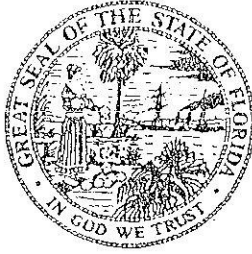


EARL MORELAND
STATE ATTORNEY
TWELFTH JUDICIAL CIRCUIT

OFFICES

Sarasota County

Criminal Justice Building
2071 Ringling Blvd., Suite 400
Sarasota, Florida 34237-7000
Telephone: 941-861-4400
Fax No: 941-861-4465



Desoto County

Desoto County Courthouse
115 East Oak Street, Third Floor
Arcadia, Florida 34266-4446
Telephone: 863-993-4881
Fax No: 863-993-4890

and

South County Courthouse
4000 South Tamiami Trail
Venice, Florida 34293-5028
Telephone: 941-861-3200
Fax No: 941-861-3127

Manatee County

1112 Manatee Avenue West
P.O. Box 1000
Bradenton, Florida 34206-1000
Telephone: 941-747-3077
Fax No: 941-742-5868

March 25, 2008

Please Reply To:

Inspector Tom Berlinger
Florida Department of Law Enforcement
P. O. Box 1489
Tallahassee, FL 32302-1489

RE: FDLE FILE E1-73-7500-210/163

Dear Inspector Berlinger:

I am in receipt of your report regarding the complaint made against Kathy Dent. After reviewing your investigation, I have determined there is insufficient evidence to support the filing of any criminal charge.

Thank you for your cooperation. If you have any questions, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dennis J. Nales".

Dennis J. Nales
Chief Assistant

DJN/lm

W/O Kathy Dent (hand del)



Florida Department of
Law Enforcement

Gerald M. Bailey
Commissioner

Office of Executive Investigations
Post Office Box 1489
Tallahassee, Florida 32302-1489
(850) 410-8240
www.fdle.state.fl.us

Charlie Crist, *Governor*
Bill McCollum, *Attorney General*
Alex Sink, *Chief Financial Officer*
Charles H. Bronson, *Commissioner of Agriculture*

March 14, 2008

Dennis Nales, Chief Asst. State Attorney
Office of the State Attorney
2071 Ringling Boulevard – Suite 400
Sarasota, FL 34237

RE: FDLE File EI-73-7500-210/163

Dear Mr. Nales:

A complaint was recently filed against Kathy J. Dent, the Supervisor of Elections for Sarasota County by Winifred Rush, a voter and resident of Sarasota County. It was referred to the Florida Department of Law Enforcement Office of Executive Investigations for review. The complaint alleged possible violations of Florida's Statutes related to the administration of elections.

We have completed our investigation and included it herein for review and any action that you deem appropriate. Should you have any questions regarding our review, you may contact Inspector Tom Berlinger at (850) 410-8240.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Perez', is written over a large, stylized circular flourish.

Mark Perez
Chief Inspector
Office of Executive Investigations

MP/tpb

**FLORIDA DEPARTMENT OF LAW ENFORCEMENT
INVESTIGATIVE REPORT**

On February 11, 2008, Special Agent Supervisor Robert LeFiles of the Florida Department of Law Enforcement Office of Executive Investigations (FDLE/OEI) assigned a complaint from Winifred J. Rush, a resident of Sarasota, Florida, to Inspector Tom Berlinger for review and follow-up. The complaint was filed by Ms. Rush against Kathy J. Dent, the elected Supervisor of Elections of Sarasota County, Florida.

This report is a spin-off from a complaint that was originally filed with the Sarasota County Sheriff's Office on October 29, 2007, then later passed on to the FDLE Sarasota Field Office in early December, 2007, at the request of Sarasota County Sheriff William Balkwill. When first filed with FDLE in December, 2007, it was memorialized in FDLE Case Report # SA-73-0366 written by Special Agent Stephen D. Lieberman.

Background and Overview:

Kathy J. Dent has been Sarasota County's elected Supervisor of Elections (SOE) since 2000. Sarasota County first began utilizing what are commonly called "touch screen" voting devices in 2002 and by SOE Dent's estimate, her office has held about 40-50 different elections on touch screens since that time. Dent has publicly stated on numerous occasions that Sarasota County did not encounter any significant challenges with the use of touch screens in the four years prior to November 7, 2006.

That said, in recent years, there has been a significant and ever-growing wave of opposition mounted by opponents of the touch screen voting systems nationwide, and Sarasota County was not immune from experiencing opposition to them from a group of local residents that had misgivings about their use and/or reliability. In response to the mounting discontent, shortly after he took office as Governor of Florida, Charlie Crist shepherded an initiative through the Florida legislature that effectively eliminated touch screen voting machines from all 17 counties in Florida that were using them. It is safe to say that the ongoing use of touch screens in locales outside Florida continues to generate debate even today.

In the matter at hand, on November 7, 2006 in Sarasota County, Florida, there were one or more candidates on the ballot, including the highly publicized congressional race between candidates Jennings and Buchanan. On that same election day, there was also a citizen initiative on the ballot related to the use of touch screen voting machines. In essence and in layman's terms, the ballot initiative asked for voter input on whether to keep touch screen

Case Number:EI-73-7500	Serial #:210
Author:Berlinger, Thomas P	Office:Executive Investigations
Activity Start Date:02/11/2008	Activity End Date:

Approved By:LeFiles, Robert J.

Description:Complaint - Winifred J. Rush vs. Kathy J. Dent, Supervisor of Elections (Sarasota County)

THIS REPORT IS INTENDED ONLY FOR THE USE OF THE AGENCY TO WHICH IT WAS DISSEMINATED AND MAY CONTAIN INFORMATION THAT IS EITHER PRIVILEGED OR CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. ITS CONTENTS ARE NOT TO BE DISTRIBUTED OUTSIDE YOUR AGENCY.

