IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA; KATHERINE HARRIS, Secretary of State for the State of Florida; JOHN MCKAY, President of the Florida Senate; TOM FEENEY, Speaker of the House of Representatives; ROBERT A. BUTTERWORTH, Attorney General of the State of Florida, and DEE BROWN, Supervisor of Elections for Marion County, Florida,

CASE NO. SC02-1813

Appellants,

DCA Case No. 5D02-2325
Trial Case No. 02-1064-CA-G

vs.

CHARLES R. FORMAN and MICHAEL A. FINN,

Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT IN AND FOR MARION COUNTY, FLORIDA

BRIEF OF APPELLANTS THE STATE OF FLORIDA AND ROBERT A. BUTTERWORTH

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

GERALD B. CURINGTON
ASSISTANT DEPUTY ATTORNEY GENERAL

GEORGE WAAS
SENIOR ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0129967
PL-01 THE CAPITOL
TALLAHASSEE, FLORIDA 32399-1050
(850) 414-3662; (850) 488-4872 (FAX)

TABLE OF CONTENTS

TABLE OF CONTENTS. i

TABLE OF CITATIONS. ii

STATEMENT OF THE CASE AND OF THE FACTS. iv

SUMMARY OF THE ARGUMENT. 1

ARGUMENT

THE TRIAL COURT ERRED AS A MATTER OF LAW IN HOLDING THAT THE FOUR SENATE DISTRICTS THAT EMBRACE MARION COUNTY CONSTITUTE A POLITICAL GERRYMANDER UNDER DAVIS V. BANDEMER , 478 U.S. 109, 106 S.CT. 2797, 92 L. ED. 2D 85 (1986) IN THAT NEITHER BANDEMER NOR ANY CASE HAS EVER HELD THAT COUNTY VOTERS CAN ASSERT A JUSTICIABLE CLAIM BASED ON THE NUMBER AND AMOUNT OF PROJECTS A LEGISLATOR CAN DELIVER TO CONSTITUENTS. . . 3

CONCLUSION. 14

CERTIFICATE OF SERVICE. 16

CERTIFICATE OF COMPLIANCE. 16

CITATION OF AUTHORITIES

CASES PAGE(S)

Central States v. Lady Baltimore Foods, Inc.
960 F. 2d 1339, 1344 (7th Cir. 1992)... 4

Davis v. Bandemer, 478 U.S. 109, 106 S. Ct. 2797,
92 L. Ed. 2d 85 (1986)...Passim

Duncan v. Moore, 754 So. 2d 708 (Fla. 2000).. 11

Fraternal Order of Police v. Department of State
392 So. 2d 1296 (Fla. 1980)... 8

In re Apportionment Law, etc., 414 So. 2d 1040, 1042 (Fla. 1982)........... 12

In re Apportionment Law, etc., 263 So. 2d 797, 822 (Fla. 1972)............... 12, 13

In re Constitutionality of House Joint Resolution 1987
817 So. 2d 819, 830 (Fla. 2002)...Passim

In re Senate Joint Resolution 2G, 597 So. 2d 276, 286 (Fla. 1992)........... 12

Newark v. New Jersey, 262 U. S. 192, 43 S. Ct. 539,
67 L. Ed. 943 (1923).. 11

Sasso v. Ram Property Management
431 So. 2d 204, 211 (Fla. 1st DCA 1983)... 3

Stern v. Miller, 348 So. 2d 303 (Fla. 1977).. 9

CASES PAGE(S)

Triplett v. Tiemann, 302 F. Supp. 1239 (N. D. Neb. 1969)..................... 11

Whitcomb v. Chavis, 403 U.S. 124, 91 S. Ct. 1858, 1875,
29 L. Ed. 2d 363 (1971)... 4

FLORIDA CONSTITUTION

Art. III, §16, Fla. Const..Passim

STATEMENT OF THE CASE AND OF THE FACTS[1]

Charles R. Forman and Michael A. Finn, both Marion County residents (Finn is also a resident of the City of Ocala), filed separate complaints for declaratory and injunctive relief on May 24, 2002, claiming that the legislative redistricting plan for the Florida Senate (Senate Plan) violates the term limits provision of Article IV, Section 4, Fla. Const., and the equal protection clause of Article I, Section 2, Fla. Const. The basis for the second claim is that the Senate Plan, which divides Marion County into four senate districts (Senate Districts 14, 7, 3, and 20) and the City of Ocala into three senate districts, constitutes an impermissible political gerrymander within the scope of Davis v. Bandemer, 478 U. S. 109, 1056 S. Ct. 2797, 92 L. Ed. 2d 85 (1986). (Vol. I, pgs. 1-18) (These two cases were consolidated by the trial court on its own motion. Vol. I pgs. 19-21.)

