

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

ALBERT GORE, Jr., Nominee of the
Democratic Party of the United States for
President of the United States, and
JOSEPH I. LIEBERMAN, Nominee of
the Democratic Party of the United States
for the Vice President of the United States,

Plaintiffs,

v.

CASE NO: 00-2808

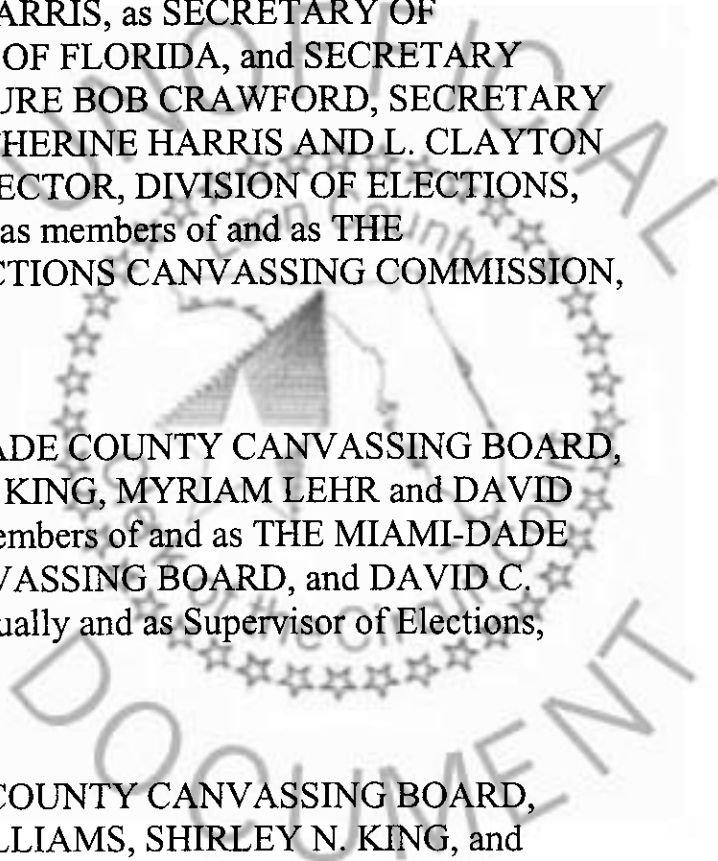
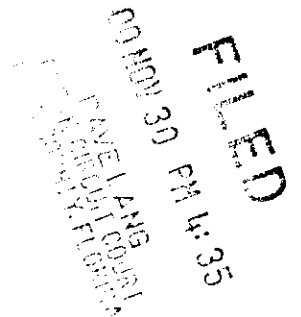
KATHERINE HARRIS, as SECRETARY OF
STATE, STATE OF FLORIDA, and SECRETARY
OF AGRICULTURE BOB CRAWFORD, SECRETARY
OF STATE KATHERINE HARRIS AND L. CLAYTON
ROBERTS, DIRECTOR, DIVISION OF ELECTIONS,
Individually and as members of and as THE
FLORIDA ELECTIONS CANVASSING COMMISSION,

And

THE MIAMI-DADE COUNTY CANVASSING BOARD,
LAWRENCE D. KING, MYRIAM LEHR and DAVID
C. LEAHY as members of and as THE MIAMI-DADE
COUNTY CANVASSING BOARD, and DAVID C.
LEAHY, individually and as Supervisor of Elections,

And

THE NASSAU COUNTY CANVASSING BOARD,
ROBERT E. WILLIAMS, SHIRLEY N. KING, and
DAVID HOWARD (or, in the alternative, MARIANNE
P. MARSHALL), as members of and as the NASSAU
COUNTY CANVASSING BOARD, and SHIRLEY
N. KING, individually and as Supervisor of Elections,



And

THE PALM BEACH COUNTY CANVASSING BOARD, THERESA LEPORE, CHARLES E. BURTON, and CAROL ROBERTS, as members of and as the PALM BEACH COUNTY CANVASSING BOARD, and THERESA LEPORE, individually and as Supervisor of Elections,

And

GEORGE W. BUSH, Nominee of the Republican Party of the United States for President of the United States and RICHARD CHENEY, Nominee of the Republican Party of the United States for Vice President of the United States,

Defendants.