--

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machines or change to a voting system that allowed for a "paper trail" for auditing purposes, particularly when the result of any particular race was being contested.

When complainant/voter Winifred J. Rush arrived at her polling place on November 7, 2006, she stated that she walked up to the initial reception/check-in table in her polling place and while in the process of checking-in, noticed two small stacks of documents situated within reach of potential voters that day.

The first document was an article written by Paul DeGregorio entitled, "*Hype Over Hacking Shouldn't Shatter Confidence.*" The second document, according to Rush, appeared to be a two-page handout of what she described as "Frequently Asked Questions" related to touch screens. Ms. Rush stated that she picked up copies of the documents without reading them, walked to the voting booth, cast her ballot, left the polling place and headed for her car. Before pulling out of the parking lot, Ms. Rush took a moment to read the documents. After reading them, Rush states that she developed the feeling that the documents were placed on the voter check-in table in an attempt to influence her vote on the touch screen issue.

In short, by making two of what she interpreted to be "pro" touch screen documents available and within reach of the voters on the election day, particularly when an issue related to touch screens was on the ballot, Winifred Rush complains that she felt that SOE Kathy Dent may have violated Chapter 102.031(4)(a) and/or Chapter 104.051(4), Florida Statutes.

STATEMENT OF COMPLAINANT WINIFRED RUSH - February 20, 2008

On February 20, 2007, Inspector Tom Berlinger met with complainant Winifred Rush at her home in Sarasota, Florida. After being placed under oath:

- * Ms. Rush stated that she holds a law degree and that she is a licensed practicing attorney in the State of Georgia, but not in Florida.
- * Ms. Rush stated that she teaches in the criminal law department and the paralegal department as an adjunct professor at Keiser University at the campus located in Sarasota County, Florida.
- * Ms. Rush affirmed that her statement was given freely and voluntarily.
- * Ms. Rush stated that the election that is the subject of this inquiry took place on November 7, 2006.
- * Ms. Rush stated that in addition to one or more candidate(s) that appeared on the ballot in Sarasota County on November 7, 2006, that a citizen initiative also appeared on the ballot, namely, the question that would decide whether voters wanted to continue with the use of touch screen voting systems in or switch to a voting system that contained a paper trail (i.e. optical readers).
- * Ms. Rush stated that on November 7, 2006, she arrived at her assigned voting precinct located within Temple Sinai, 4631 South Lockwood Ridge Road, Sarasota, Florida. When she checked in at the voter registration table and presented her identification in preparation for voting, she observed multiple copies of two different

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documents that were situated within reach of potential voters that day.

* Ms. Rush stated that the first document was a reprinted copy of a newspaper article entitled, "*Hype Over Hacking Shouldn't Shatter Confidence*," written by Paul DeGregorio (published October 26, 2006 in the *Tallahassee Democrat* newspaper). The second document appeared to be "Frequently Asked Questions" relating to the safety of using touch-screen voting machines.

* Ms. Rush stated that during the voter check-in process, she picked up a copy of each of the two documents without reading them, walked from the voter check-in table to the voting booth, cast her votes (on a touch-screen voting machine), then promptly exited the polling place.

* Ms. Rush stated that after her departure from the polling place that she walked to her vehicle. Once inside the car, Rush stated that before pulling away, that she read the two documents and determined that they were, in her opinion, "designed to somehow influence my vote" on that days' ballot initiative related to touch screen voting machines.

* Ms. Rush stated that after she read the documents, she got out of her vehicle, re-entered the polling place and told a poll worker that she wanted to file a complaint about the documents being "readily available when you check-in register to vote." The poll worker provided Ms. Rush with a blank form entitled, "*Supervisor of Elections (SOE) Incident Report Form*."

* During this interview, in the presence of Inspector Berlinger, Ms. Rush identified a copy of the one-page complaint she completed and filed with a poll worker on election day, November 7, 2006. A copy of the Incident Report form will be retained as a related item in this case file). The complaint filed by Ms. Rush in her own words, read: "2 articles are on the table where voters sign in - 1 by Kathy Dent discussing the security of our vote. The other is by reporter Paul DeGregorio of McClatchy-Tribune newspapers. I feel both articles are to influence votes against being provided with paper receipts. These articles will and do influence persons votes on this issue."

* Ms. Rush stated that when she filed the SOE Incident Report that the "poor little poll worker was clearly upset because nobody had ever filed a complaint with her before" (Rush identified the poll worker generically as an elderly woman).

* Ms. Rush stated that on the day that she filed the complaint, that the female poll worker told her that "she was advised to pass these out if anybody had any questions concerning the security of the computers." Upon filing the complaint, Rush also stated that the female poll worker presented her with a manila envelope (within which the documents were delivered to the polling places from the SOE) that had a small instructional note attached to the front of the envelope from SOE Kathy Dent.

NOTE: A copy of the instructional note from SOE Dent (SOE Dent confirmed later that she was the author of this note) that appeared on the manila envelope was secured by Inspector Berlinger. In its' entirety, the note read as follows:

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"The enclosed articles are for your use on Election Day to help you respond to the voters. Please feel free to distribute the ivory colored sheets to voters who have questions or concerns about Sarasota County voting equipment security or chain of custody. The white sheet is a more general article written by Paul DeGregorio, designed to shore up voters' confidence in electronic or touch screen voting systems. Mr. DeGregorio is chairman of the US Election Assistance Commission.")

* Ms. Rush stated that since she filed the Incident Report on November 7, 2006, that she has not heard back from SOE Kathy Dent or anyone in the SOE's office.

* Ms. Rush stated that during the year following the election (sometime during 2007) that she was contacted by an individual that identified himself as "Skip" Parish. Rush stated that Mr. Parish told her that he was doing some investigating on his own about the last election and the touch screen issue when, during the course of obtaining documents from the SOE pursuant to a public records request that he made, he came across the SOE Incident Report form that she (Rush) had filed back in November, 2006.