Specifically, for their political gerrymandering claim, Forman and Finn allege that by the Florida Legislature's dividing Marion County into four senate districts and the City of Ocala into three senate districts, "Marion County has suffered in the funding of special projects... (as has the City of Ocala)." Accordingly, say Forman and Finn, the Senate Plan "show(s) an intent to discriminate against an identifiable political group and results in an actual discriminatory affect (sic) on the citizens of

[1]References to the Record on Appeal shall be to the volume and page number(s) as follows for example only: Vol. I, pgs. 4-6.

Marion County." (Vol. I, pgs. 7-8, 16-17.)

The State of Florida and Attorney General Butterworth answered the consolidated complaints and moved for judgment on the pleadings. (Vol. I, pgs. 110-121.) (As demonstrated by other appendices accompanying other briefs, other party defendants moved to dismiss (Vol. I, pgs. 22-52, 63-109, 122-141; Vol. II, pgs. 142-225) and pursuant to motion (Vol. II, pgs. 232-238, 311-314), certain parties were designated nominal parties by court order. Vol. II, pgs. 315-318.)

On July 23, 2002, a motions hearing and trial was held based on a stipulation of all parties to an expedited proceeding. (Vol. II, pg. 320.)

At trial, Forman and Finn presented four witnesses, including Forman and Finn. Each testified as to insufficient funding for Marion County projects, although one witness, Sharon E. Nehring, senior legislative assistant to State Representative Dennis Baxley, testified that all of the projects introduced for Marion County by Rep. Baxley were funded, which means they passed both the House and Senate and were signed by the Governor.

On July 24, 2002, the trial court announced its ruling from the bench and issued a Final Order finding that the term limits claim was not ripe and that, for the purposes of this appeal, "the voters of Marion County" constitute an "important political group;" (b)oth Marion County and the City of Ocala ... each has a clear community

of interests unique to its population(,)"; and that "(t)he fragmentation and splintering of Marion County clearly has a substantial detrimental impact on the citizens of Marion County(,)" as demonstrated by the lack of "fair allocation of public funding of special projects... ." (Vol. II, pgs. 323-326.)

Based on these circumstantial findings, the trial court concluded that Forman and Finn proved a claim of political gerrymandering under Davis v. Bandemer and declared the Senate Plan "unconstitutional as applied to Districts 14, 7, 3 and 20 because. . .the legislature intended to and did discriminate against nearly 260,000 electors of Marion County for the past decade and intend the 'status quo' for the next ten years." (Vol. II, pg. 326.)

These appellants timely appealed to the District Court of Appeal for the Fifth Judicial District. (Vol. IV, pgs. 429-457.) On August 15, the district court certified the issue decided by the trial court as "an issue of great public importance and one that will have a great effect on the proper administration of justice throughout the State" and requested this Court accept jurisdiction. (Vol. IV, pgs. 458-459.)

SUMMARY OF THE ARGUMENT

The trial court misread and misapplied the teachings of Davis v. Bandemer by denominating the voters of Marion County as an identifiable political group. The political group discussed in Bandemer involves a political party, not county voters. The United States Supreme Court has never held or even suggested that county or city residents constitute a political group that is entitled to equal protection as a geographical entity, thereby capable of asserting a political gerrymandering claim.

No case has ever held that a county or city can perfect a justiciable claim of political gerrymandering under Bandemer. The effect of the unprecedented trial court ruling is to convert every county and city into a political group for equal protection purposes, regardless of population composition. Under the trial court's decision, the status of county or city voters is sufficient to meet the political group requirement entitled to equal protection under Bandemer's standard.

The trial court decision focuses on the effectiveness of senate representation based on the ability to deliver funded projects to Marion County. However, the Equal Protection Clause has never been held to be a guarantor of pork barrel or special interest legislation.[2]

The trial court's Final Order is erroneous as a matter of law by expanding the teachings of Bandemer beyond its parameters, and should be reversed by this Court.

---

[2]This reference is not intended as a comment on the worthiness of any member's project.

Finally, the trial court's decision implicates this Court's Article III, Section 16, Fla. Const., exclusive jurisdiction regarding the subject of legislative reapportionment which requires this Court's consideration.

