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IN THE

**United States House of Representatives**

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CHRISTINE JENNINGS,

*Contestant,*

v.

VERN BUCHANAN,

*Contestee.*

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**NOTICE OF CONTEST  
REGARDING THE ELECTION FOR  
REPRESENTATIVE IN THE ONE HUNDRED TENTH CONGRESS  
FROM FLORIDA'S THIRTEENTH CONGRESSIONAL DISTRICT**

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**Pursuant to the Federal Contested Elections Act,  
2 U.S.C. §§ 381-396**

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## Introduction

1. This is an action brought under the Federal Contested Elections Act, 2 U.S.C. §§ 381-396, to contest the Florida Elections Canvassing Commission's November 20, 2006 certification that Contestee Vern Buchanan received 369 more votes than Contestant Christine Jennings in the general election for Representative in Congress from Florida's Thirteenth Congressional District. The vote totals in that certification are wrong because they do not include thousands of 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 change the result of the election. Indeed, statistical analysis based upon the actual ballots cast in Sarasota County in the November 2006 general election demonstrates that, had the votes lost to machine malfunction been included in the certification, Christine Jennings would have won the election by more than 3,000 votes.

2. On November 20, 2006, the State of Florida's Elections Canvassing Commission certified a total of 119,309 votes for Vern Buchanan and 118,940 for Christine Jennings. That certification excluded the 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 *more than one out of every seven voters* — nearly 15% of those who used 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, especially in an election year when control of Congress was obviously at stake. 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 systematically failed to record votes cast for candidates in the Thirteenth District congressional race — particularly votes cast for Contestant 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.” FLA. STAT. § 101.031(2). In the election challenged here, Sarasota County election officials failed to deliver on that promise. Indeed, the failure to count the 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. These citizens should not forfeit their constitutional right to vote because the County’s paperless electronic voting machines malfunctioned. Yet disenfranchisement is exactly what will happen unless the Florida Election Canvassing Commission’s certification is declared null and void.

4. On behalf of herself and the thousands of her fellow Florida citizens facing such disenfranchisement, Contestant Christine Jennings therefore claims the right to this congressional seat and seeks appropriate relief under the Federal Contested Elections Act. It is critically important that the United States House of Representatives — exercising its constitutional authority to “Judge . . . the Elections, Returns and Qualifications of its own Members,” U.S. CONST. art. I, § 5, cl. 1 — provide that relief promptly, by resolving that (a) there has been no valid election for the Representative in the One Hundred Tenth Congress from Florida’s Thirteenth Congressional District, (b) Contestee Vern Buchanan is not entitled to a seat as a Representative in the One Hundred Tenth Congress, and (c) the Governor of the State of Florida should be notified that the office is vacant, so that he can issue a Writ of Election to fill

the vacancy pursuant to Article I, Section 2, clause 4 of the United States Constitution and Chapter 100 of the Florida Statutes.

5. These remedies are exceptional, but they are by no means novel or precedent-setting. The House has never hesitated to grant the exact remedies requested by Contestant Jennings when circumstances warrant such relief. In contested-election cases, the House has found the contestant to be entitled to the seat on 128 occasions. And the election has been voided, and the seat vacated, in another 66 cases. *See, e.g.*, 78 CONG. REC. 1510-21 (1934) (agreeing to House Resolution 231, which provided that there had been no valid election, that the state-certified winner was not entitled to a seat, and that the Speaker of the House should notify the governor of the vacancy). Likewise, Florida law provides for analogous remedies. *See, e.g.*, FLA. STAT. § 102.1682(1) (providing for entry of a “judgment of ouster” against the contestee); *Craig v. Wallace*, 2 FLA. L. WEEKLY SUPP. 517a (2d Jud. Cir., Leon County 1994) (setting aside election results and requiring a new election for state representative because irregularities prevented votes from being properly cast on three Votomatic machines).

