

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
OF FLORIDA IN AND FOR THE COUNTY OF MIAMI-DADE**

**FINAL REPORT  
OF THE  
MIAMI-DADE COUNTY GRAND JURY**

**SPRING TERM A.D. 2012**

**\*\*\*\*\***

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December 19, 2012

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## EXECUTIVE SUMMARY

In the aftermath of the August 14, 2012 Primary Election, Miami-Dade County was rocked with allegations of absentee ballot fraud that bombarded us daily in the media. The headlines of the breaking news coverage revealed gaping holes in the absentee ballot voting process in our community. As we discovered, each of those holes represented an opportunity for someone to commit fraud – undetected and in the shadows.

This Grand Jury Report identifies a number of those holes and offers ways to plug them. We hope that by doing so, we can bring some level of integrity to the absentee ballot voting process and the election results obtained there from. Toward that effort, we make a number of recommendations, primarily to two general groups: The Florida Legislature and the Miami-Dade County Elections Department on behalf of all the voters and residents in our community. Collectively, the recommendations to the legislature are aimed at making changes in the law that will make it more difficult for persons to commit fraud with impunity, make it easier for police and prosecutors to detect and prosecute such fraud, and increase the punishment for some specific violations related to the absentee ballot voting process. Many of our legislative recommendations are easy to implement as we are only asking that they reinstate laws that were previously on the books. Recommendations made to our county Elections Department are designed to put more protections in place to reduce fraud in requesting, voting and returning absentee ballots. Finally, our recommendations are designed to create an incentive for those in the community who have knowledge about fraud regarding absentee ballot voting so that they will report that information to law enforcement agencies or alternatively, make anonymous reports to Crime Stoppers.

Accordingly, the Spring Term Grand Jury humbly submits the following recommendations.

### **To Florida's Senate and House members we recommend that:**

- 1. The Florida Legislature, consistent with the 2002 version of Florida Statutes, amend 101.64 and 101.65(8), reinstating the requirement that the signing of absentee ballots by electors require the signature of an attesting witness 18 years of age or older. The name and address of the attesting witness shall be under the signature of the elector on the mailing envelope that is returned to the Elections Department. (p. 32)*

2. *In connection with the aforementioned recommendation, the Florida Legislature also amend the revived 2002 statutes and impose a requirement that the signature of the attesting witness will also be used to attest that in addition to witnessing the signing of the ballot by the elector, the witness also observed the elector mark or vote the ballot. (p. 32)*
3. *That the Florida Legislature, consistent with the present requirements of Florida Statute 101.051(4), which requires that a declaration be signed by a person who **provides assistance** to an elector who needs assistance when voting at a polling place, amend the statute to require that **a person who provides assistance to an elector** who needs assistance when voting an absentee ballot **shall sign a declaration**. The Declaration shall be similar in form to the document presently provided for by Florida Statute 101.051(4) and we propose for consideration the Declaration to Provide Assistance to Absentee Ballot Voter attached hereto as Exhibit C. The signed declaration shall be placed in the return envelope but shall not be placed in the secrecy sleeve when returned to the Elections Department. (p. 20)*
4. *In connection with the aforementioned recommendation, that the Florida Legislature, consistent with the present requirements of Florida Statute 101.051(4), amend the statute to require that if an absentee ballot elector needing assistance requests that a person other than a family member provide him or her with assistance in voting, **the elector requesting assistance** with the absentee ballot **shall sign a declaration**. The Declaration shall be similar in form to the document presently provided for by Florida Statute 101.051(4) and we propose for consideration the Declaration to Provide Assistance to Absentee Ballot Voter attached hereto as Exhibit C. The signed declaration shall be placed in the return envelope but shall not be placed in the secrecy sleeve when returned to the Elections Department. (p. 20)*
5. *That the Florida Legislature amend Florida Statute 101.657 to allow for the expansion of Early Voting Sites, especially in large counties like Miami-Dade, and to give the Supervisor of Elections discretion in choosing and determining the location and number of the Early Voting sites to utilize in an election cycle. (p. 10-11)*
6. *That the Florida Legislature, consistent with the 2004 version of Florida Statutes, amend 101.657 (1) (b), and at a minimum, restore the total of 120 hours for early voting and restore the former language which specifically provided that “early voting should begin on the 15<sup>th</sup> day before an election and end on the day before an election.” (p. 11)*
7. *That the Florida Legislature repeal Florida Statute 101.62(1)(a), thereby eliminating the permanent absentee voter list and require that absentee voters who desire to vote by absentee ballot for a specific election request an absentee ballot for such election. (p. 12)*
8. *The Florida Legislature adopt the language of Chapter 12, Section 12-14 of the Miami Dade County Code thereby making it illegal for anyone to be in possession of more than two absentee ballots at one time, unless the ballots being possessed are those of the voter*

*and members of the voter's immediate family (as that term is defined in Florida Statute 101.62(4)(c)(4)). (p. 18)*

9. *In connection with the aforementioned recommendation, the Florida Legislature upon enacting such a law makes the violation of the new statute a third degree felony. (p. 18)*
10. *The Florida Legislature amend Florida Statute 101.62(3) by further limiting the public record exemption from confidentiality for absentee ballot vote information, and making such information available **only** to a canvassing board or an election official, and not making this information available to a political party or official thereof, a candidate, or a registered political committee or committee of continuous existence. (p. 34)*

**To the Miami-Dade County Elections Department and its Supervisor of Elections we recommend:**

11. *That the Miami-Dade County Elections Department provide to all electors requesting absentee ballots a pre-paid self-addressed mailing envelope to return the signed ballot to the Supervisor of Elections. (p. 18)*
12. *The Miami-Dade Elections Department expand its outreach efforts to the owners and operators of ALFs, nursing homes and such facilities in an effort to increase the number of voters participating in the Supervised Voting Program. (p. 29)*
13. *Each member of the Miami-Dade County Board of County Commissioners assist the Miami-Dade Elections Department with expanding its outreach efforts by encouraging owners and operators of ALFs, nursing homes and such facilities within their respective Districts to participate in the Department's Supervised Voting Program. (p. 29)*
14. *The election staff members schedule a follow-up contact with every owner, administrator or operator who attends a training session and use that opportunity to suggest the facility uses that opportunity to schedule a supervised voting session for that specific facility. (p. 29)*
15. *For facilities where no one signed up for training we recommend that the Supervisor of Elections create a form document that informs every ALF and nursing home administrator within the county of the availability of supervised voting for their residents. The mailer advising them of this information can also include a return postcard or return envelope which the administrator can use to schedule supervised voting at their respective facility. (p. 29-30)*
16. *That the Miami-Dade County Election Department upgrade its existing elections website to have secure access and modernized features. Voters should be able to access a secure site via login / password (similar to financial institutions) where they can access absentee ballot requests and update their voter information. Instructions on obtaining user names and passwords will be included with all voter registration mailings. Utilizing login and password features would limit the ability of future fraudulent absentee ballot requests. (p. 14)*

17. *That the Miami-Dade County Supervisor of Elections adopt the procedures used in the State of Oregon whereby the Department will contact electors if 1) an elector returns an envelope without a signature; or 2) if the elector returns an envelope with a signature that does not match the registered signature on file. Voters who are contacted will have until the close of the polls on Election Day to resolve such issues. (p. 25)*
18. *That, in an effort to reduce the number of ballots rejected as a result of signatures that do not match, the Supervisor of Elections, beginning immediately, and staggered over the course of every successive four (4) year period, shall send out a notice to every voter in Miami-Dade County encouraging them to submit a voter registration application that will be used to update their signature on file with the Department of Elections. (p. 25)*
19. *That the Miami-Dade County Supervisor of Elections review absentee ballot packets that are returned as “undeliverable” and check them for postal and/or office errors and if such errors are found they should be corrected and election officials should re-mail the absentee ballot with the corrected mailing information. (p. 26)*
20. *That the Elections Department work with Crime Stoppers to create Public Service Announcements informing citizens of the importance of restoring confidence in our elections results and advising how they can assist in that effort by reporting illegal voting activity to Miami-Dade Crime Stoppers. (p. 35)*
21. *That the Elections Department place information on the homepage of its website advising and encouraging citizens to make anonymous Miami-Dade Crime Stopper reports of persons engaged in illegal voting or fraudulent election activity. (p. 35)*
22. *In connection with the aforementioned recommendation, that the Elections Department also include such information with every absentee ballot packet that is mailed out and in any other mailing sent by the Elections Department to Miami-Dade County voters. (p. 35)*
23. *That 2% of the filing fee for any candidate running for office be used to help fund the Miami-Dade Crime Stopper’s rewards. Funds collected for each election cycle will be given to those who report crimes involving voter or election fraud related to that election cycle. (p. 35)*

## ABSENTEE BALLOT VOTING: CONVENIENCE AND ITS CONSEQUENCES

### I. INTRODUCTION

In 1997 the City of Miami had one of its most memorable elections. The mayoral election for that year was plagued with widespread absentee ballot fraud. Many absentee ballots were filled out by boleteros<sup>1</sup> and even one absentee ballot was cast in the name of a voter who was already dead. Pursuant to a joint investigation conducted by the State Attorney's Office, the Florida Department of Law Enforcement and other agencies, charges were filed against fifty-five (55) persons, including a City of Miami Commissioner (charged with being Accessory After the fact to Voter Fraud), his Chief of Staff and the Chief of Staff's father. The Commissioner, Chief of Staff and the father were all convicted and sentenced to jail. Collectively, findings of guilt were entered against fifty-four (54) of the fifty-five (55) defendants and one was sent to a pre-trial diversion program. On the civil side, in a lawsuit filed by the mayoral candidate who lost the election, the judge found that fraud was involved in so many of the absentee ballots that he threw them out. That action resulted in the losing candidate being declared the winner of that mayoral election.

Fast forward to the 2012 Primary Election in Miami-Dade County and we are faced anew with numerous allegations of absentee ballot fraud and several arrests. In connection with multi-agency investigations and pending prosecutions, various candidates have given statements or been interviewed by the police or representatives of the State Attorney's Office alleging all manner of fraudulent activity.

The *rumors* of what occurred included allegations of:

- Boleteros promising candidates that they can guarantee and secure for them a certain number of absentee ballots in exchange for a certain amount of money; the more money the more votes;
- Absentee ballots being collected from certain elderly or otherwise vulnerable voters and later filled out by someone other than the voters who received the absentee ballots;
- Blank absentee ballots being filled out *en masse* in the residences of boleteros and other such ballot brokers.

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<sup>1</sup>Boletero, roughly translated, means "ticket-person" and is used for a person who assists in collecting absentee ballots, primarily helping elderly and disabled voters.



The *reality* of what occurred was much more bizarre. The acts and actions that election officials and law enforcement agents have corroborated thus far include:

- A scheme where someone created a computer program that automatically, systematically and rapidly submitted to the County's Department of Elections numerous bogus on-line requests for absentee ballots.
- Boleteros dropping off absentee ballots at the District Office of a sitting member of the Miami-Dade Board of County Commissioners.
- A United States Postal employee who discovered more than 150 absentee ballots that had been dropped into a single mailbox. His concern and suspicion led to a call to law enforcement and eventually led to an arrest for violations of a Miami-Dade County ordinance that governs how many absentee ballots one person can lawfully possess.
- The investigation following the discovery of more than 150 absentee ballots in the mailbox revealed that the absentee ballots were initially dropped off at a County Commissioner's Office, collected there by a Commissioner's Aide and thereafter, dropped in the mailbox by the Aide. The Aide advised that she was unaware that it was illegal to possess more than two absentee ballots.

