**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF FLORIDA**
**TALLAHASSEE DIVISION**
**CASE NO. 4:18cv529-MW/CAS**

**MIKE FOX, et al.,**
　　　*Plaintiffs*,

**versus**

**KEN DETZNER, in his official capacity as**
**Florida Secretary of State, et al.,**
　　　*Defendants*.
_____/

# NOTICE OF FILING EXHIBITS FOR MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION (PLAINTIFFS' EXHIBITS 8-10)

Plaintiffs submit Exhibits 8-10 to the Memorandum of Law Supporting the Motion for Preliminary Injunction (DE32). These exhibits were inadvertently omitted from the prior Notice of Filing Exhibits 1-10 (DE33).

Respectfully submitted on December 29, 2018.

*S/ Benedict P. Kuehne*　　　　　　*S/ Carl Christian Sautter*
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## CERTIFICATE OF SERVICE

I certify that on December 29, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the CM/ECF and transmitted in accordance with CM/ECF requirements.

*S/ Benedict P. Kuehne*
**BENEDICT P. KUEHNE**

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## Americans United for Democracy, Integrity and Transparency in Elections

**How ballot images are saved on the
Election Systems & Software (ES&S) high-speed Digital Scanner DS850**

The ES&S DS850 high-speed digital scanner tabulates vote counts using the scanned images made from the paper ballots.  These images are crucial, legally protected election records that must be retained.

The DS850's instructional guide offers the operator options for saving the ballot images:

> \*None
> ***All Processed Images***
> \*Processed Write-In Images Only

The default setting for ES&S machines is to **save all processed images**, as shown in ES&S's own illustration (#3 & 4) below. In other words, the ballot images will be saved to the Election Management System (EMS) unless an election official or another party intentionally selects another option.

An operator who selects "None" willfully chooses not to transfer the ballot images into the Election Management System "EMS," ultimately condemning the ballot images to be destroyed when overwritten by the setup of the next election. See

ES&S DS instructional guide offers the operator three options, as illustrated below. Please note that the recommended setting in the pictures below is "\*All Processed Images."

## In ES&S's own words:

Excerpt, page 86 & 87 of manual, Operators Guide for EVS5200_DOC_SOP_DS850**:**
https://drive.google.com/open?id=0B2TKmkSNAkCfY1oxdUJ1UFBMVzg

## Ballot Images

1. Select **Ballot Images** on the Configuration screen to access the Ballot Images settings screen.

Plaintiffs' Exhibit #8, page 1

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2. Press **Edit** to update the selections.

3. You will be able to select from one of the following options:

   - None
   - All Processed Images
   - Processed Write-In Images Only



4. After you make your selection, press **Save** to save your selection, or press **Cancel** to exit.

Plaintiffs' Exhibit #8, page 2

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**Excerpt below, "DS850 System Operations Procedures" Manual see Page 2:**

https://drive.google.com/open?id=0B2TKmkSNAkCfY1oxdUJ1UFBMVzg

# Chapter 1: DS850 Overview

The ES&S DS850 is a high-speed, computerized, digital image-based scanner and tabulator with ballot sorting capabilities. The ES&S DS850 is designed to process all of the ballot types supported by the ES&S election management system, including folded (absentee) ballots.



The DS850 accurately records all votes as marked by the voter and is capable of meeting or exceeding the 1.5 million mark test as stated in Volume 1, Section 2.1.1 of the 2005 VVSG. Voter accumulation records are saved on the machine's hard drive and can be transferred from the hard drive to a USB flash drive.

Excerpt from the DS850 picture caption above: *"Voter accumulation records are saved on the machine's hard drive and can be transferred from the hard-drive to a USB thumb drive."*

The manual linked above also states that ballot images can be archived and do not have to be deleted. It further says that the DS850 adheres to the "Voluntary Voting System Guidelines ("VVSG")" promulgated by the U.S. Election Assistance Commission.

Plaintiffs' Exhibit #8, page 3

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## System Functionality Description

Another ES&S document called "**System Functionality Description**" on data retention (see page 54, "2.1.10 Data Retention") is posted on the Colorado Secretary of State website:
https://www.sos.state.co.us/pubs/elections/VotingSystems/systemsDocumentation/ESS/EVS5203-C-D-0200-SFD.pdf

**Excerpt**: *"Because the purpose of this law is to assist the federal government in discharging its law enforcement responsibilities in connection with civil rights and elections crimes, its scope must be interpreted in keeping with that objective. The appropriate state or local authority must preserve all records that may be relevant to the detection and prosecution of federal civil rights or election crimes for the 22-month federal retention period, **if the records were generated in connection with an election that was held in whole or in part to select federal candidates. It is important to note that Section 1974 does not require that election officials generate any specific type or classification of election record. However, if a record is generated, Section 1974 comes into force and the appropriate authority must retai the records for 22 months."***

**ES&S Brochure.** "… retains individual digital ballot images for auditing and adjudication:
https://www.clayelections.com/portals/clay/documents/PDF/qs_ds200_fl_v3.pdf
**Excerpt:**

✓ **2005 VVSG Compliant**
With important usability, accessibility, and security enhancements, the DS200 is designed to be fully compliant with the more rigorous 2005 Voluntary Voting System Guidelines.