6. The current election result in Florida’s Thirteenth District 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. The resolution that Contestant Jennings requests here will ensure that the will of the people of Florida’s Thirteenth Congressional District is respected, and will restore the confidence of the electorate, which has been badly fractured by this machine-induced debacle.

### **Grounds for Contesting the Election**

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

8. Both for early voting (from October 23 to November 5) and for Election Day voting (on November 7), Sarasota County made use of an electronic voting system, called the “iVotronic” touch-screen voting system, manufactured by Election Systems & Software, Inc. (“ES&S”), a privately held corporation. Sarasota County does not use the iVotronic electronic voting system (or any other electronic voting machines) for absentee balloting. For absentee balloting, Sarasota County uses paper ballots read by optical-scanning equipment.

9. 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 Buchanan, 65,367 votes for Jennings, and 18,383 undervotes. 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* FLA. STAT. § 97.021(37).

10. 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 recorded for Buchanan and for Jennings was less than one half of one percent of the total votes recorded district-wide.

11. On November 15, 2006, the Honorable Sue M. Cobb, Florida 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 for Buchanan and for Jennings was less than one fourth of one percent district-wide.

12. As anticipated, neither the machine recount nor the manual recount altered the number of congressional undervotes recorded on the iVotronic system in Sarasota County because merely “recounting” electronic ballots, unlike paper ballots (or absentee, overseas, or provisional votes), is inevitably a meaningless exercise. The machine “recount” consists merely of comparing the counters on the precinct tabulators with the overall election returns, and the manual “recount” consists simply of printing out the ballot-image reports from the malfunctioning iVotronic system and counting by hand the ballot images that recorded no choice for the particular race in question. *See* FLA. STAT. §§ 102.141(6)(b), 102.166; FLA. ADMIN. CODE Rule 1S-2.031.

13. By November 18, 2006, county canvassing boards in the three counties wholly contained in Florida’s Thirteenth Congressional District (DeSoto, Hardee, and Sarasota) and the two counties partly contained in the district (Charlotte and Manatee) had officially certified their election results and filed them with Florida’s Division of Elections. On November 20, 2006, Florida’s Elections Canvassing Commission, having compiled the official results from those five counties, certified the election returns and declared that Contestee Buchanan had been elected to Congress.

14. The official results from the five counties were as follows:

	<u>Buchanan</u>	<u>Jennings</u>
<b>Charlotte:</b>	<b>4,460</b>	<b>4,277</b>
<b>DeSoto:</b>	<b>3,471</b>	<b>3,058</b>
<b>Hardee:</b>	<b>2,629</b>	<b>1,686</b>
<b>Manatee:</b>	<b>50,117</b>	<b>44,432</b>
<b>Sarasota:</b>	<b>58,632</b>	<b>65,487</b>
<b>TOTAL:</b>	<b>119,309</b>	<b>118,940</b>

15. As required by state law, the official returns from the five counties also reported undervotes, which exhibited a sharply aberrant total for Sarasota County:

	<u>Undervote</u>
<b>Charlotte:</b>	<b>225</b>
<b>DeSoto:</b>	<b>142</b>
<b>Hardee:</b>	<b>265</b>
<b>Manatee:</b>	<b>2,324</b>
<b>Sarasota:</b>	<b>18,412</b>
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<b>TOTAL:</b>	<b>21,368</b>

16. Sarasota County, the one county carried by Jennings, accounted for barely half of the congressional candidates' recorded votes district-wide, but fully 86% of the district's congressional undervotes:

	<u>Buchanan</u>	<u>Jennings</u>	<u>Undervote</u>
<b>Sarasota County:</b>	<b>58,632</b>	<b>65,487</b>	<b>18,412</b>
<b>The Four Other Counties:</b>	<b>60,677</b>	<b>53,453</b>	<b>2,956</b>
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<b>TOTAL:</b>	<b>119,309</b>	<b>118,940</b>	<b>21,368</b>

17. 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. Jennings received 39,930 votes and 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. Jennings received 14,509 votes, and 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 22,613 votes cast in this race by paper absentee ballot in Sarasota County (which were recorded by optical-scanning devices, not by electronic voting machines), Jennings received 10,981 votes, and Buchanan received 11,065 votes, and there were just 566 undervotes recorded — an undervote rate of only 2.5%, 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, 2.1% in DeSoto County, 5.8% in Hardee County, and 2.4% in Manatee County. The combined undervote percentage for these four counties was 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 1.3% and the undervote percentage for the United States Senator's race was 1.1%.

