

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.

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

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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

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APPENDIX – NAMES OF PROPOSED *AMICI CURIAE* *

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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,
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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
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Robert Yablon, Associate Professor of Law, University of Wisconsin Law
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* Institutional affiliations are listed for identification purposes only.