STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AMERICAN CIVIL LIBERTIES UNION OF FLORIDA, INC. (ACLU-FL); SOUTHWEST VOTER REGISTRATION EDUCATION PROJECT (SVREP); COMMON CAUSE FLORIDA (CCF); FLORIDA SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE CHAPTER (FSCLC); AND THE FLORIDA VOTERS LEAGUE, INC. (FVL),	)	
Petitioners,	)	
and	)	Case No. 04-2341RX
PEOPLE FOR THE AMERICAN WAY FOUNDATION,	)	
Intervenor,	)	
vs.	)	
DEPARTMENT OF STATE,	)	
Respondent.	)	

FINAL ORDER

Pursuant to notice, a final hearing was held in this case on July 27, 2004, in Tallahassee, Florida, before Susan B. Kirkland, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioners: Benjamin R. Patterson, Esquire
Jerry G. Traynham, Esquire
Patterson & Traynham
315 Beard Street
Post Office Box 4289
Tallahassee, Florida 32315-4289

For Intervenor: Reginald J. Mitchell, Esquire
1550 Melvin Street
Tallahassee, Florida 32301

For Respondent: George L. Waas, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

Whether Florida Administrative Code Rule 1S-2.031(7) is an invalid exercise of delegated legislative authority under Subsection 120.56(3), Florida Statutes (2004).

PRELIMINARY STATEMENT

On July 6, 2004, Petitioners, the American Civil Liberties Union of Florida, Inc. (ACLU-FL); Southwest Voter Registration Education Project (SVREP); Common Cause Florida (CCF); Florida Southern Christian Leadership Conference Chapter (FSCLC); and The Florida Voters League, Inc. (FVL), filed, pursuant to Subsection 120.56(3), Florida Statutes (2003), a Petition to Determine the Invalidity of Rules challenging the validity of Florida Administrative Code Rule 1S-2.031(7).

On July 9, 2004, Respondent, Department of State, filed an unopposed Request for Official Recognition, requesting

that official recognition be taken of the following: (1) Subsections 97.021(3), 101.5603(4), 101.5603(5), and 101.5612, Florida Statutes (2003) (Exhibit A); (2) Order Granting Defendants' Motions to Dismiss in Wexler v. LePore, 319 F. Supp. 2d 1354 (S.D. Fla. 2004) (Exhibit B); (3) Order Granting Defendants [sic] Motion to Dismiss and Determining Motion for Change of Venue Moot in Wexler v. LePore, No. 502004CA 000491XXXXMB AA (Fla. 15th Cir. Ct. Feb. 11, 2004) (Exhibit C); and (4) DE 04-02, Division of Elections Opinion issued February 12, 2004 (Exhibit D). On July 12, 2004, Respondent filed Respondent's Second Request for Official Recognition, requesting that official recognition be taken of Review of Voting Irregularities of the 2000 Presidential Election, Report Number 2001-201, Prepared for the Florida Senate by the Commission on Ethics and Elections, March 2001 (Exhibit E). An Order Granting Official Recognition was entered on July 26, 2004, granting Respondent's requests for official recognition.

On July 21, 2004, People for the American Way Foundation (PFAWF) filed a Petition for Leave to Intervene. The petition was heard by telephonic conference call on July 26, 2004, and an Order Granting Petition to Intervene was entered on the same date.

The parties filed a Prehearing Stipulation on July 27, 2004, and stipulated to certain facts contained in Section E of the Prehearing Stipulation. Those facts have been incorporated in this Final Order.

At the final hearing, Petitioners presented the following witnesses: Howard L. Simon, Benjamin T. Wilcox, Reverend S. L. Phillips, and John Seibel. Petitioners' Exhibits A through C were admitted in evidence. Intervenor presented Sharon Lettman as its witness. Intervenor did not submit any exhibits in evidence. Respondent called Sarah Jane Bradshaw and Paul Craft as its witnesses. Respondent's Exhibit F was admitted in evidence.

The parties agreed to file their proposed final orders within ten days of the filing of the transcript. On August 5, 2004, the one-volume Transcript was filed. On August 12, 2004, Petitioners filed an Unopposed Request for Enlargement of Filing Period requesting additional time to file the proposed final orders. On August 13, 2004, an order was entered extending the time for filing the proposed final orders to August 18, 2004. The parties timely filed their proposed final orders, which have been considered in rendering this Final Order.