**ANSWER AND AFFIRMATIVE DEFENSES
OF DEFENDANTS GEORGE W. BUSH AND RICHARD CHENEY
TO COMPLAINT TO CONTEST ELECTION**

Defendants Governor George W. Bush and Secretary Richard Cheney submit this Answer and Affirmative Defenses to Complaint to Contest Election filed by Albert Gore, Jr. and Joseph I. Lieberman. The numbered paragraphs below correspond to the numbered paragraphs in the Complaint. All allegations in the Complaint not specifically admitted are denied.

1. Defendants Bush and Cheney admit that the Complaint purports to be an action to contest the certification declaring Governor Bush and Secretary Cheney as the winners of the presidential election in Florida, but they deny that Plaintiffs are entitled to any relief whatsoever. The remaining allegations in Paragraph 1 are denied.

2. Defendants Bush and Cheney admit that Plaintiffs purport to contest the November 26, 2000 certification by the Elections Canvassing Commission and the Secretary of State's certification of the Presidential Electors for Defendants Bush and Cheney, but they deny that Plaintiffs are entitled to contest such certifications.

3. Defendants Bush and Cheney admit that the Elections Canvassing Commission certified 2,912,790 votes for the Republican Presidential Electors and 2,912,253 votes for the Democratic Presidential Electors. The remaining allegations in Paragraph 3 are denied.

4. To the extent that Paragraph 4 purports to invoke the Court's jurisdiction pursuant to Section 102.168 of the Florida Statutes (2000) ("Section 102.168"), that allegation is denied.

5. To the extent that Paragraph 5 purports to establish venue, pursuant to Section 102.1685 of the Florida Statutes (2000), that allegation is denied.

6. The allegations in Paragraph 6 state a legal conclusion as to which no response is required.

7. Admitted.

8. Admitted.

9. The allegations in the first sentence of Paragraph 9 state a conclusion of law as to which no response is required. The allegations in the second and third sentences of Paragraph 9 are admitted. The allegations of the fourth sentence of Paragraph 9 are denied because Jeb Bush declined to serve because his brother is the nominee of the Republican Party, not a candidate.

10. The allegations in the first sentence of Paragraph 10 are admitted. The second sentence is denied, because the Presidential Electors received the votes, not the nominees.

11. The allegations in the first sentence of Paragraph 11 state a conclusion of law as to which no response is required. The allegations in the second sentence are denied.

12. The allegations in Paragraph 12 state a conclusion of law as to which no response is required.

13. The allegations in Paragraph 13 state a conclusion of law as to which no response is required.

14. The allegations in Paragraph 14 state conclusions of law as to which no response is required.

15. The allegations in Paragraph 15 state a conclusion of law as to which no response is required.

16. Admitted.

17. Admitted.

18. Paragraphs 1-17 above are re-alleged.

19. Admitted.

20. Admitted.

21. Defendants Bush and Cheney lack sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 21 and therefore they are denied. In addition, Paragraph 21 states a legal conclusion as to which no response is required.

22. Defendants Bush and Cheney admit that the Miami-Dade County Canvassing Board conducted a sample manual count, that it thereafter declined to conduct a manual recount, and that it eventually reversed itself and decided to conduct a manual recount. The remaining allegations in Paragraph 22 are denied.

23. Defendants Bush and Cheney admit that on November 15, 2000, the Secretary of State did not accept votes submitted by the Miami-Dade County Canvassing Board after 5:00 p.m. on November 14, 2000. The remaining allegations in Paragraph 23 are denied.

24. Paragraph 24 states a legal conclusion as to which no response is required.

25. The allegations in the first, second, and fourth sentences are denied.

Defendants Bush and Cheney lack sufficient information and knowledge to form a

belief as to the truth of the allegations in the third sentence and therefore they are denied.

26. Denied.

27. Defendants Bush and Cheney lack sufficient information and knowledge to form a belief as to the truth of the allegations in the first and second sentences of Paragraph 27 and therefore they are denied. The remaining allegations in Paragraph 27 are denied.

28. The first sentence of Paragraph 28 is denied. Defendants Bush and Cheney lack sufficient knowledge and information to know what the *New York Times* reported, but they deny the substance of any such report.

29. Defendants Bush and Cheney lack sufficient knowledge and information to know what the *New York Times* or other news organizations reported, but they deny the substance of any such reports.

