IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT,
LEON COUNTY, FLORIDA, CIVIL DIVISION

ALBERT GORE, JR., Nominee of the
Democratic Party of the United States for
President of the United States, et al.,

Plaintiffs,

v.

KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, et al.,

Defendants.
_____/

CASE NO.: 00-2808

FILED
00 NOV 28 PM 12:54
DAVE LANG
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

EMERGENCY MOTION TO COMMENCE COUNTING
OF VOTES IN MIAMI-DADE AND PALM BEACH COUNTIES
PURSUANT TO BECKSTROM AND REQUEST FOR IMMEDIATE HEARING

Plaintiffs Albert Gore, Jr., as Nominee of the Democratic Party of the United States for President of the United States, et al., submit this Emergency Motion to Commence Counting of Votes in Miami-Dade and Palm Beach Counties in accordance with the procedure validated in *Beckstrom v. Volusia County Canvassing Board*, 707 So. 2d 720 (Fla. 1998) and requests an immediate hearing upon this motion. The following grounds support this motion.

1. This Court has the power and duty to direct immediately the counting of approximately 10,500 unrecorded votes in Miami-Dade County and 3,300 disputed ballots in Palm Beach County pursuant to Section 102.168(8), Florida Statutes (2000), as well as Fla.R.Civ.P. 1.610.

2. The duty of courts to require manual recounts is well-settled in Florida. *State v. Peacock*, 125 Fla. 810, 170 So. 309 (1936) (recount conducted under the "Order of this Court");

State v. Latham, 125 Fla. 788, 170 So. 472 (1936); *Hornsby v. Hilliard*, 189 So. 2d 361 (Fla. DCA 1966) (court-ordered recount).

3. In *Beckstrom v. Volusia County Canvassing Board*, 707 So. 2d 720, 722 (Fla. 1998), that trial court's responsibility was compellingly validated. In its analysis of the critical role of manual recounts of the disputed ballots – in that case, over 8,000 thousand absentee ballots – the Supreme Court of Florida said:

> . . . appellant moved the court to order a manual recount of the absentee ballots. The court granted the motion, and the clerk of the circuit court conducted a re-count, which was observed by representatives for both candidates.

Thus, in *Beckstrom*, the power of the trial judge to direct manual recounting of disputed ballots was strongly endorsed by the Supreme Court of Florida – as was the decision by that Judge to direct the Clerk to execute that tabulation. *Beckstrom*, 707 So. 2d at 722.[1] In the present case, in which the Miami-Dade Canvassing Board simply stopped counting votes in the face of orchestrated intimidation that included screaming, door-poundings and physical assaults, the need for the judiciary to transcend mob action in Miami is clear and urgent.

4. That same evening, the Third District Court of Appeal ruled that because its recount "could affect the outcome of the election" the Miami-Dade Canvassing Board had a "mandatory obligation" to proceed with manual recounting. *Miami-Dade Democratic Party v. Miami Dade Canvassing Board*, Case No. 3D00-318 (Fla. 3d DCA, Nov. 22, 2000). Op. at 2-3. While denying mandamus to require completing the recount of 653,000 ballots prior to the November 26, 2000

---

[1] Manual recounts were overwhelmingly vindicated last week in *Palm Beach Canvassing Board v. Harris*, Nos. SC00-2346, SC00-2348 and SC00-2349 (Fla. Nov. 21, 2000).

certification, due to the lack of sufficient time, the denial was without prejudice to seeking relief elsewhere. In similar fashion, the Supreme Court of Florida denied mandamus without prejudice so that the manual recount obligations of the Miami-Dade Canvassing Board could be resolved "in any future proceedings."

5. This motion invokes, *inter alia*, the mandatory recount obligations that are now before this Court for enforcement. To remedy Miami-Dade's improper abdication of its legal responsibility, this Court has the duty to direct that a manual recount of the disputed votes be conducted by the clerk of the court – the result explicitly validated in *Beckstrom*.

6. Given the obvious and urgent exigencies that require the commencement of this count, we respectfully urge the Court not to delay in making any decision.

7. The single critical issue in this case is the counting of the contested ballots. That counting must commence now if this contest is to be resolved within the time set by the Supreme Court. In addition to the counting of 10,500 unrecorded ballots in Miami-Dade, manual recounting should be directed for the 3,300 disputed ballots in Palm Beach County. We propose three alternative ways for that count to commence.

(1) A count by the Circuit Court Clerk – In *Beckstrom v. Volusia County Canvassing Board*, 707 So. 2d 720, 722 (Fla. 1998), the Supreme Court approved a procedure whereby "the clerk of the circuit court conducted a re-count, which was observed by representatives of both sides." In the present case, such a count could be conducted either

(a) by the clerks of Miami-Dade and Palm Beach Counties (which would eliminate the delay and other issues raised by transferring the ballots to this Court), or

(b) by the Clerk of this Court.

(2) A count by other judges of the Circuit Court of Leon County pursuant to an order of this Court pursuant to Section 102.168(8). That provision – Section 102.168(8) – gives this Court broad powers to enter whatever orders are required to decide this contest within the time set by the Florida Supreme Court. Defendants have objected to Plaintiffs' proposal for the appointment by this Court of a Special Master, or Special Masters, to conduct the count on the ground that such a count is a judicial determination. Defendants can hardly object to the appointment of Circuit Court judges to conduct the count.

8. Either of these procedures would be acceptable to Plaintiffs. We ask that this Court hold an immediate hearing on this issue and, upon its completion, order that the count of the contested ballots begin immediately by whichever of these procedures the Court elects.

