

No. 00-836

IN THE
SUPREME COURT OF THE UNITED STATES

GEORGE W. BUSH,
Petitioner,

v.

PALM BEACH COUNTY CANVASSING BOARD, et al.
Respondents.

On Petition For Writ of Certiorari
to the Florida Supreme Court

**BROWARD COUNTY CANVASSING BOARD'S AND
BROWARD COUNTY SUPERVISOR OF ELECTION'S
RESPONSE TO PETITION FOR WRIT OF CERTIORARI**

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Counsel for the Broward County
Supervisor of Elections

Counsel for the Broward County Canvassing Board

STATEMENT OF THE CASE

After the November 7, 2000 general election, the Broward County Canvassing Board (the “Board”) conducted a statutorily-mandated machine recount of the votes cast for President/Vice President. Consistent with the requirements of §102.166(4), Florida Statutes, the Board then conducted a limited manual recount of the votes cast in three precincts, which comprised more than one percent (1%) of the total votes cast in Broward County. The Board determined that the results of the limited manual recount indicated an error in vote tabulation that could affect the outcome of the election. As a result of this determination, the Board was statutorily required, pursuant to §102.166(5)(c), Florida Statutes, to conduct a county-wide manual recount of all ballots in Broward County cast for President of the United States.

The Board began its full manual recount on Wednesday, November 15, 2000, at 2:00p.m.. From that date, the Board worked continuously, without taking any days off, even for the Thanksgiving holiday. Initially, the Board, as well as hundreds of county employees and party observers, worked from 8:00 a.m. until 6:00 p.m. each day, but the Board increased its hours even further as the recount continued, working several days from 8:00 a.m. until 11:00 p.m. After working eleven (11) consecutive days, the manual recount concluded on Saturday, November 25, 2000 shortly before midnight.

As stated in the certifications attached hereto as Exhibits “A” and “B”, which were filed with the Secretary of State on November 8, 2000 and November 26, 2000, respectively, the manual recount resulted in One Thousand Seven Hundred Twenty-One (1,721) additional valid votes being included in the vote totals for Broward County.

ARGUMENT

I. THE FLORIDA SUPREME COURT'S HOLDING DOES NOT VIOLATE THE DUE PROCESS CLAUSE OR 3 U.S.C. §5.

Under 3 U.S.C. §5, a determination regarding the appointment of presidential electors pursuant to Florida's Election Code "shall be conclusive" provided:

1. The applicable provisions of the Florida Election Code were "enacted prior to the day fixed for appointment of the electors;" and
2. The determination is made by December 12, 2000, which is six days prior to the meeting of the electors under 3 U.S.C. §7 (2000).

A. The Supreme Court of Florida Did Not Rewrite the Applicable Provisions of the Florida Election Code.

The Florida Supreme Court decision did not impose post-election judicial limitations on state executive officials. Nor did it impose judicially created standards for the determination of controversies concerning the appointment of presidential electors. Rather, the Florida Supreme Court's decision interpreted existing Florida statutes as required to harmonize the various provisions of the Florida Election Code so as to give effect to the overall purpose and intent of Florida's election laws. In the Court's own words, the decision of the Florida Supreme Court was "consistent with the Florida election scheme."

It has long been the law in Florida that wherever it is possible to do so, a court must construe statutory sections so they operate in harmony with each other. *Palm Harbor Special Fire Control District v. Kelly*, 516 So.2d 249 (Fla. 1987). In this case, the Florida Supreme Court's decision does exactly that, squaring the express language of Florida's statutory provisions governing the election process with the intent and purpose behind those provisions. At the same time, the Florida Supreme

Court ensured that each vote in counties utilizing manual recounts can be accurately counted, and that Florida's ability to appoint its electors by December 12, 2000 will not be jeopardized.

By providing that the Secretary of State was required to accept amended certifications from the county canvassing boards, the Florida Supreme Court's holding did nothing more than interpret Florida law in a manner to allow for what was intended-- to permit enough time for pre-certification manual recounts as well as post-certification contests. The Court recognized that Florida's Election Code contains no deadlines for filing corrected, amended or supplemental vote returns. The Court further recognized that while Florida statutes specifically provide for manual recounts, the recounts could not be accomplished in larger counties, like Broward County, within the seven (7) day period contained in §102.166, Florida Statutes (2000).

