



IN THE SUPREME COURT OF FLORIDA

Case No.:

KATHERINE HARRIS, as
SECRETARY OF STATE, STATE OF
FLORIDA, and as CHAIRPERSON OF THE
FLORIDA ELECTIONS CANVASSING
COMMISSION

Petitioner,

vs.

THE CIRCUIT JUDGES OF THE ELEVENTH,
FIFTEENTH, AND SEVENTEENTH
JUDICIAL CIRCUITS OF FLORIDA,
PALM BEACH COUNTY CANVASSING
BOARD, MIAMI-DADE COUNTY CANVASSING
BOARD, AND BROWARD COUNTY
CANVASSING BOARD,

Respondents.

_____ /

EMERGENCY PETITION FOR EXTRAORDINARY RELIEF

Petitioner, Katherine Harris, as Secretary of State, State of Florida, and as Chairperson of the Florida Elections Canvassing Commission, hereby petitions for a writ of mandamus, prohibition or such other appropriate writ, or for this Court to exercise its all writs jurisdiction directed to the Circuit Courts of this state and the Canvassing Boards of Palm Beach, Broward and Miami-Dade Counties.

Jurisdiction is appropriate pursuant to Article V Section 3(b)(7) of the Florida

Constitution. Such writ is necessary to permit the Florida Supreme Court to secure its jurisdiction and to consider and resolve all issues surrounding the Florida electoral process associated with the election of the President and Vice President of the United States of America.¹ The grounds for this motion are set forth below:

1. On or about November 7, 2000, the people of this state and nation cast ballots for the purpose of electing the next President and Vice President of the United States of America.

2. Florida's unofficial tally showed a very small margin between the two front-running candidates. Within days, a lawsuit was filed challenging the results of the election. Over the last several days, a total of at least eleven lawsuits have been filed in Broward, Leon, and Palm Beach counties. Just last night, the Miami-Dade Canvassing Board and the Broward Canvassing Board decided not to

¹“Ordinarily, the Supreme Court does not supervene and take jurisdiction from lower courts, that is, depart from the usual routine of adjudication from trial courts to the appellate courts. However certain cases present extraordinary circumstances involving great public interest where emergencies and seasonable considerations are involved that require expedition.” Monroe Education Ass’n v. Clerk, District Court of Appeal, Third District, 299 So. 2d 1 (Fla. 1974). See also State ex rel. Williams v. Baker, 248 So. 2d 650 (Fla. 1971); State ex rel. Pettigrew v. Kirk, 243 So. 2d 147 (Fla. 1970).

proceed with a manual hand counting of ballots, which will likely result in a multitude of additional lawsuits in those counties within the next few days.

3. The lawsuits are based upon many legal theories and have a collection of defendants, including the Secretary of State, the Director of the Division of Elections, the Commissioner of Agriculture, Vice President Gore, Governor George Bush, Governor Jeb Bush, various county canvassing boards, the state canvassing commission, and various other state and local election officials. One of those lawsuits involved a temporary injunction, since lifted, and further injunctive relief and other orders could be entered at any time by any number of courts in any number of actions. Additionally, three separate lawsuits contesting the election are currently pending in the United States District Courts in Florida. (A summary of the actions currently pending contesting Florida's presidential elections is attached as Exhibit "A".) Many of these suits joined the Secretary of State and the Florida Elections Canvassing Commission, but many did not. The likelihood of additional lawsuits being filed over the next few days is great.

4. Yesterday, in response to a challenge by Volusia County or its canvassing board as to the power of the Secretary of State to require that vote tallies be filed with her office by 5:00 p.m., as required by Fla. Stat. § 102.112,

Circuit Judge Terry Lewis of Leon County confirmed the validity of the deadline, but indicated that Secretary Harris was required to consider certain factors regarding election activities in the various counties. (A copy of that order is attached as Exhibit “B” to this Petition.)

5. The statutory deadline for supervisors of elections to certify returns expired at 5:00 p.m. on November 14, 2000. All 67 of Florida’s counties certified results in the Presidential election within the statutory deadline. Likewise, the statutory deadline has passed for county canvassing boards to submit written reports of “any problems incurred as a result of equipment malfunctions either at the precinct level or at a counting location, any difficulties or unusual circumstances encountered by an election board or the canvassing board, and any other additional information which the canvassing board feels should be made a part of the official election record.” § 102.141(6), Fla. Stat. No canvassing board submitted any such written reports. However, at least one county canvassing board is continuing to conduct a manual count of at least some ballots.

