UIC John Marshall Journal of Information Technology & Privacy Law

Volume 23
Issue 3 *Journal of Computer & Information Law - Spring 2005*

Article 3

Spring 2005

Florida's Post 2000 Voting Systems Overhaul: The Road to Perdition, 23 J. Marshall J. Computer & Info. L. 497 (2005)

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FLORIDA'S POST 2000 VOTING SYSTEMS OVERHAUL: THE ROAD TO PERDITION

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I. INTRODUCTION

In early 2001, after the disastrous election of 2000, Florida decided to revamp its voting systems, as well as its elections laws, because it did not want another disaster—it didn't want to be another Florida.

The 2001 overhaul of Florida's voting systems was outwardly sold to Floridians as nothing more than simple legislation designed to upgrade Florida's voting technology. Indeed, the "Electronic Voting Systems Act" (the "Act"),[1] ostensibly modernized Florida's outdated voting machines by authorizing the use of "electronic and electromechanical voting systems in which votes are registered electronically or are tabulated on automatic tabulating equipment or data processing equipment."[2] In addition, effective September 2, 2002, the Act specifically prohibited any apparatus or device "for the piercing of ballots by the voter"—in other words, the infamous punch card system.[3]

True to the old addage that "nothing is simple in Florida," the 2001 technology overhaul of the voting systems was really a vehicle to carry

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1. *See* Fla. Stat. §§ 101.5601 - 101.5614 (2002).
2. Fla. Stat. § 101.5602 (2002).
3. Fla. Stat. § 101.56042 (2002).

out a more complex political agenda. The first part of that political agenda had to do with damage control and cleaning up Florida's now tarnished image. Florida politicians had been embarrassed by the punch cards so they *had* to get rid of them. The second part of the agenda, however, had more to do with trying to return political contests to the perceived predictability of yester-year. Indeed, Florida's politicians and supervisors of election decided after the 2000 debacle, that the problem had been with the recount process and the problem with the recount process, they surmised, was that it could not be tightly controlled, and, in fact, had gotten completely away from them in the high stakes election of November 2000. Thus, overhauling the voting technology was quickly seen as the most effective way to overhaul Florida's out of control recount process.

Central to the recount process overhaul was the introduction in Florida of a whole new type of voting system based on the use of Direct Recording Electronic voting machines ("DREs").[4] DREs were jointly touted by the Florida Department of State and the Florida Association of Supervisors of Elections ("FSASE"), as having "the highest levels of accuracy and security."[5] This, coupled with the fact that several different DRE systems went through state-sponsored "certification,"[6] under what Florida officials claim is one of the most stringent certification processes in the nation, undoubtedly lead fifteen of Florida's sixty-seven counties, representing over half of all of Florida's voters, to purchase and install DRE voting systems by late 2002.[7]

The virtue of DREs, in the minds of Florida's political interests, lies not in their purported accuracy and reliability (though those claims are central to the public relations campaigns), but rather, in the fact that DREs allegedly eliminated all possibility of overvotes,[8] and reduced undervotes[9] to instances where the voter made the concious choice to with-

4. DRE means Direct Recording Electronic voting machines. They are also called touch screens. DRE systems are designed to capture the voter's choices by touching a screen. The choices are not final until the voter has had an opportunity to verify or change any of his choices. Once the voter is satisfied, the vote is cast by either touching the screen in an indicated location or by pressing a separate button located on the voting unit. *See Touchscreen Voting Systems Issue Paper, Joint Project of the Florida Department of State and the Florida Association of Supervisors of Elections (FSASE)*, 1 (attached to e-mail dated October 25, 2003 from Constance Kaplan, Supervisor of Elections, Miami-Dade County) (hereinafter "Secretary of State/FSASE Paper") (on file with the author).

5. Secretary of State/FSASE Paper, *supra* n. 4, at 1.

6. *See* Fla. Stat. §§ 101.5606 - 101.56062 (2002).

7. *See* Secretary of State/FSASE Paper, *supra* n. 4, at 1.

