



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

HARRY N. JACOBS and
JOHN AND JANE DOES 1-NNN,

Plaintiffs,

v.

CASE NO. 00-2816
CIVIL DIVISION

THE SEMINOLE COUNTY
CANVASSING BOARD, et al.,



Defendants.

**GEORGE W. BUSH AND RICHARD CHENEY'S
AND THE REPUBLICAN PARTY OF FLORIDA'S
SUGGESTION OF DISQUALIFICATION OF TRIAL JUDGE**

DAVE LANS
CIVIL DIVISION
LEON COUNTY, FLORIDA

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FILED

In accordance with Rule 2.160, Florida Rules of Judicial Administration, and Section 38.10, Florida Statutes (2000), Defendants, GEORGE W. BUSH, RICHARD CHENEY, AND THE REPUBLICAN PARTY OF FLORIDA, file this suggestion respectfully requesting that this Court disqualify herself from presiding over this cause, and state:

1. In September of this year, the Judicial Nominating Commission (JNC) for the First District Court of Appeal nominated Your Honor as one of eight candidates to fill one of two vacancies on the First District Court of Appeal.
2. In accordance with Article V, Section 11 of the Florida Constitution, Florida's Governor John Ellis "Jeb" Bush, the brother of named Defendant George W. Bush, had the constitutional duty to determine whether to appoint Your Honor to a seat on the First District.

3. After interviewing Your Honor and the other seven nominees, Governor Jeb Bush appointed Ricky Polston and Joseph Lewis to the vacancies on the First District Court of Appeal on November 17, 2000. Governor Jeb Bush did not appoint Your Honor.

4. Mr. Al Cardenas, Chairman of The Republican Party of Florida (the Republican Party), a party defendant to this case, has expressed the fear the Republican Party will not receive a fair trial in this Court on account of the perceived bias of Your Honor, which he specifically describes in his attached Affidavit. Defendants Bush and Cheney are the nominees of the Republican Party, as well as Defendants in this case. According to the Affidavit, the fear of bias and lack of impartiality is based upon:

(a) the failure of Governor Jeb Bush, the brother of Governor George Bush, to appoint Your Honor to the First District Court of Appeal, as stated in the attached affidavit; and

(b) the knowledge that Your Honor has previously applied for an appellate judgeship and the reasonable belief that Your Honor may hereafter apply and be considered for appointment to a vacancy in a judicial office to which election for retention applies under Article V, Section 11, of the Florida Constitution, and a reasonable belief that your Honor's ruling on the merits of this case might affect such future consideration, as stated in the attached affidavit.

5. If a party to a case has a reasonable belief that he or she cannot receive a fair trial on account of the bias of the judge, Section 38.10, Florida Statutes, compels the judge to

proceed no further. The statute does not require the belief to be premised upon facts that are proven at trial. Instead, the judge must consider whether a party has stated a fear based on the facts alleged, not their truth or falsity. See *Rogers v. State*, 630 So. 2d 513, 515 (Fla. 1993).

6. Canon 3 in Florida's Code of Judicial Conduct mandates that "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might be questioned." Furthermore, because Defendants have a well grounded fear that justice in this case may be overshadowed by the appearance of impropriety, Your Honor's disqualification is necessary. *Caleffe v. Vitale*, 488 So.2d 627 (Fla. 4th DCA 1986). Your Honor need not agree with the facts on which Defendants' fear is based, because it is the reasonableness of affiant's belief, and not the judge's own perception of his or her ability to act fairly that matters. *Id.* at 628. See also, *Superkids Bargain Store, Inc. v. Breakstone*, 565 So.2d 1332, 1335, 1342 (Fla. 1990). Again, the proper consideration is not whether a lawyer would question a judge's impartiality, it is whether an ordinary litigant would reasonably question the judge's impartiality. *Id.* at 1342.

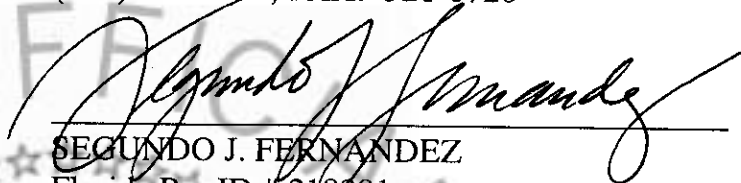
7. Of utmost concern to the Court, the parties, and the public at large is the avoidance of any appearance of impropriety. This is particularly so in a case of such prominence and notoriety as this one, which involves the election of the President and Vice President of the United States. Everyone concerned must have the utmost confidence that there is not even the appearance of perceived bias in this case. Accordingly, because Mr.

