

**STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION**

In Re: Alex Diaz de la Portilla

Case No.: FEC 19-561

TO: Benedict P. Kuehne, Esquire
Kuehne Davis Law PA
100 SE 2nd Street, Suite 3105
Miami, FL 33131

Francisco Pichel
757 NW 27 Avenue #205
Miami, FL 33125

**NOTICE OF VIRTUAL HEARING (OTHER MOTIONS: REVIEW OF PETITION FOR ATTORNEY'S FEES
AND COSTS)**

A hearing will be held in this case before the Florida Elections Commission **on February 23, 2021 at 8:30 am, EST**, or as soon thereafter as the parties can be heard.

Please note that because of COVID-19, this will be a virtual meeting conducted by remote video or teleconference. Enclosed you will find additional details on joining the video conference via GoToWebinar, 9-Digit Webinar ID 627-359-707, or via teleconference by dialing (877) 309-2071 and entering the meeting access code 324-720-215, when prompted. If you wish to speak before the Commission, you will need to appear by webcam and will be sworn in remotely. Please be advised that the Commission will consider multiple cases, so you will need to wait until your case is considered. If you have any questions, please contact Commission staff at (850) 922-4539.

Failure to appear in accordance with this notice will constitute a waiver of your right to participate in the hearing. Continuances will be granted only upon a showing of good cause.

This hearing will be conducted pursuant to Section 106.25, Florida Statutes, which governs your participation as follows:

If you are the Respondent, you may attend the hearing, and you or your attorney will have *5 minutes* to present your case to the Commission. However, some cases (including those in which motions to dismiss or recommendations for no probable cause are being considered) may be decided by an *en masse* vote and, unless you request to be heard or the Commission requests that your case be considered separately on the day of the hearing, your case will *not* be individually heard.

If you are the Complainant, you may attend the hearing, but you will *not* be permitted to address the Commission. In addition, some cases (including those in which motions to dismiss or recommendations for no probable cause are being considered) may be decided by an *en masse* vote and, unless the Respondent requests to be heard or the Commission requests that the case be considered separately on the day of the hearing, the case will *not* be individually heard.

If you are an Appellant, and you have requested a hearing, you may attend the hearing, and you or your attorney will have *5 minutes* to present your case to the Commission.

Please be advised that both confidential and public cases are scheduled to be heard by the Florida Elections Commission. As an Appellant, Respondent or Complainant in one case, you will *not* be permitted to attend the hearings on other confidential cases.

The Commission will electronically record the meeting. Although the Commission's recording is considered the official record of the hearing, the Respondent may provide, at his own expense, a certified court reporter to also record the hearing.

If you require an accommodation due to a disability, contact Donna Ann Malphurs at (850) 922-4539 or by mail at 107 West Gaines Street, The Collins Building, Suite 224, Tallahassee, Florida 32399, at least 5 days before the hearing.

See further instructions on the reverse side.

Tim Vaccaro

Executive Director
Florida Elections Commission
February 2, 2021

Please refer to the information below for further instructions related to your particular hearing:

This **Motion or Petition for Attorney's Fees** will be conducted pursuant to Section 106.265(6), Florida Statutes, and Chapter 28 and Commission Rule 2B-1.0045, Florida Administrative Code. The Commission will determine whether the petition contains sufficient facts to support a claim for costs and attorney's fees and, if so, the Commission will order a hearing involving disputed issues of material fact (formal hearing) before the Commission, a Commissioner or Commissioners designated by the Commission, or the Division of Administrative Hearings.

If the Commission determines that there are not sufficient facts to support a claim, the motion or petition will be denied or dismissed.



Florida Elections Commission

107 West Gaines Street, Suite 224 Tallahassee, Florida 32399-6596
Telephone: (850) 922-4539 · Facsimile: (850) 921-0783
FEC@myfloridalegal.com · www.fec.state.fl.us



Commission Meeting February 23, 2021 at 8:30AM via GoToWebinar and OpenVoice

In order to participate in the public portion of the February 23, 2021, Florida Elections Commission meeting, please follow the instructions below:

- A. GoToWebinar – Remote Video Conferencing
 1. Open your web browser and search GoToWebinar or enter www.gotowebinar.com
 2. Select Join A Webinar in the upper right corner of the website
 3. Enter the 9-digit Webinar ID: 627-359-707
And your email address
 4. Register your name and email address
 5. You will automatically join to the meeting as an attendee. Attendees are muted and can choose to their webcam.

- B. OpenVoice - Teleconference
 1. Call 1-877-309-2071
 2. Enter Audio Access Code 324-720-215
 3. You will automatically join the meeting as an attendee. Attendees are muted.

While this is a public meeting and advanced registration is not mandatory, we ask that if you plan to attend via Video Conference or Teleconference, that you notify our office in advance. This will give the Commission the opportunity to organize the agenda as efficiently as possible. It will be the goal of the Commission to hear cases in which parties are present, first, in order to reduce the standby time of the parties in attendance.

You can call or email our office of your intent to participate or of any questions you may have regarding this meeting. Please provide the case number(s) of interest, when contacting our office.

Thank you,

Commission Staff

STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION

In Re: Alex Diaz de la Portilla

Case No.: FEC 19-561

ORDER CONTINUING CASE

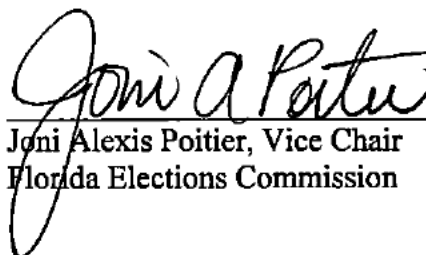
THIS MATTER was heard by the Florida Elections Commission (Commission) at its regularly scheduled meeting on December 1, 2020, in Tallahassee, Florida.

Respondent requested that the matter regarding Respondent's Petition for Attorney's Fees and Costs be continued.

The Commission reviewed Respondent's request and considered Complainant's response. Respondent's request was **GRANTED**.

THIS MATTER is continued until the next available meeting of the Florida Elections Commission.

DONE AND ORDERED by the Florida Elections Commission on December 1, 2020.



Joni Alexis Poitier, Vice Chair
Florida Elections Commission

Copies furnished to:
Tim Vaccaro, executive Director
Benedict P. Kuehne, Attorney for Respondent
Francisco Pichel, Complainant

**STATE OF FLORIDA
FLORIDA ELECTIONS COMMISSION**

In Re: Alex Diaz de la Portilla

Case No.: FEC 19-561

TO: Benedict P. Kuehne, Esquire
Kuehne Davis Law PA
100 SE 2nd Street, Suite 3105
Miami, FL 33131

Francisco Pichel
757 NW 27 Avenue #205
Miami, FL 33125

NOTICE OF HEARING (OTHER MOTIONS: REVIEW OF ATTORNEY'S FEES AND COSTS)

A hearing will be held in this case before the Florida Elections Commission on, **December 1, 2020 at 8:30 AM am, or as soon thereafter as the parties can be heard**, at the following location: **Senate Office Building, 404 South Monroe Street, Room 110-S, Tallahassee, Florida 32399**. Due to heightened security access requirements, please bring only essential items into the building and plan to arrive early to allow for delays coming through security.

Failure to appear in accordance with this notice will constitute a waiver of your right to participate in the hearing. Continuances will be granted only upon a showing of good cause.

This hearing will be conducted pursuant to Section 106.25, Florida Statutes, which governs your participation as follows:

If you are the Respondent, you may attend the hearing, and you or your attorney will have *5 minutes* to present your case to the Commission. However, some cases (including those in which consent orders or recommendations for no probable cause are being considered) may be decided by an *en masse* vote and, unless you request to be heard or the Commission requests that your case be considered separately on the day of the hearing, your case will *not* be individually heard.

If you are the Complainant, you may attend the hearing, but you will *not* be permitted to address the Commission. In addition, some cases (including those in which consent orders or recommendations for no probable cause are being considered) may be decided by an *en masse* vote and, unless the Respondent requests to be heard or the Commission requests that the case be considered separately on the day of the hearing, the case will *not* be individually heard.

If you are an Appellant, and you have requested a hearing, you may attend the hearing, and you or your attorney will have *5 minutes* to present your case to the Commission.

Please be advised that both confidential and public cases are scheduled to be heard by the Florida Elections Commission on this date. As an Appellant, Respondent or Complainant in one case, you will *not* be permitted to attend the hearings on other confidential cases.

The Commission will electronically record the meeting. Although the Commission's recording is considered the official record of the hearing, the Respondent may provide, at his own expense, a certified court reporter to also record the hearing.

If you require an accommodation due to a disability, contact Donna Ann Malphurs at (850) 922-4539 or by mail at 107 West Gaines Street, The Collins Building, Suite 224, Tallahassee, Florida 32399, at least 5 days before the hearing.

See further instructions on the reverse side.

Tim Vaccaro

Executive Director
Florida Elections Commission
November 9, 2019

Please refer to the information below for further instructions related to your particular hearing:

This **Motion or Petition for Attorney's Fees** will be conducted pursuant to Section 106.265(6), Florida Statutes, and Chapter 28 and Commission Rule 2B-1.0045, Florida Administrative Code. The Commission will determine whether the petition contains sufficient facts to support a claim for costs and attorney's fees and, if so, the Commission will order a hearing involving disputed issues of material fact (formal hearing) before the Commission, a Commissioner or Commissioners designated by the Commission, or the Division of Administrative Hearings.

