

MAY 20 2024

Rule Petition No. 24- 02

CLERK OF SUPREME COURT  
OF WISCONSIN

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# In the Supreme Court of Wisconsin

IN THE MATTER OF CREATING WIS. STAT. § 885.375

RELATING TO INTERPRETERS IN MUNICIPAL COURT PROCEEDINGS.

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## MEMORANDUM IN SUPPORT OF THE PETITION

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### INTRODUCTION

The current Wisconsin Statutes require municipal courts to provide qualified interpreters only in juvenile matters. In proceedings other than juvenile matters, a municipal court's provision of a qualified interpreter is discretionary. This often results in situations in which individuals with limited English proficiency ("LEP individuals") appear in court and even hear witness testimony without any interpreter, or at best through the interpretation of a child or other family member or friend lacking legal training.

The ability to understand the words of the judge and the opposing party during a legal proceeding is a crucial element of due process. Without the help of a qualified interpreter, LEP individuals cannot meaningfully participate in their own legal proceedings. This deprivation of due process rights has serious legal and practical consequences. A municipal citation for THC possession or retail theft, for example, could have lasting impacts on an individual's future. Indeed,

the failure to pay a municipal citation can result in a lengthy one-year driver's license suspension,<sup>1</sup> or an arrest.<sup>2</sup>

To alleviate this lack of procedural fairness, Petitioner proposes the creation of Wis. Stat. § 885.375, to require municipal courts to provide qualified interpreters in all proceedings involving LEP individuals. Wis. Stat. § 885.375 would require a qualified interpreter for all evidentiary proceedings, but allow for approved telephonic, video, or other computerized interpreter services in all other proceedings.

For the reasons given below, Petitioner respectfully requests that the Court grant its petition to create Wis. Stat. § 885.375, amend Wis. Stat. § 885.37, and amend SCR 63.002.

## DISCUSSION

### **I. LEP Individuals in Wisconsin Municipal Courts Need Better Access to Qualified Interpreters**

LEP individuals in Wisconsin today are not receiving proper access to qualified interpreters in municipal court proceedings. In August 2023, the Petitioner, Wisconsin Justice Initiative,<sup>3</sup> conducted an informal survey of Wisconsin municipal court judges from across the state (the "Survey") regarding the courts' use of interpreters for LEP individuals. *See* Municipal Court Interpreter Survey Results Summary, WISCONSIN JUSTICE INITIATIVE, October 2023, attached as Exhibit A. Forty-nine judges (21% of all municipal court judges) provided responses. About 40%

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<sup>1</sup> John Pawasarat & Lois M. Quinn, Issues Related to Wisconsin "Failure to Pay Forfeitures" Driver's License Suspensions, UNIV. OF WIS. MILWAUKEE – UWM DIGITAL COMMONS (2014), *available at* [https://dc.uwm.edu/cgi/viewcontent.cgi?article=1003&context=eti\\_pubs](https://dc.uwm.edu/cgi/viewcontent.cgi?article=1003&context=eti_pubs) (detailing how taking away the ability to drive creates the risk of criminal penalties for "driving while suspended," and operates as a barrier to employment).

<sup>2</sup> *See* Wis. Stat. § 800.095; *see also, e.g.*, Marijuana in Milwaukee: Arrest Trends and Implications, PUBLIC POLICY FORUM (March 2016), at 3, *available at* <https://wispolicyforum.org/wp-content/uploads/2019/04/MarijuanaPolicyPartII.pdf> (observing that a limited number of individuals are arrested each year for unpaid fines related to municipal citations for first-time possession of small amounts of marijuana).