* Ms. Rush stated that in September or October of 2007, she was re-contacted by "Skip" Parish who told her that he had contacted an attorney named Dennis Plews, and that Plews reportedly told Parish that the placing of the two printed documents on the voting registration tables might constitute "a misdemeanor, and possible a felony." Ms. Rush then stated that Parish asked her if she would be willing to file a criminal complaint, but this time file it with the sheriff's office? Rush stated that she told Parish she was willing to file such a complaint with the sheriff's office.

* Ms. Rush stated that on October 30, 2007, she filed a criminal complaint against SOE Kathy Dent with Deputy Sheriff Kaye Tritschler of the Sarasota County Sheriff's Office (SCSO) (Incident Report #200700089361). In the complaint filed with SCSO, Rush alleged that SOE Dent may have violated Chapter 102.031(4)(a), F.S., related to "Good Order at the Polls, and Chapter 104.051(4), F.S., related to "Neglect of Duty" (as Supervisor of Elections).

* Ms. Rush stated that on December 4, 2007, that Special Agent Steve Lieberman of the FDLE Sarasota Field Office contacted her, because Sarasota County Sheriff William Balkwill had apparently declared what was tantamount to a "conflict of interest" in this matter and requested FDLE to take over the inquiry.

* Ms. Rush also stated that she was asked by the sheriff's office personnel why it took her almost a year to file the complaint against SOE Kathy Dent with the sheriff's office? Rush stated that she told sheriff's officials that it took that long because after she filed the Incident Report form with the SOE back on November 7, 2006, she assumed that her complaint was thrown away or shredded by the SOE office, or that they (the SOE) thought her complaint was frivolous and had no merit. Rush also stated that she told the deputy that once she found out from Mr. Parish that this incident might constitute a criminal act, she felt she had a "civic duty" to follow up on the issue by filing another complaint with someone other than the SOE office.

* Ms. Rush also stated that she had, in the past few months, been contacted by local reporters (Rick Barry of the Pelican Press and George McGinn of North Port

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Sun and Doug Sword of the Sarasota Herald Tribune) and allowed herself to be interviewed regarding the complaints that she filed with the SOE and the SCSO.

* Ms. Rush also stated that she was not a part of any organized "activist" group, and has never filed any complaints of this nature with anyone before this incident.

(NOTE: For the purposes of this report, the newspaper article by Paul DeGregorio will be attached as Exhibit #1. In addition, the FAQ's will be attached at Exhibit #2.)

STATEMENT OF SARASOTA COUNTY SOE KATHY DENT - February 21, 2008

On February 21, 2007, Inspector Berlinger met with Kathy J. Dent, the elected Supervisor of Elections for Sarasota County, Florida at her office located at 101 South Washington Blvd., Sarasota, Florida. After being placed under oath:

* SOE Dent affirmed that her statement was free and voluntary and acknowledged that she was aware that she could discontinue her participation in this interview at any time.

* SOE Dent stated that she took over as the Supervisor of Elections for Sarasota County in calendar year 2000.

* SOE Dent stated that with regard to the election that was held on November 7, 2006, that she remembers this day well, because this was the date that there was an election held in which there was an 18,000 undervote in the hotly-contested Jennings/Buchanan for Congress race. Aside from that race, there was also a citizens initiative on the ballot that related to voting systems that, in layman's terms, asked the voters to choose whether or not they desired to switch to a paper ballot voting system from their current touch screen devices.

* SOE Dent stated that since being elected as the SOE in 2000 that she has overseen/conducted a total of 57 different elections. This number includes primary, general, special and municipal elections.

* SOE Dent stated that she doesn't remember exactly when, but that it was long after the election held on November 7, 2006 (and the subsequent recount) when she first heard about the Incident Report that was filed by Ms. Winifred Rush. SOE Dent stated that "we literally get hundreds and hundreds of these" Incident Reports over time, and her office finds it virtually impossible to follow-up on all of them, particularly because most are minor in nature. SOE Dent also stated that that there has been a very active and vocal group of "activists" that have challenged a lot of the things that the SOE office does when conducting elections, and she readily admitted that upon hearing about Ms. Rush's complaint, she surmised that Rush was probably one of the activists within that very vocal opposition.

* SOE Dent stated that touch screen voting machines were first introduced and used in Sarasota County in 2002 and that they have been in use in this county ever since. Dent further stated that about 45-50 of the 57 elections her office has conducted since she took office in 2000 were conducted via the use of touch

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screens voting machines and that only the election held on November 7, 2006 was contested.

* SOE Dent stated that the touch screen systems are a "good system" that served her county well. Dent stated that the county had about \$3.5 million invested in touch screens. With regard to the purchase of the original batch of touch screens back in 2002, "the state gave us 1/9 of the cost, and the county picked up the rest," according to Dent.

* SOE Dent stated that on August 25, 2006, she forwarded an e-mail to all Sarasota County elections personnel and all election temporary personnel that she had received from Terry Vaughan, the SOE for Bradford County and the then President of the Florida State Association of Supervisors of Elections (FSASE). The e-mail was entitled, "Chain of Custody Verification." The e-mail from the President of FSASE read as follows:

"Hello to all!

One of this year's hot button issues resulting in lots of chatter by election advocacy groups involves the chain of custody of election equipment and/or media. Among these groups, the term "sleepovers" is one that is bandied about greatly and refers to Clerks who take custody of equipment and/or media prior to election day. Some of the publications originating from these groups indicate that Pollwatchers may be dispatched to look for potential breaches of security in chain of custody.

