



IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT IN AND  
FOR LEON COUNTY FLORIDA

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DAVE LANG  
CLERK CIRCUIT COURT  
LEON COUNTY, FLORIDA

HARRY JACOBS, et al.,

Plaintiffs,

vs.



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CASE NO. CV-00-2816

THE SEMINOLE COUNTY  
CANVASSING BOARD, et al.,

Defendants.

**FINAL ORDER**

THIS CAUSE came before the court upon the bench trial held December 6 and 7, 2000. This case is a contest of election pursuant to Section 102.168, Florida Statutes. The purpose of a contest of election is to establish specific legal grounds upon which to set aside the results of an election. Significantly, this decision in this case may not be rendered for the purpose of sending a message to the community, a political party or the Seminole County Supervisor of Elections or the Seminole County Canvassing Board. This court decides this case, like any other lawsuit, under the fundamental principles of judicial restraint and judicial independence, and the ruling is necessarily based on existing statutory and case law and on the facts as they were developed during the trial of this matter. Although the court is given authority to fashion relief for proven and substantial violations of absentee voter laws, this court is without authority or jurisdiction to manufacture a solution to a pressing political and social predicament. Where ascertainable, this

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court must give effect to the will of the people who voiced their political choices by casting their votes on November 7, 2000.

The right of suffrage is the preeminent right contained in the Declaration of Rights of the Florida Constitution, for without that basic freedom, all others would be diminished. An accurate vote count is one of the essential foundations of our democracy. The very purpose of elections laws is to obtain a correct expression of the intent of the voters, without imposing unnecessary and unreasonable restraints on that right. Palm Beach County Canvassing Board v. Harris, 2000 WL 1725434 (Fla. 2000), vacated on other grounds at Bush v. Palm Beach County Canvassing Board, 121 S.Ct. 471, 2000 WL 1769093 (Dec. 4, 2000).

The sanctity of the ballot is as old and treasured as our democracy. This court is guided by the guiding principles set forth by the Florida Supreme Court in Boardman v. Esteva, 323 So.2d 259 (Fla.1975):

[T]he real parties in interest here, not in the legal sense but in realistic terms, are the voters. They are possessed of the ultimate interest and it is they whom we must give primary consideration. The contestants have a direct interest certainly, but the office they seek is one of high public service and of utmost importance to the people, thus subordinating their interest to that of the people. Ours is a government of, by and for the people. Our federal and state constitutions guarantee the right of the people to take an active part in the process of that government, which for most of our citizens means participation via the election process. The right to vote is the right to participate; it is also the right to speak, but more importantly the right to be heard. We must tread carefully on that right or we risk the unnecessary and unjustified muting of the public voice. By refusing to recognize an otherwise valid exercise of the right of a citizen to vote for the sake of sacred, unyielding adherence to statutory scripture, we should in effect nullify that right.

Boardman v. Esteva, 323 So.2d at 263.

Based upon the complaint, the answers, admissions and stipulations entered into by the parties, and the evidence adduced at trial, the court makes the following findings:

This contest of the November 7, 2000, presidential election was filed pursuant to Section 102.168, Florida Statutes. The plaintiffs allege that irregularities in thousands of requests for absentee ballots should invalidate the subsequently cast absentee ballots, and that if the ballots cast by those whose requests were not in strict compliance with the absentee voter laws, the entire election in Seminole County should be invalidated. The plaintiffs also allege that the Seminole County Supervisor of Elections (the "Supervisor") illegally treated Republican Party representatives differently than she treated Democratic Party representatives by allowing Republican Party representatives access to her office and equipment to add voter identification numbers to the request forms but not offering the same opportunity to representatives of the Democratic Party.


The parties stipulate that prior to the November 7, 2000 general election, both the Florida Republican Party and the Florida Democratic Party prepared and mailed pre-printed absentee ballot request forms to registered voters of their respective parties. There is no allegation by any party that this practice is prohibited by law or policy. The absentee request forms mailed out by the Democratic Party differed from the request forms mailed out by the Republican Party because the Democratic form correctly included a space for the person making the request to fill in his or her voter registration identification number. In some cases, the number was even pre-printed on the request form. In contrast, the Republican form did not include either the requestor's voter registration identification number, or a space for the requestor to put the number. The Republican form did not instruct the recipients that their voter registration identification number was needed or required.

