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CLERK OF WISCONSIN
SUPREME COURT

SUPREME COURT OF WISCONSIN
Appeal No. 2023AP002020 - OA

Tony Evers, Governor of Wisconsin, Department of Natural Resources,
Board of Regents of the University of Wisconsin System, Department of Safety
and Professional Services and Marriage and Family Therapy Board, Professional
Counseling and Social Work Examining Board,

Petitioners,

v.

Senator Howard Marklein, Representative Mark Born, in their official capacities
as chairs of the joint committee on finance; Senator Chris Kapenga,
Representative Robin Vos, in their official capacities as chairs of the joint
committee on employment relations; Senator Steve Nass and Representative
Adam Neylon, in their official capacities as co-chairs of the joint committee for
review of administrative rules,

Respondents.

Original Action in the Wisconsin Supreme Court

**NOTICE OF MOTION AND UNOPPOSED MOTION TO INTERVENE
OF GATHERING WATERS, INC.**

NOTICE OF MOTION

TO: Charlotte Gibson	Misha Tseytlin
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Attorneys for Petitioners

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PLEASE TAKE NOTICE that Proposed Intervenor Gathering Waters, Inc. hereby moves to intervene as a Petitioner in this action.

UNOPPOSED MOTION

In accordance with Wis. Stat. § 803.09, Gathering Waters hereby moves this Court to intervene as a Petitioner in this action. In support of this Motion, and as explained in detail in the accompanying brief in support of this Motion, Gathering Waters states as follows:

1. Petitioners initiated this suit on October 31, 2023, by filing a petition for leave to commence an original action.

2. Petitioners challenged the authority of three different legislative committees—the Joint Committee on Finance (JCF), Joint Committee on Employment Relations (JCOER), and Joint Committee for Review of Administrative Rules (JCRAR).

3. More specifically, Petitioners challenged JCF’s power to veto projects approved by the Department of Natural Resources (DNR) pursuant to the Knowles-Nelson Stewardship Program, JCOER’s power to veto University of Wisconsin employee pay adjustments, and separately sought review of JCRAR’s power to veto administrative rules. Petitioners argued that this legislative interference violates the Wisconsin Constitution’s separation of powers principles.

4. On February 2, 2024, this Court granted review limited to Issue 1 in the Petition for Original Action, articulated by Petitioners as follows: “Wisconsin Stat. § 23.0917 charges DNR with administering the Knowles-Nelson Stewardship

Program, through which DNR awards already-appropriated funds to expand public access to the State's natural resources. Courts have universally recognized that spending appropriated funds is an executive power and that legislative committees cannot block the executive's exercise of that power. Wisconsin Stat. § 23.0917(6m) and (8)(g)3. authorize the Joint Committee on Finance, a 16-member legislative committee, to veto DNR's choices. Do those veto provisions facially violate the separation of powers?" (Pet. at 6; Feb. 2, 2024 Order at 1) This Court held the issues raised regarding JCOER and JCRAR in abeyance. (Feb. 2, 2024 Order at 2)

5. Questions of JCF authority and how that authority is exercised with respect to the Knowles-Nelson Stewardship Program have become the sole active issue in this case.

6. The Court should grant this Motion because, as explained in further detail in the accompanying brief, Gathering Waters satisfies all four of the requirements for intervention by right under Wis. Stat. § 803.09(1).

7. **First**, Gathering Waters' motion to intervene is timely filed and is unopposed (suggesting that there is no prejudice to the existing parties). This Court limited the issues in this original action when it granted review on February 2, 2024. Only at that moment did it become clear that Gathering Waters' interests were elevated to the degree necessitating intervention. Gathering Waters has promptly acted to file this Motion, accompanied by its opening merits brief, within the timeline prescribed in the Court's February 2, 2024 Order. Except for the Petition for Original Action (and the Respondents' opposition), no additional merits briefing

has yet occurred in this case. Gathering Waters' intervention would not complicate or delay matters, as a briefing schedule and oral argument date have already been set and Gathering Waters is not seeking to change any of those deadlines.

