

No. 00-949 (00A504)

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IN THE  
SUPREME COURT OF THE UNITED STATES

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GEORGE W. BUSH AND RICHARD CHENEY,

*Petitioners,*

v.

ALBERT GORE, JR., *et al.*,

*Respondents.*

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**BRIEF OF RESPONDENTS/INTERVENORS CARR, HARRELL,  
RICHARDSON, SHULER, TEMPLE AND THOMAS IN SUPPORT  
OF THE RELIEF REQUESTED BY PETITIONERS**

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## STATEMENT OF THE CASE

The Respondents/Intervenors Glenda Carr, Lonnette Harrell, Terry Richardson, Gary H. Shuler, Keith Temple and Mark A. Thomas were allowed to intervene as parties in the Circuit Court for the Second Judicial Circuit of Florida in Case No. 00-2808. A copy of the Respondents/Intervenors' Motion for Order Allowing Intervention and their Emergency Petition for Declaratory Judgment that the Florida Statutory Scheme for a Manual Recount is Unconstitutional and Motion to Dismiss the Complaint to Contest Election is included in the Appendix as Exhibit 1.\* The trial court granted the Respondents/Intervenors motion to intervene, and they subsequently participated as intervenor parties in the trial as reflected in the Circuit Court's Order included in the Appendix as Exhibit 2.\* The Respondents/Intervenors filed a brief in the Florida Supreme Court, which is included in the Appendix as Exhibit 3.\* Pursuant to the Rules of the Supreme Court of the United States and the Order of this Court directing the filing of briefs, Respondents/Intervenors submit the following document. The Respondents/Intervenors are not dissatisfied with Petitioners statements as provided in Supreme Court Rule 24.2.

\* Due to the exigent circumstances and logistical difficulties presented by this case, the Appendix of Respondents/Intervenors will be filed with this Court on the morning of Monday, December 11, 2000, at the earliest possible time.

## INTRODUCTION OF ARGUMENT

Respondent/Intervenors contend that the Order of the Florida Supreme Court violates the equal protection and due process clauses of the Constitution of the United States. Additionally, Respondents/Intervenors would respectfully suggest that the December 8, 2000, Order of the Florida Supreme Court in Case No. SC00-2431 violates the mandate of this Court in the prior ruling in Case No. SC00-2431 that was issued on November 21, 2000. This Court's Order *vacated* the prior ruling of the Florida Supreme Court and remanded it with appropriate instructions. The Florida Supreme Court has not entered an order pursuant to the mandate of this Court. Instead, the Florida Supreme Court, in its decision of December 8, 2000, No. SC00-2431, directed that the votes that had been counted pursuant to the vacated order of the Florida Supreme Court and counted under materially different standards of voter intent must be included in the Certification considered by the Florida Secretary of State. Such Order is thus in direct violation of this Court's mandate and is consequently a jurisdictional nullity.

### **Violation of Equal Protection and Due Process.**

The Respondents/Intervenors are six voters residing in five different counties within the State of Florida and were voters in the Presidential Election of November 7th in their respective counties. They voted for the

Bush-Cheney electors. Their respective counties of residence are Duval, Okaloosa, Bay, Calhoun, Duval and Leon. The voters have standing because they have a direct stake in the outcome of the election.

The majority decision of the Florida Supreme Court indicated no standard for the manual recount of the diverse types of ballots other than counting “undervotes” for a candidate when the counters find that “the clear indication of the intent of the voter” is present. It is respectfully submitted that such a “standard” is not one at all.

To count the “undervotes” in 67 counties, whose canvassing boards apply their own interpretation of this fuzzy and nebulous standard, violates these voters due process and equal protection rights. This “standard” invites totally subjective counting, which will not allow any possibility of judicial review. Critically, it opens the door for political bias, even unintended political bias, to effect the election of a president. Such is totally unacceptable in a democratic republic governed by the rule of law.

Not only will such a “standard” allow the “undervotes” in the several counties to be treated differently and thereby violate all of the voters in Florida of their right to equal protection of the law, it also vindicates the already completed manual recount of the “undervotes” in Broward County

and Palm Beach County, whose canvassing boards used varying and totally inconsistent standards to determine the intent of the voters.

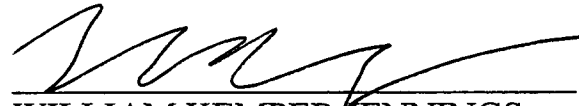
Thus, the voters' ballots have been, and will be, treated differently, not only as a result of their votes having been cast in different counties, but will also be treated differently within each county. This obviously violates fundamental standards of due process and equal protection, and will forever cast a cloud over the results of the Presidential Election in Florida, regardless of which candidate "wins."

### **CONCLUSION**

For these reasons, the Presidential Election results certified by the 67 counties' Supervisors of Elections to the Florida Secretary of State on November 14, 2000, should be deemed by this Honorable Court as the final results of the Florida Presidential Election. Because the Certification of the Bush electors is somewhat in doubt as a result of this Court's vacating of the Florida Supreme Court decision of November 21, 2000, it is respectfully submitted that this Court should deem the said November 14, 2000 results,

which gave the Bush electors a plurality in Florida, require that Florida's 25 electoral college votes be cast by the Bush-Cheney electors.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery or United States Mail, First Class Postage prepaid, to THEODORE B. OLSON, ESQUIRE, Counsel of Record for Petitioners, 1050 Connecticut Avenue, NW, Washington, DC 20036; and LAURENCE H. TRIBE, ESQUIRE, Counsel of Record for Respondents, 1575 Massachusetts Avenue, Hall 420, Cambridge, MA 02138, on this 10<sup>th</sup> day of December, 2000.

  
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WILLIAM KEMPER JENNINGS