

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.

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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.

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**DEFENDANT, SARASOTA COUNTY CANVASSING BOARD'S**  
**MOTION FOR JUDGMENT ON THE PLEADINGS**  
**AS TO JENNINGS FIRST AMENDED 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 Plaintiff Christine Jennings, Case No. 2006-CA-2973, dismissing Plaintiff’s First Amended Complaint against it and as grounds therefore states as follows:

1. Plaintiff has asserted in the First Amended Complaint that the matter at bar is brought pursuant to Florida Statutes Section 102.168(1).

2. Plaintiff has named as Defendants, the Election Canvassing Commission of the State of Florida (“State Canvassing Commission”), the Sarasota County Canvassing Board, along with other defendants. Plaintiff alleges 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 Plaintiff 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 Plaintiff alleges

in the First Amended 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 First Amended Complaint as to the SCCB should be dismissed because Plaintiff has simply alleged no wrongdoing, intentional or otherwise, on the part of the SCCB. The First Amended 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 Plaintiff does 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 Plaintiff any relief, i.e., alter the results of the certification by the state on November 20, 2006, the First Amended 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 First Amended Complaint fails to state a cause of action against the SCCB, and should be dismissed.

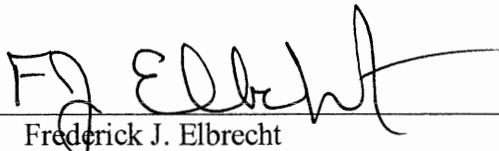
9. A trial court's decision whether to grant a motion for judgment on the pleadings must be decided solely on the pleadings without reference to outside matters. *See, e.g., Schwartz v. Greico*, 901 So. 2d 297 (Fla. 2<sup>nd</sup> DCA 2005). In deciding a motion for judgment on the pleadings, all well 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. 2<sup>nd</sup> 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. 4<sup>th</sup> DCA 1998). At bar, because the pleadings demonstrate the SCCB is not a proper party to the action, not a party that can grant Plaintiff 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 First Amended 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.

Respectfully submitted,

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Commissioner Paul Mercier

By: \_\_\_\_\_

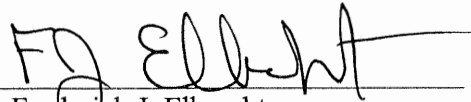


Frederick J. Elbrecht  
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**CERTIFICATE OF SERVICE**

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 1st 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: \_\_\_\_\_



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