

In the Supreme Court of the United States

BUSH, George W.

v.

PALM BEACH COUNTY CANVASSING BOARD, ET AL

No. 00-836

Brief Amicus Curiae on

Behalf of

DISENFRANCHISED VOTERS IN THE USA

Brief in Support of Neither Party

**Affirming in Part the Opinion of the Florida Supreme Court and
Seeking Equitable Relief**

Filed Under Rule 37.6 of the United States Supreme Court

Nov. 28, 2000

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NOTE: THIS BRIEF WAS INITIALLY FILED ON BEHALF OF CHARLES WEILER, MARYANN HUNSBURGER AND PATRICK McFADDEN, citizens who voted in the November 2000 Election for the 43rd President of the United States. By leave of these Amici and of the Clerk of the Supreme Court of the United States, this brief is hereby Consolidated with Petitions Pro Se by two voters who were unaware of the Rules of Procedure of the US Supreme Court of the United States and would have otherwise been without representation in this matter even though they have spent time and effort writing briefs for this case on their own. Those two voters, Gregory Apelain and Justin A. Frank, have joined the original Amici. Their comments essentially parallel the view of the original Amici and therefore will appear as Exhibit 1 and Exhibit 2 of the final version of this brief.

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Table of Authorities and Cases Cited

CASES CITED:

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United States Constitution: Article IV: Section 1.

United States Constitution Fourteenth Amendment

United States Constitution Due Process Clause or 3 U.S.C. s 5

Voting Rights Act of 1965 (Amended 1970) 42 U.S.C. 1973

OTHER AUTHORITIES:

Brief of Petitioner George W. Bush Jr. Bush v. Palm Beach County Board of Cavassers
United States Supreme Court 00-836 November 22, 2000

Laurence Tribe, AMERICAN CONSTITUTIONAL LAW “RIGHTS OF POLITICAL PARTICIPATION” Second Edition, The Foundation Press NY at 1086-87]

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STATEMENT OF INTEREST BY AMICUS

Charles J. Weiler is a voter from the State of New Jersey. Mr Weiler has been an American citizen since he was born, and served in the US Peace Corps. Mr Weiler has been a registered voter since 1972. He is a self-declared "Independent" voter who does not regularly associate with any particular political party affiliation. Maryann B. Hunsberger, a voter from the State of New Jersey, has been an American citizen since she was born, and has been a registered voter since 1976. She is a disabled American. Patrick J. McFadden, is a voter from Pennsylvania, and has been an American citizen since he was born; he has been a registered voter since 1969. Gregory Apelain is a voter from the State of New Mexico. Mr. Apelian has been an American citizen since he was born. Mr. Apelian has been a registered voter since 1980. Justin A. Frank, MD, is a voter from the District of Columbia, (Washington, D.C.). He has been an American citizen since he was born and has been a registered voter since 1964.

Mr. Weiler and similarly situated US Citizens who voted in the State of New Jersey and other states in the United States during the national presidential election that was held on November 7, 2000 have an interest in preserving his franchise and that of other voters. Mr. Weiler and other similarly situated voters run the risk of having their vote diluted or disenfranchised by any or all unconstitutional Florida State Electoral laws or unconstitutional practices under Florida Election laws that obfuscate their votes so that the will of the people cannot be heard.

SUMMARY OF THE ARGUMENT

A fundamental precept of democracy embraces recourse to the courts after events have occurred. A fundamental precept of asking the courts to solve problems retrospectively is the essence of Judicial Review, which often requires crafting a new rule to fix a pre-existing problem after the problem has become manifest, but in the process also filling the void in the law with a new rule in order to solve the problem at bar. The case at bar involves the decision of the Florida Supreme Court solving a problem by crafting a rule as needed, but not in a prohibited “retroactive” manner. The problem it attempted to solve threatens to disenfranchise voters throughout the United States of America who voted in the national election for the 43rd President of the United States, if the laws in Florida are found to be unconstitutional or if the electoral process in Florida as applied in that election cannot withstand strict scrutiny as the sacrosanct right to vote requires under the United States Constitution. If the Florida law can be repaired as the Florida Supreme Court attempted, there should be a statewide recount of votes. If the law is so flawed that it must be discarded, there should be a new election as a consequence of these flaws. The legislature, although authorized under the US Constitution to select electors, cannot supplant the will and voice of the people if that voice as expressed through voting has not been clearly heard. The Florida legislature must therefore await such recounted ballots or new election before it can instruct or select its electors.

I. RULE 37.6 NOTIFICATION

All parties to this case have granted a blanket consent for Amici. Note: this brief was initially filed on behalf of CHARLES WEILER, MARYANN HUNSBURGER AND PATRICK McFADDEN, citizens who voted in the November 2000 Election for the 43rd President of the United States. By leave of these Amici and of the Clerk of the Supreme Court of the United States, this brief is hereby Consolidated with Petitions Pro Se by two voters who were unaware of the Rules of Procedure of the US Supreme Court of the United States and would have otherwise been without representation in this matter even though they have spent time and effort writing briefs for this case on their own. Those two voters, Gregory Apelain and Justin A. Frank, have joined the original Amici. Their comments essentially parallel the view of the original Amici and therefore will appear as Exhibit 1, (Gregory Apelian) and Exhibit 2 (Justin Frank) in the final version of this brief.

II QUESTIONS PRESENTED BY THIS COURT

1. Whether post-election judicial limitations on the discretion granted by the legislature to state executive officials to certify election results, and/or post-election judicially created standards for the determination of controversies concerning the appointment of presidential electors, violate the Due Process Clause or 3 U.S.C. s 5, which requires that a State resolve controversies relating to the appointment of electors under "laws enacted prior to" election day.
2. Whether the state court's decision, which cannot be reconciled with state statutes enacted before the election was held, is inconsistent with Article II, Section 1, clause 2 of the

Constitution, which provides that electors shall be appointed by each State "in such Manner as the Legislature thereof may direct."

3. What would be the consequences of this Court's finding that the decision of the Supreme Court of Florida does not comply with 3U.S.C Sec. 5?

III. STATEMENT OF THE CASE

A. POTENTIAL UNCONSTITUTIONAL PRACTICES IN FLORIDA IMPACT THE ENTIRE NATION

The United States Constitution (Article IV: Section 1.) requires "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the relief thereof." [See also: Exhibit 1 by Gregory Apelian]

The national election of President and Vice President transcends state boundaries and has implications beyond local (State) elections. Upholding the election laws faithfully executed in other States of the United States requires under the United States Constitution, as a social contract, that each State create through its legislature and implement through its own means lawfully impartial and fair elections. That social contract is codified in Article IV of the United States Constitution, the "full faith and credit" clause.

While the process may be shaped by the legislature of each State in part, that process is subject to judicial review to correct unforeseen problems or irregularities, and the integrity of the entire nation election rests upon the good faith belief that each State will respect the other by refraining from improper practices. The appearance of impropriety in an election harms the integrity of the outcome of the whole and therefore is a matter of constitutional and national concern.

Furthermore, this Court has consistently given matters regarding the paramount right to vote strict scrutiny. Democracy so requires. The concept of Judicial Review, endemic in an appreciation of all the workings of this Court and the Courts of the States of the United States is a long-cherished principle of democracy, first pronounced by this Court nearly two hundred years ago, **Marbury v. Madison 1 Cranch 137, 2 L.Ed. 60 (1803)**, which asked questions that would be equally apt before the Florida Supreme Court this year, "2d.If he has a right, and that right has been violated, doo the laws of this country afford him a remedy? [and] 3d. If they do afford him a remedy, is it a mandamus issuing from this Court?"

The Marbury Court exhibited prescience again, regarding events in Florida recent to us but centuries after it wrote its opinion, "It is not the office of the person to whom the writ is directed, but the nature of the thing to be done that the propriety or impropriety of issuing a mandamus, is to be determined".

