

STORAGE NAME: h0001A.prc

DATE: December 10, 2000

**HOUSE OF REPRESENTATIVES
SELECT COMMITTEE ON
ELECTORAL CERTIFICATION, ACCURACY & FAIRNESS
ANALYSIS**

BILL #: HCR 1-A

RELATING TO: The manner of appointing electors for President and Vice President

SPONSOR(S): Representative Cantens & Others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Select Committee on Electoral Certification, Accuracy & Fairness
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

House Concurrent Resolution 1-A provides for the manner of appointing electors for President and Vice President of the United States; provides for the appointment of such electors; and provides for the filling of vacancies of such electors.

This concurrent resolution is based upon a finding of the Florida Legislature that the election for electors for President and Vice President of the United States of America held on November 7, 2000, may have ultimately failed to make a choice of such electors on the day prescribed by law because of the contests and controversies that have arisen concerning the election, and because the United States Congress may decide that those contests and controversies either were not finally determined by December 12, 2000, or that the determination was not made pursuant to pre-existing election law, or was not in compliance with specific provisions of the United States Constitution. Accordingly, there is a reasonable risk that Congress may not count the votes of the 25 electors already certified and sent to the Congress by the Governor.

The United States Constitution vests in the legislature of each state the sole authority for determining the manner in which the electors are appointed to the Electoral College. House Concurrent Resolution 1-A provides that the electors for President and Vice President of the United States of America will be appointed in the year 2000 by direct appointment by the Florida Legislature. The concurrent resolution sets forth 25 named persons as the electors for President and Vice President.

The concurrent resolution also provides for the manner of filling vacancies because of an inability to serve, or because of absence on December 18, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Background

On Tuesday, November 7, 2000, the State of Florida conducted its general election for President and Vice President of the United States. Because the overall difference in the total votes cast for each candidate was less than one-half of one percent of the total votes cast, an automatic recount was triggered pursuant to Florida law. [s. 102.141(4), F.S. (2000)]. Following the automatic recount, the Florida Democratic Executive Committee requested a manual recount to be conducted in several counties. [s. 102.166(4), F.S. (2000)]. Under the Florida Election Code, county returns for the election of any federal or state officer must be received by the Department of State by 5 p.m. of the seventh day following the election, or they are to be ignored. [s. 102.111, F.S. (2000)].

Following the general election, the Secretary of State issued a statement that she would not accept returns of any manual recounts received by the Department of State after Tuesday, November 14, 2000, at 5 p.m. On the same day, the Volusia County Canvassing Board filed suit in the Circuit Court of the Second Judicial Circuit in Leon County, Florida seeking declaratory and injunctive relief. The presidential candidates and others were allowed to intervene. The trial court held that although the November 14 deadline was mandatory, the Secretary of State had discretion to accept amended returns if received late. The Secretary of State was directed by the court to consider all the relevant facts and circumstances when making her determination. After receiving and reviewing written statements setting forth the facts and circumstances that would justify certification of amended returns after the statutory deadline, the Secretary of State announced that she would not accept the amended returns but rather would rely on the earlier certified returns. The Secretary of State announced that she would certify the results of the presidential election on Saturday, November 18, 2000, to include the results of the overseas absentee ballots which were due by 5 p.m., November 17, 2000. [See, Select Joint Committee on the Manner of Appointment of Presidential Electors Report and Recommendations, pp. 4-5, December 4, 2000].

