

**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 11-20)**

Plaintiffs submit Exhibits 11-20 to the Memorandum of Law
Supporting the Motion for Preliminary Injunction (DE32).

Respectfully submitted on December 26, 2018.

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CERTIFICATE OF SERVICE

I certify that on December 26, 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

2018 Edition

Ballot Image Audit

Guide for Candidates and Campaigns



AUDIT USA

AUDITelectionsUSA.org

Ballot Image Audit Guide for Candidates and Campaigns

This document contains PART ONE of the Guide. You will receive an email from team@AUDITelectionsUSA.org when PART TWO is ready for download. We'll also email you when significant updates are made to this guide.

Important: If you received this document in some way other than from filling out a request form on our website, we strongly recommend you **complete the form now** so you'll be included in emails announcing updates to this guide. Go to AUDITelectionsUSA.org/candidates

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INTRODUCTION

AUDIT USA (Americans United for Democracy, Integrity, and Transparency in Elections) is working to make elections transparent, trackable, and publicly verified. We've created this guide to help you verify or challenge the official election results in your race.

Our approach is centered around a security feature present in several of the most commonly used electronic voting systems in the nation. These systems are known as "digital scan election systems," and they're used to count votes on paper ballots.

Digital scan systems are an update to the old technology known as "optical scan," although many people confuse the two. Digital scan systems are in use in at least one location in nearly every state, and are used statewide in several states. If they're used in the state where your campaign or issue was on the ballot, you may be able to conduct your own "Ballot Image Audit" to check whether the machine generated vote totals are accurate.

If the computers used to count our votes were secure and completely trustworthy, there would be no need for this system of checking the vote counts. But the computers are far, far from secure or trustworthy. They nearly all run on proprietary software that even election officials are not permitted to examine. They have repeatedly proven to be vulnerable to hacking and rigging. And they've been shown to be designed to conduct "weighted" elections, where some votes are counted as greater than one and others as less than one whole vote¹.

Election officials and others may tell you that they know their machines are counting properly because "logic and accuracy" testing has been performed prior to the elections. But logic and accuracy testing has a fatal flaw: computers can be programmed to perform one way during the test, and a totally different way in a real election. The Volkswagen emissions scandal provides a real-world parallel: over half a million diesel-powered cars had defeat devices installed that caused the emissions controls to turn on when the cars were being tested, and turn off when the vehicles were on the road.

Tragically, we cannot trust the official vote tabulation systems in use across the country to count our votes accurately. That's why AUDIT USA and others² have developed methods and tools to use to check official vote counts.

¹ See <https://youtu.be/C3BKz02t2wA> and <http://blackboxvoting.org/fraction-magic-1/>

² See Appendix 4, "Resources"

Digital Scan Election Systems: A Brief Overview

Digital scan election systems, as mentioned above, are used to count paper ballots. They can be used for ballots voted at the precinct, at early voting centers, or by mail. Some election jurisdictions use the same system for all three of these types of voting, while others have multiple systems in use.

Unlike the older optical scan systems which count the votes marked on the paper ballots, digital scanners take a digital image of each ballot and *count the votes on the image, not on the paper ballot*. Some of these systems have a built-in ink jet feature that stamps an identifying number onto the ballot and a number onto the image, so the images can later be paired with the corresponding ballots to verify authenticity. Neither these numbers nor the images themselves identify the voter, so this system does not compromise the right to a secret ballot.

Why Digital Ballot Images Are Important

In recent history, candidates and voting rights advocates have often sought access to paper ballots in order to perform hand counts to verify the official computer-generated totals. These requests are routinely denied by most election officials, who generally cite concerns about the paper ballots being tampered with if they are handled by candidates or other members of the public. In some cases, the people requesting the records have been told that they can't see the paper ballots unless they (the requester) can prove fraud. But that's a Catch-22 situation, since the proof of fraud is in the paper ballots!

The existence of digital ballot images addresses concerns about possible damage to paper ballots if they're handled by the public. Multiple copies of the digital ballot files can be made and distributed to candidates, voting rights advocates, and the media without any possibility that granting this access to public records will result in damage to the paper ballots. Creating these copies is quite inexpensive.

How Digital Ballot Images Can Be Used in Post-Election Audits

The Ballot Image Audit (BIA) is a new method of public verification of elections that has been made possible by the advent of digital scan election systems. This protocol is currently in beta stage, as it has not yet been used to verify or dispute official election results. Small pilot projects and research projects have been undertaken to develop the BIA process.

A ballot image audit is a comparison of vote totals arrived at by actually counting the votes on the digital ballot images with a) official vote totals and b) at least a statistically significant number of the paper ballots. This means it performs the crucial task of checking whether or not the computers are counting votes properly.

Interested parties can obtain digital ballot images and essential related records from local election offices through public records requests or through the discovery process if a court action has been filed. Note that while we believe at the time of publication of this Guide that the law clearly supports treating ballot images as public records, we do know of situations where election officials have declined to make these records available³.

The ballot images can be displayed one at a time on a computer or projected onto a screen or wall so a small team of people can count the votes on the images quickly. AUDIT USA has tools available to make this process efficient. One small team can count approximately 1500 votes per hour. Multiple teams can be used if needed. Depending on the specifics of your situation, you may choose to count:

- a) All of the votes cast in your race and one or more other races across all precincts
- b) All of the votes cast in randomly selected precincts
- c) A percentage of randomly selected ballots from across all precincts, increasing the percentage if needed to refine the audit.

Your choice from among these options should be made thoughtfully based on factors including the number of votes cast, the anomalies you're researching, and the resources (primarily time and number of people) available to you.

If the difference between the official vote count and the findings of the initial BIA is significant, election officials or the courts should then grant access to the paper ballots for comparison. **This comparison with the original paper ballots is essential to confirm that the ballot images provided by the county are the exact images created from the paper ballots. If the secure chain of custody has been maintained, a discrepancy in vote totals would be evidence that neither set of data (paper ballots or ballot images) has been subjected to tampering.**

The Ballot Image Audit is a new tool in the election security toolbox, one that we believe has the potential to increase the public's ability to provide oversight of our elections. But even a BIA doesn't solve all the problems with our election systems. Before you embark on the process of conducting a BIA, we encourage you to understand what's involved, what a BIA does and doesn't do, and whether your particular election lends itself to examination through the BIA process. This guide is designed to help you understand and evaluate the BIA option as it applies to the election you're examining.

It's crucial that you perform your BIA in a professional manner, carefully documenting precisely what you're doing, so that you can make a strong case for its findings to be considered as valid by courts, election departments, or other administrative bodies.

³ See <https://law.justia.com/cases/new-york/appellate-division-third.../2018/524876.html>

Limitations of the Ballot Image Audit

Election systems and procedures have other vulnerabilities that a BIA cannot address. For example, if the chain of custody of election materials including ballots and voting system memory cards is not secure, you could be given a set of digital ballot images that have been manipulated, or even a fake set of ballot images.

Similarly, a BIA cannot detect manipulation of election results via absentee ballot envelope signature matching or other methods of disqualifying certain ballots from the count.

It's important to understand the role of a BIA as one only tool –albeit an important one– in the election security toolbox.

To reiterate, what you can check by conducting a BIA is *whether the machine generated vote count of the digital ballot images you have been given is correct.*

Beyond the Vote Count: Additional Reasons for Conducting a Ballot Image Audit

Whether you're a candidate, the leader of a campaign, or a voter, you're reading this because you care about fair elections. The BIA protocol is one of the best tools we have to protect elections in the foreseeable future. Findings from BIAs could result in strengthening election laws and procedures, catching and prosecuting election criminals, and even deterring election manipulation. By participating in the beta stage of development of the BIA protocol, you're at the cutting edge of election protection. AUDIT USA looks forward to supporting you in standing up for the rights of voters and candidates to have elections that are deserving of the nation's trust.

DOES YOUR RACE MEET THE SUGGESTED CRITERIA FOR CONDUCTING A BIA?

Not every election is a 'candidate' for a Ballot Image Audit. The first step for you is to assess whether a BIA can and should be performed on the election in question. This section will walk you through that evaluation.

Criterion #1: A digital ballot scan election system was in use.

As explained above, digital ballot images are produced in certain voting systems that count paper ballots. If your race was conducted entirely on the old optical scan systems or DRE machines (also called 'touchscreen' voting systems), or a combination of the two, a BIA will not be possible for you.

ACTION STEP: Check which election systems were used for your race.

You may be able to find out what voting system(s) are used from the election department website(s) in the jurisdiction where you or your issue were on the ballot. Additionally, election security non-profit VerifiedVoting.org has an excellent tool called The Verifier that you can use to identify the voting system or systems used in your election.