8. The term "overvote" refers to instances where a voter mistakenly spoils his ballot by voting for more than one candidate in a given race.

9. The term "undervote" refers to instances where no vote is recorded in a particular race or contest.

hold his vote in a particular contest.[10] In 2001, Florida's recount laws were changed to reflect the new landscape where overvotes were non-existant and undervotes were intentionally created. In the eyes of Florida's political interests, this new landscape dictated that the new recount laws streamline and severly limit the scope of recounts[11] precisely because on DREs, the uncertainty over the meaning of overvotes and undervotes had been greatly reduced, if not eliminated.[12] But by relying on the thesis that on DREs overvotes are non-existant and undervotes are intentional acts of the voters, Florida's political interests essentially wedded themselves to the claim, however unproven, that this must be so because DREs are accurate and reliable.

II. ENTER THE FLY IN THE OINTMENT

The premise of this paper is that as demonstrated by the experiences of Miami-Dade County in the years following the infamous November 2000 election, the accuracy and reliability of DREs is far from clear as the underlying technology is, to put it charitably, "not quite ready for prime time." As a result, Florida's voting systems and elections law overhaul has been nothing short of the road to perdition – leaving the State in a more precarious position than before 2000 when it comes to voting system accuracy and security and converting the isolated problem of messy manual recounts into a deeper problem of untrustworthy and unverifiable results regardless of the closeness of the contest.

A. SEPTEMBER 2002 – THE FIRST SIGNS OF TROUBLE

In late 2001 and early 2002 Miami-Dade and Broward Counties purchased a prototype DRE known as the iVotronic sold by Nebraska-based Election Systems & Software ("ES&S").[13] Much like the concept car in the local auto show, the iVotronic had never been used in any election anywhere in the world.[14] Despite this, Miami-Dade County purchased

10. *See* Secretary of State's "Undervote" Fact Sheet dated July 17, 2004 (on file with the author).

11. *See* Fla. Stat. § 102.141 (2002) (governing machine recounts) and § 102.166(2002) (governing manual recounts).

12. Manual recounts, in the parlance of the November 2000 debacle, were messy, ugly *mano a mano* battles that tried to gleen the intent of the voter by examining each and every ballot where there appeared to be an overvote or, more commonly, an undervote.

13. *See* David F. Carr, *How Florida's Voting Machine Failed (Again)*, Baseline (hereinafter "Carr Article") *available at* http://www.findarticles.com/p/articles/mi_zdbln/is_200210/ai_ziff32160#continue (Oct. 2002).

14. *Id.* Moreover, at the time that Miami-Dade County contracted with ES&S to purchase the iVotronics, ES&S had not yet been certified by the State of Florida for its bitmap technology (which was designed to accommodate voting in three languages) and its text-based technology was only accomodating two languages. *See Office of the Inspector General Inquiry into Circumstances Surrounding the September 10, 2002 Election in*

7,000 of them sight unseen at a cost of $24.5 million; Broward County spent $17.2 million on its machines.[15]

The "coming out" party for Florida's DREs was the September 10, 2002 Democratic gubernatorial primary. In Miami-Dade County, the results were disastrous.[16] Some polls did not open for many hours because pollworkers had difficulty activating the iVotronic machines, while others opened with only one machine.[17] Where pollworkers were unable to activate the machines, voters were turned away because there was no back-up system of paper substitute ballots for them to vote on.[18] Some precincts were unable to print "zero" tapes (showing that no votes had been cast prior to the opening of the polls).[19] Others were unable to print results tapes at poll closing.[20] County pollworkers experienced many problems collecting and reading votes from the PEBs (Personnal Electronic Ballot - the device used to store uploaded votes).[21] According to County auditors, many problems occurred because "the iVotronics lacked self-diagnostic functions to alert pollworkers of problems encountered during activation, operation, ballot collection and deactivation."[22] There were reports of voters pressing the button for one candidate and

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Miami-Dade County, 6 (hereinafter "OIG Inquiry") *available at* http://www.miamidadeig.org/archives/Sept102002election.pdf (Sept. 20, 2002).

