

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

INTERIM REPORT
OF THE
MIAMI-DADE COUNTY GRAND JURY

INQUIRY INTO ABSENTEE BALLOT VOTING

FALL TERM A.D. 1997

A large, stylized handwritten signature in black ink, appearing to be 'E. Prince', written over a horizontal line.

EDWARD J. PRINCE
FOREPERSON

A handwritten signature in black ink, appearing to be 'Frances L. Parianous', written over a horizontal line.

FRANCES L. PARIANOUS
CLERK

FILED

February 2, 1998

Circuit Judge Presiding
JUDITH L. KREEGER

Officers and Members of the Grand Jury

EDWARD J. PRINCE
Foreperson

ANTONIO ABASCAL
Vice Foreperson

CATHY WOOD
Treasurer

FRANCES L. PARIANOUS
Clerk

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Bailiff
ARTHUR LEWIS

I. INTRODUCTION

The right to vote defines the essence of American citizenship. It provides the bedrock upon which our democratic form of government survives. The greatest social struggles in our history, from the emotional impetus for the American Revolution itself, to the struggle for women's suffrage and the battle for civil rights, have all had at their core the acquisition of the vote for those who were disenfranchised. To a democracy, there can be no greater crime than voter fraud. A single falsely cast vote corrupts the entire electoral process.

In the recent local elections of 1997, evidence of outright fraud in the absentee balloting process called into question the legitimacy of two major elections. State Attorney Katherine Fernandez Rundle has asked us to assist our community by investigating this fraud with the perspective of developing solutions to deter future absentee voter fraud. Recognizing the urgency of this request and its importance to our community, we have expedited our information gathering process in an effort to quickly develop recommended solutions for implementation. Based upon the information we have gathered and the testimony we have heard, we find that absentee ballot fraud clearly played an important part in the recent City of Miami elections.

In addition, we have found actions indicating a concerted effort to influence absentee ballot votes, particularly those of elderly voters with little understanding of the absentee ballot process, to have played a part in the recent City of Miami Beach elections as well. Sadly, we must note that absentee voter fraud is not just a recent phenomenon in our local political system. The absentee voter fraud that was uncovered in the 1993 City of Hialeah elections is an indication that such political manipulations have been occurring for years.

We must insure that the lowest political elements do not control the reins of power. We must never allow voter fraud to deprive us of honest political leadership. No municipality is safe and no election is sacrosanct while such voting corruption is seen as a viable tool. But, until strong steps are taken to make voting fraud a dangerous

undertaking for any political candidate or political machine, we remain concerned that voting fraud will be assumed to be a natural part of today's political process.

It is axiomatic that good politics must always be clean politics. To need the votes of the dead, mentally incompetent or corruptible to retain or acquire power is to lack all moral or legal standing to hold that power. Those who would seek to ascend to political office through these methods are no more than political lepers and should be treated as such. Those who would assist in these endeavors are the thieves who steal democracy from us all.

Our examination has revealed that the present process of absentee voting, when used as a conduit for fraud, has so many flaws that no one solution exists which will immediately restore credibility to the process. A series of reforms, extending throughout the entire absentee voting process, must occur. With our new-found knowledge of the little understood, and often arcane, absentee ballot system, we have developed a series of recommendations for each stage of the absentee ballot process.

II. OBTAINING ABSENTEE BALLOTS

In a commendable effort to increase the number of voters participating in an election, the requirements and proof needed to vote absentee have been changed over the years to make it easier to obtain an absentee ballot. Currently, anyone can make a request and without substantiation of need, obtain one. While we understand and generally agree with the goal of increasing the electorate that has engendered the current lack of restrictions, it is important to note that it is this very lack of restrictions that has helped make absentee ballots the "voter fraud method of choice". Unlike votes cast at the polls, absentee ballots are completed outside of the oversight or supervision of local or state elections officials. Thus, unscrupulous individuals can use absentee balloting in a number of illegal and immoral ways. They can request ballots for multiple individuals under the guise of "helping the voter". Then, knowing when they are mailed, they can steal them out of mailboxes and return them without the voter's knowledge. Without the supervision or oversight of election officials, they can use past favors rendered as the quid pro quo to coercing votes for particular candidates in particular elections. They can even open the

absentee ballot envelope, indicate their choices on the ballot contained within, and then give it to the voter to complete accordingly. All of these examples are incidences that did, in fact, occur during recent elections held in the cities of Miami and Miami Beach.