Our concern about the integrity of the voting process and the voting results in our community compelled us to select the absentee ballot voting process as our investigative topic.

To adequately demonstrate the many short-comings and opportunities where fraud can be committed with absentee ballots, we must first describe in detail the process involved when one votes live and "in person." Our review will try to ascertain the integrity of each process based on the protections and security measures in place that should give us confidence in the election results. We will start our review with an examination of live, in-person voting, i.e., voting at an early voting site or at a polling location on Election Day.

## II. THE INTEGRITY OF THE EARLY VOTING AND ELECTION DAY VOTING PROCESS

It was reported that the scenes at some of the early voting and primary election day poll sites, were in a word, chaotic. Voters who approached the sites, were greeted by dozens of campaign signs and scores of campaign supporters who solicited voters on behalf of the various candidates and issues appearing on the ballot. Many voters were besieged upon arrival at the polling site and had to walk the gauntlet having palm cards, pamphlets, voting recommendations and other campaign literature shoved in their direction. All the while, campaign supporters (on opposing sides) were yelling out numbers to punch and names of candidates to support.

Amid this chaos, the law in Florida governing polling sites requires a 100-foot protected area that extends outward from the entrance of the polling place. The statute does not allow anyone attempting to influence a voter to cross that boundary line. The law specifically provides:

No person, political committee, committee of continuous existence, or other group or organization may solicit voters inside the polling place or within 100 feet of the entrance to any polling place, or polling room where the polling place is also a polling room, or early voting site. Before the opening of the polling place or early voting site, the clerk or supervisor shall designate the no-solicitation zone and mark the boundaries.<sup>2</sup>

For purposes of clarity the statute also defines soliciting.

For the purpose of this subsection, the terms "solicit" or "solicitation" shall include, but not be limited to, seeking or attempting to seek any vote, fact, opinion, or contribution; distributing or attempting to distribute any political or campaign material, leaflet, or handout; conducting a poll except as specified in this paragraph; seeking or attempting to seek a signature on any petition; and selling or attempting to sell any item. The terms "solicit" or "solicitation" shall not be construed to prohibit exit polling.<sup>3</sup>

As a practical matter, by the time a prospective voter reaches the "sanctuary" of the no-solicitation zone, the voter may have received 15-20 different pieces of campaign material and may have heard rhyming ditties and slogans from the mouths of campaign workers for and against certain candidates or issues. All of these verbal, written and visual messages are deliberate attempts to influence the choices that the voter will soon make when casting his ballot. However, once the voter crosses that line everything changes. The voter is protected on his last 100 foot walk to the entrance of the polling site. In fact, there are also strict controls on who can be inside the polling place. The rules are so strict that unless a law enforcement officer is voting, the police officer cannot be inside the polling place or at the precinct unless the polling clerk requested his/her presence.

All of the rules, policies and procedures in place from the point the elector crosses the 100-foot line are designed so that the voter will not be subjected to any outside (or inside)

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<sup>2</sup> Florida Statute 102.031(4)(a).

<sup>3</sup> Florida Statute 102.031(4)(b).

influences that will affect his/her choices on the ballot. From this point forward, and even until the voter exits the poll, no one inside the polling place (including poll workers) can lawfully do, say or post anything that would try to sway or influence the voter's choices.

Instead, procedures inside the polling place will seek to ensure the identity of the elector, provide a secure and private venue for the voter to actually vote, and thereafter, allow the voter to scan his or her own ballot. The combined effect, if done properly, gives integrity to the live, in-person voting process and to the voter's choices. For Early Voting and Election Day voting, protections and safeguards are in place on the front end of the voting process. For instance, every voter who shows up at a polling place will go through the following steps **before** she is allowed to vote a regular ballot at the polls:

1. The poll worker will ask the voter to submit a current and valid photo identification that also contains the voter's signature;<sup>4</sup>
2. The poll worker will check and ensure that the voter's name is on the precinct register;<sup>5</sup>
3. The poll worker will then inquire as to whether the voter's address in the precinct register is current;
4. The poll worker will have the voter sign the precinct ledger; and
5. The poll worker will examine the signature to ensure that it matches the signature provided on the voter's current and valid photo identification.
6. Once the poll worker, clerk or inspector is satisfied as to the identity of the elector, the elector is given a ticket/receipt.
7. The elector takes that ticket to another poll worker who provides the elector with a regular ballot. If the elector fails to furnish the required identification, the elector shall only be allowed to vote a provisional ballot.<sup>6</sup>

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<sup>4</sup> In Florida, a voter must present one of nine (9) forms of acceptable identification. They include Florida driver's license, Florida identification card issued by the Department of Highway Safety and Motor Vehicles, United States passport, debit or credit card, military identification, student identification, retirement center identification, neighborhood association identification and public assistance identification. Florida Statute 101.043(1)(a). If the picture identification does not contain the signature of the elector, an additional identification that provides the elector's signature shall be required. Florida Statute 101.043(1)(b).

<sup>5</sup> The precinct register, as prescribed in Florida Statute 98.461, shall be used at the polls for the purpose of identifying the elector at the polls before allowing him or her to vote. Florida Statute 101.043 (1)(a).

<sup>6</sup> Florida Statute 101.043(2) A ballot of a person casting a provisional ballot shall be counted unless the canvassing board determines by a preponderance of the evidence that the person was not entitled to vote. See Florida Statute 101.048.

Additional security procedures are also in place after the elector has received a ballot. The elector will be allowed to go to a privacy booth to mark the ballot.<sup>7</sup> Poll workers at the election sites are trained to ensure that all voting privacy booths are clear of all campaign materials. Florida Statute 101.51 specifically provides that the voter will have privacy as the law requires only one elector at a time to occupy a booth or compartment to vote. An elector, while casting his or her ballot, may not occupy a booth or compartment already occupied or speak with anyone, except as provided by s. 101.051.<sup>8</sup>

Once the voter has marked the ballot, the voter places the ballot in a secrecy envelope so that the voter's choices are not exposed. Next, the voter takes her ballot to the scanner and scans each page of the ballot. The scanner retains the actual ballot after scanning and tabulates the voter's choices.<sup>9</sup>

As previously stated, the right to vote a secret ballot in Florida is so sacrosanct that a statute makes it unlawful for another person to be in the voting booth with any elector.<sup>10</sup> However, the law makes an exception for an elector who, due to reason of blindness, disability, or inability to read or write, requires assistance to vote.<sup>11</sup> An elector needing such assistance

“may request the assistance of two election officials or some other person of the elector's own choice, other than the elector's employer, an agent of the employer, or an officer or agent of his or her union, *to assist* the elector in casting his or her vote. Any such elector, before retiring to the voting booth, may have one of such persons read over to him or her, *without suggestion or interference*, the titles of the offices to be filled and the candidates therefore and the issues on the ballot. After the elector requests the aid of the two election officials or the person of the elector's choice, they shall retire to the voting booth for the purpose of casting the elector's vote according to the elector's choice.”<sup>12</sup> (emphasis added)

However, to help ensure that voters will not be influenced by outside influences, the Florida legislature passed a law that both the elector and the assistant are required to swear out separate affidavits. If an elector needs assistance in voting pursuant to the provisions of this

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<sup>7</sup> Florida Statute 101.043(1)(b).

<sup>8</sup> Florida Statute 101.51.

<sup>9</sup> Florida Statute 101.5608 (2)(a).

<sup>10</sup> Florida Statutes 101.051(2).

<sup>11</sup> Florida Statutes 101.051(1).

<sup>12</sup> Id.

section, the clerk or one of the inspectors shall require the Elector Needing Assistance to take an oath.<sup>13</sup>

In the elector's affidavit, the elector must swear or affirm that he/she is a registered elector and requests assistance in voting at a specific election held on the specific date of election. The elector's affidavit must also identify the person from whom the elector will be requiring such assistance.<sup>14</sup> Specifically, if an Elector Needing Assistance requests that a person other than an election official provide him or her with assistance in voting, the clerk or one of the inspectors shall also require the person providing assistance to take an oath. The person providing assistance to the Elector Needing Assistance must identify himself and must swear or affirm that he has been requested by the Elector Needing Assistance to provide him or her with assistance to vote.<sup>15</sup> To further decrease the possibility of undue influence on the voter, the person must also swear or affirm that he is not the employer, an agent of the employer, or an officer or agent of the union of the voter and that he has not solicited this voter at the polling place or early voting site or within 100 feet of such locations in an effort to provide assistance. A copy of each of the affidavits is attached hereto as Exhibits A and B respectively.

All of the aforementioned statutes, rules, policies and procedures are in place to 1) help ensure the identity of the elector; 2) guarantee that the ballot to be voted is given directly to that elector; 3) protect the elector from solicitations or undue influences after the elector receives the ballot, 4) provide security and secrecy for the elector when marking the ballot; 5) protect the elector from solicitations or undue influences when voting his ballot; 6) identify anyone who is in the voting booth with the elector at the time the ballot is being marked; and 7) provide integrity to the authenticity and validity of each ballot cast under these rules and guidelines.

### **III. THE LACK OF INTEGRITY IN THE ABSENTEE BALLOT VOTING PROCESS**

A significant portion of our investigation was devoted to getting educated on the absentee ballot (or vote by mail) process that exists here in Miami-Dade County.<sup>16</sup> Our examination and inquiry revealed information about 1) how one can request an absentee ballot; 2) what happens

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<sup>13</sup> Florida Statutes 101.051(4).

<sup>14</sup> Id.

<sup>15</sup> Florida Statutes 101.051(5)

<sup>16</sup> For comparison purposes, we also invited and received testimony from Dr. Brenda Snipes, the Supervisor of Elections for Broward County.

within the Elections Department when such a request is made; 3) how the absentee ballot is delivered to the elector; 4) what is included in the absentee ballot mailing packet; 5) the different ways to return an absentee ballot; and 6) how a completed absentee ballot is processed once it is received by the Elections Department. We must provide some general information on all of these areas in order to highlight the concerns we have about certain major shortcomings that we believe affect (and infect) the integrity of absentee ballot voting in Miami-Dade County.

First, we must note that voting by mail is becoming the most popular method of voting, not just in Miami-Dade County, but in our state and the nation. In fact, data from the Miami-Dade County Election Department reveal that from the November 2000 General Election to the November 2012 General Election, there has been a significant increase in the number of absentee ballots cast from 45,692 (accounting for 7% of all votes cast) to 242,251 (accounting for 27% of all votes cast).

