

**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,*

v.

No:

ELECTIONS CANVASSING COMMISSION OF  
THE STATE OF FLORIDA, consisting of Governor Jeb  
Bush, Chief Financial Officer Tom Gallagher, and State  
Senator Daniel Webster; SARASOTA COUNTY  
CANVASSING BOARD, consisting of Supervisor of  
Elections Kathy Dent, Judge Phyllis Galen, and  
Commissioner Paul Mercier; 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; and VERN BUCHANAN,  
as nominee of the Republican Party for Representative  
in Congress from the State of Florida's Thirteenth  
Congressional District,

*Defendants.*

**COMPLAINT TO CONTEST ELECTION**

1. This is an action to contest the Elections Canvassing Commission's November 20, 2006 certification that Vern Buchanan received 369 more votes than Christine Jennings in the election for the United States House of Representatives for Florida's Thirteenth Congressional District. The vote totals in the certification are wrong because they do not include thousands of legal votes that were cast in Sarasota County but not counted due to the pervasive malfunctioning of electronic voting machines. The number of uncounted votes in the County is

more than sufficient to call into doubt, indeed to change, the result of the election. Thus, Christine Jennings is entitled to appropriate relief under Section 102.168, Florida Statutes. It is critically important that this Court provide such relief promptly -- in the form of a new election -- to ensure that the will of the people of the Thirteenth District is respected, and to restore the confidence of the electorate, which has been badly fractured by this machine-induced debacle.

2. The Elections Canvassing Commission certified vote totals exclude the legal votes of thousands of Sarasota County voters who used the County's electronic voting machines to vote in the election for the Thirteenth District seat and did not have their votes recorded. Indeed, the electronic voting machines in Sarasota County failed to record votes in this race for one out of every seven voters -- nearly 15% of those who voted using the machines. There is no possibility that so many Sarasota County voters would have voluntarily abstained from voting in this hotly contested, high-profile race. Statistical analysis confirms that common-sense conclusion. Even more strikingly, the eyewitness accounts of hundreds of Sarasota County voters, and the contemporaneous records of the Sarasota County Supervisor of Elections, document that the electronic voting machines in Sarasota County used in early voting and on November 7, 2006 were systematically failing to record votes cast for candidates in the Thirteenth District congressional race -- particularly votes cast for Plaintiff Christine Jennings.

3. By law, every polling place in Florida displays a "Voter's Bill of Rights" stating that "Each registered voter in this state has the right to: . . .Vote on a voting system that is in working condition and that will allow votes to be accurately cast." § 101.031(2), Florida Statutes (2006). In the election challenged here, Sarasota County election officials failed to deliver on that promise. Indeed, the failure to count the legal votes of the thousands of Sarasota County voters who went to the polls and cast votes in the Thirteenth District race is a miscarriage of the

electoral process that can -- *and must* -- be remedied in this contest action. These voters should not forfeit their constitutional right to vote because the County's machines malfunctioned. Yet disenfranchisement is exactly what will happen unless the Election Canvassing Commission's certification is declared void. If the uncounted legal votes in Sarasota County had been properly recorded and counted, Plaintiff would be entitled to prevail in this race. The voting percentages in the County ran significantly in Plaintiff's favor. The votes she lost due to machine malfunction would thus be more than enough to reverse the razor-thin margin Defendant Buchanan holds in the certified result. Thus, the current election result cannot stand. The voters of the Thirteenth District -- all of the voters, including those disenfranchised by machine failure -- should decide the outcome, and the proper remedy is therefore to hold a new election in the district as promptly as possible.

#### **Common Allegations**

4. This is an action to contest an election under Section 102.168, Florida Statutes, which provides that the outcome of an election "may be contested in the circuit court by any unsuccessful candidate for such office" based on the "rejection of a number of legal votes sufficient to change or place in doubt the result of the election." Fla. Stat. § 102.168(3)(c).

5. Section 102.1685, Florida Statutes, establishes Leon County as the proper venue for this action.

6. The Thirteenth Congressional District of Florida comprises all of DeSoto, Hardee, and Sarasota Counties, and parts of Charlotte and Manatee Counties.

