

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE  
COUNTY, FLORIDA

ABRE LOS BRAZOS, a Florida  
political committee,

GENERAL JURISDICTION  
DIVISION

Plaintiff,

CASE NO. 11-174 CA 04

and

MIAMI-DADE POLICE  
BENEVOLENT ASSOCIATION, et al.,

Intervenors/Plaintiffs,

v.

MIAMI-DADE COUNTY, FLORIDA,

Defendant,

and

MIAMI VOICE, a Florida political  
Committee,

Intervening Defendant.

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**ORDER DISMISSING CASE FOR FAILURE TO JOIN THE CLERK AS  
AN INDISPENSABLE PARTY**

**THIS CAUSE** came before the Court upon the “Intervenor’s Amended Motion to Dismiss with Prejudice,” “Miami-Dade County’s Memorandum of Law Regarding Request for Temporary and Preliminary Injunction,” and “Trial Memorandum of Miami Voice in Opposition to Complaint for Injunctive and

Declaratory Relief and Opposing Motion for Temporary and Preliminary Injunction.” The Court, having reviewed the pleadings, heard the arguments of counsel, reviewed the record, and being fully advised in the premises, hereby finds as follows:

- A. This case involves a complaint for injunctive and declaratory relief. It seeks to stop a recall of Commissioner Natacha Seijas. Before the Court reaches the merits of whether the recall should be enjoined, it will ascertain whether the case should be dismissed for failure to include the Clerk as a party to this case.
- B. Recalls are governed by section 8.02 of the Miami-Dade County Charter. That section provides in relevant part that:
  - 3. The signed petition shall be filed with and canvassed *and certified by the Clerk of the Circuit Court.*
  - 4. The Board of County Commissioners must provide for a recall election not less than 45 nor more than 90 days after the certification of the petition.

(Emphasis added).

- C. In the instant case, the complaint is based upon the assertion that the Clerk of the Court improperly issued a certification of the petition to recall Commissioner Seijas due to defects in the manner in which particular petitions were filled out.
- D. Thus, the substance underlying the complaint is the action taken by the Clerk in certifying the recall petition, not the Board of Commissioners’ ministerial duty in setting the election, which is automatic upon the Clerk’s certification. As such, the Clerk is an indispensable party to this action. *See Fla. Dep’t of Revenue v. Cummings*, 930 So. 2d 604, 607 (Fla. 2006). The failure to include an indispensable party is grounds for dismissal. *See Mantis v. Hinckley*, 547 So. 2d 292 (Fla. 4th DCA 1989).

- E. This Court cannot enter an injunction which affects the actions of the Clerk when the Clerk is not a party to this case. *See Sheoah Highlands, Inc. v. Daugherty*, 837 So. 2d 579, 583 (Fla. 5th DCA 2003).
- F. As noted by the Intervening Defendant's attorney at the hearing on this matter, without the presence of the Clerk as a party in this case, this Court will not have the opportunity to learn the Clerk's views on its certification of the recall petitions.
- G. The Plaintiff's prayer for relief supports the Court's conclusion:
1. The Plaintiff asks for "A declaration that this Court has jurisdiction of a real and active controversy between the parties." The controversy is not between the Plaintiff and the County, but between the Plaintiff and the Clerk, who is the entity that certified the recall petition.
  2. The Plaintiff asks for "A declaration that Clerk Ruvin improperly included petitions in his certification that should have been excluded." This is directed specifically at the actions of the Clerk, who is not a party to this case. The Plaintiffs' attorney claimed at the hearing that they were not asking the Court to decertify the recall petition, but only to enjoin the County from holding the recall election. However, certification is the event that triggers the recall election. Regardless of whatever terminology is used, there is no basis for enjoining the election in the absence of a decertification of the petition, or a finding that the certification was invalid.
  3. The Plaintiff asks for "A declaration that when the improperly included petitions are excluded, that the total number of valid petitions is less than the minimum number of 3,591 required to trigger a recall of Commissioner Natacha Seijas in District 13." Again, this is directed specifically at the actions of the Clerk, who is not a party to this case.
  4. The Plaintiff asks for "A temporary and permanent injunction prohibiting Miami-Dade County from holding a recall election for

County Commissioner Natacha Seijas in District 13.” Although this is directed at the County, who is a party in this case, the County’s action in this regard is dependent solely upon the action of the Clerk in certifying the petition. Thus, this relief would still require the presence of the Clerk in this action.

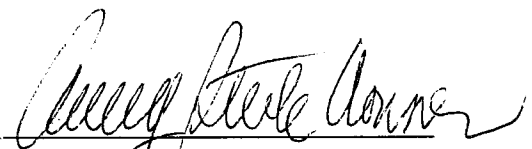
- H. The Court’s finding that the Clerk is an indispensable party to this action is not an adjudication of the substantive arguments that the parties make in regard to the validity of the petitions at issue. The Court has not yet reached those issues, as it would be improper to do so without the presence of the Clerk in this case.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that:

The instant case is **DISMISSED** without prejudice, for failure to join an indispensable party.

**DONE** and **ORDERED** in Chambers at Miami-Dade County, Florida, this

8 day of February, 2011.

  
AMY STEELE DONNER  
CIRCUIT COURT JUDGE  
**Conformed Copy**

**FEB 08 2011**  
AMY STEELE DONNER  
Circuit Court Judge