

FILED

SUPREME COURT OF WISCONSIN

JUL 03 2024

CLERK OF SUPREME COURT  
OF WISCONSIN

In the Matter of the Amendment  
of Supreme Court Rule 13.045

Rule Petition No. 24-05

MEMORANDUM IN SUPPORT  
OF PETITION FOR RULE-MAKING

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CLERK OF COURT OF APPEALS  
OF WISCONSIN~~

The Wisconsin Access to Justice Commission, the Wisconsin Equal Justice Fund, Judicare Legal Aid, Legal Action of Wisconsin, Legal Aid Society of Milwaukee, Disability Rights Wisconsin, ABC for Health, and Centro Legal<sup>1</sup> petition the Supreme Court of Wisconsin to amend Supreme Court Rule 13.045 to increase the Public Interest Legal Services Fund (PILSF) assessment to help provide direct civil legal services to persons of limited means.

When this Court first created the PILSF assessment by granting Petition 04-05, it found that “Wisconsin’s poor citizens increasingly lack access to legal representation for fundamental civil legal issues,” that “[w]ithout access to legal representation, these critical legal needs remain unmet—sometimes with tragic results,” and that leaving individuals and families to navigate the legal system without assistance “pose[s] an enormous challenge for our courts in terms of

<sup>1</sup> Descriptions of the petitioning organizations are included in the addendum to this memorandum.

increased staff time, administrative costs, and decreased efficiency. The result undermines public trust and confidence in the courts as effective and responsive social institutions.” *In the Matter of Petition of Wisconsin Trust Acc’t Fndn.*, S. Ct. Order 04-05, 2005 WI 35, at 2-3 (hereafter, *In re WisTAF*).

When the Court granted the petition in 2005, it set the amount of the assessment at \$50. Nineteen years later, the assessment remains \$50, an amount now worth only \$31, adjusted for inflation. We request that the Court increase the PILSF assessment to \$75 beginning July 1, 2025, and to \$100 in the fiscal year beginning in 2027. As explained more fully below, maintaining basic access to civil legal aid for low-income Wisconsinites is essential to this Court’s mission to “maintain the integrity and efficiency of the judicial system of this state.” *Id.* at 5.

### PROPOSED AMENDMENT

Petitioners propose the following changes to the text of SCR 13.045(1):

**SCR 13.045 Assessment of attorneys for fund; enforcement.** (1) Annual assessments. Commencing with the State Bar’s July 1, 2008 fiscal year, every attorney who is an active member or judicial member of the state bar shall pay to the fund an annual assessment, to be determined by the supreme court. Commencing with the State Bar’s July 1, 2025 fiscal year, the assessment shall be \$50.00. Commencing with the State Bar’s July 1, 2027 fiscal year, the assessment shall be \$100.00. Emeritus members and inactive members of the state bar are excused from the annual assessment. An attorney whose annual state bar membership dues are waived for hardship shall be excused from the payment of the annual assessment for that year. An attorney shall be excused from the payment of the annual assessment for the first fiscal year during which he or she is required to pay dues and assessments.

The proposed increase in the PILSF assessment will help ensure that the Wisconsin Trust Account Foundation (WisTAF) has adequate resources to fund “direct legal services to persons of limited means in non-criminal matters” (SCR 13.015(4)), but otherwise will not affect the system of collection or distribution of funds established by this Court.

### SUPREME COURT AUTHORITY

The Wisconsin Constitution explicitly vests the Wisconsin Supreme Court with “superintending and administrative authority over all courts.” Wis. Const. art. VII, § 3. It also authorizes the Supreme Court “to adopt measures *necessary for the due administration of justice* in the state.” *In re WisTAF*, 2005 WI 35, at 5 (emphasis added) (citing *State v. Holmes*, 106 Wis. 2d 31, 44, 315 N.W.2d 703 (1982)). State statutes similarly authorize this Court to exercise broad rulemaking authority. Wis. Stat. § 751.12. Finally, our Supreme Court has “express, inherent, implied, and incidental powers’ to manage the sound operation of the judicial system.” *In the Interest of Jerrell C.J.*, 2005 WI 105, ¶66, 283 Wis. 2d 145, 699 N.W.2d 110 (Abrahamson, CJ, concurring) (quoting *State v. Holmes*, 106 Wis. 2d at 45). Among those powers is the nearly exclusive authority to regulate the legal profession. See *State ex rel. Reynolds v. Dinger*, 14 Wis.2d 193, 206, 109 N.W.2d 685 (1961) (“[T]he regulation of the practice of the law is a judicial power and is vested exclusively in the supreme court.”); *State ex rel. Fiedler v. Wisconsin Senate*, 155 Wis. 2d 94, 99, 454 N.W.2d 770, 772 (1990) (“[I]t is the province of the judiciary