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%.

18. In 2001, Sarasota County became the first county in the State of Florida to purchase the iVotronic voting system. The system has 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 independent 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%.

19. 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 electronic undervote rate was 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 on 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 (on November 7) — creates an overwhelming likelihood that the problems pertain to the use of these electronic machines in Sarasota County.

20. Compared to the malfunctions of the electronic voting machines, data available thus far suggests that poor ballot design is a less likely explanation for the undervotes of this magnitude. The most egregious examples of voter confusion caused by ballot design in other races have not yielded undervote percentages remotely as high as those present in the Thirteenth District congressional race. For example, with the infamous “butterfly ballot” used in Palm Beach County, Florida in the 2000 presidential race, fewer than 1% of the voters erroneously cast their ballots for the third-party candidate Pat Buchanan, and 4% of the voters erroneously cast “overvotes” by selecting two or more candidates. If the ballot design here is in fact capable of disenfranchising nearly 15% of the electorate, that alone merits close attention from this House.

21. The poor ballot design’s most likely role here was as a contributing factor that helped to trigger a software “bug” in the machines. Page 2 of the Sarasota County iVotronic ballots contained *both* the two-candidate race for Representative in Congress and the seven-candidate race for Governor — nine ballot lines in total. No other page of Sarasota County’s electronic ballot crammed so many candidates onto a single screen. Similarly, Page 3 of Charlotte County’s iVotronic ballots contained both the seven-candidate gubernatorial field and the two-candidate race for Attorney General. And, just as in Sarasota County, this design triggered a bizarre undervote pattern, with a 0.8% undervote rate in the gubernatorial election

and an extraordinary 24.7% undervote rate in the Attorney General election that was on the same screen. (In Sarasota County, the equivalent undervote figures for the two contests compressed onto one page were 1.3% and 14.9%.) In other counties around Florida, iVotronic ballot screens showing nine candidates exhibited a similar pattern, with low undervote rates in the multi-candidate gubernatorial election and peculiarly high undervote rates in the two-candidate election that shared the same screen.

22. Some have theorized that this ballot design confused voters — especially “straight-ticket” voters who may have skimmed rapidly through the ballot, looking only for candidates from one political party. If this is true, the magnitude of the undervote that this problem caused is still startling. But based on the data available to date, it appears a less likely explanation for the undervote than the machine malfunction itself. According to this theory, the “confused voter” (a) selected his party’s gubernatorial candidate while overlooking the other contest on the same screen, (b) then moved quickly on to the next screen, and (c) at the end of the voting process, when faced with the “Summary Ballot” review screen, ignored the warning that stated in red letters, “No Selection Made” for “U.S. Representative in Congress.” Only the most egregious ballot-design flaw would have so confused the intelligent voters of Sarasota and Charlotte Counties. And it is important to note that the pattern of low undervote rates in the gubernatorial contest and extraordinarily high undervote rates in the two-candidate contest displayed on the same screen held true regardless of whether the two-candidate contest appeared on the screen immediately above the gubernatorial field (as in Sarasota County) or immediately below the gubernatorial field (as in Charlotte and other counties). That the undervote rate was not at least somewhat elevated for *both* offices suggests that this is (based on current data) a less likely explanation than the machine flaw; were ballot design the sole cause, one would not