This latter recognition was confirmed by the actual experience of the Broward County Canvassing Board, which required eleven (11) consecutive arduous days, working long hours without a break, to accurately complete the recount of approximately 588,000 ballots in Broward County. As a result, more than 1,700 votes from Broward County not previously counted were included in the final vote total certified by the Secretary of State on November 26, 2000. The inclusion of those votes is what was intended by the Legislature when it provided for a procedure for manual recounts. That goal was accomplished in Broward County, with absolutely no impact on any other part of the election process.

The provisions of the Florida Election Code, upon which the manual recount vote total was based, were enacted by the Florida Legislature prior to the day fixed for appointment of the electors. As such, the final vote totals from Broward County was determined consistent with 3 U.S.C. §5.

B. Contrary to Petitioner’s Assertions, Neither the Decision of the Supreme Court of Florida Nor the Board’s Manual Recount Thwart the Will of the Electorate.

In its introduction, Petitioner asserts that the decision of the Supreme Court of Florida “appears designed to thwart the will of the electorate . . .” To the contrary, the will of the electorate can only be determined by counting all votes as to which the clear intent of the voter can be determined. Given the problems clearly evident with machine vote tabulation in Broward County, the Board determined that the manual recount was necessary to determine the true vote totals.

Petitioner further argues that the efforts of the Broward County Canvassing Board were “unrestrained by statutory guidance[.]” This allegation is simply not true. Florida Statute §101.5614(5) provides: “No vote shall be declared invalid or void if there is a clear indication of the intent of the voter as determined by the canvassing board.” This statutory mandate guided all decisions of the Broward County Canvassing Board.

Petitioner also asserts that the act of manually recounting ballots, which requires handling of the ballots, undermined the physical integrity of the ballots. There is no evidence before this Court to support that bald assertion. Petitioner’s failure to cite to any record support equates to an admission that none exists.

II. THE FLORIDA SUPREME COURT’S DECISION IS NOT INCONSISTENT WITH ARTICLE II, SECTION 1, CLAUSE 2 OF THE CONSTITUTION.

As indicated in Section I of this Response, the Florida Supreme Court decision is consistent with Florida Statutes enacted before the election was held. The argument in Section I is incorporated here as Broward County Canvassing Board’s response to Question II presented by the Petitioner. It is further submitted that, based on those arguments, the Florida Supreme Court’s decision is not

inconsistent with Article II, Section 1, clause 2 of the Constitution.

III. IF THIS COURT WERE TO FIND THAT THE FLORIDA SUPREME COURT'S DECISION DOES NOT COMPLY WITH 3 U.S.C. §5, MORE THAN 1,700 VOTERS WOULD BE NEEDLESSLY DISENFRANCHISED.

The Broward County Canvassing Board has invested substantial time and effort in painstakingly examining each ballot cast in Broward County to determine the true intent of each voter and to reach an accurate count of votes cast. The Board's efforts were consistent with Florida law and pursuant to the clear direction of the Florida Supreme Court.

The direct result of any decision reversing the Florida Supreme Court will be the disenfranchisement of more than 1,700 Broward County voters who validly and lawfully filled in ballots which would be rendered meaningless solely because of the limitations of the county's machine counting system.

CONCLUSION

Wherefore the Broward County Canvassing Board respectfully requests this Court deny the writ of certiorari requested by Petitioners, allowing Broward County's amended certification to stand.

Respectfully submitted,

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Counsel for Broward County Supervisor of
Elections

BROWARD COUNTY, FLORIDA
Precincts Counted 609 100.00%
Absentee Precincts Counted 176 100.00%
Registered Voters 887,764 100.00%
Ballots Cast 588,007 66.23%

PRESIDENT AND VICE PRESIDENT
GEORGE W. BUSH REP 177,323 30.93%
& DICK CHENEY
AL GORE DEM 386,561 67.42%
& JOE LIEBERMAN
HARRY BROWNE LIB 1,212 0.21%
& ART CLIVIER
RALPH NADER GRE 7,101 1.24%
& WINONA LA DUKE
JAMES HARRIS SWP 50 0.01%
& MARGARET TROME
JOHN KAGELIN LAW 129 0.02%
& NAT GOLDBABER
PAT BUCHANAN REF 788 0.14%
& EZOLA FOSTER
DAVID MCREYNOLDS SPF 34 0.01%
& MARY CAL HOLLIS
HOWARD PHILLIPS CPF 74 0.01%
& J. CURTIS FRAZIER
MONICA MOOREHEAD WAP 124 0.02%
& GLORIA LA RIVA

U.S. REPRESENTATIVE DIST. 22
Precincts Counted 140 100.00%
Absentee Precincts Counted 38 100.00%
Registered Voters 176,605 100.00%
Ballots Cast 115,878 65.61%