✓ **Auditable Paper Trail**
The DS200 retains your ballot in a secure, locked container for verification in the event of a recount.

✓ **Patented Digital Image Technology**
Patented image technology provides exceptional mark-recognition capability and retains individual digital ballot images for auditing and adjudication.

Plaintiffs' Exhibit #8, page 4

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**Election System & Software advertised that their system also for "auditing and adjudication."**

### *"ES&S DS200 - Clay County Supervisor of Elections"*

Quick Start Guide for Voters Digital Image Scanner from **Clay County, Florida**:
https://www.clayelections.com/portals/clay/documents/PDF/qs_ds200_fl_v3.pdf

**"Auditable Paper Trial The DS200 retains your ballot in a secure, locked container for verification in the event of a recount."**

**"Patented Digital Image Technology Patented image technology provides exceptional mark-recognition capability and retains individual digital ballot images for auditing and adjudication."**

## FEATURES AND BENEFITS

The ES&S DS200 Digital Image Scanner offers the next generation in paper-based vote tabulation.

✓ **Large Touch Screen Display**
A 12" color LCD touch screen display provides easy-to-read instructions and feedback to voters. The display supports messaging that aids the voting process, system setup, and diagnostic testing.

✓ **2005 VVSG Compliant**
With important usability, accessibility, and security enhancements, the DS200 is designed to be fully compliant with the more rigorous 2005 Voluntary Voting System Guidelines.

✓ **Auditable Paper Trail**
The DS200 retains your ballot in a secure, locked container for verification in the event of a recount.

✓ **Patented Digital Image Technology**
Patented image technology provides exceptional mark-recognition capability and retains individual digital ballot images for auditing and adjudication.

## FOR MORE INFORMATION

**Election Systems & Software, Inc.**
11208 John Galt Blvd.
Omaha, NE 68137 USA

Toll Free: 1-800-247-8683
Fax: 402-593-8107

## ELECTION SYSTEMS & SOFTWARE

### QUICK START GUIDE FOR VOTERS

### ES&S intElect DS200
### DIGITAL IMAGE SCANNER

www.essvote.com   intElect from ES&S

Link to complete brochure: https://www.clayelections.com/portals/clay/documents/PDF/qs_ds200_fl_v3.pdf

Plaintiffs' Exhibit #9, page 1

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**"ENHANCING THE ELECTION PROCESS FOR THE COMMONWEALTH OF VIRGINIA   CAPACITY TO PROVIDE VOTING SYSTEMS TO THE COMMONWEALTH OF VIRGINIA April 7, 2015"** See page 5 of Proposals, Link:
https://www.elections.virginia.gov/Files/CastYourBallot/VotingSystems/VotingEquipReport/proposals/ESSProposal.pdf

With the most accurate and reliable digital scan technology available, the DS200:

*DS200 devices sold and installed in North America*

- **SAFEGUARDS VOTER INTENT.** The system captures and retains digital images and cast vote records of every scanned ballot for auditing and adjudication. ES&S does not alter a single retained and captured digital image.

- **EXCEEDS ACCURACY STANDARDS.** Digital scanning technology that provides exceptional mark recognition capabilities. Our Intelligent Mark Recognition® (IMR) and Positive Target Recognition & Alignment Compensation® (PTRAC) routines are **patented** and powerful and the basis for our certified products.

- **IDENTIFIES OVERVOTED, UNDERVOTED, AND MISMARKED BALLOTS.** Displays a warning message on the terminal's large text 12-inch LCD display and plays an audible alert. The DS200 accurately determines voter intent and significantly reduces the need for ballot adjudication.

- **OFFERS GREATEST EASE OF USE.** The DS200's unique lid-up, power-on approach allows the Officers of Election to easily open polls in one simple step.