On August 25, 2004, Petitioner SVREP filed a Notice of Voluntary Dismissal of SVREP, stating that SVREP had been unable to appear at the hearing to provide evidence of its standing.

FINDINGS OF FACT

1. Petitioner ACLU-FL is a public interest organization with approximately 22,000 members in Florida. The great majority of the ACLU-FL members are registered Florida voters. ACLU-FL has an interest in advancing civil liberty principles, including fair, accurate, and reliable electoral processes.

2. As part of its activities, ACLU-FL is involved in litigation concerning voting issues. Following the 2000 presidential election, ACLU-FL filed an amicus curiae brief in Bush v. Gore. In Siegel v. LePore, ACLU-FL intervened, challenging the butterfly ballot. More recently, ACLU-FL filed an amicus curiae brief in litigation filed by Congressman Wexler concerning the manual recount of votes cast on touchscreen voting systems. In Florida Caucus of Black State Legislators, Inc. v. Crosby, __ So. 2d __, 29 Fla. L. Weekly D1629 (Fla. 1st DCA July 14, 2004), ACLU-FL was successful in getting a writ of mandamus issued against the Department of Corrections to require the Department to provide to offenders, prior to their discharge, an application form and other forms necessary to obtain the Governor's review for restoration of their civil rights and to advise the offenders that the Department will assist in the preparation of the forms at the offenders' request.

3. ACLU-FL attempts to advance confidence in the voting system and the electoral process. The organization strives to ensure that the voting systems used in Florida are accurate, reliable, and capable of providing for recounts and audits.

4. CCF is a government reform advocacy group with a basic interest in good government, including issues such as campaign finance reform, ethics, reapportionment, and election reform. Its members believe that each voter's ballot should be counted as cast and it is important to be able to verify one's vote and have a record of each vote as cast. CCF has approximately 90,000 members in Florida.

5. FSCLC is an organization founded by the late Dr. Martin Luther King, Jr.; Ralph Abernathy; and Reverend C. K. Steele. This organization has an interest in election issues and was instrumental in the passage of the Voting Rights Act in the 1960's. It is concerned with having the vote of each voter counted as cast.

6. PFAWF is a civil rights and civil liberties organization, which promotes constitutional rights and the value of the vote. It has numerous voter registration projects, including the Election Protection Project, which came about as a result of the 2000 presidential election. The Election Protection Project in Florida involves educating citizens on

their rights, the process of voting, and their legal recourse in the event of election irregularities.

7. No evidence was presented concerning the standing of the FVL to bring this rule challenge.

8. After the 2000 presidential election, the Committee on Ethics and Elections prepared a report for the Florida Senate entitled Review of the Voting Irregularities of the 2000 Presidential Election (the Report). Among other things, the Report generally discussed the types of voting systems, including the Direct Recording Electronic (DRE) systems and the optical scan systems. At the time of the Report, the DRE systems, sometimes called touchscreen systems, were not used in Florida.

9. In the optical scan systems, the voter marks a paper ballot, which is fed into an optical scanning device which "reads" the ballot and tabulates the results. The paper ballot is preserved. In a DRE system, the voter indicates his or her choice by the use of a touchscreen, pushbuttons, or similar devices, rather than a paper ballot. The Report indicated that most of the DRE systems do no offer a paper trail as backup for the vote cast. The evidence presented at the final hearing established that there are DRE systems which can provide a paper trail by printing a picture of the screen as it appears to the voter when the voter indicates that his voting is completed or

by storing the screen image on microfilm. However, the DRE systems currently certified by Respondent for use in Florida do not provide a paper trail.

10. It is clear from the evidence at the final hearing, that the DRE systems do not allow for an overvote. An overvote occurs when a voter designates more names than there are persons to be elected to an office or designates more than one answer to a ballot question. § 97.021(20), Fla. Stat. (2004). DRE systems either require the voter to unselect a previously designated candidate before voting for another candidate or automatically default to the last candidate selected.

11. There can be an undervote using the DRE systems. An undervote occurs when a voter does not properly designate any choice for an office or a ballot question. § 97.021(33), Fla. Stat. (2004). Respondent requires that the DRE systems it certifies must provide a notification to the voter of an undervote before the voter casts his or her ballot.