Here's how to use it:

- Go to <http://verifiedvoting.org/verifier/>
- Select your state from the map or the dropdown list.
- Select your county/parish from the map or the dropdown list.
- If necessary, select your county division (town, district, etc.)
- Below the map, you'll see a list of the election systems used in this jurisdiction. There may be one for polling place voting, one for early voting, and one for absentee/vote-by-mail voting. Log these on the Voting System Log in the appendix of this Guide.
- Look up each of the systems on your log sheet in the digital scan voting systems chart below. Note on your log which of the systems used is digital.
- If your race spans more than one county, repeat the steps above as necessary to identify all voting systems used.

Digital scan voting systems currently in use in the U.S.	
Vendor*	Model
Dominion Voting Systems	ImageCast Precinct
Election Systems & Software	DS200
Hart InterCivic	Ballot Now
Hart InterCivic	eScan
Hart InterCivic	Verity Scan
ClearBallot	ClearVote
Dominion Voting Systems	ImageCast Central
Election Systems & Software	DS450
Election Systems & Software	DS850
Hart Intercivic	Verity Central
*Nearly all of these vendors also have models that are <i>not</i> digital scan and don't produce ballot images.	

If ALL of the votes were counted using one of the digital scan systems listed above, your race has passed this hurdle.

If NONE of the votes were counted using a digital scan system, you cannot do a ballot image audit, because there are no ballot images to audit. Options for examining the results of elections conducted using other types of voting systems are beyond the scope of this guide.

If some of the votes were counted using digital scan systems and some were counted using other systems, you have a decision to make. While an audit in these circumstances might be able to demonstrate that the system is not counting votes accurately, it will not be able to determine the actual outcome of the race, since you will only be able to audit some of the votes. It's up to you whether this makes sense in your particular situation.

Criterion #2: Announced results of the election were close OR strong evidence indicates reported vote totals are not accurate

While it's technically possible for an election to be manipulated in a way that would produce results with a margin of victory of over 5%, we do not recommend you conduct a ballot image audit when the spread is greater than 5%.

An exception to this general rule would be cases where blatant evidence contradicts the announced vote totals, such as multiple poll tapes with totals that do not match the

official vote totals, or a history of vote manipulation in your voting jurisdiction. See the list of red flags below.

Criterion #3: Red flags raise questions about the official vote count

It is the position of AUDIT USA that all elections should be transparent, trackable, and publicly verified. Until that becomes achievable across the board, we recommend that efforts to verify elections be focused on the races where red flags (warning signs) are present.

Red flags are indications that there *may* be a problem with the election. Sometimes, the same observed factor or pattern has more than one possible explanation. Undervotes provide an excellent example of this. An “undervote” is when there is no vote counted on one particular ballot in a particular race. A high number of undervotes in a race could result from any of a number of conditions, including:

- a) low interest in the race or low popularity of all candidates
- b) poor ballot design (intentional or unintentional), such as the infamous “butterfly ballot” in Florida in 2000⁴
- c) electronic election system calibration issues (intentional or unintentional)
- d) falsified reporting.

We recommend that you think of the red flags listed below as indications that an election needs to be examined further, rather than as proof of fraud.

Red Flags

All of the red flags on this list have been observed in one or more U.S. elections in recent years. While this is not an exhaustive list, it will give you a good sense of what to look for. Only the red flags that could impact vote counts can be examined using a BIA. We’ve included other types of red flags here because they may be an indication that a particular race or jurisdiction has been targeted for “dirty tricks,” and may lead you to want to do a BIA even if no other red flags are apparent.

A page is provided at the back of this guide for you to list the red flags noted in your election.

Voting Machine Problems as Red Flags

- Voting machine malfunctions at the precinct or county elections office
- Failure of a memory card or USB stick on which votes are stored

⁴ <https://www.propublica.org/article/disenfranchised-by-bad-design>

- Electronic pollbook malfunctions that make it impossible to know how many votes should have been cast
- Vendors or others accessing machines during the election
- “Zero tapes” that are missing or show that votes were already on the machine before the election began

Human Behavior as Red Flags

- The destruction or withholding of ballots or other public records
- Charging exorbitant fees for public records
- Public and/or media locked out of somewhere where there should be access
- Absurd explanations by election officials to explain "glitches"
- Ripping the "zero tape" off in the morning instead of keeping it attached to the results tape
- Precincts selected for audit too early, leaving opportunity to manipulate evidence
- Precincts selected for audit by non-random means
- Leaving voting machines or ballots in unsecured locations

Anomalies in Data as Red Flags

- Unusually high number of overvotes or undervotes
- Unusually high number of blank ballots
- Unusually high number of provisional ballots or unequal percentages of provisional ballots across the election jurisdiction
- Highly unlikely results based on local knowledge of voting patterns
- More votes than voters
- Voter turnout rate impossibly high (sometimes over 100%)
- Poll tapes that do not match reported precinct totals
- Unexplained abrupt changes in pre-election polling in month leading to election (this can be a set-up to make manipulated results believable)
- Same proportion of votes to same candidate(s) in previous elections
- Mismatch of number of signatures in pollbook and number of votes at precinct (slight mismatch might be OK if number of votes is lower, as occasionally a voter checks in and leaves without casting a ballot)
- History of vote manipulation in the jurisdiction in question
- Event Logs or Audit Logs with incomplete entries or with entries where the time or other data is wrong
- Election night posting of vote counts on news or election department websites showing vote totals (not percentages) decreasing

- Significant discrepancies between pre-election polls and official totals
- Discrepancies between exit polls and official totals
- Combination of exit polls that are surprisingly congruent with vote totals and pre-election polls that are all significantly off in the same direction
- Unexplainable discrepancies in voting patterns between different types of voting (such as one candidate leading strongly in early voting but trailing significantly in election day voting, in the absence of a news story or campaign strategy that explains the change)
- Mismatch between vote totals and "total ballots cast" (this is sometimes explained by a 2-page ballot when each page is counted as a ballot cast)

Security Breaches as Red Flags:

- Broken chain of custody of election materials (broken, missing, or mismatched seals, torn ballot bags, reports of ballots found in unexpected locations or transported insecurely, etc.)
- "Security theater" such as label-type seals that can be ripped off and reapplied without any evidence that they had been removed.
- Discovery of duplicate seal numbers (in other words, a jurisdiction has ordered multiple copies of the same sets of seal numbers)
- Suspicious activities witnessed or caught on surveillance video, such as after-hours opening of ballot boxes, ballot counting, etc. without the public present.
- Poll workers not following protocol, such as removing a memory card or USB stick without following proper procedures
- Wireless modems connected to voting systems
- Election databases being stored insecurely online

Red Flags Indicating Possible/Likely Voter Suppression Tactics

The red flags listed below cannot be researched or remedied by checking the vote count.

- Electronic pollbook malfunctions leading to long lines & voters giving up
- Ballot design issues (e.g. "butterfly ballot")
- Large numbers of voters reporting that they did not receive their absentee ballots, sometimes after multiple requests
- Voters being told they are of a different political party from the way they registered
- Large numbers of voters being told they have already voted when they haven't
- Large numbers of voters being told they are in the wrong polling place

- Unexplained power outage at an early voting site that prevents people from voting and doesn't affect any other facility except the polling place.
- Unexplained closing of early voting sites for part of a day, especially in area with a large number of voters of color
- The combination of numerous small precincts into one mega-precinct, done in area of predominately minority voters, creating long lines and insufficient parking
- Real or staged cyberattack on county website after the start of early voting that crashes the electronic poll books
- Candidate or contest omitted from some ballots
- Notifications with incorrect information about polling dates and locations
- Staged police actions, military training exercises, road construction, etc. making accessing polling sites difficult
- Relocation of polling places to hard-to-reach areas
- Mass purges of voters from the voting rolls
- Discriminatory voter ID requirements
- Requirements for identifying information not available to all citizens, such as a residential street address
- Extreme "exact match" ID regulations
- Prejudicial processing of voting materials such as qualifying absentee and provisional ballots
- Voter intimidation at or near polling places, or via media campaigns

Where to find information about the above red flags:

Observations by pollworkers, poll watchers, campaign officials, campaign volunteers, election security and voting rights advocates, and voters. Complaints submitted to hotlines. See resources section for links.

Criterion #4: Administrative considerations align to make your findings actionable

Election laws vary greatly by state. These laws will determine what legal remedies are available to you to pursue justice in your election.

We encourage you to educate yourself about the laws, procedures, and practices in your state and county before making your decision about whether to perform a BIA. Resources for finding answers to questions below are listed in the Resources appendix to this guide.