30. Defendants Bush and Cheney admit that in the afternoon of November 22, 2000, after hearing arguments from Plaintiffs' representatives, the Miami-Dade Canvassing Board reaffirmed its earlier announcement that it could not complete a full manual recount by November 26, 2000, expressed doubt that it could complete even a partial manual recount by the Court-imposed deadline, and voted to suspend the manual recount. All remaining allegations of Paragraph 30 are denied.

31. The allegations in the first and second sentences of Paragraph 31 state a conclusion of law as to which no response is required. The remaining allegations in Paragraph 31 are denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Paragraphs 1-17 above are re-alleged.

37. Denied.

38. Denied.

39. Denied.

40. Paragraphs 1-17 above are re-alleged.

41. Denied.

42. Admitted.

43. Denied.

44. Defendants Bush and Cheney admit that the Nassau County Canvassing Board conducted a machine recount on November 8, 2000. All remaining allegations in Paragraph 44 are denied.

45. Denied.

46. Admitted.

47. Denied.

48. Admitted that Marianne Marshall, but not David Howard, attended the November 24, 2000 meeting, but all remaining allegations of Paragraph 48 are denied.

49. The allegations in Paragraph 49 state a conclusion of law as to which no response is required.

50. The allegations in Paragraph 50 state a conclusion of law as to which no response is required.

51. Admitted that the Nassau County Canvassing Board submitted an amended certification on Friday, November 24, 2000, and that the amended certification was included in the results certified by the Elections Canvassing Commission. The remaining allegations are denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

57. Paragraphs 1-17 above are re-alleged.

58. Denied.

59. Defendants Bush and Cheney admit that the Palm Beach County Canvassing Board voted to conduct a manual recount, but all remaining allegations in Paragraph 59 are denied.

60. Denied.

61. Defendants Bush and Cheney admit that the Palm Beach County Canvassing Board submitted a written request for an extension of the deadline for reporting the results of a manual recount to the Secretary of State. Defendants Bush and Cheney lack sufficient information and knowledge to form a belief as to the truth of the allegation that the Palm Beach County Canvassing Board also requested an extension by telephone and therefore it is denied. The allegation in the second sentence is admitted.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. Paragraphs 1-17 and 58-66 above are re-alleged.

68. Defendants Bush and Cheney admit that the Palm Beach County Canvassing Board voted to conduct a manual recount, but all remaining allegations of Paragraph 68 are denied.

69. Defendants Bush and Cheney lack sufficient information and knowledge to form a belief as to the truth of the allegations in the first sentence and therefore they are denied. Defendants Bush and Cheney admit that the Palm Beach Canvassing Board did not complete its manual count before 5:00 p.m. on November 26, 2000, but all remaining allegations in Paragraph 69 are denied.

70. Defendants Bush and Cheney admit that the Palm Beach County Canvassing Board did not complete its manual count before 5:00 p.m. on November 26, 2000, but all remaining allegations in Paragraph 70 are denied.

71. Defendants Bush and Cheney lack sufficient information and knowledge to form a belief as to the truth of the allegations in Paragraph 71 and therefore they are denied.

72. The allegations in Paragraph 72 state a legal conclusion as to which no response is required.

73. Denied.

74. Denied.

75. Paragraphs 1-17, 58-66, and 68-74 above are re-alleged.

76. Defendants Bush and Cheney admit that in Palm Beach County votes are registered through insertion of a stylus that perforates a small square known as a "chad" on punch card ballots creating a hole in the ballots, but all remaining allegations of Paragraph 76 are denied.

77. Denied.

78. Denied.

79. The allegations in the first sentence are admitted. The remaining allegations in Paragraph 79 are denied.

80. Denied.

81. The allegations in the first, second and third sentences are denied. Defendants Bush and Cheney lack sufficient information and knowledge to form a belief as to the truth of the allegations in the fourth sentence and therefore they are denied.

82. Paragraph 82 states legal conclusions as to which no response is required.

83. Paragraph 83 states a legal conclusion as to which no response is required.

84. Denied.

85. Paragraph 85 states legal conclusions as to which no response is required.

86. Paragraph 86 states legal conclusions as to which no response is required.

87. Denied.

88. Denied.

WHEREFORE, Defendants Bush and Cheney deny that Plaintiffs are entitled to any of the relief requested in the Prayer for Relief and Universal Relief.

AFFIRMATIVE AND OTHER DEFENSES

1. This Court lacks jurisdiction to hear Plaintiffs' Complaint because it was filed more than 10 days after midnight of the date the last county canvassing board empowered to canvass the returns certified the results of the election being contested, in violation of Section 102.168 of the Florida Statutes ("Section 102.168").