ultimately to decide the fitness of those who practice before it and to regulate their activities following their admission to practice.”); 16 C.J.S. Const. Law § 289 (2024).

Lack of legal representation for low-income people produces “a profoundly adverse impact on the effective and meaningful administration of justice.” *In re WisTAF*, 2005 WI 35, at 5. Ensuring adequate access to representation is both “necessary to maintain the integrity and efficiency of the judicial system of this state, and fully consistent with the heightened obligations of lawyers, both to our justice system and to assist this court with the effective administration of justice.” *Id.*

The Court has repeatedly exercised its constitutional authority over all courts and the practice of law in Wisconsin to provide for the due administration of justice and to regulate the legal profession by directing financial resources to support civil legal services for low-income litigants in the state. SCR 13, 20:1.15(d) (March 21, 1986) (creating WisTAF and directing interest on certain lawyers’ trust accounts to WisTAF); Petition No. 04-05, 2005 WI 35 (creating the PILSF assessment for civil legal aid); Petition No. 13-11, 2014 WI 42 (increasing pro hac vice admission fees and allocating \$100 to WisTAF and \$100 to WATJC); Petition No. 15-06, 2016 WI 50 (allocating portion of unclaimed class action awards to WisTAF to fund civil legal aid).

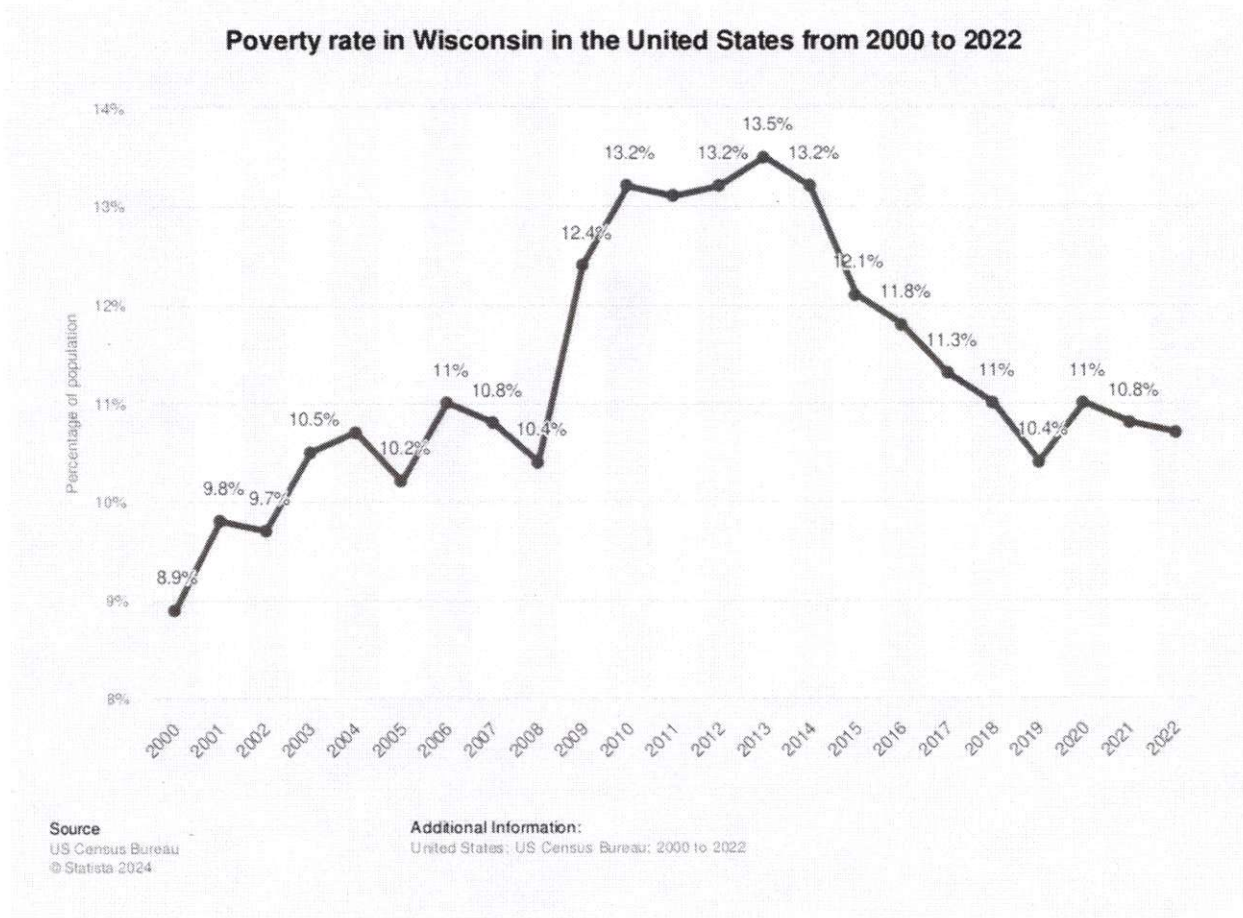
The proposed amendment of SCR 13.045 is thus well within the Court’s constitutional, statutory and inherent authority, and consistent with its past exercise of that authority.



