



IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT,
LEON COUNTY, FLORIDA, CIVIL DIVISION

ALBERT GORE, JR., Nominee of the
Democratic Party of the United States for
President of the United States, et al.,

Plaintiffs,

v.

CASE NO.: 00-2808

KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, et al.,

Defendants.

FILED
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DAVE LAVIS
CLERK, CIRCUIT COURT
LEON COUNTY, FLORIDA

MOTION TO ENTER EXPEDITED SCHEDULING ORDER

Plaintiffs, ALBERT GORE, JR., Nominee of the Democratic Party of the United States for President of the United States, et al. ("Plaintiffs"), move this Court to immediately enter the scheduling order attached hereto. Section 102.168, Florida Statutes, allows for a contest to be filed by any candidate. The right to contest an election is a fundamental right and an integral part of every citizen's right to have their vote counted. Plaintiffs allege:

1. The Supreme Court of Florida recognized the importance of that right in its opinion, *Palm Beach Canvassing Board v. Harris*, Nos. SC00-2346, SC00-2348 & SC00-2349 (Nov. 21, 2000).

2. All time frames in this contest are controlled by the Florida Supreme Court's December 12 deadline for certification before the Electoral College under the U. S. Constitution.

3. In order to comply with the decision of the Florida Supreme Court in *Palm Beach County Canvassing Board v. Harris, supra*, this Court must enter the attached order otherwise the Plaintiffs' right to a contest, and the opportunity to assure "an accurate vote count . . . one of the essential foundations of democracy." *Harris, supra*, at 34, will be denied.

4. The denial of a dramatically accelerated schedule could mean a denial of Plaintiff GORE's due process rights, and will in effect nullify the statutory right to a contest as held by the Florida Supreme Court in *Harris*.

5. The central and indispensable witness to these proceedings is the ballots. They must be manually counted without further delay. The Court or a Special Master must immediately begin that process.

6. In Miami-Dade County, approximately 10,500 unrecorded ballots need to be manually examined and counted. As of the time the canvassing board abandoned its duties on November 22, 2000, approximately 1,790 of those unrecounted ballots had been duly examined and manually counted, generating a net gain of at least 163 votes for Vice President Gore.

7. The Miami-Dade Canvassing Board had a "mandatory obligation" to manually recount all of the ballots in the county for the presidential election. *Miami-Dade Democratic Party v. Miami-Dade Canvassing Board*, Op. at 2-3. Nonetheless, because of the Florida Supreme Court's pre-certification deadline, the District Court of Appeal denied mandamus to compel completion of the court, and indicated that any pre-certification extension would have to come from the Supreme Court. When presented to the Supreme Court of Florida on November 23, that tribunal declined to act, without prejudice, directing resolution of this issue to a subsequent proceeding, i.e., the latest action before this Court.

8. In Palm Beach County, a return that reflected a net gain of at least 215 votes for Al Gore was rejected by the Secretary of State because it was not finished until 127 minutes after the 5:00 p.m. deadline. This rejection is contrary to the Supreme Court's decision in *Harris, supra*, at 33-34, which specified narrow grounds for rejecting returns. Any delay in this case will deny justice to the Plaintiff and those in Palm Beach County, who cast their ballots expecting their voices to be heard.

9. Plaintiffs have presented the expedited schedule to Defendants who objected to the schedule. Defendants' only goal in these proceedings is to have the Court delay the contest so that justice delayed will become justice denied - and thereby frustrating the principles of the Florida Constitution and Florida law, addressed by the Supreme Court in *Harris*.

10. Cognizant of the limited time available, Plaintiffs have brought a limited, focused contest. Plaintiffs' contest raises five discrete issues:

- (1) Which of the approximately 10,500 unrecorded Miami-Dade County ballots represent votes for Al Gore and Joe Lieberman, which represent votes for George W. Bush and Dick Cheney, and which are non-votes for President and Vice-President? Realistically, the determination of this question must be made, within the next few days, given the time needed to transport the ballots, with appropriate security, to a judicial officer and for that officer to make a proper review, counting and determination of this matter.
- (2) Whether it was lawful to reject and discard the additional votes that were manually counted and validated in Miami-Dade County prior to the time the County Canvassing Board opted to abandon its mandatory obligation to complete the

recount? This issue would need to be reached in the event the Court refuses to have the 10,500 unrecorded ballots counted. It should be finally resolved by December 6, 2000 to allow for time for appellate review.

