

## Elections

# Another vote audit flaw

In review of iVotronic's performance in Homestead, 162 ballots failed to appear, problem slow to surface

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By: Matthew Haggman

**F**or the second time in two weeks, an internal memo from a Miami-Dade County election official has exposed a new round of auditing flaws that have plagued the iVotronic touch-screen voting machines used in Miami-Dade and Broward counties.

The memo also indicates that the problem had been brought to the attention of Miami-Dade Supervisor of Elections Constance A. Kaplan two months earlier than she had said she first had learned of it. Its disclosure has prompted charges that Kaplan violated state open records laws by failing to disclose the memo sooner.

The latest memo, dated Oct. 10, 2003, and addressed to Kaplan, said a review of the Oct. 7, 2003, mayoral and City Council primary election in Homestead found that the iVotronic system's audit log failed to account for 162 ballots cast.

All of the votes, however, were accurately tabulated, according to the machines' manufacturer, Elections Systems & Software of Omaha, Neb.

According to the latest memo, the system's audit log did not recognize five of the touch screen machines used in the Homestead election.

The memo was sent by Orlando Suarez, division manager of the county's Enterprise Technology Services Department.

Lida Rodriguez-Taseff, a member of the Miami-Dade Election Reform Coalition, which obtained an earlier Suarez memo through a public records request, said the latest memo reported an even more serious problem with the voting machine software.

"Instead of just voting machine serial numbers being transposed, you have votes from five machines missing from the audit," said Rodriguez-Taseff, a partner at Duane Morris in Miami.

But in an interview, Kaplan denied that Suarez's memos about the audit problems caused any concerns about the accuracy of iVotronic vote tabulations. "There is no evidence shown that any of our elections have been in error as far as tabulation," she said.

On the other hand, she criticized ES&S for the audit problems and the company's failure to solve them.

"I am disappointed in the vendor. They have let us down in this area," she said. "They were advised a year ago and a solution has not come to fruition. I am very discouraged by this type of conduct."

A company spokesman said late Tuesday that the integrity of the Homestead election was never called into question and that the audit problem spotted by Suarez was rare.

"What Mr. Suarez noticed in his two memos was an anomaly that involves the formatting of audit reports," said the spokeswoman, Jill Friedman. "We want to underscore the fact that this anomaly does not involve tabulation of votes and does not in any way call into question the integrity of the election."

Next Wednesday, she said, the company has scheduled a test of new software with the state of Florida.

Florida Secretary of State Glenda Hood's office did not return calls for comment.

Suarez, who also sent a June 6, 2003, memo on this subject, which was reported by the Daily Business Review earlier this month, did not respond to requests for comment.

The audit log in the iVotronic machines is supposed to record all activity that occurs on the touch-screen voting machines; it can be used to verify total vote counts. Critics say that if the audit log does not work, the credibility of the election process can be thrown into doubt because there is no other way to verify that all votes cast were recorded.

"The audit log should verify that the machine is functioning properly and has been used properly to record the votes," said University of Miami law professor Martha Mahoney, a member of the election reform coalition. "If some machines are missing from the logs, that verification cannot be made for those machines."

The Review reported this month that Suarez sent a similar e-mail warning about the audit glitch to an ES&S official on June 6, 2003.

In that memo, he said he had found a "serious bug" in the voting machine software when he was analyzing the iVotronic



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system's performance during a May 21, 2003, municipal run-off election in North Miami Beach. He discovered a 38-vote discrepancy between the audit report and the iVotronic's so-called vote image report.

That memo had been brought to the attention of the Miami-Dade County Commission elections subcommittee by the Miami-Dade Election Reform Coalition at the subcommittee's April 19 meeting. The coalition, a group of civic activists, obtained the memo through a public records request.

At that meeting, Kaplan acknowledged the existence of the audit report problem and said that it also arose in the March 2004 election.

This month, Kaplan told the Review that the glitch Suarez discovered was merely in how the machines generate audit records. She said her office had come up with a "work-around" solution and that it had ordered new software to solve the problem.

After reading the Review's May 13 article about the June memo, Secretary of State Hood wrote to Kaplan and said she was "disturbed to have only recently learned that your office has been dealing with an equipment anomaly in the ES&S voting as early as May 2003."

Hood, whose office is responsible for certifying election machinery and software, demanded copies of any documents related to the flaw.

On May 18, Kaplan responded to Hood, explaining that she "must constantly strike a delicate balance between raising valid concerns, such as the ones in question regarding the audit trial mentioned in your letter, and not necessarily alarming the public."

Several documents were attached to Kaplan's letter, including Suarez's October memo.

In October, Suarez had sent a second memo about the audit glitch — but to Kaplan rather than ES&S. "This time, rather than submitting my concern directly to ES&S, I am bringing them to your attention so that you can personally address them," Suarez wrote Kaplan.

The disclosure of the October memo has prompted the election reform coalition to claim that Kaplan violated Florida's open records law when she failed to turn over that memo in response to the group's public records request.

Coalition leaders also question why Kaplan, at the April 19 meeting of the County Commission's elections subcommittee, told the panel that she was not aware of the audit problem until notified by the election reform coalition.

"I was not aware of it until the reform coalition brought it to my attention a couple months ago," Kaplan on April 19 told the committee, which consists of Commissioners Betty T. Ferguson, Jimmy L. Morales and Dennis T. Moss.

But in an interview Tuesday, Kaplan said she recalls receiving and reading Suarez's October e-mail. "I talked to Orlando about it and immediately took it up with ES&S," Kaplan said. "A work-around was provided to us."

Rodriguez-Taseff expressed anger that Kaplan did not reveal Suarez's October memo to the coalition when the election reform group filed its comprehensive records request for all records relating to any investigation done by Suarez.

"I believe they were hiding it because they know it is incriminating and did not want the public to know," Rodriguez-Taseff said. "The Department of Elections broke the law by hiding this document despite our repeated requests."

She also criticized Kaplan's failure to tell the County Commission's elections subcommittee about the problems reported in the second Suarez memo.

"I am shocked that Constance Kaplan would mislead the subcommittee on elections by telling them that she learned about it from coalition in December. That is obviously not the case. She learned about it from Orlando Suarez back in October. Yet she misled the commission."

Kaplan said she misspoke at the April 19 meeting, and that's the reason she didn't inform the County Commission elections subcommittee about the October memo. And she said through a spokesman that the reason she didn't provide the October memo to the election reform coalition was because of an "oversight."

Many critics of touch-screen voting, including U.S. Rep. Robert Wexler, D-Palm Beach Gardens, have urged installation of a paper backup system to allow manual recounts of individual ballots in close elections.

Previously, opponents of a paper backup system — including Gov. Jeb Bush and Hood — have argued that a paper trail is unnecessary because of the presence of the audit logs.

On Tuesday, U.S. District Judge James I. Cohn in West Palm Beach dismissed Wexler's lawsuit demanding installation of a paper backup system on the grounds that Wexler also has a state suit pending on the issue.

But the latest memo could increase pressure on state and county officials to address the growing criticisms of the electronic voting systems as the November presidential election approaches.

The iVotronic system is one of the main systems in use nationally. Palm Beach County uses a different touch-screen system, manufactured by Oakland, Calif.-based Sequoia Voting Systems.

It's estimated that 30 percent of registered voters across the country will use touch-screen machines this fall. But there have been problems and unexplained anomalies since the electronic machines came into wide use in 2002.

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