

IN THE
SUPREME COURT OF FLORIDA

CASE NOS. SC00-2346, SC00-2348 & SC00-2349

PALM BEACH COUNTY
CANVASSING BOARD

vs.

KATHERINE HARRIS,
ETC., ET.AL.

VOLUSIA COUNTY vs.
CANVASSING BOARD

MICHAEL, MCDERMOTT,
ET. AL.

FLORIDA DEMOCRATIC
PARTY

vs.

MICHAEL MCDERMOTT,
ET AL.

Petitioners/Appellants

Respondents/Appellees.

JANE CARROLL, SUPERVISOR OF ELECTIONS OF BROWARD COUNTY
REPLY BRIEF

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COMES NOW, Jane Carroll, Broward County Supervisor of Elections (“Carroll”), as the Constitutional Officer of Supervisor of Elections for Broward County, Florida, and files this Reply to Answer Briefs filed in this case.

STATEMENT OF THE CASE AND FACTS

Carroll, serves as the Supervisor of Elections for Broward County, Florida, and has done so since 1969. The Supervisor of Elections is a Constitutional Officer, established by Article VIII, Section 8(d) of the Constitution of the State of Florida. Carroll’s duties and obligations are specifically set forth within the Florida Election Code, Chapters 97-106, Florida Statutes. Pursuant to section 102.141, Florida Statutes, Carroll serves as a member of the Broward County Canvassing Board (hereinafter “Canvassing Board”). To date, Carroll has joined in the pleadings filed with this Court as a member of the Canvassing Board because the Canvassing Board as a whole has been acting entirely consistent with Florida law, particularly the provisions of section 102.166, Florida Statutes, which governs the procedures for election protests and the manual recounts currently underway in Broward County.

During a public meeting of the Canvassing Board on the morning of November

19, 2000, the County Attorney's Office advised the Canvassing Board that it was the opinion of the County Attorney that the standard used by the Canvassing Board to determine a "voter's intent" did not comply with the law. Mrs. Carroll, as Broward County Supervisor of Election, respectfully disagrees with the conclusion reached by the County Attorney's Office, which serves as legal counsel for the Canvassing Board. Carroll continues to believe that the Canvassing Board has, throughout the entire process, fully complied with the requirements of Florida law as it pertains to the manual recount – including the adoption of a standard by the Canvassing Board to determine the intent of a voter by examining the individual ballots to view the extent to which a "chad" is connected to the ballot. With due respect to the County Attorney's Office, which has worked long and hard and provided excellent guidance to the Canvassing Board through these trying and unprecedented times, Carroll is troubled by the conclusion reached by the County Attorney's Office. As a result, Carroll is filing this Reply Brief to provide further assistance and request appropriate direction from this Court on the issue of the standard used by the Canvassing Board.

STANDARD USED TO DETERMINE VOTER'S INTENT

Section 102.166, Florida Statutes, provides the procedure for election protests, including the determination of whether to conduct a limited manual recount of votes cast in an election, and states that the Canvassing Board is charged with the duty of

determining the intent of a voter when the counters could not do so during their inspection of the ballots. Florida Statutes do not provide any guidance on how a canvassing board determines the intent of a voter, and neither Division of Elections nor Florida case law has provided guidance on reviewing these ballots. In the absence of a statutory definition or set of guidelines, coupled with the language of the statute which provides that the intent of the voter is “as determined by the canvassing board” (Section 101.5614, Florida Statutes), it cannot now be said that the Canvassing Board acted improperly or outside the scope of the statute in adopting its standard as described hereinafter.

On November 13, 2000, at the time the Canvassing Board commenced the limited recount of the selected precincts pursuant to section 102.166(4), Florida Statutes, the Canvassing Board was advised by its legal counsel to attempt to set a standard from the beginning of the process. A majority of the Canvassing Board adopted a process for review of the ballots which can be referred to as a two-corner rule. On ballots where the counters could not themselves determine the intent of the voter, the Canvassing Board would review those ballots individually. If, upon inspection, it appeared that two or more corners of the “chad” were dislocated from the ballot, the Canvassing Board viewed this as an intent of the voter to cast a vote for the candidate. The ballots were then counted as votes for the particular candidate. If

only one corner of the “chad” was separated from the ballot, or if the “chad” was dimpled (or “pregnant”), then the Canvassing Board found that the intent of the voter could not be determined based on its criteria. These ballots were not assigned to a particular candidate, are segregated, and are maintained separately by the Canvassing Board.

This standard was used by the Canvassing Board through its limited manual recount, the results of which formed the basis for the Canvassing Board’s decision to undertake a complete manual recount of all ballots cast in the Presidential Election throughout Broward County. It is the same standard that has been used by the Canvassing Board since it began the manual recount of the entire County on Wednesday, November 15, 2000. It is the same standard that the Canvassing Board continues to use, subject to a motion unanimously adopted by the Canvassing Board on November 19, 2000, which provides that the Canvassing Board may go back and review the individual ballots it previous found to not be votes under its two corner rule, based upon a decision of this Court on the issue.

Carroll acknowledges the decisions and actions of the Canvassing Board as a whole, even though some may not be unanimous. Carroll voted against both the limited and the complete manual recounts in Broward County. One of the other members of the Canvassing Board, Chair of the County Commission, Suzanne

Gunzburger, has consistently expressed reservations about the Canvassing Board's two corner rule. Yet, notwithstanding these disagreements, the Canvassing Board has continued to proceed diligently and according to law in all aspects as they relate to the manual recount in Broward County. Carroll respects these differences, and only asks that this Court be cognizant of the fact that the Canvassing Board is doing the best it can, under these unique circumstances, to be fair to the candidates and voters of Broward County. It is Carroll's opinion that the two corner rule is consistent with the law, as it is a fair and objective standard that limits subjective biases that this court must acknowledge has severely impacted and affected this post-election situation.

CONCLUSION

Carroll, as Broward County Supervisor of Elections, is solely concerned with maintaining the integrity of the election process in Broward County, Florida. Given the extraordinary circumstances in this case, and the uncertainties surrounding the law and the position of the various parties, Carroll respectfully requests this court to take this matter under advisement and provide direction to the Canvassing Board as to determining the intent of voters as required by section 102.166, Florida Statutes.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via facsimile transmission to each of the following, this 19th day of November, 2000:

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