12. After the difficult experiences with the 2000 presidential election, the following 15 counties in Florida switched to a touchscreen voting system: Broward, Charlotte, Collier, Hillsborough, Indian River, Lake, Lee, Martin, Miami-Dade, Nassau, Palm Beach, Pasco, Pinellas, Sarasota, and Sumter. The aggregate voting population of the above-listed counties comprises slightly more than 50 percent of Florida's registered

voters. Petitioners, ACLU-FL, CCF, and FSCLC, and Intervenor PFAWF have members who are registered voters in all 15 counties with touchscreen voting systems.

13. Respondent has the statutory responsibility to set the minimum standards for the hardware and software for electronic and electromechanical voting systems, which include touchscreen voting systems. § 101.015(1), Fla. Stat. (2004). Respondent must approve electronic and electromechanical voting systems prior to their use in Florida. §§ 101.015 and 101.5605, Fla. Stat. (2004). One of the requirements for approval of an electronic or electromechanical voting system is that the system "must immediately reject a ballot where the number of votes for an office or measure exceeds the number of votes which the voter is entitled to cast or where the tabulating equipment reads the ballot as a ballot with no votes cast." § 101.5606(3), Fla. Stat. (2004). If the system uses a paper ballot, the system must be capable of accepting a ballot rejected pursuant to Subsection 101.5606(3), Florida Statutes (2004), and recording a no vote for any office that has been overvoted or undervoted.

14. Florida law provides for recounts of votes in certain situations. If the margin of victory for a candidate or measure in the first set of unofficial returns is one-half of a percent or less, a recount of the votes cast is to be ordered by the board certifying the results on that race or measure.

§ 102.141(6), Fla. Stat. (2004). If paper ballots are used, the paper ballots are put through the automatic tabulating equipment, and a determination is made whether the returns correctly reflect the votes cast. § 102.141(6)(a), Fla. Stat. (2004). If no paper ballots are used, the canvassing board examines the counters on the precinct tabulators to determine whether the total on the precinct tabulators are equal to the overall election return. If there is a discrepancy, the counters on the tabulators are presumed to be correct. § 102.141(6)(b), Fla. Stat. (2004).

15. If the margin of victory in the second set of unofficial returns is one-quarter of one percent or less, the board responsible for certifying the election results shall order a manual recount of the overvotes and undervotes cast for that particular office or measure. § 102.166(1), Fla. Stat. (2004). A vote is to be counted "if there is a clear indication on the ballot that the voter has made a definite choice." § 102.166(5)(a), Fla. Stat. (2004). Respondent has the responsibility to adopt rules for each certified voting system stating what constitutes "'a clear indication on the ballot that the voter has made a definite choice.'" § 102.166(5)(b), Fla. Stat. (2004). Respondent also has the authority to promulgate rules which set forth recount procedures for each certified

voting system in addition to the statutorily mandated recount procedures. § 102.166(6)(d), Fla. Stat. (2004).

16. On February 12, 2004, Respondent issued DE 04-02, Division of Elections Opinion on manual recount procedures for the touchscreen voting systems. Respondent opined:

> Because it is impossible for a voter to overvote or make stray marks on an electronic ballot, the manual recount provisions of section 102.166, Florida Statutes, do not apply and therefore, counties utilizing touchscreen voting systems are not required or authorized to print or review the electronic ballot images of undervotes occurring in a recounted race.

17. During the 2004 legislative session, legislation was filed, SB 3004, which would have renamed paper ballots as marksense ballots and would have required manual recounts only on voting systems using marksense ballots and would have provided that manual recounts may not be conducted of undervotes on touchscreen machines. The CS for CS SB 3004 deleted the provisions that recounts would be done only on marksense ballots. The revised proposed legislation died on special calendar.

18. On April 13, 2004, Respondent amended its rule governing recount procedures, and Petitioners have challenged the validity of the portion of the rule dealing with recounts of touchscreen votes, Florida Administrative Code Rule 1S-2.031(7), which provides:

> When a manual recount is ordered and touchscreen ballots are used, no manual recount of undervotes and overvotes cast on a touchscreen system shall be conducted since these machines do not allow a voter to cast an overvote and since a review of undervotes cannot result in a determination of voter intent as required by Section 102.166(5), F.S. In this case, the results of the machine recount conducted pursuant to paragraph (5)(c) shall be the official totals for the touchscreen ballots.