(3) Should the 215 net additional votes for Gore/Lieberman resulting from the Palm Beach County Canvassing Board's manual recount be counted in determining which candidates received the most votes? This issue can be resolved summarily and, as above, must be addressed by December 6, 2000.

(4) Which of the approximately 3,300 contested Palm Beach County ballots represent votes for Gore/Lieberman, which represent votes for Bush/Cheney, and which are non-votes for President and Vice-President? This issue, like the need to proceed with manual recounting in Miami-Dade, should be reached no later than Wednesday, November 29, 2000, if the remedy is to be truly meaningful in light of immediate time constraints.

(5) Does the original election night tabulation of votes or the subsequent machine recount tabulation of votes in Nassau County constitute the votes to be counted in determining which candidates received the most votes? Once again, this issue should be determined no later than December 6, 2000.

11. Each of the foregoing questions is largely or entirely a question of law. Each of the foregoing questions is indisputably a question for judicial, as opposed to administrative, resolution. Each of these questions can be resolved on the basis of undisputed facts, or on the basis of physical facts (e.g., whether or not there is an indentation on a ballot) within the court's personal observation.

12. Plaintiffs respectfully urge that all parties to this proceeding have an obligation to act such that this court can enter its judgment on the foregoing questions with sufficient time for the Supreme Court to review that judgment and render its decision before December 12, 2000. Plaintiffs also respectfully urge that the minimum time that responsibly needs to be reserved for Supreme Court review and decision is three days. This means that this Court must render its final decision on all pending issues no later than the close of business December 6, 2000 – eight days from this morning. Other determinations, such as the counting of some 10,500 unrecorded ballots in Miami-Dade County and the 3,300 votes in Palm Beach County, should be reached immediately.

13. Section 102.168(7) creates an unequivocal and affirmative duty for the court to hold an "immediate" hearing when there is an election contest. The Section provides: "Any candidate, qualified elector, or taxpayer presenting such a contest to a circuit judge is entitled to an immediate hearing." The only discretion afforded to the court is in determining the amount of time for taking testimony. But even then, the court must ensure that the hearing is conducted with sufficient speed to resolve all of the necessary issues in a timely fashion. As the court, speaking of Section 168(7), Florida Statutes observed in *Adams v. Canvassing Board of Broward County*, 421 So. 2d 34, 35 (Fla. DCA 4th 1982): "Part of the purpose of the protest and contest provisions of the election code is to effect a speedy resolution of such conflicts, with minimal disruption of the electoral process." This court thus has the obligation to expedite the schedule and conduct for the hearing to ensure that it is completed without risking any disruption to the electoral process.

14. Thus, the dictate in Section 102.168(7) for an "immediate" hearing must be taken literally. The hearing must be scheduled in the shortest possible time. Indeed, in considering other

Florida laws using the word "immediate," courts have consistently held that this creates a duty for prompt and urgent action.

15. Here, of course, time is truly crucial in obtaining relief under Section 102.168, Florida Statutes. The Supreme Court of Florida has held that all proceedings in this matter must be concluded no later than Tuesday, December 12. Therefore, proceedings must be moved forward immediately to ensure that they are completed on time. Any delay risks undermining the central purpose of Section 102.168: ensuring prompt and effective adjudication of conflicts as to balloting and counting procedures. *McPherson v. Flynn*, 397 So. 2d 665, 668 (Fla. 1981).

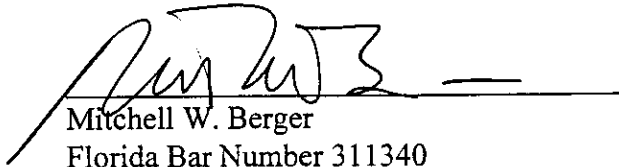
16. In construing Section 102.168, "the judge should bear in mind that the primary consideration in such a contest is whether the will of the people has been effectuated." *Flack v. Carter*, 392 So. 2d 37, 40 (Fla. 1st DCA 1981). Effectuating the will of the people requires that the hearings on the contests in this presidential election begin immediately, exactly as prescribed in the statute. Any delay risks undermining the law providing for adjudication of conflicts and, most important, the ability of the courts to effectuate the will of the people.

17. Although the proposed schedule is compressed, it is feasible. Circuit courts in other related cases have acted as fast or faster, and the Supreme Court has ensured that the time elapsed between filing a petition in circuit court and a Supreme Court decision has been seven days or less. We are, of course, aware of the burdens that litigation of this importance and pace have imposed on other circuit courts and the Supreme Court, and now imposes on this court. However, expedition is required in order to prevent the most basic right in our democracy from being abridged by delay alone. Failure to adopt the accompanying schedule, or a more expedited schedule, is tantamount to denial of Plaintiffs' contest.