If the Commission determines that there are not sufficient facts to support a claim, the motion or petition will be denied or dismissed.



FLORIDA ELECTIONS COMMISSION

**107 W. Gaines Street
Collins Building, Suite 224
Tallahassee, Florida 32399-1050
Telephone: (850) 922-4539
www.fec.state.fl.us; fec@myfloridalegal.com**

March 11, 2020

Francisco Pichel
757 NW 27th Avenue, # 205
Miami, FL 33125

RE: Case No.: FEC 19-561; Respondent: Alex Diaz de la Portilla

Dear Mr. Pichel:

The Florida Elections Commission received a Petition for Attorney's fees in this case. Pursuant to Rule 2B-1.0045, Florida Administrative Code, a copy of the Petition is enclosed for your review.

At its next regularly scheduled meeting, **currently set for May 2020 (exact date and time to be determined), in Tallahassee, Florida**, the Commission will review the Petition and determine whether it states "a prima facie case for costs and attorney's fees." A notice of hearing will be provided at the appropriate time.

If you have any questions concerning the Petition, please contact the Florida Elections Commission at fec@myfloridalegal.com.

Sincerely,

Donna Ann Malphurs

Agency Clerk

/dam

Enclosure: Petition for Fees

cc: Benedict P. Kuehne, Attorney for Respondent w/out encl.



FEC19-61 - Renewed Request for Legal Fees and CostsBenedict P. Kuehne to: Florida
Elections Commission 03/10/2020 11:27 AM
From: "Benedict P. Kuehne" <ben.kuehne@kuehnelaw.com>
To: "Florida Elections Commission" <fec@myfloridalegal.com>

1 Attachment



Revised Request for Fees and Costs.3-10-2020.pdf

Ms. Malphurs, attached is the renewed request for fees and costs.

Benedict P Kuehne
Kuehne Davis Law, PA
100 SE 2 Street, Suite 3550
Miami, FL 33131
Tel: 305.789.5989
Fax: 305.789.5987
Cell: 786.543.8352
Ben.kuehne@kuehnelaw.com
www.kuehnedavislaw.com
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KUEHNE DAVIS LAW
PROFESSIONAL ASSOCIATION

BENEDICT P. KUEHNE*+
SUSAN DMITROVSKY
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*Board Certified Appellate Practice
+Board Certified Criminal Trials
#Board Certified Criminal Appeals

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Facsimile: 305-789-5987
ben.kuehne@kuehnelaw.com
susand@kuehnelaw.com
mdavis@kuehnelaw.com

BROWARD COUNTY OFFICE

1926 Harrison Street
Hollywood, FL 33020

REPLY TO: Miami

March 10, 2020

Donna Malphurs, Agency Clerk
Florida Elections Commission
107 West Gaines Street, Suite 224
Tallahassee, FL 32399-1050
donna.malphurs@myfloridalegal.com
fec@myfloridalegal.com

Re: *Alex Diaz de la Portilla*
FEC Case No. 19-561
Request for Award of Legal Fees

Dear Clerk Malphurs:

Following the closing of this complaint file on March 5, 2020, City of Miami Commissioner Alex Diaz de la Portilla is renewing his request for an award of legal fees and costs as a result of having to defend against the entirely unfounded and legally insufficient complaint submitted by Francisco Pichel. The complaint was filed for the primary purpose of harassing and attempting to embarrass then-candidate Alex Diaz de la Portilla, exposing him to adverse publicity and a criminal investigation, as well as forcing him to incur significant expenses to defend himself against the unsupported accusations in this forum and in a criminal investigation.

The Complaint is undeniably motivated by a malicious intent on the part of the complainant to injure the reputation of Commissioner Diaz de la Portilla. As a result of this frivolous and spiteful complaint, the Commission should award attorney's fees and costs in Commissioner Diaz de la Portilla's favor pursuant to Rule 2B-1.0045, Florida Administrative Code. The complainant, an opposing candidate, actively sought, by this Complaint, to subject

Commissioner Diaz de la Portilla to a baseless accusation of criminal wrongdoing in the form of alleged vote-buying. The complainant even supplied this Complaint to the State Attorney's Office to commence a spurious criminal investigation against Alex Diaz de la Portilla. The complainant also smeared a City of Miami police officer and firefighter with false allegations of criminal activity.

Whereas the complainant used this complaint to harm Commissioner Diaz de la Portilla in his personal and professional capacities and to demean and he Commissioner through the false accusations of criminal activity, Commissioner Diaz de la Portilla was obligated to expend significant time and resources defending against this unsubstantiated and invalid assault. Legal fees should be assessed against the complainant in an amount no less than \$10,000.00.

Respectfully submitted,

Benedict P. Kuehne

BENEDICT P. KUEHNE

Copy:

Francisco Pichel, 757 NW 27 Avenue #205, Miami, FL 33125



Florida Elections Commission

107 West Gaines Street, Suite 224 Tallahassee, Florida 32399-1050

Telephone: (850) 922-4539 · Facsimile: (850) 921-0783

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March 5, 2020

Benedict P. Kuehne
Kuehne Davis Law, P.A.
100 SE 2nd Street, Suite 3550
Miami, FL 33131-2154

RE: Case No.: 19-561; Respondent: Alex Diaz de la Portilla

Dear Mr. Kuehne:

On February 7, 2020, the Florida Elections Commission notified Francisco Pichel that the complaint he filed on November 4, 2019 was legally insufficient. Since the Commission did not receive any additional information that corrected the stated grounds of legal insufficiency, this case is now closed.

In your email dated February 12, 2020, you requested an award of attorney's fees and costs pursuant to Rule 2B-1.0045, Florida Administrative Code. However, in order to claim costs and attorney's fees, under this rule, you are required to file your petition for attorney's fees and costs with the Commission Clerk ***no later than 30 days following disposition of the complaint.*** Please feel free to file your petition by the close of business on April 4, 2020.

If you have any questions, please contact us at fec@myfloridalegal.com or at the number listed above.


Sincerely,

Donna Ann Malphurs

Donna Ann Malphurs

DM/med



Re: FEC19-61 - Request for Legal Fees and Costs 
Florida Elections Commission to: Benedict P. Kuehne
Sent by: Donna Malphurs

02/12/2020 05:27 PM

From: Florida Elections Commission/OAG
To: "Benedict P. Kuehne" <ben.kuehne@kuehnelaw.com>

Thank you. Please keep in mind that final disposition of this case has not yet occurred as the response to the letter of legal insufficiency is not due until February 22, 2020.

Sincerely,

Donna Ann Malphurs
Agency Clerk/RMLO/Public Information Officer
Florida Elections Commission

"Benedict P. Kuehne" Attached letter requests an award of legal fe... 02/12/2020 03:45:58 AM

From: "Benedict P. Kuehne" <ben.kuehne@kuehnelaw.com>
To: "Florida Elections Commission" <fec@myfloridalegal.com>
Date: 02/12/2020 03:45 AM
Subject: FEC19-61 - Request for Legal Fees and Costs

Attached letter requests an award of legal fees and costs following the legal insufficiency determination.

Benedict P Kuehne
Kuehne Davis Law, PA
100 SE 2 Street, Suite 3550
Miami, FL 33131
Tel: 305.789.5989
Fax: 305.789.5987
Cell: 786.543.8352
Ben.kuehne@kuehnelaw.com

www.kuehnedavislaw.com

www.kuehnelaw.com [attachment "BPK Request for Fees and Costs.2-12-2020.pdf" deleted by Donna Malphurs/OAG]



FEC19-61 - Request for Legal Fees and Costs Benedict P. Kuehne to: Florida Elections
Commission 02/12/2020 03:45 AM
From: "Benedict P. Kuehne" <ben.kuehne@kuehnelaw.com>
To: "Florida Elections Commission" <fec@myfloridalegal.com>

1 Attachment



BPK Request for Fees and Costs.2-12-2020.pdf

Attached letter requests an award of legal fees and costs following the legal insufficiency determination.

Benedict P Kuehne
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mdavis@kuehnelaw.com

BROWARD COUNTY OFFICE

1926 Harrison Street
Hollywood, FL 33020

REPLY TO: Miami

February 12, 2020

Donna Malphurs, Agency Clerk
Florida Elections Commission
107 West Gaines Street, Suite 224
Tallahassee, FL 32399-1050
donna.malphurs@myfloridalegal.com
fec@myfloridalegal.com

Re: *Alex Diaz de la Portilla*
FEC Case No. 19-561
Request for Award of Legal Fees

Dear Clerk Malphurs:

Following the Legal Insufficiency determination made on February 7, 2020, City of Miami Commissioner Alex Diaz de la Portilla seeks an award of legal fees and costs as a result of having to defend against the entirely unfounded and legally insufficient complaint submitted by Francisco Pichel. The complaint was filed for the primary purpose of harassing and attempting to embarrass then-candidate Alex Diaz de la Portilla, exposing him to adverse publicity and a criminal investigation, as well as forcing him to incur significant expenses to defend himself against the unsupported accusations in this forum and in a criminal investigation.