As stated by Petitioner (p.4)"The choosing of presidential electors is a matter of great national importance and interest." 'As this Court stated in Anderson v. Celebrezze, 460 U.S. 780 (1983), [I]n the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and Vice President of the United States are the only

elected officials who represent all the voters in the Nation. Moreover, the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States.’ Id. at 794-95. As cited by Petitioner. Furthermore, one need not have a special interest or stake in the outcome of a particular election in order to have a voice as a voter in that election (*Kramer v Union Free School District No. 125* 395 US 621 (1969)). Under vigorous equal protection scrutiny, this Court has suggested that the fundamental character of the right to vote is crucial to ensuring that elected officials fairly represent the electorate. [Laurence Tribe, *AMERICAN CONSTITUTIONAL LAW “RIGHTS OF POLITICAL PARTICIPATION”* Second Edition, The Foundation Press NY at 1086-87]

One unprecedented aspect of the recent election in Florida is that it has produced a remarkable amount of litigation, characterized by the Petitioner as “chaos”. Without addressing the merits of these cases, the mere existence of such litigation demonstrates that the existing Florida laws are, if not unconstitutional, then problematic at best. Dozens of cases have been filed, only a small sample of which are cited here for brevity. (See: *McDERMOTT, et al , CANVASSING BOARD OF VOLUSIA COUNTY, FLORIDA, Plaintiffs, v. HONORABLE KATHERINE HARRIS, as SECRETARY OF STATE, STATE OF FLORIDA, and HONORABLE KATHERINE HARRIS, HONORABLE BOB CRAWFORD, HONORABLE LAURENCE C. ROBERTS, as the ELECTIONS CANVASSING COMMISSION, Defendants* requesting extended time from the Secretary of State of Florida to count votes; See also: *MILTON H. MILLER, a registered voter of the State of Florida Plaintiff, v. KATHERINE HARRIS, Secretary of State, Chief Election Officer, THERESA LePORE. Supervisor of Elections for Palm Beach County, Florida, and FLORIDA DEPT OF STATE, DIVISION OF ELECTIONS Defendant, seeking EMERGENCY MOTION FOR INJUNCTIVE RELIEF DOCKET-NUMBER: 00-9004-CIV United States District Court, S.D. Florida. November 8, 2000*)

In *Miller V., Harris, above, (withdrawn) Plaintiff* voted for a presidential candidate but was unsure of who he voted for as a result of the “confusing and misleading ballot” See also: *SIEGEL, et al., Florida REGISTERED VOTERS, PLAINTIFFS/APPELLANTS, and GOVERNOR GEORGE W. BUSH and DICK CHENEY, as CANDIDATES for PRESIDENT and VICE PRESIDENT of the UNITED STATES OF AMERICA, Plaintiffs-Appellants v. THERESA LePORE, et. Al. COUNTY CANVASSING BOARDS of PALM BEACH, MIAMI-DADE, BROWARD and VOLUSIA COUNTIES, Respectively, Defendants-Appellees. 00-15981 United States Court of Appeals, Eleventh Circuit. November 15, 2000; See also ANDRE FLADELL and ALBERTA MCCARTHY and LILLIAN GAINES, Plaintiffs. vs. PALM BEACH COUNTY CANVASSING BOARD, as constituted by County Court Judge Charles Burton; Supervisor of Elections Theresa LePore; and County Commissioner Carol Roberts; GEORGE W. BUSH, DICK CHENEY, AL GORE and JOE LIEBERMAN, Defendants. CASE NO. CL '00 10965 Florida Circuit Court, Fifteenth Judicial Circuit, Palm Beach County. November 8, 2000 which states in its pleadings: "all of the candidates for the Presidential election were listed on two facing pages of the ballot booklet that is attached to each voting machine. The punch holes for each candidate were in a single column that ran between the facing pages.. The names of independent (non-Democratic and non-Republican candidates such as Pat Buchanan) and the punch holes for such candidates were placed adjacent to the names of the Democratic Candidates, Al Gore and Joe Lieberman. . As a result, many voters, and in particular, many senior citizens, intending to vote*

for Al Gore and Joe Lieberman, mistakenly punched the punch hole on the ballot card designated for Pat Buchanan and Ezola Foster (hole #2).[That same document continues]”In addition, the holes in the ballot cards for numbers 4 (Gore and Lieberman) and 5 (Pat Buchannan and Ezola Foster) were directly adjacent to the section of the ballot listing the Democratic candidates (Gore and Lieberman). As a result, many voters, and in particular, many senior citizens, intending to vote for Al Gore and Joe Lieberman punched punch hole numbers 4 and 5 in the mistaken belief that such numbers referred to a vote for Al Gore and Joe Lieberman. It has been reported in the Palm Beach Post that in Palm Beach County Reform Candidates (Pat Buchannan and Ezola Foster) received 3,040 votes.”). Despite this morass, Florida law does clearly require the counties and if necessary, reviewing courts **"to determine the voter's intent."** Fla. Stat. s 102.166(7) (emphasis added). The totality of the problems described in good faith in these and other pleadings silence the voice of the people in Florida so that the true intentions of the voters remains unknown.

B. STRICT SCRUTINY IS WARRANTED TO PRESERVE THE FRANCHISE

When viewed in the aggregate, the citizen cases filed in good faith (listed above) raise a suspicion of impropriety that merits strict scrutiny when the fundamental right to vote is at stake, especially when the election involved is a national election for the President of the United States.

This situation was further complicated on November 26, 2000 when, pursuant to the first of two deadlines made available to the Florida Secretary of State in her discretion for accepting final vote tallies for certification, the Secretary of State accepted a combination of original tallies from some counties, hand counted-recount tallies with corrections from other counties, and rejected a partial recount from yet another county which requested additional time to complete its task, even though that same county noted that its work would be completed before the second of the court-established deadlines. It has also been reported in news media that there may be anywhere from ten thousand to twenty thousand uncounted votes across various Florida counties. The Voting Rights Act was designed to protect every citizen’s vote from precisely such errors. Also, the law is designed top prevent the dilution or usurpation of the votes from blacks, other minorities or other suspect classifications in a pattern, “had all people cast ballots that could be counted along the same lines as their neighbors, Mr. Gore would have gained nearly 7000 (seven thousand) votes. [See New York times, Wednesday Nov 29 2000 “Racial Pattern In Demographics of Error-Prone Ballots” A25 by Josh Barbanel and Ford Fessenden] The same article previously noted that, “The impact of these differences on the outcome will never be known but their potential magnitude is evident in Miami-Dade County, where predominantly black precincts saw their votes thrown out at twice the rate as Hispanic precincts and nearly four times the rate of white precincts. In all, one out of eleven ballots in predominantly black precincts were rejected, a total of 9,904 (nine thousand nine hundred and four).” Id., New York Times. [See also: Exhibit 2 by Justin A. Frank, MD]

The Voting Rights Act of 1970 was enacted to enforce the Fifteenth Amendment which provides that the right of citizens to vote shall not be denied or abridged by the United States or by any state on count of race, color, or previous condition of servitude. (National Ass'n for Advancement of Colored People, Inc. (NAACP) v. City of Niagara Falls, N.Y., W.D.N.Y.1994, 913 F.Supp.

722, affirmed 65 F.3d 1002.)

Thus, the “standardless” recounting in “chaos” about which the Petitioner initially complained was actually compounded by partisan refusal to accept partial tallies and await a later, but no less convenient deadline before certification [See Petitioner’s Brief]. Consequently, whether by intention or by inherent flaws in the Florida Election laws and its attendant process, the Certified votes for Florida at the time of this writing are an incomplete admixture of several inconsistent tallying methods and cannot accurately reflect the will of the people. Such problems, regardless of their cause or their precise number, rise to such a level of magnitude that they encompass the entire voting process and have undermined the integrity of the entire nation’s votes, threatening to abridge the Fourteenth Amendment due process rights of all voting citizens in the United States.

The more voters that are disenfranchised in Florida and in the nation, the more we give up our democracy. The good faith obligation of the States to pass and uphold fair election laws is a part of the social contract between the States of the United States that is a fundamental bedrock of our nation’s union. Under the United States Constitution Article IV, full faith and credit for the acts of the respective States requires no less than an honorable and honored mutual respect, exhibited in part through fair and accurate election laws and attendant electoral process. To be meaningful, such requirements for full faith and credit necessarily include keeping “such acts, records, and proceedings” of elections for President and Vice President of the United States. Furthermore, the failure of any one State to uphold its portion of the social contract that requires fair, accurate and objective counting (or recounting) of ballots is a breach of the social contract between the States of the United States as expressed and implied in the US Constitution. Such a breach of the social contract taints the entirety of any national Presidential election, thereby disenfranchising all citizens who voted in said national election.

IV QUESTIONS PRESENTED TO THE COURT

1. Whether post-election judicial limitations on the discretion granted by the legislature to state executive officials to certify election results, and/or post-election judicially created standards for the determination of controversies concerning the appointment of presidential electors, violate the Due Process Clause or 3 U.S.C. s 5, which requires that a State resolve controversies relating to the appointment of electors under "laws enacted prior to" election day.

