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April 19, 2004

Honorable Betty Ferguson  
Miami-Dade County Commissioner  
Clark Government Center  
111 N.W. 1st Street  
Miami, FL 33128

Dear Commissioner Ferguson:

Thank you for allowing the Greater Miami Chapter of the ACLU to testify today regarding voter verification of the accuracy of the Direct Recording Electronic (DRE) Voting Machines purchased by Miami-Dade County from ES&S. I want to make clear at the outset that the ACLU is not an expert regarding computerized voting or DREs. But in the last two years, we have learned enough to make us both concerned and wary: Concerned because of the vital importance to our democratic system of accurate vote tabulation, and wary because of the many problems that have surfaced in the use of DREs, and the many issues that have been raised by experts regarding their accuracy and susceptibility to manipulation.

Although the ACLU favors a voting system that includes a means of preserving a permanent independent voting record verified by each voter simultaneously with the vote cast, it appears unlikely that there will be sufficient time to purchase and install the necessary hardware for this before the November 2004 elections. For this reason, we believe that it is urgent that the Commission take whatever steps can be taken now in order to ensure that the DREs are capable of and extremely likely to produce accurate vote counts, as well as timely and accurate recounts should recounts be necessary.

We therefore urge the Commission to **retain outside, independent experts** to review at least two things.

**First**, qualified experts should review **whether the ES&S DREs have the capacity to produce adequate & accurate audits of the votes cast on each machine**. This is necessary for diagnostic purposes, in order to test for accuracy, to ensure against programming errors, to check for programming vulnerabilities to manipulation, and for purposes of a "MANUAL" recount, which is mandated by state law in cases of elections within 1/2 of 1 percent. These qualified experts should test the software and the hardware capacity of the ES&S DREs to determine whether and under what conditions they can be expected to yield an accurate count and recount of the votes tallied during an election.

**Second**, qualified experts should review whether the ES&S DREs have the capacity to produce an adequate and accurate audit of the machines **in a timely fashion**, i.e., prior to the certification deadline set by state law.

The Commission needs to retain the services of an independent expert for many reasons,

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a few of which are listed above. In addition, there appear to be no plans to devote the same financial and personnel resources in conducting the November 2004 election as were spent on the November 2002 election. Finally, the ACLU study of the September 10th 2002 primary election, the first to use the ES&S DREs, showed -- in a study of only 31 mainly minority precincts in Miami -- a "lost vote" rate of 8.2% -- far greater than when the County used the notoriously defective punch-card voting machines. The "lost vote" rate is what the ACLU's experts referred to as the difference between the number of people signing in at the polls and the number of votes recorded on the ES&S DRE voting machines.

The consequences of inaction on the part of the Commission, given what is at stake in the November election, the anxiety that voters in Florida and Miami-Dade County feel about the integrity of their vote, and the extent to which the world will be watching -- and judging our conscientiousness and competency -- require that the Commission make this important investment. I very much appreciate the time and effort that you, Commissioner Morales and Commissioner Moss have expended in looking into this matter.

Respectfully,

Terry A. Coble, President  
Greater Miami Chapter of the ACLU

c/ Honorable Jimmy Morales  
Honorable Dennis Moss