

the standards governing the Canvassing Board's evaluation of the ballots.

5. The Canvassing Board is aware of this lawsuit and the need for a prompt disposition of the questions affecting the manual vote counting process.

6. The Florida Democratic Party and all voters of Palm Beach County have a need for the alacritous disposition of these issues.

7. Because the Canvassing Board is in doubt as to its mandatory duty to conduct a manual vote recount, pursuant to 106.166(5), any delay in setting and conducting that recount could well disenfranchise all voters of Palm Beach County. Unless this Court acts immediately to set a hearing to determine the rights of Florida voters and the conditions which will govern the tabulating of their votes, the deadline for certifying the results of the county's votes may expire, thus denying all voters the right to have their express votes counted. Indeed, the Secretary of State has opined that the deadline for certifying votes is TODAY, November 14, at 5:00 p.m. While Plaintiff expressly disagrees that the deadline set by the Secretary of State is mandated by statute, Plaintiff cannot ignore this fact, nor can Plaintiff ignore the Canvassing Board's estimate

that the manual recount of all ballots required by statute will require six days to complete.

8. Without an emergency hearing, the Florida Democratic Party and Palm Beach voters may be irreparably injured and forever harmed by the cancellation and nullification of their lawful, properly cast ballots. No adequate remedy at law exists to remedy the grievances identified in the Complaint. Accordingly, an emergency hearing is needed to resolve the issues raised in the Complaint.

9. It should be further noted that the issues raised in the Complaint involve only questions of law and statutory construction.

CONCLUSION

For the reasons stated above, Plaintiff requests an emergency hearing today.

THE FLORIDA DEMOCRATIC PARTY

By its attorney,

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Dated: November 14, 2000

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY

FLORIDA DEMOCRATIC PARTY,

Plaintiff,

v.

PALM BEACH COUNTY
CANVASSING BOARD,

Defendant.

Case No. CL 00-11075AH

FILED
NOV 14 11:15
CIRCUIT CIVIL 5

**FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT
AND PETITION FOR WRIT OF MANDAMUS**

Introduction

1. This action seeks to enforce Florida law, in order to ensure that all votes for President of the United States cast in Palm Beach County, Florida are counted. Specifically, this action seeks (a) a writ of mandamus requiring the Palm Beach County Canvassing Board (the "Canvassing Board") to resume and complete a manual recount of all ballots cast in Palm Beach County in the November 7, 2000, Presidential election, a non-discretionary, ministerial action required by Fl.St. § 102.166(5); and (b) a declaratory judgment requiring the Canvassing Board to review the votes cast on all ballots based on all indications of the voter's intent.

2. After scheduling a full manual recount of all votes in Palm Beach County to begin at 7:00 am on November 14, 2000, based on errors found in the vote tabulation during a prior test manual recount, the Canvassing Board suddenly "suspended" the recount on the morning of November 14 and refused to continue the pending manual recount of all ballots. The Canvassing Board suspended the manual recount despite the fact that the Board expressly found through the test manual recount, conducted on November 11, that the County's flawed automatic vote tabulation failed to tabulate properly marked ballots in the Presidential Election, and that this error in the vote tabulation could affect the outcome of the election. The Canvassing Board had no discretion to refuse this manual recount under § 102.166, given that it had already found errors in the vote tabulation that could change the outcome of the election.

3. In addition, the Canvassing Board has also stated that, in the event it were to conduct a full manual recount, its intention is to apply a more narrow standard for reviewing punchcard ballots used in the November 7, 2000 election. The Canvassing Board has already applied that narrow standard in the initial "test" manual recount of four precincts conducted on November 11, 2000. The Canvassing Board's present narrow standard is an incorrect

method of determining a voter's intent that violates Florida law and deprives citizens of their lawful votes. Plaintiffs request declaratory and injunctive relief to redress these violations.

Jurisdiction

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

Parties

5. 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).

6. Defendant Palm Beach County Canvassing Board is a governmental body established by Fla. Stat. § 102.141. It has jurisdiction to conduct a recount under Fla. Stat. § 102.166, and that statute requires it to do so in these circumstances. 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

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