A. JUDICIAL REVIEW, ALTHOUGH RETROSPECTIVE IS NOT A RETROACTIVE USE OF THE LAW.

Petitioner mischaracterizes the decision of the Florida Supreme Court as “retroactive” and perhaps even prohibited “ex post facto” laws (See Petitioner’s Brief) . Yet, the logic of a situation rife with inconsistencies in the written legislative statute mandates that a court review the election laws as applied to ballots cast by voters. Such review can only occur after the electoral process has revealed its embedded errors, and therefore by definition must be a post-hoc review. To be meaningful, the court must be able to rule without being considered to have written prescribed retroactive or ex post facto rules. The Constitutional principle of Judicial Review has long been known to this Court, first articulated nearly two hundred years ago in *Marbury v. Madison* 1 Cranch 137, 2 L.Ed 60 (1803).

Petitioner has noted, “Given the national significance of the Florida election results, it is essential that the counting of ballots be conducted in a fair and consistent manner in accordance with established Florida law”. Petitioner fails to point out that the system, absent judicial intervention, had reached an impasse because of the legislature’s failure to provide clear deadlines for beginning or completing requested or mandatory recounts of ballots. The Florida Supreme Court crafted a deadline to save the statute. In **Marbury v. Madison 1 Cranch 137, 2 L.Ed. 60 (1803)**, whose remarkable prescience speaks to the issues at Bar, [supra] this Court further opined, “Those then who controvert the principle that the Constitution is to be considered, in court, as paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution and see only the law”.

If anything, the more convenient was also the later deadline: Tallies accepted at the first deadline required the Secretary of State on Sunday November 26 2000 to open her offices, which would otherwise be closed for the National Holiday of the Thanksgiving weekend; the second deadline was Monday morning at 9a.m.

B. THE FLORIDA COURT RULED NARROWLY, CONSISTENT WITH THE UNITED STATES CONSTITUTION AND THE VOTING RIGHTS ACT OF 1965 AND THE OBLIGATION OF COURTS TO RESOLVE POST-ELECTION DISPUTES

To the extent that errors in the Florida electoral process impinge on the franchise within and without the State, the Florida Supreme Court surgically attempted to reconstruct the broken fragments of the statute in order revive an otherwise lifeless will of the people as it was laid before its bar.

To rectify this situation requires either a statewide recount with appropriate guidelines set forth by this Court, or a new election under new laws. The Florida Supreme Court held that the right to vote is the paramount right and therefore read savings measures into the text of the otherwise unworkable statute that governed the Florida election for the 43rd President of the United States. The alternative would have required the voters to hold a new election without clear rules to govern the election,.

Absent a special session of the Florida legislature to craft such rules six or more days prior to the election itself. The Florida Supreme Court articulated again the principle often expressed by this Court, that the primacy of voting and respect for the exercise of the franchise is a fundamental right to all citizens. The court reaffirmed that voting is the paramount right of the people; one that could not be supplanted or transgressed by hyper technical attention to deadlines, if the price of those deadlines cost voters their rights. *Marbury v. Madison 1 Cranch 137, 2 L.Ed. 60 (1803)*, “It is emphatically the province and duty of the judicial department n to say what the law is”.

Petitioner has erroneously claimed “By retroactively changing the law in Florida through judicial intervention, the Supreme Court of Florida's decision preventing the Secretary of State of Florida from exercising her legislatively conferred authority to perform the act of certification that would complete the electoral process in Florida has added to that angst and has strayed from established

federal constitutional and statutory law.”

If anything, however, the Florida court ruled too narrowly and with too little retrospective oversight, leaving to the discretion of the counties the methods for recounting votes and a too-small window of opportunity for recounting by hand the votes in densely populated counties, who later abandoned their recount efforts. To the extent that the Petitioner complains there are no standards, the court wisely attempted to defer to counties to allow them their traditional freely chosen methods, in a reading of the very clause that Petitioner cites for the argument that the States shall choose electors “in such Manner as the Legislature thereof may direct”. In essence, the Petitioner’s suggested reading of the United States Constitution is counter-intuitive; restraining the counties from determining the methods of tallying the ballots from their own voters while giving the legislature unbridled discretion regarding the selection of electors. Neither of these approaches can be tolerated if they fail to pass constitutional muster under the strict scrutiny afforded the right to vote.

Petitioner continues: “The manual recount underway in certain Florida counties is unconstitutional because it is being conducted in the absence of meaningful objective standards.” A recount cannot, by its nature be, unconstitutional. The methods written by the legislature to achieve the tabulation and recording of votes can, however, be so flawed that the system is unconstitutional as applied in a given case. We believe that in this case, the Florida law has been applied in a manner that is unconstitutional and must be rectified or in the alternative, if it is indeed beyond repair, then new rules must be set forth by this Court or the Florida legislature in a timely manner with a new election by Florida voters for the 43rd President of the United States.

The lack of adequate timetables in the Florida Electoral law for candidates to request recounts, and for recounts to be completed; the ambiguity within the Florida statute that did not reveal a specific preference for hand counted-ballots or machine counted ballots for the purposes of recounting; and the absence of any clarifying instruction on a statewide basis to determine how electoral ballots are to be counted are not necessarily fatal to the statute in itself if any one of these problems could be viewed in isolation.

The totality of these peculiar circumstances, however, makes it so very difficult to sort out the precise nature of the problems that questions can be answered and problems can be corrected. There remain the lingering doubts raised by improperly drafted ballots that were not legible to voters; improper tallying by a hodgepodge of methods with so-called "standardless" procedures; (See Petitioner’s Brief, in several instances) defects in the availability and accessibility of voting places themselves. Media accounts suggest that these irregularities also have occurred in great proportion in areas inhabited by blacks, minorities and certain ethnic groups, whose voting rights enjoy special protection under the Fourteenth and Fifteenth Amendments of the United States Constitution, as implemented Congress in the Voting Rights Act and upheld by this Court in previous cases. The aim of the Voting Rights Act is to prevent political bodies from implementing election systems or practices which Act, whether intentionally or not, to minimize, cancel or dilute the voting strength or political effectiveness of minority groups. (League of United Latin American Citizens (LULAC) v. North East Independent School Dist., W.D.Tex.1995, 903 F.Supp. 1071.) Such discriminatory consequences, whether intended or not, would also raise

concern that the entire election was tainted by potential violations of the Voting Rights Act.

Thus, the post-election "judicial limitations" in this case that concern the Petitioner were designed to foster, rather than burden, constitutional due process. The Florida Supreme Court carefully reasoned in order to save a defective election process, in order to avoid the very confusion that confronts our nation today.

In this regard, the Florida Supreme Court should not be reversed for having been too deferential to a statute that was in fact defective. The election laws, and not the written opinion of the reviewing court that attempted to mend the statutes errors, was inartfully drafted and has thereby obfuscated the will of the people. The choice before this Court, therefore, is whether to further rectify the errors in the statute by reading into it new deadlines that will reasonably allow time to recount by hand or otherwise all of the ballots of all the voters in the State of Florida, or in the alternative, declare the statute and the election that was conducted pursuant to it invalid, thereby requiring a new election to be held in the State of Florida to determine who will be the winner of the 43rd Presidential election in Florida.

C. VOTING RIGHTS OF ALL VOTERS ARE IMPACTED BY THESE CIRCUMSTANCES REQUIRING A COMPLETE RECOUNT OF ALL BALLOTS OR A NEW ELECTION

Under the Civil Rights Act 42 USC 1983 and the Voting Rights Act 42 USC 1973 and the Fourteenth Amendment of the US Constitution , The right of the people to vote and to express their political will in elections by exercising their franchise is sacrosanct under the US Constitution and is protected by the Voting Rights Act as upheld in *South Carolina v Katzenbach* 01, 314-15 (1966).As evinced by the pending or withdrawn litigation cited above, these allegations filed in good faith by citizens are only a small fraction of the totality of the irregularities and improprieties within the voting process as it was conducted in Florida in the November 2000 Presidential election.

The U.S. Constitution, Amendment XIV: Section 1 clearly protects the franchise of all citizens equally regardless of state of residence: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United State; nor shall any state deprive any person of life, liberty, or prosperity without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

Any effort to undermine the integrity of this vital social contract that binds the States to each other by allowing a State to fall below the necessary minimum protections of the right to vote for its citizens in a National Presidential election undermines the integrity of all of the states and taints the valued franchise of citizens in those states that have followed the agreed upon due process standards. Such protections are reinforced by the Voting Rights Act (42 USC 1973) (quote) 42U.S.C.A. §1973 UNITED STATES CODE ANNOTATED TITLE 42. THE PUBLIC HEALTH AND WELFARE CHAPTER 20--ELECTIVE FRANCHISE SUBCHAPTER I-A--

ENFORCEMENT OF VOTING RIGHTS ““§§ 1973. Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

In order for the national election of the 43rd President of the United States to be viewed as fair and impartial in the eyes of all USA voters who participate in that process, as well as the world or other third party objective observers it is imperative these federal standards, set forth in the Voting Rights Act as upheld by this Court, be met. When use of the law is popularly viewed as unfair and people believe that something happened that was improper, such that voters feel cheated by the process itself in Florida, (whether or not there has been any underlying fraud or corruption in the process itself,) impurity of the voice of the people thereby undermines the voice of all franchised voters who voted in the same national election for the US President.