<sup>3</sup> The Wisconsin Justice Initiative Inc. ("WJI") is a 501(c)(3) organization, the mission of which is "to advocate for progressive change in the Wisconsin justice system by educating the public about the system's real-life impacts and partnering with other organizations to achieve more just outcomes." *See* <https://www.wjiinc.org/>.

said that they have the defendant bring a family member or friend to translate for intakes and initial appearances. About 15% have the defendant bring a family member or friend with them to translate for evidentiary hearings and trials. But these family members and friends acting as ad hoc interpreters may or may not be proficient in the languages being used and may or may not have conflicts of interest that prevent impartial communication.<sup>4</sup> *See Standards for Language Access in Courts* 8.1, AM. BAR ASS'N (2012), available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_standards\\_for\\_language\\_access\\_proposal.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.pdf) (“Courts should ensure that all interpreters providing services to persons with limited English proficiency are competent. Competency includes language fluency, interpreting skills, familiarity with technical terms and courtroom culture and knowledge of codes of professional conduct for court interpreters.”). Even assuming they are proficient, these individuals almost certainly lack professional training as interpreters, let alone the specialized legal training necessary for properly interpreting court proceedings.<sup>5</sup>

Moreover, the Wisconsin Director of State Courts’ 2021 Language Access Plan, prepared as a “blueprint for ensuring language assistance is provided to all [LEP] individuals involved in the Wisconsin Court System,” reported there are nearly 200,000 LEP Wisconsin residents—a large segment of the population that local justice systems should be well-equipped to serve. *See*

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<sup>4</sup> “[I]n many cases in Wisconsin, relatives who speak only slightly better English than the defendant, witnesses to the defendant’s case, or court employees often are asked to interpret without any inquiry by either the judge or attorney concerning their language proficiency and their interpreting ability or training.” Francisco Araiza, *Se Habla Everything: The Right to an Impartial, Qualified Interpreter*, WISCONSIN LAWYER, 70-SEP Wis. Law. 14 (1997), at 1-2 (further relating instance in which a battered-women’s advocate not qualified as an interpreter translated a victim’s impact statement requesting leniency for her boyfriend in a domestic violence case, and observing the possibility of a conflict of interest).

<sup>5</sup> *See* Heather Pantoga, *Injustice in Any Language: The Need for Improved Standards Governing Courtroom Interpretation in Wisconsin*, MARQUETTE LAW REVIEW, Vol. 82:601 (1999), at 601–04, 632–52, available at <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=70&Issue=9&ArticleID=20727> (describing expertise required for legal interpretation and identifying several instances in which courtroom interpretation failures in and around Wisconsin led to miscarriages of justice).

Language Access Plan, WISCONSIN DIRECTOR OF STATE COURTS, at 4–5 (December 2021), available at <https://www.wicourts.gov/services/interpreter/docs/laplan.pdf>. Historically, the frequency of instances requiring interpreters in Wisconsin state courts has increased over time.<sup>6</sup>

But even assuming for the sake of argument that the population of LEP individuals in the state of Wisconsin is low and their appearances in municipal courts infrequent, these few individuals still have the right to meaningfully participate in the proceedings. See Standards for Language Access in Courts 4, AM. BAR ASS'N (“Courts should provide competent interpreter services throughout all legal proceedings to persons with limited English proficiency.”). Municipal courts are an important part of the Wisconsin Court System that enforce municipal ordinances that would otherwise clog the already overburdened circuit court system. They handle real trials involving real charges and real consequences. Permitting municipal courts to hold proceedings without providing qualified interpreters infringes on due process. Letting the burden fall to LEP individuals may even amount to national origin discrimination under Title VI of the Civil Rights Act of 1964. See “Dear Colleague” Letter from Thomas E. Perez, Assistant Attorney General, to Chief Justice/State Court Administrator, U.S. DEPARTMENT OF JUSTICE, at 16–17, available at [https://www.justice.gov/d9/press-releases/attachments/2023/04/20/doj\\_fines\\_and\\_fees\\_dear\\_colleague\\_letter\\_final\\_with\\_signatures\\_0.pdf](https://www.justice.gov/d9/press-releases/attachments/2023/04/20/doj_fines_and_fees_dear_colleague_letter_final_with_signatures_0.pdf) (Aug. 16, 2010) (citing *Lau v. Nichols*, 414 U.S. 563, 568–69, (1974)); see also OAG—9A—08, Op. Att’y Gen. (2008), available at [https://docs.legis.wisconsin.gov/misc/oag/recent/oag9\\_08](https://docs.legis.wisconsin.gov/misc/oag/recent/oag9_08) (“It is my opinion that, by amending [Wis. Stat. § 885.38(3), which provides for court interpreters at public expense], the Legislature intended for the courts to provide necessary interpreters for both the hearing impaired and for those

