

**FILED**  
**03-27-2024**  
**CLERK OF WISCONSIN**  
**SUPREME COURT**

**IN THE SUPREME COURT OF WISCONSIN**

No. 2023AP2020

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,  
PROFESSIONAL COUNSELING, AND SOCIAL WORK EXAMINING BOARD,

*Petitioners,*

GATHERING WATERS, INC.,

*Intervenor-Petitioner,*

v.

SENATOR HOWARD MARKLEIN AND REPRESENTATIVE MARK BORN IN THEIR  
OFFICIAL CAPACITIES AS CHAIRS OF THE JOINT COMMITTEE ON FINANCE, SENATOR  
CHRIS KAPENGA AND REPRESENTATIVE ROBIN VOS IN THEIR OFFICIAL CAPACITIES  
AS CHAIRS OF THE JOINT COMMITTEE ON EMPLOYMENT RELATIONS, AND SENATOR  
STEVE NASS AND REPRESENTATIVE ADAM NEYLON IN THEIR OFFICIAL CAPACITIES  
AS CO-CHAIRS OF THE JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES,

*Respondents,*

WISCONSIN LEGISLATURE,

*Intervenor-Respondent.*

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**MOTION OF LEGAL SCHOLARS FOR LEAVE TO FILE A NON-PARTY  
AMICI CURIAE BRIEF IN SUPPORT OF PETITIONERS**

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Miriam Seifter  
State Bar No. 1113734  
State Democracy Research  
Initiative, University of  
Wisconsin Law School  
975 Bascom Mall  
Madison, WI 53706  
miriam.seifter@wisc.edu

Bryna Godar  
State Bar No. 1136046  
State Democracy Research  
Initiative, University of  
Wisconsin Law School  
975 Bascom Mall  
Madison, WI 53706  
bryna.godar@wisc.edu  
Telephone: (608) 262-4645

*Counsel for Non-Party Legal Scholars*

Through the undersigned counsel, eight legal scholars (collectively “Movants”) request permission pursuant to Wis. Stat. § 809.19(7) to file the attached non-party *amici curiae* brief in support of petitioners. In support of this motion, Movants submit the following:

1. This original action challenges the constitutionality of the Joint Committee on Finance’s powers set forth in Wis. Stat. §§ 23.0917(8)(g)3 and 23.0917(6m)(a). Court Order, *Evers v. Marklein*, No. 2023AP2020-OA (Feb. 2, 2024). These powers allow a small group of legislators to block land acquisitions and conservation project funding under the Knowles-Nelson Stewardship Program administered by the Department of Natural Resources.
2. Movants, listed in the attached appendix, are legal scholars and nationally recognized experts in areas of state constitutional law, legislative processes, and administrative law. They have a professional interest in promoting a sound understanding of the constitutional law principles at issue in this case, including the allocation of powers among state institutions and underlying constitutional commitments to democratic accountability.
3. Drawing on their research and expertise in the areas of state constitutional law and state government, Movants offer an

- important perspective distinct from the parties. Their proposed non-party *amici curiae* brief provides additional context and interpretation of the Wisconsin Constitution and its separation-of-powers principles.
4. Movants' proposed brief, attached, argues (1) that the challenged powers violate the Wisconsin Constitution's structural separation-of-powers requirements and (2) that the Wisconsin Constitution's commitment to democratic self-government powerfully reinforces the challenged provisions' unconstitutionality. The brief also provides national context and background, noting that state courts overwhelmingly deem legislative vetoes unconstitutional and that no state court has upheld a scheme of committee-based governance like Wisconsin's.
  5. This motion is timely filed under Wis. Stat. § 809.19(7)(c).

WHEREFORE, Movants respectfully request that the Court grant this motion and accept the attached *amici curiae* brief.

Dated this 27th day of March, 2024.

Respectfully submitted,

Electronically Signed By

*Bryna Godar*

Miriam Seifter  
State Bar No. 1113734  
State Democracy Research  
Initiative, University of  
Wisconsin Law School  
975 Bascom Mall  
Madison, WI 53706  
miriam.seifter@wisc.edu

Bryna Godar  
State Bar No. 1136046  
State Democracy Research  
Initiative, University of  
Wisconsin Law School  
975 Bascom Mall  
Madison, WI 53706  
bryna.godar@wisc.edu  
Telephone: (608) 262-4645

*Counsel for Non-Party Legal Scholars*

**APPENDIX – NAMES OF PROPOSED *AMICI CURIAE* \***

Richard Briffault, Joseph P. Chamberlain Professor of Legislation,  
Columbia Law School

Steven Huefner, C. William O'Neill Professor in Law and Judicial  
Administration, The Ohio State University Moritz College of Law

Ronald Levin, William R. Orthwein Distinguished Professor of Law,  
Washington University School of Law

Jonathan Marshfield, Associate Professor of Law, University of Florida  
Levin College of Law

Jim Rossi, Judge D. L. Lansden Chair in Law, Vanderbilt University  
Law School

Miriam Seifter, Professor of Law, University of Wisconsin Law School;  
Faculty Co-Director, State Democracy Research Initiative

Robert F. Williams, Distinguished Professor of Law Emeritus, Rutgers  
Law School; Director, Center for State Constitutional Studies

Robert Yablon, Associate Professor of Law, University of Wisconsin Law  
School; Faculty Co-Director, State Democracy Research Initiative

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\* Institutional affiliations are listed for identification purposes only.