Of course, there is often a great deal of misunderstanding about the security and checks and balances that are part of our procedures. Just know that it would be wise not to underestimate the importance of taking the extra steps necessary (such as the use of numbered seals and chain of custody verification procedures) to be able to prove that nothing has been tampered with after you distribute your supplies, equipment, media, etc. to your Clerks.

Just thought that you should be aware that this indeed is a "front burner" issue, and on we should take seriously as we follow our security procedures."

/s/ Terry

(NOTE: A copy of this e-mail will be attached as Exhibit #3.)

* SOE Dent stated that prior to the election held on November 7, 2006, that in her efforts to "educate the public" and "instill confidence in the touch screen system" that she made numerous public appearances and sponsored public displays at malls, fairs, and any public event where there were large crowds of people, all with the goal of educating the voters about how touch screens worked and instill voter confidence in their reliability.

* SOE Dent also stated that her office had submitted op-ed pieces to local newspapers touting how well the touch screens had worked over the six-year span that they were in use in Sarasota County.

* SOE Dent stated that to place this entire scenario in proper context, one has to

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understand that in 2005-2006 that touch screen voting systems had come under fire by numerous activist groups locally and around the country. Critics of touch screens offered that there was "no paper trail" to follow if there needed to be a recount in a particular election. She stated that Lou Dobbs and other news people at the national level kept the issue alive and were able to generate a groundswell of support to get rid of touch screens. Thus, during each election that was held, part-time temporary poll workers were being peppered with questions about the touch screen machines that they couldn't answer. Thus, SOE Dent stated that she found herself having to educate, then re-educate the part-time poll workers on an a very ongoing basis, and "give them the tools that they needed to do their job" effectively. During these dozens of poll worker training sessions, SOE Dent said that the common question that the part-time poll workers asked in class was, "are you going to give us something" that we can use when the voters ask detailed questions about touch screens. SOE Dent stated that she told poll workers that they would give them some printed materials that "would help them."

* SOE Dent stated that with regard to the two documents that Ms. Rush reported that she found on the voter check-in tables on November 7, 2006, that she agreed with Rush that the article written by Paul DeGregorio ("*Hype Over Hacking Shouldn't Shatter Confidence*") was distributed to poll workers for their use that day. But, SOE Dent disagreed with Ms. Rush regarding the presence of the "Frequently Asked Questions" (FAQ) document. Dent stated that the FAQ's were actually distributed to poll workers on the day of the Primary election held two months earlier, in September, 2006. Dent went on to further state that on November 7, 2006, that there was a second document distributed to poll workers that day, but that this second document was a single-page document that she herself authored entitled, "*Your Vote Is Secure*." (Fortunately, for the purpose of this inquiry, this discrepancy does not change the essence of the complaint. Copies of all of these documents will be retained and included in the file as related items.)

(NOTE: A copy of "*Your Vote is Secure*" will be attached as Exhibit #4.)

* SOE Dent stated that she distributed a mere 25 copies of each of these two documents for use by the poll workers in each of the precincts, in an effort to assist the poll workers' ability to answer questions about touch screens, how they work, and how secure they are as a voting system. Dent pointed out that she has a lawful obligation to educate the public on the voting systems in place at any given time and that she didn't want, particularly the older part-time poll workers to be placed in a position of not being able to assist voters that might ask questions.

* SOE Dent stated that she decided to distribute these documents to the poll workers on the election days in both September and November of 2006 because the part-time poll workers were the ones on the front lines who were being confronted by voters face-to-face, and they needed to be able to answer the questions of the skeptics that were challenging and questioning the reliability of the touch screen systems. Dent stated that between 2002 and 2006, that there was very little controversy in the first four years they were using touch screens in Sarasota County until the activist groups began loudly pronouncing their concerns against them.

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* SOE Dent stated "that is my job to instill confidence in the voters" and the voting equipment and that is why we used these documents to help accomplish that task.

* SOE Dent said that if she did anything wrong, it was that she didn't go out and actively campaign against the amendment and better educate the public that there was really not a problem, for the touch screens were reliable and worked well for 40-50 elections in their county. SOE Dent stated that notwithstanding the fact that the touch screens worked well in Sarasota County for four years, that "the people voted 55/45 to eliminate the touch screens" and replace them with a system that had a paper trail. Dent stated that now that the people had spoken and thereafter, it would now be her job to fulfill the mandate of the voters to bring in a system that met their expectations.

* SOE Dent reiterated that she only printed 25 copies of the two documents for each precinct, notwithstanding the fact that there were to be large numbers of voters that could potentially show up at many of the precincts. She stated that she simply wanted to be able to give the poll workers a tool for those once in a while voters that had questions about the system, how it worked, and the security measures that were taken to secure their votes.

* SOE Dent also stated that she had included the aforementioned note on the manila envelopes within which the 25 copies of each document were distributed to each polling place that read:

"The enclosed articles are for your use on Election Day to help you respond to the voters. Please feel free to distribute the ivory colored sheets to voters who have questions or concerns about Sarasota County voting equipment security or chain of custody. The white sheet is a more general article written by Paul DeGregorio, designed to shore up voters' confidence in electronic or touch screen voting systems. Mr. DeGregorio is chairman of the US Election Assistance Commission.")

(NOTE: A copy of this message will be attached as Exhibit #5.)

To further bolster her argument that these documents were primarily designed for the use of the part-time poll workers and not to influence the election, SOE Dent also made specific reference to the e-mail that she sent on October 27, 2006 to SOE employees Cathy Fowler and Pat Kline that reads as follows:

Cathy: This is one of the articles (the article authored by Paul DeGregorio) that I want to send to all 156 polling places in the clerk's bag. Please order 5000 from the print shop and then get them to the VEF.

Pat: I want to send 25 to each precinct. There will also be a message from me that is Sarasota County specific. When it is finished, I would like to sent 25 copies of it to each precinct, as well. These will be tools for the poll workers to use when questions are asked.