### Turnout Comparisons<sup>17</sup>

General Election	Registered Voters	Ballots Cast	Turn-out %	Abs	%	ED	%	EV	%	Total Votes
11/07/00	909,456	653,859	72	45,692	7	608,167	93	N/A	-	653,859
11/02/04	1,058,799	778,953	74	101,062	13	433,824	56	244,067	31	778,953
11/04/08	1,245,138	872,260	70	177,550	20	368,540	42	326,170	37	872,260
11/06/12	1,313,850	885,067	67	242,251	27	406,089	46	235,727	27	885,067

One of the factors contributing to that increase probably relates to a change in the law that occurred in 1997. Prior to that time, one had to “show cause” why one would be unable to attend the polls on Election Day. Being “absent” from the area was one of the primary reasons offered by voters who were going to be otherwise unavailable on Election Day. Upon establishing “cause,” the voter would be entitled to receive an absentee ballot. During that time, an absentee ballot was provided as the *exception* to Election Day voting. When the Florida Legislature did away with the “for cause” requirement, absentee voting retained its name but it is now actually a misnomer. Most voters request absentee ballots (and participate in voting by mail) primarily for convenience.

<sup>17</sup> The data set forth in the chart was compiled and prepared by the Miami-Dade County Elections Department.

### **A. Relationship of Absentee Ballots to Early Voting**

Although we believe that most of the absentee ballots voted in Miami-Dade County elections are legitimate and genuine, we still have great concerns regarding the honesty and integrity in that part of the absentee ballot voting process that occurs **outside** of the Elections Department itself. Due to these grave concerns, the Grand Jury was strongly inclined to recommend that the legislature reinstate the “for cause” requirement that existed when absentee ballots initially became available. However, in light of the debacle that was the 2012 General Election, we are loathe to make such a recommendation. How much longer would the lines have been and how much more time would voters have had to wait in those lines if instead of using absentee ballots, Miami-Dade County’s 242,251 absentee ballot voters actually showed up at their precincts or early voting sites to cast their ballots?

Unfortunately, we imagine, in light of the recent chaos during the 2012 Early Voting and Election Day voting that many more Miami-Dade County voters will probably use absentee ballots in the future. The primary justification will surely be convenience. We cannot blame them. We expect that with 6-, 7- and 8-hour long wait times that some voters experienced in November 2012, the number of requests for absentee ballots will probably increase dramatically in next year’s and ensuing elections.

We made our decision to take a look at absentee ballots in the midst of the fervor of the daily allegations of voter fraud related to the August 14, 2012 Primary Election. We never imagined that after deciding to take a look at issues regarding absentee ballots that we would experience the disorder and confusion that occurred with the Early and Election Day Voting for the 2012 General Election. Due to the serious concerns we have about the legitimacy of ballots cast via the absentee ballot voting process, we want to do all we can to make sure that folks who are opting to vote “the old fashion way” will be able to do so easily and conveniently. In light of that goal, and before we deal with absentee ballot voting issues, we offer the following observations about a few specific problems that occurred with the 2012 General Election’s Early and Election Day voting.

Early Voting sites in Florida are limited in number. Florida law presently restricts the Supervisor of Elections to the use of main and branch election offices, city halls and/or

permanent public libraries for such purposes.<sup>18</sup> As the media reported during the eight days of early voting, many early voters all over the state stood in agonizingly long lines waiting for hours for an opportunity to cast their ballots. Notably, many Miami-Dade County voters stood in line for more than five hours during Early Voting. Other voters experienced similarly long lines with Election Day voting. In fact, information provided by the Elections Department reveals that on Election Day twenty-four polling places closed after midnight, at least four closed around or after 1:30 a.m., and one polling place, the West Kendall Library, didn't close until after 2:00 a.m. -- more than seven (7) hours after the 7 p.m. official closing time for polling locations in Florida!<sup>19</sup> This is totally unacceptable.

We received information advising us that on Election Day, each Supervisor of Elections in the State of Florida has discretion in selecting locations for polling sites. That discretion is afforded to the Supervisors on the day we know the largest number and percentage of total votes will be cast. If the state gives that much discretion to the Supervisors on Election Day, we believe the state should also give such discretion to the Supervisors during Early Voting. Based on each Supervisor's knowledge of his/her county, the Supervisor knows how many sites are needed and the appropriate locations where Early Voting sites should be set up. As we discovered, some of the sites in Miami-Dade County that are permitted under the statute did not have sufficient parking to accommodate the voters who showed up. Accordingly, in connection with Early Voting for the 2012 General Election, arriving voters were being shooed away from a city hall location due to insufficient parking. Had the Supervisor of Elections been given the discretion, optional sites could have been selected in that same general area where sufficient parking was available. Our Supervisor of Elections was not able to do so because of the present restraints of Florida Statute 101.657.

The crisis that erupted on Election Day was a carryover of the crisis that existed throughout the entire early voting process. The length of the lines and the duration of the waits could have been significantly reduced by an expansion of the number of early voting locations as well as by a return to the fifteen days that had previously been provided to Florida voters who

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<sup>18</sup> Florida Statute 101.657 (2012).

<sup>19</sup> The information regarding the late closing of polling places was prepared by the Miami-Dade County Elections Department.



chose to participate in early voting.<sup>20</sup> A look at the Turnout Comparisons Chart reveals a 10% drop in the number of early votes cast (as a percentage of total votes).<sup>21</sup> How much of the drop-off was due to voters who tried to, but simply could not stay in line long enough to vote? How many prospective voters drove or walked to the early voting polling place, saw the long lines and just kept going? We imagine it is reasonable to conclude that many of those voters ended up making a last ditch effort to vote on Election Day. Again, a look at the available data comparing turnouts for the 2008 and 2012 General Election reveals a 4% increase in the number of election day votes cast (as a percentage of total votes cast). Was the increase in Election Day voting due, in part, to electors who tried and failed to vote during the shortened early voting cycle? And for those who walked or drove to their polling places on Election Day, expecting that the lines would be shorter, how many of them just threw in the towel and decided they would not vote at all? Unfortunately, we believe in spite of the 4% increase in Election Day voting that a great number of our citizens were so appalled and frustrated with this mess that they abandoned their hope and desire to exercise their right to vote.

Notwithstanding the problems created by the shortened early voting period and the limits on the number of early voting sites, in the future, with respect to Election Day voting, we suggest that the Supervisor of Elections does a better job of allocating the number of registered voters per precinct. For example, it is not workable or prudent to have contiguous precincts where the number of voters in one precinct allows a voter to walk right in and vote while at a neighboring precinct voters wait for hours. Special attention needs to be given to areas in the county that have experienced growth spurts and may be transitioning from business and commercial districts to residential areas. In areas where such growth has occurred between elections, (i.e., Downtown Miami, Mary Brickell Village, Midtown, etc.) reapportionment of precincts has to be more of a priority. If such a reallocation of voters and precincts had taken place **before** our November election voters might not have had such horrendous experiences and wait times when trying to vote. It saddens all of us that this would happen in this country, let alone, this county. Our hope is that it will never happen again. In an effort to help achieve that goal, we recommend:

*That the Florida Legislature amend Florida Statute 101.657 to allow for the expansion of Early Voting Sites, especially in large counties like Miami-Dade, and to give the Supervisor of*

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<sup>20</sup> The 2004 version of Florida Statute 101.657 (1)(b) provides “early voting should begin on the 15<sup>th</sup> day before an election and end on the day before an election.”

<sup>21</sup> See Chart on page 7 herein.

*Elections discretion in choosing and determining the location and number of the Early Voting sites to utilize in an election cycle.*

Further, in the quest to make the lines and the wait time shorter for early voters, we also believe the Florida Legislature should expand the time for early voting. Several years ago, the amount of time allotted for early voting was fifteen (15) days. The legislature changed the law in 2011 and shortened the number of days and hours allowed for early voting. We simply ask that they undo that change, restore the extra days and restore the extra hours. Accordingly, we recommend:

*That the Florida Legislature, consistent with the 2004 version of Florida Statutes, amend 101.657 (1) (b), and at a minimum, re-instate the total of 120 hours for early voting and re-instate the former language which specifically provided that “early voting should begin on the 15<sup>th</sup> day before an election and end on the day before an election.”*

#### **B. Requesting an Absentee Ballot**

Having examined the process, procedures and protections for live, in-person voting and having considered the relationship of absentee ballots to problems with early voting, we will now start our review of the absentee ballot voting process. Presently, in the absence of a “for cause” requirement, any voter may request an absentee ballot. Such requests may be made by the voter in person, in writing, by telephone or on-line via email or fax. For “in person” requests, the voter must produce a picture identification that contains the voter’s name and signature and the voter making the request must also provide his signature. For all other absentee ballot requests, the voter must provide:

- The printed name of the voter;
- A current residence address;
- Date of birth; and
- Date of the election or elections for which an absentee ballot is being requested.

Providing the voter registration number is optional. Although it could never happen with live, in-person voting, with absentee ballot voting, an elector can have an immediate family member or legal guardian request a ballot on his/her behalf.<sup>22</sup> Florida statute 101.62 provides:

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<sup>22</sup> Florida Statute 101.62.

(b) The supervisor may accept a written or telephonic request for an absentee ballot from the elector, or, if directly instructed by the elector, a member of the elector's immediate family, or the elector's legal guardian. For purposes of this section, the term "immediate family" has the same meaning as specified in paragraph (4)(c)(4).<sup>23</sup> The person making the request must disclose:

1. The name of the elector for whom the ballot is requested.
2. The elector's address.
3. The elector's date of birth.
4. The requester's name.
5. The requester's address.
6. The requester's driver's license number, if available.
7. The requester's relationship to the elector.
8. The requester's signature (written requests only).

Once a request for an absentee ballot is made, the elector making the request must also advise whether he is asking for an absentee ballot for a specific election or whether he would like to receive an absentee ballot automatically for the next two general election cycles. If the elector chooses the latter, his name is placed on what is commonly referred to as the permanent absentee voter list. Currently there are over 131,000 voters on the permanent absentee voter list for Miami-Dade County. This number represents 54% of the 242,251 absentee ballots cast by Miami-Dade County voters in the 2012 General Election. We believe that maintaining such a list is an invitation to target those voters for fraud and undue influence. Due to the potential for fraud, and because we know there were more than 2,500 fraudulent requests for absentee ballots in the 2012 Primary Election,<sup>24</sup> we recommend:

*That the Florida Legislature repeal Florida Statute 101.62(1)(a), thereby eliminating the permanent absentee voter list and require that absentee voters who desire to vote by absentee ballot for a specific election request an absentee ballot for such election.*

### **C. Processing a Request for an Absentee Ballot**

The Miami-Dade County Elections Department uses the aforementioned criteria in an effort to ensure that the person requesting the absentee ballot is in fact the actual qualified elector. Obviously, the most secure method is having the voter appear in person and produce a valid and current photo identification that contains the voter's name and signature. With all

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<sup>23</sup> Pursuant to Florida Statute 101.62(4)(c)(4), ... "immediate family" means the designee's spouse or the parent, child, grandparent, or sibling of the designee or of the designee's spouse.

<sup>24</sup> See Section C below, Processing a Request for an Absentee Ballot, p. 12-13.

other means of requesting an absentee ballot, there is no certainty that the person making the request is the actual voter. However, the Elections Department tries to utilize all available data to ensure that such is the case.