On November 17, 2000, the Florida Supreme Court accepted jurisdiction of an appeal of an Order of the Circuit Court of the Second Judicial Circuit in Leon County, Florida, denying a motion to compel the Secretary of State to accept amended returns. The Florida Supreme Court enjoined the Secretary of State and the Elections Canvassing Commission from certifying the results of the presidential election, and ultimately extended the filing date for amended certifications to 5 p.m. on Sunday, November 26, 2000. [Palm Beach County Canvassing Board v. Harris, Nos. SC00-2346, SC00-2348, and SC00-2349 (Fla. November 21, 2000)]. Pursuant to the timetable dictated by the November 21, 2000, decision of the Florida Supreme Court, the Elections Canvassing Commission certified the final results on November 26, 2000, as follows: the Republican Presidential Electors for the State of Florida received 2,912,790 votes, and the Democratic Presidential Electors for the State of Florida received 2,912,253 votes. Subsequently, the Governor signed a Certificate of Ascertainment of Presidential Electors that was then communicated by registered mail under the seal of the State to the Archivist of the United States, pursuant to federal law. [See, Select Joint Committee on the Manner of Appointment of Presidential Electors Report and Recommendations, pp. 5-6, December 4, 2000].

Governor George W. Bush, Republican candidate for the Presidency, filed a petition for certiorari in the United States Supreme Court to review the Florida Supreme Court decision. The Court granted certiorari on two of the questions presented by the petitioner, and added a third question:

- ! Whether the decision of the Florida Supreme Court, by effectively changing the State's elector appointment procedures after Election Day, violated the Due Process Clause or 3 U.S.C. s. 5.
- ! Whether the decision of the Florida Supreme Court changed the manner in which the State's electors are to be selected, in violation of the legislature's power to designate the manner for selection under Art. II, s. 1, cl. 2 of the United States Constitution.
- ! What would be the consequences of this Court's finding that the decision of the Supreme Court of Florida does not comply with 3 U.S.C. s. 5?

[George W. Bush, Petitioner v. Palm Beach County Canvassing Board, ET AL., 531 U.S. _____, (2000), U.S. Slip Op. at 1]. On December 4, 2000, the United States Supreme Court vacated the judgment of the Florida Supreme Court and remanded the case for further proceedings not inconsistent with the opinion of the Court. The reasoning of the Court can be broken down into two distinct concerns, which then led to an ultimate conclusion:

- ! It was unclear to the Court as to the extent to which the Florida Supreme Court saw the Florida Constitution as circumscribing the legislature's authority under Art. II, s. 1, cl. 2 of the United States Constitution. [U.S. Slip Op. at 5].
- ! It was unclear to the Court to what extent, if any, the Florida Supreme Court gave any consideration to 3 U.S.C. s. 5. [U.S. Slip Op. at 6].
- ! The Court declined to review the federal questions asserted to be present because of the considerable uncertainty as to the precise grounds for the opinion rendered by the Florida Supreme Court. [U.S. Slip Op. at 6].

In addition to the aforementioned case, lawsuits have been filed by various parties challenging different aspects of the presidential election in Florida, many of which are still pending final resolution by the various state and federal courts.

On Friday, November 24, 2000, John McKay, President of the Florida Senate, and Tom Feeney, Speaker of the Florida House of Representatives, announced that a select joint committee would be formed for the purpose of examining issues surrounding the 2000 Florida Presidential Elections. The Select Joint Committee on the Manner of Appointment of Presidential Electors was charged with reviewing the Florida Legislature's responsibilities and options with respect to the appointment of Florida's 25 electors. The Joint Committee met in Tallahassee from November 28-30, 2000, and heard testimony from numerous constitutional scholars, law professors, election law experts, and the public. On December 4, 2000, the committee issued its Report and Recommendations. The committee's recommendations were as follows:

- ! The Florida Legislature convene in Special Session for the purpose of addressing the manner of appointment of presidential electors for the State of Florida; and that
- ! The Florida Legislature carefully consider the broad authority granted to it under Section 1 of Article II of the United States Constitution to establish the manner of appointment of the electors for the State of Florida; and that
- ! The Florida Legislature take appropriate action to ensure that Florida's 25 electoral votes for President and Vice President in the 2000 Presidential Election are counted.

[See, Select Joint Committee on the Manner of Appointment of Presidential Electors Report and Recommendations, p.15, December 4, 2000].

