



The Constitutional County™

FINDINGS

CONCERNS

All factors considered, the County has lost the faith of the People, sewn the seeds of distrust, and raised the legitimate question of whether we are still a republic. This is not a fault of the Public. This is the fault of how the County ran the Election and failed to address our concerns.

There are legitimate questions as to whether County has served the best interests of the People. It put ES&S above the County, the People, the constitutions and the laws made pursuant thereto. It obstructed the People’s ability to conduct its own investigations, and refused to take any measures to address the concerns and problems raised.

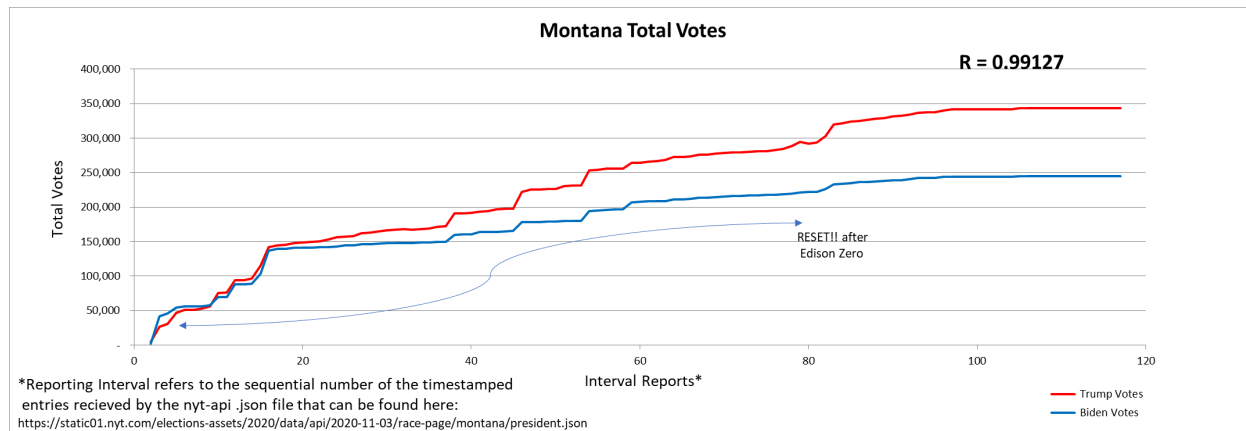
Despite known vulnerabilities and the abundant probable cause to justify inspection, and contrary to Public requests, the County knowingly and willingly continues to use the ES&S machines, even buying upgrades and entering into future contracts. No apparent changes have been made to correct its election systems.

PUBLIC INPUT IGNORED

Mathematical Analysis

Numerous qualified mathematicians and engineers across the country studied the Election results using a variety of different approaches. All reached the same conclusion—there is statistically near zero chance these were honest elections. It appears probable, if not certain, that the reported Cast Votes were calculated, not counted.

Figure 1. Sample of Draza Smith’s Mathematical Analysis



Public Comment

The People came prepared to discuss these findings. The People participated in at least three different Commissioners' meetings to present their facts and raise their concerns about the County's plans to continue, even expand their use of ES&S machines. There were some 30-40 people at each, a good turnout. Every public comment was against. No public comment was made in favor. The Commissioners nonetheless dismissed the Public concerns and requests.

The conclusion was the Commissioners' meetings were mock hearings, made to meet the letter but not the spirit of the law. The agenda of the meeting put the People's comments first, thus forced to express their views without first knowing what the County and ES&S had to say. They were each limited to just a few minutes. By contrast, the County and ES&S were then given lengthy periods to make their presentations and rebut the Public inputs. The Public was denied the opportunity to question or rebut their statements. Indeed, such efforts were rudely shut down. Representation in a republic requires representatives to carry forward the voice of the People, not override their will.

In making their decisions, the County ignored all public comment, the expert testimony of three engineers, the math models that raise statistically relevant questions about the Election, and all of the findings coming out across the country. It refused to hold a requested public hearing for the People's to adequately present their concerns and information. It refused even the reasonable and modest request to at least hold off plans to wipe the disk drives and thumb drives until an adequate review could be completed.

