



**REMARKS BY SHIRLEY S. ABRAHAMSON
CHIEF JUSTICE, WISCONSIN SUPREME COURT**

BEFORE THE JOINT COMMITTEE ON FINANCE

MARCH 21, 2013

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Good morning Co-Chair Darling, Co-Chair Nygren, and members of the Joint Committee on Finance. Thank you for the opportunity to appear before you today to speak about Assembly Bill 40 and the operation of the courts and the judicial system in Wisconsin.

The justice system, as you are well aware, is a core state function and must be appropriately funded. Although we are a co-equal branch of government, our budget is less than one percent of the overall state budget. That means the State invests less than one penny of every state tax dollar to support the judicial branch of government. You heard it right! Less than one cent to support the entire judicial branch of government: trial courts in all 72 counties and two levels of appellate courts, the court of appeals and the supreme court. This is a good return on the investment.

As you know, the counties share the cost of operating the circuit courts. The counties are essential to maintaining a trial court system in which each year there are almost one million filings.

And what do the people of Wisconsin get for this less-than-a-penny state investment? A justice system whose mission is to settle disputes peacefully in a fair, neutral, impartial, prompt, and nonpartisan manner according to the law, striving for equal justice under the law for everyone. A justice system that protects the families of Wisconsin and helps make the state an attractive place to do business because commercial disputes are resolved fairly and promptly. A justice system that protects constitutional rights guaranteed to all the people of Wisconsin by our own constitution. A justice system that has been in the forefront of innovation in the administration of justice, including technological advances, problem-solving courts, and evidence-based practices.

The investment the State and counties make in the judicial system directly contributes to the economic health of our communities and to our quality of life. Businesses gravitate to places where the courts are able to fairly and timely resolve their disputes and the disputes of their employees and customers.

Maintaining an effective, efficient court system benefits us all. It is a bipartisan, non-partisan issue.

The Supreme Court's 2013-2015 biennial budget request to the Governor and the Legislature was basically a cost-to-continue budget for state court operations.

I want to tell you how Assembly Bill 40 will affect the Supreme Court's constitutional obligation to ensure that the people of the state have an effective, efficient judicial system. And most of this is not good news.

I am here today with a greater sense of urgency than ever before. And I can tell you that all seven justices are concerned and have taken an active role in many hours of discussion about the budget and its ramifications.

My message to you, in brief, is this: If uncorrected, the \$17 million lapse provision will significantly and adversely impact the court system and our county partners in courthouses throughout the state—not in theory but in the reality people will face in courthouses across the state. We ask for your help.

Court Budget Items We Support

Let me start with the good news. That will not take much time, unfortunately.

We appreciate that the Governor's bill includes two of the court system's budget proposals—a technical change concerning the classification of the State Law Librarian and a change to authorize limited mileage reimbursement for out of state court interpreters used in border counties.

We also support the Governor's initiatives to ensure properly compensated prosecutors and public defenders. Experienced prosecutors and defense counsel are necessary for the timely and proper resolution of cases.

I now turn to the bad news. This will be a longer discussion.

First, the budget imposes an unprecedented and potentially debilitating \$17 million lapse on the judicial branch.

Second, no provision is made for increased judicial compensation.

Third, no provision is made to increase access to justice in civil litigation.

The Unprecedented \$17 Million Lapse Requirement

For the 2013-2015 biennium, the Supreme Court faces a \$17 million lapse. We asked the Governor to eliminate \$10.3 million of that lapse. We viewed this as a technical request, similar to our standard budget adjustments. Our request was denied.

Although the court has successfully managed lapses before, the 2013-2015 lapse of \$17 million is of a different order of magnitude. This lapse would result in the largest budget reduction in the history of the court system. The lapse will put the judiciary in an unprecedented financial situation and will impact individuals and businesses looking for justice in the courts.

To understand how the \$17 million lapse arose, we need to retrace a few steps.