15. Carr, *supra* n. 13. Broward County's purchase was also mirred in controversy because of an alleged "shell game" on the part of county officials, "designed to give the appearance of minority participation in the lucrative $17.2 million contract." Wyatt Olson, *Broward Shell Game* in New Times News (Sept. 25, 2003) (Broward County, FL).

16. A full report by the County's Office of the Inspector General would later determine that "the debacle was, in large part, caused by the exorbitant set-up times required by the ES&S devces." *See Miami-Dade County OIG Final Report – Miami-Dade County Voting Systems Contract No. 326*, 4 (May 20, 2003) (hereinafter "OIG Report") *available at* http://www.miamidadeig.org/reports/ voting%20final%20report.pdf (May 20, 2003).

17. Of the twenty-one precincts observed by Miami-Dade County audit staff, none had all iVotronic machines working at poll opening, fifteen (seventy-one percent) had at least one machine available for voting, six (29 percent) had none operational and one did not have its first ballot cast until noon. *See Audit Report – State Primary Election September 10, 2002* from Cathy Jackson, Director, Audit and Management Services Department to David C. Leahy, Supervisor of Elections, 1-2, 3 (Sept. 30, 2002) (hereinafter "County Audit Report") (on file with the author).

18. Such a back-up system was not implemented until the November 5, 2002 general election and not until after the Miami-Dade County Commission voted to require the provision of back-up paper ballots at the level of twenty-five percent of the registered voters in each precinct. *See Miami-Dade Election Reform Coalition – Final Report on the November 5th Election*, 9 (hereinafter "MDERC Report") *available at* http://www.reformcoalition.org/Ressources/Post-Election%20Report.pdf.

19. County Audit Report, *supra* n. 17, at 12.

20. *Id.*

21. *Id.* at 15.

22. *Id.* at 10. The County auditors opined that "the iVotronic system design did not adequately leverage technology by incorporating self-diagnostics, system messages, edits and controls to minimize voter and pollworker confusion. . . . ES&S should have demon-

the name of the other candidate appearing.[23] More ominously, the specter of 2000 loomed large, in part because of widespread reports that the problems experienced in Miami-Dade County on September 10, 2002, disproportionately disadvantaged African-Americans.[24]

What did Miami-Dade County do after September 10, 2002? In light of the fact that there was a general state-wide election for governor coming up in less than two months, the answer is that Miami-Dade County threw all of its resources into making sure that it did not embarrass itself again.[25] To achieve this, Miami-Dade County made the proverbial "pact with the devil" by putting its police department in charge of preparing for and running the November 5, 2002 general election.[26] The implication of having the police department running elections in the world's foremost democracy did not go unnoticed or unchallanged. Almost immediately, members of community groups began demanding clarification of the chain of command and requesting that police presence be minimized at the polls and that voters be assured that the police role would not affect their rights at the polls.[27]

Other measures, with more lasting consequences, were required in Miami-Dade County in order to overcome the crisis which had been created by the defective DRE technology that was, at that point, less than a year old. Due to the lengthy boot up times for the iVotronic machines, the County had to implement a program of setting up and turning on the machines the night before and leaving them on all night in preparation for the opening of the polls the next morning.[28] Even an expert hired by the County to review the County's voting systems strongly reccomended, in May of 2004, that the County change its practice of turning on its

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strated greater proficiency in system design and been more cognizant of corresponding impact on pollworker and voter behavior." *Id.* at 9.

23. MDERC Report, *supra* n. 18, at 18-19.

24. ACLU of Florida, *Analysis of September 10 Voting Fiasco in Miami-Dade Disproportionately Impacts Minorities, ACLU Says*, http://www.aclufl.org/news_events/archive/2002/racialimpactrelease.cfm (Oct. 21, 2002).

25. *See* OIG Inquiry, *supra* n. 14, at 23-31.

