

Citizens' Oversight Projects (COPs)

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CitizensOversight.org
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November 23, 2016



TO: Supervisor of Elections Susan Bucher (mailbox@pbcelections.org)
County Commissioner Steven Abrams (SAbrams@pbcgov.org)
Judge Leonard Hanser (no email available, please forward to him)
Palm Beach Clerk Sharon Bock (clerkweb@mypalmbeachclerk.com)
Other County Commissioners: BCC-AllCommissioners@pbcgov.org
Florida Secretary of State, Division of Elections: DivElections@dos.myflorida.com
Election Assistance Commission: bwhitener@eac.gov
ElectionTeam email list: ElectionTeam@CitizensOversight.org
Election Integrity email list: ElectionIntegrity@citizenoversight.org

RE: Formal Complaint regarding Election Audit Fraud at the Random Selection Meeting held on November 18, 2016 in Palm Beach County, Florida.

1. Complainant Ray Lutz is a U.S. Citizen and is the National Coordinator for Citizens Oversight, Inc, a 501(c)3 Delaware Corporation with members nationwide and specifically in Florida. Citizens Oversight, also known as Citizens Oversight Projects or “COPs” has as its primary mission increase civic engagement and has become an expert on elections and most specifically, election audits.

2. A presidential general election was held on November 8, 2016.

3. The Florida election code defines the Canvassing Board in section 102.141

102.141 County canvassing board; duties.—

(1) The county canvassing board shall be composed of the supervisor of elections; a county court judge, who shall act as chair; and the chair of the board of county commissioners.

4. The Supervisor of Elections of Palm Beach County is Susan Bucher.

5. The list of Canvassing Board and other staff members present on Nov 18, 2016, was provided in response to a public records request, as follows:

Members of Canvassing Board for 2016 General Election:

Judge Leonard Hanser
Commissioner Steven Abrams
Supervisor Susan Bucher

Staff present for meeting:

Charmaine Kelly

Erin Lewandowski
Samantha Wyman
Jeff Darter
Tony Enos

6. Four members of the public were present, Complainant Lutz and three Florida residents.

7. One of the duties of the Canvassing Board is the “voting system audit” as specified by statute 101.591, excerpted below:

101.591 Voting system audit.—

(1) Immediately following the certification of each election, the county canvassing board or the local board responsible for certifying the election shall conduct a manual audit or an automated, independent audit of the voting systems used in randomly selected precincts.

(2)(a) A manual audit shall consist of a public manual tally of the votes cast in one randomly selected race that appears on the ballot. The tally sheet shall include election-day, vote-by-mail, early voting, provisional, and overseas ballots, in at least 1 percent but no more than 2 percent of the precincts chosen at random by the county canvassing board or the local board responsible for certifying the election. If 1 percent of the precincts is less than one entire precinct, the audit shall be conducted using at least one precinct chosen at random by the county canvassing board or the local board responsible for certifying the election. Such precincts shall be selected at a publicly noticed canvassing board meeting.

8. The notice of a public meeting of the canvassing board which included the audit was posted on the county SOE website.

POSTED: November 15, 2016

THE PALM BEACH COUNTY CANVASSING BOARD WILL CONVENE AT 4:00 PM ON FRIDAY, NOVEMBER 18, 2016 TO CANVASS VOTE BY MAIL BALLOTS RECEIVED FROM OVERSEAS VOTERS AND CONDUCT OTHER BOARD DUTIES UNTIL THE OFFICIAL RESULTS OF THE NOVEMBER 8, 2016 GENERAL ELECTION ARE OBTAINED. AFTER THE OFFICIAL RESULTS ARE CERTIFIED THE CANVASSING BOARD WILL CONDUCT THE RANDOM SELECTION OF THE RACE AND RESPECTIVE PRECINCTS FOR THE MANUAL AUDIT.