These types of irregularities bespeak an underlying corruption in the process, whether or not any such improprieties have occurred and resemble more of the civil and political rights issues seen in foreign nations than the USA's proud democratic history. The harms caused by that appearance of impropriety which is repugnant to our democratic system of governance must be remedied. In such a case the sole valid remedy must be to remove the taint upon the people's franchise by calling for a re-election whereby the voters of Florida whose voice has been overtaken by the existing system will have a new opportunity to vote for the President and Vice President of the United States.

QUESTION 2:

Whether the state court's decision, which cannot be reconciled with state statutes enacted before the election was held, is inconsistent with Article II, Section 1, clause 2 of the Constitution, which provides that electors shall be appointed by each State "in such Manner as the Legislature thereof may direct."

A. THE UNITED STATES CONSTITUTION ALLOWS LEEWEAY TO THE STATES BUT DOES NOT ALLOW OR ENCOURAGE LEGISLATORS TO SUBSTITUTE THEIR WISHES OR DESIRES FOR THE WILL OF THE PEOPLE.

Ironically, the answer to Petitioner's seemingly obvious question in this case is one of first impression without precedent before this Court. Thus, we must look to the logic of the plain

meaning of the words in their context, as a part of the totality of the precepts that create a framework for democratic republican governance, in order to guide the use of these words. Although States are left to fashion their methods of determining electors as their representatives, it is nonetheless dictated by logic as well as constitutional principles that such electors must vote in a manner that is consistent with the will of the majority and that any selection before all votes have been counted, or any selection based on an arbitrary portion of the votes to be tallied (but not all the ballots cast that have been tallied) is a usurpation of the legitimate power of the people as expressed through exercising their franchise. It is unlikely, if not inconceivable, that the US Constitution could be read to allow Florida legislators (or the legislators of any other State) to simply select a Presidential candidate of their choice who has not been chosen by the majority of the voters in their state. The full faith and credit clause Article IV of the US Constitution, demands that such appointment of electors be achieved without abridging the rights of any voters in order to maintain the integrity of the votes of citizens from other states. *Marbury v. Madison* 1 Cranch 137, 2 L.Ed. 60 (1803), instructs us that in such situations, “ The constitution is either superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when the legislature shall please to alter it. If the former part of the alternative be true, then a legislative act contrary to the constitution is not law: if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable”.

The US Constitution grants States leeway and discretion in selecting their electors, but only insofar as the selection is consistent with the fundamental precepts of democracy. The choice must not be anarchistic or autocratic, but consistent with democratic principles, guided by and reflecting the will of the majority of the voters in that State. Furthermore, the methods chosen by said legislatures must comport with the parameters of democratic governance set forth in the United States Constitution and must exhibit mutual respect for the other States, consistent with Article IV’s commitment by the States to accord each other full faith and credit. Thus, the States have reserved the right to make certain discretionary choices regarding the methodology for selecting electors, but the candidate for whom those electors cast their ballots must be chosen by democratic means and must be consistent with the wishes of the majority of voters in the State.

B. THE WILL OF THE PEOPLE OF FLORIDA IS PRESENTLY UNKNOWN

It would be unconscionable, as well as unconstitutional for the legislature to disregard the will of the people by selecting a candidate that the people would not have elected. So too, in an election so close that the difference between the votes separating the certified winner and the loser is smaller than the statistical margin of error for counting, it is unclear whether the will of the people can be discerned or clearly heard. Therefore, the Florida legislature cannot proceed to select electors if either of the two following consequences have arisen: (1) the underlying Florida law that governed the election itself was based on an unconstitutional statute or (2) the votes from the State have not been counted properly or all votes have not been tallied, regardless of the certifications by election officials.

The consequences of finding otherwise, would be the ability of a state Legislature to pick any

electors they wish, without regard to the total vote of the people, thereby breaking the full faith and credit clause of the US Constitution.

QUESTION 3

What would be the consequences of this Court's finding that the decision of the Supreme Court of Florida does not comply with 3U.S.C Sec. 5?

UNCONSTITUTIONAL ELECTION LAWS REQUIRE REMEDIES SUCH AS RECOUNT OR A NEW ELECTION

If Florida is found to have breached the social contract between the states that implicitly but inevitably is a fundamental part of the respect accorded each and every State of the United States to the other States, breaking the obligation to grant each State “full faith and credit” under Article IV of the US Constitution, immediate and deliberate efforts must be made to repair the breach. Otherwise, such a breach of the social contract by Florida would taint the democratic process of the national election, thereby disenfranchising each citizen in the United States who voted in the election.

The simplest and most trustworthy method for correcting these defects for the immediate question at bar concerning the election of the 43rd President of the United States of America: either recount all the votes in the State of Florida with oversight from federal authorities, or hold a new election with federal oversight pursuant to the precepts of the Voting Rights Act 42 U.S.C. 1973. Judicial oversight in this regard, despite the disparaging characterization used by Petitioner, is a necessary and appropriate use of the power of Judicial Review as it appears as a gloss in the text of Article III of the United States Constitution, and is commonplace when there are election problems to be sorted out. In the alternative, we believe the People of this Nation will be better satisfied if all the discomfort of the tainted Florida election can be removed by calling for a new direct ballot election in the State of Florida.

CONCLUSION:

UNCONSTITUTIONAL LAWS CANNOT BE SUPPLANTED BY THE ARBITRARY SELECTION OF ELECTORS BY LEGISLATORS AND REQUIRE A FULL RECOUNT OF ALL BALLOTS OR A NEW ELECTION

The full faith and credit clause in Article IV of the US Constitution requires that states extend the same rights to all citizens of the United States and to express the same respect for all of the laws of the separate states equally. As Justice Marshall stated in *McCulloch v Maryland* 17 US (4 Wheat.) 316, 421 (1819), “Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to this end, which are not prohibited but consistent with the letter and spirit of the constitution are constitutional”.

Due to the exceptionally small margin which is within the margin of error of the machines themselves, a hand count of all ballots in Florida essential to preserving the franchise of every citizen who has voted in this nations” November 2000 election. It is inconceivable that a manual

hand count, although cumbersome and time consuming, can be so long in its duration to amount to a violation of due process rendering it unconstitutional. In the event that this Court finds such delays would harm the Republic without regard to Constitutional issues, it is respectfully requested that there be a new vote in the State of Florida, following, if necessary, laws that may be written by its State legislature to correct defects in existing Florida State Election laws, or such other remedies as this Court may deem appropriate. We nonetheless most respectfully and most vehemently pray that this Court should make every effort to include the votes of all Florida voters, whether by hand count or by a new voter election, so that democratic process will go forward and that the franchise of all voters shall be preserved.

PLEASE NOTE: TWO BRIEFS WRITTEN BY CITIZENS ALONE WILL APPEAR AS EXHIBIT ONE AND EXHIBIT TWO IN THE FINAL VERSION OF THIS DOCUMENT

No. 00-836

In The

Supreme Court of the United States

Pro Se filing of
Amicus Curiae Brief

On Behalf of Gregory Apelian,
Vice President Gore,
Governor Bush, And the American Voting Public

v.

No One

On Petition for Amicus Curiae
to the Supreme Court of the United States

Gregory Apelian

A Private Citizen, 534 Jewel Court SE, Rio Rancho, NM 87124

505-994-0390

Body of Amicus Curiae Brief,

Filed in order to insure my rights as a citizen under the Constitution are protected and fully heard. To be filed with the Supreme Court of the United States of America on behalf of American citizen, Gregory Apelian of 534 Jewel Court SE, Rio Rancho, NM, 87124, 505-994-0390, social security number, 136-68-5147.

Formal Appeal on Constitutional Grounds for a Corrective Re-vote of the entire United States.

I hereby submit the following assertions of unconstitutionality regarding the current state of disarray in the national election process to determine America's next President.

This brief is being submitted on behalf of myself as an American citizen, on behalf of the entire American citizenry in general, and in support of both candidates Bush and Gore.

The Constitutional citings contained herein, will provide a practical framework which will reveal the current arguments by Governor Bush's lawyers and Vice President Gore's lawyers, relative to the Florida Supreme Court Ruling mandating manual re-counts, to be groundless and based on an illusory premise that there was a Constitutionally valid vote worth re-counting in the first place.

It follows that all *re-counts* of a vote which was unconstitutional and invalid from the start, become likewise invalid by association.

