

November 15, 2000

The Honorable Katherine Harris
Secretary of State
The Capitol
Tallahassee, FL 32399-0250

RE: Amended certification of returns

Dear Secretary Harris:

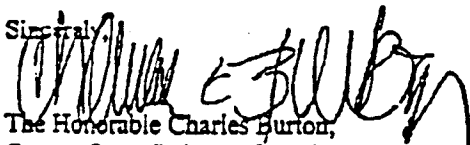
This letter is in response to your request for a written statement of the facts and circumstances which would necessitate a change to be made in the final certification of the statewide vote based on the results of Palm Beach County's manual recount of all the ballots cast in Palm Beach County for the offices of President and Vice President.

The Palm Beach County Canvassing Board has conducted a machine recount of the ballots and a limited manual recount of one percent of the total votes cast in accordance with Section 102.166(4)(d), Florida Statutes. The limited manual recount produced different results than the machine recount. The machine recorded approximately 10,000 undervotes. As stated in the Canvassing Board's Petition for Extraordinary Writ, it elected to conduct a manual recount "[b]ecause the results could affect the outcome of the election." See, § 102.166(3), Fla. Stat.

On Sunday, November 12, 2000, the Canvassing Board voted to conduct a manual recount of all the ballots cast in Palm Beach County for the offices of President and Vice-President pursuant to the authority granted to it under Section 102.166(5)(c), Florida Statutes. As you are aware, the Canvassing Board also voted to seek advisory opinions from the Division of Elections and the Attorney General regarding the proper interpretation of Section 102.166(5), Florida Statutes. The opinions were conflicting; accordingly, the Canvassing Board is currently seeking an adjudication by the Florida Supreme Court to resolve the conflicting opinions on the question of whether the Canvassing Board may, under the above-referenced circumstances, conduct a manual recount of the votes cast for President and Vice President. The Canvassing Board has voted to suspend its manual recount pending the resolution of this issue and other issues by the Florida Supreme Court.

A manual recount of four precincts, which accounts for approximately one percent of the total votes cast in Palm Beach County, resulted in a difference in the vote totals. The 4695 ballots manually recounted in four precincts resulted in a total gain of 33 votes for Vice President Al Gore and 14 votes for Governor George W. Bush, which is a net gain of 19 votes for Vice President Al Gore. Clearly, the results of the manual recount could affect the outcome of this very close presidential election if the manual recounts in the other precincts also vary in this degree from the machine counts.

Sincerely,


The Honorable Charles Burton,
County Court Judge, 15th Judicial Circuit
Chairperson, Palm Beach County Canvassing Board

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FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State

For Immediate Release
November 15, 2000

Contact: Ben McKay
(850) 414-5502

A Statement from the Secretary of State

Good evening.

On Tuesday, I requested those counties contemplating manual vote recounts to submit a written statement to me of the facts and circumstances justifying any belief on their part that they should be allowed to amend the certified returns previously filed by them in accordance with law.

All three counties – Palm Beach, Miami-Dade, and Broward – responded by the 2pm deadline today. Copies of their responses have already been distributed. Additionally, Collier County asked about the possibility of an amendment to their return unrelated to manual recounting. A copy of that letter has been distributed as well.

For the past week, I have devoted a substantial amount of my time to the issues surrounding manual vote recounts. After Judge Lewis' decision of yesterday morning, my staff and I, together with counsel, developed criteria appropriate to the exercise of my discretion under Florida law. This criteria is clearly set forth in Florida case law.

For the past six hours, I have applied these criteria in deliberating upon the specific requests of the counties contemplating manual vote recounts. As a result of these deliberations, I have decided it is my duty, under Florida law, to exercise my discretion in denying the requested amendments. The reasons given in their requests are insufficient to warrant waiver of the unambiguous filing deadline imposed by the Florida Legislature.

I have communicated this decision to these counties in letters detailing the criteria I used in making my judgments, and the application of these criteria to the stated circumstances. Copies of these letters are available.

Because it is my determination that no amendments to the official returns now on file at the Department of State are warranted, the State Elections Canvassing Commission, acting in its normal and usual manner, has certified the results of last Tuesday's election in Florida, including the Presidential election. Copies of that portion of the certification relating to the presidential election, and the signature page of the certification, are also available.

As I have previously indicated, I expect that, after receipt, tabulation, and certification of the overseas absentee ballots by the counties, the state Elections Canvassing Commission will finally certify the Presidential election in Florida on Saturday.

