



IN THE SUPREME COURT OF FLORIDA

Case No.

PALM BEACH COUNTY CANVASSING BOARD,

Petitioner,

v.

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

Respondents.

_____ /

**THE BROWARD COUNTY CANVASSING BOARD’S
AND THE BROWARD COUNTY SUPERVISOR OF ELECTIONS’
MOTION TO INTERVENE AND/OR TO JOIN
IN EMERGENCY PROCEEDINGS;
ALTERNATIVELY, MOTION TO CONSOLIDATE**

Suzanne Gunzburger, Robert Lee, and Jane Carroll, as members of the Broward County Canvassing Board (“BROWARD COUNTY CANVASSING BOARD”), and Jane Carroll, as Supervisor of Elections in Broward County, (“JANE CARROLL”) file the following Motion to Intervene and/or to Join in these Emergency Proceedings; Alternatively, Motion to Consolidate, and state as follows:

1. The Palm Beach County Canvassing Board has filed an Emergency Petition for Extraordinary Writ, asking this Court to resolve conflicting legal opinions issued by the Secretary of State, Division of Elections (“Division of Elections”) and the Attorney General answering the following question:

Would a discrepancy between the number of votes determined by a tabulation system and by a manual recount of four precincts be considered an “error in tabulation which could affect the outcome of” an election within the meaning of Section 102.166(5), Florida Statutes thereby enabling the canvassing board to request a manual recount of the entire county, or are “errors” confined to errors in the tabulation system/software?

2. As the Palm Beach County Canvassing Board states in its emergency petition, the Division of Elections issued Advisory Opinion 00-10 on November 13, 2000 directed to the Palm Beach County Canvassing Board answering this question in the negative. The Attorney General then issued an opinion (AGO-65) on November 14, 2000, answering the same question in the affirmative.

3. On November 13, 2000, the Division of Elections issued Opinion DE 00-11 directed to Al Cardenas, Chairman of the Republican Party of Florida. A copy of that opinion is attached as Exhibit “A.” On November 13, 2000, the Division of Elections also issued Opinion DE-12, directed to Jane Carroll as Supervisor of

Elections, which was received on November 14, 2000. A copy of that opinion is attached as Exhibit "B."

4. The Opinions DE-10, DE-11 and DE-12, issued by the Division of Elections to the Palm Beach County Canvassing Board, to the Chairman of the Republican Party, and to Jane Carroll, are materially the same and provide the same interpretation of Section 102.166(5), Florida Statutes.

5. On November 13, 2000, the BROWARD COUNTY CANVASSING BOARD, after completion of a manual recount of the votes in three (3) precincts and at least one percent (1%) of the votes in Broward County, voted two to one (2-1) not to continue further with a manual recount of votes in Broward County. In reaching that decision, the BROWARD COUNTY CANVASSING BOARD considered the DE Opinion 00-11 issued November 13, 2000 by the Division of Elections to the Chairman of the Republican Party.

6. On November 14, 2000, after receipt of the conflicting opinion issued by the Attorney General, (AGO-65), the BROWARD COUNTY CANVASSING BOARD granted a motion to reconsider whether to proceed further with a manual recount in Broward County. On November 15, 2000, the BROWARD COUNTY CANVASSING BOARD voted to proceed with a county-wide manual recount.

7. Like the Palm Beach County Canvassing Board, the BROWARD COUNTY CANVASSING BOARD and JANE CARROLL require immediate direction from this Court resolving the conflicting opinions issued by the Division of Elections and the Attorney General.

8. Should this Court determine that intervention and/or joinder in the action filed by the Palm Beach County Canvassing Board is not appropriate for any reason, the BROWARD COUNTY CANVASSING BOARD and JANE CARROLL respectfully request that their brief be considered as a separate original proceeding and that it then be consolidated with the Palm Beach County Canvassing Board's action.

9. Counsel for the BROWARD COUNTY CANVASSING BOARD has been notified by the Palm Beach County Attorney's Office that the Palm Beach County Canvassing Board has no objection to the intervention, joinder and/or consolidation requested in this Motion.

WHEREFORE, the BROWARD COUNTY CANVASSING BOARD and JANE CARROLL, as Supervisor of Elections in Broward County, request leave to intervene and/or join in the proceedings filed by the Palm Beach County Canvassing Board, and request in the alternative that their action be consolidated with the proceedings filed by the Palm Beach County Canvassing Board.

Respectfully submitted,

EDWARD A. DION
County Attorney for Broward County
Government Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

SAMUEL S. GOREN
MICHAEL D. CIRULLO
Josias, Goren, Cherof, Doody
& Ezrol, P.A.
3099 East Commercial Blvd.,
Suite 200
Fort Lauderdale, Florida 33308
Telephone: (954) 771-4500
Telecopier: (954) 771-4923

EDWARD A. DION
Fla. Bar No. 267732
NORMAN M. OSTRU
Deputy County Attorney
Fla. Bar No. 273971

SAMUEL S. GOREN
Fla. Bar No. 205850
MICHAEL D. CIRULLO
Fla. Bar No. 973180

CERTIFICATE OF SERVICE

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

EDWARD A. DION

Courtesy copies provided to the following counsel involved in related litigation:

	<u>Fax numbers</u>
Cecile Dykas, Ass't Attorney General	(954) 712-4707
Barry Richard, Esq., for George W. Bush	(850) 681-0207
Dexter Douglass, Esq., for Al Gore	(850) 224-3644
Kendall Coffey, Esq., for Florida Democratic Party	(305) 285-0257
William R. Scherer, Esq., for Florida Republican Party	(954) 463-9244
Gary M. Farmer, Esq., for <i>Rogers</i> plaintiffs	(954) 771-9880
Henry B. Handler, Esq., for <i>Fladell</i> plaintiffs	(561) 997-5280
Marcos D. Jimenez, Esq., for <i>Siegel</i> plaintiffs	(305) 358-5744
Benedict P. Kuehne, for <i>Florida Democratic Party</i> Plaintiff	(305) 789-5987
Patrick W. Lawlor, Esq., for <i>Elkin</i> plaintiffs	(954) 481-3631
Mark A. Cullen, Esq., for <i>Horowitz</i> plaintiffs	(954) 989-9660
Lawrence A. Gottfried, <i>pro se</i> 11211 S. Military Trail, Apt. #1224, Boynton Beach, Florida 33436	(By mail)