

**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

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EARLE FISHER, et. al., <i>Plaintiffs/Appellees,</i>	) Case No.: M2020-00831-SC-RDM-CV
v.	)
	) Interlocutory Appeal from the
	) Chancery Court of Tennessee for the
TRE HARGETT, et al. <i>Defendants/Appellants.</i>	) Twentieth Judicial District,
	) Docket No. 20-0435-III
	)
<i>Related with:</i>	)
	)
BENJAMIN LAY, et al. <i>Plaintiffs/Appellees.</i>	) Case No.: M2020-00832-SC-RDM-CV
v.	)
	) Interlocutory Appeal from the
	) Chancery Court of Tennessee for the
MARK GOINS, et al. <i>Defendants/Appellants.</i>	) Twentieth Judicial District,
	) Docket No. 20-0453-III

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**MOTION FOR LEAVE TO FILE ATTACHED BRIEF OF *AMICUS CURIAE* THE PUBLIC INTEREST LEGAL FOUNDATION IN SUPPORT OF APPELLANTS**

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The Public Interest Legal Foundation asks this Court for leave to file the attached amicus brief in support of Appellants/Defendants. As explained below, the Foundation has an interest in this important constitutional matter and believes its brief will assist the court. Tenn. R. App. P. 31.

### **INTEREST OF PROPOSED *AMICUS CURIAE***

*Amicus curiae* has a significant and long-standing interest in this matter. The Public Interest Legal Foundation is a 501(c)(3) organization whose mission includes working to protect the fundamental right of citizens to vote. The Public Interest Legal Foundation has sought to advance the public's interest in fair elections free from unconstitutional burdens and discrimination. At the state level, this is best done by ensuring that state laws enacted by each state's legislative branch are constitutional. It is also done by monitoring judicial actions that intrude into the delegated responsibilities of the legislative branch. The separation of powers is foundational to elections that are fair and free from partisan manipulation.

Attorneys for *amicus curiae* have extensive experience in election law litigation. Their interest in ensuring that state election laws comply with federal election standards is at the core of their mission of preserving election integrity across the country. When one state fails to protect its election processes in a national general election, then the election loses integrity and the national electorate feels cheated. Attorneys for *amicus curiae* believe their experience, research and comprehensive analysis of Tennessee's voter roll will aid the Court in

evaluating the issues presented.

The Liberty Justice Center has experience in constitutional law, having won *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018), maintains an election law practice, regularly practices in Tennessee, and serves as local counsel for the Public Interest Legal Foundation in this case.

## ARGUMENT

It is well-established that *amici* assist appellate courts in many ways, including by “supplementing the efforts of counsel even when both sides are represented” or by “drawing the court’s attention to broader legal or policy implications that might otherwise escape the court’s consideration.” *State ex rel. Com’r of Transp. v. Med. Bird Black Bear White Eagle*, 63 S.W.3d 734, 758 (Tenn. Ct. App. 2001). In this instance, the Foundation seeks to provide the Court with reasons for supporting the constitutional separation of powers.

In this case, the Foundation will present argument on the importance of upholding the distinct and separate roles of the legislative and judicial branches of government. During times of crisis, there is even a greater need for the division of authority and responsibilities of each governmental branch to remain clear. If such roles become confused, then the electorate’s confidence that the rule of law will be upheld begins to erode. The separation of powers doctrine plays a critical role in a free democracy and should be preserved for the stability of the country.

The Foundation also spent considerable time reviewing the evidentiary record before the chancery court, upon which it based its ruling. The ability

of a non-party to review the record without bias should benefit the Court in ascertaining whether the lower court's ruling was supported by the evidence. The Foundation undertook a national analysis of state voter rolls last year, including the Tennessee voter roll, and will offer concrete data regarding the accuracy of the voter roll and how that impacts the administration of upcoming elections.

The Foundation has been granted *amici* status in numerous lawsuits, including most recently:

1. CA: Issa v. Newsom, No. 2:20-cv-01044 (E.D.Cal.)
2. CA: RNC v. Newsom, No. 2:20-cv-01055 (E.D. Cal.)
3. NC: Democracy N.C. v. N.C. State Bd. of Elections, No. 1:20-cv-00457 (M.D.N.C.)
4. SCOTUS: Brnovich, Arizona Attorney General, v. Democratic Nat'l Comm., No. 19-1257, June 5, 2020 (by party permission).
5. TX: Tex. Democratic Party v. Abbott, No. 5:20-cv-00438 (W.D. Tex.)
6. TX: Tex. Democratic Party v. Abbott, No. 20-50407 (5th Cir.)
7. VA: LWV Va. v. Va. State Bd. of Elections, No. 6:20-cv-00024 (W.D. Va.)

A cursory review of the State's brief and issues addressed by other *amici* indicates that neither addresses the separation of powers doctrine, the Tennessee Legislature's response to the court's ruling, nor does either present an analysis of the evidentiary record.

For all of these reasons, the Foundation respectfully requests leave to file the attached amicus brief to aid the Court as it considers this important constitutional issue.

### CONCLUSION

The Court should grant this motion and allow the Foundation to file the attached amicus brief.

Respectfully submitted,

Dated: July 9, 2020

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## CERTIFICATE OF SERVICE

I hereby certify that on this 9<sup>th</sup> day of July, 2020, a true and exact copy of the foregoing was served via Tenn. S. Ct. R. 46 (4.01) through the e-filing system and via electronic mail to:

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