

No. 16-3083, 16-3091

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ONE WISCONSIN INSTITUTE, INC., *et al.*,

Plaintiffs-Appellees, Cross-Appellants,

v.

MARK L. THOMSEN, *et al.*,

Defendants-Appellants, Cross-Appellees.

On Appeal from the United States District Court
for the Western District of Wisconsin, No. 3:15-cv-324
The Honorable Judge James D. Peterson, Presiding

**MOTION OF COMMON CAUSE, FOR LEAVE TO FILE A BRIEF
AS AMICUS CURIAE IN SUPPORT OF THE PLAINTIFFS-
APPELLEES-CROSS-APPELLANTS AND AFFIRMANCE IN
PART AND REVERSAL IN PART OF THE DISTRICT COURT'S
ORDER**

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**FED. R. APP. P. AND CIRCUIT RULE 26.1
DISCLOSURE STATEMENT**

The undersigned, counsel of record for *amicus* Common Cause, hereby furnish the following information in accordance with Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of the Circuit Rules of the United States Court of Appeals for the Seventh Circuit:

1) The full name of every party or amicus the attorney represents¹:

Common Cause

2) If such party or amicus is a corporation:

a. Its parent corporation, if any:

None. Common Cause has no parent corporations.

b. A list of stockholders that are publicly held companies

owning 10% or more of stock in the party:

None. No publicly held company has any ownership interest in Common Cause.

3) The names of all law firms whose partners or associates have appeared for the party or amicus in the case or are expected to appear for the party in this Court:

¹ Disclosure forms for counsel for amicus are included in the proposed brief.

The Institute for Public Representation, Georgetown
University Law Center.

MOTION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

Pursuant to Federal Rule of Appellate Procedure 29(b), Common Cause respectfully moves this Court for leave to file the accompanying Brief as *Amicus Curiae* in Support of Plaintiffs-Appellees, Cross-Appellants. Although Plaintiffs' counsel provided consent to the filing of this *amicus* brief, the State took no position. Thus, in order to ensure compliance with Fed. R. of App. P. 29(b), Common Cause seeks leave of this Court. Common Cause urges the affirmance in part and reversal in part of the order of the United States District Court for the Western District of Wisconsin based on the District Court's failure to apply the Twenty Sixth Amendment to Wisconsin laws primarily if not exclusively limiting youth's voting rights.

Common Cause advocates for reforms that will provide citizens with the tools they need to participate in the political process and hold their elected leaders accountable to the public interest. Founded in 1970, Common Cause is a nonprofit, nonpartisan, national citizens' organization. It is one of the largest nonprofit organizations working for accountability and reform in America's political and governmental institutions, with more than 625,000 members and supporters

nationally and 35 state chapters across the country. Moreover, Common Cause members include young people and students throughout the country, including in Wisconsin.

This case is of special interest to Common Cause, as it was involved in some of the earliest advocacy efforts surrounding the push for youth enfranchisement with respect to the 1970 Amendments to the Voting Rights Act and the 1971 ratification of the Twenty-Sixth Amendment. Moreover, Common Cause advocates for accountable government by empowering voters – including its young voter members and others – to make their voices heard by every level of government.

As part of its core mission, Common Cause works at both the state and federal levels to defend the bedrock freedom of our democracy: full and free access to the franchise for every eligible voter. These efforts include engagement with young Common Cause members on and off campuses across the country, and in Wisconsin, in voter registration drives, voter education programs, and advocacy efforts to ensure a 21st Century democracy in which every voice is heard. Indeed, Common Cause has worked to educate student voters on campuses across Wisconsin about the various laws at issue in this case and court rulings

that have affected implementation of the law, and to assist individual student voters as they attempt to register to vote and obtain an eligible voter ID in time for elections.

Further, Common Cause is a leading partner of the national “Election Protection” coalition, which provides nonpartisan information to voters across the country and in Wisconsin about the election process.

