

27. Pursuant to Section 102.166(4)(c), the Palm Beach Canvassing Board authorized and conducted a test manual recount of one percent of the vote tabulation for Palm Beach County (the "test" hand count). As a result of the test hand count, the Canvassing Board made an express finding of errors in automatic vote tabulation, i.e., machines failed to tabulate votes from properly marked ballots. Specifically, the Canvassing Board found that, even with their inadequate standard, based on a manual recount of one percent of the vote tabulation, the automatic vote tabulation had failed to count 33 votes for Vice President Gore and 14 votes for Governor Bush, as well as other votes for other Presidential candidates.

28. Section 102.166(5) of the Florida Statutes provides that, if the test manual recount "indicates an error in the vote tabulation which could affect the outcome of the election," the Canvassing Board "shall" take one of three actions, depending on which is applicable to the error in question: (i) "[c]orrect the error and recount the remaining precincts with the vote tabulation system," (ii) "[r]equest the Department of State to verify tabulation software," or (iii) "[m]anually recount all ballots."

29. The Canvassing Board determined on November 11, 2000 that the test manual recount indicated an error in the entire vote tabulation and, specifically, a general failure by the automatic vote tabulation to count properly marked ballots in all Palm Beach County precincts. Accordingly, § 102.166(5)(c) requires the Palm Beach County Canvassing Board to "manually recount all ballots."

30. On November 12, 2000, the Canvassing Board voted to manually recount all ballots, pursuant to Section 102.166(5)(c), based on the errors found in the test manual recount.

31. On November 14, 2000, the Canvassing Board abruptly reversed course and, in violation of § 102.166(5)(c), suspended the full manual recount.

32. Section 102.166(5)(c) gives the Canvassing Board no discretion. The statute requires the Canvassing Board to correct the errors in the vote tabulation indicated by the test recount by recounting all ballots by hand.

33. The writ of mandamus is necessary to enforce the performance of a ministerial duty that the Palm Beach County Canvassing Board is not performing.

34. Plaintiff has no other adequate remedy at law.

COUNT II  
VIOLATION OF FLA. STAT. § 102.166(7)

35. The preceding paragraphs are incorporated herein as if fully set forth.

36. Section 102.166(7)(b) of the Florida Statutes requires that the Canvassing Board review challenged ballots to determine the voter's intent. Section 102.166(7)(b) states: "If a counting team is unable to determine a voter's intent in casting a ballot, the ballot shall be presented to the county canvassing for it to determine the voter's intent."

37. The Canvassing Board's incorrect reliance on a per se rule based on the physical perforation of a punchcard violates Section 102.166(7)(b).

38. The Canvassing Board's current standard has caused material harm to the Florida Democratic Party and its nominee for President, Vice President Gore. Absent declaratory and injunctive relief from this Court, the Board's practice will cause plaintiff and its nominee future harm.

PRAYER FOR RELIEF

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

(a) issue a writ of mandamus compelling the Palm Beach County Canvassing Board to resume and complete a manual recount of all ballots cast in the Presidential election in Palm Beach Count, in compliance with Fl. St. § 102.166(5);

(b) enter an order enjoining the Canvassing Board from certifying the results of the November 7 general election until a full hand recount is completed, pursuant to Fl. St. § 102.166(5);

(c) enter a declaratory judgment holding that the Canvassing Board's present standard for reviewing challenged ballots is illegal and in violation of Florida law;

(d) 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

(e) 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 14, 2000

9.  
C. [unclear]

IN THE CIRCUIT COURT OF THE 15<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY

\_\_\_\_\_  
FLORIDA DEMOCRATIC PARTY,  
  
Plaintiff,  
  
v.  
  
PALM BEACH COUNTY  
CANVASSING BOARD,  
  
Defendant.  
\_\_\_\_\_

Case No. CL '00 11 078 AG AH

9

CIRCUIT CIVIL D

NOV 13 PM 5:00

FILED

COMPLAINT

Introduction

1. This is an action to ensure that all votes for President of the United States cast in Palm Beach County, Florida are counted, by enforcing the provisions of Florida law and requiring the Palm Beach County Canvassing Board (the "Canvassing Board") to review ballots based on the voter's intent. The Canvassing Board has announced its intention to apply a more narrow, incorrect standard for reviewing punchcard ballots used in the November 7, 2000 election, and it has already applied that standard in the initial "test" manual recount of four precincts conducted on November 11, 2000.