

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

_____)	
DEKALB COUNTY REPUBLICAN PARTY, INC.,)	
)	
APPLICANT,)	Civil Action File No.
)	24CV011028
v.)	
)	
BRAD RAFFENSPERGER, IN HIS OFFICIAL)	
CAPACITY AS THE SECRETARY OF STATE)	
OF THE STATE OF GEORGIA,)	
)	
RESPONDENT.)	
_____)	

MOTION OF PROPOSED *AMICUS CURIAE* CHEROKEE COUNTY REPUBLICAN PARTY AND 37 ADDITIONAL GEORGIA REPUBLICAN COUNTY PARTIES, *et al.* TO FILE A SUPPLEMENTAL BRIEF IN SUPPORT OF APPLICANT’S APPLICATION FOR WRIT OF MANDAMUS

Come Now, Cherokee County Republican Party and thirty-five (35) additional Georgia District and County Republican Parties listed on the attached Exhibit “A” (the “Proposed Amici”) and respectfully seek leave to file a supplemental *amicus curiae* brief in support of the DeKalb County Republican Party, Inc.’s application for Writ of Mandamus. The proposed amicus brief is attached to this Motion as Exhibit “B”. In support of this motion, the Proposed Amici state the following:

Interest of Proposed *Amicus Curiae* and Justification for Additional Briefing

In addition to their interests outlined in their original Motion for Leave to file a supporting Brief, the *Amici Curaie* are alarmed to hear the Secretary argue that he has no continuing duty to ensure that the election equipment originally certified by the Secretary, that each of the individual county election boards **must** use to conduct statewide elections under O.C.G.A. § 2-300, remains in compliance with the USEAC and VVSG standards. Each of the

Amici operates in a county, or multiple counties, whose individual boards of election have a duty derived from the GA Constitution to “conduct all elections in such manner as to guarantee the secrecy of the ballot and to perform such other duties as may be prescribed by law.” O.C.G.A. § 21-2-70(13); Ga. Const. art. II, § 1, ¶ I. If the Secretary has no such duty, then each of the counties in which the *Amici*’s members reside is at risk for not having properly discharged their own duties. Stated another way, the county election boards are dependent upon the Secretary’s continuing assurance of compliance with certification requirements protecting the integrity of the mandatory Dominion Voting System, and therefore the *Amici* and their resident members have a keen interest in having this Court consider whether the Georgia Constitution, in addition to other legal requirements, imposes a continuing certification requirement on the Secretary that may be relied upon in the individual counties. The constitutional dimensions of this issue was not previously briefed by the parties in this action, and the proposed supplemental amicus brief is narrowly tailored to address specific issues raised by the Secretary’s argument which are highly relevant to the Court’s consideration and may otherwise escape the notice of this Court.

WHEREFORE, the Proposed Amici respectfully request that the Court accept and consider the proposed supplemental *amicus curiae* brief attached hereto.

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October 3, 2024

EXHIBIT A

PROPOSED DRAFT SUPPLEMENTAL BRIEF AMICUS CURIAE

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

DEKALB COUNTY REPUBLICAN PARTY, INC.,)	
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APPLICANT,)	Civil Action File No.
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CAPACITY AS THE SECRETARY OF STATE)	
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)	
RESPONDENT.)	



**SUPPLEMENTAL BRIEF *AMICUS CURIAE* OF
CHEROKEE COUNTY REPUBLICAN PARTY, INC. AND
ADDITIONAL GEORGIA COUNTY REPUBLICAN PARTIES, *et al.*
IN SUPPORT OF APPLICATION FOR WRIT OF MANDAMUS**

These *amici* greatly appreciate this opportunity to bring to the attention of the court three additional observations with respect to the argument that took place near the end of the September 30, 2024 hearing.

I. The Constitutional Duty of the Secretary of State

The Secretary argues, in effect, that he has no responsibility whatsoever to implement corrective actions or procedures on a Dominion Voting System that was once certified compliant, but due to the continuing evolution of technology is now irresponsibly vulnerable to intrusion – permitting unlimited manipulation of the data and the unmasking of cast votes. *See* section III, *infra*. The question of whether the Secretary has responsibility to take corrective action to ensure continuing compliance with certification requirements in O.C.G.A. § 21-2-300(a) must be viewed through the lens of the Georgia Constitution. The Secretary’s position in court is diametrically opposed to Georgia’s constitutional requirement of a government founded

on the will of the people, ballot secrecy, and security of that secret vote, as such a system could be penetrated at will, and the data changed or displayed by nearly anyone with access to the election servers.