expect the undervote rate to be elevated solely for the top-of-the-screen contest in Sarasota County and for the bottom-of-the-screen contest in the other counties. Indeed, implicit in the “confused voter” theory is the notion that Sarasota County voters read ballot screens from the *bottom up* while voters in Charlotte and the other counties read ballot screens from the *top down*, so that, in either case, the “confused” voters spotted their preferred gubernatorial candidate first, and then quickly moved on to the next screen, inadvertently bypassing the other contest (the top-of-the-screen congressional race in Sarasota, the bottom-of-the-screen Attorney General’s race elsewhere). While no empirical support has been found for this notion, evidence that it could have caused such unusually high undervotes would be extremely troubling. Regardless, the pattern of undervotes, combined with the actual ballot designs used in the various Florida counties, suggests that an error or irregularity in the machines’ source code tends to convert into undervotes some of the votes actually cast for candidates in the two-candidate field, whenever that field shares a screen with too many other ballot lines. Like any computer-based system, an electronic voting touch-screen is most likely to malfunction when filled to capacity.

23. As powerful as all the statistical evidence is, it is far from the only indication that thousands of votes in Sarasota County simply were left out of the certified election results for the congressional race because of the failure of paperless electronic voting machines. A variety of contemporaneous sources document widespread problems with the iVotronic electronic voting system 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 votes recorded in the House of Representatives race — and not in other races on the ballot.

24. Contestant 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 the iVotronic electronic voting system 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.”

25. Poll watchers also reported their observations of widespread occurrences of voters being unable to get their votes in the congressional race properly recorded by the 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.”

26. Contemporaneous official “Incident Report Forms” of the Sarasota County Supervisor of Elections likewise document widespread occurrences of voters having great difficulty in getting the iVotronic electronic voting machines to 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.”

27. 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.”

28. 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.

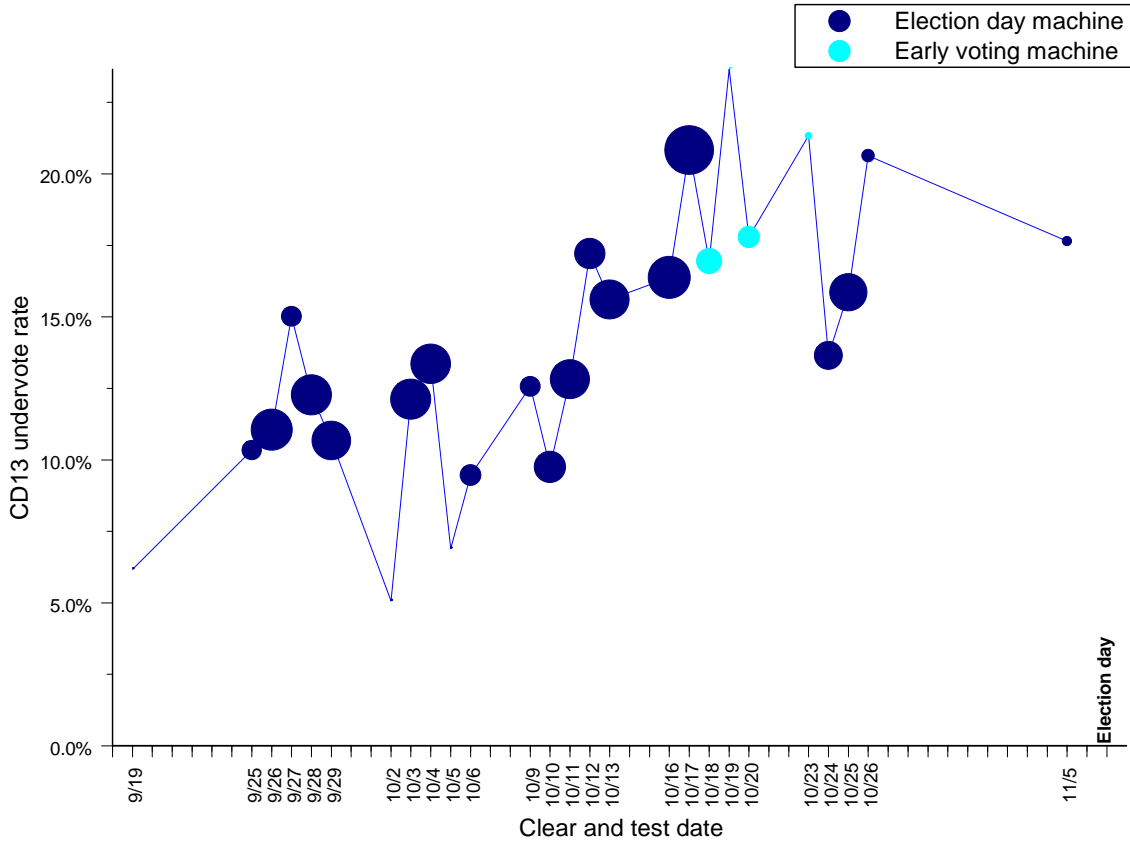
29. The eyewitness accounts of the voters, poll watchers, and election workers documented here, as well as hundreds of others like them, attest to pervasive difficulties in the recording of votes in the Thirteenth District congressional race. Although many voters believed that they were able eventually to overcome the machine difficulties and cast a recorded vote for Contestant Christine Jennings, the problems the iVotronic system exhibited in recording the 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 red “Vote” button above the screen — the voter’s recorded preference is transferred from the computer’s temporary volatile memory to its 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 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.