For instance, when a written request is submitted, in addition to verifying that the other information matches up, Department staff will also compare the signature provided by the requestor on the form. One of the other bits of identifying information maintained by the Elections Department is the voter's registered address. Once a request has been approved, the absentee ballot is mailed to the registered address on file for that elector. If the person requesting the absentee ballot is requesting that the ballot be mailed to an address that is different from the registered address, he/she must state the reason for that modification. If the Department is satisfied with the stated reason, a ballot is mailed to the alternative address. However, in an effort to protect the integrity of the absentee ballot request process, whenever such a request is made to send a ballot to a different address (whether the request is in writing, on the telephone or via the internet) the Elections Department will also send a letter to the voter at the registered address on file inquiring whether the voter made such a request. The hope is, if the voter did not make such a request, he/she will notify the Elections Department and the Department will cancel the tracking number assigned to that specific absentee ballot. Thus, even if someone obtains the ballot, fills it out and mails it back, it will be canceled upon its return to the Elections Department.

Notwithstanding the policies and procedures in place that try to ensure that only the legitimate voter is requesting a ballot, Election Department officials acknowledge that despite their best efforts, there are those who are intent on defrauding the system in an effort to help or hurt certain candidates. This reality was clearly revealed to us when we were informed about a criminal investigation that was conducted in connection with the August 2012 Primary Election.

Requesting an absentee ballot via the internet presently requires the user to type specific data on a series of consecutive computer screens on the website of the Miami-Dade County Elections Department. The security of the on-line absentee ballot request system is very low as there are no user specific log-ins or passwords required by the voter requesting a ballot. The vendor hired by Election officials to implement, maintain and monitor the Voter Registration System (which includes monitoring on-line requests for the absentee ballots), became suspicious

when it appeared that an extraordinary number of absentee ballot requests 1) appeared to be submitted from the same group of computers; and 2) were being submitted at a rate that was not humanly possible if the data on the screen was being entered by a person. These mass “phantom requests” occurred with waves of requests that streamed in from a grouping of several different Internet Protocol (“IP”) addresses.<sup>25</sup>

The elections staff randomly contacted some of the voters whose names were among these mass requests. It was determined that the individual voters had **not** submitted the on-line requests for absentee ballots. An effort was made by law enforcement to determine the source of the phantom requests through the various computer IP addresses used to send the requests. The investigation revealed that all of the IP addresses used to make the fraudulent requests for absentee ballots were tracked to anonymizers<sup>26</sup> overseas and therefore, the origination email addresses could never be determined. The use of the anonymizers made the location of the computers making the requests anonymous and precluded law enforcement from determining who was committing these crimes. Investigators determined that the computer program submitted more than 2,500 fraudulent online requests for absentee ballots. Most of the IP addresses were from overseas locations such as Ireland, England and India, although there was at least one fraudulent request from inside the United States. In an effort to prevent a repeat of this incident, we recommend:

*That the Miami-Dade County Election Department upgrade its existing elections website to have secure access and modernized features. Voters should be able to access a secure site via login / password (similar to financial institutions) where they can access absentee ballot requests and update their voter information. Instructions on obtaining user names and passwords will be included with all voter registration mailings. Utilizing login and password features would limit the ability of future fraudulent absentee ballot requests.*

#### **D. Delivery and Contents of the Absentee Ballot Packet**

With the exception of those absentee ballots picked up in person, absentee ballots are delivered to voters via the US mail. In accordance with Florida law, absentee ballots are mailed out between 35 and 28 days before the election for which the ballot was requested. The date on

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<sup>25</sup> Every device connected to the public internet is assigned a unique number known as an Internet Protocol (IP) address. An IP address can often be used to identify the region or country from which a computer is connecting to the internet. An IP address can also sometimes be used to show the user’s general location.

<sup>26</sup> The Encarta Dictionary defines anonymizer as follows: “a website through which a person browsing can visit the World Wide Web without leaving any identity traces.”

which the initial batch of absentee ballots is to be mailed is general public information, especially for candidates and the individuals and groups working on their campaigns. Further, in Miami-Dade County, once this process has begun, anyone can log-on to the Election Department's website and track on a daily basis, the total number of absentee ballots mailed out on a specific date and the total number of completed ballots returned by mail to the Department on a specific date. For instance, the initial mailing dates of absentee ballots for the Primary and General Elections were July 17, 2012 and October 5, 2012 and the Elections Department mailed out 139,047<sup>27</sup> and 174,919<sup>28</sup> absentee ballots on those respective dates.

Each absentee ballot envelope contains a return envelope and a bar code tracking number that is specific for the voter whose name is on the mailing envelope.<sup>29</sup> The "Official Absentee Balloting Material" packet is a rather distinct package. The envelope measures 6" x 10" and contains the following items:

- A pamphlet entitled *Instructions for Marking Your Ballot*
- An *Official Absentee Balloting Material* return envelope
- A secrecy envelope
- The Official Ballot for that specific voter

The instruction pamphlet (written in English, Spanish and Creole) provides general instructions on voting by mail. The information given to voters includes when, where and how ballots may be returned. The pamphlet also has specific information on who can return the ballot. For instance, the pamphlet states the voter may return the ballot in person (to the Department of Elections), by mail (via the U.S. Postal Service) or by voter's designee. "Any designee is limited to return only two ballots per election, only one of which may be from a voter who is not his/her spouse, parent, child, grandparent or sibling."<sup>30</sup>

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<sup>27</sup> This initial mailing number of approximately 140, 000 absentee ballots is out of a total of 164,867 mailed out for the August 14, 2012 Primary Election.

<sup>28</sup> This initial mailing number of approximately 175, 000 absentee ballots is out of a total of 283,867 mailed out for the November 6, 2012 General Election.

<sup>29</sup> For obvious reasons, there can be no tracking number on the actual ballot. Otherwise, Department officials would be able to match up a vote to a specific voter and thereby know the choices made by that voter.

<sup>30</sup>This language is a restatement of the Miami-Dade County Ordinance Chapter 12, Section 12-14, that limits the number of absentee ballots one can legally possess in this county.

### **E. Returning an Absentee Ballot**

Once the ballot has been marked and the elector has placed the ballot and secrecy envelope inside the return envelope, the outside back of the return envelope is signed and it is now time to return the ballot to the Elections Department. In order to be counted, the absentee ballot must be received by the Elections Department no later than 7:00 p.m. on the day of the election.<sup>31</sup> The elector has several options available for returning the ballot and some of these options change as we get closer to Election Day.

The elector may:

- Return the absentee ballot in person to the Election Department;
- Have a designee return the ballot in person;
- If the designee is a member of the elector's immediate family, the designee may return the ballot on the day prior to and on the day of the election.
- If the designee is not a member of the elector's immediate family, the designee may return the ballot to the Elections Department only on the day of the election.
- Whether or not the designee is a family member, the designee must complete an affidavit stating that the designee is authorized by the elector to return the ballot. The elector must also sign that affidavit.

In accordance with Miami-Dade County Ordinance, Chapter 12, Section 12-14, any designee is limited to returning only two ballots, only one of which may be from a voter who is not his/her spouse, parent, child, grandparent or sibling.

As an alternate to returning the ballot in-person or selecting a designee to do so, the easiest method is to simply place the ballot in the mail. The mailing of the ballot is another area that causes us great concern. The *Instructions for Marking Your Ballot* insert includes a caution that the elector should "be sure there is sufficient postage." According to testimony, the boleteros use this as a means of getting possession of fully voted and partially voted absentee ballots. "As a convenience" to the elector they offer to pick up the ballots. Out of the goodness of their hearts, the boleteros will also promise to take care of the expense of providing the

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<sup>31</sup> As simple and direct as this statement is, approximately 1,400 absentee ballots mailed to the Elections Department for the 2012 General Election were not counted because they were not received by the deadline. See Section H below, Rejection Rates for Absentee Ballots.

required postage so the ballot can be mailed to the Elections Department. However, once that ballot is out of the hands of the elector, we have no idea what happens to it. The possibilities are numerous and scary. We list a few of them below.

If the ballot is complete and the return envelope is **signed and not sealed**, the boleteros/ballot brokers can remove the ballot from the secrecy envelope and see the private, confidential selections the elector made on the ballot. Similarly, if the ballot is not completely voted and the return envelope is signed and not sealed, the boletero/ballot broker can remove the ballot from the secrecy envelope, see the private, confidential selections of the elector and then vote the rest of the ballot in lieu of the elector. If the boleteros does not like the selections made by the elector, the boleteros can simply throw the ballot away and no one would ever know. All these possibilities are present if an elector relinquishes, to a boletero, control of a fully or partially marked ballot contained in a signed but unsealed return mailing envelope.

The more unsettling issue for us is each of the above illegal actions can also take place with a boletero picking up a fully or partially marked ballot contained in a **signed and sealed** return mailing envelope. The boletero can either stealthily or surgically open the envelope, view the choices of the voter and then decide whether the un-voted portions of a partially completed ballot will be filled out by the boleteros or whether, depending on the elector's choices, the ballot will simply be discarded. The county ordinance making it a crime to possess more than two ballots seems to be ineffective in stopping this practice. The fact that numerous boleteros dropped off scores of ballots at the office of a County Commissioner and the fact that one person dropped more than 150 such ballots in the mailbox is proof of that. The apparent lack of concern by those committing these crimes might be because each such violation is only a misdemeanor. We think increasing the possible punishment for possession of multiple absentee ballots might make folks more inclined to stop this practice. Unfortunately, making a change from a misdemeanor to a felony will require legislative action. If approved, the prohibition on possessing more than two ballots will be in force statewide.

During our investigation, we discovered that possession of scores of absentee ballots was not just a Miami-Dade County problem. For instance, we would be remiss if we did not point out that Broward County presently does not have such an ordinance. However, following the 2011 Dania Beach Municipal Election, the media reported that a woman, who was a campaign



manager for two candidates and the wife of one of these candidates, was alleged to be in possession of over 400 absentee ballots which were delivered directly to the Broward County Elections Department.<sup>32</sup> We do not even want to imagine how a campaign manager came into possession of more than 400 Broward County absentee ballots. We cannot understand why this should be a legitimate practice in any of the counties in our state. There are far too many concerns regarding the integrity of ballots cast via the absentee voting process to allow such practices to continue. Accordingly, we recommend:

*The Florida Legislature adopt the language of Chapter 12, Section 12-14 of the Miami Dade County Code thereby making it illegal for anyone to be in possession of more than two absentee ballots at one time, unless the ballots being possessed are those of the voter and members of the voter's immediate family (as that term is defined in Florida Statute 101.62(4)(c)(4)).*

*In connection with the aforementioned recommendation, the Florida Legislature upon enacting such a law makes the violation of the new statute a third degree felony.*

Further, in an effort to address the “cost of postage” issue, many county and local elected officials prepared, proposed and one municipality (the City of Hialeah) even passed a resolution “urging the State of Florida and Miami-Dade County authorities to adopt stricter regulations and additional safeguards for voting absentee ballots and in particular, providing a pre-paid self-addressed mailing envelope to return the signed ballot to the Supervisor of Elections.”<sup>33</sup> We join the City of Hialeah in this “urging” and we recommend:

*That the Miami-Dade County Elections Department provide to all electors requesting absentee ballots a pre-paid self-addressed mailing envelope to return the signed ballot to the Supervisor of Elections.*

#### **F. Voting an Absentee Ballot**

During our investigation, we learned that each absentee ballot sent out is specifically formatted based on the voter’s registered address. The choices available on the elector’s absentee ballot are the ones that would be present if the voter went to his/her precinct to vote on Election Day. Accordingly, we know the specific form of ballot mailed to each and every absentee ballot voter. However, we do not know how, when or where the actual voting takes

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<sup>32</sup> <http://www.local10.com/news/5-felons-dead-woman-voted-in-2011-Dania-Beach-municipal->

<sup>33</sup> City of Hialeah, Resolution No.: 12-99.

place on that absentee ballot, nor do we know the circumstances under which such voting is done. Most importantly, we do not know **who** does the actual voting. This is a major concern for this Grand Jury, especially at a time when more allegations of fraud are being alleged and more voters are choosing to use this highly unregulated process for casting their ballots.