Because the Complaint is motivated by a malicious intent to injure the reputation of Commissioner Diaz de la Portilla, the Commission should award attorney's fees and costs in Commissioner Diaz de la Portilla's favor pursuant to Rule 2B-1.0045, Florida Administrative Code. The complainant, an opposing candidate, actively sought, by this Complaint, to subject Commissioner Diaz de la Portilla to a baseless accusation of criminal wrongdoing in the form

of alleged vote-buying. The complainant even supplied this Complaint to the State Attorney's Office to commence a spurious criminal investigation against Alex Diaz de la Portilla. The complainant also smeared a City of Miami police officer and firefighter with false allegations of criminal activity.

Whereas the complainant used this complaint to harm Commissioner Diaz de la Portilla in his personal and professional capacities and to demean and he Commissioner through the false accusations of criminal activity, Commissioner Diaz de la Portilla was obligated to expend significant time and resources defending against this unsubstantiated and invalid assault. Legal fees should be assessed against the complainant in an amount no less than \$10,000.00.

Respectfully submitted,

Benedict P. Kuehne

BENEDICT P. KUEHNE

Copy:

Francisco Pichel, 757 NW 27 Avenue #205, Miami, FL 33125



Florida Elections Commission

107 West Gaines Street, Suite 224 Tallahassee, Florida 32399-1050
Telephone: (850) 922-4539 · Facsimile: (850) 921-0783
FEC@myfloridalegal.com · www.fec.state.fl.us



February 7, 2020

Francisco Pichel
757 NW 27 Avenue #205
Miami, FL 33125

RE: Case No.: FEC 19-561; Respondent: Alex Diaz de la Portilla

Dear Mr. Pichel:

The Florida Elections Commission has received your complaint alleging violation of Florida's election laws.

The complaint alleged that Respondent committed violations of several sections of Chapter 104, F.S., all stemming from conduct allegedly occurring on or about October 17, 2019, at a local housing development. The sections cited in the complaint cover a variety of issues, including voter intimidation, corrupt influencing of voting, and fraud in connection with voting.

Specifically, Complainant alleged in his narrative that on October 17, 2019, Miriam Rodriguez, the property manager of Three Round Towers, called him and told him that two people in plain clothes identifying as a firefighter and police officer were knocking on doors and soliciting votes for Respondent. Ms. Rodriguez allegedly asked what they were doing, and they told her they were conducting a safety check. Complainant stated that Ms. Rodriguez told them they were trespassing and told them to leave, but the men told Ms. Rodriguez they would not leave.

Complainant stated that at least two police reports have been filed against Respondent by residents for coercing them to vote for him and taking their vote by mail ballots and destroying them if they voted for another candidate. Complainant provided no further details for these allegations in his narrative.

In his response, Respondent denied all allegations, stating that Complainant's allegations contain no supporting facts and they are not based upon personal information.

The only evidence provided by Complainant was a police report dated October 17, 2019, and a few photographs he alleged were taken on that date. The photographs show three police cars parked in front of an apartment building, a man and woman sitting in what looks like a lobby, and two cars parked in a parking lot. The photographs do not appear to be evidence of anything related to Respondent. Complainant referenced a police report dated October 24, 2019, but he did not attach it to the complaint.

Francisco Pichel
February 7, 2020
Page 2
FEC 19-561

The police report dated October 17, 2019 was completed in response to a call from Miriam Rodriguez. Complainant was at the property when the police arrived, but most of the issues addressed in the report were based upon events that happened to other people who were interviewed by the police officer taking the report. Ms. Rodriguez stated that a police officer and firefighter were on the property and said they were working for Respondent. She told them they were trespassing. Zolay Tomayo, another resident, told the officer that an "unknown lady" had called her to solicit a vote for Respondent and two "unknown females" had knocked on her apartment door, asked if she was voting for Respondent, and "told her to put back her ballot in the mailbox."

The incidents related to the officer by Ms. Rodriguez and Ms. Tomayo involve unknown individuals who were allegedly soliciting votes for Respondent, but there is insufficient evidence based upon Respondent's personal information or information other than hearsay to support a complaint against Respondent with respect to those issues.

The police report then noted that Respondent "and his entourage" were on the property at that time. However, the report noted that the housing complex was comprised of three buildings, two of which were owned by the county and one of which was owned by a private group. The report noted that Respondent had permission to be in the privately-owned building but not the other two. Importantly, the report noted that Respondent was at the building where he had permission to be "most of the time" and only walked over the county-owned buildings "for a moment." When the officer explained he could not be at the other two buildings, Respondent, "returned to the proper side, and there were no further issues."

The police report narrative does not provide evidence of any Election Code violations by Respondent. There was no observation of Respondent or any identified individual under Respondent's instruction committing an act that might implicate any of the statutes cited in the complaint or any others in the Election Code.

This complaint and the documents attached to it do not provide evidence based upon personal information or information other than hearsay to support a legally sufficient complaint against Respondent.

For these reasons, I find the complaint to be Legally Insufficient.

If you have additional information to correct the stated ground(s) of insufficiency, please submit it within 14 days of the date of this letter. If no additional information is received correcting the stated grounds of insufficiency, this case will be closed. Enclosed is the form for submitting additional information. Should you submit an additional statement containing facts, your

Francisco Pichel
February 7, 2020
Page 3
FEC 19-561

statement must contain your notarized signature. Any additional facts submitted to the Commission must be based on either personal information or information other than hearsay.

If you have any questions concerning the complaint, please contact us at fec@myfloridalegal.com.

Sincerely,

A handwritten signature in cursive script that reads "Tim Vaccaro". The signature is written in black ink and is positioned below the word "Sincerely,".

Tim Vaccaro
Executive Director

TV/med

Enclosure: Additional Complaint Information Form 2
cc: Benedict P. Kuehne, Attorney for Respondent w/out Enclosure

FLORIDA ELECTIONS COMMISSION
107 West Gaines Street, Suite 224,
Tallahassee, FL 32399-1050

ADDITIONAL COMPLAINT INFORMATION

Case Number: FEC 19-561

Pursuant to Rule 2B-1.0025, Florida Administrative Code, if you have additional information to correct the ground(s) of legal insufficiency stated in the attached letter, please explain in a concise narrative statement. Attach the statement and any relevant documentation to this form:

STATE OF FLORIDA

COUNTY OF _____

I swear or affirm that the information in the attached statement is true and correct to the best of my knowledge.

Original Signature of Person Bringing Complaint

Sworn to and subscribed before me this _____ day of _____, 20_____.

Signature of Officer Authorized to Administer
Oaths or Notary Public

(Print, Type, or Stamp Commissioned Name of
Notary Public)

Personally Known _____ Or Produced Identification _____

Type of Identification Produced _____

Any person who files a complaint while knowing that the allegations are false or without merit commits a misdemeanor of the first degree, punishable as provided in Sections 775.082 and 775.083, Florida Statutes.



FEC19-61 - Response and Request for Legal Sufficiency Dismissal
Benedict P. Kuehne to: Florida Elections Commission

02/06/2020 07:04 PM

From: "Benedict P. Kuehne" <ben.kuehne@kuehnelaw.com>
To: "Florida Elections Commission" <fec@myfloridalegal.com>

Good evening, Ms. Malphurs. My Response requesting a legal insufficiency dismissal is attached.

Benedict P Kuehne
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100 SE 2 Street, Suite 3550
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BPK Response to FEC Complaint.Final.2-6-2020.pdf

LAW OFFICE OF
KUEHNE DAVIS LAW
PROFESSIONAL ASSOCIATION

BENEDICT P. KUEHNE*+
SUSAN DMITROVSKY
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BROWARD COUNTY OFFICE

1926 Harrison Street
Hollywood, FL 33020

REPLY TO: Miami

February 6, 2020

Donna Malphurs, Agency Clerk
Florida Elections Commission
107 West Gaines Street, Suite 224
Tallahassee, FL 32399-1050
donna.malphurs@myfloridalegal.com
fec@myfloridalegal.com

Re: *Alex Diaz de la Portilla*
FEC Case No. 19-561
Response to Complaint and
Request for Dismissal for Legal Insufficiency

Dear Clerk Malphurs:

City of Miami Commissioner Alex Diaz de la Portilla and I have had an opportunity to review the referenced Complaint filed by Francisco Pichel. The Complaint is entirely unfounded, legally insufficient, not made on personal information, and frivolous. The complaint was filed for the primary purpose of harassing and attempting to embarrass then-candidate Alex Diaz de la Portilla, exposing him to adverse publicity and a criminal investigation, as well as forcing him to incur significant expenses to defend himself against the unsupported accusations in this forum and in a criminal investigation. The Commission should dismiss the Complaint as lacking legal sufficiency and probable cause.

Additionally, because the Complaint is motivated by a malicious intent to injure the reputation of Commissioner Diaz de la Portilla, the Commission should award attorney's fees and costs in Commissioner Diaz de la Portilla's favor pursuant to Rule 2B-1.0045, Florida Administrative Code. The complainant, an opposing

candidate, has actively sought, by this Complaint, to subject Commissioner Diaz de la Portilla to a baseless accusation of criminal wrongdoing in the form of alleged vote-buying. The complainant even supplied this Complaint to the State Attorney's Office to commence a spurious criminal investigation against Alex Diaz de la Portilla. The complainant also smeared a City of Miami police officer and firefighter with false allegations of criminal activity. The complainant used this complaint to harm Commissioner Diaz de la Portilla in his personal and professional capacities. Commissioner Diaz de la Portilla must now expend significant time and resources defending against this unsubstantiated and invalid assault. Legal fees should be assessed against the complainant.

