

FILED
01-06-2023
Clerk of Circuit Court
Waukesha County
2022CV001336

STATE OF WISCONSIN CIRCUIT COURT WAUKESHA COUNTY
BRANCH 8

Richard Braun,

Plaintiff,

v.

Wisconsin Elections Commission,

Defendant.

Case No. 2022CV001336

Case Code: 30701

Declaratory Judgment

**NOTICE OF MOTION AND UNOPPOSED MOTION
TO FILE AMICUS CURIAE BRIEF BY VOTE.ORG
IN SUPPORT OF DEFENDANT’S SUMMARY JUDGMENT MOTION**

Vote.org, by its attorneys, hereby moves this court for permission to file an *amicus curiae* brief, and to establish a due date of February 3, 2023 for the *amicus* brief, seven days after the deadline for Defendant’s summary judgment motion. In support of this motion, Vote.org respectfully submits the following:

1. Vote.org moved to intervene in this matter. In denying the motion to intervene, the Court articulated a willingness to permit Vote.org to participate as *amicus curiae*.

2. Vote.org is a nonprofit, nonpartisan organization and technology platform dedicated to voter registration and get-out-the-vote efforts. Vote.org helps millions of voters register to vote every year, including 4.2 million in the 2020 election alone, using its variety of online voter registration tools. As the largest nonpartisan organization that helps register voters in all fifty states, including Wisconsin, Vote.org has significant knowledge and expertise of voter registration practices at the state and federal level. In particular, Vote.org is a regular and long-term user of the National Mail Voter Registration Form (the “National Form”) that is at issue in this case.

3. Plaintiff has brought this lawsuit against the Wisconsin Elections Commission (“WEC”) to challenge its acceptance of the National Form in Wisconsin. Plaintiff seeks to prevent Vote.org and others from using the National Form to register voters in Wisconsin. A ruling in Plaintiff’s favor would directly and seriously impair Vote.org’s efforts to register voters in Wisconsin.

4. A Circuit Court may grant a nonparty permission to participate in a case as *amicus curiae*. See *Helgeland v. Wisconsin Municipalities*, 2008 WI 9, ¶ 113, 307 Wis. 2d 1, 55, 745 N.W.2d 1, 27. A court may hear from an *amicus curiae* in order to “be informed by persons not parties to a legal action, who are nonetheless particularly informed or interested in the outcome (or at least in the law being declared.)” *Id.*, ¶ 32 n. 20 (quoting Arthur Alan Leff, *The Leff Dictionary of Law: A Fragment*, 94 Yale L.J. 1855, 2012 (1985)). “Briefs by *amicus curiae* can provide assistance to a court by presenting an argument or citing authority not found in the parties’ briefs or by providing important technical or background information which the parties have not supplied.” *Id.* (quoting Joseph D. Kearney et al., *The Influence of Amicus Curiae Briefs on the Supreme Court*, 148 U. Penn. L. Rev. 743, 745 (2000)).

5. Vote.org is well informed about the issues presented in this case. Vote.org seeks to inform the Court about the design, history, present use, and legal status of the National Form and its state-specific instructions. This information is necessary to the proper resolution of this case, in which Braun argues that Wisconsin law does not allow WEC to accept the National Form for voter registration. As an organization that helps Wisconsin voters register to vote using the National Form, Vote.org can discuss how, as a practical matter, the National Form’s state-specific instructions are part and parcel of the National Form itself. Moreover, Vote.org can describe its

perspective as a prominent repeat user of the National Form and outline how the different possible dispositions of this case would impact voter registration in and outside of Wisconsin.

6. Vote.org also has a significant organizational interest in the outcome of this case. A holding by this court that the state-specific instructions do not comply with state law would disrupt Vote.org's operations in Wisconsin, which rely on the National Form.

7. This declaratory judgment action raises a purely legal question which will likely be resolved through summary judgment.¹

8. Vote.org requests that it be permitted to file an amicus brief by February 3, 2023, which is one week after the Defendant's motion for summary judgment is due under the current briefing schedule. This date would allow Vote.org to supplement the substantive arguments in Defendant's motion for summary judgment (due January 27, 2023) rather than needlessly replicate them. It would also give both Plaintiff and Defendant an opportunity to address Vote.org's arguments in their reply briefs, which are due February 27, 2023 and March 14, 2023, respectively.

9. Counsel for Mr. Braun and for WEC have authorized undersigned counsel to state that neither the Plaintiff nor the Defendant object to Vote.org's filing of an *amicus* brief in this case.

For these reasons, Vote.org respectfully requests that the Court grant leave to file an *amicus* brief in support of Defendant's summary judgment motion by February 3, 2023.

¹ Vote.org also reserves the right to seek appellate review of the Court's December 15, 2022 order denying Vote.org's motion for intervention as of right or permissive intervention under Wis. Stat. § 803.09.

Dated: January 6, 2023

Electronically signed by Diane M. Welsh

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CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed Vote.org's Notice of Motion and Unopposed Motion to File Amicus Curiae Brief in Support of Defendant's Summary Judgment Motion with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 6th day of January, 2023.

Electronically signed by Diane M. Welsh
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