The instruction packet accompanying each absentee ballot mailed out in Miami-Dade County includes the following wording:

**FELONY NOTICE.** It is a felony under Florida law to accept any gift, payment, or gratuity in exchange for your vote for a candidate. It is also a felony under Florida law to vote in an election using a false identity or false address, or under any other circumstances making your ballot false or fraudulent.

Although the law proscribes such conduct, there is no mechanism in place to prevent or preclude wholesale violations of these statutory provisions. If such violations are actually occurring with regularity, that is a major problem because our community cannot have confidence in the election results. If the community has the **perception** that such violations are actually occurring with regularity, that too, is a major problem because our community still cannot have confidence in the election results. To stop any such violations and to dispel the perception will require changes in Florida law.

For instance, we received testimony that many of the elderly voters utilizing absentee ballot voting need assistance in marking their ballots. If this occurred with in-person voting at a precinct or early voting site, the person providing assistance to the voter would be required to fill out and sign a *Declaration to Provide Assistance*.<sup>34</sup> Similarly, we believe if an absentee ballot voter obtains assistance from anyone other than a family member, the person providing the assistance should be required to fill out and sign a *Declaration to Provide Assistance to Absentee Ballot Voter*. If approved by the legislature, the absentee ballot declaration would only require slight editing of the existing documents provided for in Florida Statute 101.051 (4) and (5). As reflected in the attached Exhibit C, the body of the declaration could simply add the underlined language below to the existing declaration:

I, (print name), have been requested by (print name of elector needing assistance) to provide him or her with assistance to vote. I swear or affirm that I am not the employer, an agent of the employer, or an officer or agent of the union of the voter, that I am not a

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<sup>34</sup> See Exhibit B attached hereto for the declaration that is required pursuant to Florida Statute 101.054(4).

paid or volunteer campaign worker and that I have not solicited this voter in an effort to provide assistance.

Since an “Official Administering Oath” would not be available in this situation, we would recommend including two (2) signature lines: one for the voter and one for the person providing the assistance. The Declaration could be placed in the return envelope with the other items and mailed to the Elections Department. Accordingly, we recommend that:

*The Florida Legislature, consistent with the present requirements of Florida Statute 101.051(4), which requires that a declaration be signed by a person who **provides assistance** to an elector who needs assistance when voting at a polling place, amend the statute to require that **a person who provides assistance to an elector** who needs assistance when voting an absentee ballot **shall sign a declaration**. The Declaration shall be similar in form to the document presently provided for by Florida Statute 101.051(4) and we propose for consideration the Declaration to Provide Assistance to Absentee Ballot Voter attached hereto as Exhibit C. The signed declaration shall be placed in the return envelope but shall not be placed in the secrecy sleeve when returned to the Elections Department.*

*In connection with the aforementioned recommendation, that the Florida Legislature, consistent with the present requirements of Florida Statute 101.051(4), amend the statute to require that if an absentee ballot elector needing assistance requests that a person other than a family member provide him or her with assistance in voting, **the elector requesting assistance** with the absentee ballot **shall sign a declaration**. The Declaration shall be similar in form to the document presently provided for by Florida Statute 101.051(4) and we propose for consideration the Declaration to Provide Assistance to Absentee Ballot Voter attached hereto as Exhibit C. The signed declaration shall be placed in the return envelope but shall not be placed in the secrecy sleeve when returned to the Elections Department.*

#### **G. Processing a Completed Absentee Ballot**

Once an Absentee Ballot is returned to the Elections Department it goes through a screening process. The initial screening is done to ensure that the ballot is signed. If the ballot is not signed, it is placed aside and not counted. If there is a signature on the Absentee Ballot an Elections Department employee accesses via the computer, the facsimile of the voter’s registered signature and does a comparison. If the signature *appears* to be that of the registered voter to whom the absentee ballot was sent, the envelope is placed with the stack to be processed.

The examination and comparison of signatures is a critical component of the processing of absentee ballots returned to the Elections Department. However, for several reasons we have concerns about the efficacy of this step in the process. First, we know that there is specialized

training that is provided to the Elections Department employees whose job it is to review and compare the signatures. Our concern is best stated via the form of a rhetorical question. How effective can the examinations and comparisons be when so many absentee ballots are being returned daily? For instance, in connection with the 2012 General Election, the following is a sampling of voted ballots that were returned by mail on specific dates to the Miami-Dade Elections Department:

Monday 10/15	<b>11,356</b>	Saturday 10/27	<b>22,112</b>
Friday 10/19	<b>9,499</b>	Wednesday 10/31	<b>10,987</b>
Saturday 10/20	<b>13,543</b>	Thursday 11/1	<b>12,633</b>

Clearly, the daily receipt of such staggering numbers of absentee ballots, sometimes on consecutive days, begs the question of how diligent the staff members can be in their attempts to match these signatures with those on file for the registered voters. We would probably not be as concerned about this verification had it not been for an experience we had during one of our grand jury sessions.

On a day when we were discussing recommendations for this report, one of the persons present in the Grand Jury room reviewed our Grand Jury sign-in sheet. In our presence, but out of our view, that person reviewed the signatures of all the grand jurors who were present that day. Without any tracing, the individual replicated the signature of one of the grand jurors on a single sheet of paper. The “forged” signature was passed around as was the sign-in sheet which contained all of our signatures. After all of the jurors had compared the forged signature to the signatures on our sign-in sheet, all of the jurors, except one, identified the juror whose signature was supposedly on the single sheet of paper. Had the forged signature been placed on an absentee ballot and had the signature on the sign-in sheet been the “facsimile” we would have accepted that signature as genuine. Right before our eyes, we saw how simple it was for someone who had access to someone’s signature to duplicate that signature and pass it off as being genuine and legitimate. To make matters worse, for some voters who have difficulty writing, the Department accepts as their standard signature the simple marking of an “X.” How difficult is that to replicate?

Thus, in contrast to live, in-person voting, with all of the aforementioned statutes, rules, policies and procedures in place, the Elections Department 1) cannot ensure the identity of the person requesting an absentee ballot; 2) cannot provide security and secrecy for the elector when

marking his absentee ballot; 3) cannot protect the elector from solicitations or undue influences while voting his ballot; 4) cannot determine whether anyone is with the elector at the time the ballot is being marked; and 5) cannot provide integrity to the genuineness of each ballot returned and cast under these rules and guidelines.

One of the other sad realities for absentee ballot voting also occurs at the stage where the Elections Department is processing the ballot. Here, the ballot of both a legitimate voter and a forger may suffer the same fate. Florida Statute specifically provides:

An absentee ballot shall be considered illegal if it does not include the signature of the elector, as shown by the registration records...If the canvassing board determines that any ballot is illegal, a member of the board shall, without opening the envelope, mark across the face of the envelope: "rejected as illegal." The envelope and the ballot contained therein shall be preserved in the manner that official ballots voted are preserved.<sup>35</sup>

If the signature of a legitimate absentee voter is rejected, the ballot is considered illegal and there is absolutely nothing the voter can do about it. The voter probably will not even know that his vote was not counted.<sup>36</sup> If a voter's signature provided during live, in-person voting does not match the signature on record, the voter is given another opportunity to duplicate a similar signature. If the identity of the voter is then confirmed, the voter has the opportunity to execute an Affirmation Form that automatically serves to update the voter's "record" signature. That voter is then allowed to vote a regular ballot.

However, even if a live, in-person voter provides a signature that does not match and is unable to show proof that he/she is the qualified elector, that voter is given a provisional ballot<sup>37</sup> to cast and is afforded a limited amount of time in which he or she can provide whatever additional documentation is needed to ensure that the provisional ballot will be considered and counted as a genuine, regular ballot. Neither of these options is available in the absentee voting arena. There is no second bite of the apple afforded to those who use this voting method of convenience.<sup>38</sup> When we became aware of this fact we wondered how many votes were actually

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<sup>35</sup> Florida Statute 101.68 (2)(c)1.

<sup>36</sup> We make recommendations in Section H below of new procedures that we hope will eliminate this result.

<sup>37</sup> A provisional ballot is a special ballot used when the voter's eligibility cannot be determined at the site. The Elections Canvassing Board gets to make the determination of its validity later.

<sup>38</sup> We are pleased to report, however, that our Supervisor of Elections is taking proactive steps toward addressing the problem with absentee ballot signatures that do not match. The Department's website provides "Important

being rejected due to problems with signatures or a lack thereof. What we discovered was mind-boggling.

### H. Rejection Rates of Absentee Ballots

The Miami-Dade County Elections Department keeps data on all returned absentee ballots that end up being rejected and/or not counted. We requested and obtained such data from the Department for the 2012 General Election and assembled portions of that data to create the chart below. As seen below there are several reasons for which a ballot may be rejected by the Canvassing Board. As absentee ballot voting, reportedly, has the highest rejection rate of all other types of voting,<sup>39</sup> the Grand Jury wanted to see if we could come up with ways the Elections Department could reduce the number within certain categories of rejections.

Breakdown of Various Rejections For Absentee Ballots  
Miami-Dade County 2012 General Election

No signature	439
Post marked late	1,381
Returned undeliverable	3,077
Signature does not match	343
Signed by other than voter	23
TOTAL	5,263

Florida Statute 101.31(2) contains the Voter's Bill of Rights for Florida voters. In part, it provides that each registered voter in this state has the right to vote and have his or her vote accurately counted. This goal is not being met for absentee ballots under the present statutory framework. It was reported that of the 786,000 absentee ballots cast by Florida voters in the

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Information About Signature Updates" to absentee voters. The Department advises that it is important that the signature on the voter certificate match the signature we have on record. Since it is common for signatures to change throughout the years, the Department encourages voters to submit a voter registration application in order to update their files with the voter's latest signature. The signature updates must be completed no later than the start of the canvassing of absentee ballots, which occurs no earlier than the 15th day before Election Day. We commend the Department for this effort to educate and assist absentee ballot voters in seeing that their votes will be counted.