30. The probability of machine error finds support in a statistical analysis conducted by Professor Charles Stewart III, the chair of the Political Science Department at the Massachusetts Institute of Technology (MIT). Professor Stewart’s analysis indicates that the date when an iVotronic machine was “cleared and tested” by Sarasota County election workers or their contractors (as reflected by “Event Code 01” in the machine’s audit log) correlates strongly with the machine’s undervote rate: The machines prepared in the final days before the deadline for completing all such preparations exhibited the highest congressional undervote rates. And another strong correlation exists between the number of machines “cleared and tested” on a given date and the undervote rate: As the County’s staff or consultants got busier, clearing and testing more machines on a single day, the congressional undervote rate climbed.

31. The following graph demonstrates these facts. It shows the undervote rates for the iVotronic machines that were prepared on each date leading up to the election. The area of each data “bubble” is proportional to the number of machines prepared that day, so a large circle indicates a busy day of machine preparation. Dark bubbles are days when Election Day machines were primarily prepared; light bubbles are days when early-voting machines were primarily prepared.

**Figure 1. Undervote rate in the Thirteenth Congressional District race among machines prepared on the same day. (The area of bubbles is proportional to the number of machines prepared on that day.)**



Note: One early voting machine was prepared on 10/24; two were prepared on 10/25.

As this graph shows, the congressional undervote rates were below 7% for machines set up on only three days — September 19, October 2, and October 5, 2006. On each of those three days, the Sarasota County election workers cleared and tested only one machine. By contrast, the County’s busiest day of machine preparation — October 17, 2006 — involved setting up 158 machines, and on Election Day those 158 machines generated a congressional undervote rate of nearly 21%.

