

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

\*\*\*\*

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

ELECTIONS CANVASSING COMMISSION  
OF THE STATE OF FLORIDA; SARASOTA  
COUNTY CANVASSING BOARD; KATHY  
DENT, as Sarasota County Supervisor of  
Elections; SUE M. COBB, as Secretary of State  
of the State of Florida; DAWN K. ROBERTS,  
as Director of the Division of Elections of the  
State of Florida; VERN BUCHANAN, as  
nominee of the Republican Party for  
Representative in Congress from the State of  
Florida's Thirteenth Congressional District;  
and ELECTION SYSTEMS & SOFTWARE, INC.,

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  
and CHARLES CLIFTON,

CASE NO. 2006-CA-2996

Plaintiffs,

vs

TOM GALLAGHER, Chief Financial Officer, State of Florida, 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.

\*\*\*\*\*

ORDER ON MOTIONS

This cause came on for hearing on the Motions To Compel filed by Plaintiff, Christine Jennings, and 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, and the Motion For Entry of a Protective Order filed by Plaintiff, Christine Jennings. The Court having considered the evidence presented, the record, argument of counsel, and being otherwise fully advised finds as follows:

- A. All parties agree for the purposes of the motions that the Source Code and Proprietary Technology associated therewith constitutes a trade secret.
- B. The sole issue for determination is whether or not Plaintiffs can demonstrate a reasonable necessity to gain access to the trade secret.
- C. Plaintiffs allege that there was some 18,412 undervotes in the race for The United States House of Representatives in Florida's Thirteenth Congressional District in Sarasota County, or 12.9% of the votes cast in said county, and that such a large number

demonstrates a malfunctioning of the iVotronic system which rejected thousands of legal votes.

D. The machines now challenged were tested as required by law prior to the early voting and election day voting and were found to be working properly.

E. Because the election was a close one and due to Plaintiffs' allegations an audit was conducted on the voting system to verify its accuracy.

F. Two parallel tests were conducted on the subject screen systems and representatives of both Plaintiffs and Defendants were present. The test results revealed 100% accuracy of the equipment in reporting the vote selections.

G. Plaintiffs have presented no evidence to demonstrate that the parallel testing was flawed and/or the results not valid.

H. The testimony of Plaintiffs' experts was nothing more than conjecture and not supported by credible evidence.


I. For this Court to grant Plaintiffs' motions would require this Court to find that it is reasonably necessary for the Plaintiffs to have access to the trade secrets of Defendant, Election Systems & Software, Inc., based on nothing more than speculation and conjecture, and would result in destroying or at least gutting the protections afforded those who own the trade secrets.

Accordingly, it is

ORDERED AND ADJUDGED as follows:

1. The Motion To Compel filed by Plaintiff, Christine Jennings, is Denied.
2. The Motion To Compel filed by Plaintiffs, Ellen Fedder, Lance Jones, Ernest Lasche, a/k/a Mike Lasche, Barbra Klein, Lois Harmes, John Minder, Dovie Murray, John McBride, Susan Gaar, Gary Lamer, and Charles Clifton, is Denied.
3. The Motion For Entry of a Protective Order filed by Plaintiff, Christine Jennings, is moot, and thus Denied.

DONE AND ORDERED in Chambers at Tallahassee, Leon County, Florida, this  
29<sup>th</sup> day of December, 2006.

  
WILLIAM L. GARY  
Circuit Judge

copies to:

KENDALL COFFEY  
Coffey & Wright, LLP  
2665 South Bayshore Drive  
PH-2, Grand Bay Plaza  
Miami, FL 33133  
fax: 305.859.9919  
and  
MARK HERRON  
Messer, Caparello & Self, PA  
2618 Centennial Place  
Tallahassee, FL 32308  
fax: 850.558.0659  
and  
DONALD B. VERRILLI, JR.  
SAM HIRSCH  
JESSICA RING AMUNSON

Jenner & Block, LLP  
601 13th Street NW  
Suite 1200 South  
Washington, DC 20005  
fax: 202.639.6066  
Attorneys for Plaintiff/Jennings  
\*\*\*\*\*

PETER ANTONACCI  
ALLEN C. WINSOR  
GrayRobinson, PA  
301 South Bronough Street, Suite 600  
P.O. Box 11189  
Tallahassee, FL 32302  
fax: 850.577.3311  
Attorneys for State Defendants

\*\*\*\*\*  
REGINALD J. MITCHELL  
People for the American Way Foundation  
1550 Melvin Street  
Tallahassee, FL 32301  
fax: 850.402.1999  
Attorney for Fedder Plaintiffs

\*\*\*\*\*  
LOWELL FINLEY  
Voter Action  
1604 Solano Avenue  
Berkeley, CA 94707  
fax: 415.723.7141  
Attorney for Fedder Plaintiffs

\*\*\*\*\*  
RONALD A. LABASKY  
Young Van Assenderp, PA  
225 South Adams Street  
Tallahassee, FL 32302  
fax: 850.561.6834  
Attorneys for Defendant, Supervisor Kathy Dent

\*\*\*\*\*

FREDERICK J. ELBRECHT  
Sarasota County Attorney's Office  
1660 Ringling Blvd., Floor 2  
Sarasota, FL 34236-6870  
fax: 941.861.7267  
Attorney for Defendant, Sarasota County Canvassing Board

\*\*\*\*\*

MIGUEL DeGRANDY, PA  
800 S. Douglas Road, Suite 850  
Coral Gables, FL 33134-2088  
fax: 305.443.2616  
Attorney for Defendant, ES& S

\*\*\*\*\*

HARRY O. THOMAS  
Radey Thomas Yon & Clark,  
P.O. Box 10967  
Tallahassee, FL 32302-2967  
fax: 850.425.6694  
Attorneys for Defendant, ES & S

\*\*\*\*\*

ELLIOT M. MINCBERG  
JUDITH E. SCHAEFFER  
People for the American Way Foundation  
2000 M Street NW, #400  
Washington, DC 20036  
fax: 202.293.2672  
Attorneys for Fedder Plaintiffs

\*\*\*\*\*

MUSLIMA LEWIS  
RANDALL C. MARSHALL  
AZIZA NAA-KAA BOTCHWAY  
ACLU Foundation of Florida, Inc.  
4500 Biscayne Boulevard, Suite 340  
Miami, FL 33137-3227  
fax: 786.363.1448

\*\*\*\*\*

CINDY A. COHN  
MATTHEW J. ZIMMERMAN  
Electronic Frontier Foundation  
454 Shotwell Street

San Francisco, CA 94110  
fax: 415.436.9993  
Attorneys for Fedder Plaintiffs

\*\*\*\*\*

REBECCA HARRISON STEELE  
ZEINA N. SALAM  
ACLU Foundation of Florida, Inc.  
West Central Florida Office  
P.O. Box 18245  
Tampa, FL 33679-8245  
fax: 813.254.0926  
Attorneys for Fedder Plaintiffs

\*\*\*\*\*

HAYDEN R. DEMPSEY  
GLENN T. BURHANS, JR.  
Greenburg Traurig, PA  
101 East College Avenue  
Tallahassee, FL 32301  
fax: 850.681.0207  
Attorneys for Defendant, Vern Buchanan