<sup>39</sup> See New York Times: In Florida, almost 2 percent of mailed ballots are **rejected**, double the **rate** for in-person voting. "Error and Fraud at Issue as Absentee Voting Rises." <http://www.nytimes.com/2012/10/07/us/politics/as-more-vote-by-mail-faulty-ballots-could-impact-elections.html?pagewanted=all&r=0>

2012 August Primary Election, over 14,500 of them –nearly 2 %- were deemed invalid by local canvassing boards.<sup>40</sup> In this section of the report the Grand Jury will make some recommendations that should make the goal of the voter’s bill of rights more of a reality for Florida’s absentee ballot voters.

The State of Oregon has 100% vote by mail for all elections. Such has been the case since 1998 when Oregon citizens approved “vote by mail” in a statewide initiative.<sup>41</sup> We decided to take a look at how Oregon, with their mail-in voting system, deals with some of these same problems that result in rejected ballots. In reviewing Oregon’s Vote by Mail Procedures Manual,<sup>42</sup> we discovered some methods they use to try to save ballots that would otherwise be rejected. We thought we could use some of those procedures in Florida.

In Oregon, “if the ballot is returned in an unsigned [return identification] envelope, the county elections official shall attempt to notify the voter that **the ballot cannot be accepted** unless the envelope is signed no later than 10 days after the election.” (emphasis in the original)<sup>43</sup> The official will have the voter sign the return identification ballot envelope at the elections office. If the return identification ballot envelope is unsigned the ballot is not accepted until the elector signs the envelope.<sup>44</sup> Similarly, if the signature does not match the voter registration record, election officials send a challenge notice and a registration card to the voter indicating that the signature does not match. The issue must be resolved no later than the 10th day after the election. The resolution requires the voter to provide sufficient proof in-person or by mail with an updated registration card reflecting the voter’s signature for matching purposes.<sup>45</sup> In handling ballots that were returned undeliverable, election staff sorts the undeliverables for postal errors and office errors and then, if appropriate, re-mails the corrected ballots to the voters.<sup>46</sup>

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<sup>40</sup> <http://www.tampabay.com/opinion/columns/high-ballot-rejection-rates-should-worry-florida-voters/1258477>

<sup>41</sup> See “ A Brief History of Vote by Mail,” Oregon Secretary of State at <http://www.oregonvotes.gov/pages/voterresources/voteinoregon/vbm/history.html>

<sup>42</sup> [http://www.oregonvotes.org/doc/voterresources/vbm/vbm\\_manual.pdf](http://www.oregonvotes.org/doc/voterresources/vbm/vbm_manual.pdf) April 2012. Oregon’s Vote By Mail Procedures Manual and referenced forms were adopted by Oregon Administrative Rule 165-007-0030.

<sup>43</sup> Id. at p. 26

<sup>44</sup> Id. at p. 27.

<sup>45</sup> Id. at p. 28

<sup>46</sup> Miami-Dade County had 3,077 potential voted absentee ballots rejected because the ballots were returned undeliverable. See chart on p. 23.

Like Oregon, the Miami-Dade County Elections Department also makes an initial determination of whether a returned voted ballot is valid or presumed invalid. The Canvassing Board makes the final determination as to whether to accept or reject the ballot. We believe the Supervisors of Elections in the various counties in our state should follow the example of the Oregon election officials. The Elections Department receives most returned absentee ballots during and after the time for Early Voting. This time of initial screening is done prior to Election Day. As such, our election officials: 1) have the **ability** to contact those voters who sent in return envelopes that did not contain a signature; and 2) inform them that their ballots will not be counted unless they get the envelope signed before the polls close on Election Day. The voter should be required to come in person to the Elections Department to sign the envelope. Similarly, if the return envelope contains a signature that does not match the voter's signature on file, election officials should contact those voters and inform them that their ballots will not be counted unless they provide sufficient proof of their identity in-person or by mail with an updated registration card reflecting a more recent voter's signature. Again, we would recommend that this be taken care of before the polls close on Election Day. Finally, as to undeliverables, we believe election staff should review such undeliverable ballots and check for postal and/or office errors. If such errors are discovered in a timely manner, election officials should re-mail the absentee ballots with the corrected mailing information. We believe adopting all three of these measures will reduce the number of rejected absentee ballots. Accordingly, we recommend:

*That the Miami-Dade County Supervisor of Elections adopt the procedures used in the State of Oregon whereby the Department will contact electors if 1) an elector returns an envelope without a signature; or 2) if the elector returns an envelope with a signature that does not match the registered signature on file. Voters who are contacted will have until the close of the polls on Election Day to resolve such issues.*

*That, in an effort to reduce the number of ballots rejected as a result of signatures that do not match, the Supervisor of Elections, beginning immediately, and staggered over the course of every successive four (4) year period, shall send out a notice to every voter in Miami-Dade County encouraging them to submit a voter registration application that will be used to update their signature on file with the Department of Elections.*

*That the Miami-Dade County Supervisor of Elections review absentee ballot packets that are returned as "undeliverable" and check them for postal and/or office errors and if such*



*errors are found they should be corrected and election officials should re-mail the absentee ballot with the corrected mailing information.*

### **I. Assumptions We Make to Ascribe Integrity to Absentee Ballot Voting**

Once an absentee ballot is placed in the scanner, the choices on the ballot are read and tabulated. However, unlike the certainty we have with the early voting and election day voting process, when the election results are tallied with absentee ballot voting, we are required to make numerous assumptions, few of which we can prove with any certainty. Why, because absentee ballot voting is done “in the shadows.” In a sense, voting via absentee ballot is voting done on the honor system.

For instance, from the beginning of the absentee voting process to the end, we assume that:

- The request for an absentee ballot is genuine and legitimate;
- The person requesting the absentee ballot is, in fact, the voter (or someone legitimately acting on the voter’s behalf);
- The absentee ballot is actually retrieved and received by the voter to whom it was sent;
- The voter to whom the absentee ballot was sent is the person who marks the ballot;
- The voter marks the selections on the absentee ballot in secret;<sup>47</sup>
- The voter marks his/her selections on the absentee ballot without interference, undue influence or other irregularities from persons working with or for a specific campaign or ballot issue;
- The voter is the one who actually signs the return envelope in which the completed ballot is sealed;
- The voter signs the return envelope enclosing the ballot **after** the voter has made the selections on the ballot; and
- The signature that appears on the return envelope is the genuine signature of the voter.

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<sup>47</sup> Oregon voters return their ballots in a Return Identification Envelope. “The back of the envelope shall include a statement to be signed by the absent elector, stating that the elector:

- (a) Is qualified to vote;
- (b) Unless prevented by physical disability, has personally marked the ballot; and
- (c) **Has not unnecessarily exhibited the marked ballot to any other person.**” (emphasis added)

Oregon Statute 253.065 (4)

To ascribe any semblance of integrity to the absentee voting process, one must assume all or most of the above. Making these assumptions becomes very difficult in light of information we received during our investigation. Many of the charlatans and crooks out there attempting to illegally impact our elections actually prey on one of our most vulnerable population groups, the elderly. Voters who are sixty-one (61) years of age and older form a significant proportion (nearly 30%) of all registered voters in Miami-Dade County (see chart below). The protections that would be afforded to these voters inside a voting precinct are woefully absent in the absentee ballot voting process. For these reasons, we strongly recommend the expansion of a program we learned about during our term: the Elections Department’s Supervised Voting Program.

Supervisor of Elections October District Demographic Analysis Report of Miami-Dade County’s 1,319,615 Registered Voters (as of 11/1/2012)			
Age 18 – 25	175,904	Age 46 – 50	120,945
Age 26 – 30	117,419	Age 51 – 55	113,548
Age 31 – 35	102,398	Age 56 – 60	102,710
Age 36 – 40	103,092	<b>Age 61 – 65</b>	<b>91,342</b>
Age 41 – 45	108,735	<b>Age 66 – Up</b>	<b>283,333</b>

#### IV. INSTITUTING CONFIDENCE IN THE ABSENTEE BALLOT VOTING PROCESS

##### **A. The Supervised Voting Program**

In an effort to assist elderly, frail and infirm voters in the State of Florida, the Florida Legislature passed a law that allows Elections Departments to develop and provide supervised voting to persons who reside in nursing homes and assisted living facilities. Pursuant to Florida Statute 101.655, at the request of the administrator of any assisted living facility or nursing home facility “the supervisor of elections of a county **shall** provide supervised voting for absent electors residing in” such facilities.<sup>48</sup> More importantly for our purposes, the statute further provides that even in situations where a request from the administrator of a facility is **not** made, the supervisor of elections of a county **may** provide supervised voting for absent electors residing in” such facilities.<sup>49</sup> Supervised voting is a direct outreach effort to frail, infirm and elderly residents. Pursuant to the statute, working with the administrator of the facility, the Supervisor of Elections selects a date and time when the supervised voting will occur.

<sup>48</sup> Florida Statute 101.655(1) 2012.

<sup>49</sup> Florida Statute 101.655(2).

Once a date is set the Supervisor designates a supervised voting team, comprising at least two persons, with representatives of more than one political party included on the team. The team members physically go to the facility, deliver ballots to the respective absent electors and there, jointly supervise the voting done by the residents of the facility. As with live, in-person voting, if the elector requests assistance an oath must be completed and the elector may receive assistance of two members of the team or some other person of the elector's choice.<sup>50</sup> With the Supervised Voting Program, the voting of an absentee ballot mirrors that of live, in-person voting: there is an Elections Department official watching to ensure the ballot is voted by the actual elector and the marking of the ballot is done without any solicitations or outside influences. However, before allowing such supervised voting to occur, the team members must first disclose to the elector that the elector can retain the ballot and vote it at a later time, or the elector also has the option to vote "without the presence of the supervised voting team."<sup>51</sup> Further, if an elector at the facility declines to vote a ballot or is unable to vote a ballot, the supervised voting team shall so mark that elector's ballot with that specific information. Finally, after all ballots have been voted or otherwise marked the ballots are collected and delivered to the Supervisor of Elections.

In connection with the August 2012 Primary Election, the Miami-Dade Elections Department provided supervised voting at nineteen (19) facilities. A check of the calendar on the Elections Department's website revealed that in advance of the 2012 General Election voting teams were scheduled to visit thirty-four (34) facilities. An almost 100% increase in the number of supervised voting sessions scheduled is clearly a move in the right direction. Clearly, supervised voting provides security and integrity to the process that is more in line with that of voters who actually go to the polls and vote. We hope the number of visits will continue to increase because citizens can have more confidence in election results with supervised absentee voting. We would like to commend the Supervisor of Elections for the additional efforts she is taking to increase the number of facilities that may benefit from this program.

In that regard, in May 2012, the Miami-Dade Elections Department formed a relationship with the Florida Assisted Living Association (FALA). FALA assists in providing required training to administrators running assisted living facilities ("ALF's"). In order to maintain a

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<sup>50</sup> Florida Statute 101.655(5).

<sup>51</sup> Florida Statute 101.655(6).

license to run an ALF administrators and others working within the facility are required to complete a certain number of hours of specialized training covering various topics. Working with FALA, the Supervisor of Elections has developed an hour-long training session focused on the availability of Supervised Voting. FALA has designated the training session as one that can be used by the Administrators to help reach their minimum training requirements and as such, is one of many trainings the licensees, owners and operators can take to keep their licenses up to date. As part of the training, Elections Department staff members are effectively “training the trainers” to let them know about the availability of the Supervised Voting Program.