U.S. REPRESENTATIVE DIST. 22
CLAY SHAM REP 50,486 55.40%
ELAINE BLOOM DEM 40,651 44.60%

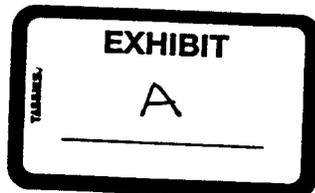
PROPERTY APPRAISER
WILLIAM "BILL" MARKHAM REP 266,458 50.12%
ARTHUR "ART" MURLEY DEM 265,135 49.88%

WE, THE BROWARD COUNTY CANVASSING
BOARD, DO HEREBY CERTIFY THE ABOVE
ELECTION RESULTS.

Robert W. Lee
COUNTY JUDGE

[Signature]
SUPERVISOR OF ELECTIONS

[Signature]
COUNTY COMMISSIONER



BROWARD COUNTY, FLORIDA
Precincts Counted 609 100.00%
Absentee Precincts Counted 176 100.00%
Registered Voters 887,764 100.00%
Ballots Cast 587,928 66.23%

PRESIDENT AND VICE PRESIDENT
GEORGE W. BUSH REP 177,279 30.92%
& DICK CHENEY
AL GORE DEN 386,518 67.42%
& JOE LIEBERMAN
HARRY BROWNE LIB 1,212 0.21%
& ART GILVICK
RALPH NADER GRE 7,099 1.24%
& WINONA LA DUKE
JAMES HARRIS SWP 49 0.01%
& MARGARET TROHE
JOHN KAGELIN LAW 128 0.02%
& NAT GOLDHABER
PAT BUCHANAN REF 789 0.14%
& FIONA FOSTER
DAVID MCREYNOLDS SPF 35 0.01%
& MARY CAL MOLLIS
HOWARD PHILLIPS CPF 74 0.01%
& J. CURTIS FRAZIER
MONICA MOOREHEAD MAP 123 0.02%
& GLORIA LA RIVA

UNITED STATES SENATOR
BILL MCCOLLUM REP 174,980 30.96%
BILL MELSON DEN 377,081 66.68%
JOE SIMONETTA LAW 3,033 0.54%
JOEL DECKARD REF 1,804 0.32%
WILLIE LOGAN NPA 6,166 1.09%
ANDY MARTIN NPA 938 0.17%
DARRELL L. MCCORMICK NPA 1,514 0.27%

U.S. REPRESENTATIVE DIST. 19
Precincts Counted 127 100.00%
Absentee Precincts Counted 30 100.00%
Registered Voters 225,856 100.00%
Ballots Cast 151,058 66.88%

U.S. REPRESENTATIVE DIST. 19
MORRIS KENT THOMPSON REP 32,494 29.79%
ROBERT WEXLER DEN 76,591 70.21%

U.S. REPRESENTATIVE DIST. 20
Precincts Counted 217 100.00%
Absentee Precincts Counted 56 100.00%
Registered Voters 351,420 100.00%
Ballots Cast 240,052 68.31%

U.S. REPRESENTATIVE DIST. 20
PETER DEUTSCH DEN 119,202 100.00%

U.S. REPRESENTATIVE DIST. 22
Precincts Counted 140 100.00%
Absentee Precincts Counted 38 100.00%
Registered Voters 176,605 100.00%
Ballots Cast 115,843 65.59%

U.S. REPRESENTATIVE DIST. 22
CLAY SNAW REP 50,419 55.39%
ELAINE BLOOM DEN 40,604 44.61%

U.S. REPRESENTATIVE DIST. 23
Precincts Counted 125 100.00%
Absentee Precincts Counted 52 100.00%
Registered Voters 133,883 100.00%
Ballots Cast 80,975 60.48%

U.S. REPRESENTATIVE DIST. 23
BILL LAMBERT REP 6,809 15.49%
ALCEE L. HASTINGS DEN 37,155 84.51%

STATE TREASURER AND INSURANCE COMM.
TOM GALLAGHER REP 231,982 42.00%
JOHN OSGROVE DEN 320,418 58.00%

COMMISSIONER OF EDUCATION
CHARLIE CRIST REP 187,814 36.07%
GEORGE H. SHELDON DEN 322,542 61.96%
VASSILIA GAZETAS NPA 10,361 1.99%

STATE SENATE DIST. 31
Precincts Counted 139 100.00%
Absentee Precincts Counted 53 100.00%
Registered Voters 162,883 100.00%
Ballots Cast 107,667 66.10%

