

July 25, 2006 Via Facsimile (2 Pages) and E-Mail

Mr. Lester Sola
Supervisor of Elections
Miami-Dade County, Florida
2700 NW 87th Avenue
Miami, FL 33172

Re: Poll Closing Procedures

Dear Supervisor Sola:

As you know, the Miami-Dade Election Reform Coalition [MDERC "the Coalition"] has been working with the Election Department to insure fair and accurate elections. One of our primary efforts has been directed towards the observation of poll closings.

In past elections, our ability to observe poll closings has been frustrated in many precincts by the clerks' misunderstanding of the law and the public's right under it to observe the closing proceedings. Some precinct clerks seem to have been intimidated or confused by our presence, and in some instances even have denied us access to the polling place or to what should have been public information. Others have been extremely open and considerate. Our experience has varied from precinct to precinct.

We believe that standardizing procedures for public access to and observation of the closing process would be in both of our interests. We are cognizant of the need for the election clerks and staff to work free from undue interference and pressure, and we couldn't agree more. Standardized procedures would help to ensure that end as well. Moreover, we believe, that a staff clearly instructed in appropriately uniform methods and procedures is a staff that can ultimately work more smoothly and efficiently.

As you know, several members of the Coalition observed the poll closing for the South Miami election that was held on February 14, 2006. Dan McCrea, Government Relations Chair, Professor Martha R. Mahoney, Barbara H. Brandon and myself, President of the Coalition, attended this closing. You personally supervised that closing and the access that was not provided to us on that evening was troubling.

The voting and the closing occurred in the Counsel Chambers. As you remember, there is a gated portion of the room for the public to sit and an area where the clerks and other poll workers were working. You directed the four of us to sit behind the gate. We were at least twenty feet from the area where the pollworkers were counting signatures and authorization slips. This sequestration prevented us from determining the signature counts in the precinct registers and the authorization slip totals. In addition, we were unable to record the serial numbers for each voting machine or document the individual voting machine counts.

This lack of access is not within the spirit or the letter of the applicable Florida Statutes and the Division of Elections Polling Place Procedures Manual.

101.5614. Canvass of returns

(1) As soon as the polls are closed, the election board shall secure the voting devices against further voting. The election board shall thereafter, in the presence of members of the public desiring to witness the proceedings, verify the number of voted ballots, unused ballots, provisional ballots, and spoiled ballots to ascertain whether such number corresponds with the number of ballots issued by the supervisor. If there is a difference, this fact shall be reported in writing to the county canvassing board with the reasons therefor if known. The total number of voted ballots shall be entered on the forms provided. The proceedings of the election board at the precinct after the polls have closed shall be open to the public; however, no person except a member of the election board shall touch any ballot or ballot container or interfere with or obstruct the orderly count of the ballots.

104.29. Inspectors refusing to allow watchers while ballots are counted

The inspectors or other election officials shall, at all times while the ballots are being counted, allow as many as three persons near to them to see whether the ballots are being correctly read and called and the votes correctly tallied, and any official who denies this privilege or interferes therewith is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Both of these provisions provide members of the public with a statutory right to observe how a polling place is closed. We do not seek to interfere with this process; we merely wish to observe quietly "whether the ballots are being correctly read and called and the votes correctly tallied." Id.

In addition, the recently revised Polling Place Procedures Manual addresses this issue: Anyone in the public may watch the proceedings of the election board after all voters have finished voting and the polls are closed. Do not allow anyone to pressure you for results, interfere in any manner, or touch any ballot or ballot container or interfere with the counting of the ballots. Take your time because accuracy is extremely important in the completion of your duties. Ballot accounting must be conducted at the end of each day during early voting and on election day after the polls close.

We think the Manual strikes the right balance between access to poll closing procedures and the county's legitimate concern that non-partisan observers watching the closing not interfere with the process. In addition we would point you to the graphic on page 16 of the Manual that we have attached to this letter as further illustration. Finally, this Manual has the force of a regulation.

Moving toward our mutual goal of accuracy in voting, the Coalition is interested in observing and recording the following during closing: (1) the serial numbers from each voting machine; (2) the individual voting machine vote counts; (3) the counts of authority slips, certificates, and voter signatures, (4) discrepancies between machine vote counts and voter signatures, (5) totals of provisional ballots used, challenge forms and affidavits submitted and other issues that arise during poll closing. This recording and observation function requires that the public be allowed to hear, see, and take notes on any and all parts of the process. Of course, members of the public are not allowed to disrupt or interfere with your responsibilities.

In addition, you know that during the November 2004 general election we experienced extreme difficulties in learning the counts, especially during early voting. We think that the precinct clerk, or staff appointed by the clerk, should clearly and audibly read out the above figures as he or she records them, so that the observers may also record them.

Directives should be communicated to all precinct clerks so that public access to closing procedures will be uniform throughout the county.

Our purpose is to help create solutions and restore public credibility in our elections. We hope you will consider these suggestions in the spirit in which they are proposed. We need to work together to insure the highest standards in accurate and fair elections for Miami Dade County. We look forward to your response to this proposal at your earliest convenience.

Respectfully,

Sandy Wayland
President

cc County Manager George Burgess