## BACKGROUND

### I. People in poverty face formidable legal problems affecting basic human needs.

As the graph below reflects, the proportion of Wisconsinites living in poverty, and thus eligible for civil legal aid, remains persistently high.<sup>2</sup>



The legal challenges facing low-income people are formidable and often life-altering. Their problems involve basic human needs, including lack of personal

<sup>2</sup> Schulz, “Wisconsin Poverty Has Come Down from Highs of 2008 Recession, but Still Above Early 2000s Lows,” Wisconsin Public Radio (Oct. 27, 2023). Nationally, child poverty is again on the rise, after a reduction due to expansion of the child tax credit and other benefits during the COVID-19 health emergency, which have begun to expire. Williams & Rudowitz, “Recent Trends in Child Poverty & Health Insurance as Pandemic-Era Programs Expire,” *KFF* (Jan. 16, 2024).

safety, lack of stable housing, insufficient food, and lack of health care. In Wisconsin, and across the country, people experiencing poverty have the greatest need for legal representation in family law, domestic violence and elder abuse cases, evictions and foreclosure actions, and denials and terminations of government benefits. See Wisconsin Access to Justice Comm'n, *The State of Equal Justice in Wisconsin* at 7-14 (Sept. 2013) (*State of Equal Justice*); Legal Services Corp. (LSC), *The Justice Gap: The Unmet Legal Needs of Low-income Americans* at 33-35 (2022) (*Justice Gap*).<sup>3</sup>

Given this reality, it is unsurprising that the legal problems experienced by people in poverty generally have serious consequences. According to LSC, legal problems had “a substantial negative effect on 55% of those who personally experienced a problem in [2021.]” *Justice Gap* at 55. Another recent national study reflects that 44% of all Americans who experienced one or more legal problems reported serious negative repercussions. Institute for the Advancement of the American Legal System, *Justice Needs and Satisfaction in the United States of America* at 70 (2021) (*Justice Needs*). Those impacts ranged from financial to emotional and psychological, including negative impacts on mental health and financial well-being as the most frequently cited. *Id.* at 73-75. And of the 50 million Americans whose incomes are below 125% of poverty, many have other vulnerabilities that make representation more essential: more than 15 million are

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<sup>3</sup> In addition to the link in the text to a pdf of the report, the Legal Services Corporation has made information from the report available in a more interactive online format: <https://justicegap.lsc.gov/>.

children, 8 million are seniors, and 1.6 million are veterans. *Justice Gap* at 10.

People who are forced to navigate those challenges without a lawyer are at risk of losing or impacting their family's shelter, safety, health, and livelihood.

