

FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State

November 15, 2000

Honorable Jennifer Edwards
Supervisor of Elections
Collier County Canvassing Commission
Collier County Government
3301 Tamiami Trail East, Building B
Naples, Florida 34112-4902

RE: Request of Collier County Canvassing Board to Amend Certification of County Returns
After November 14, 2000 Statutory Deadline

Dear Supervisor Edwards:

I am in receipt of your letter of today's date in which you submitted a written statement of facts and circumstances relative to the request of the Collier County Canvassing Board ("Board") to amend its certification of county election returns subsequent to the statutory deadline set forth in §102.112, Florida Statutes. As the Board is aware, §102.112, Florida Statutes, requires the Board to file its county election returns with the Department of State by 5 p.m. on the 7th day following the general election. Also, §102.141(6) requires the Board to file at that time a report with the Division of Elections on the conduct of the election. That deadline expired at 5 p.m. yesterday, November 14, 2000. I also am in receipt of your report filed with the Division of Elections.

Notwithstanding that statutory deadline, the Honorable Terry P. Lewis, Circuit Judge, Second Judicial District, Leon County, entered an Order on November 14, 2000, directing me to withhold determination as to whether or not to ignore late-filed returns until I have given due consideration to all relevant facts and circumstances consistent with the sound exercise of discretion. There are no express statutory standards by which to evaluate the facts and circumstances associated with a late filing of county election returns. Thus, I have concluded that the appropriate standards for determining whether to exercise discretion to accept or reject election results filed subsequent to the statutory deadline are those standards utilized by the Florida courts in deciding whether or not to uphold a challenged election. Those criteria are as follows:

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Facts & Circumstances Warranting Waiver of Statutory Deadline

1. Where there is proof of voter fraud that affects the outcome of the election. In Re Protest of Election Returns, 707 So. 2d 1170, 1172 (Fla. 3d DCA 1998); Broward County Canvassing Bd. v. Hogan, 607 So. 2d 508, 509 (Fla. 4th DCA 1992).
2. Where there has been a substantial noncompliance with statutory election procedures, and reasonable doubt exists as to whether the certified results expressed the will of the voters. Beckstrom v. Volusia County Canvassing Bd., 707 So.2d 720 (Fla. 1998).
3. Where election officials have made a good faith effort to comply with the statutory deadline and are prevented from timely complying with their duties as a result of an act of God, or extenuating circumstances beyond their control, by way of example, an electrical power outage, a malfunction of the transmitting equipment, or a mechanical malfunction of the voting tabulation system. McDermott, et. al. v. Harris, Case No. 00-2700, (Second Cir.), November 14, 2000, Order of Judge Terry P. Lewis.

Facts & Circumstances Not Warranting Waiver of Statutory Deadline

1. Where there has been substantial compliance with statutory election procedures and the contested results relate to voter error, and there exists a reasonable expectation that the certified results expressed the will of the voters. Beckstrom v. Volusia County Canvassing Bd., 707 So.2d 720 (Fla. 1998).
2. Where there exists a ballot that may be confusing because of the alignment and location of the candidates' names, but is otherwise in substantial compliance with the election laws. Nelson v. Robinson, 301 So.2d 508, 511 (Fla. 2d DCA 1974) ("mere confusion does not amount to an impediment to the voters' free choice if reasonable time and study will sort it out.")
3. Where there is nothing "more than a mere possibility that the outcome of the election would have been effected." Broward County Canvassing Bd. v. Hogan, 607 So.2d 508, 510 (Fla. 4th DCA 1992).

Facts and Circumstances Alleged By Board

For purposes of determining whether to exercise my discretion to accept or reject late-filed election returns, I have considered all of the facts and circumstances set forth in your letter of today's date and assumed that they are true. The Board asks whether it may provide an amended recount certification of Collier's ballots by adding 25 inadvertently omitted ballots to the total ballot counts already certified and provided. In its report filed with the Division of Elections, the Board reported that addressed several complaints of equipment malfunction. In

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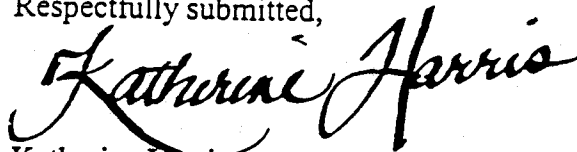
all cases the complaints were investigated, and the malfunctions were either corrected or the machines were determined to be functioning correctly. The Board reported that there were no difficulties or unusual circumstances encountered by the elections board or the canvassing board. The Board also reported that a number of individuals reported to vote under the impression that they had registered to vote at the Department of Motor Vehicles, but that these voters' applications were not on file with the supervisor of election.

