

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

CL 0011182 AM

CIVIL DIVISION

CASE NO. CL-00-\_\_\_\_\_

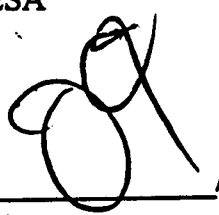
SUSAN RHODES and PAUL RHODES,  
Her Husband

Plaintiff

v

HONORABLE KATHERINE HARRIS, as  
SECRETARY OF STATE, STATE OF  
FLORIDA, and HONORABLE KATHERINE  
HARRIS, HONORABLE BOB CRAWFORD  
and HONORABLE LAURENCE C. ROBERTS  
as the ELECTIONS CANVASSING  
COMMISSION, HONORABLE CAROL  
ROBERTS, HONORABLE CHARLES  
BURTON, and HONORABLE THERESA  
LEPORE as the PALM BEACH  
COUNTY CANVASSING BOARD,

Defendants



FILED  
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CIRCUIT CIVIL 8

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

COMES NOW the Plaintiff, Susan Rhodes and Paul Rhodes, her husband (hereinafter referred to as "VOTERS"), by and through his undersigned attorneys, and sues the Defendants, Honorable Katherine Harris, Secretary of State, State of Florida and Honorable Katherine Harris, Honorable Bob Crawford, and Honorable Laurence C. Roberts, as the Elections Canvassing Commission of the State of Florida, (hereinafter referred to as "Elections Canvassing Commission"), and Honorable Carol Roberts, Honorable Charles Burton, and Honorable Theresa LePore as the Palm Beach County

Canvassing Board (hereinafter referred to as the "Canvassing Board"), and as grounds therefor would state as follows:

1. This is an action in equity for declaratory and injunctive relief.
2. Chapter 102, Florida Statutes specifies the procedures under which elections in Florida are conducted, votes counted, and their results ascertained. Its purpose self-evidently requires that the State obtain a fair and accurate report of the vote submitted by the People.
3. To ensure the fairness and legitimacy of the vote and the candidate(s) elected thereby, Section 102.166(4)(a) of the Florida Statutes specifies the right to and procedures for a manual recount of the votes.
4. On or about November 10, 2000, within 72 hours of the election, the Florida Democratic Party filed with the Canvassing Board a request, in requisite written form (Florida Statutes 102.166(4)(b)), for a manual recount of the Palm Beach County vote in the Election.
5. The Canvassing Board is specifically empowered to authorize a manual recount (F.S. 102.166(4)(c)), which must include at least 3 precincts and at least 1% of the vote cast (F.S. 102.166 (4)(d)).
6. The Statutes specify exacting procedures to ensure the integrity of a manual recount, including the provision for participation by at least two political parties (F.S. 102.166(7)(a)). Such procedures were diligently followed by the Canvassing Board. Arrangements were further made by the Canvassing Board to enable the press to view the manual recount as it was conducted, to ensure certainty as to the integrity of the manual recount process in view of the immense gravity associated with the legitimacy of the presidential election at issue, and the potential effect of the Canvassing Board's manual recount.
7. The Florida Statutes specifically provide (F.S. 102.166(5)) that in the event the manual recount of the required 1% initial sample indicates an error which could affect the outcome of the election, the Canvassing Board shall manually recount all ballots. (F.S. 102.166(5)(c)).
8. On or about November 11, 2000, the Canvassing Board conducted the initial mandatory recount provided by Section 102.166(4), Florida Statutes in the said election,

and determined that it revealed the outcome of the Presidential election may be affected by a manual recount of all the Palm Beach County votes.

9. The Board's manual recount of the 1% sample, consisting of approximately 4,300 ballots, found 33 additional votes had been cast for the Democratic candidate for President, Albert Gore, Jr., and 14 additional votes had been cast for the Republican candidate for President, George W. Bush, a result obtained in the presence of observers representing both candidates and in public view.