6. Section 102.1685 of the Florida Statutes vests venue exclusively in Leon County in all cases contesting statewide elections. See Harden v. Garrett, 483 So. 2d 409, 412 (Fla. 1986) (noting transfer of election challenge originally venued in Okaloosa County). See generally Faust v. City of North Port, 495 So.

2d 885 (Fla. 2d DCA 1986) (suit cannot proceed in another venue where statute vests venue exclusively and upholding dismissal where action venued in violation of statute); Navarro v. Barnett Bank of West Florida, 543 So. 2d 304 (Fla. 1st DCA 1989) (permitting transfer of improperly venued proceedings).

7. A more recent tactic appears to be to omit the Secretary of State from lawsuits in favor of direct filings against county canvassing boards outside Leon County. Thus, diverse rulings from circuit judges against the county canvassing boards now threaten to produce inconsistent rulings affecting whether, how and in what fashion counting should occur and even more possibilities of differences, inconsistencies, and varying rules of law. In addition, some of these actions may lack the adversity expected among litigants in a lawsuit -- as when a plaintiff sues to compel a manual count that a board is already conducting.

8. The most recent example is Florida Democratic Party v. Palm Beach County Canvassing Board, CL00-11078AH (Fla. 15th Judicial Circuit), where a hearing is currently scheduled to commence at 9:30 am, today. The following relief is being sought from the court, without adding the Secretary or any state election official as parties:

- a) issuance of a writ of mandamus compelling the Palm Beach County Canvassing Board to resume and complete a manual recount of all ballots cast in the Presidential election in Palm Beach County;
- b) issuance of an order enjoining the Canvassing Board from certifying the results of the November 7 general election until a full hand recount is completed;
- c) issuance of a declaratory judgment holding that the Canvassing Board's present standard for reviewing challenged ballots is illegal; and
- d) issuance of an injunction ordering the Canvassing Board to review challenged punchcard ballots to determine the voter's intent, based on the totality of the evidence in the four corners of the punchcard ballot.

(A copy of the pleadings and papers submitted in that case is attached hereto as Exhibit C.) Neither the Secretary nor any other state official has been named in this suit. It is unclear that there is any difference of opinion whatsoever among the parties to this lawsuit.

9. On November 13, 2000, the Florida Department of State, Division of Elections, issued a formal advisory opinion in response to a request by the Palm Beach County Canvassing Board on November 13, 2000 (DE 00-13). (A copy of

the Division's Opinion DE 00-13 is attached as Exhibit D.) In that opinion, the Department of State, Division of Elections determined that an "error of vote tabulation" means a counting error in which the vote tabulation system fails to count properly marked marksense or properly punched punchcard ballots.

Pursuant to statute, "that opinion, until amended or revoked, shall be binding on any person or organization who sought the opinion" § 106.23(2) Fla. Stat.

The Division of Elections, as provided in section 106.23(2) has issued four advisory opinions regarding this Presidential election. (Copies attached as Composite Exhibit E.) The Attorney General has declined to issue elections law advisory opinions many times, including several times within the last few months based on the Division's specific statutory authority. (Examples of such letters are attached as Composite Exhibit F.) It is unproductive and confusing for contradicting opinions to issue from Constitutional officers.

10. Nonetheless, the Attorney General's office issued its own advisory opinion in response to a request by the Palm Beach County Canvassing Board on November 14, 2000 (AGO 00-65). (The Attorney General's opinion is attached as Exhibit G.) This, despite the fact that the Attorney General has historically declined to opine on election law matters, deferring those issues to the Secretary of

State.² This opinion concludes that the definition of an “error in the vote tabulation” encompasses a discrepancy between the number of votes determined by a voter tabulation system and number of votes determined by a manual count of a sampling of precincts pursuant to section 102.166(4), Florida Statutes.

11. Only one currently pending action, McDermott et al v. Harris, et. al, properly joined the Secretary of State, the Florida Elections Canvassing Commission and was also properly venued in Leon County Circuit Court as provided by statute. § 102.1685, Fla. Stat.³ That case is numbered CV-002700 and was brought for hearing before Judge Lewis of the Second Judicial Circuit on November 13, 2000, as stated above. (See Exhibit “A”).