2. This Court lacks jurisdiction to hear Plaintiffs' Complaint because Section 102.168 is inapplicable to Presidential elections.

3. Plaintiffs lack standing under Section 102.168 because the Florida Democratic Presidential Electors, not Plaintiffs, are the "unsuccessful candidates" for the office of Presidential Elector.

4. Plaintiffs' Complaint fails to name the Republican Florida Presidential Electors as indispensable parties, and therefore it must be dismissed pursuant to Section 102.168(4).

5. Plaintiffs' Complaint fails to state a claim on which relief may be granted under Section 102.168.

6. Plaintiffs' Complaint fails to state a claim on which relief may be granted, because it does not allege any facts, which if proved to be true, would establish an abuse of discretion by the Miami-Dade County Canvassing Board, the Nassau County Canvassing Board, the Palm Beach County Canvassing Board, or the Elections Canvassing Commission.

7. The relief requested in Plaintiffs' Complaint is barred because it would violate the Constitutions of the State of Florida and the United States of America.

8. A large number of overseas military ballots have been improperly rejected by certain county canvassing boards, based on a misapplication of Federal and Florida law. Plaintiffs' representatives engaged in a coordinated effort to prevent the proper application of applicable law and thus a proper counting of the overseas military ballots. As a result of the improper application of Federal and Florida law to overseas military ballots, the margin of victory for the Republican Presidential Electors has been reduced. It would be improper for the Court to order any ballots to be recounted, but if the Court were to order any ballots recounted, the overseas military ballots must be included in that order, recounted, and the total included in the final certification.

9. Plaintiffs' request that this Court count the votes cast by voters in two selected counties differently from those cast by voters in the remaining 65 counties would violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the United States Constitution and the Equal Protection and Due Process Clauses of the Florida Constitution. To the extent that Plaintiffs are allowed to introduce evidence of selective manual recounts of ballots in Miami-Dade and Palm Beach Counties, all ballots cast in those two counties and Nassau must be counted, as well as all the ballots in several other counties where Defendants Bush and Cheney

have identified the counting of illegal votes and the exclusion of legal votes, including Broward, Volusia and Pinellas Counties.

10. The judicial limitations established by the Florida courts after the election regarding the discretion of state executive officials to certify election results and the standards applied to resolve controversies concerning the election of presidential electors, violate the Due Process Clause of the Fourteenth Amendment and 3 U.S.C. § 5, which requires that a State resolve controversies relating to the appointment of electors under "laws enacted prior to" election day. The new judicial rules imposed upon the state executive officials after the election reduced the margin of victory for the Republican Presidential Electors. Because Plaintiffs' Complaint is based on law, limitations and standards newly established only after the election, Plaintiffs are not entitled to the relief requested, and the Complaint should be dismissed with prejudice.

11. The Florida Supreme Court's decision to alter the statutory deadline for certification of election results by the Election Canvassing Commission from November 14, 2000 to November 26, 2000, is presently being reviewed by the United States Supreme Court. If the Supreme Court were to reverse the Florida Supreme Court's decision, then the final certification of results by the Election Canvassing Commission must reflect the results certified by the county canvassing boards on November 14, 2000, which would increase the margin of victory by the Republican Presidential Electors.

12. Judge Clark's denial of the request by Defendants Bush and Cheney, in Case No. 00-2816, to consolidate that case with this case is inconsistent with well-established Florida law in existence prior to the election. Judge Clark's decision violates the Due Process Clause of the Fourteenth Amendment and 3 U.S.C. § 5, which requires that a State resolve controversies relating to the appointment of electors under "laws enacted prior to" election day.

13. During its manual recount after the election, the Broward County Canvassing Board changed the established policies and procedures that it had historically followed in connection with manual recounts, including the counting of "dimpled" ballots. That alteration of election laws after the election violates the Due Process Clause of the Fourteenth Amendment and 3 U.S.C. § 5, which requires that a state resolve controversies relating to the election of electors under "laws enacted prior to" election day. The constantly changing rules adopted by the Broward County Canvassing Board after the election illegally reduced the margin of victory for the Republican Presidential Electors. If any ballots are recounted as a result of the Complaint, the illegal votes counted in Broward County under the new rules established after the election should be excluded under the Due Process Clause and 3 U.S.C. § 5.

