



## Guidance for Leagues Considering Litigation

LWV holds sacred our mission to empower voters and defend democracy. The use of legal advocacy, including affirmative litigation and filing amicus briefs is a powerful tool to protect our democracy, ensure free, fair, and accessible elections, defend voters from discrimination and intimidation, and fight for fair representation in redistricting. Our [litigation around the country](#) has made a powerful impact, particularly in our campaign for Making Democracy Work®. The League also engages in legal advocacy to engage and support emerging issues including reproductive justice, LGBTQIA+ rights, immigration, the ERA, DC Statehood, and more.

Whether to engage in legal advocacy—especially federal litigation—is a serious matter. The national LWV provides the following guidance to help Leagues understand: 1) the process for approving federal legal action or litigation; 2) how LWV partners with Leagues in federal litigation and supports Leagues in state litigation; 3) considerations for League Boards when deciding whether to file or join litigation or take legal action; and 4) additional issues for Leagues to consider.

### **Process for Seeking Approval to Engage in Federal Legal Action or Federal Litigation**

Leagues are encouraged to work with their point of contact on the LWV Litigation team (or contacting [litigation@lwv.org](mailto:litigation@lwv.org)) when considering engaging in any federal legal action or federal litigation. The LWV Litigation team can provide support prior to any action being taken. Under our bylaws, only the national LWV may take action on the federal level. This includes federal legal advocacy or litigation in federal court. Before taking any official action on litigation in federal court (i.e., a court with “U.S.” in the name), including signing a retainer or filing a complaint, please complete the [Federal Action Request Form](#) to seek approval from LWV. LWV will respond to the request within 48 hours.

The [Federal Action Request Form](#) will ask you to provide the following information:

- ◆ The proposed legal action or litigation;
- ◆ The LWVUS position underlying the basis for action (found in [Impact on Issues](#));
- ◆ Name(s) of partners, including potential legal counsel;
- ◆ Court where the case would be filed or entity where legal action is directed;
- ◆ Deadline for confirming participation and basis for the deadline.

Once federal legal action or federal litigation is approved by LWV, the LWV Litigation team will support you throughout your matter. LWVUS will also provide communications support in coordination with your legal counsel.



### **Special Note Regarding State Litigation**

LWV approval is *not* required for litigation in state court. Nevertheless, Leagues are asked to take the following actions related to legal action filed in state court to ensure effective coordination and promotion of the League's work around the country:

1. Alert the LWV Litigation team (via your contact or [litigation@lww.org](mailto:litigation@lww.org)) ahead of any new legal action in state court. LWVUS will ensure your case will be added to the [LWVUS Legal Center](#) and can promote the case, as capacity allows.
2. Send the LWVUS Litigation team important filings or updates (or ask your legal counsel to do so) to help us keep the [LWVUS Legal Center](#) up to date.
3. Reach out to the LWVUS Litigation team for support when needed, especially for legal matters arising within the campaign for [Making Democracy Work](#)<sup>®</sup>—voting rights, improving elections, campaign finance/money in politics, and redistricting.

### **Questions to Answer as a Board When Considering Litigation**

- Does the litigation advance one of the League's strategic goals or the mission?
- Is diversity, equity, and inclusion a tenet to this action?
  - Are those who are affected being asked to be part of the suit? If so, how will they be represented?
  - If those who are impacted are *not* at the table already, can we bring them to the table?
- What other options exist to remedy the problem and have they already been tried – 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? Are there harms that could come from litigation that we have considered?
- What is the potential for earned media and other visibility?
- What role will the League play? (i.e., plaintiff, amicus, intervenor)
- Who is the litigation partner(s) (legal counsel) in this case?
- Who are the other plaintiffs/intervenors/amici?
- What is the deadline for action? How quickly do we need to decide?

### **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 participating 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 (legal counsel) 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 LWWUS if they find themselves contemplating litigation of this nature to mitigate any reputational damage to LWV. When selecting litigation partners, including counsel, LWWUS recommends nonpartisan organizations. LWWUS 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, LWWUS recommends remaining on the suit.

Finally, Leagues should thoughtfully consider the role it will play in the litigation—plaintiff, intervenor, amicus—whether the case will elevate the visibility of the League’s work and how quickly the League needs to act.

### **Additional Considerations**

#### *Litigation Funding*

Leagues are usually represented pro bono. The LWWUS Litigation team reviews all retainer agreements in federal litigation. Please contact LWWUS if you are asked to pay any fees or costs associated with your representation in state court.

Given our Money in Politics positions, LWV does not take money from SuperPACs, PACs, or other such entities to finance litigation. Leagues (501c3 and 501c4 entities) may fundraise to underwrite litigation costs.