We feel that the elimination of absentee balloting as a mechanism of voter fraud must begin with the creation of reasonable restraints upon the process by which one is obtained. These restrictions should have the intent of providing absentee ballots primarily as a method of voting necessity and not only as a method of voter convenience. In addition, we feel that the absentee ballot return envelope should be restructured to insure easy identification of the voter and the witness. Currently, the ballot return envelope fails to require any witness identification other than their address. It does not even call for the basic requirement that the name of the witness be legibly printed. We must change the requirements of ballot return envelopes to provide the evidence needed to investigate and ultimately prosecute voter fraud. Accordingly we recommend that:

1. Florida law previously provided specific eligibility requirements for obtaining absentee ballots. Effective January 1, 1997, this law was changed and all of these eligibility requirements were removed. Based upon our findings, we feel this to have been a mistake. Accordingly, we recommend that the Florida Legislature reenact mandatory and specific eligibility requirements. The criteria should be more stringent for those requiring absentee ballots by mail than for those who wish to vote absentee in person prior to the election. Specifically, to receive an absentee ballot by mail, the voter must show some actual necessity, such as needing to be out of town, infirmity, illness, age or other reasonable circumstances that would physically prevent them from voting.
2. Florida's current definition of a voter's "legal residence" is too broad. We therefore recommend that the Florida Legislature establish a more specific legal definition. As a part of this definition, we recommend the incorporation of Florida's Homestead law. If a voter has established homestead under Florida law, we feel that address should be the legal residence for determining in which elections the voter is eligible to vote.
3. Based upon the testimony we have heard, by allowing absentee ballots to be requested by telephone we are increasing the probability of voter fraud. Until substantial improvements occur within the methods used to verify absentee ballots (such as we describe later in this report), we recommend that the Florida Legislature enact legislation requiring all requests for absentee ballots be made only in writing or in person and that such requests include appropriate documentation to support the need. We applaud the foresight of the Miami-Dade County Board of County Commissioners for recently enacting a local ordinance eliminating telephone requests.
4. The Miami-Dade County Supervisor of Elections should ensure that the return mailing of requested absentee ballots be based upon a random timetable making it impossible

for unscrupulous individuals to know when the ballots would appear in a person's mailbox.

5. Based upon the testimony we have heard, we find that a lack of voter knowledge has contributed to the ability of unscrupulous individuals to improperly and immorally influence absentee voters. Accordingly, we recommend that the Division of Elections of the State of Florida and the Miami-Dade County Supervisor of Elections jointly develop, for inclusion within every absentee ballot packet, an information pamphlet detailing the proper method of voting absentee. This pamphlet should also include a list of examples of improper/illegal actions and penalties. The absentee voter should be strongly cautioned against allowing anyone who has assisted them in obtaining or returning the ballot to exercise any influence upon the voter's choice of candidates.
6. The Florida Legislature should amend current Florida law to provide that all absentee ballot return envelopes require two witnesses to the voter's signature rather than the current requirement of only one. The envelope should also require the names of these witnesses be printed as well as signed and require the witnesses to list either their voter's registration number or driver's license number for identification purposes. The failure to provide this information should invalidate the absentee ballot.
7. The Division of Elections of the State of Florida and the Miami-Dade County Supervisor of Elections should consider the feasibility of developing a system wherein the voter's registration card includes copies, one of which is required to be returned with the absentee ballot as a means of insuring the identity of the voter. They should also consider the feasibility of adding photographs, similar to those currently used on Florida driver's licenses, to voter registration cards.
8. The Miami-Dade County Board of County Commissioners should provide the funding to ensure that all of Miami-Dade County's absentee ballot return envelopes include pre-paid postage of a type which would only incur a charge when used. Such an action would serve to reduce the dependence of an absentee voter on a third party in order to obtain a stamp to mail the ballot. This is a problem that is particularly prevalent among our elderly and infirm voter population as it allows unscrupulous individuals an avenue to gain access to these voters.

III. VERIFICATION OF THE ABSENTEE BALLOT

Once appropriate changes are made to the method of obtaining absentee ballots, the next key to stopping voter fraud lies with the ability to easily and consistently detect it. Currently, the only method used to detect fraud is an inspection by employees of the Miami-Dade County Elections Department of the outside appearance of the absentee ballot return envelope and a visual comparison of the voter signature on that envelope with the signature on file with the department.