The Wisconsin judicial branch has taken numerous lapses and cuts over the last 14 years. Each time, we have met our commitment to these lapses. Indeed, we have sometimes exceeded them with a greater return to the general fund than required.

2011 Act 32 included a \$17 million lapse for the court system in the 2011-2013 biennium. This was divided into two parts: a \$10.3 million lapse and a \$6.7 million lapse.

Here's where the \$10.3 million comes from: In 2011 the State required all state employees to pay a portion of their retirement and health insurance premiums. Because the court's appropriation was not reduced by this amount, the court system realized a \$10.3 million extra appropriation. 2011 Act 32 required the Court to return these excess funds to the general fund by June 30, 2013. The court will meet this lapse to close out the 2011-13 biennium. This \$10.3 million lapse for 2011-2013 makes sense to us.

Act 32 also included an additional \$6.7 million reduction for the 2011-2013 biennium consisting of 10 percent reductions to court appropriations excluding personnel costs to be consistent with executive agency cuts. The Court will meet this \$6.7 million reduction by June 30, 2013. Together, the \$10.3 and \$6.7 million make a \$17 million lapse for 2011-2013.

Moving into this coming 2013-2015 biennium—2011 Act 32 did something unusual. It required that the \$17 million lapse amount also apply to the 2013-2015 biennium.

The issue today is the \$10.3 million portion of the lapse requirement.

For 2013-2015, the Governor's budget reduces the court's appropriation to account for the additional employee contributions and also requires the lapse. Unlike 2011-2013, the \$10.3 million is a double reduction—first, a cut to the appropriation of \$10.3 million and second, a requirement to lapse the same amount that has already been recommended to be cut. In other words, the court system will not receive \$10.3 million from the general fund because employees now pay retirement and health insurance premiums. Nevertheless, the \$10.3 million lapse associated with funding for retirement and health insurance premiums remains. This does not make sense to us.

The \$10.3 million lapse to court operations in addition to the \$6.7 million lapse is too deep a cut. The judicial budget is heavily driven by people. The predominance of fixed costs, such as elected judges and statutorily required staff, and physical space requirements, leaves the judicial system fewer options for meeting lapse requirements than state agencies.

For example, the circuit courts' budget is \$189 million for the 2013-2015 biennium. That is 70 percent of the total court system funding. That \$189 million consists primarily of personnel costs. When personnel costs and other fixed costs and local assistance to counties are subtracted, only \$9.6 million remains to lapse. In other words, there's very little flexibility, very little wiggle room in the court's budget.

A \$17 million lapse is debilitating. We are in the process of determining how these cuts may be implemented, and none of the options is good for the effective, efficient administration of the justice system. No option will help us maintain a healthy justice system, a justice system that does not compromise our constitutional and statutory responsibilities.

Here are some ways a \$17 million lapse could affect those using our courts around the state.

- **Cases Delayed:** Reduction in county aid may require counties to reduce local court staff, delaying the processing of cases. Many cases have strict statutory timelines, such as restraining orders, matters involving juveniles, and mental commitment cases. They will take precedence over, and force delays in, other types of cases. Reduction in reserve judge use will make matters worse, increasing the number of continuances and further delaying resolution of cases.
- **Collections Reduction:** Reduction in county aid may require counties to reduce the hours available for clerk staff to spend collecting court fees and surcharges. This reduction would be an “anti-revenue” measure. In 2012, the court system collected over \$150.5 million, with \$114 million (76%) going to the state. Over \$18 million went to the Department of Justice to fund, for example, the crime lab, law enforcement training, and victim services.
- **Information Technology:** Reductions will likely be necessary in our Consolidated Court Automation Programs (CCAP), including a freeze on new IT development and equipment purchases. Information technology is the infrastructure of the court system, and our first priority must be managing cases, financial accounts, and juries. The lapse will force us to assess our ability to continue to maintain secondary services such as the Wisconsin Circuit Court Access (WCCA) website, which is used by many individuals and organizations and reflects the legislature’s own mandate that government be open to all.
- **Efforts of Staff and Judges in Administration of the System:** The ability of staff and judges to effectively administer the court system will be reduced. The court’s administrative staffing is lean; a great deal of work more commonly done by staff in executive branch agencies is done in the judicial branch by committees with volunteer judges, court commissioners, and clerks of circuit court. These committees work on important issues such as the following:
 - Determining effective justice strategies so that judges know what works and what doesn’t in order to address criminal and addictive behaviors, reduce recidivism, reduce costs, and improve public safety by getting smarter on crime when sentencing offenders;