10. The 19 net additional votes found to have been cast for Mr. Gore in the 1% sample recounted by the Board, suggested that a full recount would add a net 1,900 votes, and therefore, that the recount could affect the outcome of the election, the standard articulated in F.S. 102.166(5) regarding the determination whether to proceed to a manual recount of all the votes in the County.

11. The Canvassing Board, therefore, determined, at approximately 2 A.M. on the morning of Sunday, November 12, 2000, that as indeed required of them by law (F.S. 102.166(5)(c)) all ballots cast in Palm Beach County must be manually recounted, granting the request of the Florida Democratic Party to conduct a manual recount of all Palm Beach County ballots cast in the election.

12. Section 102.111(1), Florida Statutes, may require the Canvassing Board to certify the results of the Palm Beach County election no later than 5:00 PM November 14, 2000. According to the literal language of that section, if not so certified, the votes cast in the Presidential Election in Palm Beach County shall be ignored.

13. Section 102.112(1), Florida Statutes, however, addressing the exact same subject matter, provides that if the returns are not received by the Department of State by 5:00 PM November 14, 2000, the returns may be ignored, and goes on to address the topic of late returns (a topic which would not be possible if the deadline in Section 102.111(1) was absolute).

14. Overseas absentee ballots, pursuant to 42 U.S.C.A 1973ff, will be received up through November 17, 2000, and counted and certified to the Department of State after that date.

15. These VOTERS are in doubt as to whether the Canvassing Board is prohibited from delaying certification of the results of the Presidential Election conducted

November 7, 2000, until it has completed the manual recount provided in Section 102.166(4), Florida Statutes, or until it has opened and recounted the overseas absentee ballots as provided in 42 U.S.C.A Section 1973ff. In fact, these VOTERS believe the law, and the canvassing commission's obligation, are the opposite.

16. It is the understanding of these VOTERS that Defendant Harris interprets the Florida Elections Code to require the Canvassing Board to certify its results no later than 5:00 PM November 14, 2000, without any possibility of acceptance beyond that date, and that if the Palm Beach County vote is not so certified, the Department of State shall ignore all Palm Beach County votes including these VOTERS'. This rigid and hypertechncal application of Section 102.111(1)'s timing provision would undermine, rather than further, the Election Code's ultimate proposal of ensuring a fair and accurate election process.

17. These VOTERS have a substantial likelihood of success on the merits, given the Chappell and Boardman cases, and the common sense logic therein, referenced below, for in fact, there is precedent in Florida for these VOTERS' position on this matter:

(a) In Chappell v. Martinez, 536 So. 2d 1007, 1008-09 (Fla. 1988), this State's highest Court, addressing the same argument as is being advanced by the Secretary against the voters of Palm Beach County (if the votes are not certified AND received by the deadline, ignore them), stated: "[W]e do not find that section 102.111's 'all missing counties' language turns the certification process into 'an imperative, ministerial' duty, 'involving no judgment on the part' of the state canvassing commission." Further, citing to an earlier Florida Supreme Court case, Boardman v. Esteva, 323 So. 2d 259 (Fla. 1975), the Chappell Court advanced the following simple truisms:

(b) "The electorate's effecting its will through its balloting, NOT THE HYPERTECHNICAL COMPLIANCE WITH STATUTES, is the object of holding an election." [emphasis added].

(c) "Chappell has presented NO COMPELLING REASON for disenfranchising the 11,000 residents of Flagler County who cast their ballots on November 8." [emphasis added].

