UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

RUTHELLE FRANK, et al., on behalf of themselves and all others similarly situated, Plaintiffs, v. SCOTT WALKER, in his official capacity as Governor of the State of Wisconsin, et al., Defendants.	Civil Action No. 2:11-cv-01128 (LA)

PLAINTIFFS' REQUEST FOR RECONSIDERATION OF COURT'S ORDER PERMITTING FILING OF AMICUS BRIEF AND ORAL ARGUMENT

On June 4, 2012, five Wisconsin residents filed a motion requesting that this Court permit them to: 1) File a 30-page amicus brief on June 8, 2012 (prior to the time that Civ. L. R. 7 would give Plaintiffs to respond to the motion[1]); 2) Incorporate by reference a separate and additional amicus brief filed in *Jones v. Deininger,* 2:12-CV-00185-LA (E.D. Wis.); and 3) Participate in oral argument in this case. Before Plaintiffs could respond, the Court granted in full Petitioners' request.

Pursuant to Fed. R. Civ. P. 60(b), Plaintiffs request relief from this Order on the grounds that they had not yet had time to respond to it, and request that the Court reconsider its order. Plaintiffs take no position on Petitioners' request to submit an amicus brief, but object to the length of the proposed brief and the request to participate in oral argument. Moreover, should Petitioners file a brief that raises factual issues, Plaintiffs request that this Court permit Plaintiffs to conduct full discovery on any supplemental fact or expert testimony submitted by Petitioners, and to submit a responsive brief within 14 days after the completion of such discovery.

Plaintiffs do object to allowing submission of a 30-page brief, in addition to the 30-page brief submitted by the same amici in the Jones case; and to allowing Petitioners to participate in oral arguments because they do not identify any interests that are not already fully presented by the Defendants, the request appears to be merely an end-run around the page limits set for the parties and it will unnecessarily distract from the legal and factual issues to be considered by the Court. Moreover, it is practically unheard of for amici to be permitted to participate in oral argument, and Petitioners have presented no

[1] Petitioners did not style the motion as a Civil L. R. 7(h) Expedited Non-Dispositive Motion; even had they done so, Plaintiffs would still have had 7 days to respond. The Court order was issued three days after the motion was filed.

justification for such an extraordinary request here.

There are no formal rules governing when entities may seek to submit amicus briefs in District Court. The parallel Federal Rules of Appellate Procedure, however, limits such briefs to 15 pages. *See* F.R. App. Pro. 29(d) (amicus brief no more than one-half length of principal brief); F.R. App. Pro. 32(a)(7) (principal briefs limited to 30 pages). Moreover, "a district court, a forum whose principal function is resolving issues of fact, should go slow in accepting an amicus brief unless it has the joint consent of the parties." *Leigh v. Engle*, 535 F. Supp. 418, 422 (N.D. Ill 1982). The Seventh Circuit has made clear that "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 Telephone Co.*, 339 F.3d 542, 545 (7th Cir. 2003). These criteria are more likely to be satisfied if (1) the existing parties provide inadequate representation, (2) the would-be amicus has an interest in another case that may be materially affected in the present case, and (3) the movant can provide information that the court lacks. *Id.* at 545; *see also Nat'l Org. for Women, Inc. v. Scheidler*, 223 F.3d 615 (7th Cir. 2000).

With respect to the first Seventh Circuit factor, there has been no evidence that the Defendants' counsel have provided inadequate representation. With respect to the second factor, petitioners have identified no interest that would be affected by the outcome in the present case, other than seeking to participate in various photo ID cases to uphold the same interest as does the state.[2] With respect to the third factor, there is no indication

[2] Petitioners, represented by the same counsel, are on information and belief moving to intervene in the state court appeal in *League of Women Voters of Wisconsin v. Walker*,

that petitioners intend to express a distinct position, nor have petitioners articulated any reason that they are able to provide information that Defendants cannot.

Further, amicus briefs may be an effort to circumvent Court-imposed page limits. *See Nat'l Org. for Women*, 223 F. 3d at 617. Permitting petitioners to submit a brief the same length as allowed for a primary or opposition brief – 30 pages (*see* Civil L. R. 7(f)) is excessive. Petitioners also appear to be seeking to circumvent page limits by requesting to submit the separate brief submitted in *Jones*. These requests would give petitioners 60 pages of argument – nearly as much as the 75 pages for both the class certification and preliminary injunction briefs agreed to by the parties. Whatever the Court decides, Plaintiffs request an opportunity to respond with a brief of equivalent length.

Finally, petitioners should be able to make any argument this Court permits in writing. They have given no reason for also participating in oral argument. Such participation necessarily takes additional time from the Court's calendar and poses the potential for unnecessary disruption. For the reasons set forth herein, Plaintiffs request that this Court reconsider its order and deny Petitioners' motion as submitted, and permit only that Petitioners be allowed to submit a 15 page amicus brief.

Dated this 7th day of June, 2012.

/s/ Karyn L. Rotker

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