INVESTIGATIONS

Starting from August 25, 2021 there was a persistent popular effort to conduct a review of the Election results, then having found probable cause for concern, to seek remedies. The findings and the lack of County support both were shocking. For examples, the complete lack of accountability and verification of the election results, or the adamant refusal to allow inspection of the insides of ES&S machines. One hour and a screwdriver. If there was nothing to hide, this would have been a quick and easy resolution of the whole affair. To date, little has changed. The County has shrugged off all concerns and questions of the Election results. The same system is in place for the 2022 elections.

Here is a partial timeline.

August 25, 2021 First letter to the County. It raised credible concerns and probable cause to question the integrity of the Election, systemic problems that led to such a situation, and requested affirmative, aggressive, and prompt corrective actions, none of which the County pursued. It also provided a list of requirements that an honest voting system should meet.

August 26, 2021 Commissioners 1st public comments hearing. All public comments on this topic at all 3 public hearings were against the County's ultimate decisions to continue use and upgrades of Machines. All three were sham meetings, structured to prevent any discussion or full presentation of our concerns. Requests for a real, public presentation of our concerns were denied. Requests to hold off until our concerns could be address were denied.

September 6, 2021 **AFFIDAVIT01**. Findings from the August 26, 2021 Commissioners hearing.—
No claim refuted.

September 7, 2021 **DEMAND01**. Demands served on Commissioners and Clerk.—Ignored.

September 7, 2021 **FOIA01**. eBallots and chain of custody. — Not available

September 14, 2021 Commissioner's 2nd public comments hearing.

September 19, 2021 **FOIA02** ES&S agreements 2020 and present, certified 2020 election
results.—Received.

September 19, 2021 **FOIA03** Copies of communications between the County and ES&S.—Not
produced.

September 20, 201 **FOIA04** Public Works revenues from outside parties, and related contracts.
—Received.

September 21, 2021 (date approximate) Commissioner's 3rd public comments hearing.—
County ignored requests, vote yes.

September 27, 2021 **DEMAND02** for remedies. Served on clerk.—Ignored.

September 29, 2021 **DEMAND03** for remedies. Served on the Secretary of State.—Ignored.

October 8, 2021 The County stated FOIA03 would be produced by December 10.—Not done

October 13, 2021 **DEMAND04** for remedies. Served on Senate president and House speaker.—
Ignored

October 28, 2021 The Clerk invoiced MacKenzie \$330 to initiate its work on FOIA03.

October 30, 2021 MacKenzie paid the County \$330 to initiate the work.

November 2, 2021 ES&S DS850 tabulator observed in operation.

November 30, 2021 The Clerk emailed a coded list of FOIA03 items. Under review by County
Attorney.

December 10, 2021 FOIA03 DEADLINE MISSED #1.

December 15, 2021 Clerk provided December 24 as the new ETA for the County's FOIA03
response.

December 22, 2021 Clerk emailed MacKenzie. The County must seek ES&S review before
responding to FOIA03. No new ETA provided.

December 24, 2021 FOIA03 DEADLINE MISSED #2. No new ETA provided. Delivery indefinite.

January 10, 2022 **AFFIDAVIT02** and **FOIA05**. Complaint about excessive delays in FOIA03 response. Requests a firm ETA date, codes of conduct, sources of authorization and requirement to withhold a FOIA response for review by a foreign corporation.—No Affidavit02 claim refuted. FOIA05 partially responded to. No proof of authorizations or requirements provided.

January 21, 2022 **AFFIDAVIT02** (s/be a different number). Observations made at the November 2, 2021 meeting.—No claims refuted.

January 25, 2022 Sen. Theresa Manzella held a hearing regarding the ES&S election machines. Among the many important findings were those documented in Affidavit04.

January 27, 2022 **FOIA06**. Prompt production of FOIA03, authority, bonds, oaths, codes of conduct, county charter and enabling documents.—Partially responded to. No FOIA03, authority, or copies of bonds, only a certification of insurance.

January 31, 2022 Clerk emailed MacKenzie. New FOIA03 ETA February 11, 2022. Response to FOIA05 (PCR).—Partially responded to. Not provided: documents related to proof of authority, and definitions of “certify” and “certification”.

