

NOV 22 2000

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT
BY _____

CASE NOS. SC00-2346, SC00-2348 & SC00-2349

PALM BEACH COUNTY
CANVASSING BOARD

vs.

KATHERINE HARRIS and
ROBERT BUTTERWORTH,
et. al.VOLUSIA COUNTY
CANVASSING BOARD

vs.

MICHAEL MCDERMOTT, et.
al.FLORIDA DEMOCRATIC
PARTY

vs.

MICHAEL MCDERMOTT, et.
al.

Petitioners

Respondents.

**BUTLER'S REQUEST THAT COURT ACCEPT
JURISDICTION TO CONSIDER CONSTITUTIONALITY
OF MANUAL RECOUNT STATUTE**

Respondent/Appellant Matt Butler, files this Request that the Court accept jurisdiction to consider the constitutionality of the manual recount statute, and states:

1. Butler challenged the constitutionality of Section 102.166(4) and (5) on the grounds that they violate Florida voters' rights to equal protection. In short, the basis for this claim is the fact that, prior to certification of the election results, only a political party or candidate may request a manual recount. In cases like the one before the court, this prevents over a hundred thousand voters in approximately sixty-three (63) counties from having their votes reviewed for intent, even though voters in three Florida counties are afforded that special privilege.

2. As observed by this Court, “[T]he real parties in interest here, not in the legal sense but in realistic terms, are the voters. They are possessed of the ultimate interest and it is they whom we must give primary consideration. The contestants have direct interests certainly, but the office they seek is one of high public service and of utmost importance to the people, thus subordinating their interest to that of the people. Ours is a government of, by and for the people. Our federal and state constitutions guarantee the right of the people to take an active part in the process of that government, which for most of our citizens means participation via the election process. The right to vote is the right to participate; it is also the right to speak, but more importantly the right to be heard. We must tread carefully on that right or we risk the unnecessary and unjustified muting of the public voice. By refusing to recognize an otherwise valid exercise of the right of a citizen to vote for the sake of sacred, unyielding adherence to statutory scripture, we would in effect nullify that right.” Fla. Democratic Party, etc. et. al v. Katherine Harris, etc., et. al., Slip Op. (Nov. 21, 2000)(quoting Boardman v. Esteva, 323 So. 2d 259, 263 (Fla. 1975), emphasis added by the Court).

3. This Court’s Order of November 21, 2000, fails to address in any manner the fact that, as designed, Sections 102.166(4) and (5) discriminate between Florida voters based solely on where they live and whether a party or candidate wants a

recount. In other words, voters in 63 Florida counties are deprived of the right to vote, to speak, and to be heard as described by this Court just last night. The process employed in Florida illustrates that all the power is vested in the candidates, and none in the voters. In this regard, the voters are “the real parties in interest” only in a purely fictional sense.

4. There is no reasonable state interest, much less a substantial state interest, which is served by treating voters of different counties differently with respect to manual recounts. There is no valid reason¹ to make the votes of some voters worth more than others.

5. Butler realizes that this constitutional issue was not squarely before the Court in this case. However, it is pending before the First District Court of Appeal (Case number: 1D00-4513), and a Suggestion that the case be transferred to this Court, because it is a question of great public importance, was filed Friday, Nov. 17, 2000.

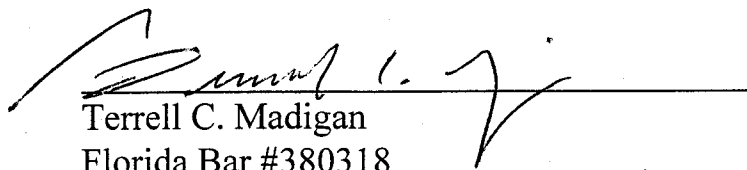
¹ Some suggest that permitting any voter to ask for a recount would burden canvassing boards. However, Florida law allows any voter to take advantage of the rest of the protest provisions of Section 102.166(1), Florida Statutes, and similarly permits them to file a contest under Section 102.168, Florida Statutes. It is only under the manual recount provision, which can most likely lead to skewed election results by selective recounts, that they are not permitted to request. Moreover, there is no evidence that there have been abuses of the remedies available to the public.

6. This constitutional question should be resolved in this case to avoid having an election possibly overturned based on the application of a statute which deprives voters of equal protection. If the statute is unconstitutional, then no manual recount results could lawfully be made part of the certification process, and the Secretary of State could certify the election results.

7. This Court has the inherent authority to take jurisdiction over First DCA Case Number: 1D00-4513 for the purpose of resolving the constitutionality of the manual recount provisions of Section 102.166, Florida Statutes.

WHEREFORE, Appellee, Matt Butler, requests that this Honorable Court take immediate jurisdiction over First DCA Case No: 1D00-4513, and provide for an expedited briefing schedule and oral argument.

Respectfully submitted this 22nd day of November, 2000.

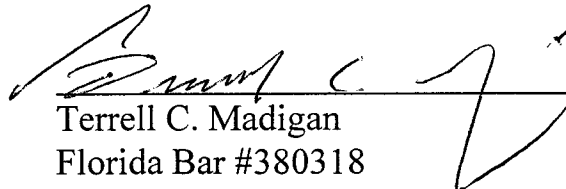


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copy of the foregoing has been sent by U.S. Mail this 22nd day of November, 2000, to the attached service list, and/or hand delivery to those marked as such on the service list.

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BUTLER'S REQUEST THAT COURT
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