

declaratory and injunctive relief from this Court, the Board's practice will cause plaintiff and its nominee future harm.

PRAYER FOR RELIEF

30. Plaintiff, the Florida Democratic Party, requests that the Court:

- (a) enter a declaratory judgment holding that the Canvassing Board's present standard for reviewing challenged ballots is illegal and in violation of Florida law;
- (b) enter 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; and
- (c) grant all such additional relief as is warranted.

THE FLORIDA DEMOCRATIC PARTY

By its attorney,

Benedict P. Kuehne

Benedict P. Kuehne
Fla. Bar No. 233293
Bank of America Tower
Suite 3550
100 Southeast Federal St.
Miami, FL 33131-2154
(305) 789-5989
(305) 789-5987 (fax)

Dated: November 13, 2000



FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State
DIVISION OF ELECTIONS

INFORMATION ONLY

November 13, 2000

The Honorable Charles B. Burton
Chairperson
Palm Beach County Canvassing Board
Palm Beach County Courthouse
West Palm Beach, Florida 33401

DE 00-13
Manual Recount Procedures and
Partial Certification of County Returns
§§ 102.166(5) and 102.151, Fla. Stat.

Dear Judge Burton:

This is in response to your request for an opinion. You are chairperson of the Palm Beach County Canvassing Board and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has the authority to issue an opinion to you. Essentially, you ask:

1. Would a discrepancy between the number of votes determined by a tabulation system and by a manual recount of four precincts be considered an "error in voting tabulation" that could affect the outcome of an election within the meaning of section 102.166(5), Florida Statutes, thereby enabling the canvassing board to manually recount ballots for the entire county?
2. May a county canvassing board do a partial certification of the votes pursuant to section 102.151, Florida Statutes, for the November 7, 2000 election that excludes the votes for the candidates of the presidential election?

With regard to your first question, section 102.166(5), Florida Statutes, provides that if the manual recount indicates an error in the vote tabulation which could affect the outcome of the election, the county canvassing board shall: (a) correct the error and

EXHIBIT	
D	_____

The Honorable Charles E. Burton
November 13, 2000
Page Two

recount the remaining precincts with the vote tabulation system; (b) request the Department of State to verify the tabulation software; or (c) manually recount all ballots.

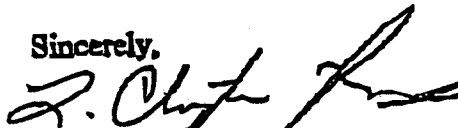
An "error in the vote tabulation" means a counting error in which the vote tabulation system fails to count properly marked marksense or properly punched punchcard ballots. Such an error could result from incorrect election parameters, or an error in the vote tabulation and reporting software of the voting system. Therefore, unless the discrepancy between the number of votes determined by the tabulation system and by the manual recount of four precincts is caused by incorrect election parameters or software errors, the county canvassing board is not authorized to manually recount ballots for the entire county nor perform any action specified in section 102.166(5)(a) and (b), Florida Statutes.

With regard to your second question, the answer is yes. The county canvassing board may do a partial certification of the votes pursuant to section 102.151, Florida Statutes, for the November 7, 2000 election that excludes the results of the presidential election.

SUMMARY

An "error in the vote tabulation" means a counting error in which the vote tabulation system fails to count properly marked marksense or properly punched punchcard ballots. Such an error could result from incorrect election parameters, or an error in the vote tabulation and reporting software of the voting system. Therefore, unless the discrepancy between the number of votes determined by the tabulation system and by the manual recount of four precincts is caused by incorrect election parameters or software errors, the county canvassing board is not authorized to manually recount ballots for the entire county nor perform any action specified in section 102.166(5)(a) and (b), Florida Statutes. The county canvassing board may do a partial certification of the votes pursuant to section 102.151, Florida Statutes, for the November 7, 2000 election that excludes the results for the presidential election.

Sincerely,


L. Clayton Roberts
Director, Division of Elections

Prepared by:
Kristi Reid Bronson
Assistant General Counsel

LCR/KRB/st

DE 00-10
Deadline for Certification on County Results

November 13, 2000

§§ 102.111 and 102.112, Fla. Stat.

TO: The Honorable Charles E. Burton, Chairperson
Palm Beach County Canvassing Board
West Palm Beach, Florida

Dear Judge Burton:

This is in response to your request for an opinion relating to sections 102.111 and 102.112, Florida Statutes. You are chairperson of the Palm Beach County Canvassing Boards and pursuant to section 106.23(2), Florida Statutes, the Division of Elections has the authority to issue an opinion to you.

You state that the Palm Beach County Canvassing Board voted to have a manual recount of all ballots cast in the presidential election. Further, you state that the manual recount will not be completed by 5:00 p.m. of the seventh day following the election as provided in sections 102.11 and 102.112, Florida Statutes. Essentially you ask:

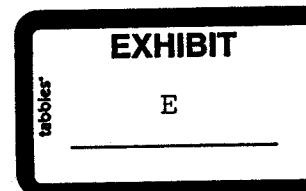
1. What effect will the provisions of section 102.111, Florida Statutes, when read in conjunction with section 102.112, Florida Statutes, have on the votes cast in the presidential election by the citizens of Palm Beach County?
2. May the board certify all other election results to the Department of State while the manual recount continues for the Presidential election?

In response to your first question, if the Palm Beach County Canvassing Board fails to certify the county returns to the Elections Canvassing Commission by 5:00 p.m. of the seventh day following the election, the votes cast in Palm Beach County will not be counted in the certification of the statewide results.

Section 102.111, Florida Statutes, is explicitly mandatory. It provides, "[i]f the county returns are not received by the Department of State by 5 p.m. on the 7th day following an election, all missing counties shall be ignored, and the results shown by the returns on file shall be certified."

Section 102.112, Florida Statutes, provides in pertinent part that returns must be filed by 5 p.m. on the 7th day following the first primary and general election. Further, if the returns are not received by the department by the time specified, such returns may be ignored and the results on file at the time may be certified by the department. This section contemplates unforeseen circumstances not specifically contemplated by the legislature. Such unforeseen circumstances might include a natural disaster such Hurricane Andrew, where compliance with the law would be impossible. But a close election, regardless of the identity of the candidates, is not such a circumstance. The legislature obviously specifically contemplated close elections in that the law provides for automatic recounts, protests, and manual recounts. It also plainly states when this process must end.

Therefore, absent such unforeseen circumstances, returns from the county must be received by the Elections Canvassing Commission by 5 p.m. on the seventh day following the election in order to be included in the certification of the statewide results.



The answer to your second question is yes, the county canvassing board may certify other election results to the Department of State while the manual recount continues for the presidential election.

SUMMARY

Absent such unforeseen circumstances such as a natural disaster, returns from the county must be received by the Elections Canvassing Commission by 5 p.m. on the seventh day following the election in order to be included in the certification of the statewide results. The county canvassing board may certify other election results to the Department of State while the manual recount continues for the presidential election.

Sincerely,

L. Clayton Roberts
Director, Division of Elections

Prepared by:
Kristi Reid Bronson Assistant
General Counsel

LCR/KRB