14. At all relevant times, the Broward County Canvassing Board during its manual recount conducted prior to November 26, 2000 employed an inappropriate

standard to determine the clear intent of the voter under Section 101.5614(5) of the Florida Statutes. In particular, the Broward County Canvassing Board used a wholly subjective and partisan standard when examining the ballots and failed to examine each ballot as a whole under the totality of the circumstances. In doing so, the Board counted “indented” chads when the ballot as a whole did not demonstrate the clear intent of the voter. If any ballots are recounted as a result of the Complaint, the illegal votes counted in Broward County under the rules altered after the election should be excluded under Section 102.168(3)(c).

15. Prior to this election, the County Canvassing Boards in Miami-Dade and Palm Beach Counties never counted “dimpled” chads as legal votes. Therefore, the counting of “dimpled” chads as votes in this election, as Plaintiffs request, would violate the Due Process Clause of the Fourteenth Amendment and 3 U.S.C. § 5, which requires that a state resolve controversies relating to the election of electors under “laws enacted prior to” election day.

16. Count I of the Complaint fails to state a claim on which relief may be granted, because the Miami-Dade County Canvassing Board’s decision not to complete the manual recount in light of the November 26, 2000 deadline imposed by the Florida Supreme Court was not an abuse of its discretion.

17. Counts I, II, IV and V of the Complaint fail to state a claim on which relief may be granted because, as a matter of law, partial recounts cannot be included

in a final certification. See Sections 102.166(5)(c); 102.168(3)(c) of the Florida Statutes.

18. Plaintiffs' request in Count II of the Complaint that the results of the partial manual recount conducted in Miami-Dade be included in the final certification by the Elections Canvassing Commission would violate the Voting Rights Act of 1965, 42 U.S.C. § 1973.

19. Count III of the Complaint fails to state a claim on which relief may be granted because the Nassau County Canvassing Board complied with applicable law, and did not abuse its discretion under Section 102.131 of the Florida Statutes in refusing to certify the machine recount on November 8, 2000, due to its determination that the results were irregular or false.

20. Counts I, II, IV and V of the Complaint fail to state a claim on which relief may be granted because the Florida Supreme Court's November 21 Order does not require the County Canvassing Boards, the Secretary of State or the Elections Canvassing Commission to include partial manual recounts in the final certification.

21. Counts I, II, and V of the Complaint fail to state a claim on which relief may be granted, because under Section 102.166(5) of the Florida Statutes, a county canvassing board has the discretion, but not the obligation, to manually recount all ballots if a sample recount indicates a vote tabulation error that could affect the outcome of the election.

22. Count VI of the Complaint fails to state a claim on which relief may be granted, because the Palm Beach County Canvassing Board did not abuse its discretion under Section 101.5614(5) of the Florida Statutes and Judge LaBarga's decision in *Florida Democratic Party v. Palm Beach County Canvassing Board*, CL 00-11078 AB.

23. Count VI of the Complaint is barred by the doctrine of res judicata.

24. The Volusia County Canvassing Board engaged in misconduct and included numerous illegal votes for the Democratic Presidential Electors during its recount of votes in violation of subsections (a), (c), and (e) of Section 102.168(3). Members of the Volusia Canvassing Board improperly, arbitrarily, and selectively interpreted various markings on the ballots as votes for the Democratic Presidential Electors and included such votes in its certified election returns. The Board's improper conduct reduced the margin of victory for the Republican Presidential Electors.

25. The Pinellas County Canvassing Board engaged in misconduct and included numerous illegal votes for the Democratic Presidential Electors during its recount of votes in violation of subsections (a), (c), and (e) of Section 102.168(3). Members of the Pinellas County Canvassing Board improperly increased the number of votes for the Democratic Presidential Electors in its certified election results. The

Board's improper conduct reduced the margin of victory for the Republican Presidential Electors.

26. Plaintiffs' Complaint is barred by the doctrine of laches.

27. The expedited schedule in this case caused by Plaintiffs' failure to comply with the statutory deadlines for filing a contest action violates Section 102.168 of the Florida Statutes, which governs the time period for contest actions. In addition, the shortened schedule deprives Defendants Bush and Cheney of due process, because it denies them an adequate opportunity for a full and fair hearing.

