
J.B. VAN HOLLEN
In his official capacity as
Attorney General of Wisconsin, et al.,

Plaintiffs,

Case No. 08-CV-4085

v.

GOVERNMENT ACCOUNTABILITY BOARD, et al.,

Defendants.

**MOTION OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW,
THE BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW, THE
CAMPAIGN LEGAL CENTER, THE LEAGUE OF WOMEN VOTERS OF WISCONSIN
EDUCATION FUND, THE AMERICAN CIVIL LIBERTIES UNION OF WISCONSIN
FOUNDATION, INC., THE VOTING RIGHTS PROJECT OF THE AMERICAN CIVIL
LIBERTIES UNION, FAIR ELECTIONS WISCONSIN AND DANIEL P. TOKAJI FOR
LEAVE TO PARTICIPATE AS *AMICI CURIAE* WITH SUPPORTING
MEMORANDUM**

The Lawyers' Committee for Civil Rights Under Law, the Brennan Center for Justice at NYU School of Law, the Campaign Legal Center, the League of Women Voters of Wisconsin Education Fund, the Voting Rights Project of the American Civil Liberties Union, the American Civil Liberties Union of Wisconsin Foundation, Inc., Fair Elections Wisconsin and Daniel P. Tokaji (collectively, "proposed *amici*") hereby move for leave to participate in this case as *amici curiae* in support of Defendant Government Accountability Board's motion to dismiss, and to file the brief enclosed herewith. The Court has indicated that the present motion for leave to participate as *amici curiae* will be granted unless objection thereto is received by October 10, 2008.

I. Proposed *Amici* Have A Significant Interest In The Present Case

Proposed *amici* have a significant interest in the present case as follows:

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") is a nonpartisan organization formed in 1963 at the request of President Kennedy to involve the private bar in providing legal services to address racial discrimination. The Lawyers' Committee's longstanding Voting Rights Project has participated in hundreds of lawsuits to vindicate the right to vote guaranteed by the United States Constitution and federal statutes, including the Voting Rights Act of 1965, 42 U.S.C. § 1973 et seq., the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg et seq., and the Help America Vote Act of 2002, 42 U.S.C. § 15301 et seq. Recently, the Lawyers' Committee filed *amicus* briefs in the Supreme Court in two voting rights cases, *Crawford v. Marion County Election Bd.*, 128 S. Ct. 1610 (2008), which dealt with Indiana's voter ID requirement, and *Bartlett v. Strickland*, No. 07-689, which concerns the standards for establishing minority opportunity districts under Section 2 of the Voting Rights Act. The Lawyers' Committee also leads the nonpartisan "Election Protection" coalition. Election Protection consists of more than 100 national, state, and local organizations, and is the largest voter protection and education effort in our nation's history. Election Protection's primary focus is on providing information to voters regarding the election process and on resolving voter problems.

The Brennan Center for Justice at NYU School of Law ("Brennan Center") is a nonpartisan institute dedicated to a vision of effective and inclusive democracy. Through its Voting Rights and Elections Project, the Brennan Center seeks to protect rights to equal electoral access and full political participation. The Brennan Center has extensively addressed issues relating to barriers that prevent citizens from registering and voting, both through litigation and

by conducting in-depth studies. Of particular relevance here, the Brennan Center successfully challenged Washington State's restrictive "no match, no vote" election statute, represents plaintiffs in an ongoing challenge to a similar Florida law, and published a study in 2006 that analyzed state efforts to implement the federal requirement that each state establish a computerized database of registered voters. The Brennan Center also filed an *amicus* brief in the Supreme Court in the *Crawford* case, and is a partner in the Election Protection coalition.

The Campaign Legal Center, Inc. ("CLC") is a nonpartisan, nonprofit organization that works in the area of election law generally, and voting rights law specifically, generating public policy proposals in these areas, as well as participating in state and federal court litigation throughout the nation regarding voting rights. Recently, the CLC served as counsel for plaintiffs in *Willie Ray v. State of Texas*, 2:06-CV-385(TJW) (E.D. Tex.), a multi-count constitutional and Voting Rights Act challenge to several Texas election laws, and filed *amicus* briefs in the Supreme Court in both *Crawford* and *Bartlett*. The CLC is also a partner in the Election Protection coalition.

The League of Women Voters of Wisconsin Education Fund ("League of Women Voters") is a nonpartisan, grassroots membership organization that encourages active and informed participation in government, works to increase understanding of major public policy issues, and seeks to influence public policy through education and advocacy. The League believes that voting is a fundamental right that must be protected and, to that end, provides general information to the public about the process of voter registration and voting. The League also encourages citizen participation between elections. The League conducts in-depth studies of major policy issues, and educates its members and the public through publications, forums and the organization's website (www.lwvwi.org).