Thanks to all"

(NOTE: A copy of this e-mail will be attached as Exhibit #6.)

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* SOE Dent, in response to Inspector Berlinger's question, "if a candidate running for office wanted you to place brochures promoting their campaign on the registration tables at each polling place, would they be allowed to do that? Dent responded that she would not allow that to occur.

* SOE Dent, in response to Inspector Berlinger's question, "suppose it was not a candidate, suppose the issue was fluoridation of the water system, and the question on the ballot asked voters whether or not they wanted their water flouridated? Would you allow anybody to put any printed materials on the registration tables at each polling place that was pro-fluoridation? Dent responded that she would not allow that to occur.

* SOE Dent did admit that she could see the point of how some persons might be offended by the fact that printed materials could be situated within reach of voters on the registration check-in tables, particularly when the issue related to touch screens was on the ballot that particular day, but she again reiterated that what she was trying to do was make sure that every voter had confidence in their vote.

* SOE Dent stated that it cost Sarasota County \$3.5 million to switch to optical readers from touch screen devices after the voters made the choice, and that Sarasota County was reimbursed approximately \$1 million of that cost by the state. To get the \$1 million from the state, Dent had to sign an agreement with the Secretary of State of Florida, allowing him to dispose of the touch screen devices that had formerly been used in their county.

* SOE Dent stated that after the ballot initiative, Governor Charlie Crist spearheaded a legislative initiative to end the use of touch screen voting machines in all 16 counties that were using them.

During the interview of SOE Dent, Inspector Berlinger read out loud Chapter 102.031(4)(a), which reads: "*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.*

(b) For the purposes of this subsection, the term "solicit" 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; seeking or attempting to seek a signature on any petition; and selling or attempting to sell any item."

After reading this statute aloud, Inspector Berlinger asked SOE Dent how, in her opinion, the placement of these two documents at the voter check-in table did not violate the statute? Dent responded that "it wasn't a solicitation, it wasn't telling people to vote one way or another," it was there just in case voters were asking questions... and to give my poll workers the tools needed to do their job.

* SOE Dent stated that even during the early voting process that people would come in to the office for early voting and start directing questions about "How do I know my vote is going to count?" and "What about the hackers" and "How do I know that these machines work? etc., and the employees in her office would have

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to be prepared to give an accurate and proper response to their concerns.

Inspector Berlinger then asked Dent, "In retrospect, if you had to do it all over again, would you have placed those same printed materials in the envelopes for the poll workers?" Dent said that despite the hue and cry that was occurring at the time, the poll workers needed to be in a position to answer questions that were posed to them and that she "probably would have put them in their again."

Inspector Berlinger then read aloud Chapter 104.051(4), which reads, "*Any supervisor (of elections), deputy supervisor, or election employee who attempts to influence or interfere with any elector voting a ballot commits a felony of the third degree...*" and asked SOE Dent if she feels in any way that she violated any of these statutes, Dent responded, "No, I was not attempting to influence anyone."

Inspector Berlinger then asked SOE Dent if what she did in providing these printed documents to the poll workers was not a violation of the statutes, could she see how some would feel that what she did "does not pass the smell test?" Dent responded that in retrospect, she did see the point that some may have questioned. Dent said that while she made have made a mistake in judgment by placing the materials at the polls for the workers, that it was never her intent to tell the people how to vote on the issue.

<End of formal interview>

Additionally, during casual conversation between SOE Dent and Inspector Berlinger on February 21, 2008, there was some other relevant conversation that is worth noting:

1. SOE Dent stated that a lot of voters chose to vote by absentee ballot prior to the election in question that was held on November 7, 2006. Dent suggested that had she intended to "influence the vote" on the touch screen issue, she would have included copies of these two documents with the absentee ballots that were mailed to (what was later determined to be 22,613) absentee voters. She did not do so.
2. SOE Dent also stated that by providing only 25 copies of each document to each polling place "as a tool for the poll workers" rather than enough copies to distribute one to each voter that came in to vote on the touch screen issue that day, that it should be clear to any casual observer that it was her intent to use offer these documents as "tools" designed to assist the poll workers in answering complex questions.
3. Inspector Berlinger explained to SOE Dent that he was familiar with the job of temporary part-time poll worker, as he had the occasion to work as a poll worker in a number of elections in past years. Berlinger noted that he was familiar with the fact that there are often "sets of instructions and information" that came down to the poll workers in printed form from the Supervisor of Elections on election days.
4. To allay any misunderstanding about Ms. Rush's motives for filing the complaint, Inspector Berlinger also informed SOE Dent that Ms. Rush was an individual citizen that filed a complaint and not a part of any organized "activist" group that was contesting the election. Rush testified that many months after she filed her complaint, she was contacted by other individuals in the community about her complaint. Those individuals later encouraged her to file a criminal complaint with the Sarasota County Sheriff's Office, which she did.

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CLOSING COMMENT:

Placing the DeGregorio article that reflected the positive aspects of touch screens, providing a printed sheet of FAQ's that generally were supportive of the use of touch screens or providing a copy of a message from SOE Kathy Dent entitled, "*Your Vote is Secure*" may have been a mistake in judgment, and might, perhaps, constitute a technical violation of Florida law. To support the filing of a criminal charge, though, it is a generally accepted principle that there needs to be an element of "intent" to commit a crime.

There are numerous factors present that would cause a reasonable person to believe that SOE Kathy Dent's actions that day lack criminal intent and lack any intent to effectively "influence the vote" on the touch screen issue.