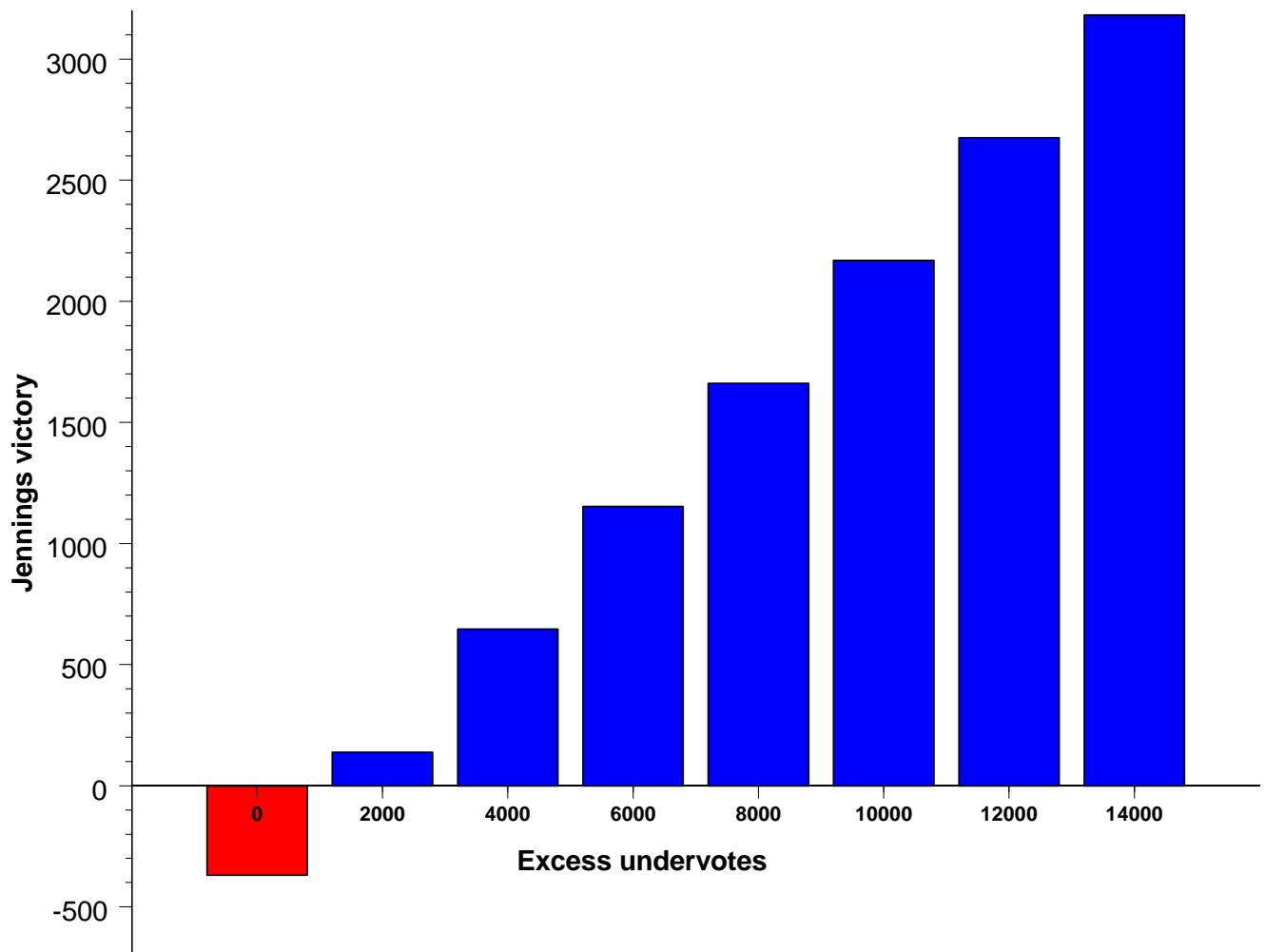
32. Professor Stewart also has analyzed the effect of machine-induced failure on the outcome of the election for the Thirteenth District congressional seat. Based on his study of patterns in the undervote rates for other statewide or countywide races in Sarasota County, Professor Stewart estimated that the number of “excess” undervotes caused by the use of the iVotronic machines in Sarasota County was approximately 14,000. This is a conservative estimate, as it suggests that slightly more than 3% of the Sarasota County voters intended not to vote for either congressional candidate, which is more than double the actual undervote rate found in the November 2006 race for U.S. Senator or Governor. Professor Stewart’s estimate was corroborated by the expert for the iVotronic machines’ manufacturer, who wrote that he was “90 percent confident that *between 14,322 and 14,896 voters in Sarasota County were suppressed from voting in the thirteenth district race*” (emphasis in original).