The Constitutional citings contained herein will also include a Constitutionally based remedy, capable of returning the selection of our President to the American Voters, whose equal protection rights under the Fourteenth Amendment have been discarded during this election-crisis period.

The Constitutional remedies contained herein, will also simultaneously restore a truly constructive bipartisan atmosphere based upon sound Democratic application of said Constitutionality.

First I will state the obvious and simple truth regarding the current Presidential Election, and then I will support my basic premise with Constitutional references.

(1) The current Presidential Election is being erroneously and absurdly tabulated from a grossly deficient and antiquated voting system with a known margin of error far in excess to what either candidate can claim as a margin of "victory." This simple assertion therefore renders the current vote tabulation invalid, for it clearly is unconstitutional as measured by its inability to satisfy the criteria of the Fourteenth Amendment which guarantees the rights of all citizens to have equal protection under the Law. This would not be the case if the current voting apparatus were the best, most efficient technological system available for casting votes, but as we now have been made

so painfully aware, and as a Congressional Election Commission pointed out in a formal report to the Congress made over twelve years ago, the current punch ballot system being used by 48% of America's citizens, is grossly innaccurate compared to several imminently available, easy to deploy technologies, which do a far better job in protecting the Fourteenth Amendment rights of equal protection, by ensuring the least possible amount of lost votes due to system error and/or voter error. Furthermore, the Congressional Commission's report on voting systems, stated specifically that the grossly innaccurate punch ballot voting systems should be replaced by more efficient methods as soon as possible.

(2) Therefore, the only just and logical conclusion to the current search for a "fair and accurate," reflection of the will of the American voters, is to replace all punch-ballot type polling machines with a computer system, setup in each polling place as a replacement for what we now so glaringly realize, can never give us a true indication of who the citizens actually elected as our next President.

We The People, deserve as a most basic right under the Fourteenth Amendment of the Constitution, to have our most cherished civic expression, our votes, counted by the most efficient means possible in any given election.

As per the testimony of various computer experts, the computer polling areas can easily be setup with central servers acting as the counting "brains" for terminals which

will offer voters a simple choice between— [A] Gore, and [B] Bush. By this corrective method, the American voting public will finally be provided with the type of voter accountability we have always deserved as a most basic protected right under the Constitution. By implementing central servers only in the polling places and not connected via phone lines, a completely secure system can be setup in a matter of days using already existing computers out of the various state beauracracies. The clear and available remedy is to replace the inefficient punch ballots immediately with more efficient Fourteenth Amendment-protecting technology, hold a nationwide Corrective Re-vote mandated by this Supreme Court, the Congress, and the President, so America's citizenry can finally know *definitively* who *We The People*, have truly elected as our forty third President.

The Corrective Re-vote plan benefits both parties and their respective candidates in that it provides a template by which the current divisiveness and litigious wrangling can be neutralized by best serving the interests of *We The People*. By encouraging the two sides to an agreement that has a sound Constitutional basis, we will take the current lose/lose bitter-battle scenario and instantly transform it into a revitalizing win/win jointly-announced compromise, whereby true bipartisanship will become the shining leap forward in our national political life as we enter this new millenium united and at peace with ourselves for having done right by our Constitution, all of America's citizens,

and indeed the entire watching world, who count on these United States to be an instructive beacon of Democratic virtue and stability.

The goal of Democracy should never be expediency at the cost of Liberty.

We owe it to ourselves to adhere to and act upon the truest possible representation of the Democratic Process in Its ideal state as defined by the Constitution, as is humanly possible, and as it necessarily should be enacted in specific terms by every branch of our federal government institutions.

The President, Congress, and the Supreme Court are required by Constitutional Law to defend these ideals as they have been officially set forth and approved by our American National Democratic Process.

Thank you for taking the time to consider the viewpoint of a common citizen. Your generosity of spirit and fairness will not soon be forgotten.

Specific Constitutional Citings related to this
Appeal for a Corrective Re-vote.

Article I, section 7.

This provides for the Congressional right to draft laws for Presidential approval. In the context of the current election crisis, this means Congress could hold an emergency session and legislate the terms of a new, clean election, which by its renewed standards can have a markedly improved margin of error (far fewer votes lost to indecipherability by implementing readily available technological improvements such as computerized voter stations in polling places, which are tied into phone-lineless network servers for maximum security against intrusion. Such closed networks would be hack-proof [please see attached explanation on the specifics of replacing punch ballot systems, which discard many thousands of votes in each election, vs. closed computer networks which lose the least votes of any available system, and which should be immediately adopted as the new standard for elections, as defined by a Constitutional Amendment declaring that in any given election, *every* effort must be made to provide the voters with the most efficient voting instruments currently available, as a vigilant protection of every citizen's Fourteenth Amendment right to due process and equal protection under Constitutional law.]

Furthermore, in section 8 of Article I, the Constitution states that the Congress has the right to,

“make rules for the Government...”

In other words, Congress can, by emergency session, stipulate more vigilant terms for deciding something as elementally important to the health of our Democracy as the next Presidency, by detailing legislatively, the precise terms for a better method of collecting each and every vote cast in a Presidential election.

Such action is deemed valid by this Article and section, and also by the fact that currently, by the antiquated vote tabulation method still being used in 48% of the nation, despite the availability of markedly more Constitutional means of vote collection and tabulation, Americans are losing their Fourteenth Amendment rights of equal protection under the law due in large part to Congressional negligence in having not addressed the basic findings of their own sanctioned election commission reports, which detailed the problems with lost votes and the need to upgrade America's voting systems, over twelve years ago. (cite the specific report).

Furthermore, Article I section 8 of the Constitution sets forth,

“The Congress shall have power to...make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof. “

In other words, as necessity dictates in serving the rights of the citizens, and in the name of justice and equality as pertains to the basic law of the United States, the Congress has the ability to form legislation in any and all areas of governance, including elections, which for the sake of optimally protecting every citizens' right to equal protection under the law, should draft a new Amendment to the Constitution, providing for the mandated use of the best possible technological means for gathering the true Will of The People (the vote), with as little error as is possible in any given time.

Article II, section 1 of the Constitution, clearly sets forth...

“The Congress may determinethe Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.”

This article clearly gives the Congress discretion to officially set *any* date within a reasonable timeframe and taking into consideration, unusual circumstances such as are confronting the nation now, as we seek resolution to the fact that the current vote tally has a known margin of error far in excess of the possible margin of victory able to be ascribed to either candidate, thereby rendering the current vote count as it stands, to be unconstitutional and therefore, invalid, as described by the Fourteenth Amendment, which guarantees the right of each individual citizen to enjoy equal protection under the law, the true and specific measure of which, in this case, should be the determination that Congress has acted vigilantly, and in the best interest of upholding the Fourteenth Amendment, by requiring states to use the best, most efficient voting systems available to them at any given time of an election.

The most basic Democratic right of each voter to have their votes counted, should supercede any budgetary considerations and be made a requisite part of Congress fulfilling Its Constitutional duties by providing for the mandating of using the best and most efficient voting and tabulation technology available at any given time, and supported by passage of a Constitutional Amendment to provide for the same.

Another Constitutional Article which may be implemented to successfully mediate the current and possibly future election crises is as follows, from Article II section 2, which states...

“He (the President) shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur...”

Nowhere does it state that such mediation is restricted to foreign affairs alone.

Hence, the President should be allowed to, with the Advice and Consent of two thirds of the Senate, provide for such terms of formal mediation in the form of a treaty between two warring domestic parties within these United States in addition to vitally supplementing the mandate implicit in the Fourteenth Amendment, described above, and in unified Democratic support in directing the cohesive national moving-forward in settling such disputes as what has arisen relative to the current Presidential Election, by naming truly bipartisan terms by which the two sides can find a common ground as defined by their overriding interest and duty in protecting the virtue of the Fourteenth Amendment as it provides for equal protection of every voter and their vote, under the venerable Constitutional law of these United States.

Furthermore, Article II, section 3, empowers the President further, stating,

“He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the laws be faithfully executed, and shall Commission all the Officers of the United States.”

Clearly, the language stating the President, “...shall take Care that the laws be faithfully executed...” charges him to intercede publicly by directing the Congress to expedite the passage of corrective legislation, on behalf of all those citizens whose basic protections under the Fourteenth Amendment are being stripped from them by the current deeply flawed and imminently correctable voting apparatus which is guilty of denying thousands of American citizens of their most cherished and basic Democratic right to have their voices heard in a Presidential election, or any other election for that matter.

With regards to the Supreme Court, as it pertains to the current election crisis, Article III section 2 clearly sets forth...