7. Plaintiff Christine Jennings is the Democratic candidate for the Representative in Congress from Florida's Thirteenth Congressional District.

8. Section 102.111 creates the Elections Canvassing Commission and charges it with certifying elections and determining who has been elected for each office. Governor Jeb Bush, Chief Financial Officer Tom Gallagher, and State Senator Daniel Webster are the members of the Elections Canvassing Commission. Section 102.168(4), Florida Statutes, provides that the Elections Canvassing Commission is an indispensable and proper party defendant in contest proceedings for federal elections.

9. The Sarasota County Canvassing Board is constituted in accordance with Section 102.141, Florida Statutes, and is comprised of Kathy Dent, Supervisor of Elections; Phyllis Galen, county court judge, who acts as chair; and Paul Mercier, chair of the board of county commissioners. The Sarasota County Canvassing Board is charged with canvassing and certifying Sarasota County's elections to the Department of State.

10. Kathy Dent is the Supervisor of Elections of Sarasota County. Kathy Dent is a member of the Sarasota County Canvassing Board and in her capacity as Supervisor of Elections is charged with overseeing all federal, state, and county elections in Sarasota County.

11. Sue M. Cobb is the Secretary of State for the State of Florida. The Secretary serves as the State's Chief of Elections.

12. Dawn K. Roberts is the Director of the Division of Elections for the State of Florida.

13. Vern Buchanan is the Republican candidate for the Representative in Congress from the Florida's Thirteenth Congressional District. Section 102.168(4), Florida Statutes, provides that the apparently successful candidate is an indispensable party to any action brought to contest the election of a candidate.

14. On November 7, 2006 (“Election Day”), the State of Florida conducted an election for numerous offices, including the Representative in Congress from the Thirteenth District. Early voting and voting by absentee ballot were permitted for this election (as for all state elections).

15. For both early voting and voting on Election Day, Sarasota County made use of electronic voting machines, called “iVotronic” machines, manufactured by Electronic Systems & Software, Inc. Sarasota County does not use iVotronic machines (or any other electronic voting machines) for absentee balloting. For absentee balloting, Sarasota County uses paper ballots read by optical-scanning equipment.

16. The first unofficial results reported on November 8, 2006 for the Thirteenth District congressional race showed that in Sarasota County, there were 58,534 votes for Vern Buchanan, 65,367 votes for Christine Jennings, and 18,382 undervotes.

17. On November 13, 2006, the Elections Canvassing Commission ordered a machine recount for the race pursuant to Section 102.141(6), Florida Statutes, because the difference in votes cast between Vern Buchanan and Christine Jennings was less than 1/2 of 1 percent.

18. On November 15, 2006, the Honorable Sue M. Cobb, Secretary of State, released the results of the machine recount and ordered a mandatory manual recount pursuant to Section 102.166(1), Florida Statutes, because the difference in votes cast between Buchanan and Jennings was less than 1/4 of 1 percent. Broken down by county, the recorded vote totals after the machine recount were as follows:

	Buchanan	Jennings
Charlotte:	4,459	4,270
DeSoto:	3,467	3,056
Hardee:	2,628	1,684

Manatee:	50,053	44,365
Sarasota:	58,535	65,366

19. On November 15, 2006, the Secretary of State also reported an “undervote” of 21,303 for the congressional race. The term “undervote” describes a situation in which a voter cast ballots for other candidates or ballot measures but did not register a vote for the particular office. *See* § 97.021(37), Florida Statutes. Broken down by county, the undervote totals were as follows:

Charlotte:	174
DeSoto:	148
Hardee:	277
Manatee:	2,324
Sarasota:	18,380

20. The undervote total for the congressional race in Sarasota County is extremely abnormal in numerous respects, including the following:

a. A total of 88,927 ballots were cast in this race on Election Day in Sarasota County on the electronic voting machines. Christine Jennings received 39,930 votes and Vern Buchanan received 36,619 votes. There were 12,378 undervotes. The undervote rate on Election Day in Sarasota County was therefore an extraordinary 13.9% of the ballots cast on the electronic voting machines.