Cardenas, on behalf of the Republican Party, has stated grounds for disqualification that are legally sufficient, Your Honor's disqualification is mandated. See *Milmir Constr. v. Jones*, 626 So. 2d 985, 987 (Fla. 1st DCA 1993) (holding that disqualification, if sought in a timely manner, is appropriate where a party's counsel serves on the nominating commission entrusted with reappointing that judge).

Respectfully submitted,

OERTEL, HOFFMAN, FERNANDEZ
& COLE, P.A.

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SEGUNDO J. FERNANDEZ

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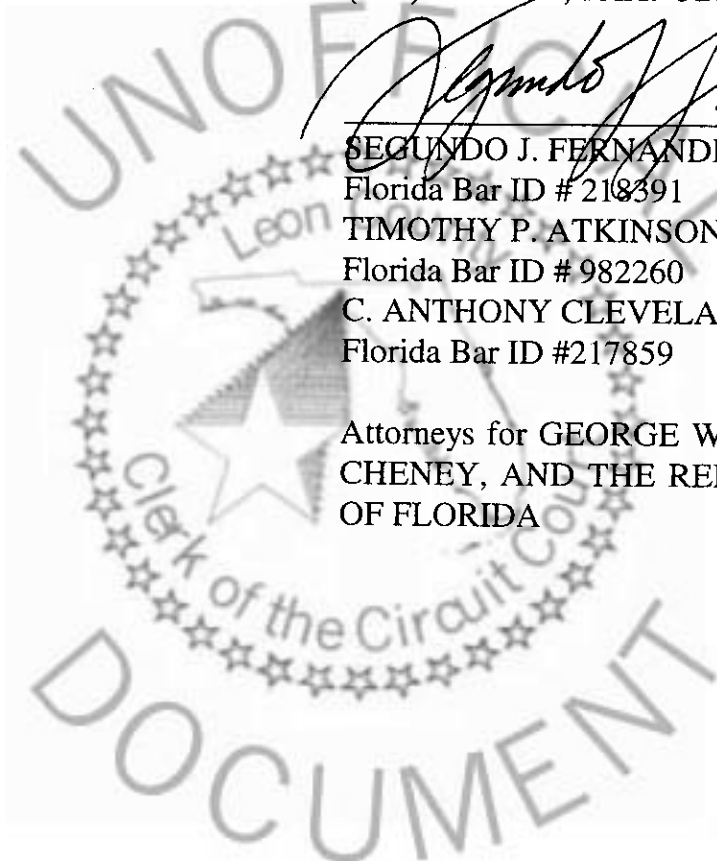
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C. ANTHONY CLEVELAND

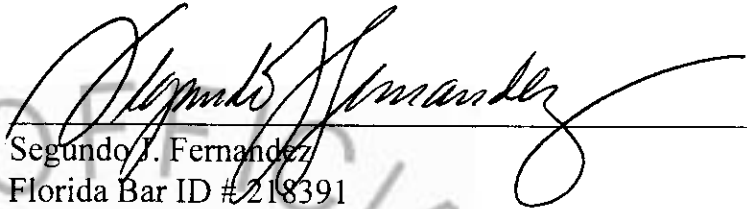
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Attorneys for GEORGE W. BUSH, RICHARD
CHENEY, AND THE REPUBLICAN PARTY
OF FLORIDA



CERTIFICATE OF COUNSEL

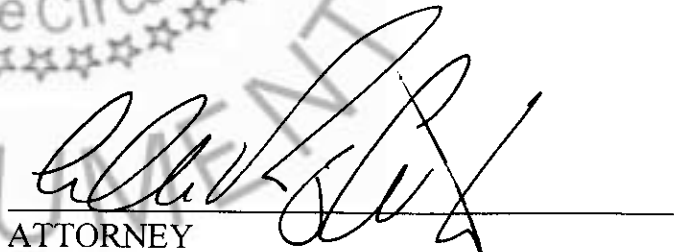
Pursuant to Section 38.10, Florida Statutes, and 2.160, Fla. R. Jud. Admin., I hereby certify that the Affidavit and Motion herein filed are made in good faith, and on sufficient grounds, that the client has a well-founded fear described in the affidavit that Your Honor's disqualification is necessary. Defendants further certify that this Motion is not made for the purpose of delay, nor in fact anticipate any delay, from the recusal of Your Honor. At a hearing on November 28, 2000, Your Honor ordered a discovery schedule which Defendants will continue to scrupulously adhere to, and as the Court may further order.