Under our State Constitution: "All government, of right, originates with the people [and] is founded upon their will only...." Ga. Const. art. I, § II, ¶ I. Insofar as the will of the people is manifested through citizens chosen by the people to serve in office, there is no state official entrusted with a higher duty to ensure that will is carried out, than the Chief Election Official of Georgia --- the Secretary of State. Article 2, § 1 of the Georgia Constitution, provides that "[e]lections by the people shall be by secret ballot and shall be conducted in accordance with procedures provided by law." Ga. Const. art. II, § 1, ¶ I The Secretary is not given the authority to ignore these Constitutional mandates. He necessarily has an implied obligation to ensure that the system for casting ballots continues to provide secrecy and security, reflecting the actual will of the People of Georgia.

II. Applicant's Apparently Unrebutted Testimony

Should the motion to dismiss or for a directed verdict be denied, at the hearing State Counsel advised the court that it would not be responding to applicant's testimony about insecure treatment of encryption keys.¹ Therefore, Georgia will not be disputing the basic security flaws demonstrated in the Dominion election system. That would leave the testimony by Applicant's experts about encryption keys, including the following excerpts from that testimony, unrebutted.

¹ See [6:54:27] Judge McAfee: I just kind of want to scope it out, if you say, just generally, what that would look like, if you have a **proffer**, generally, of what that testimony would be, just to kind of complete the roadmap for today.... **Is there anything as it relates to encryption keys** or their current status that you think would come in through that witness?

[2:03:33] This method of storage of **encryption keys** “is egregious ... There is **no security**, for what little that you claim as security is irrelevant, what’s more important than security is integrity of the system, there is **no integrity**, because you have to understand that these keys are vital to the security and the integrity of the system, this is how you validate that it is secure, that it cannot be tampered with. [Marcy McCarthy (emphasis added).]

[5:58:07] If I'm looking at [cybersecurity of the encryption keys] from a hacker's point of view, Hallelujah! If I'm looking at it from a a cyber security perspective, I can't believe that anybody would ever do this. You know **if you're talking about the criticality of the ensuring the integrity of the vote which is the base for our democracy then how could you ever leave this unprotected, so I find it frankly appalling.**” [Benjamin Cotton (emphasis added).]

[6:26:51] If I put this into analogy with banks, if you've got a bank vault and that's the latest and greatest lock on that bank vault, and you tout that security on that bank vault, what they've done here is the equivalent of **writing in big bold letters the combination on the wall** next to the lock, okay, so there really is no security. [*Id.* (emphasis added).]

In the absence of State rebuttal evidence on encryption keys, the only legal issue which remains is whether the Secretary of State’s duty as Chief Election Official ends with the selection of and approval of a EAC-certified voting system, no matter what flaws that system may have or develop. Stated differently, the issue is whether the Secretary of State has the authority to disregard demonstrated blatant security flaws in the system he chose and administered, particularly under his Constitutional duty, as discussed in Section I, *supra*.

[6:55:09]State Counsel Bryan Tyson: **I don’t believe so**, Your Honor. [Emphasis added.]

III. State Counsel's Arguments for Motion to Dismiss or Directed Verdict

At the close of Applicant's case, State Counsel Elizabeth Young presented arguments in favor of the State's motion to dismiss and/or motion for a directed verdict (beginning at 6:55:10).²

[6:56:19] We've heard a lot of **testimony about the flaws that the petitioners' experts believe are in the system. And, even if you take all of that as, as true, and even if you don't hear testimony** that we might put on about the guardrails that are put around the system that **keep some** of the parade of horrible ideas **from happening**.... [State Counsel (emphasis added).]

Here, State Counsel contends that even assuming all of the security breaches to which Applicant's experts testified were true, the State believes the Secretary of State had no duty to address the problem. This is a remarkable claim.

[6:56:48] They look at 300, and they say, well, that can't mean what it seems, what they think it says. You know, it can't simply be, you know — **go buy a system that's certified and certify the system and you don't have to do anything else ever again. And they're kind of right** and they're kind of wrong. Um, **that is what it says**, but it doesn't say that in a vacuum.

[6:57:13] And if you look at, there's a great law review article at 36 **Georgia State University Law Review** page 86 — I'm sorry, 81 — and it kind of goes through the history of HB316, of which, 21-2300 was a part.

[6:57:43] And, you know, the use of the BMDs at that time were very hotly debated — sorry... BMDs — and while we didn't hear this exact argument about encryption keys, there were arguments made against the use of the system. And, the law review article kind of goes through, you know, the objections to that. And what came out of that was okay, you know, the majority wanted to have a BMD system, um, but they said we're gonna do certain things. [*Id.* (emphasis added).]