Among the questions you'll need to explore about your state:

- What are the recount laws and timelines? What triggers an automatic recount? Who can request a non-automatic recount, and what are the charges? Are recounts performed by machine or manually?
- What is the timeline for election certification?
- What type of election audit is performed in your state?
- What laws and timelines govern election contests or other available legal challenges? Can challenges made after election certification change official outcomes?
- What are laws and practices surrounding public records requests? For example, how quickly does the law say requesters must receive a response? What does the law say about whether or not paper ballots are considered a public record, and what access the public has to examine them? (In many states, when the public is allowed to view paper ballots, paying election department employees to do the actual handling of ballots is required. This can be quite costly.)
- Have the digital ballot images been saved in your election? What work has already been done to protect ballot images and make them publicly available? (Email team@auditelectionsusa.org with questions about ballot images in your state.)

A page has been provided in the Appendix to this guide for notes about your state's laws, policies, and practices.

NEXT STEPS

You'll need some time to gather the information necessary to make an educated decision about whether or not to perform a BIA. Post-election timelines are quick, so it's important that you get help to gather information as quickly as possible.

If you're seriously considering a BIA, there are two steps we strongly recommend you take right now, even before you make your decision:

Action Step: Photograph poll tapes posted at polling locations.

Poll tapes provide crucial evidence in an election investigation. In most states the public posting of poll tapes at the close of polls is required. The poll tapes may remain visible for a few days or longer after an election.

If it's too late for you to photograph poll tapes, ask in your network whether anyone else has poll tape photos they can share with you. Concerned members of the public increasingly understand the importance of this evidence, and some will collect it in case it is needed.

Action Step: Submit public records request(s) to obtain records for your BIA.

First, check to see if ballot images are posted online on your local or state elections website. (If they are, please let us know at team@AUDITelectionsUSA.org.)

See the Resources appendix to find guidelines for PRRs in your state.

We encourage you to use our template for a public records request, adapting it as needed for your state. [See appendix.]

Costs for the public records you'll be requesting may vary widely, especially because laws regarding requests for digital records are not yet firmly established. Consult your state law for guidance.

Now WHAT?

Once you've made your way through this guide, using the log sheets in the appendix to note how these materials apply to your situation, you may have a clear idea of whether or not to move forward with a BIA. We encourage you to contact us with questions. We can answer some questions by email or phone, and we're also available on a fee-for-service basis to consult with you on your Ballot Image Audit. We're easiest to reach by email: team@AUDITelectionsUSA.org

We know this is a lot to digest, and the aftermath of an election can be a stressful time. We honor you for your commitment to the integrity of elections, and for seriously considering how you can best help assure that the outcome of your election is fair and accurate.

This concludes Part One of the Guide.

In Part Two, we'll provide detailed instructions for conducting a Ballot Image Audit, including how many people you'll need, how much time you'll need, and what equipment and supplies you'll need to gather.

We'll contact you by email when Part Two is available. If you received Part One of this guide in some way other than by downloading it from a link we emailed you, we may not have your email address. Please sign up now to receive the Guide:
<http://AUDITelectionsUSA.org/candidates>

ABOUT AUDIT USA

Americans United for Democracy, Integrity, and Transparency in Elections, better known as AUDIT USA, was established in early 2018 as an expansion of AUDIT AZ, an Arizona-based election integrity and transparency group founded after the 2004 election by John Brakey and Arlene Leaf. Our core team is made up of experienced election security advocates. We use a combination of public education, advocacy, and litigation to advance the cause of election transparency. Learn more at AUDITelectionsUSA.org.

We're supported by donations and small grants. If you found this guide useful, we encourage you to support our work. <http://AUDITelectionsUSA.org/donate>

APPENDICES

Appendix 1: Voting System Log

Look up the voting system(s) in use in your jurisdiction(s) using The Verifier:
<http://verifiedvoting.org/verifier>

The Verifier does not distinguish between optical scan and digital scan voting systems. Please use the chart at right to look up each system in use and note whether or not it is a digital scan system.

Note: If you're running in only one jurisdiction, you'll only need one row of the log below. If you're running in a statewide race, you may need to use multiple sheets.

Digital scan voting systems currently in use in the U.S.

Vendor*	Model
Dominion Voting Systems	ImageCast Precinct
Election Systems & Software	DS200
Hart InterCivic	Ballot Now
Hart InterCivic	eScan
Hart InterCivic	Verity Scan
ClearBallot	ClearVote
Dominion Voting Systems	ImageCast Central
Election Systems & Software	DS450
Election Systems & Software	DS850
Hart Intercivic	Verity Central
*Nearly all of these vendors also have models that are <i>not</i> digital scan and don't produce ballot images.	

Note the systems in use in your jurisdiction(s) below.

Jurisdiction	Polling Place System	Digital?	Early Voting System	Digital?	Absentee/vote-by-mail System	Digital?

Appendix 2: Red Flags Log

Red flag noted	Notes	Next Step

Appendix 3: Notes on Applicable State Laws and Procedures:

Appendix 4: Resources

Election problem hotlines:

You may want to contact these and ask about election problems reported in your jurisdiction:

1-866-OUR-VOTE

<http://866ourvote.org>

The nation's largest and oldest nonpartisan voter protection coalition, led by the Lawyers' Committee for Civil Rights Under Law.

ProPublica Electionland

<https://www.propublica.org/article/electionland-is-tracking-voting-problems-and-getting-results>

Coalition of newsrooms around the country covering problems preventing eligible voters from casting 2018 election ballots

Screen captures of election night posting of preliminary results:

Watch The Count(ies)

<https://sites.google.com/site/watchthecounties/>

Information about Voting Systems, Election Audits, and More

Verified Voting

<http://verifiedvoting.org/verifier/>

Public Records Law & Guides

Reporters' Committee for Freedom of the Press

<https://www.rcfp.org/open-government-guide>

Ballotpedia

https://ballotpedia.org/State_sunshine_laws

National Freedom of Information Coalition

<https://www.nfoic.org/coalitions/state-foi-resources/state-freedom-of-information-laws>

Freedom of Information Advocates

<http://www.foiadvocates.com/records.html>

Reporters Committee for Freedom of the Press

<https://www.rcfp.org/open-government-guide>

Ballot Image Audits

Video demo of Counting Ballot Images:

Wisconsin Election Integrity

<https://www.youtube.com/watch?v=SUmOrTt2DvQ>

The Open Ballot Initiative White Paper

Citizens' Oversight Projects

http://www.copswiki.org/w/pub/Common/OpenBallotInitiative/OpenBallotInitiativeWhitePaper_withsample.pdf

Appendix 5: Template Public Records Request

Public Records Request All-State Template for Ballot Images & Related Materials 2018 General Election Records, AUDIT USA 11-7-18

Notes from AUDIT USA legal research:

- only red text should change with different requests
- include email address as requester's exclusive contact info (no phone number, snail mail address, or URL)
- make separate individual requests for any other records sought

An editable version of the template below can be downloaded at <http://bit.ly/audit-prr1>

Template begins below

Jane Servant
People County Supervisor of Elections
3333 First Avenue
Publica MI 33333

November 7, 2018

Subject: Public Records Request of 11-7-18 for People Co's Nov 6, 2018 General Election Records & Notice re Ballot Images & Associated Records & Data

Dear Jane Servant,

I am requesting public records pursuant to Florida Statutes Section 119, *et seq.*

All requests herein refer to records related to the Michigan General Election of November 6, 2018.

All requests are for electronic copies.

Request 1 of 3

All Ballot Images for the November 6 General Election.

Inclusions

- each and every electronic or digital Ballot Image file created, held or used by the County
- any and all metadata associated with each image
- provided in the format or formats in which they are:
 - a) generated by the voting system
 - b) used by the voting system, and
 - c) exported or exportable from the voting system (e.g., Election Management System), such as the .pbm file format

- Ballot Image files' filenames unchanged from filenames:
 - a) generated by the voting system, and
 - b) linked to their corresponding Cast Vote Records' filenames

Exclusions

This request does not seek to inspect or obtain copies of the paper ballots themselves, or to obtain hard copies of ballot images. It is limited to copies of electronic or digital files.

Likely location

These ballot image files should have been imported into the Election Management System from any and all voting system scanners or imaging components (for example: poll-site based, vote center-based, centrally-based).

People County Elections' digital scanners scan the front and back of each individual paper ballot to create a digital copy. The scanner (or separate voting system component) then captures votes from the scanned copy, NOT the paper ballot. In this scenario, the digital scan is the election material actually counted.

Request 2 of 3

All Cast Vote Records (CVRs) for the **November 6 General Election**.

"Cast Vote Record" carries its common election administration meaning, here designating a digital file containing the information captured off a single voted ballot.