9. The urgent duty to resume recounting must be resolved by this Court forthwith. Section 102.168(7) creates an unequivocal affirmative duty for the court to hold an "immediate" hearing when there is an election contest. The Section provides: "Any candidate, qualified elector, or taxpayer presenting such a contest to a circuit judge is entitled to an immediate hearing." The only discretion afforded to the court is in determining the amount of time for taking testimony. But even then, the court must ensure that the hearing is conducted with sufficient speed to resolve all of the necessary issues in a timely fashion.

10. As the court held in *Adams v. Canvassing Board of Broward County*, 421 So. 2d 34, 35 (Fla. 4th DCA 1982) regarding Section 102.168(7): "Part of the purpose of the protest and contest provisions of the election code is to effect a speedy resolution of such conflicts, with minimal disruption of the electoral process." This Court thus has the obligation to expedite the schedule and

conduct for the hearing to ensure that it is completed without risking any disruption to the electoral process.[2]

11. The duty to proceed forthwith with manual recounting is firmly anchored on Supreme Court of Florida precedent as old as *Peacock* and *Latham* and as new as the 1998 decision in *Beckstrom* and last week's ruling in *Harris*. It is further predicated upon the broad remedial powers in a contest action under Section 102.168(8), Florida Statutes (2000).

12. It is further premised upon Fla.R.Civ.P. 1.610 because the circumstances described herein, along with those set forth in the Complaint to Contest An Election and the Motion to Compel Counting of Votes, clearly establish: (a) irreparable harm; (b) lack of adequate remedy at law; (c) sufficient likelihood of success on the merits; and (d) compelling needs of the public for an immediate resolution of the disputed ballots.[3]

---

[2] In considering other Florida laws using the phrase "immediate hearing," courts have consistently held that this statutory command must be taken literally. For example, the Florida Public Records Act requires courts to provide an "immediate" hearing on actions under the law. (§119.11(1), Fla. Stat.: "Whenever action is filed to enforce the provisions of this chapter, the court shall set forth an immediate hearing, giving the case priority over all other pending cases.") In *Salvador v. Fennelly*, 593 So.2d 1091 (Fla. 4th DCA 1992), the court emphasized that the word "immediate" means what it says: prompt and urgent action is necessary. The city, whose denial of records was challenged, argued that Section 119.11(1) required only a hearing in a "reasonable time." The court, however, dismissed this argument as "patently unreasonable." *Id.* at 1093. The court declared: "The fact that the statutory mandate for an early hearing may be difficult to accommodate does not mean, however, it must not be done."

[3] This Court's power to order immediate resumption of the manual recounting in this Section 102.168 contest proceeding is strongly supported by statements of the canvassing board itself which responded before the District Court on the issue of manual recounts and said:

> Florida Statutes Section 102.168 provides just such a remedy, allowing a contest of the election results after the protests have been resolved and the returns certified. *See* §102.168, Fla. Stat.

(Canvassing Board Response, Nov. 22, 2000, at 7.)

CONCLUSION

For the reasons set forth, Plaintiffs urge this Court to direct the immediate counting of disputed ballots in Miami-Dade and Palm Beach Counties.

Respectfully submitted this 28 day of November, 2000.

COUNSEL FOR ALBERT GORE, JR. AND JOSEPH I. LIEBERMAN.

W. Dexter Douglass
Douglass Law Firm
211 East Call Street
Tallahassee, FL 32302
Telephone: 850/224-6191
Facsimile: 850/224-3644

David Boies
Boies, Schiller & Flexner LLP
80 Business Park Drive, Suite 110
Armonk, NY 10504
Telephone: 914-273-9800
Facsimile: 914-273-9810

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by United States mail, hand delivery or facsimile transmission this 28th day of November, 2000 to the following:

Barry Richard
Greenberg Traurig
101 East College Avenue
Tallahassee, FL 32301
for Governor Bush

Deborah Kearney, General Counsel
Florida Department of State
400 South Monroe Street, PL 02
Tallahassee, FL 32399
for Secretary Katherine Harris and
the Elections Canvassing Committee

Donna E. Blanton
Joseph Klock
Steel Hector & Davis
215 South Monroe Street, Suite 601
Tallahassee, FL 32301-1804
for Secretary Katherine Harris and
the Elections Canvassing Committee

Tucker Ronzetti
Assistant County Attorney
111 N.W. 1st Street
Miami, FL 33130
for Miami-Dade County Canvassing Board

Ben Ginsburg
State Republican Headquarters
420 West Jefferson Street
Tallahassee, FL 32301
for the Republican Party

Craig Meyer
Florida Department of Agriculture and
Consumer Services
The Capitol
Tallahassee, FL 32399

Andrew McMahon
Palm Beach County Attorney Office
301 N Olive Avenue, Suite 601
West Palm Beach, FL 33401-4705
for Palm Beach Canvassing Board

Bruce Rogow
Bruce S. Rogow, P.A.
500 East Broward Boulevard, Suite 1930
Ft. Lauderdale, Florida 33394
for Palm Beach Canvassing Board

Michael S. Mullin
191 Nassau Place
Yulee, Florida 32097
for Nassau County Canvassing Board

Terrell C. Madigan
McFarlain Wiley Cassedy & Jones
215 South Monroe Street, Suite 600
Tallahassee, FL 32301-1804
for Intervenor Butler

R. Frank Myers
Messer Caparello & Self
215 South Monroe Street, Suite 701
Tallahassee, Florida 32301
for Intervenor Named West Florida Voters

Kendall Coffey
Attorney