Before the August 2012 Primary, election staff provided training to fifty-five (55) administrators who were willing to take the training. The hope was (and is) that those administrators will go to their respective facilities and pass on the information about the availability of the supervised voting program. Setting up voting places at designated senior centers, adult congregate living facilities, nursing homes, apartment buildings, and condominiums prior to election day, wherein employees from the Department of Elections can supervise voting in these high volume voting locations will reduce the size of the “target group” for unscrupulous operatives, in that these voters will not have a need to vote an absentee ballot in an uncontrolled environment.

As the Supervised Voting Program is a more secure process for our elderly residents to cast their absentee ballots we recommend that:

*The Miami-Dade Elections Department expand its outreach efforts to the owners and operators of ALFs, nursing homes and such facilities in an effort to increase the number of voters participating in the Supervised Voting Program;*

*Each member of the Miami-Dade County Board of County Commissioners assist the Miami-Dade Elections Department with expanding its outreach efforts by encouraging owners and operators of ALFs, nursing homes and such facilities within their respective Districts to participate in the Department’s Supervised Voting Program;*

*The election staff members schedule a follow-up contact with every owner, administrator or operator who attends a training session and use that opportunity to suggest the facility uses that opportunity to schedule a supervised voting session for that specific facility.*

*For facilities where no one signed up for training we recommend that the Supervisor of Elections create a form document that informs every ALF and nursing home administrator within the county of the availability of supervised voting for their residents. The mailer advising*

*them of this information can also include a return postcard or return envelope which the administrator can use to schedule supervised voting at their respective facility.*

## **B. Decreasing Fraud With Absentee Ballots**

One way to decrease absentee ballot fraud is to vigorously prosecute those who engage in such fraud. In that regard, raising the stakes so that violations result in felony charges instead of misdemeanors may serve as a deterrent for those who are so blatant in conducting their craft that they pass out business cards advertising their services; in one case, the card referred to the boletero as “Queen of Absentee Ballots.” If this strategy is to be successful it will require two major changes in the present law.

First, as previously stated, the legislature will need to change the level of the offense so that anyone who engages in absentee ballot fraud faces a felony prosecution and concomitantly, the potential loss of their right to vote. Second, to be able to secure convictions or otherwise obtain successful prosecutions for those who break the law in this area the legislature will have to go back to a witness signature requirement for absentee ballots. Until January 1, 1997, the law imposed a two (2) witness signature requirement for absentee ballots. In other words, when the voter of an absentee ballot signed the ballot the law required that the act of signing be witnessed by two persons who were older than 18 years of age. The two witnesses were then required to sign the ballot as witnesses and provide identifying information.<sup>52</sup> The statute and the instructions to absentee electors were later changed to require the signature of only one attesting witness.<sup>53</sup> The existence of this requirement in 1997 gave law enforcement significant leads and evidence that led to the prosecution of the fifty-five (55) defendants following the City of Miami mayoral election. The cases that were developed were based primarily on following the trail of the “witnesses” whose names repeatedly appeared on absentee ballots. Those prosecutions would not have been possible without the signature requirement and the signatures. The fraud in

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<sup>52</sup> “6. VERY IMPORTANT. Sign your name on the line above “(Voter’s Signature).” a. Persons serving as attesting witnesses shall affix their signatures and addresses on the Voter’s Certificate. Any two persons 18 years of age or older may serve as attesting witnesses, except that no candidate may serve as an attesting witness. b. Any notary or other officer entitled to administer oaths or any other Florida supervisor of elections or his deputy, other than an candidate, may serve as a sole attesting witness. The sole attesting witness shall affix his signature, official title, and address to the Voter’s Certificate.” Florida Statute 101.65 (1995). See also Florida Statute 101.64 (1995).

<sup>53</sup> “7. VERY IMPORTANT. In order for your absentee ballot to be counted, it must include the signature and address of a witness 18 years of age or older affixed to the Voter’s Certificate. No candidate may serve as an attesting witness.” Florida Statute 101.65 (1996). See also, Florida Statute 101.64 (1996).

the 1997 election was revealed by the signatures and the prevalence of the fraud was significant enough to have negatively impacted that election.

Unfortunately, the witness signature requirement was removed by the Florida Legislature by legislation effective on July 1, 2004. That action of the legislature effectively removed one of the most effective investigative tools for prosecutors and police alike. Based on the evidence we have heard, it is likely that the incidence of fraud in the area of absentee ballots have not decreased. Indeed, with the overall increase in the percentage of absentee ballots being cast in recent elections,<sup>54</sup> the amount of fraud has probably also increased. The problem is law enforcement cannot prove it any more. We think as a means of bringing some integrity to the absent ballot voting process that the Florida Legislature should restore the witness signature requirement in its next legislative session. Further, in addition to verifying the signature, we believe the same person should also witness the actual voting by the elector. The jurat for the witness could simply state, "I swear or affirm that the elector voted the enclosed ballot and signed this Voter's Certificate in my presence."<sup>55</sup>

Imposing such a requirement is not onerous and is no more taxing than the strictures imposed on those of us who vote at early voting sites or on Election Day in our precincts. We believe the minor inconvenience that may accompany such requirements would be worth it, if, at the end of the process, we have more confidence in the authenticity of the voted absentee ballots returned to the Elections Department. Restoring the requirement that the signature of a voter casting an absentee ballot be witnessed by an individual older than 18, and that the witness' signature and address appear on the voter's certificate on the back of the mailing envelope would serve two important benefits: 1) It should help deter absentee ballot fraud; and 2) if there is any doubt about a specific ballot it will give law enforcement officers and prosecutors the name and address of a witness to speak to, who would either confirm or deny that the voter cast the actual ballot.

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<sup>54</sup> In the 2008 presidential election, one out of every five Broward and Palm Beach county voters used an absentee ballot. *Sun Sentinel*, October 3, 2012. For the August 2012 Primary Election in Miami-Dade County absentee ballots represented more than 37% of all votes cast. In the 2000 General Election, it was only 7%.

<sup>55</sup> This language is a slight amendment to the language that was set forth in the 2002 version of Florida Statute 101.64.

As we believe it will be an effective tool to deter, detect and prosecute absentee ballot fraud we recommend that:

*The Florida Legislature, consistent with the 2002 version of Florida Statutes, amend 101.64 and 101.65(8), reinstating the requirement that the signing of absentee ballots by electors require the signature of an attesting witness 18 years of age or older. The name and address of the attesting witness shall be under the signature of the elector on the mailing envelope that is returned to the Elections Department.*

*In connection with the aforementioned recommendation, the Florida Legislature also amend the revived 2002 statutes and imposes a requirement that the signature of the attesting witness will also be used to attest that in addition to witnessing the signing of the ballot by the elector, the witness also observed the elector mark or vote the ballot.*

### **C. Closing The Public Record Exemption From Confidentiality of Absentee Ballot Information**

The Grand Jury believes that one of the most effective measures to decrease the ability to commit fraud or exert undue influence on absentee ballot voters is for the Florida Legislature to more strictly limit the availability of information currently provided regarding who is requesting and receiving an absentee ballot. Enforcing this limitation will require a change to the provisions of Florida Statute 101.62(3). Florida Statute §101.62(3) currently provides that certain information concerning absentee ballots shall be confidential and exempt from the provisions of the public records law disclosures of §119.07(1), with certain exceptions. This information includes:

- The date that a request for an absentee ballot was made
- The date that the absentee ballot was delivered to the voter or the voter's designee, or the date that it was delivered to the post office or other carrier
- The date that the ballot was received back by the Supervisor of Elections
- Any such other information as the Supervisor of Elections may deem necessary

All of this information obtained by the Supervisor of Elections from electors requesting absentee ballots becomes a public record once it is received or created by the Elections Department. Under normal circumstances it would be available for copying or inspection by **anyone** who made a public records request for the information.<sup>56</sup> However, the Florida Legislature made the absentee ballot data and information collected pursuant to Florida Statute

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<sup>56</sup> F.S. 119.07 (1).

101.62 (3) exempt from the public records requirements of F.S. 119.07 (1). In other words, by creating an exemption to the public records statute they made the data confidential. Well, almost.

Unfortunately, the Florida Legislature made an “exception” to the exemption. Florida Statute §101.62(3) provides that this otherwise confidential information shall be made available to or reproduced for:

- The voter requesting the ballot;
- A canvassing board;
- An election official;
- A political party or official thereof;
- A candidate who has filed qualification papers and is opposed in an upcoming election; and
- Registered political committees or registered committees of continuous existence, for political purposes only.<sup>57</sup>

Simply stated, individuals and groups who have a direct and obvious interest in issues or candidates on the ballot have the ability to get the name of every voter who requests an absentee ballot, the voters’ residence address and the date the voters’ absentee ballot is mailed. The persons who have the most to gain from the election are the ones who have access to this confidential information. For someone who is predisposed to engage in inappropriate and/or illegal activity with respect to absentee voters, this exception to the exemption arms them with the specific information of whom they should target and where and when they should move in on that target. The 101.62 (3) “exception” effectively paints a bull’s-eye target on the back of every vulnerable absentee voter. We strongly recommend that the legislature remove the bull’s-eye by limiting the public records exemption, and making such information available **only** to a canvassing board or an election official, and not making this information available to a political party or official thereof, a candidate, or a registered political committee or committee of continuous existence. Taking this bold step will effectively eliminate the means with which unscrupulous operatives could obtain lists of target victims.<sup>58</sup> Limiting access to this information should significantly decrease the ability of others to engage in fraudulent activity with respect to absentee ballots.

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<sup>57</sup> Florida Statute 101.62 (3).

<sup>58</sup> An amended statute incorporating this change would read as follows: This information shall be confidential and exempt from the provisions of s. 119.07 (1) and shall be made available to or reproduced only for the voter requesting the ballot, a canvassing board, an election official.



Accordingly, we recommend that:

*The Florida Legislature amend Florida Statute 101.62(3) by further limiting the public record exemption from confidentiality for absentee ballot vote information, and making such information available **only** to a canvassing board or an election official, and not making this information available to a political party or official thereof, a candidate, or a registered political committee or committee of continuous existence.*

#### **D. Combating Absentee Ballot Fraud as a Community**

If we are to be successful in ferreting out and detecting absentee ballot voter fraud, every citizen will have to play a role. To borrow a phrase, "it takes a village," to stamp out this kind of covert fraud. It is our belief that the illegalities and irregularities that occurred in the 1997 City of Miami mayoral election are still occurring. Further, as to absentee voter fraud, we are confident that there are people in this community who know what is being done, know how it is being done, and most importantly, know who is doing it. A commissioner's aide does not just happen to come into possession of more than 150 absentee ballots. Each of the persons who dropped off multiple absentee ballots was in violation of the county ordinance that makes it a crime for someone to be in possession of more than two (2) absentee ballots. But for the keen awareness and suspicions raised by a U.S. Postal Worker, we would have been totally unaware that these crimes were committed.