The American Civil Liberties Union of Wisconsin Foundation, Inc. (“ACLU-WIF”) is a charitable, nonprofit organization whose purpose is to maintain and advance civil liberties, including the freedoms of association, press, religion, and speech, and the rights to vote, due process of law, and equal protection under the law. The ACLU-WIF is affiliated with the American Civil Liberties Union of Wisconsin, which has more than 9,000 members statewide, and the American Civil Liberties Union, which has a national membership of more than 500,000 individuals.

The Voting Rights Project of the American Civil Liberties Union was established in 1966 to protect and advance the rights of voters and candidates to access to the ballot. The non-partisan Voting Rights Project has engaged in public education and litigation, challenging structures which limit or suppress the right to vote. The Voting Rights Project has represented individuals in the U.S. Supreme Court and in more than forty states and nine federal circuits, seeking to enforce the guarantees of the fourteenth and fifteenth amendments to the Constitution of the United States and various federal civil rights statutes, including the Voting Rights Acts of 1957 and 1965, the National Voter Registration Act, and the Help America Vote Act. Supreme Court litigation that the Voting Rights Project has handled includes *Rogers v. Lodge*, 458 U.S. 613 (1982); *McCain v. Lybrand*, 465 U.S. 236 (1984); *Hunter v. Underwood*, 471 U.S. 222 (1985), *Holder v. Hall*, 512 U.S. 874 (1994), *Abrams v. Johnson*, 521 U.S. 74 (1997) and *Crawford v. Marion County Election Board*, 128 S. Ct. 1610 (2008). The American Civil Liberties Union is a partner in the Election Protection coalition.

Fair Elections Wisconsin (“FEW”) is an independent organization working for elections that are accurate, fair, well administered, transparent, and convenient for voters. Fair Elections

Wisconsin believes that the process of voting should balance access and integrity, and should be as open as possible while protecting ballot secrecy.

Daniel P. Tokaji is an Associate Professor of Law at the Ohio State University, Moritz College of Law and the Associate Director of Election Law @ Moritz. He currently is a Visiting Associate Professor at Harvard Law School. Professor Tokaji is an authority on election law and voting rights, specializing in such topics as voting technology, voter ID, provisional voting, and other subjects addressed by the Help America Vote Act of 2002. His participation in the attached brief is solely in his individual capacity, not on behalf of the institutions with which he is affiliated.

II. The Court Would Be Aided By Proposed *Amici*'s Participation.

As demonstrated above, proposed *amici* have substantial experience and expertise in the issues presented by this case. Accordingly, participation by proposed *amici* should greatly assist the Court in addressing the important issues raised by the Attorney General's Complaint as to the application of the federal Help America Vote Act of 2002, 42 U.S.C. §15301 et seq. ("HAVA"), to the State of Wisconsin.

Specifically, our brief addresses the following issues:

- First, the brief details the legal flaws in the Attorney General's interpretation of HAVA, thus demonstrating that the Complaint fails to state a cause of action under which relief may be granted.
- Second, the brief places the Attorney General's construction of the Act in a national context to show how his interpretation of HAVA is significantly at odds with the understanding of HAVA adopted by many other states.

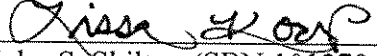
- Third, the brief provides background information concerning the practice of computer matching to explain why HAVA generally does not link voter eligibility to the successful matching of registration records with records contained in other databases.
- Lastly, the brief identifies concerns as to whether granting the relief requested by the Attorney General could significantly interfere with the conduct of the November 4, 2008 election in Wisconsin.

III. Proposed *Amici*'s Participation Would Not Prejudice Any Party Or Delay Disposition Of This Case.

Finally, proposed *amici*'s involvement will not delay proceedings or prejudice any party or intervening party in this case. Proposed *amici* have enclosed herewith their brief for filing, mindful of today's deadline for parties to file motions to dismiss. Any party that wishes to object to proposed *amici*'s participation may do so by October 10 and will have adequate time, if the present motion is granted, to address the substantive issues raised in the attached brief by the October 15 deadline for responsive pleadings. Therefore, no delay or prejudice will result from proposed *amici*'s participation.

For all the foregoing reasons, the Lawyers' Committee for Civil Rights Under Law, the Brennan Center for Justice, the League of Women Voters, the Campaign Legal Center, the ACLU-WIF, the Voting Rights Project of the ACLU, Fair Elections Wisconsin and Professor Tokaji respectfully request that this Court grant this motion to permit their participation in this case as *amici curiae*. For the reasons discussed in their Motion for Leave to Exceed Non-Party Brief Page Limits, Dkt. 29 (10/3/08), proposed *amici* also request that the Court permit the attached 15-page brief to be filed. A proposed Order is attached.

Dated this 6th day of October, 2008

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