy or contest concerning the appointment of all or any of the electors...a final determination **by judicial** or other methods or procedures." 3 U.S.C.

§5. (emphasis added). Although some exceptions exists even on the time, as long as the resolution of such post-election day contests occurs at least six days before the date fixed for the meeting of the electoral college (in this year, December 12 prior to the scheduled December 18 meeting), the statute provides that the state's determination "shall be conclusive, and shall govern in the counting of the electoral votes". *Id.*

The lower court erred by ignoring the provisions of 3 U.S.C. Sections 2 and 5, which specifically envision situations where the election of Presidential electors meant to be final on the stated date is not finalized on that date. In such cases as the one at issue, the states, including Florida, are to finalize the selection of the electors in a manner established under state law, and to be finalized after the stated date. Here, the manner specified by the Florida legislature is an election contest under Section 102.168, *Fla. Stat.* Therefore, the statutes are congruous and not in conflict. Thus, nor does one preempt the other. The state statutes do not conflict with the United States Code, and in fact the state statutes were enacted under the authority given to the Florida legislature by the United States Congress. As such, the federal statutes in no way mandate that the final election and selection of electors must, without exception, be completed by the Tuesday following the first Monday in November, and the trial court erred in so holding.

Since there exists a similar set of laws governing United States Congressional elections that required a uniform voting day on the Tuesday following the first Monday in November, those cases provide great guidance. *Public Citizen, Inc. v. Miller,* 992 F.2d 1548 (11th Cir. 1993) for an example worth considering since Florida falls within the federal circuit that issued it. In Miller, the Eleventh Circuit upheld the legality of runoff election ordered held after federal election day where no candidate in initial election received majority required by state law. The decision was based upon a long standing principle, recognized recently by Judge Middlebrooks, that "federal

law gives states the exclusive power to resolve controversies over the manner in which presidential electors are selected." , Siegel v. Lepore 2000 WL 1687185 (S.D. Fla. Nov. 13, 2000), *affirmed,* 2000 WL 1718741 (11th Cir., Nov. 17, 2000).

Such controversies that the court was alluding to, virtually by definition, will need to be resolved after election day. The manner to resolve the controversy is in an election contest under Section 102.168, *Fla. Stat.* This position is clearly consistent with decisions like Beckstrom and Craig, that voiding an election and ordering remedies such as a re-vote should occur where necessary to remedy violations of state election law which permeated the entire election process and in order to reflect the will of the voters.

The possibility of another election after a specified election day is also reflected in United States Supreme Court case law. In Foster v. Love, 522 U.S. 67 (1997), the Court considered an analogous federal law concerning the November date for congressional elections. The Court invalidated a Louisiana law that called for elections that effectively selected the winner of congressional elections in October. The Court explained that an "election" in that context referred to actions "**meant** to make a final selection of an officeholder," and that Louisiana had violated federal law by concluding the selection "before the federal election day." *Id.* at 71-72. But the Supreme Court specifically recognized that actions affecting the final selection of officeholders, including another election, could permissibly take place **after the federal election day**, such as where a runoff is required by a state law mandate that the winner must receive a majority of all votes cast. *Id.* at 71 and n.3; *See also* Public Citizen, Inc. v. Miller*, supra.*

In this case, Palm Beach County held the election on the date required by law, but due to the nature of the ballot a final and definite selection of the winner was not accomplished. It is therefore clearly permissible for post-election day relief to be granted, including another election

if necessary, to comply with state law. The same conclusion follows under state law. State law provides that the election of federal electors is to occur on the first Tuesday after the first Monday in November. §103.11, *Fla. Stat.*

However, state law also specifies the same date for elections for all other federal, state, county, and district officials. §100.031, *Fla. Stat.* It does not make a specific exclusion for Presidential elections. Thus, such laws cannot be interpreted to preclude post-election day relief, including voiding elections and ordering re-votes where necessary, or Beckstrom, Craig, and Sections 101.111(5) and 102.168, *Fla. Stat.*, would be effectively overruled or repealed, respectively. As with federal law, the proper interpretation of the state law election date statutes is that the election "meant to make a final selection of an officeholder" must occur on the date specified, but post-election day relief can be ordered, including an additional election if necessary, where appropriate to comply with state law and to reflect the will of the voters.

The trial court in this case erred by mechanically applying a very literal reading of Section 103.11, *Fla. Stat.*, to the point of nullification of Beckstrom, Craig, and Sections 101.111(5) and 102.168, *Fla. Stat.* Essentially, the trial court ruled that since Section 103.11 did not specifically reference a run-off election or special election, then none was available to resolve any dispute over the results or conduct of a Presidential election. This was error, as the court should have read Sections 103.11, 101.111 and 102.168 in *para materia*, thereby giving effect to each statute. Chapters 101 and 102 of the Florida Statutes do not exclude in nay way from their ambit the United States Presidential election. Indeed, if the trial court's ruling were correct, then there could never be any election for the United States Senate or Congress after the Tuesday following the first Monday in November. As mentioned, even the United States Supreme Court has

recognized the validity of a post-Tuesday federal election, in the form of a run-off election, in Foster v. Love, *supra.*

In a matter even more on point, in Donohue v. Board of Elections of the State of New York, 435 F. Supp. 957 (E.D. N.Y. 1976), the court specifically considered a request for an injunction to prohibit the certification of presidential election results in the State of New York. In fact, the court actually rejected the defendants argument that "ordering a new presidential election in New York State is beyond the equity jurisdiction of the" court. Donohue, 435 F. Supp. at 967. Although the burden of proof on a contesting party may be a heavy one, the court refused to preclude the possibility of a new presidential election in New York, since foreclosing such a remedy "would invite attempts to influence elections by illegal means, particularly in those states where no statutory procedures are available for contesting general elections." *Id.* Because the protection of "the integrity of elections particularly Presidential contests is essential to a free and democratic society," the court ruled that the "fact that a national election might require judicial intervention, concomitantly implicating the interests of the entire nation, if anything, militates in favor of interpreting the equity jurisdiction" of the court to include post-election day challenges to Presidential elections. *Id.* at 968. The court ordered an evidentiary hearing to determine whether a new Presidential election in New York was necessary.