b. A total of 30,832 ballots were cast during the early-voting process in Sarasota County, on the same type of electronic voting machines. Christine Jennings received 14,509 votes, and Vern Buchanan received 10,890 votes. There were 5,433 undervotes. The undervote rate in the early-voting process in Sarasota County was therefore an extraordinary

17.6% of the ballots cast. And the combined undervote percentage for early and Election Day voting on the electronic voting machines was an equally extraordinary 14.9%.

c. In vivid contrast, of the 22,525 votes cast in this race by absentee ballot in Sarasota County (which were recorded by optical-scanning devices, not by electronic voting machines), Christine Jennings received 10,928 votes, and Vern Buchanan received 11,025 votes, and there were just 571 undervotes recorded -- a rate of only 2.53%, which is consistent with historical norms and expectations.

d. In equally vivid contrast, the percentage of undervotes for the House of Representatives race in other counties within the Thirteenth District did not remotely approach the undervote rates for the electronic voting machines in Sarasota County. The undervote rate for this race was 2.5% in Charlotte County, 2.2% in DeSoto County, 5.3% in Hardee County, and 2.4% in Manatee County. The combined undervote percentage for these four counties is only 2.5% -- one-sixth the undervote percentage recorded in Sarasota County for votes cast on electronic voting machines.

e. In addition, the undervote percentage recorded in Sarasota County for other high-profile races is a small fraction of the 14.9% undervote rate on electronic voting machines for the congressional race. For example, the undervote percentage recorded in Sarasota County for the Governor's race was 1.28% and the undervote percentage for the United States Senator's race was 1.14%.

f. Finally, the percentage of undervotes on electronic voting machines for the congressional contest in Sarasota County in 2006 is almost seven times the rate of undervotes for the Thirteenth District congressional race in 2002 (the last midterm election), which was 2.2%.

21. In 2001, Sarasota County became the first county in Florida to use the iVotronic voting system. They have been used since 2001 in at least 19 separate primary, general, and local elections. In the 2006 election, Sarasota County voters were asked whether to adopt a proposed county charter amendment requiring that as of January 1, 2008, all county voting systems provide a voter-verified paper ballot and that mandatory audits of election results be conducted in every election comparing hand counts to machine counts. The county adopted the proposed charter amendment with the support of 55.4% of voters, indicating that voters themselves have lost confidence that the iVotronic system is capable of correctly recording their votes. Significantly, the undervote rate for this proposed charter amendment was only 6.2%.

22. The statistical evidence alone indicates that the staggeringly large number of undervotes in Sarasota County is due to the malfunctioning of the iVotronic electronic voting machines. In fact, preliminary expert statistical analysis of the reported election results concludes there is little doubt that the use of the iVotronic machines in Sarasota County caused the extraordinarily high rate of undervotes in that county. The fact that undervote rates from the rest of the district and from absentee voters in Sarasota County were so much lower than rates from voters using the iVotronic machines in Sarasota County rules out the possibility that the extraordinarily high Sarasota County undervote rates were caused by factors common throughout the district --- such as voter abstention due to negative campaigning or dissatisfaction with both candidates. Evidence that such alternative explanations were causing high undervote rates would have shown up throughout the district, not in a single county, and not just among one type of voting machine in that county. Additionally, the fact that a higher undervote rate was present on identical electronic voting machines in two different modes of voting that occurred at different times --- early voting (from October 23 to November 5) and Election Day voting (November 7) -

-- creates an overwhelming suspicion that the problems pertain to the use of these electronic machines in Sarasota County.

