

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Robert C. TOUCHSTON, Deborah SHEPPERD
and Diana L. TOUCHSTON, *Petitioners*,
and
George W. Bush, *Intervenor/Appellee* (11th Cir.)

v.

Michael McDERMOTT, Ann McFALL, Pat NORTHY, Theresa LePORE, Charles E. BURTON,
Carol ROBERTS, Jane CARROLL, Suzanne GUNZBURGER, Robert LEE, David LEAHY,
Lawrence KING, Jr., and Miriam LEHR, in their official capacities as members of the County
Canvassing Boards of Volusia, Palm Beach, Broward and Miami-Dade Counties, respectively;
and Katherine HARRIS, in her official capacities as Secretary of the Department of State and as
a member of the Elections Canvassing Commission, and Clay ROBERTS and Bob
CRAWFORD, in their official capacities as members of the Elections Canvassing Commission,
Respondents
and
Florida Democratic Party, *Intervenor/Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

**PETITIONERS' MOTION TO EXPEDITE CONSIDERATION OF
PETITION FOR A WRIT OF CERTIORARI AND TO SET
EXPEDITED SCHEDULE FOR BRIEFING AND ARGUMENT**

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Rule 29.6 Corporate Disclosure Statement

No parties are corporations.

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Petitioners Robert C. Touchston, Deborah Shepperd, and Diana L. Touchston, as registered voters residing in Brevard County, Florida, respectfully request that this Court expedite its consideration of the petition for a writ of certiorari in this case. Pursuant to Supreme Court Rule 25.4, petitioners further request that, if the Court grants the petition, it expedite the schedule for briefing and oral argument.

This is a case of the utmost national importance and urgency, involving the Constitution's most fundamental rights as exercised in the Nation's most important election. The outcome of the election for the Presidency of the United States may hang in the balance. Petitioners filed this action in the Middle District of Florida on November 13, 2000, seeking declaratory and injunctive relief under the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983. On November 14, the District Court held a hearing on and denied Petitioners' motion for preliminary injunction. The same day, Petitioners filed a notice of appeal and motion for injunction pending appeal, which the District Court denied. On December 6, 2000, the Eleventh Circuit Court of Appeals denied Petitioners' motion for preliminary injunction based on the plurality's contention that irreparable harm had not been demonstrated and refused to reach the merits of Petitioners' constitutional claims. This petition for writ of certiorari is now before this Honorable Court.

Petitioners voted for George W. Bush in the national presidential election held on November 7, 2000, in the county of their residence, Brevard County, Florida. In this action, Petitioners challenge the constitutionality of the Florida Manual Recount Statute, Fla. Stat. § 102.166 (2000) (hereinafter “Manual Recount Statute”), both on its face and as applied to the statewide election for Electors, which was held on November 7, 2000, as well as in future statewide elections. The Manual Recount Statute allows a candidate in a statewide election, as in this case, to request a manual recount of ballots cast in counties selected by the candidate or the candidate’s political party. Furthermore, the county canvassing boards have absolute discretion whether to grant or deny the request for manual recount, and their decision is not subject to any form of statutory or regulatory guidelines.

This statutory framework places at the disposal of partisan political candidates the means to dilute and debase the votes of those voters who do not reside in the selected counties and who did not cast their ballots for the candidate requesting the recount. The Manual Recount Statute creates a two-tiered system that weights the votes cast in some parts of the state more heavily than votes cast in other parts of the state. This problem is exacerbated, because under Florida law there are no statutory or regulatory standards to assist canvassing boards in determining voter intent. As evidenced by the current election controversy, when reviewing ballots pursuant to a manual recount of votes, canvassing boards are free to determine voter intent according to any subjective, arbitrary, or capricious standards and are further free to change such standards within the course of the manual recount. Furthermore, standards used for determining voter intent upon manual inspection of ballots may vary from county to county.

The result of this statutory scheme is that votes in counties selected by candidates are considered more carefully than votes in counties not selected, manufacturing an increase in votes for the selected counties which would not have been otherwise counted. Overall votes in counties not selected are thereby devalued, because individual votes that may be counted in such counties, if manually inspected, will remain uncounted. Because the decision of whether to grant manual recounts in selected counties and what constitutes manifestation of voter intent are subject only to the indiscriminate whim of the county canvassing boards, partisan considerations inevitably infect the democratic process in Florida. The illegal dilution of Petitioners' votes and the votes of those similarly situated has resulted. Accordingly, the Florida Manual Recount Statute is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

It is imperative that the United States Supreme Court hear Petitioners' claims as soon as practicable. This Court's expedited consideration of the petition for writ of certiorari is warranted in order to ensure that Petitioners' constitutional rights are not irretrievably vanquished and to restore stability by bringing the 2000 presidential election to orderly finality in accordance with constitutional law. Time is plainly of the essence: Florida must certify its representatives to the Electoral College before December 18, 2000, the date on which the College meets to select the next President and Vice President of the United States. *See* 3 U.S.C. § 7; *see also* 3 U.S.C. § 5 (setting December 12, 2000 as the deadline for resolving controversies regarding electors). If this matter is not resolved prior to that time, not only Petitioners but the Nation as a whole may suffer irreparable injury. Indeed, the intense national and worldwide attention on the recount efforts to date only foreshadows the disruption that may well follow if

the uncertainty and unfairness that have shrouded this election are allowed to persist. The importance of a prompt resolution of the federal constitutional questions presented by this case cannot be overstated.

Should this Court grant the petition for certiorari on an expedited basis, an expedited briefing schedule is necessary for the same reasons that warrant expedited consideration of the certiorari petition. Particularly given the importance of the issues presented, it is in the best interests of the parties, as well as the Nation, that this Court have as much time as possible to consider the relative merits of the parties' positions and to issue its decision sufficiently in advance of the Electoral College's selection of the next United States President and Vice-President on December 18, 2000.

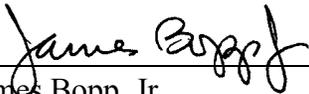
This Court has previously granted expedited treatment of cases involving substantial questions of national importance. *See, e.g., Dames & Moore v. Regan*, 453 U.S. 654 (1981); *United States v. Nixon*, 418 U.S. 683 (1974); *Youngstown Co. v. Sawyer*, 343 U.S. 579 (1952); *Ex parte Quirin*, 317 U.S. 1 (1942). The importance of this case is at least equal to, if not greater than, those landmark decisions. The Presidency, the constitutional rights of Petitioners, and the stability of our democratic process will be in dire jeopardy if this Court does not act soon.

Accordingly, Petitioners respectfully request that Respondents should be directed to file their response(s) to the petition by 7:00 a.m., Sunday, December 10, 2000; that petitioners submit a Reply Brief in support of certiorari by 7:00 a.m., Monday, December 11, 2000; and that the Court issue its ruling on the petition as soon as practicable thereafter. If certiorari is granted, Petitioners submit that opening briefs of both parties, together with any *amicus curiae* briefs, should be filed and served by 7:00 a.m., Wednesday, December 13, 2000; that reply briefs should

be filed and served by 7:00 a.m., Thursday, December 14, 2000; and that oral argument be held on Friday, December 15, 2000.

Respectfully submitted ,

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