Application of Criteria to Alleged Facts and Circumstances

The Board has not alleged any facts or circumstances that suggest the existence of voter fraud. The Board has not alleged any facts or circumstances that suggest that there has been substantial noncompliance with the state's statutory election procedures, coupled with reasonable doubt as to whether the certified results expressed the will of the voters. The Board has not alleged any facts or circumstances that suggest that Collier County has been unable to comply with its election duties due to an act of God, or other extenuating circumstances that are beyond its control. Rather, the Board has alleged that 25 ballots were mistakenly not counted. I find that these circumstances, standing alone, do not rise to the level of extenuating circumstances that justify a decision on my part to ignore the statutory deadline imposed by the Florida Legislature.

For the above-described reasons, I hereby decline to exercise any authority I may possess pursuant to §102.112, Florida Statutes, to accept election results reported by the Board after the statutory deadline of 5 p.m., November 14, 2000.

Respectfully submitted,



Katherine Harris
Secretary of State

OFFICIAL CERTIFICATE OF THE STATE ELECTIONS
CANVASSING COMMISSION OF THE GENERAL
ELECTION HELD ON THE SEVENTH DAY
OF NOVEMBER, A. D., 2000

We, BOB CRAWFORD, Commissioner of Agriculture, KATHERINE HARRIS, Secretary of State, and L. CLAYTON ROBERTS, Director, Division of Elections, constituting the State Elections Canvassing Commission, hereby certify the election returns of the general election held in the State of Florida on the Seventh day of November, A.D., 2000, as shown by the returns of said general election on file in the office of the Secretary of State from all the counties in Florida and herewith give below the results of said canvass:

For President of the United States, the whole number of votes cast was 5,958,643 of which number

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|---------------------------------------------|----------|------------------|-------|
| George W. Bush and Dick Cheney (REP) | received | <u>2,910,492</u> | votes |
| Al Gore and Joe Lieberman (DEM) | received | <u>2,910,192</u> | votes |
| Harry Browne and Art Olivier (LIB) | received | <u>16,401</u> | votes |
| Ralph Nader and Winona LaDuke (GRE) | received | <u>97,422</u> | votes |
| James Harris and Margaret Trowe (SWP) | received | <u>558</u> | votes |
| John Hagelin and Nat Goldhaber (LAW) | received | <u>2,273</u> | votes |
| Pat Buchanan and Ezola Foster (REF) | received | <u>17,472</u> | votes |
| David McReynolds and Mary Cal Hollis (SPF) | received | <u>618</u> | votes |
| Howard Phillips and J. Curtis Frazier (CPF) | received | <u>1,370</u> | votes |
| Monica Moorehead and Gloria La Riva (WWP) | received | <u>1,805</u> | votes |
| May Chote and Miriam E. Lancaster (WRI) | received | <u>34</u> | votes |
| Ken. C. McCarthy and Frank Beifus (WRI) | received | <u>6</u> | votes |

For United States Senator, the whole number of votes cast was 5,854,816 of which number

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| Bill McCollum (REP) | received | <u>2,704,151</u> | votes |
| Bill Nelson (DEM) | received | <u>2,988,836</u> | votes |
| Joe Simonetta (LAW) | received | <u>26,075</u> | votes |
| Joel Deckard (REF) | received | <u>17,319</u> | votes |
| Willie Logan (NPA) | received | <u>80,819</u> | votes |
| Andy Martin (NPA) | received | <u>15,877</u> | votes |
| Darrell L. McCormick (NPA) | received | <u>21,652</u> | votes |
| "Nikki O." (WRI) | received | <u>29</u> | votes |
| Olen C. Faulk (WRI) | received | <u>8</u> | votes |
| Richard Grayson (WRI) | received | <u>36</u> | votes |
| Brian Heady (WRI) | received | <u>6</u> | votes |
| Argiris Malapanis (WRI) | received | <u>8</u> | votes |

For Member, House of Representatives, One Hundred and Seventeenth House District, the whole number of votes cast was 24,941 of which number

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| Carlos Lacasa (REP) | received | <u>24,940</u> votes |
| Richard Cason (WRI) | received | <u>1</u> votes |

For Member, House of Representatives, One Hundred and Eighteenth House District, the whole number of votes cast was 27,819 of which number

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|-------------------------------|----------|---------------------|
| Edward B. Bullard (DEM) | received | <u>27,819</u> votes |
| Marie Yves Jose Avignon (WRI) | received | <u>0</u> votes |

For Member, House of Representatives, One Hundred and Nineteenth House District, the whole number of votes cast was 32,794 of which number

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| Tom David (REP) | received | <u>16,047</u> votes |
| Cindy Lerner (DEM) | received | <u>16,747</u> votes |

For Member, House of Representatives, One Hundred and Twentieth House District, the whole number of votes cast was 37,925 of which number

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|--------------------|----------|---------------------|
| Ken Sorensen (REP) | received | <u>19,123</u> votes |
| Ron Herron (DEM) | received | <u>18,802</u> votes |



IN TESTIMONY WHEREOF, we have hereunto set
our hands and official signatures this
Fifteenth day of November, A. D., 2000


COMMISSIONER OF AGRICULTURE


SECRETARY OF STATE


DIRECTOR, DIVISION OF ELECTIONS