

**IN THE SUPREME COURT
STATE OF FLORIDA**

**CASE NO: SC00-2403
Lower Tribunal No.: 1D00-4513
CV00-2745**

MATT BUTLER

VS.

HONORABLE KATHERINE
HARRIS, ETC., ET.AL.

Petitioner

Respondents

HARRIS' NOTICE OF WAIVER OF FILING BRIEF

Secretary of State Katherine Harris (“Harris”) hereby waives the filing of a brief in this matter. Harris, through the Division of Elections, previously issued binding opinion DE-00-13 stating that a manual recount was appropriate under section 102.166(5), Florida Statutes, only when a voting machine failed to count a properly marked marksense ballot or a properly punched punchcard ballot. Harris has argued throughout the course of the Florida election law litigation that section 102.166(5), Florida Statutes, was constitutional as applied pursuant to that

interpretation. This Court has now disagreed with Harris' interpretation of that law. Palm Beach County Canvassing Board v. Katherine Harris, etc., et.al. Case Nos. SC00-2346, SC00-2348 & SC00-2349, (Fla. Nov. 21, 2000). Thus Harris is bound by the Court's ruling that "the plain language of section 102.166(5) refers to an error in the vote tabulation rather than the vote tabulation system." Palm Beach County slip op. at 12.

Under the circumstances of this case, Harris, as an executive branch official, will not affirmatively challenge the constitutionality of this state statute as interpreted by this Court. See Barr v. Watts, 70 So. 2d 347 (Fla. 1953); State ex rel. Atlantic Coast Line Ry. v. State Bd. of Equalizers, 84 Fla. 592, 94 So. 681 (1922). Therefore, Harris leaves to the other parties the argument of whether the statute, as applied, is constitutional.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery this 4th day of December, 2000, to the following:

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