

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

ONE WISCONSIN INSTITUTE, INC., CITIZEN)
ACTION OF WISCONSIN EDUCATION FUND,)
INC., RENEE M. GAGNER, ANITA JOHNSON,)
CODY R. NELSON, JENNIFER S. TASSE,)
SCOTT T. TRINDL, and MICHAEL R. WILDER)

Plaintiffs,

v.

Case No. 15-cv-324

JUDGE GERALD C. NICHOL, JUDGE ELSA)
LAMELAS, JUDGE THOMAS BARLAND,)
JUDGE HAROLD V. FROEHLICH, JUDGE)
TIMOTHY VOCKE, JUDGE JOHN FRANKE,)
KEVIN J. KENNEDY, and MICHAEL HAAS,)
all in their official capacities,)

Defendants.

**MOTION FOR LEAVE TO PARTICIPATE AS AMICI CURIAE
AND CORPORATE DISCLOSURE STATEMENT**

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, it 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.

The Plaintiffs have brought the instant litigation in Wisconsin 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 *Lee v. Virginia State Board of Elections*, Case No. 3L15-cv-357 (E.D. Va.) and *Ohio Organizing Collaborative v. Husted*, Case No. 2:15-cv-1802 (S.D. Ohio). Counsel for the Plaintiffs here are the same as counsel for the plaintiffs in Ohio and Virginia. Plaintiffs in those cases also challenge facially race-neutral election process rules as violative of federal civil rights guarantees. This national litigation strategy has been initiated in states traditionally considered “swing 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 Plaintiffs’ causes of action that 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.¹

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.

¹ 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.

- 2) Plaintiffs' 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, Ala. v. Holder*, 570 U.S. ____ (2013).

The decision to permit *amici curiae* to participate in a pending case is “a matter of judicial grace.” *NOW, Inc. v. Scheidler*, 223 F.3d 615, 616 (7th Cir. 2000); see also *Waste Mgmt., Inc. v. City of York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995); *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982). While there is no rule governing the appearance of *amici* in a district court, *Johnson v. U.S. Office of Pers. Mgmt.*, 2014 U.S. Dist. LEXIS 60404, at *2 (E.D. Wis. Apr. 28, 2014), the courts have recognized they have broad discretion whether to permit a non-party to participate as *amicus curiae*. “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).

In the Seventh Circuit, the criterion for deciding whether to permit the filing of an *amicus* brief is “whether the brief will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties’ briefs.” *Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003). The presence of certain factors can make it more likely that this criterion has been met, including when a party is inadequately represented, when the proposed *amicus* has a direct interest in another related case, or when the

amicus presents “a unique perspective or specific information that can assist the court beyond what the parties can provide.” *Id.*

Here, because of its unique expertise and access to data and experts, PILF will be able to provide a unique perspective and specific information that the parties are unable to provide. PILF will be able to provide arguments, facts, and data that are likely unavailable to the parties. As a result, any brief submitted by PILF will not be a duplication of the briefs submitted by the parties. *See, e.g., Laborers Local 236, AFL-CIO v. Walker*, 2013 U.S. Dist. LEXIS 129341 (W.D. Wis. Sept. 11, 2013); *Johnson*, 2014 U.S. Dist. LEXIS 60404 at *2.

PILF has numerous interests in this case, not all of which the Defendants’ are likely to advance. First, PILF seeks to ensure that Wisconsin is not subject to renewed 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 Plaintiffs’ 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 Wisconsin statutes challenged in this case promote

the integrity of Wisconsin elections. PILF seeks to provide a national perspective in a case which might seem from the pleadings merely an effort confined to Wisconsin.

Undersigned counsel have attempted to contact Plaintiffs' attorneys by telephone several times during the week of July 19, 2015, seeking consent to the instant motion. As of the date of this filing, undersigned counsel have not received any response from Plaintiffs' attorneys.

Undersigned counsel have conferred with counsel for the Defendants', who have indicated that Defendants do not oppose this motion.

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

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. Civ. P. 7.1, the Public Interest Legal Foundation states that it is a corporation organized under Section 501(c)(3) of the Internal Revenue Code. The Public Interest Legal Foundation does not have a parent corporation, and no publicly held company has a 10% or greater ownership interest in it.

Dated: July 30, 2015

Respectfully submitted,

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Attorneys for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2015, a copy of the foregoing was electronically filed through the ECF system and will be sent electronically to all persons identified in the Notice of Electronic Filing.

/s/ Joseph A. Vanderhulst
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