

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,

CASE NO. 2006-CA-2973

Consolidated with Case No. 2006-CA-2996

vs.

ELECTIONS CANVASSING COMMISSION  
OF THE STATE OF FLORIDA, consisting of  
Governor Jeb Bush, Chief Financial Officer  
Tom Gallagher and State Senator Daniel Webster,  
et al.,

Defendants.

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**DEFENDANT ELECTION SYSTEMS & SOFTWARE, INC'S RESPONSE TO  
PLAINTIFF JENNINGS' MOTION TO STAY PROCEEDINGS**

Defendant Election Systems & Software, Inc. ("ES&S") opposes the request by Plaintiff Christine Jennings ("Plaintiff Jennings") for an indefinite stay of this state election contest in deference to a later-filed federal election contest. In effect, Plaintiff Jennings is arguing that this Court lacks jurisdiction over this disputed election given the fact that the United States House of Representatives has initiated an investigation into the same election and will ultimately decide the election winner. However, if this Court lacks jurisdiction, or if the state election dispute is now moot because the House of Representatives has started an inquiry, then the appropriate remedy would be to dismiss rather than to stay the state election contest.

Alternatively, if the Court deems a stay to be appropriate, then the stay should not be open-ended or indefinite, as it would be if it were tied to an incipient congressional investigation

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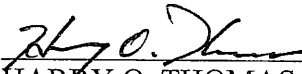
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which as yet has no clear timetable or scope. In this regard, ES&S would not object to a stay of the trial court proceeding which remains in effect until the First District Court of Appeal has ruled on Plaintiff Jennings' petition for certiorari, which the parties have now fully briefed. Indeed, regardless of what is happening in the federal election contest, it makes little sense to continue discovery in the trial court proceeding until the appellate court has resolved the parties' dispute as to the permissible scope of discovery. However, once this discovery matter has been resolved, the trial court will be in a better position to evaluate the need to proceed to a final disposition of the state contest, as it will be able to take into account the appellate court's ruling, the progress of the federal investigation, as well as other facts and circumstances that exist at that time.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by electronic transmission and U.S. Mail on this 16th day of May, 2007, to all counsel of record on the attached mailing list.

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