33. Using the ballot-image logs for every individual ballot cast electronically in the Sarasota County November 2006 general election — and studying voters’ preferences not only for the congressional race but also for the statewide races for U.S. Senator, Governor, Attorney General, Chief Financial Officer, and Agriculture Commissioner — Professor Stewart determined that the voters whose congressional ballots were recorded as undervotes likely supported Contestant Jennings over Contestee Buchanan by a margin of approximately 63% to 37%. So if the 14,000 “excess” congressional undervotes had actually been recorded and properly tallied as votes for one or the other congressional candidate, Contestant Jennings would have won the election by more than 3,000 votes. Indeed, even if machine malfunction caused only 1,500 “excess” undervotes — less than 10% of the total congressional undervotes reported in Sarasota County — properly tabulating those 1,500 congressional ballots would have reversed the outcome of the election, with Contestant Jennings prevailing over Contestee Buchanan.



34. The following bar graph shows the projected results, for various levels of excess undervote, beginning with zero and working in 2,000-vote increments up to 14,000. The graph shows the estimated victory margin for Jennings, given different values of excess undervotes. The very first bar, which shows zero excess undervotes, is the situation under the official certification, which declared Buchanan the victor by 369 votes.

**Figure 2. Estimated size of Jennings victory, with the allocation of different numbers of excess undervotes.**



### State Court Litigation

35. On November 20, 2006, Contestant Christine Jennings filed a complaint under Florida's election-contest statute, Section 102.168, Florida Statutes, in the Circuit Court of the Second Judicial Circuit, in Leon County, Florida. On November 28, 2006, Contestant's case was consolidated with a second election-contest action brought by a bipartisan group of eleven individual voters represented by counsel from four public-interest groups. The defendants in these consolidated suits include Florida's Elections Canvassing Commission, the Secretary of State, the Director of Florida's Division of Elections, the Sarasota County Supervisor of Elections, the Sarasota County Canvassing Board, congressional candidate Vern Buchanan, and Election Systems & Software, Inc. ("ES&S"), the manufacturer of the iVotronic voting system.

36. In the trial-court proceedings Contestant and the voter plaintiffs have requested expedited discovery of materials necessary to establish that thousands of undervotes were caused by machine malfunctions in the iVotronic voting system. Determining the precise cause of the irregularities requires that all parties — including *both* candidates — be allowed to inspect and test a sample of iVotronic machines and related equipment, and especially the ES&S source code and other software, all of which are in the possession of the defendants in the state-court action.

37. Thus far, the state and county election officials who are defendants in that action have invoked the trade-secret privilege to protect the business interests of ES&S and have resisted production of the materials requested by Contestant and the voter plaintiffs, thereby denying them the critical evidence they need to determine conclusively the cause of the pervasive malfunctioning of the iVotronic voting system in this election. On December 19 and 20, 2006, the court held an evidentiary hearing on whether Jennings and the voter plaintiffs have a "reasonable necessity" for production of the software and hardware that ES&S purports are

privileged as “trade secrets.” To expedite matters, Jennings took the extraordinary step of moving for a protective order to assuage any concerns ES&S might have about its purported trade secrets being disclosed to persons uninvolved with the litigation, including any of ES&S’s commercial competitors. The trial court has not yet ruled on Jennings’s and the voter plaintiffs’ motions to compel production of the software and hardware.

38. Throughout the state-court litigation, Contestant Jennings has gone to great lengths to ensure the speedy resolution of the election contest. For example, on the very day she filed her state-court complaint, she also filed a motion to compel expedited discovery of the iVotronic hardware and software; but that motion was denied. Another example was the December 7 filing by Jennings and the voter plaintiffs of a joint notice setting a case-management conference and requesting prompt entry of a scheduling order consistent with a late-January trial date.