As one example, a client of one of the petitioners, a mother of two, was trapped in an abusive marriage. She decided to leave when her husband began physically abusing their children. A legal aid attorney helped her initiate the divorce, secure a no-contact order to protect her and her children, obtain sole custody of the children, and achieve a fair division of assets from the divorce. Two years later, the client approached the attorney, expressing gratitude and saying the legal help she got saved her life. She now feels empowered, has purchased a new home, and her boys are thriving in school. Without legal aid, her story might have ended very differently.

State court data<sup>4</sup> shows an increase in the types of cases that disproportionately affect the ability of lower-income people to secure their basic needs:

<b>TYPE OF CASE</b>	<b>Calendar Year 2022</b>	<b>Calendar Year 2023</b>	<b>% Increase</b>
<b>Restraining Order Dispositions</b>	13,070	14,904	14.03%
<b>Family Law Case Dispositions</b>	32,406	33,477	3.30%
<b>Evictions + Evictions due to Foreclosure</b>	25,057	27,716	10.61%

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<sup>4</sup> Data in the table were drawn from Wisconsin Circuit Court Access system.



As the legal needs of Wisconsinites in poverty continue to grow, existing funding sources have not kept up. Under the current level of funding for legal aid, the number of lawyers available to this population is shockingly low. See WisTAF, *Growing Impact: 2023 Annual Report* at 3 (forthcoming July 2024) (*Growing Impact*). “There is roughly one attorney for every 4,300 people in Wisconsin with incomes below 125% of the federal poverty level.” *Id.*

[I]f you filled Lambeau Field to its capacity, you’d have 18 lawyers to serve them all. If those lawyers met with each person for just 60 minutes, it would take them more than six months, working around the clock, seven days a week to meet with everyone. What’s more, Lambeau Field’s seating capacity could accommodate a mere 10% of Wisconsinites who are income eligible for WisTAF-funded legal aid.

*Id.*

Not only are there far more low-income people with legal problems than there are lawyers to serve them, but many of these potential clients also have multiple legal problems, exacerbating the impact of being unrepresented. The LSC’s *Justice Gap* report found that, in 2021, 75% of low-income households in the Midwest had one or more civil legal problems, 45% had five or more civil legal problems, and 23% had 10 or more civil legal problems.<sup>5</sup>

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<sup>5</sup> See <https://justicegap.lsc.gov/resource/section-3-the-prevalence-of-civil-legal-problems/>. The most recent equivalent data specific to Wisconsin are from 2007. See State Bar of Wisconsin Access to Justice Study Committee report, *Bridging the Justice Gap: Wisconsin’s Unmet Legal Needs* at 1 (March 2007) (*Bridging the Justice Gap*) (“Overall, 45% of the households we surveyed reported experiencing a need for legal assistance in at least one area of law. We also found that Milwaukee (54%) and other urban (49%) residents were more likely than rural (32%) residents to have had a legal problem. The level of need also

The legal needs of the most vulnerable sub-populations are generally even higher:

- **Households with Recent Domestic Violence:** 98% had one or more civil legal problems, 87% had five or more civil legal problems, and 62% had 10 or more civil legal problems. (These statistics *exclude* the legal problems related to domestic violence, such as the need for a restraining order.)
- **Households with Children:** 83% had one or more civil legal problems, 52% had five or more civil legal problems, and 30% had 10 or more civil legal problems.
- **Rural Households:** 77% had one or more civil legal problems, 40% had five or more civil legal problems, and 23% had 10 or more civil legal problems.
- **Veteran Households:** 76% had one or more civil legal problems, 44% had five or more civil legal problems, and 27% had 10 or more civil legal problems.
- **Senior Households:** 70% had one or more civil legal problems, 31% had five or more civil legal problems, and 14% had 10 or more civil legal problems.

