

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

OHIO ORGANIZING COLLABORATIVE;
JORDAN ISERN; CAROL BIEHLE; and
BRUCE BUTCHER

Plaintiffs,

v.

JON HUSTED, in his official capacity as
Secretary of State of the State of Ohio; and
MIKE DEWINE, in his official capacity as
Attorney General of the State of Ohio,

Defendants.

Case No. 2:15 CV 1802

JUDGE WATSON

MAGISTRATE JUDGE KING

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO MOTION
FOR LEAVE TO PARTICIPATE AS *AMICUS CURIAE***

Plaintiffs submit this memorandum in opposition to the Motion for Leave to Participate as *Amicus Curiae* (ECF No. 28) filed by The Public Interest Legal Foundation, Inc. ("PILF").

Plaintiffs request that the Court deny the motion because neither the Court nor Defendants require the assistance of an *amicus*. Furthermore, PILF's *amicus* motion should be denied as premature.

A District Court has complete discretion over whether to permit an *amicus curiae* to participate in a pending action. *United States v. Michigan*, 940 F.2d 143, 165 (6th Cir. 1991). However, when a district court lacks joint consent of the parties it "should go slow" in accepting an *amicus*. *Strasser v. Dooley*, 432 F. 2d 567, 569 (1st Cir. 1970). An *amicus* brief is appropriate "when a party is not represented competently or is not represented at all, when the *amicus* has an interest in some other case that may be affected by the decision in the present case...or 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. Otherwise leave to file an *amicus curiae* should be denied." *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997).

Defendants' do not require assistance in litigating this case. Ohio's Attorney General is well situated to competently defend the state's election laws. PILF has not indicated that it has any interest in another case that could be affected by the decision in this case. Moreover, PILF has made no showing that it will provide information that will be of assistance to this Court. In fact, the Western District of Wisconsin recently denied an identical *amicus* motion by PILF for these exact reasons. *One Wisconsin Inst. Inc. v. Nichol*, No. 15-00324 (W.D. Wis. Aug. 17, 2015) ECF No. 30. The Court reasoned that Defendants' were more than capable of introducing expert evidence without the assistance of PILF. *Id.* Additionally, in *One Wisconsin*, as here, PILF sought to provide expert evidence on election law. The Court rejected PILF's *amicus* motion because "[i]nterpretation of the law is the province of the court." *Id.*

Even if PILF were capable of providing assistance to the court, PILF's *amicus* motion should still be denied as premature. For example, a district court recently denied an identical *amicus* motion filed by PILF because dispositive motions had not yet been filed. *Lee v. Virginia State Board of Elections*, No. 15-357 (E.D. Va Aug. 4, 2015) ECF No. 29 ("the Court finds PILF's request premature."). When an *amicus* seeks leave of court, "Rule 29(b) provides that the motion for leave to file must be accompanied by the proposed brief." *Neonatology Assocs., P.A. v. Comm'r*, 293 F.3d 128, 130-31 (3d Cir. 2002). Yet PILF has provided no indication as to when it intends to file such a brief. Moreover, at the July 8, 2015 pretrial conference in this case the Court discouraged the filing of summary judgment motions. Thus, plaintiffs expect that there will be no dispositive motions filed in this case. As a result, PILF will have no need to file an *amicus* brief.

For the foregoing reasons, Plaintiffs request that this Court deny PILF's Motion for Leave to Participate as *Amicus Curiae* (ECF No. 28).

Dated: August 21, 2015

Respectfully submitted,

/s/ Donald J. McTigue

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CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing by transmitting a copy to all counsel with an e-mail address of record, who have appeared and consent to electronic service in this action and any consolidated actions.

This the 21 day of August, 2015.

By: Donald J. McTigue
Counsel for Plaintiffs