

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

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

v.

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

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

**MOTION TO FILE PETITION FOR A WRIT OF CERTIORARI
IN 8.5 x 11 INCH PAGE PROOFS**

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Rule 29.6 Corporate Disclosure Statement

No parties are corporations.

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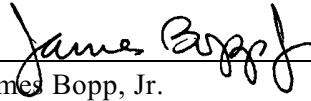
Petitioners Robert C. Touchston, Deborah Shepperd, and Diana L. Touchston, as registered voters residing in Brevard County, Florida, respectfully request leave to file a petition for a writ of certiorari in 8.5 x 11 inch page proofs (with printed copies to be filed shortly hereafter as soon as is reasonably practicable).

Petitioners voted for George W. Bush in the national presidential election held on November 7, 2000, in the county of their residence, Brevard County. In this action, Petitioners challenge the constitutionality of the Manual Recount Statute, Fla. Stat. § 102.166 (2000), both on its face and as applied to the statewide election for Electors, which was held on November 7, 2000, and to future statewide elections. The Manual Recount Statute allows a candidate in a *statewide* election, as in this case, to request a manual recount of ballots cast in *counties* selected by the *candidate* or the candidate's political party. Furthermore, the county canvassing boards have absolute discretion whether to grant or deny the request for manual recount. This statutory framework places at the disposal of partisan political candidates the means to dilute and debase the votes of those voters who do not reside in the selected counties and who did not cast their ballots for the candidate requesting the recount. The Manual Recount Statute creates a two-tiered system that weights the votes cast in some parts of the state more heavily than votes cast in other parts of the state. Accordingly, the Manual Recount Statute is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Voters filed this action in the Middle District of Florida on November 13, 2000, seeking declaratory and injunctive relief under the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983. On November 14, the District Court held a hearing on and denied Voters' motion for preliminary injunction. The same day, Voters filed a notice of appeal and motion for injunction pending appeal, which the District Court denied. On December 6, 2000, the Eleventh Circuit Court of Appeals denied Petitioners' motion for preliminary injunction based on the plurality's contention that irreparable harm had not been demonstrated and refused to reach the merits of Petitioners' constitutional claims. This Petition for Writ of Certiorari is now before this Honorable Court.

In order to secure Petitioners' constitutional rights from being irretrievably vanquished, it is imperative that the United States Supreme Court hear Petitioners' claims as soon as practicable. In light of the need for extraordinary expedition and in order to secure a definitive judicial resolution of this controversy in advance of December 18, 2000, when the Electoral College will meet to select the next President and Vice President of the United States, it is simply not feasible to file a certiorari petition that complies with the requirements of Rule 33. Petitioners therefore seek leave to file their petition in 8.5 x 11 inch page proofs, with the understanding that printed versions of the petition, complying with the requirements of Rule 33, will be filed as soon as is reasonably practicable after the filing of the petition.

Respectfully submitted,



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