As an example of the legal problems facing vulnerable groups, one elderly legal aid client faced \$100,000 in debt incurred by her adult son, who had stolen her credit cards and opened other accounts in her name while she was hospitalized and recovering from COVID. At first, she and another family member unsuccessfully attempted to fight the debt on their own. A legal aid attorney eventually got involved and was able to investigate and demonstrate to a court the fraudulence of the accounts that had gone into collection, resulting in their dismissal. The attorney also assisted the client to secure her financial arrangements from future abuse by

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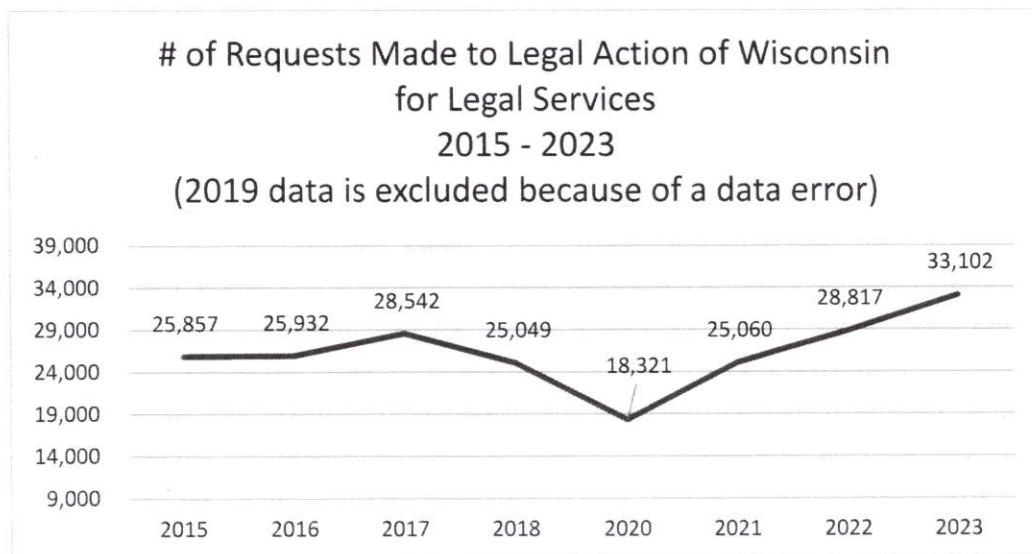
was high among lowest income families (48%), minorities (59%), and in households with children (64%). The average number of problems reported by all respondents was 2.1 problems.”)

her son. The client emphasized that, beyond the financial burden being lifted, she appreciated the support at a time when she felt fearful, alone, and without options.

Low-income people also experience unique legal problems arising from the fact they have direct contact with government institutions more often than others. For example, low-income individuals who receive government benefits, such as childcare assistance, housing assistance, FoodShare, and public health insurance, are subjected to frequent monitoring for ongoing determinations of eligibility. This monitoring often leads to civil legal problems, including erroneous eligibility determinations and calculations of benefits that may reflect discriminatory attitudes or assumptions. Citron, "A Poor Mother's Right to Privacy: A Review," 98 *B.U. L. Rev.* 1139, 1142 (2018).

The volume of civil legal problems affecting low-income people is reflected in the number of requests for service that legal aid providers receive each year. As an illustration, from 2015 through 2023, Legal Action of Wisconsin, a civil legal aid agency that serves the state's southern 39 counties, received an average of 26,335 requests for legal help annually. Although there was a falloff in the first year of the pandemic, requests for service have increased each year since then and reached a new high in 2023.





Data collected nationally and locally clearly demonstrate the mismatch between needs and resources. Nationwide, low-income Americans do not get any or enough legal help for 92% of their substantial civil legal problems. *Justice Gap* at 8.<sup>6</sup> Closer to home, one in seven Wisconsinites is eligible for civil legal aid, but they receive help for only 7% of the civil legal problems they face.<sup>7</sup> Legal Action reports that it must decline service to eligible people seeking help about 75% of the time. In 2023, Judicare Legal Aid, which serves the northern 33 counties from its office in Wausau, turned away 64% of the 5,365 applications for services it received. And even when legal aid providers can provide some service, they are often unable to provide the level of service that the seriousness of a person's problem warrants. Legal Action of Wisconsin was only able to provide extended service (beyond advice

<sup>6</sup> In contrast, people with higher incomes are more likely to seek and obtain legal help for problems with substantial impact. *Id.* at 9.