19. Petitioners, ACLU-FL, CCF, and FSCLC, and Intervenor PFAWF, contend that Florida Administrative Code Rule 1S-2.031(7), prohibiting manual recounts of undervotes on the touchscreen voting systems, violates the statutory requirement for a manual recount and denies voters a method to insure the accuracy of the votes cast.

20. Respondent argues that if a manual recount were to be conducted of undervotes using the touchscreen voting systems it would be useless in determining that there was "a clear indication on the ballot that the voter has made a definite choice" because the screen would be blank. This assertion may be true if the software or hardware on the voting machine does not malfunction. It does not deal with a malfunction situation in which what actually appeared on the screen when the vote was cast was not what was actually recorded by the machine. It is not known whether such a malfunction has occurred in Florida because a copy of the screen image is not maintained.

21. Respondent's expert, Paul Craft, acknowledged that the touchscreen voting systems have had problems with system software, but pointed out that the touchscreen voting systems certified by Respondent currently have no known system software problems.

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. § 120.56(3), Fla. Stat. (2004).

23. Petitioners, ACLU-FL, CCF, and FSCLC, and Intervenor PFAWF, have standing to bring this rule challenge. Subsection 120.56(3)(a), Florida Statutes (2004), provides that "[a] substantially affected person may seek an administrative determination of the invalidity of an existing rule at any time during the existence of the rule."

24. In Florida Homebuilders v. Department of Labor and Employment Security, 412 So. 2d 351, (Fla. 1982), the Florida Supreme Court set forth the requirements for associational standing in a rule challenge.

> To meet the requirements of section 120.56(1), an association must demonstrate that a substantial number of its members, although not necessarily a majority, are "substantially affected" by the challenged rule. Further the subject matter of the rule must be within the association's general scope of interest and activity, and the relief requested must be of the type

> appropriate for a trade association to receive on behalf of its members.

Id. at 353-354.

25. Petitioners ACLU-FL, CCF, and FSCLC, and Intervenor PFAWF, have a substantial number of members who are registered voters in Florida, and have members who are registered voters in the 15 counties using the touchscreen voting systems who will not have their votes manually recounted in the event of a close election because of the challenged rule. These associations' interests and activities include ensuring that it members' votes are recorded accurately and maintaining the integrity of the voting process. Having a rule declared invalid is within the types of relief that would be appropriate for an association to ask on behalf of its members.

26. Respondent argues that Petitioners and Intervenor do not have standing because they have not demonstrated a particularized injury that is different in kind from that sustained by the public generally and that they have not demonstrated an "injury in fact." Petitioners, ACLU-FL, CCF, FSCLC, and Intervenor PFAWF, will sustain an injury different from the public in general. Members voting in the 15 counties using a touchscreen voting system, will not be entitled to have their undervotes counted because of the challenged rule, while voters using other types of voting systems will be entitled to

have their undervotes counted. In NAACP, Inc. v. Florida Board of Regents, 863 So. 2d 294, 300 (Fla. 2003), the Florida Supreme Court rejected the type of argument that would require the members having an injury in fact, such as cast unintended undervotes, in order to have standing.

> It also appears that the First District was adopting a rule of standing that would require a challenge to demonstrate immediate and actual harm, i.e., rejection of admission to a state university by a member before standing would be granted. We required no such showing in Florida Home Builders. Indeed, such a holding would constitute a narrowing of the concept of standing as defined in Florida Home Builders. Under our holding there the required showing is that there would be a substantial effect of the rule change on a substantial number of its members.

27. Petitioner FVL presented no evidence on the issue of its standing, and, thus, has failed to establish that it has standing to bring this rule challenge. Petitioner SVREP has voluntarily dismissed its petition.

28. Petitioners and Intervenor, as the parties challenging an existing rule, have the burden to establish by a preponderance of the evidence that Florida Administrative Code Rule 1S-2.031(7) is an invalid exercise of delegated legislative authority. § 120.56(3), Florida Statutes (2004). Petitioners and Intervenor contend that the rule at issue exceeds Respondent's grant of rule making authority, modifies and

contravenes the specific provisions of law it implements, and is arbitrary and capricious.