Our examination has shown this inspection to be the weakest link in the chain of detecting absentee voter fraud. First, those doing comparisons receive no training whatsoever in the methods of comparing signatures. Second, the two signatures they are comparing may have been signed decades apart. Over time, signatures often change. Lastly, we are told that many people performing these comparisons can have a type of "form blindness". This would prevent them from delineating the difference between a circle and an oval and thus weakens their ability to make effective signature comparisons. As a result, fraudulent voter signatures can be missed and genuine voter signatures can be erroneously called into question. Citizens serving on canvassing boards, who act as the final arbiters of absentee ballot validity, face similar limitations. We recognize that, for the short term, signature comparison will remain the primary method to detect absentee ballot fraud and have made recommendations accordingly. However, we feel that the incorporation of existing technology to allow fingerprint identification to replace signature comparison may be the only way to truly eliminate absentee voter fraud. While the use of this technology may increase the cost of preparing and processing absentee ballots, we feel it to be money well spent. Accordingly, we recommend that:

1. Every Miami-Dade County Elections Department employee who is involved in the comparison of signatures should be required to take a standardized form blindness test to determine if they can correctly distinguish the differences needed to make accurate comparisons between signatures.
2. The Miami-Dade County Supervisor of Elections should work with the Miami-Dade County Crime Laboratory Questioned Documents Unit to develop and implement a training program in handwriting comparison for all employees who are involved in the comparison of signatures as part of the verification process. They should also develop a standardized criteria for this comparison.
3. The Miami-Dade County Board of County Commissioners and all local municipalities should provide the same standardized test and the same training program for all members of local canvassing boards.
4. Whenever an absentee ballot is rejected by the Miami-Dade County Elections Department and any canvassing board, that ballot should be investigated for fraud.
5. We recommend that all voter registrations automatically expire every five (5) years. This requirement of re-registration would result in a more recent (and thus more accurate) signature of the voter for comparison. It would also result in effectively purging voters who have moved or died from the voter rolls and provide more up-to-date information regarding voter addresses and residency. It would also allow new

technology to be implemented on a timely basis. We recommend that the Miami-Dade County Congressional Delegation lead the state in an effort to amend the National Voter Registration Act of 1993 accordingly.

6. The Division of Elections of the State of Florida and the Miami-Dade County Supervisor of Elections should study the feasibility of utilizing existing technology to improve the methods used to verify the true identity of the voter returning the absentee ballot. The chances of errors under the present system of comparing signatures are simply too great. One example would be to use inkless fingerprinting material on the outside of the absentee ballot return envelope. Both the voter and the witness(es) would be required to place their thumbprint on this envelope. This system will insure greater accuracy in identifying the voter and, should any information relating to fraud or coercion exist, the identity of the witness(es) as well. This technology is currently being successfully used in the private banking industry to reduce fraud. We see no reason why it should not be expanded to include the public sector as well. In addition, by requiring all voter registrations to be renewed every five (5) years, and also requiring the fingerprint of the voter at the time of registration, a computer system can be utilized to compare the fingerprints when the ballots are received. This system could also be used to check identification of voters at the polls.
7. Witnesses have told us that the manner in which a person places their signature on a line is an important element used in questioned signature analysis. Due to the eccentricities of current scanning technology used by election officials, the blue line that appears under the voter's signature on the registration form can not be successfully scanned. This prevents election officials and members of canvassing boards from utilizing the position of the signature on that line as a tool during signature comparisons. Therefore, we recommend that the Division of Elections of the State of Florida change the color of the signature line in the voter registration form so that it will appear in the scan of the voter's signature.

IV. PROACTIVE METHODS TO DETECT ABSENTEE BALLOT FRAUD

The electoral process necessitates a relatively short time frame for the examination of absentee ballots. To truly deter unscrupulous individuals from using the absentee ballot system as a mechanism for voter fraud, we must implement a system that dramatically increases the probability that those who commit fraud will be caught. Currently, even when election officials detect a suspicious absentee ballot, and even when a canvassing board invalidates that ballot, they are usually simply tossed into a box, stored for a year and then destroyed. In only the rarest of instances are they referred to law enforcement for follow-up or investigation. By following this procedure we are telling those who would engage in absentee voter fraud that, upon detection, the worst penalty they will face is the invalidation of their fraudulent vote. Such a system offers no deterrent and must be

changed. We must create a well-founded fear in those intent upon using absentee ballot fraud that they will be caught and once detected, that there will be serious consequences. Accordingly, we recommend that:

1. Each year the Miami-Dade County Elections Department should randomly, and publically, select one recent local election and the Miami-Dade County portion of one recent statewide election for complete voting audits. These audits should include a certain percentage of the machine vote and a certain percentage of the absentee vote in those two elections. Based upon our findings, key issues to investigate regarding absentee ballots should include multiple ballots witnessed by the same person, multiple ballots voted at the same address and any indication of alteration on the return envelope or the ballot itself. The audits should also verify citizenship and residency. Any indication of voting fraud should immediately be turned over to law enforcement officials for criminal investigation. We further recommend that the Miami-Dade County Board of County Commissioners provide whatever funding is needed to accomplish these audits.
2. The Miami-Dade County Supervisor of Elections greatly impressed us with his dedication toward improving the absentee voting process. Unfortunately, we believe that his efforts in this regard have been hampered in the past by a lack of sufficient funding and resources. Failure to adequately fund his efforts calls into question the commitment of Miami-Dade County government to this mission. Therefore, should the Miami-Dade County Supervisor of Elections uncover irregularities in absentee ballots as a result of the audits recommended above, or as a result of other evidence uncovered independently, he should be vested with the authority, and provided by the Miami-Dade County Board of County Commissioners with the funding, to develop and implement actions designed to deter future irregularities. For example, if it was determined that problems were found in absentee ballots from a particular location, the Supervisor of Elections should have the ability to prohibit voters residing at that particular location from voting absentee in the next year's elections unless the ballots were witnessed by employees of the Miami-Dade County Elections Department.

