

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,

vs.

CASE NO. 2006-CA-2973

Consolidated with Case No.: 2006-CA-2996

ELECTIONS CANVASSING COMMISSION
OF THE STATE OF FLORIDA, consisting of
Governor Jeb Bush, Chief Financial Officer
Tom Gallagher and State Senator Daniel Webster,
et al.,

Defendants.

ELLEN FEDDER, LANCE JONES
ERNEST LASCHE a/k/a MIKE LASCHE,
BARBARA KLEIN, LOIS HARMES,
JOHN MINDER, DOVIE MURRAY,
JOHN MCBRIDE, SUSAN GAAR,
GARY LAMER, CHARLES CLIFTON,

Plaintiffs,

TOM GALLAGHER , CHIEF
FINANCIAL OFFICER, STATE OF FLORIDA,
and GOVERNOR JEB BUSH, and STATE
SENATOR DAN WEBSTER, as members of and
as the FLORIDA ELECTIONS CANVASSING
COMMISSION, and SUE M. COBB as SECRETARY
OF STATE, STATE OF FLORIDA, et al.,

Defendants.

DEFENDANT, SARASOTA COUNTY CANVASSING BOARD'S
MOTION FOR JUDGMENT ON THE PLEADINGS
AS TO FEDDER COMPLAINT

Defendant, Sarasota County Canvassing Board, ("SCCB"), through counsel, and pursuant to Rule 1.140(c) of the Florida Rules of Civil Procedure, moves the Court to enter judgment on the pleadings in favor of the SCCB in the contest initiated by Plaintiffs Ellen Fedder, Lance Jones, Ernest Lasche a/k/a Mike Lasche, Barbara Klein, Lois harmes, John Minder, Dovie Murray, John McBride, Susan Gaar, Gary Lamer and Charles Clifton, Case No. 2006-CA-2996, dismissing Plaintiffs' Complaint against it and as grounds therefore states as follows:

1. Plaintiffs have asserted in the Complaint that the matter at bar is brought pursuant to Florida Statutes Section 102.168(1).

2. Plaintiffs have named as Defendants, the Election Canvassing Commission of the State of Florida ("State Canvassing Commission"), the Sarasota County Canvassing Board, along with other defendants. Plaintiffs allege under § 102.168(1) that the certification of the election of Defendant Vern Buchanan be invalidated and that the actions of the State Canvassing Commission be changed or modified by this Court.

3. Defendant, SCCB completed its canvass of returns and reported such to the Florida Division of Elections, pursuant to §§ 102.111 and 102.112, Fla. Stat., on November 17, 2006. The Court can and should take judicial notice of that official action of the SCCB. *See* § 90.202(12), Fla. Stat.

4. Defendant SCCB has filed an Answer and Affirmative Defenses, thereby closing the pleadings in the action at bar.

5. Any claim by Plaintiffs against Defendant, SCCB, is inappropriate and unnecessary because the SCCB is not a proper defendant in a contest of an election for

the United States House of Representatives. As set forth in § 102.168(4), Fla. Stat., the “indispensable and proper party defendant” in federal, multi-county races like the race contested at bar, is the State Canvassing Commission, not a county canvassing board. As Plaintiffs allege in the Complaint, the State Canvassing Commission, pursuant to § 102.111, Fla. Stat., completed its certification of the results in the race for Florida’s Thirteenth Congressional District on November 20, 2006, and is appropriately named as a defendant in this case. No action of the SCCB can alter or modify those multi-county certified returns, which resulted in the certification issued by the State Canvassing Commission on November 20, 2006.

6. Notably, the inclusion of the SCCB as a defendant, in the absence of the canvassing boards of the other counties in which voters cast their ballots for Florida’s Thirteenth Congressional District, would invite an unequal level of scrutiny to votes from different counties within a single congressional district, a situation similar to the one courts sought to prevent in the litigation following the 2000 Presidential Election; i.e., different recount and review standards for voters in different locations. In preventing such an outcome, the proper party from which relief should be sought is the State Canvassing Commission, not the canvassing board of a single individual county, particularly in a multi-county race. Indeed, should the Court require any remedial action, the state is best suited to coordinate and oversee a multi-county race like the congressional race at bar by providing a single set of rules, procedures, etc.

7. Lastly, the Complaint as to the SCCB should be dismissed because Plaintiffs have simply alleged no wrongdoing, intentional or otherwise, on the part of the SCCB. The Complaint alleges only the official acts taken by the SCCB, acts reflecting

the SCCB's statutory duty to perform its role in certifying the election results contested at bar. Indeed, the prayer for relief reflects the SCCB is an unnecessary party because Plaintiffs do not request any relief from the SCCB.

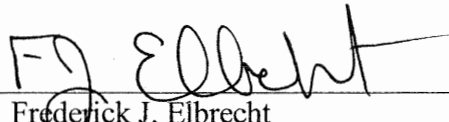
8. Because the SCCB is not an "indispensable and proper party defendant" in this contest of a federal, multi-county race as a matter of statutory mandate, and thus, is not a party that can provide Plaintiffs any relief, i.e., alter the results of the certification by the state on November 20, 2006, the Complaint names an improper party defendant and fails to state a cause of action against the SCCB. Further, because the SCCB is not alleged to have engaged in any form of wrongdoing, intentional or otherwise, the Complaint fails to state a cause of action against the SCCB, and should be dismissed.