When the absentee ballot requests are returned to the Supervisor's office, the Supervisor

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is required to, among other things, mail out the absentee ballot and instructions. Both sides agree that thousands of requests for absentee ballots were submitted to the Supervisor that did not contain the voter registration identification number. Both sides also agree that after the Republican Party-generated request forms lacking the voter identification numbers were submitted to the Supervisor's office, Republican Party representatives (who were not employed by the Supervisor's office) used the Supervisor's office for weeks to add the voter identification numbers. Once the voter registration identification numbers were added, the Supervisor accepted and processed the requests, and sent absentee ballots to the requestors. The Supervisor did not advise the other political parties that she was allowing the Republican Party to use her office or allowing them to add the voter registration identification numbers. There is no evidence that the Democratic Party or any other political party requested access to the Supervisor's office or that any other party requested to add voter registration identification numbers. In fact, the Democratic Party did not need to make such a request, because their forms were correct and included either the pre-printed identification number or instructions that the voter Identification number was required.

The first issue for this court to decide is whether the absentee voting laws require strict compliance with all its provisions, or whether substantial compliance is sufficient to give validity to the ballots. Did the addition of voter registration identification numbers on the request forms after they were submitted to the Supervisor constitute such an irregularity that the ballots cast thereafter should be invalidated, or did the addition of that information constitute a violation of the absentee voter election laws that did not impugn or compromise the integrity of the ballots cast or ultimately the election itself?

Section 101.62, Florida Statutes, provides that the supervisor of elections may accept a

request for absentee ballots from an elector and that the person making the request must disclose:

1. The name of the elector for whom the ballot is requested;
2. The elector's address;
3. The last four digits of the elector's social security number;
4. **The registration number on the elector's registration identification card;**
5. The requester's name;
6. The requester's address;
7. The requester's social security number and, if available, driver's license number;
8. The requester's relationship to the elector; and
9. The requester's signature (written requests only).



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(emphasis supplied).

Although the statute clearly sets forth what must be disclosed by the person requesting the absentee ballot, there is no statutory directive regarding the treatment of absentee ballot *requests* which do not contain all of the information required by Section 101.62 (1)(b), Florida Statutes. In contrast, there is a clear statutory directive regarding the treatment of absentee ballots which do not contain all of the information required on the ballot. Section 101.68(2), Florida Statutes specifically provides that a ballot that fails to include the statutory elements is illegal. It has been the law in Florida for more than 25 years that “unless the absentee voting laws which have been violated . . . expressly declare that the particular act is *essential* to the validity of the ballot . . . the statute should be treated as directory, not mandatory, provided such irregularity is not calculated to affect the integrity of the ballot or election.” Boardman v. Esteva, 323 So.2d 259, 265 (Fla. 1975) (emphasis supplied).

Twenty five years after Boardman and after rampant absentee voter fraud occurred in the Miami mayoral election, the Miami Beach City Commission election and the Hialeah mayoral

election, the Florida Legislature amended and detailed absentee voter laws to include the requirements now found in Section 101.62, Florida Statutes. The 1998 revisions to Section 101.62(b), however, did not supersede Boardman on the issue of invalidating ballots for the lack of information required by statute. Unless a statutory provision also specifically states that the lack of information voids the ballot, the lack of the information does not automatically void the ballot. See, Final Bill Research & Economic Impact Statement, House of Representatives Committee on election Reform, CS/HB Sections 3743, 3941 at page 8 (passed as CS/HB 1402) on May 12, 1998.

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Because the irregularities in the casting of the actual ballot are directory unless specified in a statute as mandatory, it follows that the information listed as necessary for a request for an absentee ballot is directory, and not mandatory. It cannot be said that the lack of a voter registration identification number on an absentee ballot request is calculated to effect the integrity of the request itself or the subsequent ballot or the election, when substantial other identifying information has been included on the request. In comparison, Section 102.68(2)(c), Florida Statutes requires that a voters name, address and signature must be included on an absentee ballot. That section goes on to provide specifically that the failure to include the absentee voter's name address and signature voids the ballot.