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority... to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--[between a State and Citizens of another State;--]between Citizens of different States... "

Clearly, this Article and section provide for my inherent American right in filing this Constitutional claim on behalf of myself and every other concerned citizen who cherishes the Fourteenth Amendment's guarantee of equal protection under the law, which expressly in this case, can be interpreted to defend our inalienable American right to have our votes counted by the most efficient means available at any given time and in any given election.

Furthermore, this Article clearly sets forth the ability of this , the Supreme Court of the United States, to make a definitive ruling regarding the Constitutional clarifications sought in this brief, as defined by the above-noted Constitutional basis for the Court to adjudicate in matters of "Controversy" as described above.

Clearly, the current election crisis is such a "Controversy" between, "two or more States," and between "citizens of different States," such as myself.

Another pertinent Constitutional clarification for procedural insight into the current election dispute can be found in Article IV section 1 which states...

"Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State; and the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Clearly, this Article charges Congress to strive for the most accurate voting tabulation technologically possible at any given time. By mandating the "proving" of "Records", Article IV makes plain, the elemental importance of maintaining the highest possible standards in all matters of the public Record.

Certainly then, elections, and the true will of the voters as protected by the Fourteenth Amendment's guarantee of equal protection under the Law, must receive the highest priority in keeping with the "provable" mandate Article IV definitively prescribes.

Article V provides the impetus for Congress to address the specifics of a more efficient means of protecting the Fourteenth Amendment rights of every citizen's equal protection under the Law when it states...

“The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions of three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress...”

In the case of the current election crisis, and as previously described herein, Congress should move to pass a Constitutional Amendment immediately which shall provide that the most efficient technological means available be the standard for any given election in the basic Democratic interest of protecting every citizen’s right to equal protection under the law as defined by the Fourteenth Amendment of the United States Constitution.

Additionally, Amendment I states clearly,

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

This is precisely the Constitutional right, being exercised by the filing of this brief.

The Tenth Amendment is also illustrative in helping to clarify the current Presidential Election dispute by asserting...

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Therefore, by the Charge of this Amendment, any citizen (“the people”) have the right to assert our Constitutional right in expressing remedies at times when such solutions are not forthcoming from the other branches of government.

Specifically, in the case of the current Presidential Election dispute, the overriding truth defining this situation is the fact that the vote as it was tabulated using antiquated and drastically imprecise methods, leaves America with a greater margin of error in tabulating the actual vote, then the margin of victory can be for either candidate. Hence, the election as it stands now, cannot, as defined by the Fourteenth Amendment, possibly preserve the citizens rights for equal protection under the Law.

Therefore, the most sensible remedy, as allowed by the provisions within the Tenth Amendment, is to address and replace the deficient voting apparatus *immediately* (please see previous Constitutional citing in section— of this brief) and hold a re-vote of the entire nation, free of media bias and free from the overwhelming margin of error of such faulty systems as punch-ballots [which 48% of the

nation uses, thereby voiding tens of thousands of votes nationally, and rendering any election with a margin of "victory" smaller than the known margin of ballot-error a bogus, invalid election with no adequate possibility of determining a clear winner.

The Fourteenth Amendment is the basis for the urgent remedy sought within this brief— a restoration of equal protection of every citizen's most basic Democratic rights under the law.

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

Liberty is most elementally and significantly defined by our citizens' right to vote and to have our votes counted in the most efficient and vote preserving manner technologically possible at any given time. Therefore, the Fourteenth Amendment can be clearly applied and interpreted to mean, every available effort (ie. the best current technology available for reducing the number of uncounted and uncountable votes to an absolute minimum) must be vigilantly made a top budgetary/legislative priority in order to count every vote cast (as provided for by the means delineated in the previously cited portions of this brief).

Clearly, the fact that it is a matter of public record, that the Congress' own commission reported to them over twelve years ago, that America's voting apparatus was badly in need of repair due to an unacceptably high margin of error (lost votes), and yet, here we are these twelve years later, left with the same inefficient, Fourteenth Amendment-breaking equipment, which now has left the nation in the weakened, contentious position of not being able to discern a winner from the original, poorly tabulated, vote. We are charged by this very Constitution to fix this elemental breach of our Democratic Process as it affects the current election tabulations, and as revealed by the previous assertions made on a myriad of applicable Constitutional grounds within this brief, all made on behalf of my American neighbors whose only wish is to truly know who we chose to be our next rightfully elected President.

With regards to the validity under the Constitution for the holding of a Corrective Re-vote, the Twentieth Amendment asserts...

"If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice president elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall

be selected, and such person shall act accordingly until a President or Vice President shall have qualified.”

By this language, Congress is capable of legislating that a new, more accurate voting process be implemented to determine the true will of the voters. This can be accomplished by simply replacing antiquated and Fourteenth Amendment-breaking voting methods, with currently available technologies which, by the opinion of numerous computer experts, could easily be configured and deployed in just over one week, thereby finally producing a vote tabulation which genuinely does everything humanly possible to enfranchise the absolute maximum possible number of voting citizens.

In conclusion, I feel it is my civic duty to this great Promised Land we call America to speak out on behalf of the sacred trust of our Democratic Process, the heart of which is our equal representation under the law as provided by the Fourteenth Amendment of the Constitution.

I do not use the term Promised Land lightly here. For truly, when we consider the full weight of what America has represented to so many oppressed and yearning cultures for so many generations, one can clearly see that the living truth is far more palpable than the tired cliché.

We *are* a Promised Land, and it is our sacred Democratic Trust to treat our nation as such, for when that most basic

right to be counted in participating in the solemn duty of voting for a President, is reduced to a mere formality with no actual substantive regard for the true will of the voters, we are allowing the very foundation this nation depends on for its stability and prosperity to be grossly eroded and intentionally left in disrepair. By such caloused disregard is the road to ruin paved. Please, consider this appeal of a common citizen with an open heart and mind, for the very core of our Democratic ideals as we apply them in the practical workings of our nation, hangs in the balance.

By simply and justly upholding the Constitution, America's citizens will finally receive our fair and equal protection under the law. Allow the voters a fair and efficiently managed election, and we can finally have a vote which will not be poisoned by unquenchable doubt and the partisan enmity which is sure to escalate in increasing measure as our new President attempts to serve the public interest and trust.

We The People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

As the current Presidential Election crisis continues to unravel along with the public confidence and trust, these are the words we must never forget. These are the words that are the living, precious, membrane by which our Democratic vitality and Purpose are essentially nourished.

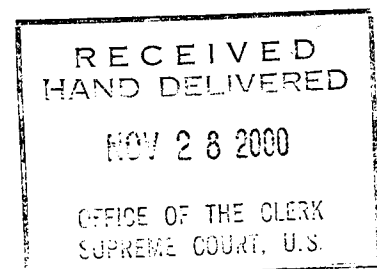
Thank you for time and consideration of this brief.

Respectfully Submitted,

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Ned L Siegel, et. al. V Theresa LePore et. al.
Docket Number 00-15981

Amicus Brief of Justin A. Frank, MD
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AMICUS CURAE BRIEF

Justin A. Frank, MD

Pro Se

Question Presented:

Whether deprivation experienced by and known to up to 30,000 registered voters in Florida whose ballots were, for one reason or another, not counted in the final tally can cause voters in Florida in particular, and the entire American electorate in general to suffer serious alienation from democratic institutions thus leading to either apathy or a rise of violence on an unprecedented scale?

Justin Frank, MD, is a non-partisan physician, committed to the free and fair operation of our legal-political system. Its

membership is of diverse political backgrounds who share an abiding concern for freedom of participation in our system of government as essential to individual well-being. Through Dr. Frank's extensive experience working with families, he is acutely aware of the necessity of recognition of an individual's intention and of the repercussions that result when intentions are frustrated or ignored. Further, he is aware of the fragility of systems which foster and guarantee that recognition. The frustration of expectations can set in motion the capacity for destructive patterns of behavior, including but not limited to rage and its opposite extreme, retreat and apathy.

Security is a prerequisite for the development of confidence in the political life of a nation. Where a voter is deprived of the experience of a secure environment based on transparency and predictability, the experience of negative consequences are not necessarily contained locally.

Accordingly, Justin A. Frank, MD feels that it is imperative that the psychological implications of voter deprivation be factored in to the Supreme Court's deliberations of the grave questions presented before it in this appeal.

ARGUMENT

1. In political life, one of the elements necessary for security and well-being is the right to vote and to have that vote count. The psychological damage of an insecure voter environment can be extrapolated from the agreed prerequisites for secure and productive lives. The importance of a "political ego" CANNOT be denied; FURTHER, the consequences, intended and not, for the body politic that result from deprivation of its political ego, cannot be

ignored.

2. Voter deprivation affects group cohesiveness and stability.

IT ALSO affects how group members perceive the world around them. It can lead to extreme apathy, or violence.