ARGUMENT

THE TRIAL COURT ERRED AS A MATTER OF LAW IN HOLDING THAT THE FOUR SENATE DISTRICTS THAT EMBRACE MARION COUNTY CONSTITUTE A POLITICAL GERRYMANDER UNDER DAVIS V. BANDEMER , IN THAT NEITHER BANDEMER NOR ANY CASE HAS EVER HELD THAT COUNTY VOTERS CAN ASSERT A JUSTICIABLE CLAIM BASED ON THE NUMBER AND AMOUNT OF PROJECTS A LEGISLATOR CAN DELIVER TO CONSTITUENTS

The trial court, in relying on Davis v. Bandemer, found an equal protection violation as to Senate Districts under Article I, Section 2, Fla. Const.,[3] solely on the grounds that new Senate Districts 14, 7, 3 and 20, which encompass Marion County (three of which also encompass the City of Ocala), prevent the voters of Marion County from receiving their "fair share of public funding for special projects." In reaching this conclusion, the trial court determined that the voters of Marion County constitute "an identifiable political group(,)" and "a common and important political group" with "a clear community of interests unique to its population." (Exhibit F, pages 6-8.)

As demonstrated below, these findings are not based on the teachings of Bandemer, and if the trial court's decision is allowed to stand, it will have the effect

[3] Although Forman and Finn rely exclusively on Florida's constitutional equal protection provision, Florida courts follow federal authority in addressing Article I, Section 2. Sasso v. Ram Property Management, 431 So. 2d 204, 211 (Fla. 1st DCA 1983).

of converting the voters in every county or city into "an identifiable political group" entitled to equal protection in the crafting of legislative districts by claiming a deficiency of special legislative projects , regardless of population size or dynamics, or any other factor that may be involved in the legislative redistricting process.[4] Bandemer is not authority for such a scenario.

Of more profound significance is the trial court's reading of Bandemer as requiring the state, through its constitutional redistricting process as set out in Article III, Section 16, Fla. Const., to weigh the ability of each senator to deliver funded special projects to his or her districts in determining whether there is intentional discrimination and actual discriminatory effect within Bandemer's contemplation.

In other words, under the trial court's decision, the ability of a senator to successfully engage in pork barrel legislation[5] is now a controlling factor in making out a political gerrymandering claim under the Fourteenth Amendment.[6]

---

[4]Under the trial court's unprecedented ruling, it would not be difficult for any county or city to make the same claims of uniqueness thereby entitling it to special treatment as defined by the geographical entity.

[5]"Pork barrel" is defined as "(a) government project or appropriation benefitting a specific locale or a legislator's constituents." The American Heritage Dictionary of the English Language, 1981 ed., pg. 1020. See also Central States, Southeast and Southwest Pension Fund v. Lady Baltimore Foods, Inc., 960 F. 2d 1339, 1344 (7th Cir. 1992).

[6]The United States Supreme Court, in Whitcomb v. Chavis, 403 U. S. 124, 91 S. Ct. 1858, 1875, 29 L. Ed. 2d 363 (1971), held that the Fourteenth Amendment would not be violated even assuming racial bloc voting "unless it is invidiously discriminatory for a county to elect its delegation by majority vote based on party or candidate platforms and so to some extent predetermine legislative votes on particular issues."

Nothing in Bandemer or in any case citing to Bandemer even suggests, much less supports, such a view of the justiciability, and successful maintenance, of a political gerrymandering claim. Indeed, there is no case law supportive of such a finding. In fact, as demonstrated below, the courts recognize that a particular legislator's effectiveness in delivering specific legislation is not the stuff of equal protection guarantees.

In In Re Constitutionality of House Joint Resolution 1987, 817 So. 2d 819, 830 (Fla. 2002), the Supreme Court discussed Davis v. Bandemer as follows:

> Under the *Bandemer* test, a plaintiff raising a political gerrymandering claim must establish that there was (1) intentional discrimination against an identifiable political group and (2) an actual discriminatory effect on that group. See *id.* at 127, 106 S.Ct. 2797. The plurality opinion candidly recognized that the first determination of intentional discrimination against an identifiable political group would not be difficult to show in most instances because "[a]s long as redistricting is done by a legislature, it should not be very difficult to prove that the likely political consequences of the reapportionment were intended." *Id.* at 129, 106 S.Ct. 2797.
>
> In order to establish that there has been an actual discriminatory effect, the plaintiff must show that: (1) the identifiable group has been, or is projected to be, disadvantaged at the polls; and (2) by being disadvantaged at the polls, the identifiable group will lack political power and be denied fair representation. See *id.* at 139, 106 S.Ct. 2797. As the *Bandemer* plurality explained, "the mere fact that a particular apportionment scheme makes it more difficult for a particular group in a particular district to elect the representatives of its choice does not render that scheme constitutionally infirm." *Id.* at 131, 106 S.Ct. 2797. This conclusion is premised on the assumption that "the power to influence the political process is not limited to winning elections" because the elected