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<sup>6</sup> See Pantoga, at 604–05 (identifying a four-fold increase in state-court interpretations from 1994 to 1998, from 374 to over 1,500).

of limited English proficiency regardless of their ability to pay, and that courts may not tax the parties for these costs.”). Adopting Petitioner’s proposed statute will ensure that all individuals—regardless of their ability to speak English or their ability to afford an interpreter—are able to understand any municipal court proceedings in which they are involved.

## **II. The Proposed New Statute Will Help Ensure That LEP Individuals Can Understand and Participate in Legal Proceedings**

The new Wis. Stat. § 885.375 will introduce several important changes to the current Wis. Stat. § 885.37. The primary difference between the two statutes will be that Section 885.375 requires a municipal court to provide a qualified interpreter for all proceedings, not only for juvenile proceedings or proceedings when an LEP individual is a witness. Additionally, municipalities will be required to provide qualified interpreters at no expense to LEP individuals. This will promote the use of qualified interpreters, as the existing Wis. Stat. § 885.37 only requires a municipality to pay for an interpreter in the limited circumstance in which it makes a finding of indigency.

The new Section 885.375 will track the language of Wis. Stat. § 885.38, the statute requiring qualified interpreters in circuit and appellate courts, with a few changes. Section 885.375 will provide for two categories of municipal court proceedings: (1) evidentiary hearings; and (2) any other proceedings. The new statute will define “evidentiary hearing” as any proceeding before a municipal court which will likely require the oral testimony of one or more witnesses. For evidentiary hearings, the statute will require municipal courts to provide a qualified interpreter to all LEP parties.<sup>7</sup> All other municipal court proceedings will be in a separate classification. Municipal court proceedings other than evidentiary hearings will only require the court to provide

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<sup>7</sup> Even for evidentiary hearings, qualified interpreters may appear by video or telephone. Wis. Stat. § 800.085.

a qualified interpreter by telephone, video, or another computerized service approved by the director of state courts.

As part of creating the new Wis. Stat. § 885.375, the existing Wis. Stat. § 885.37 must be amended to apply only to administrative agencies. This will involve amending the title to read “Interpreters in administrative agency contested cases,” removing subsections (1), (2), and (4)(a), and striking any other references to “court” or “municipal court.” Additionally, any affected cross-reference citations must be amended. Here, only Supreme Court Rule 63.002 has an affected reference and must be amended to replace the reference to “885.37(1)(b)” with “885.375(1)(b).”

The purpose of this new statute is to empower LEP individuals to meaningfully participate in the legal proceedings in which they are involved. The statute accomplishes this in two ways: (1) by requiring municipal courts to provide qualified interpreters for all proceedings, and (2) by requiring municipalities to cover the necessary expenses of qualified interpreters.

### **III. The Availability of Qualified Interpreters in Municipal Courts Is a Matter of Procedure Best Addressed by the Supreme Court**

The Court should exercise its authority to regulate the courts and require court interpreters in all municipal court proceedings, as this is an issue of practice and procedure. The legislature, through Wis. Stat. § 751.12, granted this Court authority to “regulate pleading, practice, and procedure in judicial proceedings in all courts[.]” And Wisconsin courts have determined the right to an interpreter is a procedural right.