We do not believe that the full story has been told in this incident. However, as is done with other "unsolved crimes," we believe monetary incentives might work. We recommend that the Supervisor of Elections, law enforcement and elected officials work together to create an election/voter fraud rewards program through Miami-Dade County Crime Stoppers.<sup>59</sup>

With Crime Stoppers, citizens can report criminal activity anonymously and may receive a monetary reward for doing so. As reflected on the Miami-Dade Crime Stopper website:

The caller or "Tipster" is the most important partner in our program. He or she is a member of the community who sees, hears or knows of criminal activity. When a caller contacts Crime Stoppers, he or she is **GUARANTEED ANONYMITY**. Once a call is received, the "Tipster" is given a control number. If, as a result of their information, an arrest and filing of criminal charges has been made, the caller is eligible (sic) for a

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<sup>59</sup> Crime Stoppers is a community action program that gives citizens the opportunity to become involved in the fight against crime in Miami-Dade County and make our community a better place to live, work and go to school. Crime Stoppers is comprised of three segments (the community, law enforcement and the media) working as partners towards one goal - reducing crime.

monetary **REWARD OF UP TO \$1,000.00**. The guarantee of anonymity allows members of the community to offer information to law enforcement without the fear of reprisals.<sup>60</sup>

The home page for Crime Stoppers encourages citizens to report crimes involving weapons, drugs, illegal dumping, vandalism, theft, graffiti, cyber crime and domestic violence. Because it tears at the fabric of our democratic process, we would encourage the Miami-Dade Crime Stoppers to make election and voting fraud a priority.

In an effort to bring public attention to this, we recommend:

*That the Elections Department work with Crime Stoppers to create Public Service Announcements informing citizens of the importance of restoring confidence in our elections results and advising how they can assist in that effort by reporting illegal voting activity to Miami-Dade Crime Stoppers.*

*That the Elections Department place information on the homepage of its website advising and encouraging citizens to make anonymous Miami-Dade Crime Stopper reports of persons engaged in illegal voting or fraudulent election activity;*

*In connection with the aforementioned recommendation, that the Elections Department also include such information with every absentee ballot packet that is mailed out and in any other mailing sent by the Elections Department to Miami-Dade County voters;*

In support of the funding of reward payouts, we encourage businesses, corporations, civic-minded residents and civic-minded organizations to make tax deductible donations to Miami-Dade Crime Stoppers. If at all legally possible, we would also recommend:

*That 2% of the filing fee for any candidate running for office be used to help fund the Miami-Dade Crime Stopper's rewards. Funds collected for each election cycle will be given to those who report crimes involving voter or election fraud related to that election cycle.*

## **CONCLUSION**

The firestorm of media reports on absentee ballot voter fraud that surrounded our county's August 2012 Primary Election was unsettling. The widespread belief is that such illegal activity is rampant. With several narrow victories in races in the 2012 Primary and General Elections, the general sentiment that undetected fraud is occurring is a major problem for this Grand Jury and the citizens of this community. Can the public have confidence in the

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<sup>60</sup> <http://www.crimestoppersmiami.com/>

election results of those close races? We are not certain they can. Until there are more restrictions, protections and checks and balances put into place, our residents will continue to wonder whether the will of the people is accurately revealed when the election totals are tallied from absentee ballots. We hope that our elected officials in positions to make changes will adopt these recommendations as a means of instilling credibility and integrity to our elections and absentee voting process.

Following the 2012 General Election, Mayor Carlos A. Gimenez appointed many good community leaders to serve with the mayor and four (4) county commissioners on an Election Advisory Group. The goal of the Advisory Group is to find sensible, long-term solutions to the county's recent election challenges. We will forward a copy of this Grand Jury Report to the mayor and request that he forward it for review by the Advisory Group in hopes that they might join us in the recommendations we are making herein. We strongly believe that by adopting these recommendations we will drastically improve our absentee ballot voting process.

EXHIBIT A

DECLARATION TO SECURE ASSISTANCE

(Required Pursuant to Florida Statute 101.051 (4) )

State of Florida

County of

Date

Precinct

I, (Print name) , swear or affirm that I am a registered elector and request assistance from (Print names) in voting at the (name of election) held on (date of election) .

(Signature of voter)

Sworn and subscribed to before me this day of , (year) .

(Signature of Official Administering Oath)

EXHIBIT B

DECLARATION TO PROVIDE ASSISTANCE

(Required Pursuant to Florida Statute 101.051 (4) )

State of Florida

County of

Date

Precinct

I, (Print name) , have been requested by (print name of elector needing assistance) to provide him or her with assistance to vote. I swear or affirm that I am not the employer, an agent of the employer, or an officer or agent of the union of the voter and that I have not solicited this voter at the polling place or early voting site or within 100 feet of such locations in an effort to provide assistance.

(Signature of assistor)

Sworn and subscribed to before me this day of , (year) .

(Signature of Official Administering Oath)

EXHIBIT C

DECLARATION TO PROVIDE ASSISTANCE TO ABSENTEE VOTER

(Modeled after Declaration required Pursuant to Florida Statute 101.051 (4) )

State of Florida

County of

Date

Address where voting occurs

I, (Print name) , have been requested by (print name of elector needing assistance) to provide him or her with assistance to vote. I swear or affirm that I am not the employer, an agent of the employer, or an officer or agent of the union of the voter, that I am not a paid or volunteer campaign worker, and that I have not solicited this voter in an effort to provide assistance.

(Signature of assistor)

(Signature of elector needing assistance)

<u>NAME OF DEFENDANT</u>	<u>CHARGE</u>	<u>INDICTMENT RETURNED</u>
JOSEPH PHELPS and JUSTIN EDMOND	First Degree Murder Robbery/Deadly Weapon/Firearm/ Attempt	True Bill
JOSE R. ROJAS	First Degree Murder First Degree Murder Kidnapping Kidnapping Attempted Armed Robbery Fraudulently Obtaining Credit Card or Property	True Bill
BRINY RINCHERE	First Degree Murder	True Bill
KARON GAITER	First Degree Murder Shooting or Throwing Deadly Missile	True Bill
KEVON KENDALL GEORGE (A) and MICHELLE CAMILLE LEWIS (B)	First Degree Murder (A&B) Kidnapping/With a Weapon, Firearm or Aggravated Battery (A&B) Attempted Armed Robbery (A&B) Falsely Personating Officer (A&B) Giving False Name/ID After Arrest (A) Discharging a Firearm From a Vehicle (A&B) Aggravated Assault With Deadly Weapon (A&B)	True Bill
ROSELINE LOUIDOR (A) and CAMEO SERREL WALKIN (B)	First Degree Murder (A) Child Abuse/Aggravated/Great Bodily Harm/Agg Batt/ Firearm (A) Child Neglect/Great Harm (A&B)	True Bill
STEVENSON CHARLES	First Degree Murder Robbery Using Deadly Weapon or Firearm Grand Theft 3 <sup>rd</sup> Degree / Vehicle	True Bill
DERRICK L. HARRELL, Also known as "Dirty D"	First Degree Murder Murder/Premeditated/Attempt/ Deadly Weapon or Aggravated Battery	True Bill
MAURICE D. WILLIAMS	First Degree Murder	True Bill
FERMIN RECALDE	First Degree Murder	True Bill
CLAUDIO CANA	First Degree Murder	True Bill
(A) EMILIO PEREZ-TEJON, and (B) CESAR RUIZ	First Degree Murder (A&B) Robbery/Carjacking/Armed (A&B)	True Bill
SERGE JABREL BURROWS	First Degree Murder Robbery/Deadly Weapon Firearm/ Attempt	True Bill

<u>NAME OF DEFENDANT</u>	<u>CHARGE</u>	<u>INDICTMENT RETURNED</u>
DIANELIS DELA CARIDAD-FONSENCA (A) and JOSE MARTIN PEREZ-SANCHEZ (B)	First Degree Murder Murder 1 <sup>st</sup> Degree / Conspiracy	True Bill
(A) ADOLFO PEREZ, (B) ADOLFO PEREZ, JR., (C) ROBERTO RODRIGUEZ, also known as ORLANDO RODRIGUEZ, (D) OSMANI SIMON, (E) JOSE RODRIGUEZ, (F) NOEL MORIERA-PITA, (G) GODUAL LOPEZ	First Degree Murder (A) Conspiracy to Commit RICO (A-G) RICO (A-G) Cargo Theft (A,B,C,E) Cargo Theft (A,B,C,E) Cargo Theft (A,B,C,E) Cargo Theft (A,B,C,D) Cargo Theft (A,B,C,D) Cargo Theft (A,B,C,F) Cargo Theft (A) Insurance Fraud (A&B) Insurance Fraud (A&B)	True Bill
REGISTER HOLSENDORFF, III, Also known as "PONCHO"	First Degree Murder	True Bill
BRAYSHUN NWAMAH (B) and TAVARIS RAYSHOD CROMER (C)	First Degree Murder Robbery Using Deadly Weapon or Firearm	True Bill
ALPHONSO GERARD LUCAS	First Degree Murder Murder/Premeditated/Attempt Deadly Weapon or Aggravated Battery Burglary With Assault or Battery Therein While Armed Cruelty to Animals Firearm/Weapon/Ammunition/ Possession by Convicted Felon or Delinquent Attempted Felony Murder With a Deadly Weapon or Aggravated Battery	True Bill
SHANNON DARELL DAWSON, a/k/a DOUGH BOY, STEPHON JARVAS HART, a/k/a PLAYBOY and DESMAR JASON AKINS, a/k/a JIT	First Degree Murder Robbery/Deadly Weapon/Firearm/ Attempt Robbery/Armed/Conspiracy	True Bill
WAYNE REGINALD SANDERS	First Degree Murder Attempted Armed Robbery	True Bill



## ACKNOWLEDGMENTS

In a day where we see men and women putting themselves in harm's way to protect our rights and freedoms, it was our honor to offer our time and service to help those who enforce our laws. While our commitment to serve on the Grand Jury 2012 term seemed like an inconvenience at first, we soon realized the depth and importance of our role as jurors. Our 7-month commitment began with a group of people diverse in ages, background, ethnicity and religion, all united in a common effort to protect our rights and ensure justice ultimately prevailed.

We trust our final act as a Grand Jury, presenting our report "Absentee Ballot Voting: Convenience and its Consequences," will not only provide some enlightenment on voting issues, but that our recommendations as a non-biased, non-political, non-affiliated group would initiate positive change in our process.

We thank you for allowing us to be a part of this process and end our term with the knowledge that our sacrifice was well worth it.

We give special thanks to:

Rose Anne Dare – for coordinating our group and keeping us all informed;

Neil Gil – for always greeting us with a smiling face and keeping our orders straight;

Don Horn – for continually guiding us and informing us on issues and laws and allowing us to learn from his experience;

Katherine Fernandez Rundle – For selecting us to be a part of this journey and for her years of dedication to Miami-Dade County;

The witnesses and law enforcement officers who took time out of their day to answer our questions;

Judge Gisela Cardonne Ely, who encouraged us and commended us for playing such an important role in our community; and

The Court reporters for documenting our findings.

Respectfully submitted,

Jeffrey Pankey, Foreperson  
Miami-Dade County Grand Jury  
Spring Term 2012

ATTEST:

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Melvin Norton  
Clerk

Date: December 19, 2012