23. It is extremely unlikely that an undervote rate of the magnitude that occurred in Sarasota County can be principally attributed to voter confusion or ballot design. Even the most egregious examples of voter confusion caused by ballot design in other races do not yield undervote percentages remotely as high as those present in the Thirteenth District congressional race. For example, the infamous “butterfly ballot” used in Palm Beach County, Florida in the 2000 presidential race caused fewer than 1% of the presidential votes cast in that election to be erroneously cast for the independent candidate Pat Buchanan. Moreover, because of pervasive problems with electronic voting machines during early voting in Sarasota County -- widely reported in the press before and on Election Day and in public statements by Sarasota County Supervisor of Elections Kathy Dent -- Sarasota County voters were alert to the risks of ballot confusion, and thus highly unlikely to have fallen victim to it.

24. As powerful as this statistical evidence is, it is far from the only indication that thousands of legal votes in Sarasota County simply were left out of the certified election results for the congressional race because of the failure of electronic voting machines. A variety of contemporaneous sources document widespread problems with the iVotronic electronic voting machines in Sarasota County. These documents, including both the statements of voters and contemporaneous records maintained by the Sarasota County Supervisor of Elections, identify a consistent pattern of voter difficulty in having their votes recorded in the House of Representatives race -- and not in other races on the ballot.

25. Plaintiff has obtained affidavits memorializing the eyewitness accounts of hundreds of Sarasota County voters attesting to their difficulties attempting to cast a vote for

Christine Jennings in early voting and on Election Day on iVotronic electronic voting machines in Sarasota County. The following statements are representative of the memorialized eyewitness accounts of these hundreds of voters:

- “I went through the ballot making my selections on the Ivotronics touch screen voting machine and took my time making sure that I voted in every race. I am certain that I cast a vote for Christine Jennings. When I reviewed the ballot at the end of the voting process, I noted that the race for the 13th congressional district . . . indicated that I had made no selection. I double-touched the 13th Congressional District race and again cast my vote for Christine Jennings. . . . I have more than 15 years experience in selling computer systems, five of those years are in selling touch screen systems. Based on my experience, I believe there was a software bug in the voting machine software causing the software not to register the touch.”
- “I took a sample ballot, which I had previously filled out and my intention to vote in every race. I believed that I voted for Christine Jennings but I came to the review screen it said I had not cast a vote in the Congressional race. . . . I used the back arrow and it took me back to Congressional race and I recorded a vote for Christine Jennings.”

- “When my husband and I voted on the iVotronics touch screen voting machines, I was told by a poll worker to be sure and check the District 13 Congressional race because several voters, even at that early hour, had complained that they had voted for Christine Jennings, but the summary page did not reflect their votes for Christine Jennings.”
- “When I voted on the iVotronics touch screen voting machine I touched the screen for Christine Jennings and it showed I voted for Christine Jennings. But when I reviewed the summary page at the end of the ballot, it did not show a vote for Christine Jennings or anyone else.”
- “There was no warning or mention of any problems however, I was aware there may be a problem with the Congressional vote based on various media reports. I went through the ballot and specifically remember voting for Christine Jennings. When I arrived at the review screen, there was no candidate selected for the Congressional vote. I called a poll worker over and explained the situation and she told me that I did not ‘press hard enough’ when selecting the vote and I then returned to the vote screen and recast my ballot, I then confirmed it on the review screen.”
- “When I voted on the touch screen voting machine I touched the screen voting for Christine Jennings and when I reached page 15, the summary page, it indicated that I had not voted for Jennings. I immediately called

this to the attention of a poll worker who showed me how to go back and vote for Jennings. I followed her instructions and again voted for Jennings. It did appear on the summary screen this time and I hope was duly registered.”

- “When I voted on the ivotronics touch screen voting machine I touched screen and voted for Christine Jennings for U.S. Congress Florida District 13. When I reviewed my ballot before hitting the red button and actually voting, I saw the review screen did not show a vote for Christine Jennings. I was afraid I would lose my other votes if I tried to go back and correct the problem, so I then went ahead and cast my ballot without confirming that the machine had registered my vote for Christine Jennings.”
- “I attempted to vote for Christine Jennings in the District 13 race and experienced the following difficulties: I was well-aware of the difficulties in the early voting in District 13 race and so I carefully voted in each election on the ballot, including that race. When I got to the review page, my vote for Christine Jennings was not reflected. I called out to a poll worker to alert them that my vote in the District 13 race had not been recorded. The poll worker who came to assist me informed me that the same thing had happened to her when she had voted earlier. She guided me back to the District 13 page and I pressed the touch screen again to reflect my vote for Christine Jennings. The poll worker then guided me

back to the review page where my vote in the District 13 race was reflected and I then pressed the vote button.”