18. Similarly, there is no legitimate complaint to be made if Palm Beach County's votes are manually recounted in the manner proscribed by law and certified as soon as possible, for the Secretary cannot present, and has not presented, a compelling reason to the contrary. The salutary, and ultimate, purpose of the Election Code, as evidenced by the existing procedures of Section 102.166, is to ensure the integrity, accuracy, and legitimacy of Florida elections. This is the substantive purpose of the Election Code, and indeed, of our nation's entire democratic process. The time periods of the Election Code, of necessity, then, are meant to serve to effect the purpose of the Code (integrity and accuracy), not to thwart it through "hypertechnical" time enforcement. Given that the State awaits overseas absentee ballots until Saturday, November 18, 2000, there surely shall be no harm to the Government or the People in allowing the Board no less than this time period within which to complete its certification of the manual recount required by statute. Rather, the overriding harm will arise, both for Florida and the Nation, if the Secretary's arbitrary curtailment of the statutorily mandated recount process were to cost the legitimacy of the presidential election.

19. Irreparable injury will be suffered not only by these VOTERS, but also, by all qualified electors of Palm Beach County, and indeed, every citizen of this Country, if the recount provided by F.S. 102.166 to protect the integrity of elections is wrongfully denied.

20. In contrast, no real injury to the voters of Palm Beach County, Florida, arises if the injunctions are granted for a reasonable period of days as may be needed to complete the manual recount provided for in F.S. 102.166.

21. If issued, the injunctions sought would not be adverse to the public interest, but rather would further and protect it, improving the nation's certainty of the legitimate election of its President, regardless of outcome.

WHEREFORE, VOTERS prays that this Honorable Court,

1. Declare that the higher purposes of the Florida Elections Code not only permit, but require, the Canvassing Board to certify the results of the 2000 Election after completion of the manual recount provided in Section 102.166(4), Florida Statutes, without regard to the deadline of 5:00 PM November 14, 2000.

2. Temporarily and permanently enjoin Defendant Harris and Defendant Elections Canvassing Commission, from ignoring results certified by the Canvassing Board after 5:00 PM November 14, 2000, from the November 7, 2000 ballots cast and recounted in Palm Beach County, and the overseas absentee ballots counted after November 17, 2000.

3. Temporarily and permanently enjoin the Canvassing Board to actually perform the manual recount of the Palm Beach County votes in accord with Section 102.166, Florida Statutes, and certify the results thereof as soon as possible.

4. Waive any requirement that a bond be posted by these VOTERS upon entry of a temporary injunction.

5. Grant these VOTERS such other and further relief as this Court deems just and proper.

VERIFICATION OF COMPLAINT

The allegations contained in the foregoing Complaint are true and correct to the best of my knowledge and belief.

Susan Rhodes  
Susan Rhodes

Paul Rhodes  
Paul Rhodes

STATE OF FLORIDA  
COUNTY OF PALM BEACH

Sworn to and subscribed before me this 14<sup>th</sup> day of November, 2000, by Susan Rhodes who is  personally known to me or ( ) produced the following identification

My Commission Expires:

Sally A. Larson  
Print Name: Sally A. Larson  
Notary Public, State of Florida



STATE OF FLORIDA  
COUNTY OF PALM BEACH

Sworn to and subscribed before me this 17<sup>th</sup> day of November, 2000, by Paul Rhodes who is (  ) personally known to me or (  ) produced the following identification



SALLY A. LARSON  
COMMISSION # CC 685772  
EXPIRES OCT 28, 2001  
BONDED THRU  
ATLANTIC BONDING CO. INC.  
My Commission Expires:

Sally A. Larson  
Print Name: Sally A. Larson  
Notary Public, State of Florida

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by fax and regular U.S. Mail to: Honorable Katherine Harris, Honorable Bob Crawford and Honorable Laurence C. Roberts as the Elections Canvassing Commission, c/o Katherine Harris, Secretary of State, at The Capitol, Florida Department of State, PL-02 Tallahassee, FL 32399-0250, Fax Number 850-487-2214, and to Honorable Carol Roberts, Honorable Charles Burton, and Honorable Theresa LePore, as the Palm Beach County Canvassing Board, c/o Honorable Charles Burton, at 205 North Dixie Highway, West Palm Beach, FL 33401, Fax Number 335-3841 on the 14<sup>th</sup> day of November, 2000, and by Service of Process thereafter in accordance with law.

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By: [Signature]  
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