> candidate will still be responsive to the voters in his or her district. *Id.* at 132, 106 S.Ct. 2797. "[W]ithout specific supporting evidence, a court cannot presume ... that those who are elected will disregard the disproportionately underrepresented group." *Id.* **The discriminatory effect of political gerrymandering would only be found "when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole."** *Id.* As the plurality opinion explained, the plaintiff must establish that the discriminated against group has "essentially been shut out of the political process." *Id.* at 139, 106 S.Ct. 2797. (Emphasis added.)

The Supreme Court also pointed out that "neither the United States nor the Florida Constitution requires that the Florida Legislature apportion legislative districts (to) preserve communities of interest(,)" citing to Shaw v. Reno, 509 U. S. 630, 647, 113 S. Ct. 2816, 125 L. Ed. 2d 511 (1993). House Joint Resolution 1987, 817 So. 2d at 831. Yet, contrary to the Florida Supreme Court's determination, the trial judge in this case essentially found that the Marion County voters constitute a community of interest that can assert a political gerrymandering claim (and by establishing a self-serving diminutive level of receipt of legislative pork, perfect such a claim). By doing this, the trial court has grafted a new geographical standard or requirement into the constitution.

Bandemer involves a claim by Indiana Democrats. References to "political group" are those who are members of a political party. When the Bandemer Court refers to "racial gerrymander," the Court is referring to groups identified by race.

Nothing in this seminal case intimates or suggests that political gerrymander applies to a geographical entity. None of the cases cited in Bandemer for the above-quoted standard of proof ("intentional discrimination against an identifiable political group and an actual discriminatory effect on that group(,) 106 S. Ct. at. 2807, is authority for the trial court's decision.

The Bandemer Court also recognizes the reality of the redistricting process and that elected representatives cast votes for a variety of reasons which do not impact constitutional inquiry:

> (T)he mere fact that a particular apportionment scheme makes it more difficult for a particular group in a particular district to elect the representatives of its choice does not render that scheme constitutionally infirm. This conviction, in turn, stems from a perception [478 U.S. 132] that the power to influence the political process is not limited to winning elections. An individual or a group of individuals who votes for a losing candidate is usually deemed to be adequately represented by the winning candidate and to have as much opportunity to influence that candidate as other voters in the district. **We cannot presume in such a situation, without actual proof to the contrary, that the candidate elected will entirely ignore the interests of those voters.** This is true even in a safe district where the losing group loses election after election. Thus, a group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that makes winning elections more difficult, and a failure of proportional representation alone does not constitute impermissible discrimination under the Equal Protection Clause. (Emphasis added.)

106 S. Ct. at 2810.

The Bandemer Court further emphasizes that

> unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will **consistently degrade a voter's or a group of voters' influence on the political process as a whole.**

Id. (Emphasis added.) What is critical at this juncture is that Forman and Finn did not offer any evidence of a constant degrading of "a voter's or a group of voters' influence on the political process as a whole."

And with regard to specific districts, the Court instructed that

> (i)n a challenge to an individual district, this inquiry focuses on the opportunity of members of the group to participate in party deliberations in the slating and nomination of candidates, their opportunity to register and vote, and hence their chance to directly influence the election returns and to secure the attention of the winning candidate. Statewide, however, the inquiry centers on the voters' direct or indirect influence on the elections of the state legislature as a whole. **And, as in individual district cases, an equal protection violation may be found only where the electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively. In this context, such a finding of unconstitutionality must be supported by evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.**

106 S. Ct. at 2810-11. (Emphasis added.) In the case at bar, the mere fact that four senators did not get through the legislature what Forman and Finn believe is enough local projects does not make out an equal protection claim. It does not prove that the voters of Marion County or Ocala were effectively denied "a fair chance to influence the political process." To hold otherwise would require the judiciary to make a value judgment on legislative enactments and weigh the economic value of specific

legislative efforts. To this end, Florida courts do not have the power to rule upon the policy or wisdom of the law. Fraternal Order of Police, Metro. Dade County, Lodge No. 6 v. Dep't of State, 392 So.2d 1296 (Fla.1980). Any questions as to the need or appropriateness of a particular enactment are for the Legislature. Stern v. Miller, 348 So.2d 303 (Fla.1977). The trial court's Final Order seeks to trump this well-settled separation of powers principle of constitutional law.