² In the absence of a transcript of the hearing, this informal transcription of the testimony is presented, derived from, and together with, specific references to the video now on [YouTube](#).

Yes, *Amici* agree that Applicant's are — at least — “kind of right.” The relevance of the law review article cited by State Counsel is unclear. Certainly, it shows the legislature's disappointment that “Georgia was one of the last five states to still use the antiquated and highly vulnerable [DRE] System.” *Election: Elections and Primaries Generally*, 36 GA.ST.U.L.REV. 81, at 85. The article states that the legislature had concern about “a potential conflict of interest between ES&S and Georgia Governor and former Secretary of State Brian Kemp's deputy chief of staff ... a registered lobbyist for ES&S until June 2018, and his relationship and influence have drawn criticisms of favoritism and self-dealing.” *Id.* at 102. Nothing in that article indicates in the slightest that the Secretary of State can disregard demonstrated security breaches in the software he chose, and has monitored.

[6:58:16] You're gonna **buy a system that's certified**, and then after that purchase you're gonna have risk limiting audits and logic and accuracy testing. So, when you look at 300, it's a starter statute. You know, **it tells the Secretary, go buy a system that's certified, then you look at it and you certify it yourself**, and then from there other statutes kick in in terms of who's gonna do what. You've got, um, you know, if you go through the entire election code, lots and lots of statutes that talk about what happens after that. You have statutes that tell the county superintendents that they need to make storage plans, they need to appoint a person that's gonna be in charge of making sure the storage is safe. [*Id.* (emphasis added).]

Here, the State sets out its only defense: once the Secretary purchases a certified system, and certify it himself, then he has fulfilled his obligations to the People of Georgia to ensure a fair election. There is no ongoing duty to ensure that the system continues to work as the EAC anticipated when it was initially certified.

[6:59:09] You've got this whole very detailed description of the county's doing **logic and accuracy testing** *before* elections, and then a process for **risk limiting audits** *after* the elections. From that point forward, most of the responsibilities are placed on the county, the SCB is told to go promulgate rules

for recounts, and they narrowed the threshold for the recount by a half of a percent to make it a little easier for somebody to meet that recount threshold.

[6:59:50] And so when you look at HB316 on our election code as a whole, it makes sense that **the Secretary's obligations under 21-2300 did stop at that point**, because that's when other things kicked in.

[7:00:05] In terms of what we've heard today, we've heard a lot of things criticizing, you know, whether or not the system should have been certified, or should still be certified, the reality is, it's certified, it's still certified. And, under 21-2300, **what the Secretary was to do was to purchase a certified system, which he did, and then certify the safety of that system, which he did.**

[7:00:38] What should happen today could be a matter of debate. Should the EAC change its rules; should they do something; those are interesting points to debate but **that's not a proper case for mandamus.**

[7:00:52] You also heard that Mr. Cotton, or Dr. Cotton, I can't remember, you know, admit that the **EAC certification is static.** That was a very clear admission, that, you know, he acknowledged that that certification is static, um, now they have raised, you know, lots of arguments about why, um, maybe it shouldn't be, or, you know, whatever, but EAC isn't here, they're not a party to the case. [*Id.* (emphasis added).]

The court also heard testimony about the weakness of Logic and Accuracy Testing.

Neither that testing nor "risk limiting audits" would solve the problem asserted by Applicant's experts. EAC certification may be static, but the duty of the Secretary of State to ensure that it continues to generate reliable results continues.

[7:01:50] So when you look at mandamus, um, **nothing** that we have heard here today **points to a clear legal duty placed on the Secretary** that has been breached.³ [*Id.* (emphasis added).]

State counsel argues the State has no "clear legal duty" even when there is clear evidence of security breaches of the magnitude, that, as one witness stated, our home computers are more secure than the Dominion Machines. [. . .]. **If this is true, the People of Georgia need to know that the state's Chief Election Official believes he has no "clear legal duty" to fix disclosed security breaches in the system for elections in which he, personally has been a candidate.**

The state denies that there is resort to an equitable remedy, because there are adequate legal remedies.

[7:24:44] I will remind you that in terms of, you know, relief post-election, we do have a fully litigated **case pending in the Northern District**, which kind of tells you there are **adequate legal remedies** out there, um, where many of these issues may end up being decided in that forum. [*Id.* (emphasis added).]