3. The FIRST practical remedy is an expeditious recount of presidential votes. This recount may be accomplished in two ways: a statewide recount which must include dimpled chads as actual evidence of the voter's intention; or a statewide re-election just for President.

The SECOND AND ONLY other possible remedy is to divide the electoral votes in half (13 to 12 with the majority belonging to the contested winner). Giving all electoral votes to ONE candidate, given how the close race - without statewide re-count or re-vote - makes no logical sense and will contribute, through voter deprivation, to injury of the

voting population. Such injury is characterized by a strong sense of grievance: citizens do not go to the polls to NOT vote for President. Expeditious methods - for example, the use of volunteers or the National Guard - can be employed to do the recount. THIS RECOUNT should be done by touch as in the Braille Method, as well as by sight: This is an objective method for detecting the dimpled chad. While any remedy will result in some resentment, turning one's back on voter deprivation would have worse repercussions, both short and long term. "An environment that is passively frustrating...invites depression, or a depressive apathy which may be concealed by the pursuit of any time-killing amusement."

A. The Dangers of Voter deprivation.

1. Individual dangers - present and future

To be Discounted is not to have a voice, and thus from a psychiatric point of view, to not really exist. It is thus a denial of the most primitive existential need to "BE." Being requires recognition by other, in this case recognition by the governing body. The repercussions are acute not just for those whose votes are uncounted or discounted, but also for all who witness this process: all lose faith in a system which does not confer recognition upon its members. The sense of outrage expressed by many over the last few weeks is a primitive and powerful feeling that stems from the horror of being erased, or ceasing to exist as a person. This feeling is compounded by helplessness, which in turn triggers rage, violence towards others, or apathy and depression if turned inward. This trauma results, then, in a distorted self-image, as well as causing the individual to have a distorted image of his world.

The individual has fundamental psychological mechanisms at her disposal since birth which help protect her from experiencing feelings of pain, of being attacked, or of the helplessness just described. That fundamental psychological mechanism, "projection", is a method by which the individual gets rid of bad feelings in the mind by relocating them outside the self.

Thus aggressive behavior, once a cause of internal conflict or ambivalence, gets attributed to others and the individual now is only acting in response to attack. Such projections are often relocated in our conception of

institutions. These numerous projections range from feelings that the Government is greedy and intrusive to a sense that the government is unreliable and indifferent. Stable institutions withstand such projections. Unstable institutions leave the individual not only unsatisfied but prone to paranoid anxiety and distorted thinking.

Another consequence of disillusionment with the system is the loss of a sense of goodness in the government. One becomes like Aesop's fox and gets filled with feelings of dismissive contempt. Being dismissed results in becoming dismissive. Government, which once was viewed as protecting us from our baser impulses (cf. Freud, Money-Kyrle, and Joan Riviere) no longer is experienced as providing that protection; that security is lost. We then risk

resorting to the search for goodness elsewhere. Sometimes this search has a positive outcome: loss may lead to renewed self-reliance or to a focus on religious values. But if this search is accompanied by contempt for the system of government itself, the individual may become enamored with leaders or systems which express his own contempt. Thus hate readily finds an accomplice in the disenfranchised. Government exists, in this psychological function of the mind, as a space, a place to receive "our dangerous and destructive feelings in such a way that we obtain the maximum security in life and pleasure too." In other words, the individual begins to derive pleasure in dangerous and destructive feelings and, consequently, in the expression of these feelings.

One also internalizes dismissive treatment, a process which results in apathy and dismissing of the self by the self. One feels unable to make a difference or to be an active

participant in political life. One dismisses others by blaming. In cases of severe injury, the concept of transgenerational transmission of trauma, developed by Dr. Vamik Volkan, applies. Volkan wrote about conscious and unconscious transmission of memories of pain to future generations. Thus the Jewish woman in Palm Beach who was denied another ballot after realizing she had mistakenly voted for Buchanan relived a modified version of the Holocaust trauma.

Transmission of post-Holocaust trauma had been interrupted by living in the United States where, until this election, numerous voters basked in the liberty of being able to vote their choice. Suddenly that changed. Some individuals for whom this has changed have filed sworn affidavits in West Palm Beach.

2. The Individual and the System

Those who attain power based on voter deprivation will be

those who are content to disregard the disenfranchised. Maintenance of this power comes to require continuing disregard for the disenfranchised. The people who receive projections - those in power - must think about them and modify them, as the healthy mother does for her child. Thus if the mother is accused of being hurtful she has to think about that from the child's perspective and act accordingly. But in the political life of systems, such unwanted projections by individuals are also unwanted by the system itself. The political system then denies the legitimacy of the angry "projectors", labeling them as irrational. A two-way paranoia develops, with neither party being able to listen to or think about the needs of the other. The uncouneted will feel discounted, and will suspect the party in power. The party in power will likewise suspect the outsiders. This is a natural psychological process within groups. It is dangerous and may lead those in power to tyrannize those without it. Further, those in charge may attack the very system itself -

just as the disenfranchised do. As the breakdown of confidence in the benignity of power relations breaks down because of disputes over feelings of disenfranchisement, we are left with paranoid accusations on both sides - accusations which each side handles differently.

The individual exists within a system which confers identity and existence on that individual. The sense of self as a responsible and contributing individual is challenged if that individual is disenfranchised. Those who are vote-deprived may resort to blaming other systems. For example, if one is discounted by the executive branch of the system - that very system which exists to protect the individual and to ensure that the individual is counted - the individual's only resort is an appeal to the judiciary. For a Chief Executive to in turn attack and "discount" the Judiciary itself is then doubly destructive.

This fractured group behavior is one of the immediate outcomes of voter deprivation.

Attacks on the Florida Supreme Court thus have the effect of rendering the disenfranchised individual even more helpless.

At the same time, those who attack the system seek to legitimize voter deprivation and to invalidate the system that exists to protect individual rights and freedoms.

3. The Individual and Democracy

If the ingredients of a democratic system are:

- a) self-defining individuals who have validated existence
- b) an active, participating populace that supports the expression of the individual
- c) a structure that respects, confers existence on and counts that populace

one can see here voter deprivation affecting all levels.

The discounting of individual votes, the discrediting of the system for counting those votes, and the attempted discrediting of the judicial appeal system (as "illegal" or "inventing") all combine to create the most subtle and pernicious danger of all, a conflation of our governmental systems into a single system, the rule of those in power. To discount individuals becomes lawful. This evokes chilling echoes of fascist systems.

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In psychoanalytic terms, the mother provides what Mahler calls "object constancy", giving the child the feeling that it can move closer and further away from mother but she will

still be there. This sense of a predictable and consistent caregiver gets internalized and the child becomes an adult with a built-in inner stability and sense of self. Still, the environment of the adult must meet similar needs for security. It, too, must be constant, predictable. The right to vote and to have that vote count is just such a necessary precondition of adult "object constancy", without which one may develop what we call "voter deprivation syndrome" - a syndrome in which the victim becomes apathetic and disillusioned with democratic institutions or else becomes violent. These unstable self-states vary with irregular regularity.

A split develops in the mind between the government system (which I will call object) and the self-system (which is the individual whose intentions are thwarted). One result is Rambo - a folk hero who felt that

his greatest enemy was not the Vietnam Communists, but our own government which hampered his ability to fight a war to the finish. What may have been humane on the government's part became persecutory and controlling to Rambo. Hence his folk-hero status. That Rambo-as-hero resorted to physical acts of violence and shows of strength, demonstrates one crucial negative consequence of governmental thwarting or neglect. In such movies as "Hopscotch", which came out almost at the same time as Rambo but never enjoyed its popularity, the thwarted individual exacts healthy intellectual and humorous revenge against the thwarting governmental agency.

The aim of integration of self and other fails when the "other" fails the self - actively or passively. A severe split in

the mind destabilizes the self which in normal circumstances could rely on the "other" to help regulate its own feelings and actions. The results, according to recent work by Akhtar , are intense oscillations of self-esteem, violent reactions which are unpredictable, and the lack of a feeling of temporal continuity. Experience is fragmented into little bits, rather than felt along a tradition or a continuum. Groups become unable to understand one another and negative mood swings, if unchecked, "might result in destructive and violent acts."

B. Analogy with The Family System

The analogy between body politic and the family is of crucial importance in understanding the psychological dangers of voter deprivation. From a psychoanalytic viewpoint, it is

impossible to separate the individual's need for recognition from the earliest child-parents relationships. The family model, the analogy between family and body politic, is of crucial importance in understanding the psychological dangers of voter deprivation. The young child thrives best in what Hartmann calls "the average expectable environment." Hartmann states that adults living in society need a benign environment to encourage and not impede growth. He wrote, "the task of man to adapt to man is present from the very beginning of life. Furthermore, man adapts to an environment part of which has not, but part of which has already been molded by his kind and himself... Thus the crucial adaptation man has to make is to the social structure, and his collaboration in building it."

