

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMON CAUSE,

ET AL.,

Plaintiffs,

v.

PRESIDENTIAL ADVISORY COMMISSION ON
ELECTION INTEGRITY,

ET AL.,

Defendants.

No. 1:17-cv-01398, Hon. Royce C.
Lamberth

**MOTION FOR LEAVE TO FILE BRIEF OF FORMER NATIONAL
SECURITY AND TECHNOLOGY OFFICIALS AS AMICI CURIAE
SUPPORTING PLAINTIFFS' MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

JOSHUA A. GELTZER (D.C. Bar No. 1018768)
INSTITUTE FOR CONSTITUTIONAL
ADVOCACY AND PROTECTION
Georgetown University Law Center
600 New Jersey Ave. NW
Washington D.C. 20001
Telephone: 202.661.6728
JG1861@Georgetown.edu

ROBERT S. LITT*
DAVID A. NEWMAN*
SOPHIA M. BRILL*
MORRISON & FOERSTER LLP
2000 Pennsylvania Avenue N.W.
Washington, D.C. 20006

ROBERT TAJ MOORE*
MORRISON & FOERSTER LLP
250 West 55th Street
New York, New York 10019

Counsel for Amici Curiae

* *pro hac vice* motions pending

Proposed amici curiae, a group of former national security and technology officials identified below, respectfully move this Court under Local Civil Rule 7(o) for leave to file the attached amicus curiae brief in support of Plaintiffs' memorandum in opposition to Defendants' motion to dismiss in the above-captioned case. The proposed brief is attached to this Motion.

1. The Court "has broad discretion to permit . . . participat[ion] [of] amici curiae," and amicus participation is appropriate where amici have "relevant expertise and a stated concern for the issues at stake in [the] case." *Dist. of Columbia v. Potomac Elec. Power Co.*, 826 F. Supp. 2d 227, 237 (D.D.C. 2011). This Court has recognized that an amicus brief should "normally be allowed when . . . the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003) (Lamberth, J.) (quoting *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997)); see also *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 137 (D.D.C. 2008) (same).

2. Proposed amici curiae are former national security and technology officials who have decades of experience combatting cyber threats posed by foreign adversaries and other malicious actors. Proposed amici have worked at senior levels in administrations of both parties and share strong concerns about securing the integrity of our nation's electoral systems. Proposed amici have unique insight about cyber threats to these systems, particularly those posed by hostile foreign actors.

3. This brief is intended to highlight for the Court a particular aspect of this litigation that has been referred to but not substantially discussed by either party: the potentially serious national security and cybersecurity implications of the Presidential Advisory Commission on Election Integrity's (the "Commission's") compilation of a massive database of personally

identifiable information about American voters and its storage of that database on White House computer systems. Proposed amici are uniquely positioned to provide this Court with information and insight about the risks that such a database could be breached, as well as the potential consequences of such a breach. The proposed amicus brief provides the Court with information about the vulnerabilities of databases that contain large amounts of personally identifiable information, the motives that hostile actors have for breaching these databases, the factors that may make the Commission's database a distinctively valuable target, and several concerns posed by the Commission's apparent conduct thus far. This information is directly relevant to the Court's assessment of the potential harms posed by the Commission's activity, as well as to the Court's determination of whether Defendants are in compliance with the Privacy Act.

4. Proposed amici are the following individuals¹:

a. James R. Clapper served as the U.S. Director of National Intelligence (DNI) from 2010 to January 20, 2017. Prior to becoming the DNI, he served for over three years in two administrations as the Under Secretary of Defense for Intelligence, where he was dual-hatted as the Director of Defense Intelligence for the DNI and as the Director of the National Geospatial-Intelligence Agency from 2001 to 2006.

b. Dipayan Ghosh served as Senior Advisor on Technology Policy at the Office of Science and Technology Policy and National Economic Council in the White House from 2013 to 2015, and until recently served as a privacy and public policy advisor at Facebook.

c. Andrew J. Grotto served as the Senior Director for Cybersecurity Policy at the White House from 2016 to 2017. He previously served as Senior Advisor for Technology Policy at the Department of Commerce.

d. Nancy Libin served as Chief Privacy Officer at the U.S. Department of Justice from 2009 to 2012.

e. Alex Macgillivray was Deputy United States Chief Technology Officer from 2014 to 2017. He previously served as General Counsel at Twitter and Deputy General Counsel at Google.

¹ Affiliations are for identification purposes only.

f. Matthew G. Olsen served as Director of the National Counterterrorism Center from 2011 to 2014. He previously served as the General Counsel for the National Security Agency and in various national security-related roles at the Department of Justice.

g. Christopher Painter served as the Coordinator for Cyber Issues at the Department of State from 2011 to 2017.

h. Paul Rosenzweig is a Senior Fellow at the R Street Institute. He teaches Cybersecurity Law and Policy at George Washington University School of Law. He served as Deputy Assistant Secretary for Policy at the Department of Homeland Security from 2006 to 2009.

i. Suzanne Spaulding served from 2011 to 2017 as the Under Secretary for the National Protection and Programs Directorate (NPPD) at the Department of Homeland Security, which is charged with strengthening cybersecurity and protecting the nation's critical infrastructure.

5. Counsel for amici sought the consent of counsel of all parties for filing this amicus brief. Counsel for Plaintiffs has consented to the filing, and counsel for Defendants does not oppose the filing.

For the aforementioned reasons, proposed amici respectfully request that the Court enter the attached Proposed Order granting leave to file the attached brief.

Dated: December 5, 2017

Respectfully submitted,

/s/
JOSHUA A. GELTZER (D.C. Bar No. 1018768)
INSTITUTE FOR CONSTITUTIONAL
ADVOCACY AND PROTECTION
Georgetown University Law Center
600 New Jersey Ave., NW
Washington, D.C. 20001
Telephone: 202.661.6728
JG1861@Georgetown.edu

ROBERT S. LITT*
DAVID A. NEWMAN*
SOPHIA M. BRILL*
MORRISON & FOERSTER LLP
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006

ROBERT TAJ MOORE*
MORRISON & FOERSTER LLP
250 West 55th Street
New York, N.Y. 10019

Counsel for Amici Curiae

* *pro hac vice* motions pending

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2017, I filed this Motion with the United States District Court for the District of Columbia using the CM/ECF system, which will cause it to be served on all counsel of record.

Dated: December 5, 2017

Respectfully submitted,

/S/

JOSHUA A. GELTZER (D.C. Bar No. 1018768)
INSTITUTE FOR CONSTITUTIONAL
ADVOCACY AND PROTECTION
Georgetown University Law Center
600 New Jersey Ave., NW
Washington, D.C. 20001
Telephone: 202.661.6728
JG1861@Georgetown.edu