

2. The Canvassing Board's present standard is an incorrect method of determining a voter's intent that violates Florida law. Plaintiffs request declaratory and injunctive relief to redress these violations.

Jurisdiction

3. This Court has jurisdiction pursuant to the Florida Declaratory Judgment Act, Fla. Stat. § 86.011.

Parties

4. Plaintiff, the Florida Democratic Party ("FDP"), is a political party. The FDP brought about the present recount by filing a request with the Canvassing Board on or about November 9, 2000, under Fla. Stat. 102.166(4).

5. Defendant Palm Beach County Canvassing Board (the "Canvassing Board" is a governmental body established by Fla. Stat. 102.141. It has jurisdiction to conduct the present recount under Fla. Stat. 102.166. At all relevant times, the Canvassing Board's three members are and have been the Honorable Charles Burton; Theresa LePore, Supervisor of Elections of Palm Beach County; and Carol Roberts, a Palm Beach County Commissioner.

Statement of Facts

9. On November 7, 2000, the State of Florida, along with the other 49 states and the District of Columbia, held.

its election for President of the United States and other federal and states offices.

10. Each county of the State of Florida designed and used its own ballot for the November 7 election.

11. Palm Beach County used a "punchcard" voting system. In this system, a punchcard with perforated rectangles is inserted into a plastic holder that contains ballot pages.

12. To cast a vote on the punchcard, the voter inserts a metal stylus into the hole corresponding to the chosen candidate. When the stylus is fully inserted into the hole, it often perforates the punchcard ballot and creates a hole. In some instances, however, the stylus may only partially perforate the punchcard or may create an indentation with no perforation at all. When the punchcard is not fully perforated, the paper remaining on the punchcard is known as a "chad."

13. Following the November 7, 2000 election, Palm Beach County conducted an initial count of punchcard ballots using electronic machines. Those machines tabulate votes by shining light through each punchcard ballot.

14. The initial machine count of Palm Beach County ballots resulted in a count of 268,945 votes for the Democratic Party presidential candidate, Al Gore ("Vice

President Gore"), and 152,846 votes for the Republican Party presidential candidate, George W. Bush ("Governor Bush"). A subsequent machine recount required by Fla. Stat. § 102.166 produced totals of 269,732 for Vice President Gore and 152,951 for Governor Bush.

15. Because machine counting of punchcard ballots fails to count votes on punchcards where insufficient light shines through the punchcard, the Florida Democratic Party formally requested that the Canvassing Board conduct a "test" manual recount of four precincts pursuant to Fla. Stat. § 102.166(4). On November 10, 2000, the Canvassing Board granted the request.

16. On November 11, 2000, the Canvassing Board conducted its "test" manual recount. Observers from the Florida Democratic Party and the Bush-Cheney campaign monitored the manual review of punchcard ballots. Whenever an observer challenged the initial counting of the ballot, the three-member Canvassing Board would review the challenged punchcard and determine how the ballot would be counted.

17. The Canvassing Board had previously adopted a standard for reviewing punchcard ballots in November 1990.

18. In conducting its "test" manual recount on November 11, 2000, the Canvassing Board initially announced

that it would interpret its 1990 standards as equivalent to a "sunshine" rule: a vote would be counted if and only if light could be seen through the punchcard.

19. The Canvassing Board applied the "sunshine" standard in its review of challenged ballots for one-half of one precinct. That initial review of one-half of one precinct resulted in a net change of 39 in favor of Vice President Gore.

20. After the review of one-half of one precinct, the Canvassing Board sua sponte announced a change in its standard. Under the new interpretation of the 1990 guidelines, the Board would recognize a vote only if the rectangle (or "chad") is at least partially detached. Applying this new per se rule, an indentation on a punchcard would not count as a vote absent some perforation of the paper, regardless of any other evidence on the punchcard of a voter's intent.

21. Applying this new rule, the Canvassing Board's "test" manual recount of four precincts using the "perforation" standard yielded a net change of 33 additional votes for Vice President Gore and 14 additional votes for Governor Bush.

22. Based on observers' objections at the "test" manual recount, both Vice President Gore and Governor Bush

would receive several hundred additional votes at the "test" recount alone if the broad, totality-of-the-evidence standard were applied.

23. The "test" manual recount of four precincts indicated that the county's initial machine counts had failed to count many votes; by relying solely on the light test, the machine failed to register many ballots that indicated a voter's intention to cast a vote for President. The results of the Presidential election could potentially be affected by this fundamental flaw in machine counting - based on the "test" manual recount of approximately one percent of Palm Beach County Ballots, a county-wide manual recount could be expected to result in a net change of several thousand additional votes for both candidates.

24. Based on these results, the Florida Democratic Party requested a full manual recount of all ballots pursuant to Fla. Stat. § 102.166(5)(c). On November 12, 2000, the Canvassing Board granted the request. The county-wide recount is scheduled to begin on Tuesday, November 14, 2000. at 7:00 a.m.

25. The Canvassing Board has stated its intention to apply its "detached chad" standard to review challenged punchcard ballots in the county-wide recount. The Florida Democratic Party has formally requested that Board to adopt

a totality-of-the-circumstances standard, by which the Board would attempt to determine the voter's intent based on all of the evidence visible on the punchcard ballot. The Democratic Party submitted a written brief on the issue on November 11, 2000. Despite these requests for a more accurate rule that recognizes all votes, the Board has held firm to its narrow "detached chad" test.

COUNT I

VIOLATION OF FLA. STAT. § 102.166(7)

26. The preceding paragraphs are incorporated herein as if fully set forth.

27. Section 102.166(7)(b) of the Florida Statutes requires that the Canvassing Board review challenged ballots to determine the voter's intent. Section 102.166(7)(b) states: "If a counting team is unable to determine a voter's intent in casting a ballot, the ballot shall be presented to the county canvassing board for it to determine the voter's intent."

28. The Canvassing Board's incorrect reliance on a per se rule based on the physical perforation of a punchcard violates Section 102.166(7)(b).

29. The Canvassing Board's current standard has caused material harm to the Florida Democratic Party and its nominee for President, Vice President Gore. Absent