This schedule, of course, is subject to judicial intervention. In that context, I once again will be unable, personally, to answer questions. However, I have with me our General Counsel, Debby Kearney, and two of our outside counsel, Joe Klock and Donna Blanton, and have asked them to remain behind to answer appropriate questions from you.

One final comment. I want to reassure the public that my decisions in this process have been made carefully, consistently, independently, and, I believe, correctly.

I am very grateful for your patience, and your understanding.

Thank you, and God bless.

Mr. Klock.

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FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State

November 15, 2000

Honorable Charles Burton
County Court Judge
Chair, Palm Beach County Canvassing Commission
Palm Beach County Courthouse
West Palm Beach, Florida 33401

RE: Request of Palm Beach County Canvassing Board to Amend Certification of County Returns After November 14, 2000 Statutory Deadline

Dear Chairman Burton:

I am in receipt of your letter of today's date in which you submitted a written statement of facts and circumstances relative to the request of the Palm Beach County Canvassing Board ("Board") to amend its certification of county election returns subsequent to the statutory deadline set forth in §102.112, Florida Statutes. As the Board is aware, §102.112, Florida Statutes, requires the Board to file its county election returns with the Department of State by 5 p.m. on the 7th day following the general election. Also, §102.141(6) requires the Board to file at that time a report with the Division of Elections on the conduct of the election. That deadline expired at 5 p.m. yesterday, November 14, 2000. I also am in receipt of your report filed with the Division of Elections.

Notwithstanding that statutory deadline, the Honorable Terry P. Lewis, Circuit Judge, Second Judicial District, Leon County, entered an Order on November 14, 2000, directing me to withhold determination as to whether or not to ignore late-filed returns until I have given due consideration to all relevant facts and circumstances consistent with the sound exercise of discretion. There are no express statutory standards by which to evaluate the facts and circumstances associated with a late filing of county election returns. Thus, I have concluded that the appropriate standards for determining whether to exercise discretion to accept or reject election results filed subsequent to the statutory deadline are those standards utilized by the Florida courts in deciding whether or not to uphold a challenged election. Those criteria are as follows:

Honorable Charles Burton

November 15, 2000

Page Three

recount and a limited manual recount of one percent of the total votes cast and that the two recounts produced "different results than the machine recount." The Board has alleged that "the machine recorded approximately 10,000 undervotes." And, the Board alleged that it has received conflicting opinions from the Division of Elections and the Attorney General regarding the proper interpretation of §102.166(5), Florida Statutes, and that the Board is seeking adjudication by the Florida Supreme Court to resolve the conflicting opinions on whether the Board may conduct a manual recount under the law. Finally, the Board alleged that the results of a manual recount could affect the outcome of the election. In its report filed with the Division of Elections, the Board responded in the negative to the question of whether the county "had any problems which occurred as a result of equipment malfunctions either at the precinct level or at a counting location." In this report, the Board also noted that it would provide additional details regarding "difficulties or unusual circumstances encountered by an election board or canvassing board," and "problems which the canvassing board feels should be made a part of the official election record."

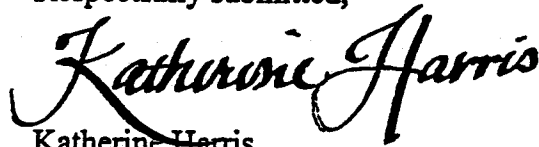
Application of Criteria to Alleged Facts and Circumstances

The Board has not alleged any facts or circumstances that suggest the existence of voter fraud. The Board has not alleged any facts or circumstances that suggest that there has been substantial noncompliance with the state's statutory election procedures, coupled with reasonable doubt as to whether the certified results expressed the will of the voters. The Board has not alleged any facts or circumstances that suggest that Palm Beach County has been unable to comply with its election duties due to an act of God, or other extenuating circumstances that are beyond its control. The Board has alleged the possibility that the results of the manual recount *could* affect the outcome of the election if certain results obtain. However, absent an assertion that there has been substantial noncompliance with the law, I do not believe that the possibility of affecting the outcome of the election is enough to justify ignoring the statutory deadline. Furthermore, I find that the facts and circumstances alleged, standing alone, do not rise to the level of extenuating circumstances that justify a decision on my part to ignore the statutory deadline imposed by the Florida Legislature.

Honorable Charles Burton
November 15, 2000
Page Four

For the above-described reasons, I hereby decline to exercise any authority I may possess pursuant to §102.112, Florida Statutes, to accept election results reported by the Board after the statutory deadline of 5 p.m., November 14, 2000.

Respectfully submitted,

A handwritten signature in cursive script that reads "Katherine Harris". The signature is written in black ink and is positioned above the printed name and title.

Katherine Harris
Secretary of State