STATE SENATE DIST. 31
DEBBY P. SANDERSON REP 51,148 51.84%
JOHN GILLESPIE DEN 47,520 48.16%

STATE SENATE DIST. 32
Precincts Counted 126 100.00%
Absentee Precincts Counted 20 100.00%
Registered Voters 226,506 100.00%
Ballots Cast 155,420 68.62%

STATE SENATE DIST. 32
KEN JENNINGS REP 45,725 33.03%
DEBBIE WASSERMAN SCHULTZ DEN 92,722 66.97%

STATE REPRESENTATIVE DIST. 91
Precincts Counted 41 100.00%
Absentee Precincts Counted 6 100.00%
Registered Voters 52,869 100.00%
Ballots Cast 36,523 69.08%

STATE REPRESENTATIVE DIST. 91
CONNIE MACK REP 20,444 60.07%
KEVIN J. RADER DEN 13,589 39.93%

STATE REPRESENTATIVE DIST. 92
Precincts Counted 59 100.00%
Absentee Precincts Counted 28 100.00%
Registered Voters 70,643 100.00%
Ballots Cast 44,859 63.50%

STATE REPRESENTATIVE DIST. 92
STEPHEN M GREEP JR. REP 15,500 39.45%
JOHN P. 'JACK' SEILER DEN 23,788 60.55%

STATE REPRESENTATIVE DIST. 96
Precincts Counted 48 100.00%
Absentee Precincts Counted 12 100.00%
Registered Voters 88,484 100.00%
Ballots Cast 58,507 66.12%

STATE REPRESENTATIVE DIST. 96
JOSEPH 'JOE' KAUFMAN REP 13,085 31.52%
STACY RITTER DEN 28,429 68.48%

PLANTATION ACRES IMPROVEMENT DIST.
Precincts Counted 2 100.00%
Absentee Precincts Counted 2 100.00%
Registered Voters 2,985 100.00%
Ballots Cast 2,144 71.83%

PLANTATION ACRES IMPROVEMENT DIST.
SUPERVISOR
Vote For 02
JIM DAVIS 1,041 33.08%
DAVID R. HAWKINS 603 19.16%
VINCE PETTI 455 14.46%
SHARON M. URIA 1,048 33.30%

NO. 1 - CONSTITUTIONAL AMENDMENT
FLORIDA TRANSPORTATION INITIATIVE
FOR STATEWIDE HIGH SPEED MONORAIL
YES for Approval 282,569 53.64%
NO for Rejection 244,234 46.36%

NO. 2 - CIRCUIT COURT
JUDGE REFERENDUM
YES 210,950 42.22%
NO 288,676 57.78%

NO. 3 - COUNTY COURT
JUDGE REFERENDUM
YES 198,523 39.91%
NO 298,553 60.09%

COUNTY BOND REFERENDUM
FOR BONDS 379,904 73.59%
AGAINST BONDS 136,324 26.41%

COUNTY CHARTER AMENDMENT
INCREASING NUMBER OF COMMISSIONERS
NEEDED TO CALL A SPECIAL MEETING
YES for approval 319,412 65.57%
NO for rejection 167,705 34.43%

COUNTY CHARTER AMENDMENT
INCREASING NUMBER OF COMMISSIONER
VOTES NEEDED TO PROPOSE AMENDMENTS
YES for approval 340,258 70.39%
NO for rejection 143,141 29.61%

ANNEXATION REFERENDUM - AREA A
Precincts Counted 1 100.00%
Absentee Precincts Counted 2 100.00%
Registered Voters 1,572 100.00%
Ballots Cast 1,009 64.19%

ANNEXATION OF AREA A
Annexed into Dania Beach 628 66.24%
Annexed into Hollywood 320 33.76%

ANNEXATION REFERENDUM - AREA B
Precincts Counted 1 100.00%
Absentee Precincts Counted 2 100.00%
Registered Voters 238 100.00%
Ballots Cast 186 78.15%

ANNEXATION OF AREA B
Annexed into Dania Beach 66 40.49%
Annexed into Hollywood 97 59.51%

ANNEXATION REFERENDUM - AREA C
Precincts Counted 1 100.00%
Absentee Precincts Counted 2 100.00%
Registered Voters 1,712 100.00%
Ballots Cast 1,059 61.86%

ANNEXATION OF AREA C
Annexed into Dania Beach 665 66.04%
Annexed into Hollywood 342 33.96%

ANNEXATION REFERENDUM - AREA D
Precincts Counted 1 100.00%
Absentee Precincts Counted 2 100.00%
Registered Voters 384 100.00%
Ballots Cast 251 65.36%

ANNEXATION OF AREA D
Annexed into Dania Beach 205 87.98%
Annexed into Hollywood 28 12.02%

WE, THE BROWARD COUNTY COMMISSIONERS
BOARD, DO HEREBY CERTIFY THE ABOVE
ELECTION RESULTS.