This Court first established the right to an interpreter in *State v. Neave*, 117 Wis. 2d 359, 344 N.W.2d 181 (1984), where it determined that fairness and judicial economy required a criminal defendant to be provided an interpreter. *Id.* at 361, 365. The legislature subsequently codified the requirement for court interpreters in Wis. Stat. § 885.38. In interpreting the requirements imposed by the statute, the Court of Appeals determined that the due process rights

guaranteed by the Fifth and Fourteenth Amendments require all litigants be able to participate in their legal proceedings. *See Strook v. Kedinger*, 2009 WI App 31, ¶ 17, 316 Wis. 2d 548 (“It is axiomatic that all litigants be able to understand the proceedings. If a person is unable to hear and understand, that person is unable to participate, and if unable to participate, it is a denial of due process under the Fifth and Fourteenth Amendments.”). The Court based this holding on the rationale that to participate—and be afforded due process—a litigant must be able to understand the words being said during the proceeding. *See id.*

The members of this Court have extensive trial experience and are well aware of the difficulties that arise during proceedings when an LEP individual is involved. This first-hand knowledge and experience makes this Court well suited to respond to the practical procedural problems raised in this Petition. Further, the right to an interpreter provides meaningful access to participation in an individual’s legal proceedings. It is thus an important procedural right that should be insulated from the political process and is therefore best addressed by this Court.

#### **IV. The Anticipated Fiscal Impacts on Municipalities Are Reasonable in Relation to the Services Provided**

It is Petitioner’s position that—consistent with due process rights—LEP individuals should not bear the responsibility of paying for the opportunity to meaningfully participate in legal proceedings. Accordingly, the proposed Wis. Stat. § 885.375 will require the municipality that established the court to cover the necessary expenses of providing a qualified court interpreter. These expenses are currently controlled by Wis. Stat. § 814.67, which provides that an interpreter’s fee is \$10 per one-half day unless the municipality or county board has established a higher rate. This is a reasonable burden for the operation of a municipal court.

This Court has previously approved a rule amendment relating to the administration of municipal courts that increased costs for municipalities. Rule Petition 10-11 proposed, among

other things, mandatory municipal court clerk education at a cost of approximately \$550 for a 1.5-day training seminar, per municipal court clerk. *See* 10-11 Municipal courts (petition filed Dec. 17, 2010), Petition Archive, Wisconsin Court System, *available at* <https://www.wicourts.gov/scrules/archive/1011.htm>. The Court evidently determined that this proposed training was important enough to warrant the concomitant financial burden on the municipalities.

Similarly, the change to mandatory provision of municipal court interpreters will result in costs for municipalities, but those costs are reasonable and necessary, much like those for clerk education, in that they are simply the cost of operating a municipal court. This would be true even if the proposed burden were high but here Petitioner expects the costs to be low. There are far fewer evidentiary proceedings in municipal courts than in circuit courts. And under the proposed statute, proceedings other than evidentiary proceedings will only require relatively inexpensive video and telephonic interpreter services.

Additionally, the results of Petitioner's Survey, *supra* Part I, tend to show that the number of defendants requiring interpreters is correlated with the size of that municipality. Accordingly, Petitioner predicts that any increase in costs will be roughly proportionate to the budget for each municipality's court.<sup>8</sup>

This Court's adoption of the proposed Wis. Stat. § 885.375 will bring municipal courts in line with the rest of the Wisconsin Court System. In fact, prior to 2001, municipalities already

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<sup>8</sup> A popular online language service, LanguageLine, charges \$3.95 per minute for audio interpreting and \$4.95 per minute for video interpreting. *See LanguageLine Solutions*, *available at* <https://www.language-line.com/interpreting/self-service> (last visited April 24, 2024). However, court-contracted and state-contracted rates are likely cheaper. For example, Petitioner's April 2024 inquiry with LanguageLine indicated that LanguageLine's contracts with courts that have an active government account typically include terms under which the court pays about 25% of the above-mentioned rates. The State of Minnesota IT Services also contracts with LanguageLine. *See Energy Assistance Program: LanguageLine Information*, STATE OF MINNESOTA COMMERCE DEPARTMENT (2023), *available at* <https://mn.gov/commerce-stat/pdfs/language-line-info.pdf>. The contracted rate is \$1.45 per minute. *Id.*



