



14 Suite 600 South  
15 Washington, D.C. 20005-3807

16 Representing the Defendant:

17 FRED H. BARTLIT, ATTORNEY AT LAW  
18 -and-  
19 PHILIP BECK, ATTORNEY AT LAW  
20 -and-  
21 GLEN E. SUMMERS, ATTORNEY AT LAW  
22 1899 Wynkoop Street, 8th Floor  
23 Denver, Colorado 80202

24 IRVIN TERRELL, ATTORNEY AT LAW  
25 1299 Pennsylvania Avenue, NW  
0003 Washington, D.C. 20004-2400

26 BARRY RICHARD, ATTORNEY AT LAW  
27 101 East College Avenue  
28 Tallahassee, Florida 32301

29  
30

31 APPEARANCES:

32  
33 Representing the Secretary of State:  
34 JOSEPH KLOK, ATTORNEY AT LAW  
35 -and-  
36 THOMAS M. KARR, ATTORNEY AT LAW  
37 200 South Biscayne Boulevard  
38 Miami, Florida 33131-2398

39 Representing Miami-Dade Canvassing Board:  
40 MURRAY GREENBURG, ATTORNEY AT LAW  
41 (Via Telephone)  
42 111 Northwest First Street  
43 Miami, Florida 33128

44 Representing Nassau County Canvassing Board:  
45 MICHAEL S. MULLIN, ESQUIRE.  
46 Via Telephone  
47 Post Office Box 1010  
48 Fernandina Beach, Florida 32035-101

49  
50 Representing:

51 GARY RUTLEDGE, ATTORNEY AT LAW  
52 215 South Monroe Street, Suite 420  
53 Tallahassee, Florida 32301

54  
55 Representing Palm Beach County Canvassing Board:

56  
57 ANDREW McMAHON, ATTORNEY AT LAW  
58 501 North Olive Avenue, Suite 601  
59 West Palm Beach, FL 33401-4705

60  
61  
62

23  
24  
25  
0004

1 APPEARANCES:

2  
3  
4  
5  
6

Representing Intervenors, Carr, et al.:  
WILLIAM KEMPER JENNINGS, ATTORNEY AT LAW  
Three Clifford Drive  
Shalimar, Florida 32579

7  
8  
9

Representing Intervenors, Cruce, et al.:  
  
FRANK MYERS, ESQUIRE  
-and-  
MANUEL KLAUSNER, ATTORNEY AT LAW  
215 South Monroe Street, Suite 700  
Tallahassee, Florida 32301

10  
11  
12  
13  
14  
15

Representing Intervenor, Butler:  
TERRELL C. MADIGAN, ATTORNEY AT LAW  
-and-  
CHRIS BARKAS, ATTORNEY AT LAW  
Post Office Box 2174  
Tallahassee, Florida 32302

16  
17  
18  
19  
20  
21  
22  
23  
24  
25

\* \* \* \* \*

0005

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

INDEX

ITEM	PAGE
PROCEEDINGS COMMENCEMENT	
CERTIFICATE OF REPORTER	00

\* \* \* \* \*

19  
20  
21  
22  
23  
24  
25  
0006

1 PROCEEDINGS

2 THE COURT: All right. At this time we'd call the case  
3 of Albert Gore, et al., versus Catherine Harris, et al. ,  
4 Case Number 00-2808.

5 At this time, the action having been tried, the Court  
6 at this time will enter its ruling from the bench, as to the  
7 exigencies surrounding this case, the ruling and findings  
8 shall be incorporated into the final judgment, and shall be  
9 immediately entered herein.

10 At this time the Court finds and concludes as follows:  
11 The complaint filed herein states in its first paragraph that  
12 this is an action to contest the state certification in the  
13 presidential election of 2000, asserting that the state  
14 Elections Canvassing Commission's certification on in  
15 November 26th, 2000, was erroneous, and the vote totals  
16 wrongly included illegal votes, and do not include legal  
17 votes that were improperly rejected.

18 Plaintiffs further contest the State of Florida's  
19 certification of the electors for George W. Bush and Richard  
20 Cheney as being elected.

21 They further challenge and contest the election  
22 certifications of the Canvassing Boards of Dade, Palm Beach,  
23 and Nassau Counties.

24 As to the Dade Canvassing Board, the Plaintiffs seek to  
25 compel the Dade board to include in its certification, and

0007

1 the state elections canvassing commission to include in the  
2 certification, a six-vote change in favor of Plaintiffs,  
3 resulting from the board's initial test and partial manual  
4 recount of one-percent of the countywide vote total conducted  
5 with respect to three precincts, designated by the Plaintiffs  
6 designee.

