

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
COLUMBUS DIVISION**

THE OHIO ORGANIZING )  
COLLABORATIVE, JORDAN ISERN, )  
CAROL BIEHLE, and BRUCE BUTCHER )  
*Plaintiffs,* )

v. )

Civil Action No. 2:15-cv-1802-MHW

JOHN HUSTED, in his official capacity )  
as Secretary of State of Ohio, and MIKE )  
DEWINE, in his official capacity as )  
Attorney General of Ohio )  
*Defendants.* )

**MOTION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE**

The Public Interest Legal Foundation, Inc., by and through their undersigned counsel, respectfully moves for leave to participate as *amicus curiae* in opposition to Plaintiff’s requested relief in this matter. In further support of its motion, a memorandum of support is attached:

Dated: July 30, 2015

Respectfully submitted,

*s/ Brian D. Heskamp*  
Brian D. Heskamp (0083548)  
THACKER MARTINSEK LPA  
2330 One Cleveland Center  
1375 E. 9<sup>th</sup> Street  
Cleveland, OH 44114  
Tel: (216) 456-3840  
Fax: (216) 456-3850  
Email: bheskamp@tmlpa.com

J. Christian Adams (VA Bar #42543)  
PUBLIC INTEREST LEGAL FOUNDATION  
300 N. Washington St., Suite 405  
Alexandria, VA 22314  
Tel: 703-963-8611  
Email: adams@publicinterestlegal.org

*Pro Hac Vice application to be filed*

Noel H. Johnson (Wis. Bar #1068004)  
PUBLIC INTEREST LEGAL FOUNDATION  
209 W. Main Street  
Plainfield, IN 46168  
Tel: (317) 203-5599  
Email: [njohnson@PublicInterestLegal.org](mailto:njohnson@PublicInterestLegal.org)  
*Pro Hac Vice application to be filed*

*Attorneys for Amici Curiae*

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\_\_\_\_\_ )

**MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE  
TO PARTICIPATE AS *AMICUS CURIAE***

The Public Interest Legal Foundation, Inc. (“PILF”) is a non-partisan, public interest organization headquartered in Plainfield, Indiana, and with undersigned counsel in Alexandria, Virginia. Founded in 2012, PILF seeks to promote the integrity of American elections and preserve the Constitutional balance giving states control over their own elections. PILF files *amicus curiae* briefs as a means to advance its purpose, preserve election integrity and has appeared as *amicus curiae* in federal courts on multiple occasions.

The Plaintiffs have brought the instant litigation in Ohio as part of a nationally-coordinated litigation campaign seeking to transform long-standing legal standards related to federal election laws. As of the date of this filing, related claims advancing similar legal theories include *One Wisconsin Institute, Inc. v. Nichol*, Case No. 15-cv-324 (W.D. Wis.) and *Lee v. Virginia State Board of Elections*, Case No. 3:15-cv-357 (E.D. Va.). Counsel for the Plaintiffs here is the same as counsel for the plaintiffs in Virginia and Wisconsin. Plaintiffs in those cases

also challenge facially race-neutral election process rules as violating federal civil rights guarantees. This national litigation strategy obviously has been initiated in states with a significant role in the upcoming 2016 federal elections.

PILF can provide an understanding of this national strategy and the national implications of Plaintiff's cause of action which any singular defendant is unlikely to provide. PILF can marshal an array of election law experts who served in the Voting Section of the United States Department of Justice across multiple administrations who enforced the statutes at issue in this case, as well as other election law practitioners with significant experience. PILF employs or is affiliated with national election law experts, scholars and practitioners who can provide this court with a comprehensive history of the enforcement of these statutes and their traditional enforcement considerations.<sup>1</sup>

PILF seeks leave to appear as *amicus curiae* in this matter, and in particular on issues touching on:

- 1) Appropriate and longstanding legal standards for enforcement of the Voting Rights Act.
- 2) Plaintiff's efforts to introduce a statistical trigger for liability under Section 2 of the Voting Rights Act akin to a disparate impact standard.
- 3) The appropriate use of experts in Voting Rights Act and federal civil rights cases regarding election process rules.
- 4) Remedial issues, including standards related to renewed statewide preclearance obligations under Section 3 of the Voting Rights Act of the sort that the United States Supreme Court suspended in *Shelby County v. Holder*, 570 U.S. \_\_\_\_ (2013).