ALL CANVASSING BOARD ACTIVITIES WILL TAKE PLACE AT THE LOCATION LISTED BELOW:

SUPERVISOR OF ELECTIONS SERVICE CENTER
7835 CENTRAL INDUSTRIAL DRIVE
RIVIERA BEACH, FLORIDA 33404

Public notice of the dates and times of all meetings will be posted on the website at www.pbcelections.org

In accordance with the Americans with Disabilities Act (ADA), if any person with a disability, as defined by the ADA, needs special accommodation to participate in these meetings, then not later than two business days prior to the pertinent meeting or meetings, he or she should contact the Supervisor of Elections at (561) 656-6200.

Please be advised that you are entering a building which is equipped with security cameras which will record your activities while visiting. Entry into this building constitutes your agreement to be so recorded.

9. As this is a public meeting, it is subject to the Florida Open Meeting laws. Florida has been a strong proponent of open meeting laws. The primary provision is Section 286.011, as follows:

Open Meeting Law

286.011 Public meetings and records; public inspection; criminal and civil penalties.—

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

10. Furthermore, the Florida Constitution was amended specifically to reinforce these rights to public meetings in 1993.

SECTION 24. Access to public records and meetings.—

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

11. The Canvassing Board is such a body that must hold open meetings and any records produced are public records that are subject to inspection by the public.

12. The Florida Constitution defends the freedom of speech.

SECTION 4. Freedom of speech and press.—Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for defamation the truth may be given in evidence. If the matter charged as defamatory is true and was published with good motives, the party shall be acquitted or exonerated.

Case law supports the notion that members of the public can record such public meetings using video, audio, photography, or other means.

13. In addition, Florida Sunshine Laws allow public inspection of records

Florida Sunshine Law -- Public Records

119.07 Inspection and copying of records; photographing public records; fees; exemptions.—

(1)(a) Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

(b) A custodian of public records or a person having custody of public records may designate another officer or employee of the agency to permit the inspection and copying of public records, but must disclose the identity of the designee to the person requesting to inspect or copy public records.

(c) A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed.

(d) A person who has custody of a public record who asserts that an exemption applies to a part of such record shall redact that portion of the record to which an exemption has been asserted and validly applies, and such person shall produce the remainder of such record for inspection and copying.

(e) If the person who has custody of a public record contends that all or part of the record is exempt from inspection and copying, he or she shall state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute.

14. With these facts in mind, the following complaint is hereby lodged against the Canvassing Board in their conduct of the November 18, 2016 meeting as noticed above. We believe the manipulation of the selection process is a form of Election Audit Fraud.

15. Video Documentation of the Meeting -- Citizens Oversight created video documentation of the meeting in two versions, a shorter version that details only the selection process once the board started to show the public what they were doing, and a longer version including the initial secretive conduct of the meeting and intervention by Mr. Lutz. The videos can be viewed on line:

<https://youtu.be/lneBnC3w0pc> -- Short version (12 minutes)

<https://youtu.be/2EAhRYG5bPA> -- Longer version (39 minutes)

16. Main events in the Meeting: There are two main events in this meeting.

1. Selection of a random race.
2. Selection of 1% of the precincts appropriate for that race.

In each case, they use cards and drawn by hand from a bin. The first draw is from the set of “race cards” and the second draw is from the set of “precinct cards.” In each case, one important step is to verify that all race cards and all precinct cards are included in the bin.

17. **PUBLIC COULD NOT HEAR NOR SEE** -- The public was isolated about 30 to 40 feet from the table used by the Canvassing Board. The Board used NO audio amplification and conducted business on a table where only they could see. The oriented the table toward staff area and perpendicular to the public

area so it was not possible to see all members of the board at one time and the board members frequently blocked the view of the public. SOE Bucher did not participate in the procedures and was on the phone the whole time. They frequently faced away and blocked the view of the public. They used no projector or other means to allow the public to observe the selection process. Citizens Oversight recommends that the Canvassing Board turn the table to face the public and use a PA system to allow the public to hear every word. They also conducted private conversations during the meeting, contrary to open meeting law. At this meeting, there is no voter-information, such as ballots or security envelopes and so there is no valid reason to keep the public 30 feet from the table.