January 31, 2022 **AFFIDAVIT04**. Findings at Sen. Manzella’s hearing. Potential ES&S use of phones to connect the machines to the Internet.—No claims refuted.

February 22, 2022 **FOIA07**—Communications between County and the Secretary of State.—Delayed response. \$560.00 to initiate the work.

ELECTION SYSTEMS & SOFTWARE (ES&S)

Election Systems & Software (ES&S) is a foreign corporation based in Nebraska. It manufactures voting machine equipment and services, including vote tabulators, direct-recording electronic machines, voter registration and election management systems, ballot-marking services, electronic poll books, Ballot on Demand printing services, and absentee voting-by-mail services. It is a subsidiary of McCarthy Group, LLC.

THE CONTRACT

Flathead County, Montana (the “County”) entered into one or more contracts (the “Contract”) with ES&S to use its voting machine equipment and services, including for the 2020 General Election (the “Election”). The Contract was provided by ES&S and accepted by the County.

The People’s interests are protected from government abuse by laws and procedures that insure, among other things, transparency, accountability, due process, and rights to appeal. By putting the Election in the hands of a foreign corporation, the County appears to seek to circumvent all those protections. In response to FOIA03, for example, the County took the position it would not, could not, provide a response until it had been reviewed and approved by ES&S. This created a barrier to discovery, inserted a foreign corporation between the People and the County, and between the People and their rights.

Control

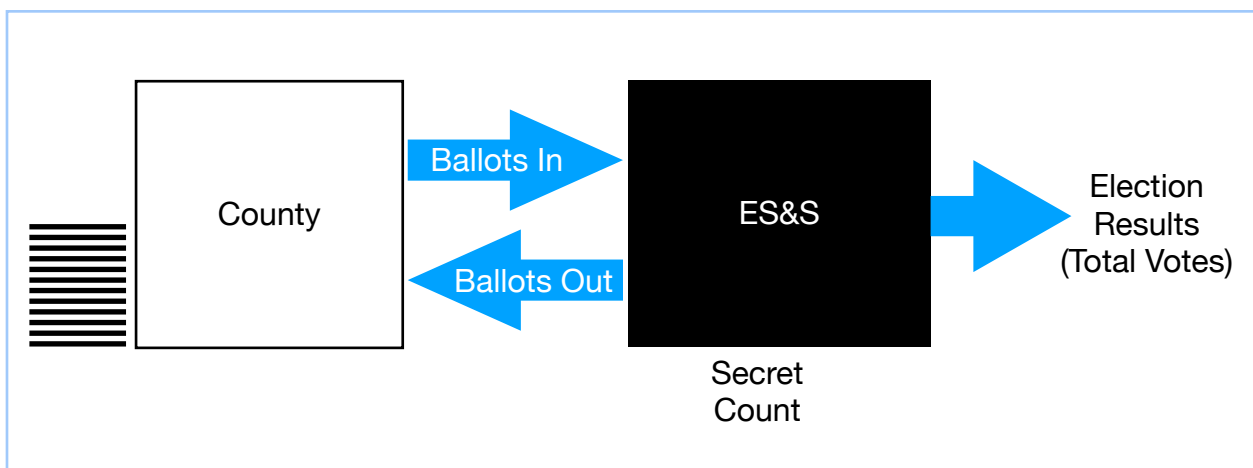
The contract:

- Established a secret election with no transparency, accountability, inspection or independent verification
- Abrogated the County's duty to ES&S
- Subordinated the County to ES&S
- Subordinated the interests and rights of the People to ES&S
- Subordinated even the constitution and laws to ES&S
- Prohibited inspection of the Machines and software used
- Gave ES&S total over the count and election results, even to the point of having an ES&S representative stand guard over every Machine, every hour
- Did not require ES&S to certify its numbers, leaving the liability of certification to the County