Actually, the pending litigation in *Curling v. Raffensperger* in the Northern District demonstrates that post-election challenges are not adequate legal remedies. The complaint there was filed in 2017⁴, and remains undecided nine months after a trial was conducted. Several elections have occurred in the interim, and if the Dominion system is as flawed as has been shown, several elections could have already been altered. How many more elections will be decided until that case is resolved. The pendency of that action in federal court in no way relieves the Superior Court of making a decision on the record before it on the application for mandamus.

Finally, State Counsel concluded her remarks: [7:25:38] “Mandamus is not **the right place** for us to be right now. *Id.* (emphasis added). Actually, Mandamus is **the only place** for us to be now. The Secretary of State has been on notice of the gross security vulnerabilities of the systems that he has deployed at least since having been made aware of the Halderman Report in the *Curling* case in 2021. The most recent occasion on which he was put on notice was the letter from Applicant co-counsel Kurt Olsen on March 28, 2023. *See* Appl. at 19; Appl. Ex. 5. It is the

³ The issues of s about physical security are not addressed here.

⁴ *See Curling v. Raffensperger*, 2023 U.S. Dist. LEXIS 202368, at *29 (N.D.GA. 2023) Case No. 1:17-cv-02989-AT.

inaction of and neglect of duty by the Secretary of State that has brought us to where we are, and mandamus is the precise remedy for such situations.

The Secretary of State has a duty to enforce the law that justifies mandamus because the alternative remedy suggested by the State is neither “as ‘complete [nor] convenient as mandamus....” See *Barrow v. Raffensperger*, 308 Ga. 660, 667, 842 S.E.2d 884, 891 (2020) (citation omitted). In *Perdue v. Baker*, 277 Ga.1, 22, 586 S.E.2d 606, 620 (2003), the court declared that “[a] lawsuit is the ultimate remedy to ensure compliance with the law.” Thus, Mandamus is the appropriate remedy in this case because there is no alternative remedy that is complete and convenient under the circumstances.

Conclusion

It would be difficult to improve on the comments of Applicant’s Expert Witness Benjamin Cotton as to how these *amici*, and likely the People of the State of Georgia, would view this Application for Mandamus relief.

[6:45:26] **This is not about rehashing the 2020 election this is about restoring the confidence and Faith of all Americans in the foundation of our democracy which is the voting process** and if if we can't prove or demonstrate to them that this process is secure and that we can detect if there is something going on then I think that what we saw subsequent to the 2020 election is going to continue forward in the next foreseeable future with whoever lost bringing these up as issues before the general public and so I really look at this as more of a **confidence issue** and making sure that we as a collective government are **doing the steps that we need to do to ensure the Integrity of these elections.**
[Emphasis added.]

Respectfully submitted,

/s/ David E. Oles

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EXHIBIT B

AMICI

Amy Kremer - RNC National Committeewoman For Georgia	
1 st Congressional District Republican Party	Kandiss Taylor
7 th Congressional District Republican Party	John Nance
11 th Congressional District Republican Party	Christopher Mora
Chattooga County Republican Party	Tammy Flowers
Charlton County Republican Party	Guy Gowen
Bryan County Republican Party	Jordan Given
Chatham County Republican Party	Brittany Brown
Walker County Republican Party, Inc	Jackie Harling
Catoosa County Republican Party	Joanna Hildreth
Cherokee County Republican Party, Inc.	CV Dinsmore
Rockdale Republican Party	Jonathan Chavez
Paulding County Republican Party	Jim Tully
Cobb County Republican Party	Salleigh Grubbs
Gordon County Republican Party	Tim Pridemore
Gwinnett County Republican Party	Sammy Baker
Taylor County Republican Party	Mandy Robinson
Monroe County Republican Party	Claude Curlee
Tift County Republican Party	Keith Satonica
Columbia County Republican Party	Joseph Edlemon

Upson County Republican Party	Lisa Pierce
Crawford County Republican Party	Janet Carter
Hall County Republican Party	Rich Elsarelli
Fulton County Republican Party Inc.	Stephanie Endres
Jeff Davis Republican Party	Sarah Rowin
Peach County Republican Party	Tim Waters
Banks County Republican Party	Brian Parker
Grady County Republican Party	Jeff Jolly
Decatur County Republican Party	Jesse Willard
Pickens County Republican Party	Christopher Mora
Bibb Count Republican Party	David Sumrall
Hart County Republican Party	Timothy Roberts
Lamar County Republican Party	Audra Beth Pearce
Thomas County Republican Party	Bruce Fykes
Newton County Republican Party	Brendan Cherry
Colquitt County Republican Party	Dennis Futch
Putnam County Republican Party	Dale Bills
Forsyth County Republican Party	Greg Landon