In addressing the conditions precedent to making out a political gerrymandering claim amid the political realities of legislative redistricting and representation, the Bandemer Court, in addition to giving credence to the judiciary's hands-off policy regarding judicial inquiry into legislative wisdom or appropriateness, also admonished the judiciary by pointing out that

> (i)nviting attack on minor departures from some supposed norm would too much embroil the judiciary in second-guessing what has consistently been referred to as a political task for the legislature, a task that should not be monitored too closely unless the express or tacit goal is to effect its removal from legislative halls.

106 S. Ct. at 2811.

Yet, despite both the Florida and United States Supreme Courts' commentary and discussion of the principles involved in establishing the justiciability of a political gerrymandering claim, and the admonition that courts not second-guess legislative

redistricting decisions, the trial court brushed aside these critical points. Engaging in creative jurisprudence, the trial court concluded that Marion County voters are a political group for Bandemer's purposes. Inexplicably, the trial court then concluded that according to its value judgment, Forman's and Finn's self-serving belief that the Marion County voters are entitled to more legislative pork from their four senators than they are getting makes out a political gerrymandering claim.

Both in fact and as a matter of law, these trial court findings have nothing whatever to do with Bandemer's jurisprudential teachings.

Pointedly, for their equal protection claim, Forman and Finn do not contend that a person's vote for a senator in one district is not equal to a person's vote for a senator in another district. Indeed, as the Florida Supreme Court recognizes in its decision validating the entire legislative plan, there is no question that the "one person, one vote" equal protection principle has been met. House Joint Resolution 1987, 817 So. 2d at 825-27.

Rather, Forman and Finn appear to argue that Marion County (and perhaps the City of Ocala) has a constitutional right to have its own senator.[7] Of course, the logical extension of such a claim is the strongest reason for its rejection. If every sufficiently

---

[7]Interestingly, Forman and Finn do not say what division (if any) of senators would be permissible. If, for example, four is too many, would two or three suffice? This question poses the dilemma born of the trial court's Final Order by opening up the redistricting process to judicial value judgments.

large city claimed a constitutional right to have its own unshared senator or congressional representative, the equal protection guarantee would go where no court has gone before; that is, no court has held that a political subdivision such as a city or county is entitled to its own senator (or representative, for that matter).

Moreover, the Fourteenth Amendment Equal Protection Clause has no application to acts of a state against its own political subdivisions, Triplett v. Tiemann, 302 F. Supp. 1239 (D. C. Neb. 1969). To this end, the United States Supreme Court, in Newark v. New Jersey, 262 U.S. 192, 43 S. Ct. 539, 67 L. Ed. 943 (1923), held that this clause cannot be invoked by a city against its state. There is no law that holds that cities and counties are persons under the Fourteenth Amendment. On this ground alone, Forman's and Finn's claims must fail.

Equal protection only requires that persons similarly situated be treated similarly. Duncan v. Moore, 754 So. 2d 708 (Fla. 2000). Forman's and Finn's senatorial votes have the same weight as that of any other voter casting his or her ballot for a candidate for the state senate from the voter's district. As a matter of established law, they cannot claim, solely as residents and citizens of Marion County or the City of Ocala, that they are members of a class that is protected by the Equal Protection Clause for voting rights purposes. Forman's and Finn's effort to create a new equal protection guarantee out of whole cloth must fail.

Finally, there is a jurisdictional question that this Court must consider. The circuit court decision raises serious and unprecedented questions as to the extent of the jurisdiction of Florida trial courts to hear and dispose of challenges to legislative redistricting plans after the approval of such plans by the Florida Supreme Court.

The adverse impact of the circuit court decision is demonstrated by the fact that Article III, Section 16, Fla. Const., vests **exclusive jurisdiction** regarding the subject of legislative reapportionment in the Florida Supreme Court. No other court is mentioned in this provision, and of course the Florida Constitution is a limitation upon, rather than a grant of, power. In each of the previous three redistricting processes, the Supreme Court retained **"exclusive state jurisdiction to consider any and all future proceedings relating to the validity of this apportionment plan."** In Re Senate Joint Resolution 2G, 597 So. 2d 276, 286 (Fla. 1992); In Re Apportionment Law, Etc., 414 So. 2d 1040, 1042 (Fla. 1982); In Re Apportionment Law Senate Joint Resolution 1305, 263 So. 2d 797, 822 (Fla. 1972).