<sup>7</sup> Legal Services Corporation, FISCAL YEAR 2025 BUDGET REQUEST 133, available at <https://lsc-live.app.box.com/s/oi1atcgn8xmvojc70aildz3bhg5p0zn5>.

only or brief, limited representation) in about 27% of cases. Judicare Legal Aid was able to provide extended representation in 24.5% of cases in 2023.

## II. History of funding for civil legal aid.

From the inception of legal aid programs, attorneys have played a critical role in funding access to justice for poor people. The first civil legal aid organizations were founded in New York city in the 1860s and 1870s.<sup>8</sup> One of the early pioneers of legal aid was attorney Edward Saloman, a German-Jewish immigrant who served as the Republican Governor of Wisconsin from 1862 to 1864.<sup>9</sup> Saloman moved to New York City and founded *Der Deutsche Rechts-Schutz Verein* (The German Legal Aid Society) in 1876.<sup>10</sup> Attorneys and businessmen paid \$20 annual fees to fund the Society, which provided free legal representation to German immigrants.<sup>11</sup> Saloman said that the work of legal aid provided “not alms ... but justice.”<sup>12</sup> As legal aid law firms spread across the country, the Legal Aid Society of Milwaukee was founded in 1916.<sup>13</sup>

More recently, governmental programs have funded access to justice for low-income Americans. President Lyndon Johnson’s War on Poverty resulted in the passage of the Economic Opportunity Act of 1964 and the creation of the Office of

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<sup>8</sup> Felice Batlan, *Women and Justice for the Poor: A History of Legal Aid, 1863-1945*, at 17-36 (2015); Earl Johnson Jr., *To Establish Justice for All: The Past and Future of Civil Legal Aid in the United States*, at 3-16 (2014).

<sup>9</sup> Johnson at 4-5.

<sup>10</sup> Johnson at 6-8.

<sup>11</sup> John MacArthur Maguire, *The Lance of Justice: A Semi-Centennial History of the Legal Aid Society, 1876-1926*, at 35 (1928). This \$20.00 annual fee in 1876 is the rough equivalent of \$600.00 in 2024.

<sup>12</sup> Maguire at 22.

<sup>13</sup> Thomas Cannon, *Equal Justice: A History of the Legal Aid Society of Milwaukee* (2010).

Economic Opportunity, which provided federal funding to legal aid law firms across the country, including in Wisconsin.<sup>14</sup> The OEO was the forerunner to the Legal Services Corporation (LSC), the federally-funded non-profit created when President Richard Nixon signed the Legal Services Corporation Act on July 24, 1974.<sup>15</sup> LSC currently provides funding to two legal aid law firms in Wisconsin: Legal Action of Wisconsin and Judicare Legal Aid.<sup>16</sup> The current LSC budget is \$560 million, of which Wisconsin providers receive approximately \$6.5 million.<sup>17</sup>

Like these leaders in equal justice in the private and public spheres, this Court, too, has recognized the critical importance of increasing access to justice for poor people, and repeatedly responded to the need by allocating funds under its authority. In 1986 the Wisconsin Supreme Court created the Interest on Lawyers' Trust Accounts program (IOLTA) and the Wisconsin Trust Account Foundation (WisTAF) to provide funding for civil legal aid.<sup>18</sup> In 2004 WisTAF petitioned the Wisconsin Supreme Court to establish an annual assessment of \$50 for active members of the State Bar of Wisconsin.<sup>19</sup> The Court adopted a modified version of the Petition, establishing the \$50 assessment which is now paid by all

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<sup>14</sup> Johnson at 62-64.

<sup>15</sup> LSC Act, P.L. 93-355, 93 Cong. H.R. 7824 (July 25, 1974); *see also*, Milestones in LSC's History, The Legal Services Corporation Is Created.

<sup>16</sup> Johnson at 451-454; <https://www.lsc.gov/grants/our-grantees/wisconsin-state-profile>.

<sup>17</sup> <https://www.lsc.gov/about-lsc/who-we-are/what-we-fund/quick-facts>. The LSC budget is approximately 0.009% of the federal budget. <https://www.lsc.gov/grants/our-grantees/wisconsin-state-profile>.

<sup>18</sup> SCR 13, 20:1.15(d).