Inclusions

- each and every electronic Cast Vote Record file created, held or used by the **County**
- any and all metadata associated with each Cast Vote Record
- CVR files' filenames unchanged from filenames:
 - a) generated by the voting system, and
 - b) linked to their corresponding Ballot Images' filenames
- provided in the format or formats in which they are:
 - a) maintained by the voting system (e.g., native format), and
 - b) exported or exportable from the voting system (e.g., EMS), such as the .pbm file format

Request 3 of 3

The List of Vote Records (LVR) for the **November 6 General Election**.

- this record or set of records goes by a variety of names, such as Cast Ballot Log or Cast Vote Record(s)
- typically consists of a spreadsheet, with each row displaying contents of one Cast Vote Record
- provided in the format or formats in which it is:
 - a) maintained by the voting system (e.g., native format), and
 - b) exported or exportable from the voting system (e.g., EMS)
- may consist of more than one file

- sample page of the LVR provided as a public record by Hillsborough County FL, obtained from the ES&S DS-850 and DS-200, configured in xlsx format:
http://www.mediafire.com/file/j0fioo493pyogyl/2018_Primary_Cast_Vote_Record-1.xlsx/file

In event of denial

If any documents are withheld from production in whole or in part, please provide me an exemption log index of each record or category of records that have been withheld or redacted, the explicit statutory citation exempting the records, and a brief explanation of how the statutory exemption applies to the records.

Notifications

Because **the August 28 Primary and** the November 6 General Election are also federal elections, my records request is also affirmed by federal Freedom of Information Act pursuant to 5 USC §552 *et seq.*

Notice: Pursuant to 52 USC §20701, you are notified that the destruction of digital ballot images is ALSO a violation of federal law:

52 USC 20701 - Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation

Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(Pub. L. 86-449, title III, §301, May 6, 1960, 74 Stat. 88)

<http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title52-section20701&num=0&edition=prelim>

Thus, from this Notification, **and the laws of the State of Florida**, you are hereby notified that “ignorance or mistake of fact” is removed as a legal defense, should the digital ballot images (records) be damaged or deleted by you yourself, or by any subordinate.

Method of delivery

It is essential that the method and means of delivery do not insert requester into the records' public authentication chain of custody.

My first choice is for production of all records online by posting on your official website or official publicly accessible portal.

Only if that is not available, my backup choice is by digital media secured against undetectable post-production alteration of the media containing the records (e.g., by hash, by write-once read-only media).

Cost of digital media for records production

I am pleased to compensate the **County** for the cost of digital media onto which to copy said digital ballot images and other records to my possession. According to the U.S. Department of State Freedom of Information Act site at <https://foia.state.gov/Request/Fees.aspx>, the cost to me for such records should not exceed \$25.00. If there are additional costs associated with this records request, please advise and itemize.

Plea for orderly communications by email only

Please use only the email address below for all communications.

Please communicate from a single email address.

Please maintain this subject line intact, in one continuous string to include all correspondence concerning this request.

Thank you for your prompt attention to this request.

Respectfully,

[name of natural person requester]

[requester email address as only contact provided]

CC: AUDIT USA, team@auditelectionsusa.org

KUEHNE DAVIS LAW
PROFESSIONAL ASSOCIATION

BENEDICT P. KUEHNE*
SUSAN DMITROVSKY
MICHAEL T. DAVIS
*Board Certified
Appellate Practice and
Criminal Trial Practice

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

FORT LAUDERDALE OFFICE
1 W. Las Olas Blvd., Suite 500
Fort Lauderdale, FL 33301

REPLY TO: Miami

October 19, 2018

Ken Detzner, Secretary of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399

Re: Request for Access to and Preservation of Digital Scanning
Voting Information

Dear Secretary Detzner:

We represent several Florida voters who have concerns about practices and procedures related to digital scanning voting equipment used throughout the State of Florida. As you know, Florida counties use digital scanners manufactured by Election Systems and Software (ES&S) or Dominion systems. This equipment counts voter-marked paper ballots. These digital scanners generate ballot images that provide an audit trail critical in verifying vote counts and voter intent.

It has come to our attention that some county election supervisors intend to allow the destruction of these ballot images in violation of federal and state law, both of which require the preservation of election materials and data for 22 months following a federal election. Perhaps these officials are unaware of or misunderstand the legal requirements to preserve all election materials and data, including digital ballot images.

We respectfully request that you and Florida Director of Elections Maria Matthews instruct the election supervisors in each of Florida's counties using ES&S DS200 and/or the DS850 or any equivalent digital voting equipment made by the above referenced vendors of their legal obligation to preserve all ballot images. Such instruction must be in writing and sent immediately to ensure compliance during the

Florida general election voting period. A simple instruction on how this can be accomplished is contained in the ES&S manual.

These digital scanners do not count the original ballot. Instead, the scanners count votes on the digital image and are therefore an integral part in the chain of custody. Whatever local election officials believe may be the purpose or use of such ballot images, 52 U.S.C. Section 20701 mandates that any and all election materials and data in the chain of custody must be preserved for a minimum of 22 months following a federal election.

We have surveyed a number of Florida counties that use digital equipment. Our survey found only a very few that are preserving ballot images for 22 months as required by law. Most are using procedures that, if unchanged, will result in the unlawful destruction of those ballot images. Several counties are preserving "Write-Ins" only which is inconsistent with federal law.

The public is depending upon the Florida Secretary of State and the Director of Elections to lawfully execute your duties. The Secretary and Director should immediately instruct the appropriate county supervisors of elections to comply with the legal requirements to preserve all election materials and data, including digital ballot images.

Please provide us with written documentation that you have instructed appropriate county election officials to comply with the legal requirements to preserve all election materials and data, including digital ballot images.

Your failure to do so may cause litigation to compel such compliance. I believe this is something that all parties would prefer to avoid.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Benedict P. Kuehne". The signature is written in a cursive, flowing style.

Benedict P. Kuehne
Chris Sautter

Copy: David Fuggett David.Fugett@dos.myflorida.com

Benedict P. Kuehne

From: McVay, Brad R. <Brad.McVay@dos.myflorida.com>
Sent: Wednesday, October 31, 2018 12:14 PM
To: Benedict P. Kuehne
Cc: sauttercom@aol.com
Subject: FW: Reminders for Upcoming Elections

Mr. Kuehne,

A short time ago, the below communication was sent out to all Supervisors of Elections.

If you have further issues you would like to discuss, as always, I'm happy to schedule time for a phone call.

Thank you,

Brad McVay

Interim General Counsel
Florida Department of State
R.A. Gray Building
500 S. Bronough Street
Tallahassee, FL 32399-0250
Phone: 850-245-6511

Note: This response is provided for reference only and does not constitute a formal legal opinion or representation from the sender or the Department of State. Parties should refer to the Florida Statutes and applicable case law, and/or consult an attorney to represent their interests before relying upon the information provided.

In addition, Florida has a very broad public records law. Written communications to or from state officials regarding state business constitute public records. Public records are available to the public and media upon request, unless the information is subject to a specific statutory exemption. Therefore, any information that you send to this address, including your contact information, may be subject to public disclosure.

Sent to all Supervisors of Elections –

Dear Supervisors,

We are in the final stretch to Election Day and beyond. We offer a few reminders to ensure our elections go smoothly and that every eligible vote is counted. We ask that you also share this information with your canvassing board members as many of these reminders pertain to the canvassing board's responsibilities in the election:

Canvassing Board Duties and Responsibilities

Canvassing ballots

One of the primary duties of the canvassing board is the canvassing of ballots. It is important for the canvassing board to have established procedures and criteria for:

- Securing and handling returned voted ballots including preliminary review of ballot certificates, affidavits and comparison of signatures;
- Presenting unopened ballots for further canvassing to determine whether the ballot is legal and should be counted or not; and
- To record any action taken.

Please be sure to allot a reasonable time for challenges by the public. For example, those times could be set to occur before canvassing begins. The FSASE [canvassing board manual](#) contains valuable information including references to laws, rules, forms and charts, including matrixes for determining how and when to canvass and count provisional ballots and vote-by-mail ballots.

Membership requirements for activities

Additionally, I am re-attaching DE Reference Guide 0020 which details what the membership requirements are for canvassing board activities. Please share this document with your other canvassing board members.

In order to ensure there is continuity and relief for the canvassing board, as needed, it is also critical that substitutes and alternatives be appointed or designated well in advance as set forth in section [102.141](#), Fla. Stat.