Common Cause’s *amicus* brief will help inform the Court’s resolution of this appeal for two primary reasons. First, the proposed *amicus* brief provides a “unique perspective” that “can assist the court of appeals beyond what the parties are able to do,” *Nat’l Org. for Women v. Scheindler*, 223 F.3d 615, 617 (7th Cir. 2000) (citing *Ryan v. Commodity Futures Trading Comm’n*, 125 F. 3d 1062, 1063 (7th Cir. 1997)); it provides the perspective of an organization consisting of young members who work to advance election reform and, as such, addresses the broad considerations that should inform a decision as to whether elimination of strong reforms amount to the infringement of the right to vote for young eligible voters.

Then-circuit judge Samuel Alito cogently explained the reasons why *amicus* briefs providing a unique perspective can benefit the appellate process:

Even when a party is very well represented, an amicus may provide important assistance to the court. “Some amicus briefs collect background or factual references that merit judicial notice. Some friends of the court are entities with particular expertise not possessed by any party in the case. Others argue points deemed too far-reaching for emphasis by a party intent on winning a particular case. Still others explain the impact a potential holding might have on an industry or other group.” Luther T. Munford, *When Does the Curiae Need An Amicus?*, 1 J. App. Prac. & Process 279 (1999). . . .

The criterion of desirability set out in Rule 29(b)(2) is open-minded, but a broad reading is prudent. . . . If an amicus brief that turns out to be unhelpful is filed, the merits panel, after studying the case, will often be able to make that determination without much trouble and can then simply disregard the amicus brief. On the other hand, if a good brief is rejected, the merits panel will be deprived of a resource that might have been of assistance.

A restrictive policy with respect to granting leave to file may also create at least the perception of viewpoint discrimination. Unless a court follows a policy of either granting or denying motions for leave to file in virtually all cases, instances of seemingly disparate treatment are predictable. A restrictive policy may also convey an unfortunate message about the openness of the court.

Neonatology Assocs., P.A. v. Comm’r of Internal Revenue, 293 F. 3d 128, 132-33 (3d Cir. 2002) (Alito, J.), *aff’d*, 299 F.3d 221 (3d Cir. 2002). The considerations identified by Justice Alito strongly support admission of Common Cause’s brief.

Second, Common Causes’ proposed brief provides a substantially more detailed discussion of the history of the Twenty-Sixth Amendment, its construction and application by state and federal courts, and context regarding current threats to the Amendment nationally and in Wisconsin. In particular, Common Cause’s *amicus* brief provides a detailed exposition of the history, both judicial and legislative, of the 1970 Amendments to the Voting Rights Act and the Twenty-Sixth Amendment, and examines the unique opportunity presented to this Court to protect the right to vote under the Twenty-Sixth Amendment, given nationwide efforts to curb young people’s access to the franchise. Thus, Common Cause’s proposed *amicus* brief focuses principally on matters “that are not to be found in the parties’ briefs.” *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003) (Posner, J., in chambers). Common Cause’s proposed brief avoids duplication, instead providing an in-depth analysis of legal principles

“the parties for one reason or another have not [fully] brought to [this Court’s] attention,” *Ryan*, 125 F.3d at 1064, or “have not adequately developed,” *Sierra Club, Inc. v. Env’tl. Prot. Agency*, 358 F.3d 516, 518 (7th Cir. 2004). The more extensive discussion of the history and proper application of the Twenty-Sixth Amendment in the proposed brief, therefore, will assist the Court by providing it with “information . . . beyond what the parties [have provided].” *Nat’l Org. for Women*, 223 F.3d at 617.

CONCLUSION

For the foregoing reasons, the motion for leave to file a brief as *amicus curiae* should be granted. If such relief is granted, Common Cause requests that the accompanying brief be considered filed as of the date of this Motion’s filing.

Dated: October 26, 2016

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of October, 2016, I caused the foregoing Motion of Common Cause for Leave to File Brief as *Amicus Curiae* in Support of Plaintiffs-Appellees and Affirmance and Reversal to be served on the following via the Electronic Case Filing (ECF) service:

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