

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

CHRISTINE JENNINGS, nominee of the
Democratic Party for Representative in Congress
From the State of Florida's Thirteenth Congressional
District, *Plaintiff*,

v.

Case No.: 2006 CA 2973

**ELECTIONS CANVASSING COMMISSION OF
THE STATE OF FLORIDA**, *et al.*, *Defendants*.

ELLEN FEDDER, *et al.*, *Plaintiffs*,

v.

Case No. 2006 CA 2996
(consolidated)

**FLORIDA ELECTIONS CANVASSING
COMMISSION**, *et al.*, *Defendants*.

**DEFENDANTS SUE M. COBB AND DAWN K. ROBERTS' MOTION TO
DISMISS COMPLAINT AS TO THEM FOR FAILURE TO STATE A CLAIM**

Defendants Sue M. Cobb, in her official capacity as Secretary of State of the State of Florida (the "Secretary"), and Dawn K. Roberts, in her official capacity as Director of the Division of Elections of the State of Florida (the "Director"), submit this Motion to Dismiss. The Complaint seeks no relief from the Secretary or the Director, *see* Prayer for Relief, and there is no relief available from these defendants. Neither the Secretary nor the Director is a proper defendant, and both should be dismissed from this action. In support of this Motion, the Secretary and the Director respectfully show this Court the following:

1. This is an action to contest the Florida Elections Canvassing Commission's certification of the election results for Florida's Thirteenth Congressional

District. (Compl. ¶ 1.) The action was initiated under Florida's Election Contest Statute, Section 102.168, Florida Statutes. (Compl. ¶ 2.)

2. The Election Contest Statute specifies the proper defendants for election contests. “[T]he Elections Canvassing Commission is an indispensable and proper party defendant in federal, state, and multicounty races.” § 102.168(4), Fla. Stat. (2006). In addition, “the successful candidate is an indispensable party to any action brought to contest the election or nomination of a candidate.” *Id.*

3. Therefore, under the clear language of the statute, the Elections Canvassing Commission and Vern Buchanan are indispensable and proper party defendants. The statute does not provide for other defendants, and under the general principle of statutory construction, *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of others. *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976). “Hence, where a statute enumerates the things on which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned.” *Id.*

4. In an election contest regarding the 2000 disputed presidential election, this Court dismissed then Secretary of State Katherine Harris and other defendants “on the grounds that no affirmative relief could be attained against them based upon the nature of the proceedings.” *Taylor v. Martin County Canvassing Board*, Final Judgment for Defendants, Case No. 00-2850, 2000 WL 1793409 (Fla. Cir. Ct. Dec. 8, 2000) (Lewis, J.). The Florida Election Canvassing Commission and the prevailing candidates remained as defendants. *Id.*

5. The Complaint's Prayer for Relief asks this Court to order certain relief from the Elections Canvassing Commission, and it asks for a declaration regarding the District 13 Congressional election. It does not ask for relief against the Secretary or the Director. Indeed, no such relief is available.

WHEREFORE, the Secretary and the Director ask that this Court dismiss them from the action as improper defendants against whom no relief may be granted.

Respectfully submitted this 1st day of December, 2006.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Facsimile or Electronic Transmission this 1st day of December, 2006, to the following:

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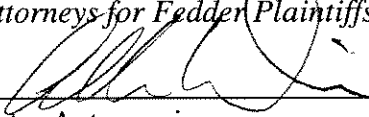
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