British psychoanalyst Roger Money-Kyrle was explicit in linking family life with political life. He described how the environment impacts the individual - whether it be family

environment and the child or the State environment and the adult. He wrote, "The state guarantees us a certain measure of protection. It demands from us a certain measure of obedience. It inspires, or may inspire, our loyalty. In short, our relation to it...is of the same general form as our relation to our parents, so that it is inevitably personified as a parental figure." P126) Beneficent government, as in the case of kind and loving parents, diminishes distortions and promotes clearer thinking. A tyrannical government, however, or one which takes away certain fundamental rights, will increase "the old sense of inner persecution" and the kinds of thoughts which protect against that familiar childhood anxiety. (M-K 126) One's conscience becomes modified over time in response to frustrations. Various acts of violence occur without conscious guilt.

Family as Container

For a family to feel secure, anxiety stemming from what Money-Kyrle calls feelings of inner persecution needs containment and modification. The government functions as a container of anxieties, a government whose laws keep us from enacting our more base instincts and urges. In families, from the beginning of the mother/infant relationship, there develops over time a sense of confidence in the mother who is able to experience her baby's needs and respond accordingly.

Second, there is the problem of the closed door, the parental bedroom unconsciously out of which the child is locked. The child in a healthy family has hope, he can amuse himself or play with friends or read or watch TV, knowing full well that sooner or later that door will open - even though he experiences pain and frustration when it is closed. Part of the child's confidence is based on the experience of having parents open the door regularly (or even irregularly) before.

It is when that confidence is challenged or compromised that the child starts having trouble with issues of trust in his/her environment and eventually having trouble with trust in himself.

The same is true in the larger political sense; in that voters, while not having direct or immediate access to their representatives know that their representatives are responsible to them and can be turned out of office or are available to hear their grievances. If they are not elected - and by this I don't mean that when the candidate favored by Democratic voter is defeated - the voter still has access as a constituent as well as having hope to change things when elections next come around. There is a sense, therefore, of predictability and of confidence in the system. This helps manage feelings of helplessness and frustration which get stirred up at times when people disagree with policy.

Everyone knows that Congress is elected every two years

and the Senate every six and that Presidential elections occur every four years on the second Tuesday after the first Monday of November in years divisible by 4. What happens if one doesn't have that confidence - if one can't just vote out a leader or overthrow him? Our government has survived in part because of its having kept faith with the legal system, reassuring what anxiety might otherwise arise if the system were to break down. Then we have a dysfunctional government, not the steady one described by Churchill as the worst form of government except for all the others.

Law is essential to the processes of predictability, containment, and accessibility. There is an ample body of psychoanalytic literature about the importance of rules in society to protect citizens from themselves. As Dr. Ernest Wallwork wrote, "The rule of law is essential for civilization because humanity's instinctual predisposition to violence and selfishness requires a mechanism for making it in everyone's

self-interest to ‘restrict themselves in their possibilities of satisfaction’ and to band together to resist domination and exploitation by those possessing superior strength....In order for this to happen, ‘the community must be maintained permanently, must be organized, must draw up regulations to anticipate the risk of rebellion and must institute authorities to see that those regulations - the laws - are respected and to superintend the execution of legal acts of violence.’ (EW 274; SE 21:95; SE:22: 205)

The rule of law is now in a crisis, as explicit election law may dictate one thing - a smoothly running system. But it can also undermine another - the messy process of having everyone having a say in choosing who will lead that system (the right to vote). What I know is that the thwarting of a person’s intent to participate in his or her future, the blocking of access to that participation which is central to our democracy, and the dismissal of predictability that every vote

counts and will be counted will have severe deleterious long-range effects on the everyone's psyche and hopes to live in an increasingly secure world.

Freud wrote that justice should apply to everyone equally - and he wasn't one of our founding fathers, though he is one of mine. He noted that when leaders put themselves above the laws which should apply to everyone, they start to retreat "from a dominion of law to a dominion of violence." (se:22, 1933 p206 And part of upholding the law requires renunciation of personal desire - at least in some instances.

Freud wrote that if just principles and moral precepts benefit everyone in the community, renunciations will be less painful and the community has a better chance of coming together for work and fruitful living. (cf. EW 283)

In development, structure leads to new coping mechanisms to manage and prevent expressions of impulses, pain, loss,

greed, etc. Family members sublimate their destructiveness, for example, into some form of relatively benign form of sibling competition. But when material structure is compromised in the family as well as in society, similar mechanisms (self-glorification; sense of injustice; an attitude of innocence; sense of entitlement have the opposite intent - in stead of being coping mechanisms used to manage or prevent destructive expression, they are used to express instincts. (Sidney Levin, MD, Int.Rev.Psa V5, Part 1, 1978)

In America, it is the Supreme Court which does a major part of that containing. It protects the rights of citizens to pair off, to argue and fight, to get certain needs met without causing excessive anxiety which would lead to breakdown.

All three factors - feeling contained, having access, and having influence - are compromised by the feeling of not having one's vote count.

It is impossible to summarize the long term effects of slavery, violence, and murder have had down generations. I just want to say that no matter how much one may try, that memory - emotional even more than factual - remains unconsciously imbedded in all our souls. A poetic description of this history, this ever-present memory, is described by David Bradley at the end of his novel, *The Chaneyville Incident*:

"For a moment he was not sure that he could lead them, was not sure that they would follow, but then he saw Harriette Brewer take her knife from beneath her shawl and hold it high, and then he heard her, heard her singing softly, then louder, heard the others join in, the words of the song growing, rising up from the hilltop, floating down the incline, the words sharp and clear against the night: 'And before I'll be a slave I'll be buried in my grave, and go home to my God, and be free.' For a chorus or two, or three, the

song was loud and strong. And then the song grew weaker, the voices that had raised it falling silent one by one, until at last there was only one voice, a strong soprano voice, carrying the song. And then that voice, too, fell silent. But the song went on. Because the wind had shifted again, and was blowing from the west; because now the wind sang."

Conclusion:

In summary there is ample psychoanalytic and historical evidence for the existence of voter deprivation syndrome - for want of better terminology at present - which leads to a fragmentation of a sense of self because of the loss of a secure predictable environment. This loss, the indifference to voter intent and to votes being counted, leads to depression and apathy as earlier childhood losses get re-activated. Then there can be a circle of blame, where the person or disenfranchised group can see other groups as enemies who

are robbing them of their rights. What the groups had in common before this rupture gets lost and what remains is intense enmity. That is what is happening at present between the supporting camps of the warring political parties: recounting ballots for "A" means voter deprivation to "B"; not recounting for "B" (meaning that votes have already been counted) means voter deprivation for "A".

The pain of voter deprivation gets handed down unconsciously as injury from generation to generation. While the trauma at first seems only to be in parts of Florida one can see how national interests are at stake. What is at stake is the security of prediction of elections, of redress, which will never be denied by government fiat. At stake is security that votes intended will be votes counted. At stake is confidence in our judicial system to be able to think and then to be able to protect the rights of an injured populace. And what is at stake is the stability of our society which has remained stable

through many upheavals in the past because of the rule of law and the knowledge that everyone has a vote in this nation should he choose to exercise that right.

Finally, there have been recent studies made about what Apprey calls transgenerational haunting in which he states "it is as if the injured group has accepted the message that they do not deserve to live [or that they do not count for anything] and therefore must die in one form or another. At the very least that injured group may exist in a reduced form such as living but living a most unproductive life. Here the motor of ambush toward one's death remains the same but the license plate, that is, the form of reducing oneself to nothingness, changes from one generation to the next."

This kind of injury to the body politic, to the political ego - if you will - is an injury to our entire society and its capacity to

feel secure in its institutions as well as secure in its power to make a difference by voting and having votes count. Loss of faith in this system has consequences which can only be inferred from what has happened to other groups when their essential freedoms have been usurped - women, African-Americans, European Jews just to name a few. Security in the body politic has reverberations with "containment" in the family - and without either, the sense of political potency elides into apathy and cynicism, leaving feelings of inner persecution and rage unchecked.

It is imperative for the health of our democracy and incumbent on the Court that it address the issue of full recount and/or new vote. It is believed that the High Court's failure to do so would constitute a serious and fundamental abdication of its precious responsibility to uphold the concept of the rule of law. The High Court cannot and should not be dismissive of this

concept. Were it to fail to act, the Supreme Court of the United States of America will damage the voter undermining faith in Court itself as protector and insurer of democracy, of voter value, of voter rights.