9. A trial court's decision whether to grant a motion for judgment on the pleadings must be decided solely on the pleadings without reference to outside matters. *See, e.g., Schwartz v. Greico*, 901 So. 2d 297 (Fla. 2nd DCA 2005). In deciding a motion for judgment on the pleadings, all well pleaded allegations by the opposing party must be accepted as true and all allegations by the moving party are treated as false. *See, e.g., Delgado v. J.W. Courtesy Pontiac GMC-Truck, Inc.*, 693 So. 2d 602 (Fla. 2nd DCA 1997). If, after reviewing the pleadings, the complaint fails to state a cause of action, the moving party is entitled to judgment. *See, e.g., Coddington v. Staab*, 716 So. 2d 850 (Fla. 4th DCA 1998). At bar, because the pleadings demonstrate the SCCB is not a proper party to the action, not a party that can grant Plaintiffs any relief, and not a party to which any wrongdoing, intentional or otherwise has been alleged, Defendant SCCB is entitled to judgment as a matter of law.

WHEREFORE, Defendant, SCCB, respectfully requests the Court enter judgment on the pleadings in favor of Defendant SCCB, thereby dismissing the Complaint Contesting the Election for Florida's Thirteenth Congressional District as to Defendant SCCB, and that the Court grant any other such relief the Court deems just and appropriate.

Stephen E. DeMarsh, County Attorney
Frederick J. Elbrecht, Deputy County Attorney
Office of the County Attorney, Sarasota County
1660 Ringling Boulevard, Second Floor
Sarasota, Florida 34236
Telephone: (941) 861-7272
Facsimile: (941) 861-7267
Attorneys for Defendant, Sarasota County
Canvassing Board, Sarasota County Judge Phyllis
Galen, Sarasota County Commissioner Paul Mercier
and Kathy Dent, Sarasota County Supervisor of
Elections, as members of and The Sarasota County
Canvassing Board.

By: _____



Frederick J. Elbrecht
Deputy County Attorney
Florida Bar No. 0314609

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above document has been filed with the Clerk of the Second Judicial Circuit for Leon County via facsimile (850) 922-4310 on this 15th day of December 2006, with copies forwarded via facsimile and U.S. First Class Mail to all counsel of record on the attached mailing list.

By: _____



Frederick J. Elbrecht
Deputy County Attorney

MAILING LIST

Kendall Coffey, Esq.
Coffey & Wright, LLP
2665 South Bayshore Drive
PH-2, Grand Bay Plaza
Miami, FL 33133
and

Mark Herron, Esq.
Messer, Capareello & Self, P.A.
2618 Centennial Place
Tallahassee, FL 32308
Counsel for Plaintiff Jennings

Peter Antonacci, Esq.
Allen C. Winsor, Esq.
Gray Robinson, P.A.
301 South Bronough Street
Suite 600
P.O. Box 11189
Tallahassee, FL 32301
*Attorneys for Defendants, Elections
Canvassing Commission of the State of
Florida, Sue Cobb, Secretary of State and
Dawn K. Roberts, Director, Division of
Elections and Defendants, Tom Gallagher,
Chief Financial Officer, State of Florida, and
Governor Jeb Bush, and Senator Dan
Webster, as members of and as the Florida
Elections Canvassing Commission*

Hayden R. Dempsey, Esq.
Glenna Burhans, Esq.
Greenberg Traurig, P.A.
101 East College Avenue
Tallahassee, FL 32301
Attorneys for Defendant, Vern Buchanan

Harry O. Thomas, Esq.
Radey Thomas Yon & Clark, P.A.
P.O. Box 10967
Tallahassee, FL 32302
Attorneys for ES&S

Ronald A. Lasbasky, Esq.
Young Van Assenderp, P.A.
225 South Adams Street
Tallahassee, FL 32302
Attorneys for Defendant, Kathy Dent

Lowell Finley, Esq.
1604 Solano Avenue
Berkeley, CA 94707

Elliot M Mineberg, Esq.
Judith E. Schaeffer, Esq.
2000 M. Street N.W., #400
Washington, D.C. 20036

Reginald J. Mitchell, Esq.
1550 Melvin Street
Tallahassee, FL 32301

Muslima Lewis, Esq.
Randall C. Marshall, Esq.
4500 Biscayne Boulevard, Suite 340
Miami, FL 33137-3227

Rebecca Harrison Steele, Esq.
Seina N. Salam, Esq.
ACLU West Central Florida Office
P.O. Box 33679-8245
Tampa, FL 33679-8245

Cindy A. Cohn, Esq.
Matthew J. Zimmerman, Esq.
454 Shotwell Street
San Francisco, CA 94110
Counsel for Plaintiffs in Fedder lawsuit

Miguel A. DeGrandy, Esq.
800 S. Douglas Road, Ste.850
Coral Gables, FL 33134
Attorney for ES&S