12. Multiple lawsuits before multiple judges now address the Presidential election. This will produce an unpredictable variety of results, theories, legal rulings and procedures applying throughout the State. The Court is confronted by a significant risk of forum shopping, inconsistent results, and loss of control necessary for the fair administration of justice. The multiplicity of actions also

²Indeed, the Attorney General’s Official Web Page disclaims any authority in the Attorney General to issue opinions on elections law.

³A previous case also properly joined the Secretary and Commission and was venued in Leon County. *Dickens v. State, et. al*, Case No. 00-2694 (Second Judicial Circuit). This case was voluntarily dismissed after a motion for a temporary injunction was denied.

creates the spectacle of the judicial system in Florida running in myriad directions, all while the citizens of Florida and the nation await the final tally of votes to determine who will be the next president of the United States.

13. Additionally, because of the manual count attempted in Palm Beach County without coherent standards, the integrity of the ballots themselves are in serious jeopardy.⁴ The Court must act to preserve its jurisdiction and to preserve the opportunity for these matters to be heard and resolved expeditiously and fairly.

14. Without question, this Court must make it clear that the election of the president and vice president is not a matter of local pleasure. It is, at the least, a statewide matter of concern. This Court must assume control over this litigation to preserve its ability to establish standards, and to protect the voters of the state.

⁴ As the citizens of our nation witnessed on television the manual recount in Palm Beach County over the past weekend, it became apparent that ballots were degraded during the process. “Flying” chads came off the ballots during the recount and were seen on the floor and furnishings. Each ballot was handled by numerous persons and many ballots were inspected over and over again by the canvassing board members due to the difficulty of determining how much of a chad was “hanging.” Observers were heard asking the counters and canvassing board members to stop “flexing” the cards because of the potential hazard in dislodging chads that otherwise may have been intact. Given the potential for a contest to this national election, it is essential to preserve the integrity of the ballots. This is important not only to the residents of the State of Florida but to all citizens of the United States.

_____15. The precise legal issues that may well have to be decided have not yet been conclusively identified, but all election issues regarding this one election need be joined in a coherent process of hearings, determinations, and appellate review. Most importantly, if county-wide manual recounts continue before this Court decides whether such recounts are authorized and/or constitutional, the results will be broadcast to the nation, which will neither advance the process nor serve the interests of public policy.

WHEREFORE, Petitioner, Katherine Harris, as Secretary of State, State of Florida requests entry of an Order directing as follows:

1. That no hearing be commenced in 15th Judicial Circuit Case No. CL00-11078AH, that any such hearing already commenced cease, no additional order be issued and any additional order already issued therein be vacated and that case be transferred immediately to the Second Judicial Circuit in and for Leon County.
2. That exclusive venue for any proceeding contesting the election for the Presidency and Vice Presidency of the United States of America shall be in the Circuit Court of the Second Judicial Circuit in and for Leon County.

3. That each Florida Circuit Court case reflected on the attached Exhibit A and currently pending be immediately transferred to the Circuit Court of the Second Judicial Circuit in and for Leon County.
4. That the canvassing boards of Palm Beach County, Broward County and Dade County cease any attempt to manually recount ballots pending final resolution as to whether any basis exists to modify the certified results after the statutory deadline for submission of returns.

Respectfully submitted,
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Counsel for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery or telecopy on this 15th day of November, 2000 to the following:

17th Judicial Circuit of Florida
In and for Broward County
Chief Judge Dale Ross
201 SE 6th Street
Ft. Lauderdale, Florida 33301

15th Judicial Circuit of Florida
In and for Palm Beach County
Palm Beach County Courthouse
Chief Judge Walter N. Colebath, Jr.
205 North Dixie Highway
West Palm Beach, Florida 33401

11th Judicial Circuit of Florida
In and for Dade County
Chief Judge Joseph P. Farina
Dade County Courthouse
73 West Flagler Street, Room 511
Miami, Florida 33130

Dade County Canvassing Board
Miami, Florida

Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, Florida 33401

Broward County Canvassing Board
Ft. Lauderdale, FL

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