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<sup>1</sup> See, e.g., Adams, J. Christian (2015) "Transformation: Turning Section 2 of the Voting Rights Act into Something It Is Not," *Touro Law Review*: Vol. 31: No. 2, Article 8.

The decision to permit *amici curiae* to participate in a pending case is within “the sound discretion of the courts.” *United States v. Michigan*, 940 F.2d 143, 165 (6th Cir. 1991) (citing *Northern Sec. Co. v. United States*, 191 U.S. 555 (1903)). While there is no rule governing the appearance of *amici* in a district court, the courts have recognized that a non-party should be permitted to participate as *amicus curiae* “upon a finding that the proffered information of amicus is timely, useful, or otherwise necessary to the administration of justice.” *Michigan*, 940 F.2d at 165 (citation omitted); *see also United States ex rel. Roby v. Boeing Co.*, 73 F. Supp. 2d 897, 900 (S.D. Ohio 1999) (motion to appear as *amicus curiae* granted where movant had an “important interest and a valuable perspective that is helpful to the Court on the issues presented in this case”).

“Even when a party is well represented, an *amicus* may provide important assistance to the court.” *Neonatology Assocs., P.A. v. Commissioner of Internal Revenue*, 293 F.3d 128, 132 (3rd Cir. 2002). Indeed the courts have regularly permitted parties with both pecuniary and policy interests to appear as *amici*. As explained by Judge Alito:

A restrictive policy with respect to granting leave to file may . . . create at least the perception of viewpoint discrimination. Unless a court follows a policy of either granting or denying motions for leave to file in virtually all cases, instances of seemingly disparate treatment are predictable. A restrictive policy may also convey an unfortunate message about the openness of the court.

*Neonatology Assocs., P.A.*, 293 F.3d at 133; *see also United States v. Alkaabi*, 223 F. Supp. 2d 583, 592 (D.N.J. 2002).

*Amicus curiae* has numerous interests in this case, not all of which the Defendants are likely to advance. First, PILF seeks to ensure that Ohio is not subject to federal oversight of all election law changes of the sort suspended in *Shelby County*. Second, PILF seeks to provide a comprehensive understanding to this Court on the national implications of the Plaintiff’s legal

theories, particularly as they pertain to questions of Constitutional federalism. Third, PILF seeks to preserve a traditional understanding of Section 2 of the Voting Rights Act, which contains a robust requirement of causality such that a plaintiff must demonstrate that a particular election practice ultimately prevents, in fact, the ability of minorities to fully participate in the political process. Fourth, and finally, PILF seeks to prevent treasured civil rights statutes such as the Voting Rights Act of 1965 from being turned into mere partisan weapons to leverage federal power over state elections merely to advantage one political party and disadvantage another.

The Supreme Court has said that confidence in the integrity of the electoral process encourages citizen participation in the democratic process. *Crawford et al. v. Marion County Election Board*, 553 US 181, 197 (2008). The Ohio statutes challenged in this case promote the integrity of Ohio elections. PILF seeks to provide a national perspective in a case which might seem from the pleadings merely an effort confined to the Buckeye State.

Undersigned counsel has attempted to contact Plaintiff's attorneys by telephone multiple times during the week of July 19, 2015, seeking consent to the instant motion. As of the date of this filing, undersigned counsel has not received any response to his request.

Undersigned counsel contacted Defendants' attorney by telephone on July 21, 2015. Movant is authorized to state that Defendants do not object to this motion.

For the foregoing reasons, PILF respectfully requests that this Court grant leave to allow appearance as *amicus curiae*.

Dated: July 30, 2015

Respectfully submitted,

s/ Brian D. Heskamp

Brian D. Heskamp (0083548)  
THACKER MARTINSEK LPA  
2330 One Cleveland Center  
1375 E. 9<sup>th</sup> Street  
Cleveland, OH 44114

Tel: (216) 456-3840  
Fax: (216) 456-3850  
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J. Christian Adams (VA Bar #42543)  
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was filed electronically this 30th day of July, 2015.

Notice of this filing will be sent by operation of the Court's electronic filing system to counsel of record for all parties as indicated on the electronic filing receipt. Parties and their counsel may access this filing through the Court's system.

*s/ Brian D. Heskamp*  
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Brian D. Heskamp