18. PUBLIC COMPLAINED AND WERE THREATENED WITH ARREST -- Members of the public complained that they could not see what the board was doing during the initial review of the cards used to select the random race. The board said they did not care and would proceed. Complainant Lutz realized it was necessary to get closer to see the cards on the table as they were shown face-up and could not be read or seen from the public area. Lutz has been in countless other similar meetings and in some cases has been seated right at the table or at least within a few feet. Thus his request was not outlandish. As the processing of this event is in essence a public record and according to public record and open meeting laws, the public has a right to observe. Lutz moved closer to be able to record the selection process and would not have disturbed their meeting. He requested that they start over so he could capture the review of the race cards on his camera. SOE Bucher blocked his view and became confrontational. Finally, after Lutz asserted his rights, they agreed that they would hold up the cards and announce the names on the cards. Lutz moved back to the public area and attempted to record the selection process from there.

Meanwhile, the SOE was bent on having the public not be able to see nor understand what the Canvassing Board was doing, and called law enforcement to force Lutz to leave completely with the threat of arrest. Sheriffs did arrive and detained Lutz but did not make an arrest.

Fortunately for the public, the Canvassing Board DID start over and DID show the cards that were to be selected in the race. However, without the intervention by Mr. Lutz, the public would have been unable to see anything.

19. PAUSE AT CARD IMPLIED CARD WAS PRESELECTED -- During the review of the cards, Abrams paused partway through the cards and gave the card that was ultimately selected special handling and he changed his voice. As the cards were held up and place on the table, Abrams changed his voice and stopped on the desired card and straightened up the pile, indicating he knew the final selection in advance and had conspired with Hanser to avoid other more contentious races that may have been hacked by SOE Bucher and her staff.

20. Canvassing Board Manipulated the Selection Fraudulently -- After reviewing that all the race cards, instead of placing those cards directly into the bin for randomization and selection, the Board and Staff picked up the cards and fiddled with them. Supervisor Abrams blocked our camera from seeing exactly what was going on while Judge Hanser looked through the cards and apparently pulled out the race for Judge Melanie G. May and put it in his trouser pocket. This is clear when you view the video documentation.

21. CARD WAS SWAPPED WITH SELECTED RACE CARD -- Then they put the rest of the cards in the bin and shook them up. Hanser selected a card from the bin and did not allow the public to immediately see the card, the recommended method when drawing cards from a bin (just ask any church raffle). Instead of showing the card directly, Hanser turned around and swapped the selected card with the

card in his pocket, that of Judge Melanie G. May. He actually turned away from the public and manipulated the card before revealing it.

This can be clearly seen in our video documentation as we freeze frame when the swap was done.

22. **Not possible to see the selected race card.** It was not possible to see the card from our vantage point. It was clear to us that we were placed that far away and the SOE attempted to distract us with talk of arrest to allow the rigging of the race selected.

23. **Raffle-style selection process should be scrapped** -- Citizens Oversight recommends that the Canvassing Board discontinue the raffle-style selection using objects drawn from a container as it time consuming to verify that all the objects are correctly in the container, and it opens up the possibility of sleight-of-hand manipulation. Instead, the Board should use the list with dice method, where all items to be selected (races or precincts) can be listed, easily reviewed, and chosen with dice, which eliminates the sleight-of-hand vulnerability.

24. **NO REVIEW OF PRECINCT CARDS, POOR RANDOMIZATION** -- The Canvassing Board then selected random precincts. They placed cards with precinct numbers directly in the bin. There was NO review of the numbers on the cards to ensure that all precincts were included. The public was not invited to review them. No staff reviewed them. Again, Citizens Oversight recommends that the Canvassing Board uses a list and a set of ten-sided dice to select the precincts. In this way, there is no doubt that all the precincts are represented and no sleight-of-hand vulnerability exists. Also, the larger cards in a smallish bin means there really is almost no real mixing of the cards when shaken. The entire methodology of using cards in a bin is very poor procedure.