A. The Diaz de la Portilla Campaign Seeks Dismissal of the Complaint for Lack of Personal Knowledge and the Absence of Non-Hearsay Facts.

1. Commissioner Diaz de la Portilla Denies the Allegations.

Alex Diaz de la Portilla was elected to the office of City of Miami Commission District 1 in November 2019. At the time of the Complaint, he was a candidate competing against the complainant for that elective office. He denies each allegation in the Complaint. During his campaign for City of Miami Commission District 1, Commissioner Diaz de la Portilla complied with all required campaign law requirements. He did not make false declarations in securing ballot assistance. He did not commit fraud in connection with casting votes. He did not violate vote-by-mail laws. He engaged in no corruption or neglect of duty and had no legal duty in connection with the allegations in the complaint. He did not interfere with the voting process. He did not corruptly influence voting or voters. He engaged in no voter intimidation or vote suppression.

In short, Commissioner Diaz de la Portilla did none of the deeds for which he is accused. The complainant is aware of the truth yet submitted a perjurious sworn complaint in order to falsely accuse Commissioner Diaz de la Portilla of criminal activity.

2. Complaint Is Not Based on Personal Information.

Not a single allegation of the Complaint is based on the

complainant's personal knowledge. As well, the Complaint is not based on anyone's knowledge or presentation of facts. Instead, the entirety of the Complaint is merely an effort to use innuendo and rank speculation to smear Commissioner Diaz de la Portilla's good name and reputation.

This lack of firsthand information constitutes neither personal knowledge nor fact evidence of any sort. Nor does the Complaint identify any personally known or non-hearsay fact supporting the allegations. In short, the Complaint merely states the complainant's unsubstantiated conjecture that Commissioner Diaz de la Portilla's campaign engaged in illegal practices.

What is even more offensive is that the complainant smears two City of Miami First Responders, a police officer and a firefighter, accusing them of engaging in criminal activities. This reprehensible conduct warrants an assessment of sanctions against the complainant.

Because the Complaint is not based on the complainant's personal knowledge or supported by non-hearsay evidence, as is required by §106.25(2), Florida Statutes (2018), it is legally insufficient and must be dismissed.

B. Response to Complaint.

1. No Supporting Facts for False Declarations.

The first claim is that the Diaz de la Portilla Campaign engaged in making false declarations to secure assistance in preparing a ballot. Yet, the Complaint contains no supporting facts. The Complaint is therefore legally insufficient and must be dismissed.

2. No Facts Support the Conclusory Allegation of Fraud in Connection with Casting Votes.

While the Complaint asserts fraud in connection with the casting of votes, the complainant offers no supporting facts or information even suggesting that voting fraud occurred or that the Diaz de la Portilla Campaign was involved in that wrongdoing. Consequently, the Complaint must be dismissed for legal insufficiency.

3. No Supporting Allegations of Vote Selling.

The Complaint contains no factual allegations supporting the accusation of vote buying and offers no information the Diaz de la Portilla Campaign was involved in that illegal conduct. The Complaint must be dismissed for legal insufficiency.

4. The Complaint Does Not Allege Any Facts Supporting the Accusation of Vote-by-Mail Violations.

Again, the Complaint does not contain any facts supporting a violation of the vote-by-mail law and does not even suggest the involvement of the Diaz de la Portilla Campaign in that conduct. Therefore, the Complaint must be dismissed for legal insufficiency.

5. No Facts Support the Allegation of Neglect of Duty and Corrupt Practices.

The Complaint alleges violations of §104.051, Florida Statutes, proscribing neglect of duty or corrupt practices on the part of "any official." Yet, it does not identify any "officials" to which the statute applies. Alex Diaz de la Portilla was a candidate, not a public official, at the time of the complaint. Accordingly, these allegations must be dismissed for legal insufficiency.

6. The Complaint Makes No Factual Allegations Supporting the Accusation of Deprivation of Voting Rights.

Without identifying a single fact supporting the contention that Alex Diaz de la Portilla or his Campaign deprived anyone of their voting rights, the Complaint nonetheless cites a violation of §104.0515, Florida Statutes. This is conclusory rhetoric that is not legally sufficient. Accordingly, the Complaint must be dismissed for legal insufficiency.

7. The Complaint Does Not Offer Any Facts Supporting the Accusation of Corruptly Influencing Voting.

Citing §104.061, Florida Statutes, the Complaint asserts the Diaz de la Portilla Campaign corruptly influenced voting. The Complaint does not identify a single fact connecting then-candidate Diaz de la Portilla or his Campaign to acting corruptly in influencing voting. As a result, the Complaint must be dismissed for legal insufficiency.

8. The Complaint Does Not Offer Any Facts Supporting the Accusation of Voter Intimidation or Vote Suppression.

Citing the Voter Protection Act, §104.0615, Florida Statutes, the Complaint asserts the Diaz de la Portilla Campaign engaged in the illegal practice of voter intimidation and suppression yet does not include even a single fact of the actual or attempted use of threats, force, violence, or intimidation against any voter. The Complaint must be dismissed for legal insufficiency.

9. The Complaint Does Not Offer Any Facts Supporting the Accusation of Voter Intimidation or Vote Suppression.

Citing §104.0616, Florida Statutes, the Complaint claims an unspecified violation of vote-by-mail requirements. The Complaint does not identify a single fact connecting then-candidate Diaz de la Portilla or his Campaign to acting corruptly in influencing voting. As a result, the Complaint must be dismissed for legal insufficiency.

C. An Award of Attorney's Fees and Costs Is Warranted.

Because the Complaint is not based on personal knowledge and is not supported by evidence, an award of legal fees and costs not less than \$10,000.00 should be assessed against the complainant for filing this maliciously motivated complaint intended to demean, harass, and injure Commissioner Diaz de la Portilla personally and professionally.

D. Conclusion.

The Complaint is legally insufficient and not based on personal information or non-hearsay sources. It is, to the contrary, a spurious and false attack against Commissioner Diaz de la Portilla. None of

the allegations are supported by any facts suggesting misconduct on the part of then-candidate Diaz de la Portilla or his Campaign. The Complaint is nothing other than a publicity stunt by a then-failing candidate for political office. The Complaint must be dismissed, and costs and fees awarded in favor of Commissioner Diaz de la Portilla.

Respectfully submitted,


Benedict P. Kuehne

BENEDICT P. KUEHNE

Copy:

Francisco Pichel, 757 NW 27 Avenue #205, Miami, FL 33125



FEC 19-561 

Florida Elections Commission to: Benedict P. Kuehne

12/17/2019 09:27 AM

Sent by: Donna Malphurs

Dear Mr. Kuehne,

We are in receipt of your notice of appearance, request for an extension of time, and a copy of the file materials. We have updated our records to reflect you are counsel of record, your request for an extension of time is granted; please submit your response by the close of business on January 6, 2020. As requested, attached is a copy of the complaint and the correspondence mailed to your client. If you have any questions, please let me know.

Sincerely,

Donna Ann Malphurs

Agency Clerk/Public Information Officer
Florida Elections Commission
850-922-4539



2019-11_04_Complaint.pdf



2019-11-05_1st 14 day ltr.docx

"Benedict P. Kuehne" Eric Lipman, General Counsel Florida Electi...

12/16/2019 08:01:08 PM

From: "Benedict P. Kuehne" <ben.kuehne@kuehnelaw.com>
To: "Florida Elections Commission" <fec@myfloridalegal.com>
Date: 12/16/2019 08:01 PM
Subject: FEC Case No. 19-561, Alex Diaz de la Portilla, Letter of Representation & Request for Case File

Eric Lipman, General Counsel
Florida Elections Commission
107 West Gaines Street, Suite 224
Tallahassee, FL 32399-1050
fec@myfloridalegal.com

Re: Alex Diaz de la Portilla
FEC Case No. 19-561
Letter of Representation & Request for Case File

Dear Mr. Lipman:

My law firm is providing representation to the subject of the referenced case, Alex Diaz de la Portilla. Please direct all communications concerning my client to my attention.

Also, please provide the entirety of the referenced case file. An electronic copy is requested if available.

Because I just received this Complaint, please allow an extension until January 6, 2020, for responding. I intend to challenge legal sufficiency.

Thank you for your assistance.

Respectfully submitted,

BENEDICT P. KUEHNE

Benedict P Kuehne

Kuehne Davis Law, PA

100 SE 2 Street, Suite 3550

Miami, FL 33131

Tel: 305.789.5989

Fax: 305.789.5987

Cell: 786.543.8352

Ben.kuehne@kuehnelaw.com

www.kuehnelaw.com

[attachment "BPK Letter of Representation.FEC19-561.pdf" deleted by Donna Malphurs/OAG]



FEC Case No. 19-561, Alex Diaz de la Portilla, Letter of Representation & Request for Case File
Benedict P. Kuehne to: Florida Elections Commission 12/16/2019 08:01 PM
From: "Benedict P. Kuehne" <ben.kuehne@kuehnelaw.com>
To: "Florida Elections Commission" <fec@myfloridalegal.com>

1 Attachment



BPK Letter of Representation.FEC19-561.pdf

Eric Lipman, General Counsel
Florida Elections Commission
107 West Gaines Street, Suite 224
Tallahassee, FL 32399-1050
fec@myfloridalegal.com

Re: Alex Diaz de la Portilla
FEC Case No. 19-561
Letter of Representation & Request for Case File

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Also, please provide the entirety of the referenced case file. An electronic copy is requested if available.