THE MACHINES

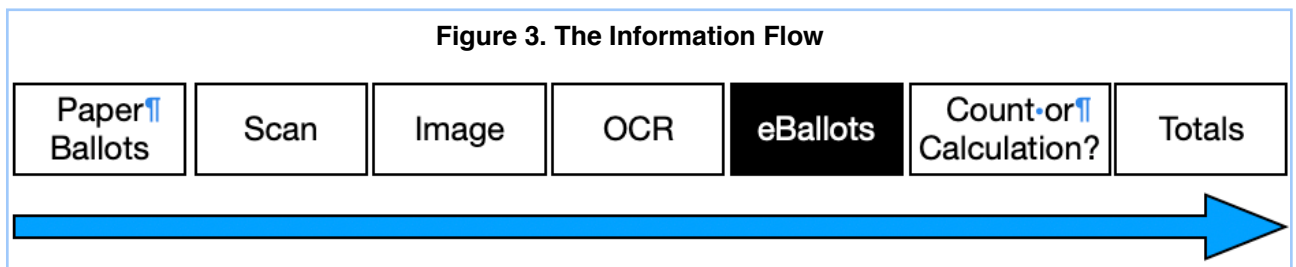
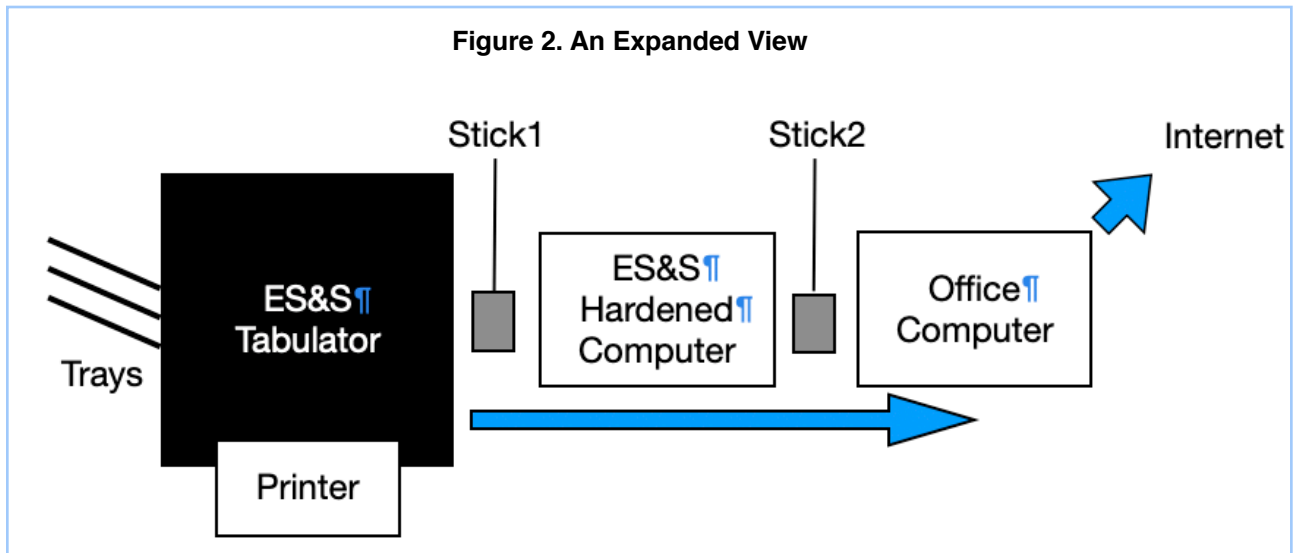
The County used two DS850 machines to tabulate all of the County's Election ballots, hardened computer(s) to process that information into total vote counts, and a conventional office computer to publicly release the outcomes. Memory sticks were used to shuttle data between Machines: Stick1 from the DS850 to the hardened computer, and Stick2 from the hardened computer to the office computer.

Figure I. A Simplified View



In simplest terms, County personnel handle the paperwork, loading and unloading paper ballots. Everything else is controlled by ES&S and its machines. The machines determine who won by “counting” the ballots and reporting the results. Whether they actually “count” or “calculate” is

the debate. Without independent inspection or verification of the ballots, the County rubber-stamps the ES&S totals as “certified”. The secrecy and way these machines operate does not conform to conventional computer design. If one wanted to cheat and leave no trail, they would design machines just like these.