7 Also, additional votes manually hand-counted, and a  
8 further partial recount total resulting from the board's  
9 discretionary decision to stop completion of a full manual  
10 recount of all the votes and all the precincts in Dade,  
11 because of insufficiency of time to complete the same.

12 These represent the results of the count of an  
13 additional 136 precincts of the 635 precincts in Dade County.

14 And, also, the results of any Court order, manual  
15 review and recount of some nine to ten thousand voter cards  
16 or ballots, which at Plaintiff's request, have been  
17 separated, or were separated as alleged undervotes by the  
18 Dade Canvassing Board, or the Dade Supervisor of Elections,  
19 as a result of all of the countywide ballots being processed  
20 through the counting machines a third time and being

21 nonreadable by the machine.

22 As to the Palm Beach Canvassing Board, Plaintiffs seek  
23 to compel the Palm Beach board to include in its  
24 certification, and the State Elections Canvassing Commission  
25 to include, in the state certification, additional votes

0008

1 representing the results of an attempted partial  
2 certification of results, completed before the November 26th,  
3 2000 deadline, mandated by the Florida Supreme Court, as well  
4 as the additional remainder of the results of the manual  
5 recount, which was completed after the deadline, and the  
6 attempted certification thereof on December 1.

7 And in addition, the result of any Court ordered manual  
8 review and recount of some 3,300 ballots which were objected  
9 to during the Palm Beach board's manual recount which  
10 Plaintiffs allege should have been counted as ballot votes  
11 because that board used an improper standard.

12 As to Nassau, the Nassau County Canvassing Board, the  
13 Plaintiffs seek to compel the Nassau Board to amend its  
14 certification, and the State Elections Canvassing Commission  
15 to amend the state certification to reflect and include the  
16 results of the board's machine recount, rather than the  
17 results of the board's original machine count, thereby  
18 resulting in a favorable net gain to Plaintiffs, of 51 votes.

19 It is the established law of Florida as reflected in  
20 State v. Smith that where changes or charges of irregularity  
21 of procedure or inaccuracy of returns in balloting and  
22 counting processes have been alleged, that the Court must  
23 find as a fact that a legal basis for ordering any recount  
24 exists before ordering such recount.

25 Further, it is well established and reflected in the

0009

1 opinion of Judge Joanos and Smith v. Tine, that in order to  
2 contest election results under Section 102.168 of the Florida  
3 Statutes, the Plaintiff must show that, but for the  
4 irregularity, or inaccuracy claimed, the result of the  
5 election would have been different, and he or she would have  
6 been the winner.

7 It is not enough to show a reasonable possibility that  
8 election results could have been altered by such  
9 irregularities, or inaccuracies, rather, a reasonable  
10 probability that the results of the election would have been  
11 changed must be shown.

12 In this case, there is no credible statistical  
13 evidence, and no other competent substantial evidence to  
14 establish by a preponderance of a reasonable probability that  
15 the results of the statewide election in the State of Florida  
16 would be different from the result which had been certified  
17 by the State Elections Canvassing Commission.

18 The Court further finds and concludes the evidence does  
19 not establish any illegality, dishonesty, gross negligence,  
20 improper influence, coercion, or fraud in the balloting and  
21 counting processes.

22 Secondly, there is no authority under Florida law or

23 certification of an incomplete manual recount of a portion  
24 of, or less than all ballots from any county by the state  
25 elections canvassing commission, nor authority to include any

0010

1 returns submitted past the deadline established by the  
2 Florida Supreme Court in this election.

3 Thirdly, although the record shows voter error, and/or,  
4 less than total accuracy, in regard to the punchcard voting  
5 devices utilized in Dade and Palm Beach Counties, which these  
6 counties have been aware of for many years, these balloting  
7 and counting problems cannot support or effect any recounting  
8 necessity with respect to Dade County, absent the  
9 establishment of a reasonable probability that the statewide  
10 election result would be different, which has not been  
11 established in this case.

12 The Court further finds that the Dade Canvassing Board  
13 did not abuse its discretion in any of its decisions in its  
14 review in recounting processes.

15 Fourthly, with respect to the approximate 3,300  
16 Palm Beach County ballots of which Plaintiffs seek review,  
17 the Palm Beach Board properly exercised its discretion in its  
18 counting process, and has judged those ballots which the  
19 Plaintiff wish this Court to, again, judge de novo.

20 The old cases upon which Plaintiff rely are rendered  
21 upon mandamus prior to the modern statutory election system  
22 and remedial scheme enacted by the Legislature of the State  
23 of Florida in Chapter 102 of the Florida Statutes.