8. ***Second***, Gathering Waters' interests are sufficiently related to the subject of this action. The Knowles-Nelson Stewardship Program has been at the heart of Gathering Waters' organizational mission for the past 30 years. Gathering Waters and its members have an interest in, and are reliant upon, the orderly functioning of the Knowles-Nelson Stewardship Program to ensure state grant funding gets to lands across the state that need it most (and meet Program criteria) and to ensure its members do not have to unnecessarily tap other philanthropic resources. The number of JCF objections to Knowles-Nelson Stewardship Program projects has accelerated in recent years, including grants to Gathering Waters' member land trusts. As a result of JCF's increased interference with the program in the last five years, Gathering Waters' day-to-day operations have dramatically changed. JCF's interference in the Knowles-Nelson Stewardship Program is causing harm to Gathering Waters' land trust members and individual donors in Wisconsin who care about conservation and are being blocked from using established Wisconsin law to accomplish the impact that they want in their local communities.

9. ***Third***, no matter what the Court concludes on the separation of powers issues in this case, Gathering Waters will be impacted by the disposition of this action. The Court's decision on the Knowles-Nelson Stewardship Program will provide clarity one way or another and will undoubtedly impact the success of the

Knowles-Nelson Stewardship Program going forward, as well as the role Gathering Waters and its land trust members play.

10. **Fourth**, no other party adequately represents Gathering Waters' interests. The Legislature created the Knowles-Nelson Stewardship Program, the DNR administers the Program, and Gathering Waters (and its land trust members and individual donors) form many of the constituents who apply for and (attempt to) use the Program. Gathering Waters represents a different perspective that will help the Court obtain a more full, cohesive view of the case. Gathering Waters has unique insights from the view of the Knowles-Nelson Stewardship Program applicants, interested citizens, and organizations directly impacted by the Knowles-Nelson Stewardship Program's operations and JCF's increased, unlawful interference with the Program.

11. Weighing these four factors compels the conclusion that Wisconsin law requires that Gathering Waters be granted intervention as a matter of right. *See Helgeland v. Wis. Municipalities*, 2008 WI 9, ¶38, 307 Wis. 2d 1, 745 N.W.2d 1.

12. Alternatively, Gathering Waters should be granted permissive intervention under the more flexible standard in Wis. Stat. § 803.09(2) because, as demonstrated above, it has a significant stake in the outcome of this case and its intervention would not unduly delay or prejudice the adjudication of the original rights of the parties. Further, § 803.09(2) makes clear that allowing a proposed intervenor like Gathering Waters to intervene is within the Court's discretion, so long as Gathering Waters' position and the main action "have a question of law or

fact in common.” *Helgeland*, 2008 WI 9, ¶120. Gathering Waters’ claims align with the main action.

13. On February 15, 2024, counsel for Gathering Waters contacted Charlotte Gibson, counsel for Petitioners, to inquire whether they would oppose this Motion. Attorney Gibson responded that same day and indicated that Petitioners do not oppose this Motion.

14. On February 16, 2024, counsel for Gathering Waters contacted Misha Tseytlin, counsel for the Legislature and Legislative Respondents, to inquire whether they would oppose this Motion. Attorney Tseytlin responded on February 20, 2024 and indicated that neither the Legislature nor the Legislative Respondents oppose this Motion.

15. Consequently, this Motion is unopposed by the parties to the case, which demonstrates that no party perceives any prejudice to its interests from Gathering Waters’ intervention.

16. As noted above, Gathering Waters does not seek any delay or change to the schedule set by this Court, so Gathering Waters’ intervention will not cause delay.

17. And Gathering Waters clearly has a significant stake in the outcome of this case, as it and its members are directly involved in, and reliant upon, the proper functioning of the Knowles-Nelson Stewardship Program as enacted into law.

18. For these reasons, even if this Court does not grant Gathering Waters intervention as of right, it should grant permissive intervention under Wis. Stat. § 803.09(2).

WHEREFORE, Proposed Intervenor-Petitioner Gathering Waters respectfully requests that this Court grant this Motion and enter an order joining Proposed Intervenor Gathering Waters, Inc. to this action as an additional Petitioner and accept Gathering Waters' merits brief, which is being filed simultaneously with this Motion and its supporting papers.

Dated: February 22, 2024.

By *Electronically signed by Erin K. Deeley*

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