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TIMOTHY P. ATKINSON
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C. ANTHONY CLEVELAND
Florida Bar ID # 217859

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished
Via Facsimile and United States Mail this 29th day of November, 2000, to all counsel
of record.



ATTORNEY

CERTIFICATE OF SERVICE LIST

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

HENRY N. JACOBS and JOHN and
JANE DOES 1-NNN,

Plaintiffs,

vs.

CASE NO.: 00-2816

THE SEMINOLE COUNTY CANVASSING
BOARD, SANDRA GOARD, KENNETH MCINTOSH,
JOHN SLOOP, THE FLORIDA REPUBLICAN
PARTY, RYAN MITCHELL, MICHAEL LEACH,
GEORGE W. BUSH, RICHARD CHENEY, THE
STATE OF FLORIDA ELECTION CANVASSING
COMMISSION AND KATHERINE HARRIS,

Defendants.

AFFIDAVIT OF AL CARDENAS

STATE OF FLORIDA
COUNTY OF LEON

BEFORE ME personally appeared Al Cardenas, who after being sworn, deposes and says:

1. My name is Al Cardenas, and my business address is The Republican Party of Florida, Tallahassee, Florida 32303. I am Chairman of The Republican Party of Florida (Republican Party) a party defendant in this case. The nominees of the Republican Party for President and Vice President are George W. Bush and Richard Cheney. They are also Defendants in this case. I file this affidavit in support of the Suggestion of Disqualification of Trial Judge.

2. I have a well founded fear that the Republican Party and its nominees will not receive a fair trial in this case from the Honorable Judge Nikki Clark, as described in detail below.

3. In September of this year, the Judicial Nominating Commission (JNC) for the First District Court of Appeal nominated Judge Clark as one of eight candidates to fill one of two vacancies on the First District Court of Appeal.

4.. After interviewing Judge Clark and the other seven nominees, Governor Jeb Bush appointed Ricky Polston and Joseph Lewis to the vacancies on the First District on November 17, 2000.

5. Governor Jeb Bush did not appoint Judge Clark to the First District.

6. I am aware of Judge Clark's outstanding reputation as a jurist, and in no way question it. I nevertheless firmly believe that Canon 3E(1) of the Code of Judicial Conducts and the accompanying commentary requires disqualification under the unusual circumstances presented here.

The commentary says the followings:

Under this rule a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific rules in section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

7. It is public record that Judge Clark was "negotiating" for an employment position on the First District Court of Appeal with Governor John Ellis "Jeb" Bush, the brother of George W. Bush, a named defendant in this cause. On November 17, 2000, Governor Jeb Bush did not appoint Judge Clark to a position on the First District - a position for which Judge Clark naturally believed she was qualified.

8. It is my firm belief that Judge Clark will not provide a fair trial to the Republican Party and its nominees for President and Vice President because Governor Jeb Bush did not appoint her to the First District judgeship. Additionally, it is my firm belief that Judge Clark would reasonably believe that her ruling on the merits in this case, might affect her future chances for

appointment to a judicial office to which election for retention applies, a situation that would affect her complete and total impartiality in this litigation.

9. Judge Clark has not yet rendered any substantive rulings in this case or indicated any personal bias against George W. Bush or Richard Cheney. But I have a legitimate, well-grounded concern that her continued participation in the case could be detrimental to both, or either, sides of this dispute, as well as to the administration of justice. For instance, if Judge Clark were to enter a ruling favorable to Bush and Cheney, it could be perceived as demonstrating partiality toward Governor Jeb Bush in order to obtain an appointment to a vacancy on the appellate bench during the remaining two year of Governor Jeb Bush's term as Governor of the State of Florida. That perception would cast a shadow on any appeal and might lessen Defendants' ability to obtain an affirmance on appeal. On the other hand, Judge Clark might attempt to dispel any appearance of bias or prejudice by resolving all doubts against Bush and Cheney and in favor of Plaintiffs. That would be unfair to Defendants.

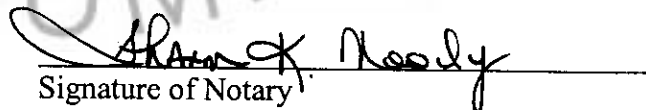
10. Because of the extraordinary, unprecedented circumstances present here, I regretfully conclude that disqualification is necessary under Canon 3E(1) and the commentary.



Al Cardenas

STATE OF FLORIDA
COUNTY OF LEON

SWORN TO AND SUBSCRIBED BEFORE ME this 28th day of November, 2000, by Al Cardenas, who has produced FDL # C635-016-48-003-0 as identification.



Signature of Notary