Because I just received this Complaint, please allow an extension until January 6, 2020, for responding. I intend to challenge legal sufficiency.

Thank you for your assistance.

Respectfully submitted,

BENEDICT P. KUEHNE

Benedict P Kuehne
Kuehne Davis Law, PA
100 SE 2 Street, Suite 3550
Miami, FL 33131
Tel: 305.789.5989
Fax: 305.789.5987
Cell: 786.543.8352
Ben.kuehne@kuehnelaw.com
www.kuehnelaw.com

LAW OFFICE OF
KUEHNE DAVIS LAW
PROFESSIONAL ASSOCIATION

BENEDICT P. KUEHNE*+
SUSAN DMITROVSKY
MICHAEL T. DAVIS
*Board Certified Appellate Practice
+Board Certified Criminal Trials
#Board Certified Criminal Appeals

MIAMI TOWER, SUITE 3550
100 S.E. 2ND Street
MIAMI, FLORIDA 33131-2154
Telephone: 305-789-5989
Facsimile: 305-789-5987
ben.kuehne@kuehnelaw.com
susand@kuehnelaw.com
mdavis@kuehnelaw.com

BROWARD COUNTY OFFICE

1926 Harrison Street
Hollywood, FL 33020

REPLY TO: Miami

December 16, 2019

Eric Lipman, General Counsel
Florida Elections Commission
107 West Gaines Street, Suite 224
Tallahassee, FL 32399-1050
fec@myfloridalegal.com

Re: *Alex Diaz de la Portilla*
FEC Case No. 19-561
Letter of Representation & Request for Case File

Dear Mr. Lipman:

My law firm is providing representation to the subject of the referenced case, Alex Diaz de la Portilla. Please direct all communications concerning my client to my attention.

Also, please provide the entirety of the referenced case file. An electronic copy is requested if available.

Because I just received this Complaint, please allow an extension until January 6, 2020, for responding. I intend to challenge legal sufficiency.

Thank you for your assistance.

Respectfully submitted,



BENEDICT P. KUEHNE



Florida Elections Commission

107 West Gaines Street, Suite 224 Tallahassee, Florida 32399-1050
Telephone: (850) 922-4539 · Facsimile: (850) 921-0783
FEC@myfloridalegal.com · www.fec.state.fl.us



November 5, 2019

CERTIFIED MAIL 9214 8969 0099 9790 1630 8464 92

Alex Diaz de la Portilla
1861 NW S. River Drive Apt 1801
Miami, FL 33125

RE: Case No.: FEC 19-561; Respondent: Alex Diaz de la Portilla

Dear Mr. Diaz de la Portilla:

On November 4, 2019, the Florida Elections Commission received the enclosed complaint alleging that you violated Florida's election laws. Section 106.25(2), Florida Statutes, states:

The respondent shall have 14 day *after receipt* of the complaint to file an initial response, and the executive director may not determine the legal sufficiency of the complaint during that time period.

Should you choose to file a response to the complaint, please send it to my attention at the address listed above. You may also send your response to my attention at fec@myfloridalegal.com. You will be notified by letter whether the complaint is determined to be legally sufficient.

Please note that all documents related to this matter will be mailed to the above address unless you notify us of a new address.

Pursuant to Section 106.25, Florida Statutes, complaints, investigations, investigative reports, and other documents relating to an alleged violation of Chapters 104 or 106, Florida Statutes, are confidential until the commission finds probable cause of no probable cause. The confidentiality provision does not apply to the complainant, however, it does apply to you, the Respondent, unless you waive confidentiality if writing.

The confidentiality provision does not preclude you from seeking legal counsel. Should you retain counsel, your attorney must file a notice of appearance with the Commission before any member of the commission staff can discuss this case with him or her.

For additional information, please refer to the Commission's website www.fec.state.fl.us.

Sincerely,

Molly Donovan

Molly Donovan
Complaint Coordinator

Enclosure: Complaint w/ attachments

COMPLAINT

The Commission's records and proceedings in a case are confidential until the Commission rules on probable cause. A copy of the complaint will be provided to the person against whom it is brought.

1. PERSON BRINGING COMPLAINT:

Name: Francisco Pichel Work Phone: (305) 582-5279
Address: 757 NW 27 Avenue #205 Home Phone: ()
City: Miami County: Miami-Dade State: FL Zip Code: 33125

2. PERSON AGAINST WHOM COMPLAINT IS BROUGHT:

If you intend to name more than one individual or entity, please file multiple complaints. A person can be an individual, political committee, political party, electioneering communication organization, club, corporation, partnership, company, association, or other type of organization.

Name of individual or entity: Campaign of Alex Diaz De La Portilla
Address: 1861 NW S. River Drive Apt 1801 Phone: (786) 792-8254
City: Miami County: Miami-Dade State: FL Zip Code: 33125

If individual is a candidate, list the office or position sought: City of Miami Commissioner District 1

Have you filed this complaint with the State Attorney's Office? (check one) Yes No

Are you alleging a violation of Section 104.271(2), F.S.? (check one) Yes No

Are you alleging a violation of Section 104.2715, F.S.? (check one) Yes No

3. ALLEGED VIOLATION(S):

Please attach a **concise** narrative statement in which you list the provisions of the Florida Election Code that you believe the person named above may have violated. The Commission has jurisdiction only to investigate provisions of Chapter 104 and Chapter 106, Florida Statutes. Please include the following items as part of your attached statement:

- The facts and actions that you believe support the violations you allege;
- The names/telephone numbers of persons whom you believe may be witnesses to the facts;
- A copy or picture of any political advertisement(s) you mention in your statement;
- A copy of each document you mention in your statement;
- An explanation of why you believe information you reference from websites is relevant; and
- Any other evidence supporting your allegations.

SEE REVERSE SIDE OF DOCUMENT FOR ADDITIONAL INFORMATION

*Any person who files a complaint while **knowing** that the allegations are false or without merit commits a misdemeanor of the first degree, punishable as provided in Sections 775.082 and 775.083, Florida Statutes.*

REC'D: FL ELECTIONS COM
4 NOV 19 AM 11:49

4. OATH:

STATE OF FLORIDA

COUNTY OF Miami-Dade

I swear or affirm that the above information is true and correct to the best of my knowledge.

Original Signature of Person Bringing Complaint

Sworn to and subscribed before me this 26 day of
October, 20 19

Signature of Officer Authorized to Administer Oaths or Notary Public



(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known Or Produced Identification

Type of Identification Produced _____

5. IMPROPERLY COMPLETED COMPLAINT FORMS MAY BE RETURNED:

- You **MUST submit this** completed complaint **form** in order to file a complaint.
- You **MUST** complete **ALL FOUR** of the above sections of this form. **DO NOT** leave any blanks.
- You **MUST** submit the **ORIGINAL** complaint form. Copied/faxed/emailed forms are returned.
- Each complaint can only be filed against **ONE PERSON** or **ENTITY**. If you wish to file against multiple parties, you **MUST** submit a complaint form **for each party** you wish to file against.
- **DO NOT** submit multiple complaint forms with one set of attachments applying to multiple complaints. You **MUST** attach **copies** of attachments **to each complaint** to which they apply.
- **MAKE SURE** the alleged violation(s) of **Chapters 104 or 106** occurred within the last **2 years**.
- **MAKE SURE** your complaint is **sworn** and there is **no defect** to the **notarization** in Section 4.

STATEMENT OF FLORIDA ELECTIONS COMMITTEE COMPLAINT

I am a candidate running for City of Miami Commission, District 1. I am filing a formal complaint against the campaign of Alex Diaz De La Portilla for several violations of election laws. I believe his campaign has violated several Florida laws regarding elections including:

104.031 False declaration to secure assistance in preparing ballot. 104.041 Fraud in connection with casting vote. 104.045 Vote selling. 104.047 Vote-by-mail ballots and voting; violations. 104.051 Violations; neglect of duty; corrupt practices. 104.0515 Voting rights; deprivation of, or interference with, prohibited; penalty. 104.061 Corruptly influencing voting. 104.0615 Voter intimidation or suppression prohibited; criminal penalties. 104.0616 Vote-by-mail ballots and voting; violations.

On October 17, 2019, I received a call by the property manager of the Three Round Towers, Miriam Rodriguez, located at 2820 NW 18th Avenue, Miami, FL 33142. I was told that there were two people who identified themselves as a firefighter and a police officer who were dressed in plain clothes. The police officer had a side arm, a City of Miami badge on his belt and a police radio. The gentlemen were knocking on doors and soliciting votes for Alex Diaz De La Portilla. When confronted by Ms. Rodriguez she asked what they were doing there? They replied, "That they were conducting a "safety check"". At this time, Ms. Rodriguez told them that they were trespassing and informed them they needed to leave. Both men became belligerent and disrespectful and told Ms. Rodriguez they would not leave. This was not the first incident. To my knowledge, there are at least two police reports that have been filed against Alex Diaz De La Portilla by residents concerning his campaign, coercing them to vote for him and also physically taking residents Vote by Mail Ballots and tearing them up if they voted for another candidate. Listed below are two of the most recent police reports filed against campaign workers of Alex Diaz De La Portilla.

The case number for the incident on October 17th is: City of Miami Police Department Report 1910170078446-001 – Police Report attached.