26. In fact, it was the Office of the Inspector General who made this recomendation, stating that in light of the fact that the County had less than forty-two days to ready itself for the November 5, 2002 general election, "[w]e therefore recommend that County officials immediately involve professional management personnel already available at the Miami-Dade Police Department and the Miami-Dade Emergency Management Office and task them to *lead* the solution effort." *Id.* at 23 (emphasis in original). *See also* MDREC Report, *supra* n. 18, at 5.

27. *Id.* at 5-6, Exhibits "A" and "B."

28. OIG Report, *supra* n. 14, at 4-5 (detailing the decision, made by the County's police director, described as the Special Project Manager, to "plan the election around known factors not new untested variables" – a reference to an interim modification proposed by ES&S but never actually certified by the State of Florida, to reduce boot up times).

machines the night before.[29] However, as of this writing, Miami-Dade County is still turning on its voting machines the night before and leaving them on all night, at mostly unguarded polling places.

Other practices of the County in the November 5, 2002 general election that have had a lasting impact on the character of election in Miami-Dade County include the use of County employees as Voting Systems Supervisors, troubleshooters, hot line operators and pollworkers.[30] The County employees have replaced, and in many cases displaced, the citizen pollworker[31] – turning what were formerly County-lead, civilian-run elections, into County-run elections. While the costs of this practice are less obvious in terms of maintaining the democracy and fostering civic participation, the hard costs in terms of dollars have been made abundantly clear.

According to Miami-Dade County's assessment the November 5, 2002 general election cost the County an estimated $7,995,000.[32] Assuming the County's numbers are correct, and there is every reason to believe that the County underreported, the November 5, 2002 election went 380 percent over budget.[33] Any assumption that the November 2002 general election was a "crisis anomaly"[34] went out the door when it was revealed that the November 2004 Presidential election cost the County a whopping $6,643,500[35] putting it at 91 percent over budget.[36]

This is without even counting the costs of the August 2004 primary

29. Douglas W. Jones, *Reccomendations for Conduct of Elections in Miami-Dade County Using the ES7S iVotronic System*, at 9-10 (May 24, 2004) (on file with the author).

30. *See Post Election Analysis and Reccomendations*, from Steve Shiver, County Manager, to Honorable Alex Penelas, Mayor, Honorable Chairperson and Members, Board of County Commissioners, at 4-5 (Jan. 22, 2003) (hereinafter "Jan. 22, 2003 Report") (on file with the author) "We supplemented our citizen poll workers [*at each polling place*], with a 3-person County Triangle composed of Quality Assurance Manager (QAM), Technical Support Specialist (TSS) and Verification Specialist (VS). . . . [and] established a pool of back-up personnel for dispatchin the event of no-shows on election day." *Id.*

31. *Id.* at 8. *3,000* county employees worked the November 5, 2002 general election in various capacities.

32. *See* Chart on November 2, 2004 Election Cost provided by Office of the County Manager (hereinafter "Chart") (on file with the author). According to the Jan. 22, 2003 Report, $454,000 of the total was for "additional services received from ES&S. . . ." *See* Jan. 22, 2003 Report, *supra* n. 30, at 4.

33. Interviews with Dan McCrea, Government Relations Chair, Miami-Dade Election Reform Coalition (hereinafter "McCrea Interviews") (Dec. 23 and 24, 2005).

34. *See* Jan. 22, 2003 Report, *supra* n. 30, at 7 (stating that the "costs of election [for the November 5, 2002 general election] were higher than would be expected in the future when we have additional planning time and the knowledge leaned from November 5th. Nevertheless, it is evident that countywide elections will cost significantly more than in previous years") *Id.*

35. Chart, *supra* n. 32.

36. McCrea Interviews, *supra* n. 33.

election which came in at approximately $3,000,000.[37] Most telling in the November 2004 numbers is the $1.4 million in overtime that the County was required to pay its County employees working the election.[38] This is in addition to $788,000 in overtime spent by the County to run the August 2004 primary election.[39]

