

**IN THE UNITED STATES DISTRICT COURT
FOR THE NOTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DONNA CURLING, et al.,)	
)	
Plaintiffs,)	Civil Action No.
)	1:17-cv-02989-AT
v.)	
)	
BRIAN KEMP, et al.,)	
)	
Defendants.)	

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN
SUPPORT OF PLAINTIFFS’ OPPOSITION TO MOTION TO
DISMISS AND IN SUPPORT OF PLAINTIFFS’ ANTICIPATED
REQUEST FOR PRELIMINARY INJUNCTION BY *AMICI CURIAE*
COMMON CAUSE, NATIONAL ELECTION DEFENSE COALITION,
AND PROTECT DEMOCRACY**

This case presents profound questions of national significance regarding the foundations of our democracy’s electoral system. Plaintiffs challenge the use of an unreliable and inherently unverifiable voting system – specifically, a system that relies on a kind of paperless direct recording electronic voting machine (“paperless DRE”) that is at substantial risk of being compromised by hacking, manipulation, or other error in the upcoming November election that *cannot be detected or corrected* after the election. These real and serious threats justify preliminary injunctive relief to protect Plaintiffs’ fundamental rights and Georgia’s democracy.

Amici request leave to file the attached *Amicus Curiae* Brief to explain the

seriousness of the threats that Plaintiffs face, to emphasize the national significance of this case, and to urge the Court to deny Defendants' motion to dismiss and to promptly consider and grant Plaintiffs' anticipated motion(s) for preliminary injunctive relief.

Interest of Amici Curiae

Common Cause is a nonpartisan, grassroots, citizens' organization dedicated to fair elections and making government at all levels more democratic, open, and responsive to the interests of all people. Founded by John Gardner in 1970 as a "citizens' lobby," Common Cause has over one million members nationwide and has local chapters in 30 States, including in Georgia. Common Cause has been a leader in the nationwide effort to protect the security and integrity of public elections in the United States. Common Cause has published reports that document the security vulnerabilities of paperless direct recording electronic machines such as the AccuVote TS/TSx used in Georgia. Nationally and locally, Common Cause has advocated for the use election equipment and procedures that would allow election jurisdictions to detect a cyberattack or a simple programming error in computerized election equipment and to recover from a miscount caused by such an attack or error. Common Cause has also provided expert testimony related to voting technology before the United States Congress

and in state legislatures.

The **National Election Defense Coalition** (NEDC) is a national nonpartisan organization and network of recognized experts in cybersecurity and elections administration, bipartisan policymakers, and concerned citizens dedicated to promoting policies and practices to secure U.S. election systems. NEDC works to provide a bridge between cybersecurity experts, research and best practices that pertain to election systems, and the election administrators and policy makers responsible for selecting and managing election technology.

Protect Democracy is a nonpartisan, nonprofit organization dedicated to protecting and strengthening the norms and institutions that underpin our democracy. Among other things, it engages in litigation and other advocacy to ensure that elections are administered fairly and effectively. It has studied the issue of election cybersecurity extensively in support of its advocacy efforts to ensure that America's election systems are adequately secured against cyberattacks.

Reasons the *Amicus Curiae* Brief Will Assist the Court

Amici's proposed attached brief will assist the Court's consideration of Defendants' motion to dismiss and Plaintiffs' anticipated motion(s) for preliminary injunctive relief by bringing to the Court's attention voluminous evidence in the

public record establishing that, without prompt relief in this case, Plaintiffs face an imminent, serious risk of irreparable harm – the unconstitutional discounting of their votes in the upcoming November 2018 election – as the result of Defendants’ use of an outdated paperless DRE-based voting system, including unreliable and unverifiable paperless Diebold AccuVote TS/TSx machines, exacerbated by Defendants’ failure to observe basic cybersecurity measures in maintaining the state’s election system.

Without duplicating Plaintiffs’ arguments, *Amici*’s attached brief highlights Congressional testimony, expert reports, scholarship, and news reporting, which establish that (a) Plaintiffs face a substantial risk of irreparable harm; (b) Georgia’s voting system is unacceptably vulnerable to manipulation; (c) the threat that Georgia’s voting system will be attacked in the upcoming election is real and serious; (d) Georgia’s paperless voting machines are unacceptably susceptible to undetectable and uncorrectable errors in vote tallying even *without* malicious tampering; and (e) requiring paper ballots will substantially reduce the risk of undetectable, uncorrectable hacking or errors in the upcoming election. This context will help the Court evaluate Defendants’ arguments that Plaintiffs’ claims are nothing more than “hypothetical” or “speculative,” and will assist the Court’s

prompt resolution of Plaintiffs' anticipated motion(s) for preliminary injunctive relief.

Amici have no interests other than the protection of our democracy and urge the Court to look beyond prior delays caused by this case's procedural history and to promptly take action to protect Plaintiffs' fundamental rights before the upcoming November election.

For all these reasons, *Amici*'s request for leave to file the attached *Amicus Curiae* Brief should be granted.

Date: July 17, 2018

Respectfully submitted,

By: s/ Jon L. Schwartz

JON L. SCHWARTZ (Ga. Bar no. 631038)
Jon L. Schwartz, Attorney at Law, P.C.
1170 Peachtree St., N.E., Suite 1200
Atlanta, Georgia 30309
Tel. (404) 667-3047
Fax (404) 529-4587

STEPHEN P. BERZON
(*pro hac vice* pending)
STACEY M. LEYTON
(*pro hac vice* pending)
MATTHEW J. MURRAY
(*pro hac vice* pending)
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, California 947108
Tel. (415) 421-7151
Fax (415) 362-8064

Attorneys for *Amici Curiae* Common Cause,
National Election Defense Coalition, and
Protect Democracy

CERTIFICATE OF SERVICE

I certify that I have this 17th day of July, 2018, served the foregoing Motion upon all counsel of record by way of the Court's electronic case filing (ECF) system.

s/ Jon L. Schwartz

JON L. SCHWARTZ (Ga. Bar No. 631038)
Jon L. Schwartz, Attorney at Law, P.C.
1170 Peachtree St., N.E., Suite 1200
Atlanta, Georgia 30309
Tel. (404) 667-3047
Fax (404) 529-4587