25. **PUBLIC RESTRICTED FROM PARTICIPATION** -- When all precincts were selected, Lutz and other members of the public requested that he be allowed to take a photograph of the selected precincts. The Board refused and said to take the picture from 30 feet away. This is a violation of the open meeting and sunshine laws. They even refused to take a picture for the members of the public that requested it using the camera-phone of the public. This is documented in the video. No pictures were allowed. Thus, it is impossible to prove or disprove what precincts were selected.

26. **AUDIT REPORT NOT SIGNED** -- The report of the audit was placed on the website but was not signed by Judge Hanser. See this link: <http://www.pbcelections.org/GetDocument.aspx?id=1120>

OUR REQUESTS

27. **Please provide legal rationale** for restricting pictures by public observers of the cards selected. There is no voter personal information and no ballots exposed. Such a picture only documents what the Canvassing Board has done in their meeting. The public has a right to observe and document this procedure. The meeting is considered a public meeting and sunshine and public records laws apply.

28. **Please provide legal rationale** for placing the public more than 30 feet away and orienting the table so it was impossible to see what the Board was doing.

29. **Please provide legal rationale** for allowing a member of the Canvassing Board to select the desired race, place it in his pocket, then swap it for the card actually selected.

30. **REDO THE AUDIT:** Please redo the audit, including the audit selection meeting using procedures that will not allow sleight-of-hand manipulation and reduce the need to inspect all the cards to make sure

none were withheld from the selection process. We recommend using a list with dice as it eliminates the need to inspect objects in the bin and there is little or no vulnerability to sleight-of-hand manipulation.

31. START AN INVESTIGATION, REMOVE OFFICIALS: Authorities should start an investigation into the fraudulent activity of the board. Citizens Oversight has submitted a report to the Palm Beach County FBI office. Susan Bucher should be removed from her seat as Supervisor of Elections. The actions of Judge Hanser should be reviewed. No judge should be allowed to continue after committing Election Audit Fraud. Palm Beach County Commissioner Abrams should not be allowed to continue in his seat as Commissioner after this demonstration of his complicity in the conspiracy to commit Election Audit Fraud.

32. CONSIDER CHANGING PROCEDURE: Florida has a very bad reputation regarding the manipulation of elections and this is a very bad example. To re-establish the credibility of the election, we propose a more substantial audit process, to include all major races and a random race chosen from the balance. Close races should be given a higher probability of being chosen. Uncompetitive races, such as judge seats, should not be included in the audit selection process or given very low priority.

33. PUBLIC RECORDS REQUEST: Citizens Oversight hereby submits a public records request for all records, including communications such as emails, phone logs, text messages, etc. Please provide in electronic form to raylutz@citizenoversight.org. Our specific requests are all documents

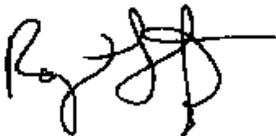
A. Regarding the election audit for the November 8 election in Palm Beach County, including all preparation and anything mentioning Judge Melanie G. May.

B. Records that provide the names of all races chosen for the audit in recent elections since the audit law was first enacted, so we can see if prior election audits have been similarly rigged to avoid competitive races.

C. Please make the RACE and PRECINCT cards available so we can physically inspect them for size, shape and other identifying features that may distinguish Melanie G. May card from the others.

Citizens Oversight will be happy to work with the SOE in Palm Beach and other counties to improve their audit process so it cannot be subverted and “fixed” in a similar manner. Elections are important in our country and it is our goal to root out such fraudulent activity.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ray Lutz', with a long horizontal line extending to the right.

Raymond Lutz
National Coordinator, Citizens' Oversight Projects