B. 2003-2004 More Flaws Are Uncovered

In the wake of the disastrous September 2002 primary election and the costly, police-run November 5, 2002 general election, activists from the Miami-Dade Election Reform Coalition began to look for alternatives to repair what Miami-Dade County's Inspector General described as an iVotronic system that "is not fit to meet the intended use and elections-based business requirements of Miami-Dade County."[40] The activists started their seach, inauspiciously enough, with a public records request, under Florida law, for all communications between ES&S and the County.[41] In response, in late 2003, the coalition received a small box of documents. That box of documents included a two-page e-mail from a Miami-Dade County technology specialist by the name of Orlando Suarez to a representative of the vendor.[42] In the June 6, 2003 e-mail, Orlando Suarez detailed his findings concerning a review that he performed of the audit log and vote image files from a precinct in the May 20, 2003 run-off election in a Miami-Dade municipality known as North Miami.[43] What Orlando Suarez found was that the event log[44] and vote image files,[45] touted by the Secretary of State as "a means by which all votes can be ascertained,"[46] were deeply flawed and had, in fact, malfunctioned to the point of being unusable: "In my humble opinion (and

37. *Id.*

38. Chart, *supra* n. 32.

39. McCrea Interviews, *supra* n. 33.

40. OIG Report, *supra* n. 14, at Cover Memorandum and Summary, 5.

41. Ltr. from Lida Rodriguez-Taseff, Miami-Dade Election Reform Coaltion, to George Burgess, 3-4 (Oct. 27, 2003) (on file with the author).

42. E-mail from Orlando Suarez, eGov to Jimmy Carmenate, Elections, *Event Log and Vote Image Report* (June 6, 2003, 11:59 A.M.) (hereinafter "Suarez June 6, 2003 E-mail") (on file with the author).

43. *Id.*

44. The "event log" of a DRE records every significant event that happens with that machine (including the time of the event), from the time it is tested, to the end of the election, including when the machine is turned on and each and every time a vote is recorded or canceled. (Copies of event logs from actual elections using ES&S iVotronics on file with the author).

45. The "vote image files" are the randomly sorted images of every vote cast. These vote image files can be reduced to a printable report setting forth, in random order, every vote cast by every voter. (Copies of vote image reports from actual elections using ES&S iVotronics on file with the author).

46. Secretary of State/FSASE Paper, *supra* n. 4, at 4.

based on my over 30 years of experience in the IT field), I believe that there is/are a serious 'bug' in the program(s) that generate these reports making the reports unusable for the purpose that we were considering (audit an election, recount and [sic] election and if necessary, use these reports to certify an election)."[47]

Orlando Suarez's findings as startling as they were from the technology perspective, had a political significance far greater than even the debacle of September 2002. While the spin masters were able to sell the concept that the problems of September 2002 were mostly caused by normal bumps that happen with the implementation of new technology and poor pollworker training, the findings of Orlando Suarez struck at the core of DRE technology and exposed, for the world to see, that the technology could and did "malfunction" in an actual election.[48]

And what a malfunction it was! The event logs and vote image files are required by Florida State law.[49] Moreover, the event logs and vote image files had been touted by the Florida Secretary of State and supervisors of elections as the reason why DREs did not need a voter-verified paper record and why voters were protected in a close election, if the vote needed to be audited: "It is critical to understand that each DRE has a record that can be retrieved from each machine to show the votes that were actually cast by the voter. While it may be a lengthy process, the equipment can provide the authorities with the ability to demonstrate the votes actually cast if a recount or such similar issue presented itself, post election."[50]

What happened to the Suarez June 6, 2003 E-mail in the months following its creation should surprise no one. The memo sat, buried, no doubt beneath mounds of paperwork, until the Miami-Dade Election Reform Coalition brought the memo to light, first in a meeting with Miami-Dade Supervisor of Elections Constance Kaplan in December of 2003[51]

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47. Suarez June 6, 2003 E-mail, *supra* n. 42, at 2.

48. Orlando Suarez wrote additional e-mails, which later came to light, giving greater detail about the problem and his investigation. (on file with the author).