Election results reporting

Not least of the canvassing board duties is to timely report results. The deadlines for reporting results are as follows:

- ⊖ **Preliminary Election Night Results** – Starting at 7 pm local time on November 6, preliminary results including early voting and vote-by-mail ballots tabulated to date are due to be reported to the State. Then every 45 minutes thereafter, results updates are to be provided until completed.
- The **1st set of Unofficial Returns*** is due no later than Noon, Saturday, November 10, 2018. (section [102.141](#)(5), F.S.) These results determine whether a machine recount will need to be ordered for a local, county, multi-county, state or federal race.
- The **2nd set of Unofficial Returns*** is due no later than 3 pm, Thursday, November 15, 2018. (section [102.141](#)(7)(c), F.S.) These results determine whether a manual recount will need to be ordered for a local, county, multi-county, state, or federal race.
- **The Official Returns** are due no later than Noon, Sunday, November 18, 2018. (section [102.112](#)(2), F.S.)

The **Elections Canvassing Commission** certifies the Official Returns at 9 am on Tuesday, November 20, 2018. (section [102.111](#), F.S.)

[*Note: We ask that you do not submit official returns ahead of a state's determination of whether a recount is needed in a multi-county, state or federal race.]

Mismatched and Missing Signatures

The law provides a detailed procedure for a voter's right to cure a returned vote-by-mail ballot without a signed affidavit or with a signed affidavit in which the signature does not match the voter's signature on record. As of 2017, the Supervisor of Elections is responsible for immediately notifying the voter that his or her signature is either missing or does not match what is on the voter registration record. By whatever means of notification, be sure to either include a copy of or to direct the voter to the 'cure affidavit' (DS-DE 137 ([ENG/SPN](#))) whether online or by paper. A voter has until 5 pm local time on the day before Election Day to submit such affidavit. Procedures for mismatched and missing signatures is detailed in section [101.68](#)(4), Fla. Stat.

Provisional Ballots

The law requires that provisional ballots be offered:

- Any time to any person who claims to be registered and eligible to vote but the person's eligibility cannot be determined;
- To any person whom an election official asserts is not eligible; and
- To any other person entitled under the Florida Election Code, including but not limited to when a person is unable to provide photo identification per section [101.043](#), Fla. Stat., at the polls.

Additionally, a provisional ballot is to be counted UNLESS the canvassing board determines by a preponderance of the evidence that the person was not entitled to vote. Please be sure to refresh yourselves, staff, poll workers, and canvassing board with procedures set out in section [101.048](#), Fla. Stat. and [R1S-2.037](#), Fla. Admin. Code

Public Records

As a public records custodian, you are responsible for the records you/your office obtain or create. Remember that not only does the General Elections Retention Schedule GS-3 govern your records management, retention and disposition, but retention of records are also governed by federal law including but not limited to the law governing the retention and preservation of "records and papers which come into [your] possession relating to any application, registration or other act requisite to voting in such election." See also [52 U.S.C. 20701](#)

Under Florida law, "public records" consist of: a) All "documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other material, regardless of the physical form, characteristics, or means of transmission" (includes electronic communications like Facebook postings, text messages, emails, blog comments, tweets). b) Made or received pursuant to law or ordinance or in connection with the transaction of official business c) By any agency [including a private entity acting 'on behalf of' a public agency] d) Which are used to perpetuate, communicate, or formalize knowledge. See e.g., section [119.011](#), Fla. Stat. Public records encompass paper or electronic form or medium.

If you have records that are the subject of a request, they may be public record and subject to public disclosure. Additionally, regardless of whether a record exists in your possession is a public record or not, and required or not required under law, be sure to refer to provisions under the Florida Public Records Law including but not limited to section [119.071](#), Fla. Stat. For those utilizing voting systems that are programmed to capture images of ballots as they are scanned, those images may be subject to retention requirements under the public records law. Supervisors of Elections should consult with their county attorney or legal counsel regarding any questions about public records, and the retention and/or disclosure of such records.

Recounts

A few machine and manual recounts in local, county-wide and multi-county jurisdictional races occurred during the Primary Election. As was discussed on the SOE monthly calls, it is important to be prepared for the possibility of a recount involving a local, state and/or federal contest in the General Election. One of the best proactive steps to take is to provide contingency public notice in the event a recount is ordered which will allow you, the staff, and canvassing board to start as soon as possible but no later than 18 hours after the order is issued.

The law and rules, however, provides detailed procedures for what triggers a recount, how to notice a recount, how to conduct a recount and when to report the results of a recount. The applicable laws and rules include but are not limited to the following:

- Section [102.141\(7\)-\(8\)](#), Fla. Stat.
- Section [102.166](#), Fla. Stat.
- Rule [1S-2.027](#) Standards for Determining Voter's Choice on a Ballot
- Rule [1S-2.031](#) Recount Procedures
- Rule [1S-2.051](#) Standards for Determining Voter's Choice on a Federal Write-In Absentee Ballot

Our DE Reference Guide 0010 - Recount Procedure Summary may also serve as a resource.

In conclusion, we hope this information is helpful.

As always, if you have any other questions, please do not hesitate to contact me.

Wishing the best to all of you and us for a successful election!

Respectfully,

Maria Matthews, Esq.
Division of Elections, Director
Florida Department of State
500 S. Bronough Street
Tallahassee, Florida 32399
850.245.6520 O
850.443.7730 C

Maria.matthews@dos.myflorida.com

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As always, if you have any other questions, please do not hesitate to contact me. Wishing the best to all of you and us for a successful election!

Respectfully,

Maria Matthews, Esq.
Division of Elections, Director
Florida Department of State
500 S. Bronough Street
Tallahassee, Florida 32399
850.245.6520 O
850.443.7730 C

Maria.matthews@dos.myflorida.com

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<p>The Department of State is committed to excellence. Please take our Customer Satisfaction Survey.</p>
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YAHOO! MAIL

Find messages, documents, photos or people

Susan Home

Compose Back Archive Move Delete Spam

Fwd: Clarification/Reminders for Upcoming Elections susanffec/Inbox

susanpsells@... 999+
susanpynchon 999+
susanffec 999+
adaliaviles 999+

Inbox 999+
Unread
Starred
Drafts 179
Sent
Archive
Spam
Trash
Less

Views Hide
Photos
Documents
Groceries
Travel
Tutorials

Folders Hide
New Folder
BALLOT IMAGE REC.,
FL DIV OF ELECTIONS
FOR RUSS
Notes
OSCEOLA POLL.. 1
Susan Pynchon Bill.,
TEXAS REQUESTS

Lisa Lewis <llewis@volusia.org>
To: susanffec@yahoo.com

Nov 7 at 12:29 PM

2nd email from Director Matthews.

Dear Supervisors,

You all may have received a communication from an outside entity expounding on an email that I sent to you all on October 31 about key reminders for the upcoming election.

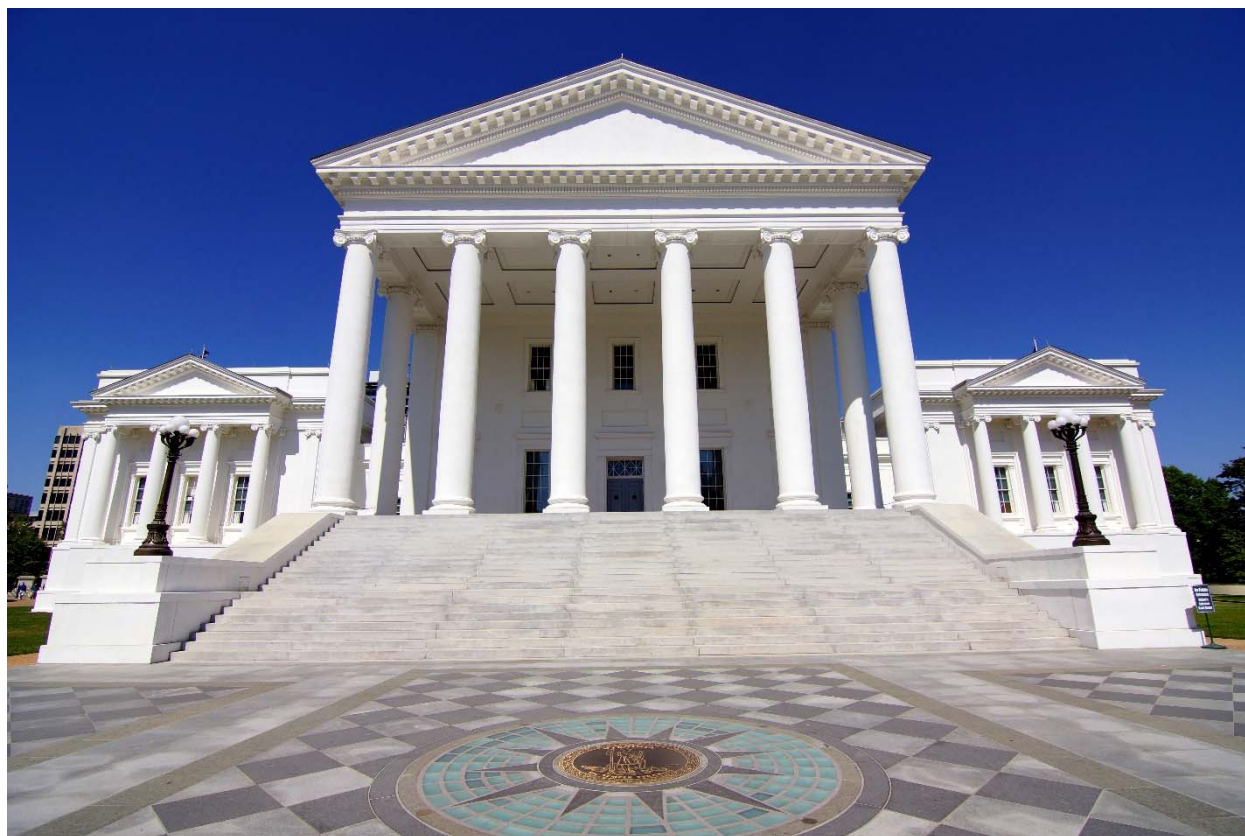
This is what my email below (reference guides cited in email are available on the SOE Resource webpage) in relevant part said to you - . . . If you have records that are the subject of a request, they may be public record and subject to public disclosure. Additionally, regardless of whether a record exists in your possession is a public record or not, and required or not required under law, be sure to refer to provisions under the Florida Public Records Law including but not limited to section [119.071](#), Fla. Stat. For those utilizing voting systems that are programmed to capture images of ballots as they are scanned, those images may be subject to retention requirements under the public records law. Supervisors of Elections should consult with their county attorney or legal counsel regarding any questions about public records, and the retention and/or disclosure of such records.

