

**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.)	

***AMICI CURIAE* COMMON CAUSE AND NATIONAL ELECTION
DEFENSE COALITION’S MOTION FOR LEAVE TO FILE
DECLARATION OF CANDICE HOKE IN SUPPORT OF PLAINTIFFS’
MOTIONS FOR PRELIMINARY INJUNCTION**

Amici Curiae Common Cause and National Election Defense Coalition

request leave to file the attached Declaration of Candice Hoke in support of plaintiffs’ motions for a preliminary injunction.¹ Although preliminary injunctive relief before the November election is justified on the current record, the attached declaration would aid the Court’s consideration of the pending motions. The declaration discusses the experience of another jurisdiction that successfully transitioned from DRE voting machines to optical scanning voting machines in a

¹ *Amici* previously filed an amicus brief in opposition to defendants’ motion to dismiss and in support of plaintiffs’ anticipated request for preliminary injunction. See ECF 246 (motion to file amicus brief), 246-1 (amicus brief), 253 (order granting motion to file amicus brief).

similar time frame to the time that currently remains available before the November election, supporting plaintiffs' showing that transitioning away from paperless DREs in Georgia before the November election is both feasible and appropriate.

The Court may permit *amici curiae* to submit evidence where doing so would assist the Court. *See* 4 AM. JUR. 2D *Amicus Curiae* § 8 (2018); 3B C.J.S. *Amicus Curiae* § 18 (2014). *Cf. Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982) (upholding trial court's order permitting amicus curiae to investigate the facts and participate in the case with rights of parties), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995). *See also Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, CV 01-640RE, 2005 WL 878602, *4 (D. Or. Apr. 8, 2005) (accepting evidence from amici because "whether presented by parties or amici, [the presented evidence] serve[s] the purpose of assisting the court"); *United States v. State of La.*, 751 F. Supp. 608, 620 (E.D. La. 1990) (courts have exercised "great liberality" in permitting an amicus curiae to file a brief in a pending case, including, with permission of the court, introducing evidence); *United States v. Michigan*, 116 F.R.D. 655, 664 (W.D. Mich. 1987) (allowing amicus curiae to present evidence, enforce consent decree, and engage in oral argument); *Davis v. Balson*, 461 F. Supp. 842, 847 (N.D. Ohio 1978) (United States appointed as

amicus curiae with right to present evidence); *United States v. U.S. Klans, Knights of Ku Klux Klan, Inc.*, 194 F. Supp. 897, 907 (M.D. Ala. 1961) (allowing amicus curiae to present evidence at hearing for a preliminary injunction). Because the attached declaration would assist the Court, it is proper to allow *amici* to file it here.

Date: September 13, 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*)
STACEY M. LEYTON (*pro hac vice*)
MATTHEW J. MURRAY (*pro hac vice*)
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
and National Election Defense Coalition

CERTIFICATE OF SERVICE

I certify that I have this September 13, 2018, served the foregoing *Motion for Leave* and accompanying *Declaration* upon all counsel of record by way of the Court's electronic case filing (ECF) system.

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