24 The local boards have been given broad discretion which  
25 no Court may overrule, absent a clear abuse of discretion.

0011

1 The Palm Beach County board did not abuse its  
2 discretion in its review and recounting process.

3 Further, it acted in full compliance with the order of  
4 the Circuit Court in and for Palm Beach County.

5 Having done so, Plaintiffs are estopped from further  
6 challenge of this process and standards. It should be noted,  
7 however, that said process and standards were changed from  
8 the prior 1990 standards, perhaps contrary to Title III,  
9 Section (5) of the United States code.

10 Furthermore, with respect to the standards utilized by  
11 the Board in its review and counting processes, the Court  
12 finds that the standard utilized was in full compliance with  
13 the law and reviewed under another standard would not be  
14 authorized, thus creating a two-tier situation within one  
15 county, as well as with respect to other counties.

16 The Court notes that the Attorney General of the State  
17 of Florida enunciated his opinion of the law with respect to  
18 this, in a letter dated November 14, 2000, to the Honorable  
19 Charles E. Burton, Chair of the Palm Beach County Canvassing  
20 Board, which, in part, is as follows: "A two-tier system  
21 would have the effect of treating voters differently,  
22 depending upon what county they voted in."

23 The voter in a county where a manual count was  
24 conducted, would benefit from having a better chance of

25  
0012

having his or her vote actually counted, than a voter in a county where a hand count was halted. As the State's chief legal officer, I feel a duty to warn that the final certified total for balloting in the State of Florida includes figures generated from this two-tier system of differing behavior by official Canvassing Boards, the State will incur a legal jeopardy under both the United States and the state constitutions.

8 This legal jeopardy could potentially leave Florida having all of its votes, in effect, disqualified, and this state being barred from the Electoral College's election of a President.

12 The Court finds further that the Nassau County Canvassing Board did not abuse its discretion in its certification of Nassau County's voting results.

15 Such actions were not void or illegal, and was done with the proper exercise -- within the proper exercise of its discretion upon adequate and reasonable public notice.

18 Further, this Court would further conclude and find that the properly stated cause of action under Section 102.168 of the Florida Statutes to contest a statewide federal election, the Plaintiff would necessarily have to place at issue and seek as a remedy with the attendant burden of proof, a review and recount on all ballots, and all of the counties in this state with respect to the particular alleged irregularities or inaccuracies in

0013

1 the balloting or counting processes alleged to have occurred.

2 As recently stated by Judge Kline with the concurrence of Chief Judge Warner in the Fourth District Court of Appeal case, of *Bedell v. Palm Beach Canvassing Board*, Section 102.168 provides in Subsection (1) that the certification of elections may be contested for presidential elections. Section 103.011 provides that, "The Department of State shall certify as elected the presidential electors of the candidates for President and Vice President who receive the highest number of votes."

11 There is in this type of election, one statewide election, and one certification. Palm Beach County did not elect any person as a presidential elector, but, rather, the election with the winner-take-all proposition, dependent on the statewide vote.

16 Finally, for the purpose of expedition, due to the exigencies surrounding these proceedings, this Court will deny those portions of the pending motions to dismiss of the various parties herein not affected by or ruled upon in these findings and conclusions in those portions consisting solely of matters of law being reviewable upon such denial.

22 In conclusion, the Court finds that the Plaintiff failed to carry the requisite burden of proof, and the judgment shall be hereby entered, and the Plaintiffs will take nothing by this action. All ballots in the possession

0014

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

of the Clerk of this Court shall remain pending review. A judgment will be entered and filed with the Clerk immediately following the hearing.

(HEARING CONCLUDED AT 4:48 P.M.)

0015

1 , through 14, are a true and correct record of the aforesaid proceedings.

0016

1 Certified Realtime Reporter  
2 519 East Park Avenue  
3 Tallahassee, Florida 32301  
4 (850)222-5508  
5 My Commission Expires March 20, 2001

6

7

CERTIFICATE OF NOTARY

8

9

STATE OF FLORIDA:

10

COUNTY OF LEON:

11

12

I, B. J. QUINN, Notary Public in and for the State of Florida at Large, do hereby certify that the witness personally appeared before me and was first duly sworn by me to testify to the truth on the date and time indicated herein.

13

14

15

16

17

B. J. QUINN, RPR, CCR, CMR  
Certified Realtime Reporter  
519 East Park Avenue  
Tallahassee, Florida 32301  
(850) 222-5508.

18

19

20

21

0017

1

2

3



4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25