Here is a more detailed explanation.

1. Paper ballots are fed into the tabulators, where they are scanned into images (pictures), then converted into digital records (eBallots) by image recognition software.
2. The paper ballots are proprietary. The edges of each paper ballot are printed with a series of black rectangles. By law, there are various mixed designs that print the questions and responses in different physical locations and patterns.
3. Ballots are tabulated in batches of 100 typically, or fewer. One batch is processed at a time.
4. The paper ballots are output into one of three trays. Each sub-stack is placed in a different and differently colored folder. The ballots in each batch are thus separated and routed differently through the organization.
5. The Tabulator accumulates the eBallots and transfers them, in encrypted form, to Stick1. Both the Tabulator’s hard drive and Stick1 had stored copies of the eBallots.
6. Stick1 is walked over to the ES&S Hardened Computer, inserted, and its contents uploaded.

7. The Hardened Computer uses the eBallot data to count (calculate?) totals, which are then written to Stick2. It does not report individual eBallots.
8. Stick2 is then walked over to a standard, unencrypted Office Computer and publicly disseminated via the Internet. After polls close, interim counts are publicly reported roughly 6 times before final vote counts are certified and released.
9. Prior to, and after processing actual ballots, operators run a “test deck” to verify machine operation. A great deal of thought and time is given to its creation.
10. Detailed operator interactions are reported by printing them out on continuous, folded computer paper using a separate printer attached to the Tabulator. eBallot information is not printed out.
11. ES&S representatives stand guard over every machine, every hour, of every election.

THE ELECTION

Ballot Processing

Two centrally-located ES&S DS850 tabulators and a hardened computer were used to process all the Flathead County ballots in the Election. Precinct boxes were brought to this location for that purpose. The ES&S machines reported totals only. The County never inspected the inside of the ES&S machines.

ES&S representatives stood guard at every machine, every hour of the Election. At Senator Manzella’s hearing, at least two members of the public testified ES&S representatives in other Montana counties were observed holding up their smartphones in close proximity to the Machines on Election Day, suggesting a possible use of the phones to establish Internet connections between the Machines and the Internet using BlueTooth, near field communications (NFC), or similar short range wireless connection technology.

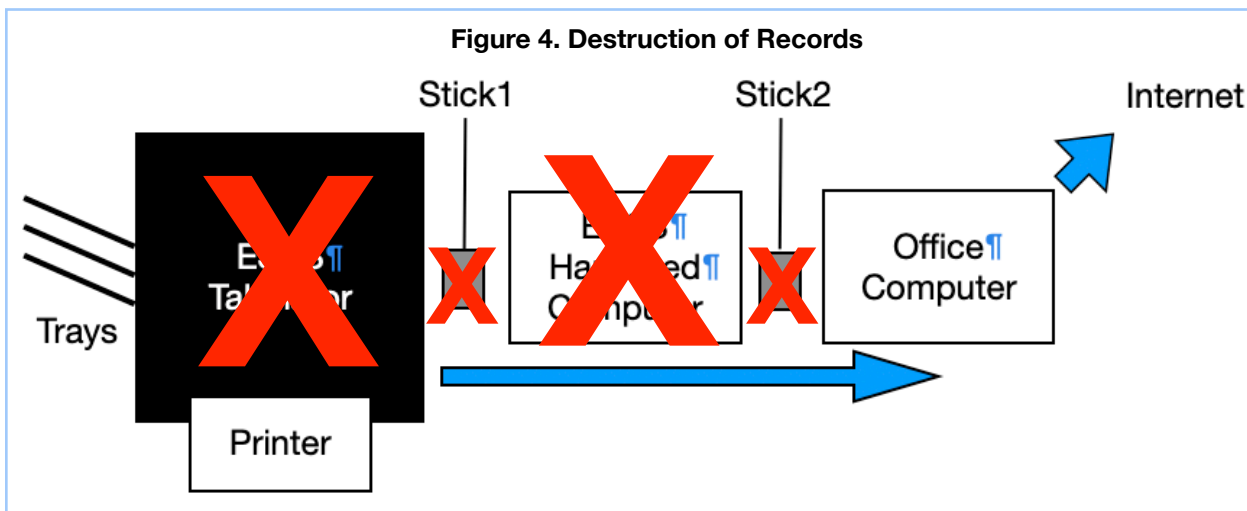
Certification

County personnel did not count, were not given, did not have, see, inspect, validate, or produce the eBallot records, and had no interest in doing so. “Unity software utilized by Flathead County during the 2020 General Election does not offer cast vote record technology, therefore, the requested information cannot be provided.” ES&S refused to do so. It is therefore impossible to verify the reported vote totals to the eBallots, nor the eBallots to the paper ballots.