- “When I voted on the ivotronics touch screen voting machine, I went through the ballot to vote. I was being careful because I seemed to have to press hard for my votes to register. In addition, I knew to be careful because my wife had been to vote previously and had overheard some women who had a problem voting discussing their problems with the machines. They were different machines. A neighbor also told me that she had encountered six different people who had a problem with the voting machines. When the review sheet came up it said that I had not voted in the Congressional race even though I knew I had voted for Christine Jennings. I went back and registered my vote again and this time it indicated that I had voted for Ms. Jennings on the review screen.”
- “When I voted with the stylus on the ivotronics touch screen voting machine, I am absolutely sure the box for Christine Jennings showed the X. On the Review screen, however, Christine Jennings’ name showed but the box beside her name was blank. I clicked on the review ballot and corrected my vote and it then showed an X beside her name. After that, I registered my vote with the Red button at the top of the screen. After voting, I asked my husband if anything unusual happened when he voted (on a different machine). He told me that when he reviewed his ballot, the

box by Christine Jennings' name was blank and he had to correct it. At that time, I reported this to a poll worker named Charlie, who said he would report it.

- “I had heard prior to going to the poll that there were problems with the voting machines. When I went to vote, the poll worker also warned me that there had been problems with the machine registering the Congressional race. When I voted on the ivotronics touch screen voting machine, I voted for Christine Jennings. The screen indicated I had voted. Yet when I got to the end, the review page indicated that I had not voted in the Congressional race. I went back and voted for Ms. Jennings. This time my vote did register on the voting page.”
- “When I voted on the iVotronics machine I was being very methodical. When I voted in the Buchanan-Jennings race, I specifically voted for Christine Jennings and checked to make sure that the box was checked before I went to the next page. When I got to the review screen it reflected no vote was cast for the Congressional race, but both candidates' names were shown. All of my other selections were properly recorded. I touched where it said no vote had been cast and it took me back to the Buchanan-Jennings race. I then re-voted for Christine Jennings and carefully rechecked the review page three times. I then pushed the vote button. No report was made to the poll worker. Prior to voting, the poll

worker recommended that I check the review page before casting my final ballot. I am a registered Republican and I believe these machines failed democracy.”

- “I voted on the iVotronics machine I took my time to be sure I did not make any errors. When I voted in the Buchanan-Jennings race, I specifically voted for Christine Jennings and checked to make sure the box was checked before I went to the next page. When I got to the review screen it reflected no vote was cast for the Congressional race. All of my other selections were properly recorded. I touched where it said no vote had been cast and it took me back to the Buchanan-Jennings race. I then re-voted for Christine Jennings and I then pushed the vote button. “
- “When I voted on the ivotronics touch screen voting machine I touched the screen for Christine Jennings and it showed I voted for Christine Jennings. But when I reviewed the summary page at the end of the ballot, it not only failed to show a vote for Christine Jennings, but the only name to appear on the review page was Christine Jennings, next to a blank box indicating no vote had been cast. I called a poll worker over and explained what had happened and the poll worker pulled back the page for the Congressional race. I revoted for Christine Jennings, and my vote appeared to register in my second review of the summary screen.”