V. STRENGTHENING OUR ELECTION LAWS TO INSURE ENFORCEMENT AND DETERENCE OF VOTER FRAUD

The final element needed in our overall system designed to deter absentee voter fraud rests within the laws that describe the actions deemed illegal and the penalties proscribed for those acts. We were amazed to learn that certain illegal actions, such as accepting payment of money in agreement to vote for a particular candidate, are only misdemeanors. No illegal acts associated with insuring the integrity of our electoral process should be deemed to be within the same classification as "spitting on the sidewalk" or "sleeping in public". Florida's laws must be designed to provide the

maximum protection constitutionally permissible for our electoral process. Accordingly, we recommend that:

1. All criminal violations of Florida's voting laws relating to voter fraud should be, at minimum, third-degree felonies. Therefore, we recommend that the Florida Legislature amend the penalties for the following misdemeanor election law violations accordingly:

<u>Florida Statute</u>	<u>Description</u>
104.011(2)	Submission of false voter registration information
104.012(1)	Payment of cash in consideration for registering as voter
104.012(2)	Interference with registration
104.012(3)	Soliciting registrations for compensation
104.013	Unauthorized use, possession or destruction of voter registration ID card
104.031	False declaration to secure assistance in preparing ballot
104.045	Vote selling
104.051(4)	Election employee attempting to influence or interfere with election voting ballot
104.0515(5)	Deprivation or interference with voting rights
104.061(1)	Corruptly influencing voting
104.081	Threats of employers to control votes of employees
104.185	Knowingly signing a petition more than once

2. In addition to the general provisions of existing election statutes we recommend that the Florida Legislature buttress current laws, and provide greater notice to prospective violators, by enacting more specific provisions outlawing the following activities:
 - (a) Falsely witnessing an absentee ballot.
 - (b) Obtaining an absentee ballot from election authorities through misrepresentation or false promises.
 - (c) Unlawful possession of an unopened envelope containing an absentee ballot.
 - (d) Willful interference without authority in the delivery by election officials of an absentee ballot to a voter.
 - (e) Using a false address to allow registration or voting in an election in which that person would not otherwise be eligible to vote.
3. By increasing the probability of arrest and prosecution of individuals committing absentee ballot fraud, we can help restore credibility to the absentee balloting process. Accordingly, we recommend that the Florida Legislature enact a law providing that proof of possession of an altered or fraudulent absentee ballot, unless satisfactorily explained, gives rise to an inference that the person in possession had knowledge of the alteration or fraud.
4. The Miami-Dade County Elections Department, in cooperation with the Florida Department of Law Enforcement, the Vital Records Department of the State of Florida and the United States Immigration and Naturalization Service, should conduct an audit of Miami-Dade County's voter rolls every five years to purge from the voter rolls any person who is not an eligible voter, either by death, lack of United States citizenship, lack of legal residency, the removal of civil rights through felony conviction or other legal reasons. Should this audit uncover individuals who have

voted in past elections, despite being ineligible to do so, the information should be immediately turned over to law enforcement for investigation.

5. The Miami-Dade County Congressional Delegation should lead the state in an effort to amend the National Voter Registration Act of 1993 to require, at the time of registration, proof of age, citizenship and residency before permitting an individual to register to vote.
6. The Miami-Dade County Board of County Commissioners should develop and implement a reward system, similar to the current "Crime Stoppers" program, to provide a cash reward for information leading to the arrest and conviction of persons committing voter fraud. The amount should be sufficient to make it more financially rewarding to report voter fraud than it would be to commit it.

VI. CONCLUSION

We recognize that some will decry our recommendations as unnecessary, overly restrictive, expensive or difficult to implement. However, such complaints tacitly accept the existence and growth of absentee voter fraud. Through these recommendations, we strongly desire to send a message to our community that corruption for the sake of ease and convenience is too high a price to pay. We can never advance and confront the problems of the Twenty-First Century unless we take these basic preliminary steps to insure that our leaders are men and women of vision and ideas, not charlatans well versed in theft and deceit.