Chief among them are:

1. SOE Dent has repeatedly contended and then swore under oath that the documents in question were for the education and use by the poll workers, and not a part of any organized scheme to influence the vote on the touch screen issue.
2. Evidence shows that prior to the election on November 7, 2006, SOE Dent ordered the printing of a total of 5,000 copies of each of the two documents in question. She further ordered that a total of 25 of each document be sent to each of the 156 polling places.
3. There were 156 polling places and 250,500 registered voters in Sarasota County on November 7, 2006. This translates into an average of 1,605 potential voters assigned to each polling place. To break it down further, that also translates into one copy of each document for what could have potentially been 64 voters showing up at each precinct on election day.
4. In the weeks prior to the election held on November 7, 2006, a total of 22,613 voters cast absentee ballots. Had SOE Dent intended to influence the vote on the touch screen issue, she would have been wise to send out the questioned documents with every absentee ballot. SOE Dent stated that she did not mail any of these documents with absentee ballots, and there is no evidence or testimony that suggests that the documents were ever mailed to voters that requested absentee ballots.
5. Prior to the election held on November 7, 2006, a total of 30,832 voters cast "early votes." To "early vote," a voter shows up in person to cast their ballot prior to the actual day of election. "Early voting" is most often accomplished through the use of fulltime employees of the SOE office at the courthouse or another similar location, and not necessarily through the use of temporary poll workers that are probably less-savvy about the touch screen issue than fulltime employees. Regardless, there is no evidence or testimony that any of these documents were made available to, or got into the hands of "early voters" prior to casting their ballot.
6. Of the 250,500 registered voters in Sarasota County, a total of 142,532 persons cast a ballot (via either absentee ballot, early voting or in person at the polls) in the November 7, 2006 election.
7. SOE Dent had no way to know in advance how many of the 250,500 registered voters would actually cast a ballot at the polls on November 7, 2006. A total of 88,927 voters did physically show up at the polls that day. It is safe to assume that with an average of 1,605 voters

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assigned to each polling place, that providing a mere 25 copies of each of these documents "for use as tools by the part-time poll workers" as SOE Dent has suggested, is a far more plausible scenario than any suggestion that one document for every 64 voters would effectively have any "influence" over the outcome of the election.

8. During the election held on November 7, 2006, there was a total of 1,402 part-time temporary poll workers spread over 156 polling places and they were, according to SOE Dent's testimony, the primary target audience for the documents that were distributed.

9. When SOE Dent distributed the 25 copies of the documents to each of 156 polling places on the morning of the election held November 7, 2006, they were packaged in a manila envelope that had a personal message from her attached to each envelope. The message from Dent to poll workers began with the words, "***The enclosed articles are for your use on Election Day to help you respond to the voters,***" suggesting her "intent" that day was exactly that, to provide the documents as "tools" for the poll workers as she has repeatedly alleged.

10. There were 250,500 registered potential voters in Sarasota County on November 7, 2006, and a total of 5,000 copies of each document printed. Given that written evidence shows that Dent was distributing the documents as "tools" for the poll workers, it would be difficult, even for Dent's most harsh critics to make the case that she was actively trying to influence the outcome of the election via one pair of documents for every 64 registered voters, even if they were forced on voters until they ran out, which they were not.

This report and the relevant documents that have been mentioned within the report will be provided to the Office of State Attorney Earl Moreland of the 12th Judicial Circuit of Florida for his review and consideration for any action he deems is appropriate.

Copies of the documents in question; the e-mail from SOE Kathy Dent ordering 5,000 copies of the DeGregorio article; and other related materials will be retained in the file as Related Item # INV-163.

Attachments:

Exhibit #1 - Article by Paul DeGregorio entitled, "*Hype Over Hacking Shouldn't Shatter Confidence*"

Exhibit #2 - Document of "Frequently Asked Questions"

Exhibit #3 - E-mail from Terry Vaughan, President of FSASE

Exhibit #4 - "*Your Vote is Secure*" by SOE Kathy J. Dent

Exhibit #5 - Message from Kathy Dent attached to manila envelopes that were distributed as "instructions" to poll workers on the intended use of the documents

Exhibit #6 - E-mail from SOE Kathy Dent to subordinate employees Cathy Fowler and Pat Kline regarding the printing of 5,000 of the documents for use as "tools for the poll workers to use when questions are asked."

EXHIBIT
#1

Article published Oct 26, 2006 in the Tallahassee (FL) Democrat

Your vote will count

Hype over hacking shouldn't shatter confidence

By Paul DeGregorio

McCLATCHY-TRIBUNE NEWSPAPERS

Americans have been bombarded with tales about how easy it is to hack into a voting machine. Academics, computer scientists and others tell us that they have done it and that we cannot trust voting systems, specifically electronic or touch-screen systems.

Ironically, all of these experiments took place in the sterile environment of a laboratory. In each instance, these experts demonstrated only that, with unlimited time and resources, they could hack a voting machine. What does this prove? Nothing. Is there any proof that a voting system has successfully been hacked during an election? No. Can the hype over hacking discourage voters from participating in our elections? It certainly can.

The real question is whether voting systems are secure enough to withstand potential threats on Election Day. And the answer is yes. Ultimately, real security is the result of systematic preparation, which includes prevention, detection, reaction and recovery. It is not just software that protects a voting system; it also is protected by rigorous testing, physical barriers, election officials, poll workers, law enforcement and voters.

Election officials are working hard to make sure that voting equipment is stored in secure locations and that they have established a chain of custody for the storage, maintenance and transport of polling equipment. Before Election Day, officials test and retest voting equipment as well as train staff and poll workers.

Debate about making sure our voting systems are secure, accurate and reliable is healthy. Conducting hacking experiments without working with election officials in a real-world election environment is not. I strongly encourage experts and others with concerns to join forces with election officials and identify the real security risks - set up mock polling places with all of the Election Day safeguards, including poll workers. Even more useful would be for these experts to serve as poll workers or technicians on Election Day to gain real-world experience. That said, a word of caution to potential hackers: Anyone trying to hack a voting machine will be prosecuted. Voters' rights should never be tampered with - for any reason.