- “When I voted on the touch screen voting machine I encountered two problems with the machine. First, after I had voted for Christine Jennings on the top of the second screen, when I pushed my selection for Jim Davis for Florida Governor next, the “X” on the computer screen came up indicating that I had voted for Charlie Crist. I called a poll worker, advised her of the problem and she showed me how to change my vote to Jim Davis. I then proceeded to vote on every race I saw on the ballot. When I got to the review screen, it showed Christine Jennings name, but unlike all the other names and races on the review screen, there was no X in the box next to Christine Jennings’ name. I am certain that I had initially cast a vote for Christine Jennings as my two main purposes in voting were to vote for Christine Jennings for Congress and Jim Davis for Florida Governor. I again called a poll worker who told me to hold my finger down on the box next to Christine Jennings name on the review screen until the X came up. I did so and then pushed the ‘Vote’ button.”
- “When I arrived at the polls I was warned by a poll worker that some votes from ‘page 2’ were not being registered. I waited on line for 45 minutes to vote and when I returned home, informed my wife of what I had been warned.”
- “I had heard earlier media reports and was aware that there were some problems with the machines. When I arrived, I specifically asked if there

had been problems and I was told no issue or problems had arisen. I voted for Christine Jennings on a touch screen and when I arrived at the review page the Congressional vote was left blank. I called a poll worker over at that time and she showed me how to move back and I re-cast my vote for Christine Jennings. On the final review page, I confirmed my vote was cast. I approached a poll worker to complain about the situation and filled out a complaint card.”

26. These eyewitness accounts, and hundreds of others like them, attest to pervasive difficulties in the recording of votes in the Thirteenth District congressional race. Although many of these voters believed that they were able eventually to overcome the machine difficulties and cast a recorded vote for Plaintiff Christine Jennings, the problems the iVotronic machines exhibited in recording the legal votes of these and thousands of other voters provide substantial grounds for doubting whether the votes were in fact counted. The information voters see on the touch-screen of an electronic voting machine when they cast their votes is stored in the machine’s temporary, volatile computer memory. A permanent record of a vote is made only when -- upon pressing the “Vote” button -- the voter’s recorded preference is transferred from the temporary volatile memory on the computer to permanent nonvolatile memory. If, as the statistical evidence suggests is overwhelmingly likely, a software “bug” or other malfunction disrupts or prevents the transfer of the recorded legal vote from temporary to permanent memory, the voter may well see a vote cast for Jennings on his or her review screen even though no permanent record of the vote is ever recorded.

27. Poll watchers also reported their observations of widespread occurrences of voters being unable to have their votes in the congressional race recorded by iVotronic electronic voting

machines. One poll watcher reported as follows: “There were seven ivotronics touch screen voting machines at the precinct where I was watching the voters. Two of the ivotronics touch screen voting machines stopped working while I was watching the voters. After an hour or so, one was repaired and put back into service. The other was put back into use without repair except that the poll workers instructed voters to hold their finger on the touch screen for more time, rather than just touch [the] screen to get the vote to register. I heard several voters tell poll workers the ivotronics touch screen voting machine was not recording their vote.”

28. Contemporaneous official “Incident Report Forms” of the Sarasota County Supervisor of Elections likewise document widespread occurrences of voters having great difficulty in having the iVotronic electronic voting machines record their votes in the Thirteenth District race. Numerous such forms noted that iVotronic electronic voting machines were “not recording votes.” One report from a particular precinct noted that a “voter voted on screen -- didn’t show up on review . . . asked poll worker for help . . . [c]ancelled ballot and moved to another machine,” and went on to observe “more than one [voter] with trouble on machine.” Another incident report observed that “[e]very other voter is complaining about the Christine Jennings contest not coming up.” Indeed, these incident reports document multiple instances of frustrated voters telling election officials at the polling places that “voting machine[s] would not let her vote for Jennings.”

29. Other contemporaneous official forms maintained by the Sarasota County Supervisor of Elections similarly document that iVotronic electronic voting machines used in the County were not recording the votes that voters had cast. Machines were taken out of service on Election Day because they were “slow to respond to touch” or “required a hard/extended touch before [a] vote was recognized,” or because they were “not recording some votes [and] the

touchscreen was not working properly -- hard to record vote, needed to push hard and juggle to record vote,” or because they were “not accepting votes.” Technical support personnel reported receiving “several complaints that voters make selections that do not appear on the summary screen” and that “the selection has to be highlighted . . . two or three times before the summary page reflected the suggestions.” Other reports indicate that “voters reported making a selection but the selection did not appear on the review screen,” requiring further corrective action by the voter, and that particular machines “miss[] selections on some pages.” One report by a Sarasota County technical support person indicated that a particular electronic voting machine “will not register votes no matter how hard you press screen.”