18. Accordingly, Plaintiffs request the scheduling order be entered immediately, that a hearing on this request be held as soon as its Court's schedule permits, and that all contested ballots be manually counted starting at 9:00 a.m., November 29, 2000.

Respectfully submitted this 20 day of November, 2000.

COUNSEL FOR ALBERT GORE, JR. AND JOSEPH I. LIEBERMAN.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States mail, hand delivery or facsimile transmission this 20 day of November, 2000 to the following:

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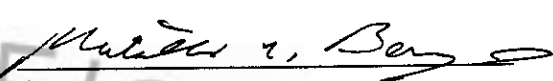
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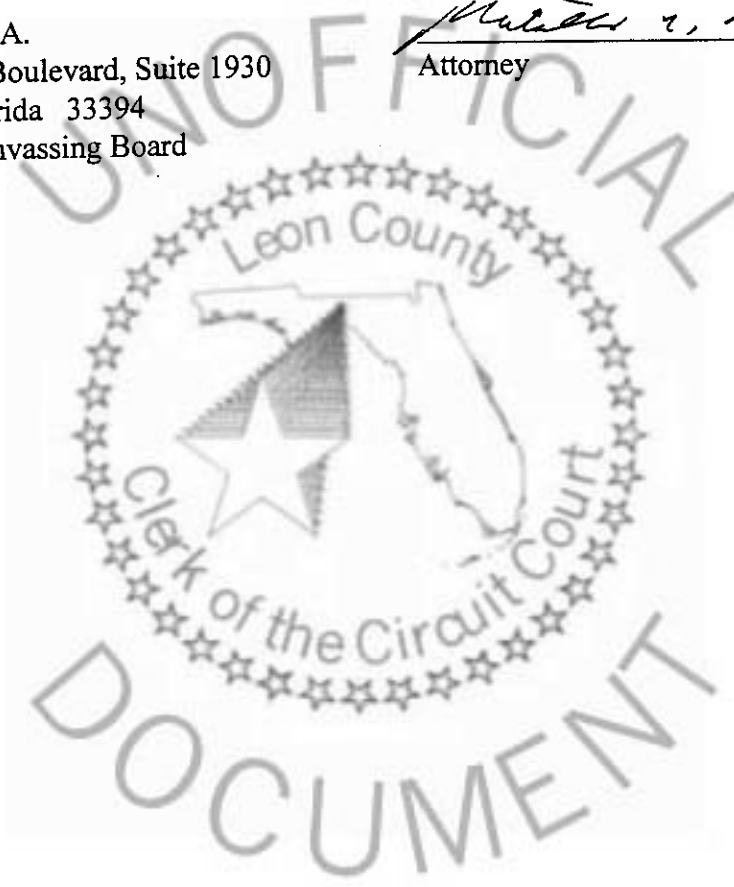
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ORDER DIRECTED TO ALL PARTIES REGARDING SCHEDULING

This cause came before this court on the parties' request for a scheduling order to facilitate the timely and efficient resolution of this cause.

After due consideration, it is

ORDERED AND ADJUDGED that the parties shall immediately and fully comply with the attached schedule of all proceedings in this matter.

Done and Ordered in Tallahassee, Leon County, Florida, this ____ day of November 2000.

N. Sanders Sauls
Circuit Judge

Copies furnished to all counsel of record



NOV / DEC EXPEDITED TRIAL CALENDAR

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
26 Certification	27 Contest Filed 4 pm Hearing	28 Witness List Served Order/Hearing on Schedule and Delivery of Ballots	29 Ballots Received Ct Review of Contested Ballots Begins Discovery	30 Responsive Pleadings Due Ct Review of Contested Ballots Cont. Discovery	1 Ct Review of Contested Ballots Cont. Discovery	2 Ct Review of Contested Ballots Cont. Discovery
3 Ct Review of Contested Ballots Cont. Discovery	4 Evidentiary Hearing Ct Review of Contested Ballots Discovery	5 Evidentiary Hearing Ct Review of Contested Ballots Discovery	6 Findings of Fact and Conclusions of Law Possible Notice of Appeal	7 Simultaneous Exchange of Appellants' and Appellees' Briefs	8 Florida Supreme Court Hearing	9 Florida Supreme Court Order
10	11	12	13	14	15	16