Capacity to Provide Voting Systems
Commonwealth of Virginia

April 7, 2015
Page 5

https://www.elections.virginia.gov/Files/CastYourBallot/VotingSystems/VotingEquipReport/proposals/ESSProposal.pdf

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**The DOMINION DIFFERENCE "DIGITAL BALLOT AUDITMARK",
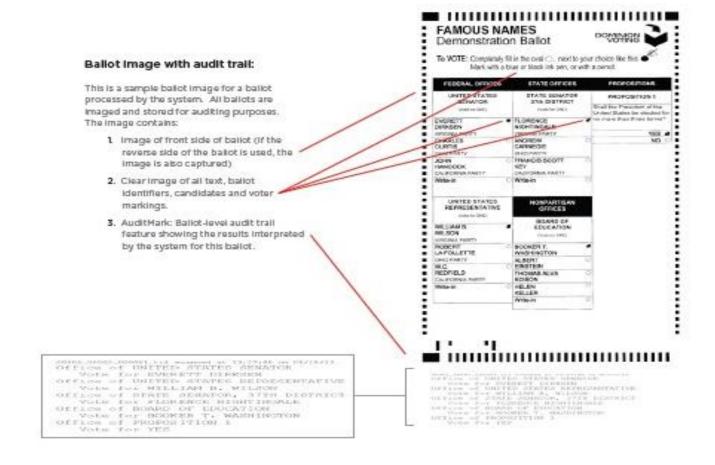auto saves and uses ballot images for auditing and adjudication:**

https://www.dominionvoting.com/pdf/DD%20Digital%20Ballot%20AuditMark.pdf

THE DOMINION DIFFERENCE

## DIGITAL BALLOT AUDITMARK®

Dominion's exclusive AuditMark technology is a unique, patented visual audit trail, which allows results to be audited down to each individual ballot. This technology allows jurisdictions to provide greater transparency in the electoral process. The AuditMark® can be used for visual inspection or in Risk-Limiting Audits. Once the election is complete, all of the ballot images are in one location for the purpose of searching, reviewing and performing Risk Limiting Audits. Dominion can provide tools to be able to efficiently perform these types of tasks.

Dominion Voting has created a patented process that not only images and stores a copy of the ballot, but also records on that image how that ballot was counted by the scanner on Election Day. Using this process, the comparison can easily be made by any Election Official.

**Ballot image with audit trail:**

This is a sample ballot image for a ballot processed by the system. All ballots are imaged and stored for auditing purposes. The image contains:

1. Image of front side of ballot (if the reverse side of the ballot is used, the image is also captured)

2. Clear image of all text, ballot identifiers, candidates and voter markings.

3. AuditMark: Ballot-level audit trail feature showing the results interpreted by the system for this ballot.

**FAMOUS NAMES**
Demonstration Ballot

DIGITAL BALLOT AUDITMARK®

DOMINION VOTING

Plaintiffs' Exhibit #10, page 1

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DOMINION's "**STATE-OF-THE-ART SECURITY**"

**AuditMark® technology:**

- Each digital ballot image has an AuditMark® appended at the bottom, showing a record of how that ballot was interpreted by the tabulator on Election Day. Why bother purchasing a scanner if it can't tell you what it read?

**Marginal Mark detection:**

- This feature makes it possible for voters to clarify their intent when they cast their ballot. Thresholds can be configured to jurisdictional requirements.

**Complete end-to-end system auditability:**

- Every action taken on the tabulator and the election management system is recorded in a permanent, unalterable digital audit log.

"Security is a big factor when you choose an election solutions provider."

"Democracy Suite is designed to ensure a high level of security that meets the latest EAC VVSG requirements while maintaining ease of use. **The Democracy Suite system also features Dominion's patented, exclusive ballot-level audit trail, AuditMark®, which not only creates a digital image of every ballot scanned, but also appends to that image a record of how the voter's intent was interpreted by the voting system."**

"You can rest assured that the integrity of your election data is fully maintained at all times."  Link
https://www.dominionvoting.com/products

**City and County of San Francisco RFI: REG2015-01 System Hardware, Firmware, Software, and Service August 28th, 2015, excerpt below from page 22.** Link to RFI:
https://sfelections.sfgov.org/ftp/uploadedfiles/elections/rfi/20150828_Dominion.pdf

August 28th, 2015

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**Dominion Voting Response (o)**

Dominion's Democracy Suite EMS includes the ImageCast Adjudication module, a Microsoft Gold software application, which allows officials and observers to audit and clarify voter intent in real-time. As ballots are being scanned on the ImageCast Central, ballots with conditions – which are customizable by the jurisdiction – will be automatically sent to the ImageCast Adjudication module for review and adjudication. This allows minimal disturbance of operations, as the ImageCast Central will continuously scans ballots without stopping.

In ImageCast Adjudication, users can see the full ballot image, and the AuditMark showing the tabulator interpretation at the bottom, thereby confirming that the system is operating successfully. If an adjudication decision is made, the adjudication decision will be appended to the original ballot image, producing a transparent, easy to read chain of custody and activity log (as illustrated here).

19 times in RFI the word adjudication is used: Link

https://sfelections.sfgov.org/ftp/uploadedfiles/elections/rfi/20150828_Dominion.pdf

Plaintiffs' Exhibit #10, page 2