There is no invalidating directive for failure to include the voter registration identification number on a request for an absentee ballot. In McLean v. Bellamy, 437 So.2d 737, 742-743 (Fla. 1st DCA 1983), the court stated:

Our examination of Section 101.62 leads us to conclude that its provisions are directory. We are unable to glean from the provision of tht section a legislative intent that the failure to follow the letter of its provisions should result in the



invalidation of absentee ballots cast by qualified electors who are also qualified to vote absentee.

The statutory requirement that the requester “must” disclose the nine items in Section 101.62(b) is simply not a definitive statement by the Legislature that requests which are missing the voter’s registration number are illegal or void. In contrast, Section 101.68(2)(c)1., Florida Statutes provides that an absentee ballot shall be considered illegal if it does not include the signature and the last four digits of the social security number of the elector, as shown by the registration records, and either the subscription of a notary the signature, printed name, address, voter identification number, and county of registration of one attesting witness, who is a registered voter in the state.

The irregularity of allowing the ballot requests to be completed by someone other than the person making the request after the submission of the requests violated Section 101.62, Florida Statutes. The statute requires the disclosure of the voter identification number by “[t]he person making the request.” § 101.62(1)(b), Fla. Stat. (2000). Because the requests for absentee ballots could have been considered valid even without the identification numbers, the violation of Section 101.62 is not a substantial non-compliance with elections law and does not compromise the integrity of the ballots cast or the integrity of the election.

The second issue for the court’s determination is whether the Supervisor of Elections treated the representatives of the Florida Republican Party differently than she treated representatives of other political parties to the extent that the integrity of the ballots or election was compromised. The plaintiffs allege that the Supervisor of Elections “treated the interests of non-Republican voters differently from those of Republican voters” because she informed the



public that she would strictly enforce the requirements of Section 101.62, Florida Statutes, including the disclosure of the voter identification number, yet she honored the request of a Republican representative to obtain access to the incomplete request forms and add the voter identification numbers and did not notify the Democratic Party or any other group of this development. The plaintiffs argued at trial that this failure to notify others and invite others to take the same actions constituted illegal disparate treatment. However, the proof offered at trial failed to show that she treated other political parties differently than she treated the Republican party. There was no showing of any violation of 104.0515, Florida Statutes, equal protection under the law under Article I, Section 2 of the Florida Constitution, or any other applicable law. Unlike the Republican mail-out, the Democratic mail-out did not suffer from the general omission of the voter identification numbers. Therefore, there was no need for the Democrats to request access to the request forms to correct them, and in fact, there was no evidence that such a request was made by the Democratic party or any other political subdivision. Consequently, there was no evidence that the request of any representative, including any Democrat, was denied by the Supervisor. Thus, there was no adequate showing that there was disparate treatment of Republicans as opposed to any other individuals or groups with regard to the ballot request forms.

There was no allegation or evidence that any of the absentee votes counted were not "cast by qualified, registered voters who were entitled to vote absentee and who did so in a proper manner." Boardman v. Esteva, 323 So.2d 259 at 269. The effect the irregularities complained of could have had on the election was the prevention of voting by certain requestors for absentee ballots whose requests lacked the voter identification number and who were unwilling or unable



to go to their precinct to cast their vote on election day. There was no evidence that any absentee ballot requests were excluded or denied solely because they lacked the required voter registration identification number.



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As stated in Boardman:

the primary consideration in an election contest is whether the will of the people has been effected. In determining the effect of irregularities on the validity of absentee ballots cast, the following factors shall be considered:

- (a) the presence or absence of fraud, gross negligence, or intentional wrongdoing;
- (b) whether there has been substantial compliance with the essential requirements of the absentee voting law; and
- (c) whether the irregularities complained of adversely affect the sanctity of the ballot and the integrity of the election.

Boardman v. Esteva, 323 So.2d 259 at 269. The evidence presented in this case does not support a finding of fraud, gross negligence, or intentional wrongdoing in connection with any absentee ballots. The Supervisor's initial strict enforcement of the 9-item requirement, followed by her permitting amendment of the request forms by third parties, shows a violation of Section 101.62, Florida Statutes, and of her own policy, but does not show fraud, gross negligence, or intentional wrongdoing. That the Supervisor's judgement may be seriously questioned, and that her actions invited public and legal scrutiny, do not rise to the level of a showing of fraud, gross negligence, or intentional wrongdoing. The Supervisor's negligence and failure to require strict compliance with Section 101.62 was not "negligence that is so pervasive that it thwarts the will of the people." Beckstrom v. Volusia County Canvassing Board, 707 So.2d 720, 725 (Fla. 1998).

