

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMON CAUSE, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of
the United States, *et al.*,

Defendants.

No. 1:20-cv-2023-CRC-GGK-
DLF

**UNOPPOSED MOTION OF IMMIGRATION REFORM LAW INSTITUTE
TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS**

The Immigration Reform Law Institute (“IRLI”) respectfully moves this Court for leave to file a proposed *amicus* brief in support of the federal defendants’ cross-motion to dismiss and opposition to the plaintiffs’ motion for partial summary judgment or interim relief. A copy of the proposed *amicus* brief is attached to this motion as an exhibit. IRLI’s counsel reached out to all parties by email dated September 8 and report as follows: (1) the plaintiffs do not oppose the motion; (2) defendants’ consent to the motion.

Although no rules directly govern the filing of *amicus* briefs in district courts,¹ the courts have broad discretion to permit the filing of *amicus* briefs. *Dist. of Columbia v. Potomac Elec. Power Co.*, 826 F. Supp. 2d 227, 237 (D.D.C. 2011). Indeed, this Court’s order dated August 27, 2020 (Dkt. No. 48), granted leave to file three *amicus* briefs in support of the plaintiffs. For the

¹ Consistent with FED. R. APP. P. 29(a)(4)(E), counsel for movant authored this motion and brief in whole, and no counsel for a party authored the motion and brief in whole or in part, nor did any person or entity, other than the movant and its counsel, make a monetary contribution to preparation or submission of the motion and brief.

reasons set forth below, IRLI respectfully moves this Court for leave to file IRLI's amicus brief on the important issues before this Court.

IRLI is a nonprofit 501(c)(3) public interest law firm dedicated both to litigating immigration-related cases in the interests of United States citizens and to assisting courts in understanding federal immigration law. IRLI has litigated or filed *amicus curiae* briefs in a wide variety of immigration-related cases. For more than twenty years the Board of Immigration Appeals has solicited supplementary briefing, drafted by IRLI staff, from the Federation for American Immigration Reform, of which IRLI is a supporting organization.

By way of background, the plaintiffs challenge a memorandum that the President issued to establish "the policy of the United States to exclude" illegal aliens from the apportionment base "to the extent feasible and to the maximum extent of the President's discretion under the law." Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census, 85 Fed. Reg. 44,679, 44,680 (July 23, 2020). The plaintiffs have moved for partial summary judgment, and the federal defendants have cross-moved to dismiss on jurisdictional grounds under FED. R. CIV. P. 12(b)(1) and for failure to state a claim on which relief can be granted under FED. R. CIV. P. 12(b)(6). Movant IRLI respectfully submits that its proffered *amicus* brief brings several relevant matters to the Court's attention with respect to the merits issues under FED. R. CIV. P. 12(b)(6):

- **Only members of the national political community should be represented in the national government.** The IRLI *amicus* brief cites Supreme Court decisions and Founding-Era history for the proposition that only members of the "national political community"² should be represented in the national government. *See IRLI Amicus Br.* at 3-5.
- **Illegal aliens are not part of the national political community.** The IRLI *amicus* brief cites Supreme Court decisions and appellate decisions from other Circuits to show that

² The phrase "national political community" comes from *Blumen v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff'd*, 565 U.S. 1104 (2012).

illegal aliens are not part of the national political community, which the Census measures.
See IRLI Amicus Br. at 5-8.

These issues are relevant to deciding the pending motions, and movant IRLI respectfully submits that filing the IRLI *amicus* brief will aid the Court.

For the foregoing reasons, movant IRLI respectfully requests that the Court grant leave to file the accompanying *amicus* brief.

Dated: September 11, 2020

Respectfully submitted,

/s/ Christopher J. Hajec

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September 2020, I electronically filed the foregoing letter motion—together with the proffered amicus brief—with the Clerk of the Court using the CM/ECF system, thereby causing it to be served upon all counsel of record.

/s/ Christopher J. Hajec
Christopher J. Hajec