

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

ALBERT GORE, JR., etc., et al.,

CASE NO. CL 00-2808

Plaintiffs,

v.

KATHERINE HARRIS, etc., et al.,

Defendants.

FILED
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DAVE LANG
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

**ANSWER AND AFFIRMATIVE DEFENSES OF THE PALM BEACH
COUNTY CANVASSING BOARD AND ITS MEMBERS**

Defendants THE PALM BEACH COUNTY CANVASSING BOARD and its members, THERESA LEPORE, Supervisor of Elections of Palm Beach County, CHARLES E. BURTON and CAROL ROBERTS (collectively "the PALM BEACH COUNTY CANVASSING BOARD") state as follows for their Answer and Affirmative Defenses to the Complaint to Contest Election (the paragraph numbers of the Answer correspond to those of the Complaint):

ANSWER

1. First and second sentences admitted. Without knowledge as to inclusion of illegal votes and the last sentence, and so denied to that extent.
2. Admitted.
3. Admitted as to subparagraph a; denied as to subparagraph c; otherwise, without knowledge and so denied.
4. Admitted.
5. Admitted.

6. Admitted.
7. First sentence admitted; otherwise, without knowledge and so denied.
8. First sentence admitted; otherwise, without knowledge and so denied.
9. Admitted.
10. Admitted.
11. Admitted.
12. Admitted.
13. Admitted.
14. Admitted.
15. Admitted.
16. Admitted.
17. Admitted.

Count I (Miami-Dade County Canvassing Board)

18.-35. This Count is not directed to the PALM BEACH COUNTY CANVASSING BOARD, and these Defendants make no response to the allegations.

Count II (Miami-Dade County Canvassing Board)

36.-39. This Count is not directed to the PALM BEACH COUNTY CANVASSING BOARD, and these Defendants make no response to the allegations.

Count III (Nassau County Canvassing Board)

40.-56. This Count is not directed to the PALM BEACH COUNTY CANVASSING BOARD, and these Defendants make no response to the allegations.

Count IV (Rejection of Palm Beach Manual Count)

57. The PALM BEACH COUNTY CANVASSING BOARD restates and incorporates by reference paragraphs 1-17 of this Answer.

58. Admitted.

59. Admitted.

60. Admitted.

61. Admitted.

62. Admitted.

63. Admitted.

64. Admitted.

65. Without knowledge and so denied.

66. Without knowledge and so denied.

Count V (Palm Beach County Canvassing Board's Failure to Complete Manual Recount)

67. The PALM BEACH COUNTY CANVASSING BOARD restates and incorporates by reference paragraphs 1-17 and 58-66 of this Answer.

68. Admitted.

69. Admitted that the PALM BEACH COUNTY CANVASSING BOARD stopped its manual recount after it received an opinion that was binding on it until it was reviewed and overturned by the Florida Supreme Court (no court previously reviewed or considered that opinion or its impact). See Section 106.23(2), Fla. Stat.

70. Admitted.

71. Admitted.

72. Denied.

73. Denied.

74. Denied.

Count VI (Palm Beach County Canvassing Board's Intent Standard)

75. The PALM BEACH COUNTY CANVASSING BOARD restates and incorporates by reference paragraphs 1-17, 58-66 and 68-74 of this Answer.

76. First two sentences admitted; third sentence denied. (Provision and maintenance of voting machines is not the responsibility of the PALM BEACH COUNTY CANVASSING BOARD as a whole; only the Supervisor of Elections and her staff are engaged in those activities.)

77. Denied if the allegation assumes the stylus is fully inserted.

78. Denied.

79. First two sentences admitted; third sentence denied.

80. Denied.

81. Denied. Ballots to which representatives for the Republican and Democratic candidates for President objected have been segregated.

82. Admitted. The Order speaks for itself.

83. Admitted that the case is cited in a footnote in Judge LaBarga's Order; the quoted language does not appear in Judge LaBarga's ruling.

84. Denied, except admitted that a consistent standard was applied when evaluating the totality of circumstances presented by each ballot, and that the pattern of marks on a ballot was among the circumstances evaluated to determine the voter's intent.

85. Admitted that Section 101.5614(5), Florida Statutes, applies to damaged or defective ballots. Admitted that part of Section 101.5614(6) has been quoted.

86. Admitted.

87. Denied.

88. Denied.

AFFIRMATIVE DEFENSES

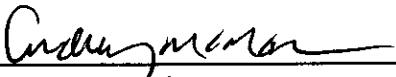
1. The issues raised in Count VI were twice raised before the Honorable Jorge LaBarga in Florida's Fifteenth Judicial Circuit and once before the Supreme Court of Florida. Neither Court directed that the PALM BEACH COUNTY CANVASSING BOARD adopt the per se rule of *Delahunt v. Johnston*.