The case number for the incident on October 24th, 2019 is: City of Miami Police Department Report 191024-00802

Witnesses to the facts are:

Miriam Rodriguez (305) 305-3804

Pastor Jose Garcia (305) 216-1052

Jesse Sarmiento (786) 970-7960

Zolay Tamayo (786) 663-6853

Ena last name unknown (786) 379-2972

Photos of incident that occurred on October 17, 2019 attached. Video available upon request.

INCIDENT REPORT

PRINTED BY: MPDREC
PRINTED DATE/TIME: 10/18/2019 2:22 PM

CITY OF MIAMI POLICE DEPARTMENT
400 NW 2ND AVE
MIAMI, FL 33128
305-579-6111
REPORT NUMBER: 1910170078446

REPORT NUMBER: 1910170078446-001	INCIDENT LOCATION: 2920 NW 18TH AV	INCIDENT TYPE: 141 - INFORMATION REPORT	DISPO: Pending	STATUS: 2 - Closed
OCCURRED ON: 10/17/2019 5:30:00 PM-	REPORTED ON: 10/17/2019 6:00:17 PM	ENTERED ON: 10/17/2019 9:39:05 PM	ENTERED BY: Romero, John	
REPORT TYPE: Offense/Incident Report	SUPPLEMENTAL:	CLEARANCE BASIS:	CLEARANCE DATE:	
CIT RELATED: No	BODY CAM FOOTAGE: Yes			
INVESTIGATOR CONTACTED:	INVESTIGATIONS NOTIFIED: No			
24HR DESK NOTIFIED: No	CIS CONTACTED:			
WAS A GUN DISCHARGED: No	WAS SOMEONE HIT:			

OFFENSES

OFFENSE: NON-CRIMINAL INFORMATION
STATUTE: 777.7777
CRIME AGAINST:
FEDERAL UCR:
FLORIDA UCR: 7777
CARGO THEFT:

**ATTEMPTED TO BURN
PROPERTY:**
**HATE/BIAS:
SYMBOLS:**
PREMISES ENTERED:
WEAPONS:
TOOLS:

LOCATION TYPE:
Residence/Home
**ATTEMPTED TO BURN
ABANDONED PROPERTY:
INDICATORS:**

ENTRY:
CRIMINAL ACTIVITY:

COMPLETED: Completed
DOMESTIC VIOLENCE:
ACTIVITIES:
USING: Not Applicable
TYPE SECURITY:

OTHERS - P - Person Reporting

NAME: Tamayo, Zolay
DOB:
AGE: 74
JUVENILE: No
SEX: Female
RACE: White
ETHNICITY: Hispanic or Latino
ADDRESS: Home - 2920 Nw 18th Ave

Miami, FL 33142 Miami USA **PHONE:**

EMAILS:

EYE COLOR:

HAIR COLOR:

FACIAL HAIR:

INCIDENT REPORT

PRINTED BY: MPDREC
PRINTED DATE/TIME: 10/18/2019 2:22 PM

CITY OF MIAMI POLICE DEPARTMENT
400 NW 2ND AVE
MIAMI, FL 33128
305-579-6111
REPORT NUMBER: 1910170078446

COMPLEXION:	HEIGHT:	WEIGHT:
CLOTHING:	RESIDENT:	POB:
SSN:		
DLN:	DL STATE:	DL COUNTRY:
EMPLOYER/SCHOOL:	EMPLOYER/SCHOOL ADDRESS:	OCCUPATION/GRADE:

OTHERS - P - Person Reporting

NAME: Rodriguez, Miriam
 DOB:
 AGE: 75
 JUVENILE: No
 SEX: Female
 RACE: White
 ETHNICITY: Hispanic or Latino
 ADDRESS: Home - 2920 Nw 18th Ave Miami, FL 33142 Miami PHONE:
 USA

EMAILS:		
EYE COLOR:	HAIR COLOR:	FACIAL HAIR:
COMPLEXION:	HEIGHT:	WEIGHT:
CLOTHING:	RESIDENT:	POB:
SSN:		
DLN:	DL STATE:	DL COUNTRY:
EMPLOYER/SCHOOL:	EMPLOYER/SCHOOL ADDRESS:	OCCUPATION/GRADE:

OTHERS - S - Subject of Report

NAME: Portilla, Alex De La
 DOB:
 AGE:
 JUVENILE:
 SEX:
 RACE:
 ETHNICITY:
 ADDRESS: - PHONE:

EMAILS:		
EYE COLOR:	HAIR COLOR:	FACIAL HAIR:
COMPLEXION:	HEIGHT:	WEIGHT:
CLOTHING:	RESIDENT:	POB:
SSN:		
DLN:	DL STATE:	DL COUNTRY:
EMPLOYER/SCHOOL:	EMPLOYER/SCHOOL ADDRESS:	OCCUPATION/GRADE:

OTHERS - S - Subject of Report

NAME: Pichel, Frank
 DOB:
 AGE:

INCIDENT REPORT

PRINTED BY: MPDREC
PRINTED DATE/TIME: 10/18/2019 2:22 PM

CITY OF MIAMI POLICE DEPARTMENT
400 NW 2ND AVE
MIAMI, FL 33128
305-579-6111
REPORT NUMBER: 1910170078446

JUVENILE:

SEX:

RACE:

ETHNICITY:

ADDRESS:

PHONE:

EMAILS:

EYE COLOR:

HAIR COLOR:

FACIAL HAIR:

COMPLEXION:

HEIGHT:

WEIGHT:

CLOTHING:

RESIDENT:

POB:

SSN:

DLN:

DL STATE:

DL COUNTRY:

EMPLOYER/SCHOOL:

EMPLOYER/SCHOOL ADDRESS:

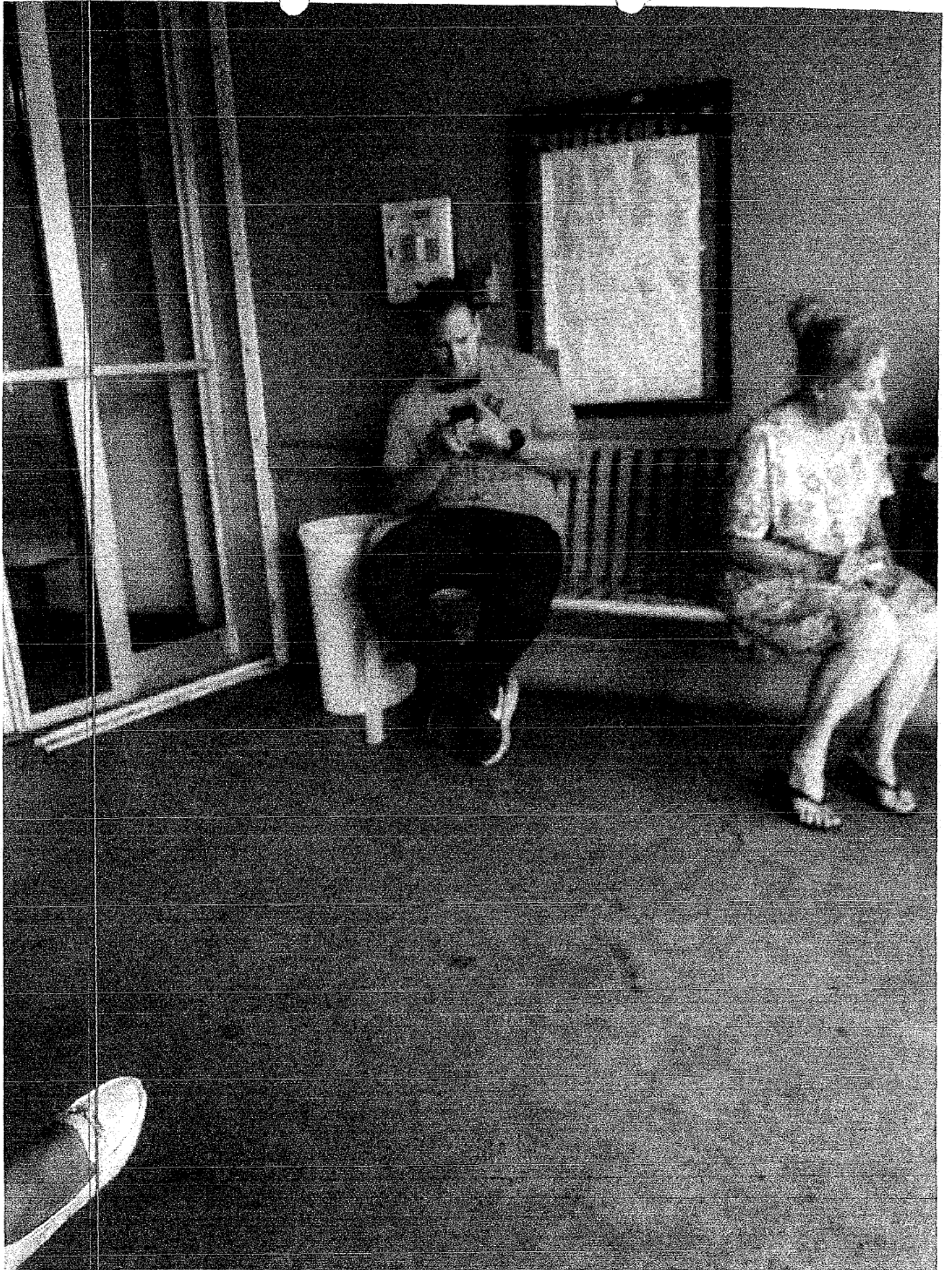
OCCUPATION/GRADE:

NARRATIVE

Unit was dispatched to 2920 Northwest 18TH Avenue in reference to checking for a couple of white females and a white male, wearing a blue top and black pants going around the condo, refusing to leave, and knocking door to door (Alex De La Portilla Loitering). Upon unit's arrival contact was made with Frank Pichel, who was dressed in a blue suit with a pink Miami Police badge and a tie lapel with the city of Miami Police seal, who stated the complainant was upstairs and that "They are trespassing here and they won't leave." As Mr. Pichel and I made our way up stairs to the 7th floor he stated, "I needed a report for Zolay Tamayo because they intimidated her." We contacted Miriam Rodriguez, who identified herself and the president of the association. She stated that yesterday a tall police officer about 7ft tall and another male who said he was from the fire department came over and stated they worked for Alex De La Portilla, she continued to state that she told them "they could not be here". At this moment it was brought up to my attention that these individuals who were "trespassing" were still on the property but inside another building (it was later discovered it was Alex Del La Portilla and his entourage). Zolay Tamayo, who identified herself as a resident, stated she received a phone call from an unknown lady in order to solicit a vote for Alex Del La Portilla. She continued to state that later that day two unknown females knocked on her apartment door and asked her if she was voting for Alex De La Portilla, she said "no." We then made our way downstairs where Ms. Zolay Tamayo continued to explain how the two females came over to her apartment door and how they told her to put back her ballot in the mailbox. Alex De La Portilla and his entourage were explained they could not be on the property because Ms. Miriam Rodriguez didn't not want their presence on the property. Mr. Alex De La Portilla explained he had permission to be on the property from the Related group. After a short discussion on who is a proper representative, Ofc. Herbello was able to informed the unit, after speaking to a county representative via phone, that two out of the three buildings located on the property are owned by Miami Dade County and the remaining building, which is blue in color, is owned by the related group which is going to be remodeled for low income housing. It was at that building Alex De La Portilla and his entourage were observed most of the time and for a moment they walked over to the middle building (county owned). Ofc. Herbello, respectfully addressed Mr. Alex De La Portilla and explained the resident's concerns and how it could be a conflict when they walk into the other two buildings. Note: Alex Del La Portilla did have the right to be on the property but only in the blue building. Mr. Del La Portilla and his entourage then returned to the proper side, and there were no further issues. Report generated.











757 NW 37 Avenue
205
Miami, FL 33125

RECEIVED

2019 NOV -4 P 12:41
STATE OF FLORIDA
ELECTIONS COMMISSION


Florida Elections Commission
107 West Gaines Street
Suite 224
Tallahassee, FL 32399-1050

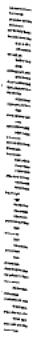
	
U.S. POSTAGE	\$1.30
FCM LG ENV	3319 0020
10/27/19	25 K
1447390	11487390

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2.30 oz
0020

SHIP TO:
TALLAHASSEE FL 32399

(420) 32399




FLORIDA ELECTIONS COMMISSION

REVIEW OF COMPLAINT FOR LEGAL SUFFICIENCY			
~ PRELIMINARY INFORMATION ~			
Date Received: 11/04/19	Reviewer: Cole	Case #: 19-561	<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> AMENDED
Complainant: Francisco Pichel		Respondent: Alex Diaz de la Portilla	
Complainant:	Complainant was one of 7 candidates for Miami City Commission, District 1, in the November 5, 2019, election. He was not elected.		
Respondent:	Respondent was one of 7 candidates for City of Miami Commission, District 1, in the November 5, 2019, election. He was elected after defeating Miguel-Angel Gabela in a run-off election held on November 19, 2019.		
Background:	Respondent is represented by Benedict P. Kuehne, Esq., who has not filed a response.		
~ VIOLATIONS ~			
Violations in complaint:	§104.031, 104.041, 104.045, 104.047, 104.051, 104.0515, 104.061, 104.0615, 104.0616		
Violations for CMS:	§104.0515(3), 104.061(1), 104.0615(2)(b)		
~ COMPLAINT ISSUES ~			
1. Respondent allegedly violated several sections of Chapter 104, F.S.			
~ REVIEW OF COMPLAINT ISSUES ~			
1.	<p>Complainant alleged Respondent committed violations of several sections of Chapter 104, F.S., all stemming from conduct allegedly occurring on or about 10/17/19 at a local housing development. The sections cited in the complaint cover a variety of issues, including voter intimidation, corrupt influencing of voting, and fraud in connection with voting. However, this complaint and the documents attached to it do not provide enough evidence based upon personal information or information other than hearsay to support a legally sufficient complaint against Respondent.</p> <p>Specifically, Complainant alleged in his narrative that on 10/17/19 Miriam Rodriguez, the property manager of Three Round Towers, called him and told him that two people in plain clothes identifying as a firefighter and police officer were knocking on doors and soliciting votes for Respondent. Ms. Rodriguez asked what they were doing, and they told her they were conducting a safety check. Ms. Rodriguez told them they were trespassing and told them to leave, but the men and told Ms. Rodriguez they would not leave.</p> <p>Complainant stated that at least two police reports have been filed against Respondent by residents for coercing them to vote for him and taking their vote by mail ballots and destroying them if they voted for another candidate. Complainant provided no further details for these allegations in his narrative.</p>		

The only evidence provided by Complainant was a police report dated 10/17/19 and a few photographs he alleged were taken on 10/17/19. The photographs show three police cars parked in front of an apartment building, a man and woman sitting in what looks like a lobby, and two cars parked in a parking lot. The photographs do not appear to be evidence of anything related to Respondent. Complainant referenced a police report dated 10/24/19, but he did not attach it to the complaint.

10/16?
The police report dated 10/17/19 was completed in response to a call from Miriam Rodriguez. Complainant was at the property when the police arrived, but most of the issues addressed in the report were based upon events that happened to other people who were interviewed by the police officer taking the report. Ms. Rodriguez stated that 10/16/19 a police officer and firefighter were on the property and said they were working for Respondent. She told them they were trespassing. Zolay Tomayo, another resident, told the officer that an "unknown lady" had called her to solicit a vote for Respondent and two "unknown females" had knocked on her apartment door, asked if she was voting for Respondent, and "told her to put back her ballot in the mailbox."

The incidents related to the officer by Ms. Rodriguez and Ms. Tomayo involve unknown individuals who were allegedly soliciting votes for Respondent, but there is insufficient evidence based upon Respondent's personal information or information other than hearsay to support a complaint against Respondent with respect to those issues.

The police report then noted that Respondent "and his entourage" were on the property at that time. However, the report noted that the housing complex was comprised of three buildings, two of which were owned by the county and one of which was owned by a private group. The report noted that Respondent had permission to be in the privately-owned building but not the other two. Importantly, the report noted that Respondent was at the building he had permission to be at "most of the time" and only walked over the county-owned buildings "for a moment." When the officer explained he could not be at the other two buildings, Respondent, "returned to the proper side, and there were no further issues."

The report appears to support that Respondent was at the housing complex, but it also notes that he was in a building where he had permission to be and only walked to the other buildings for "a moment;" he left when it was explained he could not be there, apparently before doing anything. The police report narrative does not provide evidence of any Election Code violations by Respondent. It simply notes that he was at the housing complex but had the right to be where he was and did not stay in the area where he did not have permission to be. There was no observation of Respondent or any identified individual under Respondent's instruction committing an act that might implicate any of the statutes cited in the complaint or any others in the Election Code.

Legally Insufficient

~ REVIEWER'S RECOMMENDATION AND COMMENTS ~

I recommend the complaint is Legally Insufficient for the reasons stated above.

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Francisco Pichel

Francisco Pichel ran for election to the Miami Board of Commissioners to represent District 1 in Florida. Pichel lost in the general election on November 5, 2019.

BP This page was current at the end of the individual's last campaign covered by Ballotpedia. Please contact us with any updates.

Francisco Pichel



Do you have a photo that could go here? [Click here](#) to submit it for this profile!

Nonpartisan

Elections and appointments

Last election November 5, 2019

Elections



2019

See also: *City elections in Miami, Florida (2019)*

General runoff

General runoff election for Miami Board of Commissioners District 1

Alex Diaz de la Portilla defeated Miguel Angel Gabela in the general runoff election for Miami Board of Commissioners District 1 on November 19, 2019.

	Candidate	%	Votes
✓	 Alex Diaz de la Portilla (Nonpartisan)	60.8	2,784
	 Miguel Angel Gabela (Nonpartisan)	39.2	1,796







BP There were no incumbents in this race. [Source](#)

Total votes: 4,580

General election

General election for Miami Board of Commissioners District 1

The following candidates ran in the general election for Miami Board of Commissioners District 1 on November 5, 2019.

	Candidate	%	Votes
✓ 	Alex Diaz de la Portilla (Nonpartisan)	38.8	2,487
✓ 	Miguel Angel Gabela (Nonpartisan)	20.8	1,335
	Eleazar Melendez (Nonpartisan)	17.6	1,127
	Horacio Aguirre (Nonpartisan)	10.6	682
	Francisco Pichel (Nonpartisan)	5.2	332
	Verania Hermida (Nonpartisan)	4.1	261

Scroll for more ↓

BP There were no incumbents in this race. Source

Total votes: 6,411

Campaign themes

2019

Ballotpedia survey responses

See also: *Ballotpedia's Candidate Connection*

Francisco Pichel did not complete Ballotpedia's Candidate Connection survey.