- Developing problem-solving courts that target services to certain groups, such as those subject to foreclosure and the lending institutions, veterans, drug and alcohol abusers, drunk drivers, domestic violence perpetrators, and those with mental health issues. (We have 53 drug and alcohol court programs, of which 9 are targeted for veterans.)
- Developing and updating forms to meet changing case law and statutes; and
- Revising and updating benchbooks—the desktop reference guides that every judge in Wisconsin relies upon—and providing judicial education to both new and veteran judges to assure that accurate information that incorporates all law changes affecting case processing and sentencing is available.

These committees and others make the court system work. Much of this work cannot be done, or at best will be done less efficiently and effectively, if at all, with a \$17 million lapse. This all adds up to delays in processing cases and increasing the possibility of errors.

We strongly urge you to remove the \$10.3 million portion of the lapse so that the court system can get its job done for the people of Wisconsin.

Judicial Compensation

To maintain an effective, efficient justice system, we must have a compensation system that retains experienced judges and attracts high quality lawyers to the bench.

We are disappointed that the Governor’s recognition of compensation issues within the justice system did not include any increase for judicial compensation as requested.

There have been no judicial compensation increases since February 2009. In the last five years the court system has experienced a turnover of almost 1/3 of the judges.

We ask that, similar to funding in AB 40 for state attorney compensation increases, this committee include funding for and non-statutory direction to the Office of State Employment Relations to include compensation increases for the judiciary in its biennial compensation plan to be submitted to the Legislature’s Joint Committee on Employment Relations this spring. We also ask that court personnel be treated equally with employees of the executive and legislative branches.

Access to Justice

Staying with the cost-to-continue theme in our budget as submitted, we did not include any request for state funding to address a growing challenge in the courts. Increasingly, people are representing themselves without counsel in family law cases and small claims court, as well as in other civil cases, because they cannot afford an attorney.

People have a right to represent themselves but I am concerned for indigent individuals who find themselves in court without counsel in high stake cases. The result is that individuals in our communities, without legal assistance, struggle to stay in their homes, to keep their children, to get government benefits, or to protect themselves from abusers.

I am also concerned about the added challenge self-represented litigants pose for the courts. The legal system is designed to operate with lawyers. Growing numbers of self-represented litigants cause court delays that impose difficulties on opposing parties and the court system.

We join with others to support state funding to assist indigent self-represented persons in meeting their legal needs. Increased spending on civil legal services may prevent unwarranted foreclosures or evictions, avoid foster care placements, help people get access to government benefits, and ease court delays. Spending on civil legal services can provide real economic benefits for the state.

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Again, I appreciate the opportunity to address you today. The court system is a very small part of the state budget. It needs your attention. As an independent co-equal branch of government, the responsibilities of the judicial branch are great but our budget is small.

The judicial branch has, over many recent years, put in place numerous cost containment measures and will continue to become more frugal and cost effective whenever possible in keeping with our constitutional responsibilities to provide an effective, efficient judicial system. We must not, however, weaken our government's core functions or impair our ability to meet our constitutional and statutory obligations.

The court system provides an excellent return on the state's one percent investment. I look forward to working with the public, our partners in government, and all of you in the months ahead in resolving the critical concerns we have about the proposed budget.

With due regard for openness, I am, as always, available to meet with this committee or individual legislators to discuss these issues. You know where my office is. I know where yours are. For the people of the state—your constituents—who need a court system that is open, affordable, fair and timely, let us work together to keep an open, affordable, fair and timely court system a reality.