2. Determination of a voter's intent from a ballot that is ambiguous is a question of fact; unless there is no evidence from which a reasonable factfinder could reach the same conclusion the factfinder here (the PALM BEACH COUNTY CANVASSING BOARD) reached, the conclusion should not be overturned. Alternatively, the PALM BEACH COUNTY CANVASSING BOARD did not abuse its discretion in determining the voter's intent on each ballot it reviewed. As a further alternative, there was substantial competent evidence to support the PALM BEACH COUNTY CANVASSING BOARD's determinations of voter intent.

WHEREFORE, the PALM BEACH COUNTY CANVASSING BOARD requests that this Court grant such relief as it determines to be just and proper under these extraordinary circumstances.

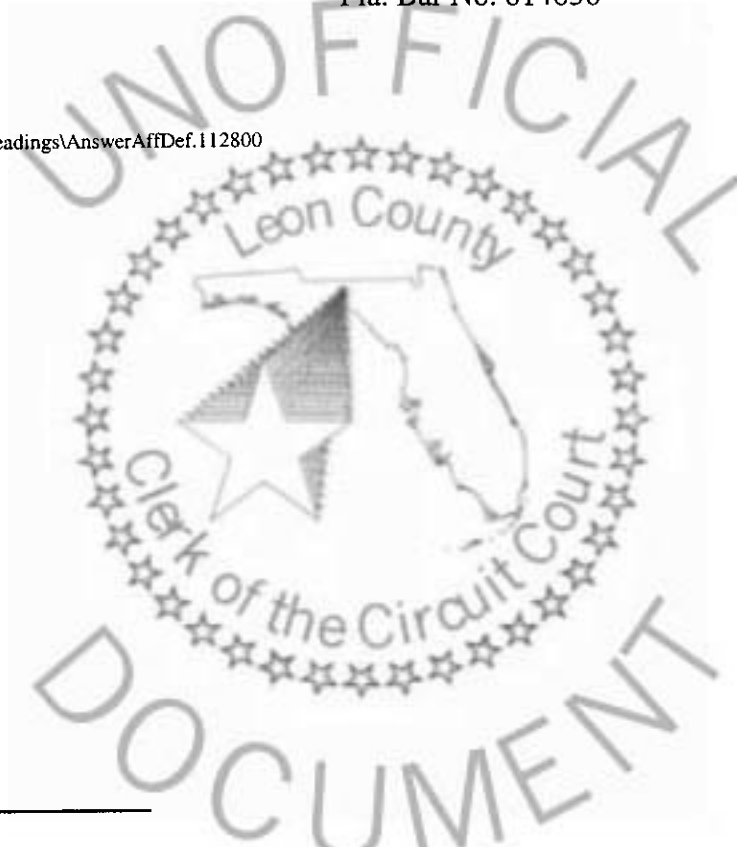
Certificate of Service

I CERTIFY that a copy of the foregoing has been provided by fax & mail this 29th day of November, 2000, to those on the attached service list.



Andrew J. McMahon
Chief Assistant County Attorney
Palm Beach County Attorney's Office
Attorney for Defendants LEPORE, CHARLES E.
BURTON and CAROL ROBERTS
Post Office Box 1989
West Palm Beach, Florida 33402
Tel. 561/ 355-6021
Fax. 561/ 355-4234
E-mail: amcmahon@co.palm-beach.fl.us¹
Fla. Bar No. 814636

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¹ Counsel and the Court are invited to send pleadings, motions, correspondence, and orders as attachments to e-mail rather than by fax.

SERVICE LIST

Barry Richard, Esquire
Greenberg Traurig
101 East College Ave.
Tallahassee, FL 32301
Fax: 850-681-0207
Coordinator for Counsel for Gov. Bush

Gary R. Rutledge, Esquire
Rutledge, Ecenia, Purnell & Hoffman, P.A.
215 South Monroe St., Suite 420
Tallahassee, FL 32301
Fax: 850-681-6515
Coordinator for Counsel for Co. Canv. Boards

Joseph P. Klock, Esquire
Steel Hector & Davis
215 South Monroe St., Suite 610
Tallahassee, FL 32301
Fax: 850-222-8410
Coordinator for Counsel for Secy of State
and Fla. Elections Canv. Comm'n

Mitchell M. Berger, Esquire
Berger Davis & Singerman
215 South Monroe St., Suite 705
Tallahassee, FL 32301
Fax: 850-561-3013
Coordinator for Counsel for V.P. Gore

Terrell C. Madigan, Esquire
McFarlain, Wiley, Cassedy & Jones
215 South Monroe St., Suite 600
Tallahassee, FL 32301
Fax: 850-222-8475
Coordinator for Counsel for Intervenors