shouldered the necessary expenses of court interpreters. The previous version of Wis. Stat. § 885.37 provided, in relevant part, that “[t]he necessary expense of furnishing an interpreter for an indigent person [in municipal court] . . . shall be paid [by] the municipality.” Wis. Stat. § 885.37 (1999–2000). In 2001, the legislature amended Wis. Stat. § 885.37 to apply to interpreters in municipal courts and administrative agency proceedings and created Wis. Stat. § 885.38 for circuit and appellate courts. *See* 2001 Wisconsin Act 16, sec. 3860m. Each statute only required the government to pay for the costs of a qualified interpreter if the defendant was indigent. Wis. Stat. §§ 885.37, 885.38 (2005-06). However, the legislature subsequently amended Wis. Stat. § 885.38 to remove the indigent person requirement and directed the county, the court of appeals, or the Supreme Court to pay the necessary expenses of providing qualified interpreters. *See* 2007 Wisconsin Act 20, sec. 3773. The Court should follow suit and adopt Petitioner’s proposed statutory change to provide the necessary interpreters at municipal expense regardless of any indigency determination.

#### **V. Other States Have Adopted Similar Municipal Court Provisions**

Several other states have adopted provisions similar to Petitioner’s proposed new statute. The New Mexico Supreme Court, for example, established a set of rules for interpreters in the court system requiring municipal courts to appoint certified court interpreters and cover the expenses associated with those interpreters. *See* N.M. R. Mun. Ct. P. 8-113.

And the Rules of Superintendence for the Courts of Ohio are nearly identical to the statute proposed here. *See* Ohio Sup. R. 80. While the Ohio Rules have a slightly more expansive approach as to when only in-person interpreter services are permitted, *see* Ohio Sup. R. 80(A)-(B) (prohibiting video interpreter services for any in-court matter), Ohio also requires a finding of indigency for a court to cover the necessary court interpreter expenses—a requirement Petitioner’s

proposed statute does not include. Moreover, some counties in Ohio, on the same due process basis Petitioner identifies above, have foregone the indigency analysis, effectively allowing LEP individuals to request in-person interpreter services for any in-court proceeding. And even these municipalities have easily borne the cost.<sup>9</sup>

## **VI. Interested Groups**

In drafting this rule petition, Petitioner has identified the following potentially interested groups.

- ACLU
- American Bar Association
- Centro Hispano
- Hmong American Peace Academy
- Islamic Society of Milwaukee
- Judicare Legal Aid
- JusticePoint
- League of Wisconsin Municipalities
- Legal Action of Wisconsin
- Legal Aid Society of Milwaukee
- Milwaukee Bar Association
- State Bar of Wisconsin
- United Migrant Opportunity Services
- United States Department of Justice
- Voces de la Frontera
- Wisconsin Access to Justice Commission
- Wisconsin Asian American Bar Association
- Wisconsin Association of African American Lawyers
- Wisconsin Hispanic Lawyers Association
- Wisconsin Judicial Council
- Wisconsin Municipal Judges Association
- Wisconsin Muslim Civic Alliance
- Wisconsin Towns Association
- Wisconsin Tribal Judges Association

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<sup>9</sup> See, e.g., Franklin Cnty. Municipal Ct. Language Access Plan (Jan. 1, 2018), available at <https://municipalcourt.franklincountyohio.gov/Muni-website/media/Documents/Interpreter/Franklin-County-Municipal-Court-Language-Access-Plan.pdf>.

## CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant its petition to create Wis. Stat. § 885.375, amend Wis. Stat. § 885.37, and amend SCR 60.332 as stated in the Petition.

Dated this 15th day of May, 2024.

Respectfully submitted:

**Wisconsin Justice Initiative, Inc.**

*/s/ Parker White*

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