Robert W. Lee
COUNTY JUDGE

[Signature]
SUPERVISOR OF ELECTIONS

[Signature]
COUNTY COMMISSIONER



November 26, 2000

**BY FACSIMILE (850) 488-1768
AND HAND DELIVERY**

L. Clayton Roberts, Director
Elections Canvassing Commission
Office of the Secretary of State, Division of Elections
The Capitol, PL-2
Tallahassee, Florida 32399-0250

Dear Sir:

On behalf of the Board of County Canvassers in and for Broward County, Florida I hereby transmit by facsimile the certificate of County Canvassing Board, as amended, dated November 26, 2000 and Supplemental Certification of Overseas of Absentee Ballots, dated November 26, 2000. These certificates are filed for the November 7, 2000 General Election and in accordance with the Order of the Supreme Court of Florida dated, November 21, 2000, in Case Nos. SC 00-2346, SC 00-2348 & SC 00-2349.

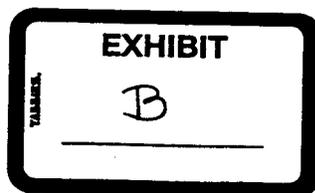
These documents, along with the Certification of Overseas Absentee Ballots previously filed with your officer, represent the final returns for the November 7, 2000 presidential election.

The original certificates referenced herein will be hand filed with the Office of the Secretary of State on November 26, 2000.

Please acknowledge receipt by return facsimile to (954) 771-4923.

Sincerely,

ROBERT W. LEE
County Judge
Chair, Broward County Canvassing Board



CERTIFICATE OF COUNTY CANVASSING BOARD

STATE OF FLORIDA (AS AMENDED)

Broward County November 26, 2000

We, the undersigned, ROBERT W. LEE, County Judge, ROBERT A. ROSENBERG, Circuit Judge for Supervisor of Elections, and SUZANNE N. GUNZBURGER, Chairman of the Board of County Commissioners, constituting the Board of County Canvassers in and for said County, do hereby certify that we met on the 15th -25th day of November, A.D., 2000, and proceeded publicly to canvass the votes given for the several offices and persons herein specified at the General Election held on the 7th day of November, A.D., 2000 as shown by the returns on file in the office of the Supervisor of Elections. We do hereby certify from said returns as follows:

For President of the United States, the whole number of votes cast was 588,007 of which number

Table with 3 columns: Candidate Name (Party), Votes, and Unit. Includes George W. Bush and Dick Cheney (REP) with 177,902 votes, Al Gore and Joe Lieberman (DEM) with 387,703 votes, and others.

Signature of Robert W. Lee, County Judge

Signature of Robert A. Rosenberg, Circuit Judge for Supervisor of Elections

Signature of Suzanne N. Gunzburger, Chairman of Board County Commissioners

SUPPLEMENTAL CERTIFICATION OF OVERSEAS ABSENTEE BALLOTS

November 2, 2000

The Broward County Canvassing Board hereby certifies the following ballots cast as a supplement to the previous certification of overseas absentee ballots conducted on November 17, 2000:

President of the United States

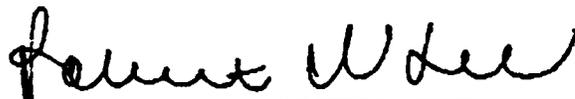
Al Gore (DEM)

received four (4) additional votes.

United States Senator

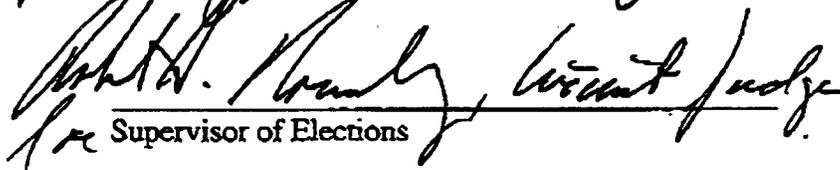
Bill McCollum (REP)

received two (2) additional votes.



County Judge

for  County Commission

 County Judge
for Supervisor of Elections