

**IN THE SUPREME COURT OF FLORIDA**  
**CASE NOS.: SC00-2346, SC00-2348 & SC00-2349**

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**PALM BEACH COUNTY  
CANVASSING BOARD**

**vs. KATHERINE HARRIS, ET  
AL.**

**VOLUSIA COUNTY  
CANVASSING BOARD**

**vs. MICHAEL MCDERMOTT,  
ET AL.**

**FLORIDA DEMOCRATIC PARTY**

**vs. MICHAEL MCDERMOTT,  
ET AL.**

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

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**RESPONSE IN OPPOSITION TO REPLY BRIEF**

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Petitioner Al Gore, Jr., and Florida Democratic Party filed a Reply Brief at 3:00 p.m. on Sunday, November 19, 2000, which raised for the first time entirely new issues regarding the setting of standards for the counting of ballots by County Canvassing Boards. This issue is not raised in either of the cases in the consolidated appeal. No factual record exists on this issue, and we have had no opportunity to respond to this question.

The Court is without power to decide this question of ballot standards because there is no case before them raising the question. Moreover, this is an intensely fact-bound question, and there is no existing Florida law on this question. It would thus be particularly inappropriate to decide this question in this legal and evidentiary vacuum. At a minimum, if the Court does proceed, we request an opportunity to be heard on this question.

In addition, as the Court's repeated inquiries during oral argument made clear, there is an extremely tight timeframe for consideration of these issues. As the Court recognized, the State of Florida must conclusively select its electors by December 12, 2000, or risk not having its electors participate in the election of President. See 3 U.S.C. § 5. Florida law provides by right that an unsuccessful candidate may contest the certification of election. Section 102.168, Florida Statutes, provides that such contestant shall have 10 days after the last county canvassing board certifies its election result or 5 days after the last county canvassing board certifies the

results of a particular election following a protest. Section 102.168(6), Florida Statutes, further provides that the defendant to such contest shall have 10 days after the complaint has been served to file an answer admitting or denying the allegations on which the contestant relies. There is then a statutory provision for an evidentiary hearing with the taking of testimony, § 102.168(7), Fla. Stat., and any ruling by the circuit judge would be subject to appeal. Even on an expedited basis, it is difficult to believe that such legal proceedings could take less than at least 7 days. Thus, Florida statutory law at the very minimum provides for a 22 to 27 day period for contesting an election. Counting back from December 12, 2000, this would require that the certification of election be completed by November 20, 2000, at the very latest.

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