

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

LONETTE HARRELL,
GARY H. SHULER, and
MARK A. THOMAS, as
Florida registered voters,

Petitioners,

CASE NO. 00-2803

vs.

KATHERINE HARRIS,
in her official capacity as
Florida Secretary of State,

Respondent.

FILED
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CLAY LATHROP
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

**EMERGENCY PETITION FOR WRIT OF MANDAMUS
TO THE FLORIDA SECRETARY OF STATE
KATHERINE HARRIS**

COME NOW the Petitioners LONNETTE HARRELL, GARY H. SHULER, and MARK A. THOMAS, and hereby petition this Court for a Writ of Mandamus to the Florida Secretary of State, KATHERINE HARRIS, requiring her to certify the Presidential/Vice-Presidential election results that were received by her before 5:00 p.m. of the seventh day following the election of November 7, 2000, and to disregard all changes in the voting tabulation resulting from the manual recount of Miami-Dade County, Palm Beach County and Broward County; and to declare those portions of Chapter 102, Florida Statutes providing for such manual recounts to be unconstitutional under the Fifth and Fourteenth Amendments to the United States Constitution. As grounds for this Petition, Petitioners state:

1. Each of the Petitioners are registered voters and taxpayers in the State of Florida,

reside in counties which cast ballots for the electors of the respective Presidential and Vice-Presidential candidates, and each Petitioner voted for George W. Bush and Dick Cheney in the election held on November 7, 2000.

2. Venue is in Leon County because the Respondent KATHERINE HARRIS, Florida Secretary of State is a state officer of the State of Florida.

3. The Petitioners are:

- a. LONNETTE HARRELL, a resident of Okaloosa County, Florida.
- b. GARY H. SHULER, a resident of Calhoun County, Florida.
- c. MARK A. THOMAS, a resident of Leon County, Florida.

4. The election which is the subject matter of this Petition involved the votes of registered voters throughout the 67 counties of the State of Florida, and the process by which Florida Statute 102.166 allows for the determination of a manual recount purportedly enables a presidential or vice-presidential candidate and such candidates' party to obtain a manual recount of even those counties where such candidate won the election in order to enable such candidate or candidates to enhance the amount of votes determined to have been cast for such candidate or candidates.

5. This procedure allows the candidate who loses the popular vote in the entire State of Florida to select arbitrarily, and without consideration of other counties which have discredited or uncounted votes to seek to undermine the state-wide election result by selecting counties for manual recount only in those counties where there will be an enhancement of such candidates' vote in the state-wide tabulation.

6. This type of procedure ignores the logical purpose of the manual recount statute: Permitting the losing candidate or party in the election to seek a manual recount, but only if such a

manual recount, will correct errors which could offset the outcome of the election. Section 102.166(5), Florida Statutes.

7. The process that has been involved in the three above-stated counties ignores the fact that the candidate that wins the popular vote in a state-wide tabulation has absolutely no motive or reason to demand a manual recount and thereby the statutory scheme arbitrarily, capriciously and illogically allows the losing candidate in the state-wide election, but the winning candidate in counties of the candidates' own choosing, to demand a manual recount without including the discarded and/or uncounted ballots in the counties where the winner of the state-wide tabulation is likely to obtain a greater number of votes through a manual recount of such discarded or uncounted ballots.

8. Such a scheme is arbitrary, capricious and undermining of the people's right to vote and be heard, and thereby completely destroys the equality of the voting rights of all of the registered voters of Florida who cast ballots on November 7, 2000, including the Petitioners.

9. Even the Democratic attorney general, Robert A. Butterworth, acknowledges the obvious risk to the disenfranchising of the voters of the State of Florida when certain counties are allowed to be recounted to the exclusion of other counties. See Attorney General's letter to Charles E. Burton, Chairman, Palm Beach County Canvassing Board, dated November 14, 2000 attached hereto and made a part hereof.

10. Whether a particular candidate filed a request for a manual recount within the time period provided by Florida law in no way waives the right of the individual voters to have their ballots or votes treated equally under the United States Constitution, Amendments V and XIV. Moreover, any such waiver cannot deprive the individual voters of their right to due process of law as guaranteed by the United States Constitution, Amendments V and XIV.

11. In this regard, it is important that the electoral canvassing boards of the counties which are manually recounting the votes are partisan Democrats favoring the candidacy of the presidential and vice-presidential slate that lost the state wide popular vote that was tabulated by the deadline set by Florida statute.

12. Moreover, these electoral canvassing committees have absolutely no guidelines established by law to guide them in their divination of the "intent of the voter." They can, under the present circumstances, determine that a vote was cast for a candidate even if there is no clear indication of such intent.

13. These partisan canvassing boards are even being allowed to "read the minds" of the voter who may have determined that the voter was not going to vote for any Presidential candidate, or may have started to vote for a Presidential candidate and then determined that he or she could not bring himself or herself to vote for anyone in the Presidential race. Indeed, this is an extremely probable state of mind for a high percentage of voters in what has been a very close election making it difficult for many to determine the one for whom to vote.

14. For the reasons described above, the Florida statutory scheme for manual recounting, both on its face and as applied in the circumstances of this election, is unconstitutionally vague and/or overbroad and violates the Petitioners' right to due process of law, equal protection of law, and constitutionally diminishes their right to vote under the aforesaid provisions of the United States Constitution.

15. Moreover, the statutory provisions providing for a manual recount are not reasonably related to the purpose of allowing a losing candidate to obtain a manual recount; these provisions permit a candidate who loses the state-wide popular vote but wins in some counties, often


overwhelmingly, to chose only those counties for the purpose of a recount; and such scheme impermissibly allows the state-wide loser to attempt to undermine the weight and value of the voters of those counties where such candidate lost, often overwhelmingly.

16. Such a scheme violates the due process clauses, the equal protection clause, and the constitutional protection of each individual's right to vote under the provisions of the United States Constitution, Amendments V and XIV.

WHEREFORE, Petitioners pray that this Court will declare the said statutes providing for a manual recount, on their faces and as applied, to be violative of the Petitioners' right to have their vote treated equally and right to due process of law. Further, Petitioners pray that the Court due to the said unconstitutionality issue a Writ of Mandamus to the Florida Secretary of State requiring her to certify the election returns which had been received by 5:00 p.m. on November 14, 2000, thereby certifying that GEORGE W. BUSH and DICK CHANEY are entitled to the 25 electoral votes of the State of Florida.

DATED this 22 day of November, 2000.

Respectfully submitted.


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November 14, 2000

The Honorable Charles E. Burton
Chair, Palm Beach County Canvassing Board
County Courthouse
West Palm Beach, Florida 33401

Dear Judge Burton:

Attached is the legal opinion requested by the Board.

The circumstances surrounding these legal issues are extremely serious. If hand recounts have already occurred in Seminole County and an unknown number of other counties without the restraint of a legal opinion while similar hand counts are blocked in other counties due to a newly issued standard, a two-tier system for reporting votes results.

A two-tier system would have the effect of treating voters differently, depending upon what county they voted in. A voter in a county where a manual count was conducted would benefit from having a better chance of having his or her vote actually counted than a voter in a county where a hand count was halted.

As the State's chief legal officer, I feel a duty to warn that if the final certified total for balloting in the State of Florida includes figures generated from this two-tier system of differing behavior by official canvassing boards, the State will incur a legal jeopardy, under both the U.S. and State constitutions. This legal jeopardy could potentially lead to Florida having all of its votes, in effect, disqualified and this state being barred from the Electoral College's selection of a President.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/dmm