I have worked in the field of elections at home and abroad for more than 21 years, and whether voters are using paper ballots or electronic voting machines,

details matter. It is just as important to make sure the voting equipment is working properly as it is to have procedures and well-trained people in place to control access and maintenance to the equipment properly.

The bottom line is that our nation's voting equipment, election results and election officials can and should be trusted. Election officials are some of the hardest-working, most dedicated public servants in the country, and they welcome input and support to keep our democracy strong and elections trustworthy. They deserve constructive criticism and solutions, not baseless attacks and unfounded accusations about the equipment they use. Attacking their integrity and the system in broad strokes is even less productive.

This election year is one of change, challenge and progress in how our citizens will vote. At least one-third of Americans will vote on new equipment, many contests may be close, and voters (hopefully) will turn out in great numbers at polling places throughout the nation. For the first time, thanks to the Help America Vote Act and modern voting equipment, many people with disabilities will have the ability to vote independently. Provisional voting is now available in every state. We have come a long way since 2000, but challenges related to the transition to new equipment remain. But changes along the way are a good thing, because it builds trust in election systems that can be verified to further empower confidence among voters.

Americans should be confident that their vote will be counted, whether they touch a screen or fill in an oval. The integrity of the system is not in hands of hackers, professors, interest groups or politicians in Washington - it is managed by local election officials, as it always has been. No one should be intimidated by the hype over hacking. Vote on Nov. 7. You can count on it.

Mr. DeGregorio is Chairman of the U.S. Election Assistance Commission (EAC) and served as the Director of Elections in St. Louis County, Missouri and as Executive President and CEO of the International Foundation of Election Systems (IFES), a leading institution involved in the promotion of democracy worldwide.

Exhibit
#2

Frequently Asked Questions

Q. Is touch screen voting safe? How do I know my vote will count?

A. Since implementing our present voting system, we have conducted 39 successful elections in Sarasota County, including the 2002 primary and gubernatorial elections and 2004 primary and presidential elections. Touch screens have been used in this country since 1984 and there has never been reported, documented, or proven fraud uncovered or discovered. Our system meets the Federal Voting Systems Standards that state the voting equipment will count votes to an accuracy level of one error in one million votes. F.S. 101.015 defines the minimum standards for hardware and software for electronic and electromechanical voting systems.

Q. Why won't I get a paper receipt to confirm my vote?

A. There is no system certified by the Florida Department of State Division of Elections for use in the state at this time that provides a printed receipt for any voting system.

Q. Does the touch screen system have a paper trail?

A. The touch screen system used in Sarasota County has the ability to print out every ballot record, if necessary. In addition, for each election, we print out the precinct tabulation at each precinct at the close of the polls.

Q. Can someone hack into the touch screen voting system?

A. The touch screen system is not networked or connected to the Internet. The voting machines are plugged into the wall for electrical power only. Our election software computer is free standing. It is not networked within the office or connected to the Internet. Someone with malicious intent would need to physically change each of our 1600 units in plain view of poll workers and voters in each precinct. Additionally, there are several layers of security while the machines are in the custody of the SOE.

May I vote using a paper ballot?

If you are properly registered in the county and eligible to vote in this precinct, you may vote on touch screen only. For the next election, if you'd like to vote a paper ballot, you may request to receive an absentee ballot (paper) directly from the Supervisor of Elections office (861-8600). Absentee ballots are not available at the precinct on election day. Voted absentee ballots must be received (by mail or delivered in person) by the Supervisor of Elections office no later than 7 p.m. on election day.

Q. I would like to vote using a provisional ballot in the precinct. Why am I not permitted to do so?

A. Florida law provides for the use of a provisional ballot only in the following cases:
A voter claiming to be properly registered in the state and eligible to vote at the precinct in the election, but whose eligibility cannot be determined (F.S. 101.048)
Any person who votes in an election after the regular poll-closing time pursuant to a court or other order extending the statutory polling hours (F.S. 101.049)
A person who fails to provide the required photo and signature ID at the polls on election day (F.S. 101.043)
A person whose right to vote is challenged by any elector or poll watcher (F.S. 101.111)

A person who has received an absentee ballot from and returned it to the supervisor of elections office, but goes to the precinct on election day maintaining he/she has not returned the ballot and remains eligible to vote (F.S. 101.69)

A person who has received an absentee ballot from the supervisor of elections and it cannot be determined whether the ballot has been returned to and received by the supervisor (F.S. 101.69)

All other voters must vote using the touch screen system in the precinct on election day..

Q. Are all absentee ballots counted?

A. Yes. FS 101.68 2(b) defines the canvassing of absentee ballots. It states: To ensure that all absentee ballots to be counted by the canvassing board are accounted for, the canvassing board shall compare the number of ballots in its possession with the number of request for ballots received to be counted according to the supervisor's file or list.

Why did you move my polling place?

The relocation of polling places occurs for many reasons. The most common reasons are districting, population shifts, or lack of accessibility by all voters. Sometimes, a polling place may no longer be available.

Do I have to vote everything on my ballot for my vote to count?

A. No. It is your prerogative to abstain from selecting a race or issue on your ballot. When you cast your ballot, the selections you make will count. When the elector does not properly designate any choice for an office or ballot question, and the tabulator records no vote for the office or question, this is called an "under vote". F.S. 97.021 (33)

Why do I have to vote the same party ballot as my registered party affiliation?

FS 101.021 states that the elector is to vote the primary ballot of the political party in which he is registered. It is unlawful for any elector to vote in a primary for any candidate running for nomination from a party other than that in which such elector is registered. The only exception to this is covered in Article VI, Section 5(b) of the Florida Constitution. (See next question)

I am registered as Democrat or nonpartisan. Why are Republican candidates on my ballot?