Without independent inspection of the hardware, software, or inspection and validation of the eBallots, the County “certified” the Election by rubber stamping the ES&S numbers, relying solely on faith in ES&S. County personnel merely loaded and unloaded the paper ballots. The actual count was made in the darkness of a computer. The ES&S machines, therefore, are “black boxes” that count votes in secret with no independent verification. There are serious and legitimate concerns whether this methodology meets a rational threshold of faithful performance and due care.

The County conducted pre- and post-election tests. Although useful, they provided no protection against possible malicious efforts to corrupt the count on Election day. The County also takes the position machine certification equates to election certification. However, the first does not prove the second. What matters is what actually took place during the Election. Furthermore, information provided suggests “machine verification” consists of the inspection of one closed Machine in Helena. Ostensibly, this implies the County’s position is that the inspection of one machine certifies all machines and all elections.

RECORDS



The Debate

The debate is whether the reported vote totals are counted or calculated. The eBallots are counted, not the paper ballots. The eBallots are therefore crucial records for validation and transparency. Without the eBallots, it is not possible to validate the Machine vote totals.

The Hard Drives and Memory Sticks

The County is vanishing every trace of ES&S’s participation in the Election. These actions make it impossible to validate the eBallots against the paper ballots, and raise the not unreasonable question of a possible coverup.

The hard drives were wiped by a software upgrade that ES&S insisted upon. The County refused to accept the logical and low cost alternative proposed by the People: Remove the Election drives for safe storage, and replace them with new drives for the software upgrade. Instead, it installed the new software on the old drives, and thus wiped them.

The memory sticks were wiped by reusing them at the next election, in the fall of 2021. The County again refused the suggestion to save the Election sticks, and use new ones in their place.

The County seeks to “upgrade” to newer models. This eliminates even the Machines. The People demanded they be kept. The County’s ultimate decision is unknown.

Public Records Requests

Numerous FOIA requests were made to the County, mine and others. Surprisingly, even after paying our taxes, we were required to pay more to responses, as if the County was a services business instead of a government. The fees to reply to my requests were \$330.00 and \$560.00. The quote to count ballot envelopes was \$14,029.94. These fees provide a barrier to citizens seeking what they are presumably entitled to: transparency.

The County did not produce or timely produce record requests. This is a partial list of those not produced.

- the eBallot records—NOT PRODUCED
- its communications with ES&S, as requested by FOIA03—PRODUCED AFTER 6 MONTHS
- The County’s definitions/standards for “certify” and “certification”—NOT PRODUCED
- documents to support its legal authority to transfer its duties and responsibilities to a foreign corporation—NOT PRODUCED
- documents to support its legal authority to subordinate the County and the People to a foreign corporation—NOT PRODUCED
- documents to support its legal authority and requirement to have ES&S approve records requests before they are fulfilled—NOT PRODUCED
- documents to support its legal authority to subordinate its election systems under federal control—NOT PRODUCED
- documents to support its legal theory that the Contract alters the County’s obligations under the MCA—NOT PRODUCED

Other record requests were unreasonably delayed. Although the requested deadlines were reasonable, they were seldom met. In some cases, the delays were quite long.

FEDERAL GOVERNMENT

The research uncovered shocking facts about the federal government.

The federal government has, furthermore, taken over the country’s election system—in direct violation of the Constitution. It declared the election system critical infrastructure, placing it under under the oversight and protection of the FBI and related agencies. The federal government controls which vendors, machines, and software can be used. It also provides the money to buy them. The states merely select from among the machines dictated by the federal government.