IN THE SUPREME COURT OF FLORIDA

CYNTHIA McCAULEY,
Plaintiff

vs. CASE NO. SC00-2462

MARC NOLEN, RICHARD STEWART, THE HONORABLE THOMAS WELCH, in their official capacities as members of the BAY COUNTY CANVASSING BOARD; Secretary of State KATHERINE HARRIS, Secretary of Agriculture BOB CRAWFORD, and the Director of the Division of Elections L. CLAYTON ROBERTS in their official capacities and as the FLORIDA ELECTIONS CANVASSING COMMISSION; GEORGE W. BUSH; and DICK CHENEY,
Defendants

RESPONSE TO NOLEN'S SUGGESTION OF MOOTNESS AND GEORGE BUSH'S MOTION TO DISMISS

Appellant, CYNTHIA McCAULEY, through her undersigned attorney responds to the Suggestion of Mootness of Appellees Marc Nolen, Richard Stewart, The Honorable Thomas Welch in their official capacities as members of the Bay County Canvassing Board and the Motion to Dismiss of George W. Bush and states as follows:

1. The argument is made because December 12, 2000, has come and gone, the contest action is moot. The date of December 12 is not established in Florida Statutes. The December 12, 2000, date existed as a buffer to create time in which to identify Florida electors for the Electoral College by December 18, 2000. Both of these dates are significant to identify the Florida electors selected to be counted by the United States Congress on or about January 5, 2001. Obviously, the Florida judiciary has and probably should continue to work to expedite contest actions to serve the

public policy of electoral finality. However, there is no basis in the law for dismissing a contest action by declaring it moot because of delay. Moreover, the more significant deadline for purposes of deciding Florida's electors is the meeting of the United States Congress on or about January 5, 2001. Any Florida judicial decisions after January 5, 2001, may conflict with federal laws governing the procedures for selection of the President and inauguration. Prior to January 5, 2001, however, the resolution of Florida judicial matters and their impact on the chosen electors from the State of Florida would merely mean that two competing slates of electors are in place on January 5, 2001. Competing slates of electors were created after December 12 by the State of Hawaii in the 1960 Presidential race between John F. Kennedy and Richard M. Nixon. U.S. News & World Report, December 11, 2000, "When is a deadline not a deadline," page 38.

2. If this Court determines that the McCauley appeal has merit and should be remanded, the broad range of remedies available under Fla. Stat. Section 102.168 are all still fully available to the Circuit Court. Under current equal protection jurisprudence, it would be a denial of equal protection to dismiss McCauley's contest rights as moot simply because the lower court made errors of law or delayed the appellant's right to an immediate hearing. Certainly, there is a denial of equal protection due to the two tier electoral system created when Governor Jeb Bush of the executive branch of Florida offered selected segments of the population, mostly Republicans, the convenience of voting from their own home and did not make an equal offer to the remainder of Florida citizens.

3. George Bush makes the additional argument that Appellant's lawsuit should be dismissed because Vice-President Al Gore made a concession speech on December 13, 2000. Of course, there is no legal basis for dismissing the lawsuit because of Al Gore's withdrawal or concession. The political decisions affecting Vice-President Al Gore's speech should not affect the

contest rights of Appellant Cynthia McCauley. Appellant Cynthia McCauley's complaint sought a wide range of judicial remedies including injunctions, declarations of law, up to and including the validation of certain absentee votes. Regardless of the posture of the presidential race, these remedies remain availing.

4. Furthermore, the issues of this case as recognized by the First District Court of Appeals include issues of great public importance. An exception to the doctrine of mootness exists concerning issues of great public importance. In Re Dubreuil, 629 So.2d 819 (Fla. 1993). Moreover, the issues presented in this case are likely to reoccur with each election. If the political parties believe that they can convert Florida to a mail-in ballot state through widespread use of absentee ballot voting, those with the money and resources to do so, will take advantage of this method of increasing their get out the vote.

5. It is apparent from the answer briefs of George W. Bush and Katherine Harris, that there is no direct response to this Court's holding in Boardman v. Esteva that to be in substantial compliance an absentee voter must in some sense be absent. This Court's ruling in this case will likely therefore have a substantial impact on how future elections in the State of Florida are conducted.

For the foregoing reasons, the Appellant Cynthia McCauley respectfully requests this Court to deny the Suggestion of Mootness of the Bay County Canvassing Board and the Motion to Dismiss of George W. Bush and requests such further relief as this Court deems proper.

Respectfully submitted,

By:_____

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Appellant,

vs.

MARC NOLEN, et al.,

Appellees

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CASE NO. SC00-2462
DCA CASE NO. 1D00-4825
Circuit Case No. 00-2802

APPELLEE CYNTHIA MCCAULEY'S RESPONSE TO NOLEN'S SUGGESTION OF MOOTNESS AND GEORGE BUSH'S MOTION TO DISMISS

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by fax and U.S. mail to the following on this _____ day of December, 2000.

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