

**IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY**

LINDA SCHADE, ANDREW HARRIS, JUDITH BURNS,
MARK ELRICH, KWAME ABAYOMI, TERRENCE
FITZGERALD, SHARON BEARD, and PAUL SUH,

Plaintiffs,

vs.

MARYLAND STATE BOARD OF ELECTIONS,
LINDA H. LAMONE (as Administrator of Maryland's State
Board of Elections),

Defendants.

CASE NO. C0497297

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs, Linda Schade, Andrew Harris, Judith Burns, Mark Elrich, Kwame Abayomi, Terrence Fitzgerald, Sharon Beard, and Paul Suh, by their undersigned counsel, move for a preliminary injunction to maintain the status quo and enjoin Defendants from using the Diebold AccuVote TS electronic voting system in the November 2004 elections in violation of applicable state and federal law unless and until the well-publicized security and reliability concerns with the new machines are remedied. Plaintiffs state as follows:

1. Plaintiffs have filed a lawsuit against the Maryland State Board of Elections and its Administrator, Linda H. Lamone, for recklessly certifying the Diebold AccuVote TS electronic voting system deployed in Maryland over the objections of its own Procurement Review Committee, and then failing to either fix or decertify the machines as required by state and federal law once numerous independent expert reports commissioned by the state of Maryland -- as well as reports of widespread problems in actual elections in Maryland and

nationwide -- confirmed that the machines could not preserve the security and reliability of Maryland elections.

2. The lawsuit was filed on April 21, 2004 -- six months before the November 2004 general elections -- after it became apparent that the Defendants would not honor a public pledge to upgrade the Diebold machines per the recommendations of expert reports commissioned by the state before the November 2004 elections. Although plaintiffs initially hoped to take advantage of the expedited provisions of Maryland Election Law § 12-202 for judicial review of election cases to bring the case to trial well before the November elections, the Defendants have engaged in a concerted, multi-pronged strategy to run out the clock on the state's ability to implement a remedy for the November 2004 general election before the merits of Plaintiffs' case can be addressed and Defendants unlawful actions exposed. As a result, Plaintiffs are now forced to bring this motion for a preliminary injunction to ensure that Defendants' are not able to thwart Maryland voters' statutory right to use a secure and reliable voting system with a paper audit capability in the November 2004 elections.

3. This case, in which Plaintiffs' remedy is in danger of being extinguished not by a ruling the merits but by the passage of time, presents the classic situation in which a preliminary injunction is appropriate. Plaintiffs are able to establish -- simply based on the public record -- a strong likelihood of success on the merits (even though they only need to show a serious question), and the balance of hardships is decidedly in Plaintiff's favor. Plaintiffs would be irreparably harmed if the requested injunction is not issued because it would deprive them of a remedy for the November 2004 elections altogether. On the other hand, defendants will suffer little if any harm from the institution of a reliable and secure election system prior to the November 2004 election.

4. Plaintiffs simply seek a return to an election system that complies with Maryland law and a November 2004 election that is free from the cloud of voter distrust that surrounds the current Diebold electronic voting system.

WHEREFORE, Plaintiffs, Linda Schade, Andrew Harris, Judith Burns, Mark Elrich, Kwame Abayomi, Terrence Fitzgerald, Sharon Beard, and Paul Suh, request that this Court enter a preliminary injunction that maintain the status quo and enjoin Defendants from using the Diebold AccuVote TS electronic voting system in the November 2004 elections in violation of applicable state and federal law unless and until the well-publicized security and reliability concerns with the new machines are remedied.

Dated: June 25, 2004

John B. Isbister
Daniel S. Katz
Richard D. Rosenthal
TYDINGS & ROSENBERG LLP
100 East Pratt Street, 26th Floor
Baltimore, Maryland 21202
Telephone: (410) 752-9700
Facsimile: (410) 727-5460

*Counsel for Plaintiffs Schade, Harris, Burns,
Elrich, Abayomi, Fitzgerald, Beard, and Suh*

Respectfully Submitted,



Ryan P. Phair
Kathryn R. DeBord
Daniel M. Nelson
Avery W. Gardiner
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and Federal Express to all counsel on the attached service list on this 25th of June, 2004.

John B. Isbister
Daniel S. Katz
Richard D. Rosenthal
TYDINGS & ROSENBERG LLP
100 East Pratt Street, 26th Floor
Baltimore, Maryland 21202
Telephone: (410) 752-9700
Facsimile: (410) 727-5460

*Counsel for Plaintiffs Schade, Harris, Burns,
Elrich, Abayomi, Fitzgerald, Beard, and Suh*



Ryan P. Phair
Kathryn R. DeBord
Daniel M. Nelson
Avery W. Gardiner
KIRKLAND & ELLIS LLP
655 15th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 879-5000
Facsimile: (202) 879-5200

SERVICE LIST

Michael D. Berman
Judith A. Arnold
**STATE OF MARYLAND,
OFFICE OF THE ATTORNEY GENERAL**
200 Saint Paul Place, 20th Floor
Baltimore, MD 21202-2021

*Counsel For Defendants Maryland State
Board of Elections and Lamone*

Daniel F. Goldstein
Shelly Marie Martin
BROWN GOLDSTEIN & LEVY, LLP
120 E. Baltimore Street
Suite 1700
Baltimore, MD 21202

*Counsel for Proposed Intervenors
National Federation of the Blind et al.*

Christopher M. Loveland
**SCHMELTZER, APTAKER & SHEPARD,
PC**
2600 Virginia Avenue, N.W.
Suite 1000
Washington, D.C. 20037

Cindy Cohn
**ELECTRONIC FRONTIER
FOUNDATION**
454 Shotwell Street
San Francisco, CA 94114

*Counsel for Electronic Frontier Foundation
VerifiedVoting.org and VotersUnite!*

John M. Majoras
Mary Hellen Perry
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20004

*Counsel for Non-Party DESI Election
Systems, Inc.!*