29. Section 102.166, Florida Statutes (2004), deals with manual recounts and provides:

> (1) If the second set of unofficial returns pursuant to s. 102.141 indicates that a candidate for any office was defeated or eliminated by one-quarter of a percent or less of the votes cast for such office, that a candidate for retention to a judicial office was retained or not retained by one-quarter of a percent or less of the votes cast on the question of retention, or that a measure appearing on the ballot was approved or rejected by one-quarter of a percent or less of the votes cast on such measure, the board responsible for certifying the results of the vote on such race or measure shall order a manual recount of the overvotes and undervotes cast in the entire geographic jurisdiction of such office or ballot measure.
>
> (2)(a) If the second set of unofficial returns pursuant to s. 102.141 indicates that a candidate for any office was defeated or eliminated by between one-quarter and one-half of a percent of the votes cast for such office, that a candidate for retention to judicial office was retained or not retained by between one-quarter and one-half of a percent of the votes cast on the question of retention, or that a measure appearing on a ballot was approved or rejected by between one-quarter and one-half of a percent of the votes cast on such measure, any such candidate, the political party of such candidate, or any political committee that supports or opposes such ballot measure is entitled to a manual recount of the overvotes and undervotes cast in the entire geographic jurisdiction of such office or ballot measure, provided that

> a request for a manual recount is made by 5 p.m. on the third day after the election.
>
> (b) For federal, statewide, state, and multicounty races and ballot issues, requests for a manual recount shall be made in writing to the state Elections Canvassing Commission. For all other races and ballot issues, requests for a manual recount shall be made in writing to the county canvassing board.
>
> (c) Upon receipt of a proper and timely request, the Elections Canvassing Commission or county canvassing board shall immediately order a manual recount of overvotes and undervotes in all affected jurisdictions.

30. Florida Administrative Code Rule 1S-2.031(7) provides that "[w]hen a manual recount is ordered, and touchscreen ballots are used, no manual recount of undervotes and overvotes cast on a touchscreen system shall be conducted." The rule is contrary to the plain language of Section 102.166, Florida Statutes (2004), which requires manual recounts of overvotes and undervotes when the margin of victory is one-quarter of a percent or less or when there is a proper and timely request for a manual recount.

31. In State v. Burris, 875 So. 2d 408, 410 (Fla. 2004), the Florida Supreme Court stated:

> Our purpose in construing a statute is to give effect to the Legislature's intent. State v. J.M., 824 So. 2d 105, 109 (Fla. 2002). When a statute is clear, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. Lee County Elec. Coop., Inc. v. Jacobs, 820 So. 2d 297, 303 (Fla. 2002). Instead the

> statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent.

32. In Subsection 102.141(6), Florida Statutes (2004), the Florida Legislature made a distinction between recounts of the first set of unofficial returns for voting systems using paper ballots and voting systems that do not use paper ballots, such as the touchscreen voting systems. For a recount pursuant to Subsection 102.141(6), Florida Statutes (2004), with systems using paper ballots, each ballot is to be put through automatic tabulating equipment and a determination is to be made whether the returns correctly reflect the votes cast. The tabulating equipment is to be tested immediately before and after the recount, and, if no error is detected in the equipment, the recount tabulation shall be presumed correct. For a recount pursuant to Subsection 102.141(6), Florida Statutes (2004), for voting systems that do not use paper ballots, the counters on the precinct tabulators are to be examined to ensure that the total of the returns on the tabulators equals the overall election return. The counters on the tabulators are presumed correct if there is a discrepancy between the overall election returns and the tabulator counters.

33. The Florida Legislature made no distinction between voting systems using paper ballots and those not using paper

ballots when requiring manual recounts. If the legislature had intended that no manual recounts be done in counties using voting systems which did not use paper ballots, it could have easily done so; it did not. In the 2004 legislative session, SB 3004 was introduced containing language which would essentially prohibit manual recounts for the touchscreen voting systems. The conference committee substitute legislation rejected this language, leaving the provisions requiring manual recounts undisturbed.

34. Other language in Section 102.166, Florida Statutes (2004), supports the conclusion that the legislature intended that manual recounts be conducted for all types of voting systems. Subsection 102.166(5)(b), Florida Statutes (2004), states that Respondent "shall adopt specific rules for each certified voting system prescribing what constitutes a 'clear indication on the ballot that the voter has made a definite choice.'" (emphasis supplied) Subsection 102.144(6)(d), Florida Statutes (2004), provides that Respondent "shall adopt detailed rules prescribing additional recount procedures for each certified voting system which shall be uniform to the extent practicable" and lists specific areas which the rules must address. (emphasis supplied) The statutes clearly contemplate that manual recounts will be done on each certified voting system, including the touchscreen voting systems.