With Election Day less than 6 days away, we are not asking you to undo or reprogram machines that have been prepped and already used in this Election. Public testing for logic and accuracy, which could have occurred as early as October 12, is complete and you would have already started with tabulation of early voting ballots and returned vote-by-mail ballots which could have started as early as October 22.

The purpose of the email was to remind you about key points as we go into the final days before Election Day including duties that may exist under public records law, and to the importance of seeking guidance from your county attorney or legal counsel in the event you have questions regarding your obligations under the public records law.

Respectfully,

Maria Matthews, Esq.
Division of Elections, Director
Florida Department of State
500 S. Bronough Street
Tallahassee, Florida 32399



ENHANCING THE ELECTION PROCESS FOR THE COMMONWEALTH OF VIRGINIA

**CAPACITY TO PROVIDE VOTING SYSTEMS TO THE
COMMONWEALTH OF VIRGINIA**

April 7, 2015

EXECUTIVE SUMMARY

Election Systems & Software, LLC (“ES&S”) and our long-standing partner, **Printelect**, are pleased to respond to the Commonwealth of Virginia’s request for information. Our proposal will provide the Commonwealth with an election-tested and certified voting equipment and software solution for the immediate need to replace up to 30 Localities who currently use the WinVote system manufactured by the now defunct Advanced Vote Company.

ES&S / Printelect is in the unique position to support your needs. We have Virginia-certified voting hardware in the quantities needed to successfully support the 30 Localities in question. In addition to having the physical hardware on hand, ES&S / Printelect have the bandwidth of election knowledgeable staff to implement, train and install a new voting system within the required timelines for a June, 2015 and/or November, 2015 first election use. We also have the financial strength to provide the localities with financing options to meet their local needs. Whether that is renting the system for a single election or leasing to own the system over a multi-year period. ES&S offer’s customizable financial packages to meet the needs of the local jurisdiction.

No other company has the experience of ES&S / Printelect. For more than 40 years, ES&S has been the election industry leader. Our combined 500+ dedicated election professionals currently support more than 2,400 of the 3,140 county-level customers across the U.S.

In 2003 ES&S partnered with Printelect, to provide 54 Virginia localities with products and services. We currently serve over 3.0 million Virginia registered voters in 1,230 precincts. Our Virginia customer’s run the gamut from the largest (Fairfax County, 663,000 registered voters) to the smallest (Highland County, 1,700 registered voters). Each one gets nimble, responsive, knowledgeable local service.

We look forward to the opportunity to continue to work with you in implementing the most technically advanced election solution in the Commonwealth of Virginia.

Sincerely,



Thomas E. Burt
President and CEO
Election Systems & Software

THE ES&S AND PRINTELECT TEAM

The ES&S and Printelect team offers the Commonwealth of Virginia the most election experience of any comparable vendor. The table below illustrates the benefits of partnering with ES&S and Printelect for election systems and support services.

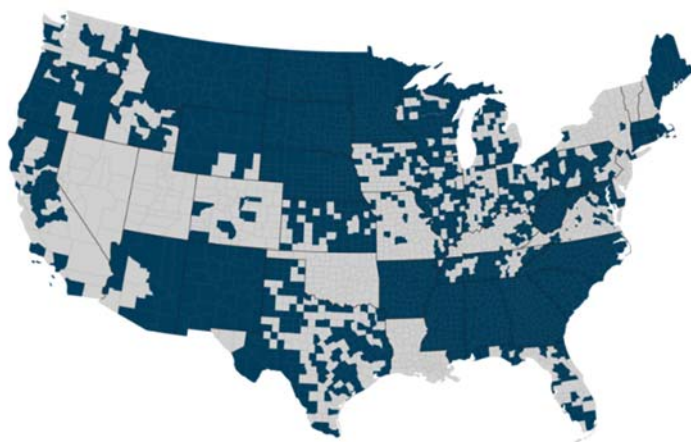
STRENGTHS	BENEFITS
Current relationship with Virginia Localities	ES&S and Printelect provide 54 Virginia localities with products and services.
ES&S' financial strength is unmatched by any vendor in the industry	Capacity to scale our solution to Commonwealth of Virginia needs, providing a technically robust and financially responsible solution.
Experience with the Commonwealth's election rules and regulations	Familiarity with the Commonwealth's election processes and procedures was gained from our long-standing presence in the State.
Vote tabulation experience	40+ years of ballot tabulation experience at your service. Our team has unmatched knowledge and experience preparing, maintaining and conducting elections in Virginia.
ES&S is the elections industry leader	Being the best demands accountability. Our commitment, dedication and credibility in the industry will give you the assurance that your elections will be accurate, safe, and secure.
Ballot Printing experience	<p>Printelect has over 111 years of elections industry experience, and is a leader in ballot printing services, including 20 years of experience printing optical scan ballots.</p> <p>Printelect is the largest-volume ballot printer in the Virginia, North Carolina, and South Carolina regions.</p>
Options to purchase or lease	ES&S offers long-term leasing options that could make it easier for counties to acquire new equipment, as well as the services and maintenance needed for a complete voting system.

OFFICE LOCATIONS



Omaha, NE	Corporate Office	Clearwater, FL	Vote by Mail Production
New Bern, NC	Printelect Corporate Office	Rockford, IL	Software Development
Richmond, VA	Project Management Office	Cary, NC	Software Development
Raleigh, NC	Ballot Printing Facility	Roseville, CA	Voter Registration
Birmingham, AL	Ballot Printing Facility	Lombard, IL	Project Management Office
Spencer, WV	Ballot Printing Facility	Annapolis, MD	Project Management Office
Allen, TX	Production Office	Jackson, MS	Project Management Office

ES&S MARKET SHARE



ES&S has completed successful installations of statewide voting systems in Alabama, Arkansas, Georgia, Idaho, Iowa, Maine, Maryland, Minnesota, Mississippi, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, and West Virginia. From our humble beginnings supporting a handful of election administrators and voters in 1979, we have grown to capture more than 62 percent of the market share of customers voting on ES&S equipment (*ES&S customers shown in dark blue*).

PRODUCTS



DS200 PRECINCT SCANNER AND TABULATOR

ES&S' third-generation, leading-edge paper-based digital scanner combines the security, auditability, and voter confidence of paper ballot voting with the increased accuracy and flexibility of a digital image scanner.

The result of more than 35 years of experience designing poll-based scanning technology, the DS200 features a voter-friendly interface supported by our powerful digital image scan technology. More DS200 devices have been purchased in North America than all of our competitors' digital scanners combined.

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

- **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.



