

IN THE SUPREME COURT OF FLORIDA

CASE NO: SC00-2373

BEVERLY ROGERS, et. al. v. **THE ELECTIONS CANVASSING
COMMISSION OF THE STATE OF
FLORIDA, et al.**

Petitioners/Appellants

Respondents/Appellees

4TH DCA CASE NOS. 4D00-4145, 4D00-4146 and 4D00-4153

FROM THE CIRCUIT COURT, FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO.:CL 00-10992 AF

**PETITIONERS' MOTION TO PROCEED
WITHOUT FORMAL RECORD**

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MOTION TO PROCEED WITHOUT FORMAL RECORD

The Petitioners, BEVERLY ROGERS and RAY KAPLAN, et al, file this Motion to Proceed without Formal Record, and in support thereof state the following:

1. As the Court is well aware, this case involves challenges filed by numerous Palm Beach County voters arising out of the Presidential election conducted in Palm Beach County, Florida, on November 7, 2000. On November 20, 2000, the trial court entered an Order in which it determined that, even if the ballot utilized in Palm Beach County, Florida were found to be illegal, the Court had no authority or power to order a new election or re-vote in Palm Beach County, Florida for President of the United States. On that same date, Plaintiffs filed a Notice of Appeal with the Fourth District Court of Appeal and sought immediate certification to this Court. On November 27, 2000, the Fourth District Court of Appeal certified this case as a matter of great public importance requiring immediate review by this Court. Subsequently, this Court entered an order establishing a briefing schedule by which the parties were to be submitted to the Court no later than 5:00 p.m. on November 28, 2000.

2. Obviously, things have been moving fast and furiously in these cases. On the same date that the Notice of Appeal was filed with the Fourth District Court of Appeal, Petitioners also filed an Emergency Suggestion for Immediate Resolution by the Florida Supreme Court. Suffice to say, there has been little time for the clerk of the lower tribunal to prepare an Index to Record on Appeal, due in large part to the fact that the Circuit Court for the Fifteenth Judicial Circuit closed for the four (4) day Thanksgiving Holiday within hours after the Notice of Appeal had been filed. On very next day that the circuit court was open, November 27, 2000, the Fourth District Court of Appeal certified the case to this Court. At that point in time, the parties turned their attention to preparing the briefs, which were due the

next day. Those briefs have been submitted, along with lengthy and detailed Appendices, both by these Petitioners and by the *Fladell* Petitioners (the cases have been consolidated).

3. Again, the Order under review is one in which the trial court ruled that it had no authority order a new election or re-vote. In the Order, the trial court specifically references its decisions to bifurcate the proceedings, considering the viability of the remedy requested by Petitioners first before determining whether the ballot was illegal. At a hearing held November 15, 2000, the Petitioners requested the trial court set down, on an emergency basis, a hearing to determine the legality of the ballot, but as reflected in the Order under review, the court declined to do so.

4. Petitioners believe that the only record necessary for this Court's review of the case is as follows:

- a) The Order itself;
- b) The complaints filed by the parties;
- c) The transcript from the hearing held on November 17, 2000 (the hearing at which the parties presented argument pursuant to the trial court's requested on its authority or ability to order a new election or re-vote).

5. Given the extremely urgent nature of this case, and the time constraints under which the parties are laboring, Petitioners now file this Motion to Proceed without Formal Record, and respectfully request this Court review this case based upon the Appendices already submitted by the parties and based upon the Complaint and transcript which are now being filed with the Court.

6. Sufficient time does not exist for the clerk of the circuit court to prepare a formal index to record on appeal. Certainly the parties have available to them the option of preparing appendices, and both sets of Petitioners did in fact submit Appendices to the Court. The

Respondent did not chose to submit any materials to the Court, nor has he raised the necessity of a formal record on appeal.

7. Finally, although not certain, it is undersigned's counsel understanding that the other election-related cases already decided by this Court were in fact decided based upon informal records or upon the appendices submitted by the parties.

WHEREFORE, Petitioners, BEVERLY ROGERS and RAY KAPLAN, et al., respectfully request that this Court enter an order determining that the Court will consider this Appeal based upon an informal record and will not require a formal record to be submitted under the Rules of Appellate Procedure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been faxed

this _____ day November, 2000 to: All Counsel on Attached Service List.

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