See also

2019 Elections



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Several Miami-Dade County Elections Headed For Runoff After Tuesday Voting

By [WLRN NEWS \(/PEOPLE/WLRN-NEWS\)](#) • NOV 6, 2019

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(//www.wlrn.org/sites/wlrn/files/styles/x_large/public/201911/103Election05NEWPPP.jpeg)

Supporters of candidates camped outside the voting precinct at the Allapattah Branch Library in Miami on Tuesday, as voters chose from seven candidates running for the Miami City Commission in District 1.

PEDDRO PORTAL / MIAMI HERALD

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LEARN MORE

The results from Tuesday's municipal elections in some areas of South Florida are in. We have summarized them so you can catch up with what happened in a glance.



FEB. 15, 16, 17.
COCONUT GROVE
 ARTS FESTIVAL

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SunSentinel



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In the race to fill the District 1 seat, former state senator Alex Diaz de la Portilla and auto parts retailer Miguel-Angel Gabela will go to a runoff election on November 19.

They both received the most votes in a seven-person field, but neither received more than 50%, a requirement to win the election outright, according to the Miami Herald (<https://www.miamiherald.com/news/politics-government/election/article236981983.html>).

That district includes Allapattah, Grapeland Heights, the Health District around Jackson Memorial Hospital and a bit of Flagami near Blue Lagoon.

In District 2, incumbent Ken Russell easily won reelection, capturing about 59% of the vote. That district is home to some of Miami-Dade County's most valuable real estate, it includes Miami's waterfront communities from Coconut Grove to Morningside, including downtown and Brickell.

Voters in Miami Beach will be back at the polls to elect their leaders. None of the 12 candidates made the cut in total votes to win any of the three City Commission seats, meaning all three races will go to a runoff.

But voters there did agree on something. The proposed pay raise for city commissioners and the mayor was rejected. The salary hike would've increased the earnings for those positions by 650%.

In Hialeah, voters unseated Lourdes Lozano, the city council races' only incumbent in Group 1. She had been a council member since 2011 and was running for her third term, but fell short with 41.67% or 4,948 votes. Mónica Pérez, who is an elementary school teacher and has no prior political experience, won that seat with 58.33% or 6,927 votes..

No candidate in the races for seats in Group 2 and Group 3 received more than 50% of the votes that means they will be headed to a runoff on November 19.

In Group 2, Luis González, who had 31.97% or 4,015 votes will face off against Jesus Tundidor with 28.08% or 3,526 votes.

González is a former city council member, who is supported by Carlos Hernández, the city's Cuban-born mayor. Tundidor is the former vice chair of the city's planning and zoning board.

In Group 3, Jaqueline Garcia-Roves and community activist Milagros "Milly" Herrera will go against each other in the runoff.

How To Make Your Home Unappealing To Burglars (<https://patch.com/florida/miami/s/gzybe/how-your-neighbors-make-their-homes-unappealing-burglars>)



Politics & Government (<https://Patch.com/Florida/Miami/Politics>)

Miami-Dade Runoff Election Results: Miami, Miami Beach, Hialeah

Miami-Dade County voters in Miami, Miami Beach and Hialeah headed back to the polls for special runoff elections on Tuesday.

By Paul Scicchitano, Patch Staff (<https://patch.com/users/paul-scicchitano>)
Nov 19, 2019 8:02 pm ET | Updated Nov 20, 2019 12:11 am ET

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(<https://patch.com/florida/miami/amp/28419511/miami-dade-runoff-election-results-miami-miami-beach-hialeah>)





Miami-Dade County voters in Miami, Miami Beach and Hialeah headed back to the polls for special runoff elections on Tuesday. (Photo by Paul Scicchitano)

MIAMI, FL — Miami-Dade County voters in Miami, Miami Beach and Hialeah headed back to the polls Tuesday for special runoff elections.

The polls closed at 7 p.m. around Miami-Dade County.

Here are the unofficial election results with 100 percent of the precincts reporting:

MIAMI

Commissioner Wilfredo Gort's District 1 seat was up for grabs in Tuesday's runoff since no candidate garnered the necessary 50 percent plus one vote to win the race outright. Commissioner Gort had been barred from running in this election based on term limitations.

With 100 percent of precincts reporting, former Florida State Sen. Alex Diaz de la Portilla (<http://www.flsenate.gov/Senators/2008-2010/S36/4649>) appeared to defeat Miguel Angel Gabela (<https://www.facebook.com/votegabela/>) by a vote of 2,784 to 1,796 based on unofficial returns.

Seats on the Miami Commission are considered non partisan.

Click here (https://www8.miamidade.gov/global/news-item.page?Mduid_news=news1547756720256301) for more information on the Miami runoff election.

MIAMI BEACH

With 100 percent of precincts reporting, Steven Meiner (<https://www.stevenmeiner.com/>) appeared to defeat former Miami Beach Commissioner Kristen Rosen Gonzalez by a margin of 4,427 votes to 3,798 based on unofficial results.

Meiner earned a spot in the runoff by only two votes after a recount (<https://www.miamidade.gov/elections/library/reports/2019-miami-beach-certified-results.pdf>) while Rosen Gonzalez received more votes than any of her opponents in the Nov. 5 election.

In the days since the Nov. 5 election, Miami Beach Mayor Dan Gelber publicly endorsed Meiner, and blasted Rosen-Gonzalez in an email to city residents on Monday.

"Ms. Rosen Gonzalez has, on a daily basis, accused me of oppressing her and waging a campaign against her," the mayor penned in Monday's email. "She has compared herself to Jews in Nazi Germany and African-Americans during Jim Crow."

Miami Beach Commissioner Ricky Arriola (<http://rickyarriola.com/>) appeared to beat Raquel Pacheco (<https://www.voteraquelpacheco.com/>) by a margin of 4,578 to 3,343 with 100 percent of the votes counted, according to the unofficial returns.

David Richardson (<https://davidforflorida.com/>) appeared to defeat Adrian Gonzalez (<https://www.adriangonzalezmb.com/>) based on unofficial returns by a margin of 4,677 to 3,394 with 100 percent of the votes tallied.

Arriola told Patch Tuesday's unofficial results marked a big win for city residents.

"We elected three solid, serious, drama free commissioners who will get to work right away to move our city forward," Arriola said.

Click here ([https://www8.miamidade.gov/global/news-item.page?](https://www8.miamidade.gov/global/news-item.page?Mduid_news=news1547756720256301)

[Mduid_news=news1547756720256301](https://www8.miamidade.gov/global/news-item.page?Mduid_news=news1547756720256301)) for more information on the Miami Beach runoff election.

HIALEAH

With 100 percent of the votes tallied in the Group II council runoff race, Jesus Tundidor (<https://www.facebook.com/tundi4hialeah/>) appeared to defeat Luis Gonzalez (<https://www.facebook.com/pages/category/Politician/Luis-Gonzalez-For-Hialeah-104737640884643/>) by a margin of 6,795 votes to 3,728.

With 100 percent of the votes tallied in the Group III Council runoff, Jackie Garcia-Roves (https://ballotpedia.org/Jackie_Garcia-Roves) appeared to defeat Milly Herrera (<https://millyherrera.com/>) by a margin of 5,552 votes to 4,730 based on unofficial returns.

Click here ([https://www8.miamidade.gov/global/news-item.page?](https://www8.miamidade.gov/global/news-item.page?Mduid_news=news1547756720256301)

[Mduid_news=news1547756720256301](https://www8.miamidade.gov/global/news-item.page?Mduid_news=news1547756720256301)) for more information on the Hialeah runoff election.

All of the results from the Nov. 5 municipal elections have been certified and are now available online for Hialeah, Miami and Miami Beach

(<https://results.enr.clarityelections.com/FL/Dade/98373/web/#/summary>) as well as Homestead

(<https://results.enr.clarityelections.com/FL/Dade/98374/web/#/summary>).

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Checklist for Identifying Technical Deficiencies in Complaints

Rule 2B-1.0025

****If any of the following information is incorrect or missing upon receipt of a new complaint, DO NOT open a case in CMS. Instead, process in accordance with Rule 2B-1.0025.****

- Complaint is filed on Form 1
- All information required by Form 1 is provided
- Only one Respondent is named
- Complainant's name is included (not "Anonymous")
- All exhibits and attachments referenced in the complaint are attached
- If multiple complaints are submitted, separate copies of exhibits and attachments are attached for EACH complaint
- Complaint includes an original signature
- Notary is proper:
 - Includes the **venue** stating the location of the notarization in the format, "State of Florida, County of ."
 - Includes an **oath or an acknowledgment**, evidenced by the words "sworn" or "acknowledged."
 - States that the signer **personally appeared** before the notary public at the time of the notarization.
 - Includes the exact **date** of the notarial act.
 - Includes the **name of the person** whose signature is being notarized.
 - Specifies the specific **type of identification** the notary public is relying upon in identifying the signer, either based on personal knowledge or satisfactory evidence (e.g., drivers license).
 - Includes the **notary's official signature**.
 - Includes the **notary's name**, typed, printed, or stamped below the signature.
 - Includes the **notary's official seal** affixed below or to either side of the notary's signature.
- Alleging violation of Section 104.271(2), Florida Statutes
 - Box was checked, but no allegation of this statute was made
- Alleging violation of Section 104.2715, Florida Statutes
 - Box was checked, but no allegation of this statute was made