Likewise, the evidence in this case did not show a "substantial noncompliance with the election statutes." Beckstrom v. Volusia County Canvassing Board, 707 So.2d 720, 725 (Fla.

1998). If the court finds “substantial compliance with the absentee voting laws,” the ballots cast are not void or illegal. Boardman v. Esteva, 323 So.2d 259 at 264. Although the practices undertaken with regard to the absentee ballot request forms invited strong allegations of wrongdoing and fraud, there was no evidence that the request for ballots or the ballots themselves were tainted or that the will of the people who voted absentee was thwarted by the involvement of third parties in adding to the ballot request forms. The will and intent of the voters could be clearly determined by the ballots cast, and there is no evidence of substantial noncompliance with the elections laws sufficient to invalidate the ballots cast.

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Finally, the court finds that the irregularities complained of, specifically the filling in of voter identification numbers on absentee ballot request forms after they had been returned to the Supervisor of Elections’ office, did not adversely affect the sanctity of the absentee ballots subsequently cast. While the Supervisor of Elections of Seminole County exercised faulty judgement in first rejecting completely the requests in question, and compounded the problem by allowing third parties to correct the omissions on the forms, no remedy against her is available in this election contest under Section 102.168, Florida Statutes. Faulty judgement is not illegal unless the Legislature declares it so. Oversight of elections officials rests with the Executive branch rather than with the courts.

For all the forgoing reasons, the court finds that the certified election in Seminole County was the result of the fair expression of the will of the people of Seminole County. Because the intent of the voters in Seminole County is ascertainable, this court must and does give effect to the will of the people who voted their political choices by casting their votes on November 7, 2000.

Accordingly, the plaintiff is entitled to no relief.

DONE AND ORDERED this 8 day of December, 2000.



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NIKKI ANN CLARK  
Circuit Judge

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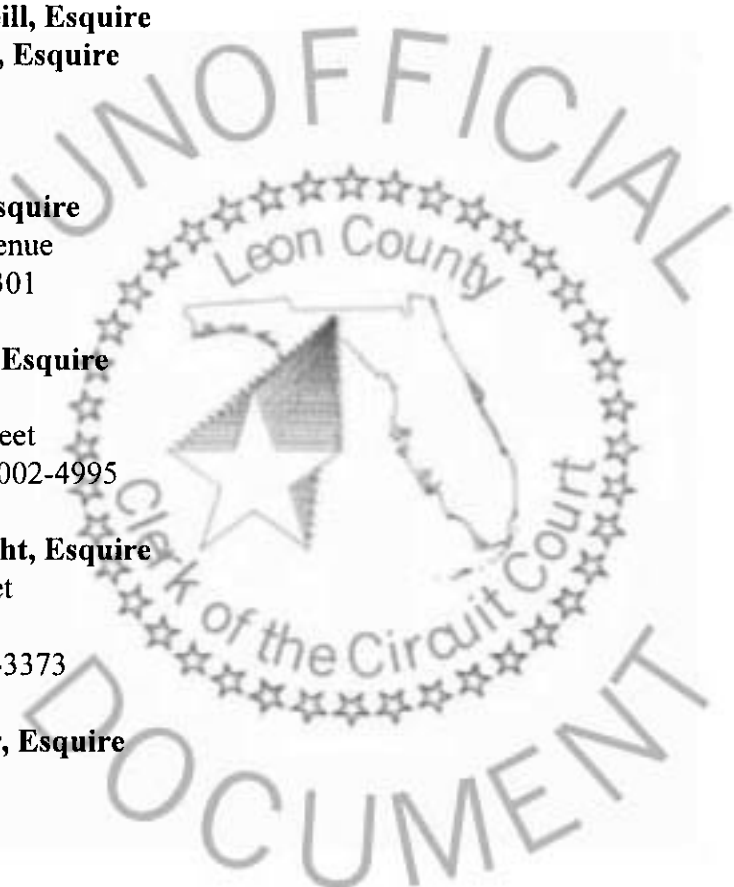
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