The Petitioners believe that they have provided adequate legal basis for their requests for at least the consideration of a new election in a specific locale. In Donahue, the court conducted an evidentiary hearing on the issue, and ultimately declined to order a new election but only because of the stringent standard to be applied in a civil rights election challenge. This is not the sole basis for the instant request.

The trial judge in this case erred in ruling that he did not have equitable jurisdiction to at least consider a new election, especially where the court refused to hear evidence as to the nature of the violation. For example, the nature of the illegality involved here - the form of the ballot utilized in all of Palm Beach County - permeated the entire election and was not limited to a small segment of ballots. Thus, the trial court erred in two ways - by ruling that it had no jurisdiction or power to order a new Presidential election in Palm Beach County, and by making such a ruling without a necessary factual predicate.

CONCLUSION

An election is a vehicle by which a selection of a winning candidate is to be achieved. The will and intent of the people is the primary focus in any election challenge. Indeed, this Court recently reminded us yet again that "the will of the people, not a hyper-technical reliance upon statutory provisions, should be [this court's] guiding principle" in an election case like this involving the exact same county. Palm Beach County Canvassing Board v. Harris, 2000 WL 1725434 (Fla. Sup. Ct., Nov. 21, 2000).

Where that goal of realizing the people's true intent is not achieved in an initial election, courts must have available to them a remedy to achieve a fair outcome. The remedies available must be flexible in order to account for unforeseeable or unpredictable circumstances not contemplated in the general election laws. In this regard, courts must be vested with a tremendous amount of discretion to effectuate whatever equitable relief is necessary to give voters a further chance, in a fair election, to express their views.

. Because the election in Palm Beach County clearly does not reflect the will of the people, it is invalid as a matter of law. Public policy as embodied in various statutes speak to unforeseeable and unpredictable circumstances by which new or special elections may be

ordered. Specifically, in the various statutes under which this lawsuit was brought, the legislature empowered a circuit court judge to fashion such orders as the judge deems necessary and to "provide any relief appropriate under such circumstances." Even the lower court took note of and emphasized this language. This Court has repeatedly held that election results may be invalidated or voided. One of the only practical and fair remedies which exists when an election is voided or invalidated is to conduct a new election.

Instead of applying a "hyper-technical reliance" on statutory provisions regarding the date of the Presidential election, and ruling that under no circumstances could it order a new election, the trial court should have first determined the legality of the ballot as a matter of law, or should have conducted an evidentiary hearing to determine whether the butterfly ballot violates Florida election laws. Only thereafter should it have to determine whether the court must invalidate and void the Presidential election results in Palm Beach County, Florida, and order a re-vote or new election.

Petitioners realize that a new election or re-vote in a Presidential election presents a case of first impression in this respect only. However, at this point it appears that, at least as to Palm Beach County, there are only two choices - go back to the results of a flawed process and conclude that the results thereof represent the will of the people, or provide for a new election.

Certainly reliance on flawed results is the least desirable alternative, and one that this Court has consistently rejected where it would not reflect the true will of the people. As a result of the illegal ballots, there were far too many that were undercounted, involved questionable votes or which were rejected. The record submitted shows that a new election can be conducted in time to accredit the results thereof, although there is a slight possibility that any remedy may require an alteration of dates depending on when it is ordered.

Certainly the voters of Palm Beach County should not be forced to accept results which do not reflect their will merely to meet al deadline. Indeed, our Congress specifically envisioned such an alteration of deadlines when it drafted 3 U.S.C. Section 2, entitled "Failure to make choice on prescribed day."

Due to the significant nature of this case, the need for a prompt resolution, and the possibility that whatever relief is deemed appropriate might need to be determined almost immediately in the event of a remand, Petitioners respectfully request that the Court:

A. Reverse the trial court's order precluding the possibility of a new election, and

B. Determine de novo, or in the first instance, whether the butterfly ballot is illegal under Florida law, after which, in fact, this Court could either determine whether a new election is appropriate or remand the case to the trial court for further proceedings.

Respectfully submitted,

_____
Charles F. Chester, Esq.
LAW OFFICES OF CHARLES F.CHESTER
One Metro Plaza
5l Monroe Street, Suite 707
Rockville, Maryland 20850
Telephone No.: (301) 294-2500

_____
Michelle G.Trca, Esq.
MICHELLE G.TRCA, P.A.
Fla. Bar No. 0009857
The International Building
2455 East Sunrise Blvd.
Fort Lauderdale, FL 33304

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of November, 2000, a true copy of the foregoing was furnished by overnite delivery to: SEE ATTACHED SERVICE LIST.

By:_____
Michelle G. Trca
FLA. BAR NO. 0009857

Katz, et al. v. The Elections Canvassing Commission of the State of Florida
SC002376
Case No.: 4D00-4187
L.T. CL-00-11301 AB

SERVICE LIST

David Spector, Esq.
STEEL, HECTOR AND DAVIS, LLP
1900 Phillips Point West
777 West Flagler Drive
West Palm Beach, Fl. 33401

Governor Jeb Bush
Office of the Governor
The Capitol
Tallahassee, Fl. 32399

James C. Mize, Jr., Esq.
Denise D. Dytrch, Esq.
Palm Beach County Attorney
301 N. Olive Avenue
West Palm Beach, Florida 33401
Phone: (561) 355-2225
Fax: (561) 355-4398