

IN THE SUPREME COURT OF FLORIDA
SC Case No. 00-2403
Lower Tribunal No. 1D00-4513
CV00-2745

MATT BUTLER,

Petitioner/Appellant,

vs.

HONORABLE KATHERINE
HARRIS, etc., et. al.

Respondents/Appellees

BUTLER'S RESPONSE TO ORDER TO SHOW CAUSE

Appellant, Matt Butler, in response to this Court's December 19, 2000, Order to Show Cause why this case should not be dismissed as moot, respectfully submits to the Court that this case is NOT moot and should be ruled upon by this Court. In support thereof, Matt Butler shows as follows:

1. Matt Butler has alleged before this Court that the manual recount provisions of §102.166(4), Florida Statutes, are unconstitutional in that they deny Florida voters equal protection under the law, and that they deny Florida voters of their right to due process.

2. Matt Butler believes that his exact position has been vindicated in the companion case (in which he was also a party), recently decided by the United States

Supreme Court, in George W. Bush, et al, v. Albert Gore, Jr., et al, 531 U.S. ____ (December 12, 2000). In that case, the United States Supreme Court determined that a recount process that allowed for different standards to be applied between (and within) counties violates the Equal Protection Clause of the United States Constitution. Matt Butler submits that such finding is equally supportive of his position that if it is violative of equal protection to count differently, then it stands to reason that it violates equal protection to recount in some areas while not providing an opportunity or manner by which voters in other areas can even request similar recounts, the exact matter over which Matt Butler initially complained.

3. The issue over which Matt Butler complained of initially, to wit: the selective use of the manual recount statutes to recount certain votes only in certain Florida counties, while not allowing a voter the opportunity to even ask that his own vote in his own county be recounted in a similar fashion; in fact formed part of the very underpinnings of the entire panoply of controversies surrounding the Presidential election of November 2000, which ultimately required resolution by the United States Supreme Court.

4. This Court has not yet addressed the constitutionality issue raised in Matt Butler's case. The same issue was also mentioned in other cases before this Court, (though not directly challenging constitutionality), but the Court decided those cases

on different grounds.

5. Although the controversy giving rise to Matt Butler's question has been decided, on a basis which essentially resolved Matt Butler's concerns, the offensive law at issue remains on the books and is certainly capable of repetition, having thus far avoided direct review. While the Florida legislature may very well address the existence of this particular law, and remove it on its own accord, the fact is that it continues to exist. This Court should not ignore the situation.

6. The question in Matt Butler's case was recognized by the First District Court of Appeal as requiring immediate resolution by the Supreme Court of Florida because it presented issues which are of great public importance. An exception to the doctrine of mootness exists concerning issues of great public importance. In re: Dubreuil, 629 So.2d 819 (Fla. 1993). Additionally, this Court evidently recognized the importance of the question in its acceptance of the case immediately upon the District Court of Appeal's December 1, 2000, certification, ordering a seventy-two (72) hour briefing schedule thereafter.

7. Matt Butler is entitled to the complete relief which should be afforded by this Court in striking down a law, still on the books, which the very highest court in the land has already effectively eviscerated. Even the constitutional officer directed by law to enforce and interpret these provisions, the Florida Secretary of State, has withdrawn

her prior advocacy in support of the law's constitutionality, on the basis that her offices' prior interpretation of the law, under which it may arguably have been constitutionally construed, has just recently been disavowed by this very Court in related cases.

WHEREFORE, it is respectfully requested that this Court resolve the matter before it, and declare Sections 102.166(4) and (5) of the Florida Statutes to be unconstitutional.

Respectfully submitted this ____ day of December, 2000.

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CERTIFICATE OF FONT SIZE AND STYLE

This Response is typed using a Times New Roman 14-point font.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copy of the foregoing Butler's Response to Order to Show Cause has been provided by U.S. Mail this ____ day of December, 2000, to Joseph Klock, Steel Hector and Davis, 215 South Monroe Street, Suite 601, Tallahassee, Florida 32301 and George Waas, The Capitol, PL-0, Tallahassee, Florida 32399-1050.

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