30. Significantly, the records of the Sarasota County Supervisor of Elections document that election officials were on clear notice, as a result of the extreme difficulties many voters encountered during the early-voting phase, that the iVotronic electronic voting machines were malfunctioning with respect to the Thirteenth District congressional race. Nevertheless, the County election officials do not appear to have taken *any* steps to correct the serious machine problems in advance of Election Day.

31. This machine-induced failure had significant, indeed, determinative, effects on the outcome of the election for the Thirteenth District congressional seat. Preliminary statistical analysis (based on the undervote rates for the election in Sarasota County absentee ballots, and in other counties) indicates that more than 14,000 Sarasota County voters (the differential over and above the expected undervote rate) cast legal ballots but failed to have their legal votes recorded. Given that the certified election results give Defendant Buchanan a lead of only 369 votes, and given that Plaintiff Jennings carried Sarasota County while Defendant Buchanan carried the rest of the district, the failure to include 14,000 or more votes in the final tally places the outcome of

the election into grave doubt. Indeed, preliminary statistical analysis indicates that inclusion of these 14,000 or more Sarasota County votes would change the outcome of the election, because the Sarasota County voters whose votes were recorded in the election favored Plaintiff Christine Jennings by a significant margin.

### **Count I**

32. Plaintiff realleges paragraphs 1 - 31.

33. As a result of the failure of iVotronic electronic voting machines to record all legal votes cast in the Thirteenth District congressional race in Sarasota County, thousands of votes legally cast in that race were not included in the vote totals certified by the Elections Canvassing Commission on November 20, 2006. The failure to include these votes constitutes a rejection of a number of legal votes sufficient to place in doubt, and likely change, the outcome of the election.

34. Given the extremely narrow margin of 369 votes in the certified election results, it is self-evident that the number of uncounted legal votes in Sarasota (which preliminary statistical analysis reveals to be at least 14,000) is sufficient to place in doubt, and likely change, the outcome of the election.

35. Given the relative percentages of the actual votes cast in Sarasota County in the Thirteenth District election, it is likely that including the uncounted legal votes cast in Sarasota County would change the outcome of the election and result in a victory for Plaintiff Christine Jennings.

36. Therefore, under Section 102.168, Florida Statutes, Plaintiff Christine Jennings is entitled to prevail in this contest action, and should be awarded all appropriate relief.

### **Prayer for Relief**

Wherefore, Plaintiff prays that the Court:

1. Advance this matter on the Court's docket.
2. Order immediate discovery as requested in the accompanying motion, which is necessary to determine conclusively the cause of the massive undervote in Sarasota County.
3. Convene a status conference promptly to establish an expeditious schedule for completing discovery and conducting a hearing.
4. Set this matter for a prompt hearing pursuant to Section 102.168(7), Florida Statutes.
5. Order the Elections Canvassing Commission to declare void the results of the 2006 general election for Representative from Florida's Thirteenth Congressional District.
6. Order the Elections Canvassing Commission to decertify Vern Buchanan as the winner of the 2006 general election for Representative from Florida's Thirteenth Congressional District. *See* Fla. Stat. § 102.1682.
7. Enter a finding that Plaintiff is entitled to the office of Representative from Florida's Thirteenth Congressional District, Section 102.1682, Florida Statutes, or, in the alternative, declare the congressional seat for Florida's Thirteenth Congressional District vacant such that a special election shall take place pursuant to Sections 100.101(1) and 100.111(3), Florida Statutes, or order a new election to determine the winning candidate for the United States House of Representatives seat.
8. Order all other appropriate relief, including an award of fees and costs.

Respectfully submitted this 20th day of November, 2006 by:

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