Acting upon the Report and Recommendations of the select joint committee, and in light of the number of pending court cases, the President of the Senate and the Speaker of the House of Representatives issued a joint proclamation convening a Special Session of the Florida Legislature beginning Friday, December 10, 2000.

Presidential Election Laws

The United States Constitution provides that the President and Vice President shall be elected through the Electoral College process. The Constitution further vests in the legislature of each state the sole authority for determining the manner in which electors are appointed to the Electoral College. [Article II, Section 1, U.S. Constitution]. The legislature's authority to direct the manner in which electors are appointed is an absolute authority that cannot be exercised by the judicial or executive branch of government. As the United States Supreme Court stated in McPherson v. Blacker, that whatever statutory provisions may exist for the choosing of electors, there is no doubt of the legislature's right to resume the power to choose electors at any time. [146 U.S. 1, 35 (1892)].

Federal law governs when the electors vote and how Congress will count the votes. Further, federal law provides that Congress must conclusively accept and count the vote of Florida's electors if the appointment of the electors is done in accordance with the laws of Florida as they existed on the date of the appointment, the November 7, 2000 general election, and any controversies or contests related to the appointment are resolved by December 12, 2000. [3 U.S.C. s. 5]. The electors are required to meet on December 18, 2000, as the Electoral College for the purpose of casting their votes for President and Vice President of the United States. [3 U.S.C. s. 7].

If all of these requirements are not met, Congress may reject the vote of Florida's electors. Pending litigation and allegations that Florida's Supreme Court and various county canvassing boards altered Florida's election law subsequent to the date of appointment, November 7, 2000, could result in Florida's electoral votes not being counted by Congress unless conclusively resolved by December 12, 2000. [See, pg. 12, Select Joint Committee on the Manner of Appointment of Presidential Electors Report and Recommendations, December 4, 2000].

C. EFFECT OF PROPOSED RESOLUTION:

The Florida Legislature has specifically provided for the appointment of electors through a general election where citizens cast their votes. Florida laws govern the manner and method of the election. Under the Florida Election Code, electors representing each of the presidential candidates are initially selected by the respective political parties prior to the general election. The names of the electors do not appear on the ballot. Rather, the names of the presidential candidates appear on the ballot and a vote cast for the presidential candidate is actually a vote for the electors representing that candidate. The candidate receiving the highest number of votes is then entitled to have his or her electors cast Florida's 25 electoral votes in the Electoral College. [See, ss. 103.011, 103.021, F.S. (2000)].

HCR 1-A provides for the manner of appointing electors for President and Vice President of the United States; provides for the appointment of such electors; and provides for the filling of vacancies. Specifically, the concurrent resolution provides that the electors for President and Vice President of the United States of America in the year 2000 be appointed directly by the Florida Legislature. The electors named in the concurrent resolution are the same electors who were appointed on November 26, 2000, and are the same electors who would have been appointed pursuant to a certification made on November 17, 2000 had the Florida Secretary of State not been enjoined by the Florida Supreme Court.

The concurrent resolution also provides that if an elector appointed by the resolution is unable to serve because of death, incapacity, or otherwise, the Governor may appoint a person to fill the vacancy. Each elector appointed by the resolution must, before 10 a.m. on December 18, 2000, give notice to the Governor that the elector is in Tallahassee and is ready to perform his or duties as an elector for President and Vice President of the United States. If one or more of the appointed electors is found to be absent, the electors present shall elect by ballot, in the presence of the Governor, a person or persons to fill the vacancy or vacancies.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Resolution" above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Election laws are exempt from the mandates provision.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

See above.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

See above.

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V. COMMENTS:

None.

A. CONSTITUTIONAL ISSUES:

See "Present Situation" above.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

SELECT COMMITTEE ON ELECTORAL CERTIFICATION, ACCURACY & FAIRNESS:

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