

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CHRISTINE JENNINGS, 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 (COLLECTIVELY,
"VOTER PLAINTIFFS" OR
"PETITIONERS") ,

CASE NO. 1D07-0011

Petitioners,

v.

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
THE STATE TO FLORIDA; DAWN
K. ROBERTS, AS DIRECTOR OF
THE DIVISION OF ELECTIONS OF
THE STATE OF FLORIDA; VERN
BUCHANAN; and ELECTION
SYSTEMS & SOFTWARE, INC.,

Respondents.

Opinion filed June 18, 2007.

Petition for Writ of Certiorari - Original Jurisdiction.

Kendall Coffey, of Coffey & Wright, L.L.P., Miami; Mark Herron, of Messer, Caparello & Self, P.A., Tallahassee; and Donald B. Verrilli, Jr., Sam Hirsch, Jessica Ring Amunson, of Jenner & Block, L.L.P., Washington, for Petitioner Jennings. Matthew J. Zimmerman, Electronic Frontier Foundation, San Francisco, California; Rebecca Harrison Steele & Zeina N. Salam, A.C.L.U. Foundation of Florida, Tampa; and Reginald J. Mitchell, P.F.A.W. Foundation, Tallahassee, for Joinder Petitioners.

Peter Antonacci and Allen Winsor, of GrayRobinson, P.A., Tallahassee, for Respondents Kurt S. Browning, Amy K. Tuck, and Elections Canvassing Commission. Miguel A. DeGrandy & Stephen M. Cody, of Miguel DeGrandy, P.A., Miami; and Harry O. Thomas & Jeffrey L. Frehn, of Radey, Thomas, Yon & Clark, Tallahassee, for Respondent Election Systems & Software, Inc. Glenn T. Burhans, Jr., Hayden R. Dempsey & M. Hope Keating, of Greenberg Traurig, P.A., Tallahassee, for Respondent Vern Buchanan.

BROWNING, C.J.

The petitioners seek certiorari review of the trial court's non-final order denying motions to compel discovery, including a request to order the respondents to disclose trade secrets, including the source code and other proprietary technology associated with certain voting machines used in the Florida Thirteenth Congressional District in the November 2006 election, which Petitioner Christine Jennings lost to Respondent

Vern Buchanan by fewer than 400 votes, according to the certified election results. We have jurisdiction. See Art. V, § (4)(b)(3), Fla. Const.; Fla. R. App. P. 9.030(b)(2)(A). “We recognize that an order denying discovery is ordinarily not reviewable by certiorari because the harm from such orders, as a general rule, can be rectified on plenary appeal.” Ruiz v. Steiner, 599 So. 2d 196, 197 (Fla. 3d DCA 1992). This is such a situation. Because the petitioners have not met their extraordinary burden to demonstrate that the trial court departed from the essential requirements of law, resulting in irreparable, material injury for the remaining trial proceedings that cannot be rectified on direct appeal, we deny the petition for writ of certiorari. See Martin-Johnson, Inc. v. Savage, 509 So. 2d 1097, 1099 (Fla. 1999); S.Y. v. McMillan, 563 So. 2d 807, 809 (Fla. 1st DCA 1990) (denying petition for writ of certiorari, where petitioner failed to show that the trial court departed from “a clearly established principle of law resulting in a miscarriage of justice which cannot be remedied on direct appeal”).

PETITION FOR WRIT DENIED.

POLSTON and HAWKES, JJ., CONCUR.