



## **Guidance for Leagues Considering Litigation Regarding Voter Access**

LWV holds our mission to empower voters and defend democracy sacred. LWV is committed to our core principles of protecting voting rights and ensuring voter access. The use of lawsuits and amicus briefs in court cases is becoming an increasingly necessary tactic in our work to ensure our elections remain safe and accessible for all. In these hyper-partisan times, we realize that in supporting litigation, there may be accusations of partisanship, and we want you to be prepared, especially during this presidential election year.

If your League is considering federal litigation, the national office's Advocacy and Litigation department must be notified to coordinate, review documents relating to the case (retainer agreements, declarations, and legal documents), and approve participation in lawsuits to ensure your League is set up for success and to protect the League brand and portfolio. Please reach out to us using the [Federal Action Form](#) to put in your request. This easy-to-complete form gets the essential information to the national Advocacy and Litigation team and allows you to upload relevant documents to the action form for rapid response. Leagues will receive a response within 24 hours.

For state litigation, please keep LWVUS informed especially with litigation that impact issues that relate to the Campaign for Making Democracy Work®. LWVUS is available to provide guidance as needed and as capacity allows.

Litigation is not electioneering, but there are implications depending on whether your organization is a 501(c)3 or 501(c)4 entity. It is not considered lobbying or advocacy, but it may count against such spending limits. (For more information, please see this [presentation](#) from Council 2019.)

Participating in any court case in this political climate opens us up to risk, so we have developed the following questions to guide your League's decision-making process.

### **Questions to answer as a board**

Does the litigation advance one of the League's strategic goals or mission?

Is diversity, equity and inclusion a tenet to this action? Are those who are affected being asked to be part of the suit – i.e., Does the impacted community have standing?

What other options exist to remedy the problem – i.e., is legislation or coordination with election officials or attorney general a viable option? Is litigation the quickest way to resolve the issue?



What are the possible risks to participation or not participating?

What is the potential for earned media and other visibility?

What role will the League play? (e.g. plaintiff, amici, intervenor)

Who is the litigation partner(s) in this case?

What is the deadline for action?

## **Evaluating Participation**

Leagues must use the above questions in collaboration with their boards to conduct a risk analysis on the productivity of filing litigation. Where the litigation would advance a goal or the mission of LWV, the litigation serves to further our Diversity, Equity, and Inclusion goals or explicitly support an impacted community, litigation is the best opportunity to make meaningful change, and the risks of not participation cause more harm to voters, Leagues should take this as a positive indicator that litigation is a viable option.

Next, Leagues should give great weight to the litigation partner and other individuals or organizations involved in the litigation. Leagues are prohibited from joining litigation with any political party or operative at the onset of any litigation. Leagues must work with national office if they find themselves contemplating litigation of this nature to mitigate any reputational damage to LWV.

Finally, Leagues should thoughtfully consider the role it will play, whether the case will elevate the visibility of the League's work and how quickly the League needs to act to participate.

## **Additional Considerations:**

When selecting partners to build or file lawsuit, LWVUS recommends selecting partners that are nonpartisan organizations. LWVUS expressly prohibits selecting political parties or candidates, or well-known party affiliates/representatives as litigation partners.

If multiple lawsuits are consolidated by a court which includes a suit that is filed by a political party, LWVUS recommends remaining on the suit.

Given our MIP positions, we don't take money from SuperPAC's, PACs, or other such entities to finance litigation. Leagues (501c3 and 501c4 entities) may fundraise to underwrite litigation costs.



LWV cannot contemplate all the different scenarios for Leagues to consider. Thus, the following situations are not exhaustive but can provide some guidance on types of situations where earlier and closer coordination would be important:

- such a suit brought by both parties who agree on a position we hold,
- a suit brought by election officials of both parties which supports our positions.
- a suit brought by former elected officials of both parties which supports our position,
- suit brought by former/current elected officials of one party or both parties.