In the 1972 case, the Court said further that **"(i)n the event it becomes necessary to take testimony in order to determine the validity of any district within the apportionment plan, this Court may appoint a commissioner for this purpose."** Id, at 822. (Emphasis added.)[8] The circuit court's decision does not

[8]Appellees note that the Supreme Court's 2002 decision does not reiterate the language quoted above. Since the previous reapportionment/redistricting decisions specify the Supreme

comport with these Supreme Court rulings that derive from the above constitutional imperative.

The legal basis for the trial court's decision is therefore unprecedented and requires immediate and final resolution by this Court. If the trial court decision is permitted to stand, Florida faces the prospect of a multiplicity of circuit court challenges by local governments that is destructive of the finality contemplated by the Constitution and will create havoc in the election process in the future.

This is amply demonstrated by Justice Lewis' discussion in In Re Constitutionality of House Joint Resolution 1987, 817 So. 2d at 832-37, of the litigious history of legislative reapportionment/redistricting, which gave rise to the current constitutional process–a process that was designed to avoid what the trial court's Final Order in the case at bar portends. Justice Lewis' analysis demonstrates that the Supreme Court's review is born of an historical expedited process driven by a strict time frame. In this regard, and to avoid this situation in the future, it may be advisable for the Supreme Court to specify either the designation of trial courts as special masters, or the specific appointment of special masters, in the future in a manner

---

Court's "exclusive jurisdiction" in this area, and the earliest decision recognizes the Court's authority to appoint a special master to making factual findings, it is presumed that the Supreme Court believed it unnecessary to again repeat that the Supreme Court has exclusive jurisdiction over this subject matter, and that the role of the trial court in the case at bar is akin to that of a special master. Now that the trial court has made its findings (report and recommendation), the Supreme Court remains the ultimate arbiter of Florida's reapportionment/redistricting plan.

similar to that set out in the previous redistricting decisions.

CONCLUSION

Bandemer is not authority for the proposition that a county's or city's voters are a political group capable of making out a political gerrymandering claim based on the putative absence of a self-serving sufficient level of legislative pork. The trial court's Final Order is not moored or founded in any cognizable American jurisprudence. There being no factual or legal basis supportive of the trial court's decision, this Court should reverse the Final Order on appeal and direct the dismissal of the case.

In addition, this Court should address its "exclusive jurisdiction" in light of the circumstances of this case and this Court's precedent as set out above.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

____
Gerald B. Curington
Assistant Deputy Attorney General
Florida Bar No. 0224170

OFFICE OF THE ATTORNEY GENERAL
PL-01 The Capitol
Tallahassee, Florida 32399-1050
(850) 414-3623
(850) 488-4872 (Fax)

George Waas
Senior Assistant Attorney General
Florida Bar No. 0129967
PL-01 The Capitol
Tallahassee, Florida 32399-1050
(850) 414-3662
(850) 488-4872 (Fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served by United States Mail to **Joseph M. Hanratty**, P. O. Box 159, Ocala, Florida 34478-0159; **R. Dean Cannon**, Jr., and **John M. Brennan**, Gray, Harris & Robinson, P. A., 301 E. Pine Street, Suite 1400, P. O. Box 3068, Orlando, Florida 32802-3068; **Jason L.**

Unger and **George N. Meros, Jr.,** Gray, Harris & Robinson, P. A., 301 South Bronough Street, Suite 600, P. O. Box 11189, Tallahassee, Florida 32302-3189; **John M. Green, Jr.**, Green, Kaster & Falvey, P.A., P. O. Box 2720, Ocala, Florida 34478-2720; **Barry Richard**, Greenberg Traurig, P. A., 101 East College Avenue, Post Office Drawer 1838, Tallahassee, Florida 32302; Secretary of State Katherine Harris, c/o **Clay Roberts**, Florida Department of State, PL-02 The Capitol, Tallahassee, Florida 32399-0250, and **Joseph P. Klock, Jr.**, and **John W. Little, III, Gabriel Nieto**, and **Arthur R. Lewis, Jr.**, Steel Hector & Davis, LLP, 200 South Biscayne Boulevard, Suite 4000, Miami, Florida 33131-2398,
this 27th day of August, 2002.

____
Gerald B. Curington

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Initial Brief was prepared in Times New Roman 14-point type in compliance with the applicable rule of appellate procedure.

____
Gerald B. Curington