*DS200 devices sold
and installed in
North America*

EXPRESSVOTE FOR ADA-COMPLIANCE



The ExpressVote Universal Voting System combines paper-based voting with touch screen technology to create an innovative breakthrough in voting solutions. **Used for In-Person Absentee Voting** and on Election Day in precincts, the ExpressVote handles it all. Election officials no longer must guess the number of ballots to print. Instead, an inexpensive Vote Session Activator™ card determines the ballot style presented on the touch screen.

EXPRESSVOTE BENEFITS

Vote session activator. The voter receives a voting session activator card to begin the process.

Verifiable paper record. After all selections are made, a paper record is produced, including text and an optical scan barcode. All votes are digitally scanned for tabulation on ES&S' precinct tabulation devices.

Easy to set up and use. The one-step startup and poll-closing procedure makes the ExpressVote an ideal device for Officers of Election. The paper card is the vote session activator – there is no expensive technology to manage or program. The ExpressVote is small, lightweight and easy to carry.

Controlled and reduced costs. Traditional ballot printing costs can be reduced significantly by eliminating the need and expense for pre-printed paper ballots. With low operation and maintenance fees, budgeting for recurring expenses becomes easy with the ExpressVote. The system does not use ink, toner, or paper rolls and consumes 70 percent less paper than traditional ballots.



The ExpressVote Universal Voting System combines paper-based voting with touch screen technology to create an innovative breakthrough in voting solutions.

HARDWARE CAPACITY

Must have physical hardware capacity to provide one (1) ADA device and one (1) scanner for each In-Person Absentee Voting location for first use on April 24, 2015

ES&S RESPONSE

We guarantee our ability to provide one (1) ADA device and one (1) scanner for each In-Person Absentee Voting location for first use on April 24, 2015.

- ✓ The ADA device will be the ExpressVote
- ✓ The precinct scanner will be the DS200

Must have physical hardware capacity to provide 270 scanners and ADA devices for a first use in June, 2015 (including spare units)

ES&S RESPONSE

Election Systems & Software has the capacity and will provide 270 DS200 scanners and 270 ExpressVote ADA devices for a first use in June, 2015. ES&S currently has over 1,300 DS200 scanners and 700 ExpressVote ADA devices in stock.

Must have physical hardware capacity to provide 563 scanners and 563 ADA devices for a first use in November, 2015 (including spare units)

ES&S RESPONSE

Election Systems & Software has the capacity and will provide 563 DS200 scanners and 563 ExpressVote ADA devices for a first use in November, 2015.

SERVICES

TRAINING

What is your training plan to get the staff and poll workers trained for a successful election in up to 30 Localities?

ES&S RESPONSE

ES&S' efficient and effective core training curriculum has been developed through more than 35 years of implementing new voting systems. We have customized our training approach and schedule to meet the unique needs of the Localities in Virginia. Our comprehensive and hands-on training approach will ensure the Officers of Election and trainers obtain the knowledge, skills, and abilities to operate our DS200 and ExpressVote.

We have developed a proposed training schedule for these systems that can be implemented at the 30 locations approved by the State Board of Elections.

The training schedule is comprised of the following:

- DS200 Operations Course, including ballot box training (half day)
- ExpressVote Operations Course (half day)
- DS200 and ExpressVote Train-the-Trainer Course (two days)

These courses can be scheduled over five days at each of the 30 locations designated by the state.

IMPLEMENTATION AND INSTALLATION

What is your implementation/installation capacity?

ES&S RESPONSE

ES&S has the capacity to support all 30 Localities with implementation and installation support, both in June (for the 10 jurisdictions) and November for all jurisdictions. The ES&S Project Management Office (PMO) will have overall responsibility for the implementation in all 30 Localities. A specific project manager will be assigned to each Locality, performing the necessary tasks of:

- Manage communication strategy with the Locality during implementation and through the first election cycle, including scope changes.
- Provide reporting to the Locality daily or weekly, depending on the task at hand.
- Confirm receipt of all goods and services agreed to in the contract

The basis for the project scope is the contract between the Locality and ES&S. The contract defines specific hardware, software, and service deliverables, requirements, and milestones that will be further detailed within a Scope Management Plan documented by the ES&S project team under direction of the election staff.

The Scope Management Plan will also define the tracking and communication methods used to monitor the status of the project deliverables and milestones. The project team will utilize reporting to update and track actual project activity for the duration of the project. Following is a sample high-level initial project schedule with typical duration/frequency levels. The specific Locality's plan will be built based on their input and needs.

Initial High-Level Project Schedule

Project Management	Duration	Description	Owner(s)
Kick-off meeting(s)	1-5 days	Following contract execution, the ES&S team will meet with key personnel and stakeholders to solidify project plan details.	ES&S Project Team
Deliver project and system documentation	1 day	Initial project plans and documentation will be provided early in the project.	ES&S Project Team
Finalize training plan	1 day	ES&S will work with each Locality to develop a comprehensive training and knowledge transfer plan.	ES&S
Project Management	Ongoing	On a frequency determined by the Locality's office, the ES&S Project Team will provide detailed status updates and reporting.	ES&S

System Installation	Duration / Frequency	Description	Owner(s)
Deliver and Install Software	1-5 days	ES&S will deliver and install the reporting software and system components.	ES&S
Equipment Delivery	1-5 days	ES&S will deliver the DS200 and ExpressVote hardware to all specified location(s), including supplies	ES&S
Complete System and Acceptance Testing	~3-5 days	Component and unit level testing, followed by an end-to-end system integration test.	ES&S, Locality

Training	Duration / Frequency	Description	Owner(s)
Complete on-site hardware training	1 day	ES&S will provide on-site training for users to provide a hands-on training delivery experience.	ES&S, Locality
Complete on-site software training	1/2 days	ES&S will provide on-site training for users that will be running the reporting software.	ES&S, Locality
Complete Officer of Election training	Each session 2 hours	Prior to the election, Officers of Election will be trained and allowed to practice using the system.	ES&S, Locality

Election Setup and Deployment	Duration / Frequency	Description	Owner(s)
Ballot Setup and Design	2 days	ES&S will assist with data entry and ballot design, along with setting up the tabulators and ADA devices to interpret the ballot	ES&S, Locality
Ballot Printing	4 days	Once ballot design is approved by the Locality, ballot production begins for In-Person Absentee and Election Day	ES&S, Locality
Setup and L&A testing	~10 days	Pre-election setup will be completed and verification and L&A will be conducted on each unit.	ES&S, Locality
System Deployment	20 days	Beginning with In-Person Absentee Voting, units will begin delivery to polling places.	ES&S, Locality
Provide Election Support	3 days	During the critical period prior to, during, and after Election Day, ES&S will assure that essential support resources are available and committed to project success.	ES&S, Locality

BALLOT PRINTING

What is your ballot printing capacity for the June and November elections?

ES&S RESPONSE

As the nation's largest ballot provider, ES&S and Printelect are uniquely qualified and positioned to provide best-in-class service and the latest technology for the June and November elections in the Commonwealth.

Our experienced elections staff possesses an in-depth working knowledge of Virginia Election Laws. Furthermore, we are able to draw on the resources of our local support staff to bring production redundancy and deep election knowledge to enhance our service to the 30 Virginia Localities.

We have the capacity to print one million ballots per week during any election cycle while maintaining the integrity of each ballot. With our extensive equipment knowledge, we are able to test everything from the precision of the format, information, color, image position, to the trim of the ballot.



FINANCING OPTIONS

Would you rent units for the June Primary election?

ES&S RESPONSE

Election Systems & Software is willing to provide a rental option for the Localities.

What type(s) of funding options do you have for the 30 jurisdictions?

ES&S RESPONSE

With ES&S strong financial stability, we are in the unique position to provide individual financing options to each Virginia locality to meet their own budgetary needs. We can provide outright purchase, rental, lease to own and/or multi-year financing packages. This financing ability will help these localities through this unexpected and unbudgeted crisis.

STATE OF FLORIDA

Affidavit of James Shawn Hunter, Plaintiff in mandamus action.