39. Throughout the litigation, the state and county election officials defending the action have pursued a two-pronged strategy: (1) deny plaintiffs access to the software and hardware whose malfunction lies at the very core of the case; and (2) always blame the “confused” voters and absolve the machines. Emblematic of the second prong of that strategy are the interrogatories that the state defendants propounded on December 15, 2006 to each of the individual voter plaintiffs, apparently in response to their complaint, which described their difficulties on Election Day with the iVotronic machines:

[Interrogatory No.] 15. Do you wear glasses, contact lenses, or hearing aids? If so, who prescribed them, when were they prescribed, when were your eyes or ears last examined, and what is the name and address of the examiner?

[Interrogatory No.] 16. Did you consume any alcoholic beverages or take any drugs (prescribed or not) or medications within 12 hours before the time you voted in the November 2006 general election? If so, state the type and amount of

alcoholic beverages, drugs (prescribed or not), or medication which were consumed, and when and where you consumed them.

### **Conclusion**

40. As a result of the failure of the iVotronic electronic voting system to record all votes in the Thirteenth District congressional race in Sarasota County, thousands of votes cast in that race were not included in the vote totals certified by Florida's Elections Canvassing Commission on November 20, 2006. Statistical analysis demonstrates that including those votes in the certified totals would have reversed the election's outcome, putting Contestant Jennings more than 3,000 votes ahead of Contestee Buchanan. Contestant Jennings thus is entitled to the seat of Representative in the One Hundred Tenth Congress from Florida's Thirteenth Congressional District.

41. Therefore, under the Federal Contested Elections Act, 2 U.S.C. §§ 381-396, Contestant Christine Jennings is entitled to prevail in this contest action and should be awarded all appropriate relief.

### **Prayer for Relief**

Wherefore, Contestant Christine Jennings prays that the United States House of Representatives:

1. Ensure that all evidence related to the November 2006 general election in Sarasota County is preserved.
2. Ensure that both the Contestant and the Contestee have full and fair access — whether through discovery in the state-court election contest or in this proceeding — to the State of Florida's and Sarasota County's ES&S iVotronic hardware, software, and source code, as needed to uncover the true causes of the elevated undervote rate at issue here.

3. Resolve that the Florida Elections Canvassing Commission's November 20, 2006 certification of the returns for the 2006 general election for Representative in Congress from Florida's Thirteenth Congressional District is null and void.

4. Resolve that Contestant Christine Jennings is entitled to a seat as the Representative in the One Hundred Tenth Congress from Florida's Thirteenth Congressional District or, in the alternative, resolve that (a) there has been no valid election for the Representative in the One Hundred Tenth Congress from Florida's Thirteenth Congressional District, (b) Contestee Vern Buchanan is not entitled to a seat as a Representative in the One Hundred Tenth Congress, and (c) the Governor of the State of Florida should be notified that the office is vacant, so that he can issue a Writ of Election to fill the vacancy pursuant to Article I, Section 2, clause 4 of the United States Constitution and Chapter 100 of the Florida Statutes — thereby allowing the people of Florida's Thirteenth Congressional District to freely vote for Contestant Christine Jennings or Contestee Vern Buchanan and to have those votes accurately tabulated, counted, and reported.

5. Reimburse the State of Florida for half the expenses it incurs in holding a special election to fill the vacancy.

6. Pursuant to 2 U.S.C. § 396, reimburse from the applicable accounts of the House of Representatives the Contestant's and the Contestee's reasonable expenses for this contested-election case, including reasonable attorneys' fees, upon such party's verified application, accompanied by a complete and detailed account of the party's expenses and supporting vouchers and receipts.

Under 2 U.S.C. § 383, Contestee must serve his Answer on Contestant within 30 days after service of this Notice of Contest.

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

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CHRISTINE JENNINGS

**VERIFICATION**

I swear or affirm that I am a party to this action, that I have read the foregoing Notice of Contest, and that the information stated in the Notice of Contest is true to the best of my knowledge and belief. I declare under penalty of perjury under the laws of the United States and of the State of Florida that the foregoing is true and correct.

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CHRISTINE JENNINGS

Subscribed and sworn to before me  
this 20th day of December, 2006.

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Notary Public

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My Commission Expires