

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.

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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.

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