I, James Shawn Hunter, swear and affirm as follows:

1. I reside at 938 Jadestone Circle, Orlando, Florida 32828.
2. I am registered to vote in Orange County which is in the 7th Congressional District.
3. I am initiating this action in order to preserve all digital ballot images and to require that state and local election officials comply with federal law to preserve all election materials, including ballot images, related to the 2018 general election in Florida and for all Florida elections thereafter.
4. According to information and belief, it is the practice and intention of Florida state election officials to permit the deletion and destruction of digital ballot images, except in some cases "write-in" images, contrary to federal law.
5. On September 17, 2018, I had a telephone conversation with Debbie Dent, Chief Deputy, Martin County Supervisor of Elections. I asked her "How long are the scanned ballot images preserved after an election?" Ms. Dent replied, "The only images kept are of the write-in votes."
6. On September 19, 2018, I e-mailed the Lee County Supervisor of Elections and asked: "How long are the scanned ballot images preserved after an election?" Todd Putnam, Public Records Custodian/Systems Administrator, Lee County Supervisor of Elections responded to me by e-mail: "The physical ballots are preserved for 22 months."
6. On September 20, 2018, I e-mailed the Osceola County Supervisor of Elections, and asked: "How long are the scanned ballot images preserved after an election?" Kari Ewalt, Community Relations Coordinator, Osceola County Supervisor of Elections, responded, "We do not scan ballot images. Our machines read choices and store results. The only images that we take are those of write-in candidates."
7. On September 21, 2018, I received an e-mail response from my inquiry about preserving ballot images from Lana Self, Records Director, Duval County Supervisor of Elections, who wrote: "Only write-in images are captured. Files retained in accordance with general retention schedule of the State of Florida, 22 months for federal elections."

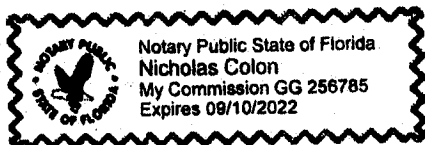
8. On September 20, 2018, I received an e-mail response from my inquiry about preserving ballots from Dustin Chase, Communications Director, Pinellas County Supervisor of Elections, who stated: "The DS200 and DS850 digitally imaged ballots containing write-in votes, so they can be manually tallied."

I declare under the penalty of perjury that the foregoing is true, accurate and correct.

James S. Hunter
James Shawn Hunter

State of Florida
County of Orange

I, Nicholas Colon, a Notary Public, hereby certify that James Shawn Hunter personally appeared before me on this 19th day of October, 2018, and having been duly sworn deposes and says that the facts set forth in the above affidavit are true and correct.



[Signature]
Notary Public

() Personally Known OR (X) Produced Identification
Type of Identification Produced: FL Driver's License

From: Paul Lux

Sent: Thursday, November 1, 2018 9:13 AM

To: 'Matthews, Maria I.'; Labasky, Ron - FSASE Legal Counsel

Cc: 'Sarah.Revell@dos.myflorida.com'

Subject: RE: Who What Why: Transparency Advocates Score Victory in Florida

Importance: High

Maria,

I personally believe that these digital images are OSA. That is they become obsolete, are superseded (by the paper ballot as the record of the election under law), and lose administrative value once tabulation has occurred. If we did not do L&A testing before and a post-certification audit after each election, I might feel differently about the potential value of these images. In a state where activists like Ms. Pynchon were the driving force behind eliminating touch screen voting that had no paper trail—insisting that the paper ballot be the record of the election—I find the argument now made by the same group to be inconsistent. Given the lawsuit in Broward where retaining a digital image of the ballot while destroying the paper was determined to be a violation of federal law, “they” can’t have it both ways.

The specific schedule they reference in the general schedule for retention in their initial request – GS3-114 – was specifically written to cover images created by touch screen voting machines that did not have any form of paper output to be the record of the election. Thus, it calls for the electronic images to be “printed out” or for the electronic images on the memory device to be retained. Their interpretation of what this schedule item covers is a gross over-simplification of its true intent. To quote their email, “a ballot image is a ballot image, regardless of form and regardless whether it is created by a DRE voting machine or a digital scan voting machine.” This is their opinion and interpretation of what this schedule item means; mine obviously differs from theirs.

Your email stated, “For those utilizing voting systems that are programmed to capture images of ballots as they are scanned, those images may be subject to retention requirements” Although my system “has” that capability, it is not a functionality of the system that I employ—nor is it a requirement to use it based upon the certification. Irrespective of my system’s ability to save or not save images, it is not “programmed” to do so therefore, I do not have any saved images in response to a public records request except for write-ins. Write-in images have administrative value and those images I will gladly retain and share with anybody. Clearly this group and I disagree on this point.

Chris Chambless forwarded this issue to Linda Bennett for comment. I believe, as Chris does, that making the changes proposed (in the attorney’s threatening emails to Supervisors) to any active election media is dangerous and has the potential to cause a catastrophic failure of the central tabulation system on election night; or that it would require a complete replacement of election media. With over 25% of my electorate having already voted, this is not a chance I am willing to take.



FLORIDA STATE ASSOCIATION OF SUPERVISORS OF ELECTIONS

PO Box 350 | Tallahassee, FL 32302 | Telephone: (850) 599-9120

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General Counsel

Ronald Labasky, Esq.

MEMORANDUM

TO: ES & S Counties

FROM: Ronald Labasky

DATE: 11/1/18

RE: Public Records Request/Ballot Images

Last week you received and we discussed a public records request from Susan Pyncheon indicating that she would be asking for any ballot images that your office may have from the upcoming November 2018 General Election. There is no authority under the Florida Public Records Act which allows for a "standing request" for documents which may exist in the future. Following those discussions we contacted ES & S concerning its equipment and the possible creation of ballot images during the course of the election. Based on the response it appears that:

- Ballot images are not automatically created for each ballot that is scanned into your system. Therefore, ballot images are not created automatically.
- Ballot images are only created if you have determined to create those for whatever use you feel is appropriate and programmed your equipment to do so.
- The choices that are available are:
 - NONE – create no image
 - ALL – create image of all scanned ballots
 - Write-In – images only ballots with a write-in designated and provides a clip file of write-in

The ballot images will need to be provided pursuant to public record request if you have made the choice to create an image, either

in its entirety or related to write-ins. If there are no images created, there will be no response/document to be produced pursuant to the request. Ballot images that are created would be subject to the state retention schedule, GS 3 for Election Records. A federal statute 52 USCA 20701 provides for retention of records created in a federal election for the same twenty-two months. Since we have to maintain the actual paper ballots pursuant to the state schedule, ballot images would appear to serve little if any purpose.

As we have previously discussed a public records request requires you to produce any document you may have in the form of that it is generally maintained. A document maintained in an electronic format is subject to being provided in electronic or paper format. The record retention schedule does not require that a document be created, only retained if created. Also, in conjunction to the letter from Kuehne Davis Law, since your L & A has long ago occurred, and votes have already been cast and received, it would be difficult to change your system at this time without, as I understand, reprogramming your data base and starting over again with a new L & A and normal subsequent actions.

I am not aware of and the Division has not indicated any statute or rule which requires the creation or use of ballot images, but has merely stated the obvious, that if you create a ballot image it must be retained pursuant to the schedule, just as you do with the ballots. There is no legal requirement that you respond to the letter from the law firm sent to you last night. I suggest you advise your attorney of this issue, in the event a public records request is made.

STATE OF FLORIDA

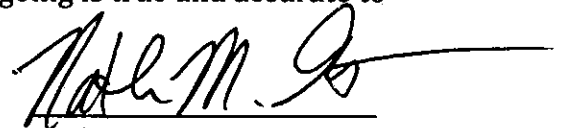
Affidavit of Nathan M. Gant, Plaintiff in mandamus action.

I, Nathan M. Gant, swear and affirm as followings:

- I reside at 321 E. 5th Street, Chuluota, Florida 32766.
- I am registered to vote in Seminole County which is in the 7th Congressional District.
- I am initiating this action in order to preserve all digital ballot images and to require that state and local election officials comply with federal law to preserve all election materials, including ballot images, related to the 2018 general election in Florida and for all Florida elections thereafter.
- According to information and belief, it is the practice and intention of Florida state election officials to permit the deletion and destruction of digital ballot images, except in some cases "write-in" images, contrary to federal law.
- On September 17, 2018, I spoke to Tim Bovanic, IT Elections Manager for Brevard County who informed me that ballot images are preserved for "write-ins" only.
- 6. On September 17, 2018, I spoke to Alan Hayes, Supervisor of Elections for Lake County who informed me he wasn't sure whether they preserved ballot images.
- On September 25, 2018, I e-mailed Lisa Hogan, Voter Services Manager for Clay County, and asked how long the scanned ballot images are preserved after an election. Ms. Hogan replied by e-mail that no digital records are saved.
- On September 20, 2018, I spoke to Vickey Oakes, Supervisor of Elections for St. Johns County who informed me they do not preserve ballot images.

I declare under the penalty of perjury that the foregoing is true and accurate to the best of my knowledge.

19 Oct 2018
Date


Nathan M. Gant

State of Florida
County of Seminole

I, Oliver Manzano Perez, a Notary Public of the aforesaid county, hereby certify that Nathan M. Gant personally appeared before me this day and having been duly sworn deposes and says that the fact set forth in the above affidavit are true and correct.


Notary Public

My commission expires:

3, 15, 2021