49. The Florida Voting System Standards promulgated by the Florida Department of State require that, to be certified in Florida a voting system, "shall include the capablity to produce records, generated by the system components, . . . from which all operations may be audited [and] [e]xcept for the storage of vote images, which shall be maintained in a random sequence, the records shall be maintained in the sequence in which the operations were performed." *Florida Voting Systems Standards*, 13 *available at* http://election.dos.state.fl.us/laws/proposedrules/pdf/dsde101Form.pdf.

50. Secretary of State/FSASE Paper, *supra* n. 4, at 4.

51. Interestingly, at the December 2003 meeting, Supervisor Kaplan failed to disclose that following up on his findings of June 2003, Orlando Suarez had reviewed an October 7, 2003 election that had taken place in the municipality of Homestead. In a memo dated October 10, 2003, Mr. Suarez detailed his findings and stated that this time he had found what he considered "a more srious issue," that the event log for the election had *failed to*

and later in a March 12, 2004 letter to Ed Kast, Director of the Florida Division of Elections[52] and in live testimony in front of Florida's Ethics in Elections Committee;[53] and lastly, in a series of news articles, many of them written by reporter Mathew Haggman, for the *Daily Business Review*.[54]

III. DAMAGE CONTROL

Seretary of State Glenda Hood, whose office is vested with the ultimate oversight of Miami-Dade County's elections, denied any knowledge of the problems uncovered by Orlando Suarez until they were reported in the *Daily Business Review* on May 13, 2004.[55] This, despite the fact that Prof. Mahoney had written to Ed Kast, the Director of the Division of Elections who is under the office of the Florida Secretary of State and had testified before the Ethics and Elections Committee in late March of 2004. Secretary of State Hood also chastised Supervisor Kaplan for failing to tell her about the problem with the event logs and vote image files.[56]

Interestingly, in February 2004, prior to the time the Secretary of State's Office claims that it first learned of Miami-Dade's problems with the event logs and vote image files, Ed Kast, the Director of the Division of Elections, had rendered a legal opinion in which his office answered the question whether, in the context of a manual recount (under Fla. Stat. § 102.166), county supervisors of elections "who utilize touchscreen [DRE] systems [are] required to print ballot images of all undervotes in a recount race."[57] Mr. Kast answered by opining that in the context of a recount under Fla. Stat. § 102.166, Florida counties using DREs are not

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show the activity of five iVotronic machines "that accounted for 162 ballots cast." (Memo on file with the author). The virtual "disappearance" of the votes from five iVotronic machines was particularly shocking in light of the fact that there were only twenty-two machines used in the election. *See* Additional documents created by Orlando Suarez (on file with the author).

52. Ltr. from Professor Martha Mahoney, Chair, Racial Impact Committee, Miami-Dade Election Reform Committee, to Ed Kast, Director, Division of Elections (Mar. 12, 2004) (on file with the author).

53. "On March 31, 2004, Prof. Martha Mahoney testified before the Senate Ethics & Elections Committee, speaking against Proposed Rule 1S-2.031 and also criticizing Section 30 on Page 44 of Senate Bill SB3004 which states in part that "a manual recount may not be conducted of undervotes on touchscreen machines." *See* The Miami-Dade Election Reform Coalition, http://www.reformcoalition.org (accessed Jan. 1, 2006).

54. *See* Daily Business Review, *Home Page*, http://www.dailybusinessreview.com.

55. Mathew Haggman, *Elections 2004 – When Did She Know?*, Daily Business Review (June 2, 2004) (Broward County, FL).

56. *Id.*

57. *See* RE:DE 04-02 Manual Recount Requirements Relating to Toucchscreen Voting Systems; § 102.166, Florida Statutes, at 1 (Feb. 12, 2004) (available at http://election.dos.state.fl.us/opinions/ TOC_Opinions.shtml).

