

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 ANSWER AND  
AFFIRMATIVE DEFENSES TO FEDDER COMPLAINT**

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 (“SCCB”) hereby answers the Complaint to Contest Election of Ellen Fedder, et al., as follows:

1. Admitted the right to vote is a fundamental liberty enjoyed by citizens in a democratic society. Admitted the right to vote includes the fundamental right to have one’s vote counted. Without knowledge as to the remaining allegations in this paragraph and they are therefore denied.
2. Admitted this is an action under Florida Statute Section 102.168(7) to contest the certification that Vern Buchanan was the winner of the November 7, 2006 congressional election in the Thirteenth District in the State of Florida for the United States House of Representatives. Denied there was misconduct on the part of election officials. Without knowledge as to the remaining allegations of this paragraph and they are therefore denied.
3. Without knowledge therefore denied.
4. Without knowledge therefore denied.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted
9. Admitted the SCCB certified 58,632 votes for Buchanan and 65,487 votes for Christine Jennings. Admitted that no vote was recorded for any congressional

candidate on approximately 18,000 electronic ballots cast on ES&S iVotronic voting machines in early voting and Election Day voting in Sarasota County for the Thirteenth Congressional District. The remaining allegations of this paragraph are denied.

10. Admitted Florida Election Canvassing Commission certified 119,309 for Vern Buchanan and 118,940 for Christine Jennings, a difference of 369 votes. Defendant is without knowledge as to the remaining allegations in this paragraph and they are therefore denied.

#### **JURISDICTION AND VENUE**

11. Admitted.
12. Admitted.

#### **COMMON ALLEGATIONS**

13. Admitted the Secretary of State certified the ES&S iVotronic direct recording electronic (DRE) voting system for use in Florida elections. Without knowledge as to the remaining allegations and they are therefore denied.
14. Admitted Sarasota County voters cast ballots on certified ES&S iVotronic voting machines in which selections in each race were made by touching the screen's display of the name of the voter's preferred candidate. Admitted certified results indicated approximately 18,000 of the ballots cast in this manner did not record a vote for any candidate in the Thirteenth Congressional District race. Admitted the undervote in the race for the United States Senate was less than 1.2 percent, and the undervote in

the gubernatorial race was less than 1.4 percent. The remaining allegations of this paragraph are denied.

15. Admitted.
16. Admitted.
17. Without knowledge therefore denied.
18. Without knowledge therefore denied.
19. Without knowledge therefore denied.
20. Without knowledge therefore denied.
21. Denied.
22. Denied.
23. Without knowledge therefore denied.
24. Without knowledge therefore denied.
25. Without knowledge therefore denied.
26. Without knowledge therefore denied.
27. Without knowledge therefore denied.
28. Without knowledge therefore denied.
29. Denied.

**COUNT I, SECTION 102.168(3)(a)**  
**(SARASOTA COUNTY SUPERVISOR OF ELECTIONS KATHY DENT)**

30. – 36. This count does not allege a cause of action against Defendant SCCB. To the extent a response would be necessary from Defendant SCCB, the allegations in this count are denied.

**COUNT II, SECTION 102.168(3)(a)**  
**(SECRETARY OF STATE SUE M. COBB)**

37. – 42. This count does not allege a cause of action against Defendant SCCB. To the extent a response would be necessary from Defendant SCCB, the allegations in this count are denied.

**COUNT III, SECTION 102.168(3)(c)**  
**(SARASOTA COUNTY CANVASSING BOARD)**

- 43. Defendant SCCB restates its responses to paragraphs 1-42.
- 44. Admitted.
- 45. Without knowledge therefore denied.

**COUNT IV, SECTION 102.168(3)(c)**  
**(FLORIDA ELECTIONS CANVASSING COMMISSION)**

46. – 48. This count does not allege a cause of action against Defendant SCCB. To the extent a response would be necessary from Defendant SCCB, the allegations in this count are denied.

- 49. Defendant SCCB denies all allegations not specifically admitted herein.

**AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

- 50. Defendant, SCCB, moves to dismiss the complaint to contest election as against this Defendant for failure to state a cause of action. Plaintiff has alleged no wrongdoing, intentional or otherwise, on the part of 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.

**Second Affirmative Defense**

51. Defendant, SCCB, moves to dismiss the complaint to contest election as against this Defendant because SCCB is not a proper party to this action contesting a federal, multi-county election to the United States House of Representatives. As set forth in Section 102.168(4), Florida Statutes, 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. Moreover, SCCB is not a party that can provide Plaintiff any relief, i.e., alter the election results certified by the State on November 20, 2006.

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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 1<sup>st</sup> 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

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