Article VI, Section 5(b), Florida Constitution, provides that if all candidates for an office have the same party affiliation and the winner will have no opposition in the general election, all qualified electors, regardless of party affiliation, may vote in the primary election for that office. This is called a Universal Primary Contest.

I have just registered to vote or changed my party affiliation within the last few weeks. Why can't I vote in this election or why can't I vote using my new party affiliation?

S. 97.055 states that the registration books must be closed on the 29th day before each election must remain closed until after that election. When the registration books are closed for an election, voter registration and party changes must be accepted but only for the purpose of subsequent elections.

EXHIBIT #3

Dent, Kathy

From: Crete, Karen
Sent: Friday, August 25, 2006 2:03 PM
To: Dent, Kathy
Subject: RE: Chain of Custody verification

Kathy, do you want for me to insert "PWs of 2 different parties should document the custody sheets on election morning" in our Action Alert?

Karen

E-MAIL
FROM TERRY VAUGHAN,
PRES. OF FSASE

-----Original Message-----

From: Dent, Kathy
Sent: Friday, August 25, 2006 2:00 PM
To: Elections; ElectionsTemps
Subject: FW: Chain of Custody verification
Importance: High

I received this from our FSASE president. It is a must read for all staff.

Subject: Chain of Custody verification

Hello to all!

One of this year's hot button issues resulting in lots of chatter by election advocacy groups involves the chain of custody of election equipment and/or media. Among these groups, the term "sleepovers" is one that is bandied about greatly and refers to Clerks who take custody of equipment and/or media prior to election day. Some of the publications originating from these groups indicate that Pollwatchers may be dispatched to look for potential breaches of security in chain of custody.

Of course, there is often a great deal of misunderstanding about the security and checks and balances that are part of our procedures. Just know that it would be wise not to underestimate the importance of taking the extra steps necessary (such as the use of numbered seals and chain of custody verification procedures) to be able to prove that nothing has been tampered with after you distribute your supplies, equipment, media, etc. to your Clerks.

Susan Gill has made a suggestion that we might want to have poll workers from opposite parties take part in the seal verification process the morning of the election.

Just thought you should be aware that this indeed is a "front burner" issue, and one we should take seriously as we follow our security procedures.

Terry

Exhibit
#4

YOUR VOTE IS SECURE

By Kathy Dent
Sarasota County Supervisor of Elections

Since 2000, Florida has led the nation in election reform. Our voting system standards and certification process are recognized as the most stringent in the nation. In addition, all of Florida's 67 supervisors of elections must follow detailed security procedures with multiple safeguards to protect each and every vote. Voting security is maintained by having a combination of the right policies, procedures and people. Consider the following.

All Sarasota County Supervisor of Elections offices and facilities are equipped with video surveillance cameras that continuously monitor critical areas and have alarm systems with connections to monitoring companies 24/7. After-hours access to all SOE facilities is limited. Access to the Voting Equipment Facility requires use of a proximity card and is restricted to personnel who have been assigned a security code by the supervisor of elections.

All passwords and encryption keys provided by equipment vendors are changed and secured in a controlled environment. Access to any device, election media, or election management system that requires the use of a password or encryption key is always witnessed by at least two authorized SOE staff members.

Our systematic and complete chain of custody procedures eliminate the opportunity for an individual or group of individuals to tamper with any part of the voting system. We have a rigorous training program in place for election officials and staff that stresses these procedures.

Every piece of voting equipment and every ballot is identified and tracked from the beginning of the election process to the end. Every transfer of custody of election equipment or ballot is performed by two or more people, employed by my office, and recorded.

We test our voting machines and tabulating equipment before every election to ensure they are recording and tabulating correctly. These tests are always advertised and open to the public.

Following the testing, the voting machines are padlocked and sealed with numbered, tamper-evident seals and access to them is restricted. The tabulation room in the main SOE office in the Terrace Building, which houses the central computer, is equipped with security cameras and alarmed and access is restricted.

On Election Day at your polling place, poll workers remove the locks, break the seals and verify the seal numbers. At the end of the day, again under dual or multiple control, poll workers secure, record, and return election devices and materials to the SOE office.

It is not just the software that protects our touch screen voting system. The system is also protected by rigorous testing, physical barriers, election officials, poll workers, law enforcement and you, the voters.

As your supervisor of elections, my pledge to you is that there is no greater priority than protecting the integrity of our democratic process. You can be assured that Sarasota County's voting and tabulation systems and, therefore, your vote, are secure.

-end-

The enclosed articles are for your use on Election Day to help you respond to voters. Please feel free to distribute the ivory colored sheets to voters who have questions or concerns about Sarasota County voting equipment security or chain of custody. The white sheet is a more general article written by Paul DeGregorio, designed to shore up voters' confidence in electronic or touch screen voting systems. Mr. DeGregorio is chairman of the US Election Assistance Commission.

EXHIBIT
5

• **-----Original Message-----**

From: Dent, Kathy
Sent: Friday, October 27, 2006 12:08 PM
To: Fowler, Cathy; Kline, Pat
Cc: Elections; ElectionsTemps
Subject: FW: Op-Ed piece

• Cathy:

• This is one of the articles that I want to send to all 156 polling places in the clerk's bag. Please order 5000 from the print shop and then get them to the VEF.

• Pat:

• I want to send 25 to each precinct. There will also be a message from me that is Sarasota County specific. When It is finished, I would like to send 25 copies of it to each precinct, as well. These will be tools for the poll workers to use when questions are asked.

• Thanks to all.

• **-----Original Message-----**

From: pdegregorio@eac.gov [mailto:pdegregorio@eac.gov]
Sent: Thursday, October 26, 2006 7:41 PM
To: pdegregorio@eac.gov
Subject: Op-Ed piece

• I thought you might like to see this Op-Ed piece that is being published in several newspapers around the country.

Article published Oct 26, 2006 in the Tallahassee (FL) Democrat