"required to print or review the electronic ballot images of undervotes occuring in the recounted race."[58] He continued, stating that, "because the rules provide no standards for review of electronic ballot images and because the Florida Election Code requires uniformity in the application and operation of the election laws and rules among the counties," supervisors of elections "*have no authority*" to look at the electronic ballot images.[59] The answer given by Mr. Kast directly contradicts the previously stated position of both the Secretary of State and the organization representing the supervisors of elections.[60]

Soon after the Kast legal opinion was issued, the Secretary of State proposed an administrative rule that was designed to do exactly what the Kast legal opinion had sought to do – prohibit the review, by supervisors of elections, of the ballot images generated by the DREs.[61] In addition, in March of 2004, the Secretary of State's Office proposed a change to the manual recount statute, Fla. Stat. §102.166, that would also bar the review of the randomly sorted ballot images produced by the DREs.[62] The proposed amendment was defeated largely through the efforts of the Miami-Dade Election Reform Coalition.[63]

A. November 2004 and Beyond – The Questions Remain

Prior to the November 2004 Presidential election, this author theorized that the election would not be close enough for a recount, that there would be few, if any outward signs of problems with DREs in Florida and that the next frontier for voting systems reform would have to be the search for holistic solutions, rather than perceived magical cures such as the all too simple voter-verified paper record.[64]

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58. *Id.* at 4.

59. *Id.*

60. Secretary of State/FSASE Paper, *supra* n. 4, at 4.

61. *Proposed Recount Rule IS-2.031.* Sub-Section (7) of Rule IS-2.031 was struck down on Aug. 27, 2004 in *American Civil Liberties Union of Florida, Inc. v. Florida Department of State*, Case No. 04-2341RY.

62. Interivew with Alexandra Wayland, Legislative Chair, Miami-Dade Election Reform Coalition (May 2004).

63. *Id.*

64. Speech, Lida Rodriguez-Taseff, *E-Voting Syposium*, The John Marshall Law School (Chicago, IL, Oct. 1, 2004). I'll close with this, what has now happened and what you will see in November is the following: there will be no chaos in Florida. We paid far too much money to avoid chaos. It's the best election money can buy. There will be no chaos. I understand this push for election protection and all those people were going to be at the polling place the day of the election. It means nothing. They will not be inside the polling places and they will be unable to detect electronic voting problems.

Where are we headed from here? We need to create a system of scrutiny for every election, an auditing system for every election and that is not going to happen in November because this issue was not litigated by any of the political interests involved because the political interest basically stood to one side and watched this process unfold and all they

Post-November 2004 Florida has proven the point. In its report of the 2004 Presidential election, *Get It Right the First Time – Poll Closing Observation, Ballot Accounting and Ballot Security*,[65] the Miami-Dade Election Reform Coalition detailed serious problems with policies and procedures that were supposed to protect the integrity of the results.[66] One of the problems uncovered by the coalition and detailed in the report is how a purported machine malfunction at one precinct in Miami-Dade County resulted in the electronic ballot stuffing of approximately 170 votes which were added to the canvass despite the fact that they did not belong there.[67] The report also details how in over seventy percent of the precincts in the County, for the November 2004 Presidential election, the number of people who signed in to vote did not match the number of votes recorded as being cast.[68] Miami-Dade County is currently studying its options in terms of replacing its iVotronic machines.

For those who think that a voter-verified paper trail is the answer, despite widespread support, DRE machine manufacturers have been slow to come forward with technological innovations to be certified. Moreover, studies have shown that retrofitting existing DREs with printers and voter-verified paper record capabilities will be very costly. Nor is optical scan technology the solution. In Pasco County, a test of the central tabulation system revealed that despite having optical scans at the polls, voters need to be worried because the central tabulation system is vulnerable to fraud and manipulation by an insider.

IV. CONCLUSION

There should be little question that DREs are costly, dubiously accurate and dubiously reliable systems upon which to place the future of our democracy. There is also little question that, as demonstrated by the political battles in Florida since 2000, DREs are dictating the evolution of elections and are serving as the foundation for changes in the way elections are run and results are tabulated.

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were thinking about – and I'm talking Republicans, I'm talking Democrats, I'm talking Independents, Greens, all of them in Florida – were sitting there trying to figure out how they would benefit from an unscrutinized system.

65. The Miami-Dade Election Reform Coalition, *supra* n. 53.

66. *See id.*

67. *Id.* at 14-18.

68. *Id.* at Table 4.