

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

ALDER CROMWELL, and	)	
CODY KEENER,	)	
<i>Plaintiffs,</i>	)	
	)	
v.	)	Civil Action No. 2:15-cv-09300
	)	
KRIS KOBACH, KANSAS	)	
SECRETARY OF STATE	)	
<i>Defendant.</i>	)	
_____	)	

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

The Public Interest Legal Foundation, Inc. has filed a motion for leave to participate as *amicus curiae* in opposition to Plaintiff Cody Keener’s Motion for Preliminary Injunction (Dkt. 4) (“Motion”).<sup>1</sup> In support of this motion the proposed *amicus* states as follows:

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, including, most recently, in the currently pending challenge to Virginia’s election law. *See Lee v. Virginia State Board of Elections*, Case No. 3:15-cv-357 (E.D. Va.).

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<sup>1</sup> Although the docket sheet reflects that the Motion was filed on behalf of both Plaintiffs, the Memorandum in Support of the Motion (Dkt. 5) suggests that the Motion is really only being filed on behalf of Plaintiff Cody Keener.

Plaintiffs' Complaint (Dkt. 1) claims that Kansas's proof-of-citizenship requirement is in violation of the Constitution and the National Voter Registration Act of 1993 ("NVRA"). Plaintiffs seek declaratory and injunctive relief. In the Motion, Plaintiff Keener then specifically seeks to preliminarily enjoin the enforcement of K.A.R. 7-23-15 – Kansas's rule regarding incomplete applications for voter registration, which mandates the cancelation of those applications that are not completed within 90 days of the date the application was received by the county election office.

PILF can provide an understanding of certain national implications of the Motion that the Defendant did not address. PILF can also marshal an array of election law experts who served in the Voting Section of the United States Department of Justice across multiple administrations and who enforced the statutes at issue in this case, as well as other election law practitioners with significant experience in this area. 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>2</sup>

PILF seeks leave to appear as *amicus curiae* in this matter and file a brief on issues touching on the widespread failure of the National Mail Voter Registration Form to prevent noncitizen voter registration.

The decision to permit *amici curiae* to participate in a pending case is within "the sound discretion of the courts." *Hammond v. City of Junction City*, 2002 U.S. Dist. LEXIS 4117, \*3 (D. Kan. Jan. 23, 2002). 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 useful or otherwise necessary to the

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

administration of justice.” *Id.* at \*4. In *Hammond*, this court granted the motion of *amicus* who was “uniquely familiar with the issues involved in the case” and stated that “the issues are of vital importance to [its] attorneys and their clients across the country.” *Id.* at \*5; *see also In re Kansas Office Assocs.*, 181 B.R. 537, 538 (D. Kan. 1995) (permitting *amicus* brief where it “may be of some benefit in resolving the pending issues in [the] case.”). 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. v. Commissioner*, 293 F.3d 128, 133 (3d Cir. 2002).

*Amicus curiae* has numerous interests in this case, not all of which the Defendant is likely to advance and, therefore, the briefing is not duplicative. First, PILF seeks to provide the Court with examples of noncitizen registration and voting from across the country. Second, PILF seeks to explain the inaction of the Justice Department in addressing the problem of noncitizen registration and voting, thus highlighting the necessity of the measures Kansas is taking and that Plaintiffs are challenging.

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 U.S. 181, 197 (2008). The Kansas regulation challenged in this case promotes the integrity of Kansas elections. PILF seeks to provide a national perspective in this case, even though the pleadings might suggest (inaccurately) that the case’s implications are confined to the Sunflower State.

Undersigned counsel contacted counsel for the Plaintiffs on November 4, 2015 and the Plaintiffs do not object to this motion.

Undersigned counsel contacted counsel for the Defendant on November 4, 2015 and the Defendant consents to this Motion.

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

Dated: November 17, 2015

Respectfully submitted,

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*Attorneys for Amicus Curiae Public Interest  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of November 2015, I electronically filed the foregoing Memorandum in Support of Unopposed Motion for Leave to Participate as Amicus Curiae with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel who have entered an appearance in the case.

/s/ Bradley J. Schlozman