

DISPOSED

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN
AND FOR LEON COUNTY, FLORIDA

LONETTE HARRELL,
GARY H. SHULER, and
MARK A. THOMAS, as
Florida Registered Voters,

Plaintiffs,

vs.

KATHERINE HARRIS,
in her official capacity as
Florida Secretary of State,

Defendant.

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BK: R2440 PG: 02181

CASE No: CV-00-2803

DAVE LANG
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

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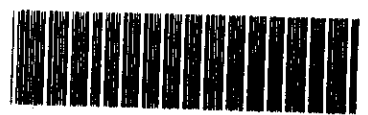
FILED

ORDER DISMISSING COMPLAINT

THIS CAUSE came before the Court upon the filing of the Plaintiffs' "Emergency Petition for Writ of Mandamus," filed November 22, 2000. The plaintiffs are registered voters in three counties in Florida, and each voted for President on election day, November 7, 2000. In their complaint, they request that this court declare "those portions of Chapter 102, Florida Statutes providing for such manual recounts to be unconstitutional under the Fifth and Fourteenth Amendments to the United States Constitution." The plaintiffs further seek an order from this court compelling the Secretary of State to certify the election using only the county returns she received before 5:00 p.m. November 14, 2000 and disregard any amended returns filed after that date by Miami-Dade, Broward, and Palm Beach counties.

To the extent that this action is related to the election contests pending in this court, and due to the plaintiffs' request regarding the certification of Florida's election, this action is governed by





extraordinary time constraints. Accordingly, the court will proceed upon its own initiative, prior to the plaintiffs' compliance with other requirements of the Florida Rules of Civil Procedure.¹

Although the plaintiffs do not refer to any particular constitutional or statutory grounds for this court's jurisdiction to afford them the relief sought, they apparently seek declaratory relief under Section 86.011, et seq., Florida Statutes, and extraordinary relief pursuant to this court's writ jurisdiction under Article V, Section 5 of the Florida Constitution and Rule 1.630, Florida Rules of Civil Procedure.

Upon its own initiative, the court finds that the complaint is moot with regard to any injunction of the Secretary of State's certification of the election. The request to enjoin Katherine Harris from considering any amended returns received after November 14, 2000 has been rendered moot by the Secretary's certification of the election on November 26, 2000. Any further action by the Secretary regarding her certification will be governed by appellate rulings in Palm Beach County Canvassing Board v. Harris.

Considering the plaintiffs' request for declaratory relief, Section 102.66(4), Florida Statutes, was challenged and deemed constitutional by this court in Butler v. Harris, Case No. CV-00-2745 (Fla. 2d Cir. Ct., Leon County, Nov. 17, 2000). The court finds that the issues raised regarding the recount statute are substantially similar in these cases. Although no appellate decision has been rendered in the earlier case, the First District Court of Appeal certified the case to the Florida Supreme Court. Butler v. Harris, Case Number 1D00-4513 (Fla. 1st DCA Dec. 1, 2000). The

¹ Specifically, the time for service of process on named defendants, a reasonable opportunity to file a written response, reasonable notice of hearing and an opportunity to be heard in a meaningful manner has not passed and such procedures have not been provided to the defendants.



District Court certified that the matter required immediate resolution, and the Florida Supreme Court has issued a scheduling order in the case. Butler v. Harris, No. SC00-2403 (Fla. Dec. 1, 2000). Because all briefs are due in the Florida Supreme Court by 3:00 p.m., December 4, 2000, a speedy appellate disposition of Butler is anticipated. Accordingly, the court adopts Judge Clark's ruling in Butler v. Harris and finds that the declaration in that case is applicable to this case. Accordingly, this case should be dismissed without prejudice to reopening this case in light of any appellate disposition of Butler v. Harris by the Florida Supreme Court.

In light of the foregoing, the complaint is hereby **DISMISSED**.

DONE AND ORDERED this 6th day of December, 2000.

L. RALPH SMITH
Circuit Judge

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