35. The Florida Supreme Court emphasized the plain meaning of a statute in determining legislative intent in Overstreet v. State, 629 So. 2d 125, 126 (Fla. 1993):

> Legislative intent must be determined primarily from the language of the statute. S.R.G. Corp. v. Department of Revenue, 365 So. 2d 687 (Fla. 1978). The legislature is assumed to know the meaning of the words in the statute and to have expressed its intent by the use of those words. . . . We decline to add words to a statute where, as in this case, the language is clear and unambiguous. "It is a settled rule of statutory construction that unambiguous language is not subject to judicial construction, however wise it may seem to alter the plain language." State v. Jett, 626 So. 2d 691 (Fla. 1993). If the legislature did not intend the results mandated by the statute's plain language, then the appropriate remedy is for it to amend the statute.

If the Legislature does not intend for manual recounts to be done for the touchscreen voting systems, it is the Legislature's responsibility to amend the statute. Respondent cannot amend the statute by promulgating a rule.

36. It is clear that Respondent exceeded its grant of rulemaking authority in promulgating Florida Administrative Code Rule 1S-2.031(7). It has the authority to promulgate procedures for manual recounts in addition to those set forth in Section 102.166, Florida Statutes (2004), and is required to address minimum areas in those rules, but it does not have the authority to abolish manual recounts for certain types of voting

equipment. Respondent is required to adopt rules prescribing what constitutes a "clear indication on the ballot that the voter has made a definite choice," but Respondent does not have the authority to preclude manual recounts for a touchscreen voting system because it does not believe that a manual recount will reveal a clear indication of the voter's choice.

37. Petitioners and Intervenor have not presented evidence to establish that the rule is arbitrary and capricious as those terms are defined in Subsection 120.52(8)(e), Florida Statutes (2004).

38. Subsections 120.52(8)(b) and (c), Florida Statutes (2004), provide that if an agency has exceeded its grant of rulemaking authority or if the rule enlarges, modifies, or contravenes the provisions of law implemented, the rule is deemed to be an invalid exercise of delegated legislative authority. Thus, Petitioners ACLU-FL, CCF, and FSCLC, and Intervenor PFAWF, have established that Florida Administrative Code Rule 1S-2.031(7) is an invalid exercise of delegated legislative authority.

39. In the Petition to Determine the Invalidity of Rules, Petitioners requested attorney's fees and costs pursuant to Subsection 120.595(3), Florida Statutes (2003). Jurisdiction is retained to determine if Petitioners and Intervenor are entitled to attorney's fees and costs, and, if so, the amount.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that:

1. Petitioners, Southwest Voter Registration Education Project and Florida Voters League, Inc., are dismissed.

2. Florida Administrative Code Rule 1S-2.031(7) is an invalid exercise of delegated legislative authority.

3. The issue of attorney's fees and costs will be determined in a separate hearing.

DONE AND ORDERED this 27th day of August, 2004, in Tallahassee, Leon County, Florida.

Susan B. Kirkland
SUSAN B. KIRKLAND
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of August, 2004.

COPIES FURNISHED:

Benjamin R. Patterson, Esquire
Jerry G. Traynham, Esquire
Patterson & Traynham
315 Beard Street
Post Office Box 4289
Tallahassee, Florida 32315-4289

George L. Waas, Esquire
Office of the Attorney General
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

Reginald J. Mitchell, Esquire
1550 Melvin Street
Tallahassee, Florida 32301

Alma R. Gonzalez, Esquire
AFSCME Florida Council 79
3064 Highland Oaks Terrace
Tallahassee, Florida 32301

Honorable Glenda E. Hood
Secretary of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399-0250

Gerry York, General Counsel
Secretary of State
The Collins Building
107 West Gaines Street
Tallahassee, Florida 32399-0250

Scott Boyd, Executive Director and General Counsel
Joint Administrative Procedures Committee
120 Holland Building
Tallahassee, Florida 32399-1300

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original Notice of Appeal with the agency clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.