28. Upon information and belief, before transporting the ballots from Miami-Dade County to Leon County Circuit Court, pursuant to this Court's Order of November 28, 2000, the Miami-Dade County Canvassing Board failed to comply with statutory requirements governing the safekeeping and security of ballots in its custody and control. Upon information and belief, in an alleged effort to segregate ballots, county employees re-tabulated the ballots by machine, dislodging additional chads and causing other spoliation of the ballots. The tabulation of ballots was not authorized by the Court or statute. In addition, county employees opened sealed envelopes of ballots, and moved ballots from one envelope to another. Further, some of those county employees, who are not members of the Miami-Dade County Canvassing Board, made ad hoc decisions as to whether a ballot, which the machine identified as an "undervote," showed the intent of the voter and put that ballot in a separate envelope

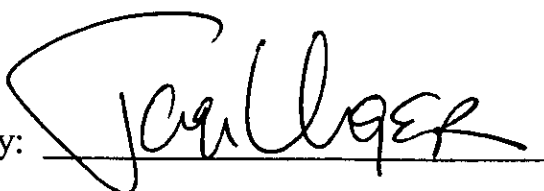
marked “clear vote.” Because the integrity of the Miami-Dade ballots has been completely compromised, the relief requested by Plaintiffs – the introduction of the ballots into evidence for a manual recount by this Court – cannot be granted.

29. Section 102.168 contemplates that the relief granted by the Court in a contest action will be a declaration of the winner in the statewide Presidential election held in Florida on November 7, 2000. In order to determine the winner, the Court must resolve all contested issues concerning the November 7 election. The Republican Presidential Electors received the highest number of lawfully cast votes including all absentee ballots cast for them in Seminole County. The approximately 15,000 absentee ballots in dispute in Seminole County are legal votes and the Seminole County Canvassing Board and Elections Canvassing Commission did not abuse their discretion in including those votes in the final certification of election results.

30. Defendants Bush and Cheney reserve the right to amend this Answer and supplement their Affirmative Defenses.

Respectfully submitted,

By:

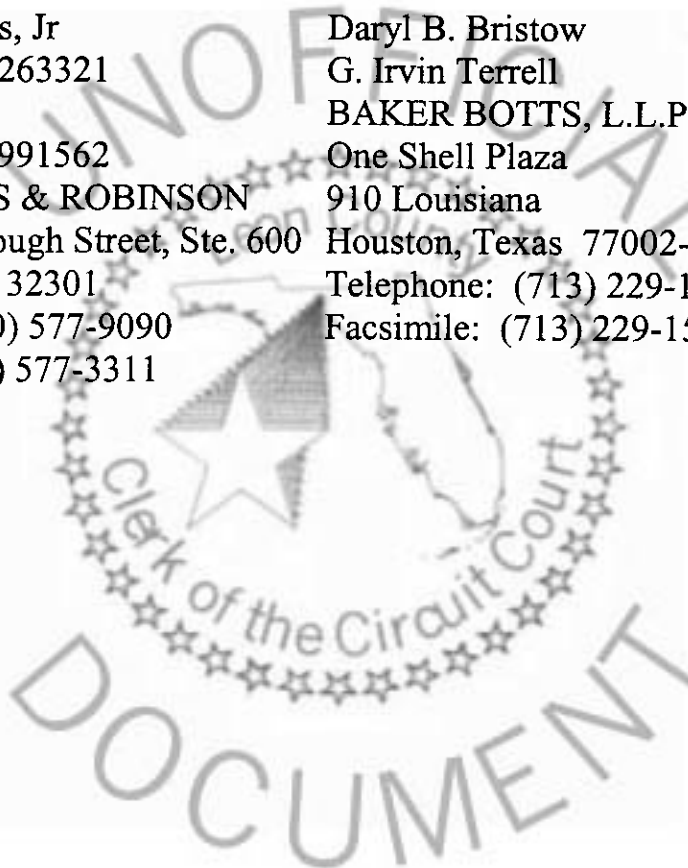


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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of November 2000, a true and correct copy of the foregoing Answer and Affirmative Defenses of Defendants George W. Bush and Richard Cheney to Complaint to Contest Election was served by hand delivery to

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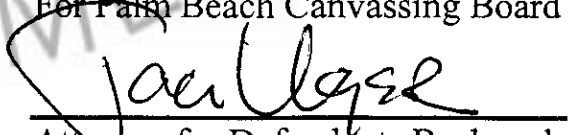
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