<sup>19</sup> Rule Petition 04-05.



active Wisconsin attorneys and judges and ordering a study of the problem of funding for civil legal aid.<sup>20</sup>

WisTAF now provides approximately \$4 million annually in funding from a variety of sources to twenty-six organizations.<sup>21</sup> Approximately \$900,000 of this funding comes from the PILSF assessment on attorneys. With PILSF funding, seventeen of WisTAF's grantees were able to serve over 3,000 low-income clients in 2023.<sup>22</sup>

### **The Origins of the Current Funding Crisis**

Over the last three decades, federal funding through the Legal Services Corporation has largely remained flat. In its 2023 Budget Request to Congress, the LSC noted that, in “FY 1994—28 years ago—Congress appropriated \$400 million for LSC. LSC’s appropriation has increased only slightly—to \$489 million in FY 2022—not remotely enough to keep up with inflation, much less the increased demand and need for services resulting from recessions and the pandemic that have occurred over the last three decades. Adjusted for inflation, the 1980 appropriation of \$300 million would be more than \$900 million in 2022 dollars.”<sup>23</sup>

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<sup>20</sup> 2005 WI 35, creating SCR 13.045. In 2008, the Court rejected a petition to allow attorneys to make a charitable contribution in lieu of the assessment and extended the assessment to judicial members of the bar. See Pet. 07-06, and *In the Matter of Amendment to SCR 13.15 & 13.045*, 2008 WI 18.

<sup>21</sup> WisTAF, *Stepping Up for Justice: 2022 Annual Report* at 12 (2023) (*Stepping Up for Justice*). Due to unusually high interest rates since 2021 that have increased IOLTA revenues, WisTAF was able to distribute just over \$9.6 million in 2023. See WisTAF, *Growing Impact* at 15.

<sup>22</sup> Calculated from 2023 reports to WisTAF from PILSF direct legal services grantees. This works out to a cost of approximately \$300 per case.

<sup>23</sup> Legal Services Corporation, FISCAL YEAR 2023 BUDGET REQUEST 4, available at <https://lsc-live.app.box.com/s/ip5pqq3dht40qvrl6hxx3l68fnivdssg>.

State governments also provide funding for civil legal aid, but the Wisconsin legislature has not provided much. For a brief period from 2008 to 2010, the legislature provided approximately \$2.5 million per year for civil legal services organizations derived from a portion of the Justice Information Surcharge included in court filing fees. Jeff Brown, *Wisconsin State Budget Defunds Legal Aid for the Poor*, Wisc. Access to Justice Commission (June 20, 2011); WisTAF, *Stepping Up for Justice: 2022 Annual Report* at 12 (2023) (showing disbursements by fund source from 2010-2022); *State of Equal Justice* at 3-4 (showing civil legal services funding in Wisconsin from 2008-2013). That funding was eliminated in 2011. Brown, *supra*. Since 2015, the Legislature has allocated approximately \$500,000 per year to allow WisTAF to fund some civil legal services for victims of domestic abuse from *federal* Temporary Assistance to Needy Families funding.

The other sources of funding that are available to legal aid providers in the state are mostly temporary, variable, or otherwise uncertain. Revenue from interest on lawyer trust accounts, for example, varies widely, depending on the interest rate environment, ranging from nearly \$4.3 million in 2023<sup>24</sup> to almost nothing in 2017 and 2018 (*Stepping Up for Justice* at 12). Traditional funding uncertainty has been exacerbated into a crisis because so many significant sources of legal aid funding have expired or are expiring at the same time: foreclosure prevention funding from a US Department of Justice settlement with Bank of America, along with several pandemic-era funding streams, accounted for roughly \$1 million annually, but have

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<sup>24</sup> *Growing Impact* at 13.

either ended or will end in the coming year. *Stepping Up for Justice* at 12. Funding from *pro hac vice* admission fees, portions of unclaimed class action settlements and *cy pres* awards have accounted for only a small fraction of WisTAF revenues. *Id.*

Most importantly for many providers of civil legal services, funding under the Victims of Crime Act (VOCA) has been reduced in the past year by approximately 70%. Kirwan, Groups Serving Marginalized Communities May Be Left Out of State Funding for Crime Victims, Wis. Public Radio (March 24, 2024) (“Wisconsin’s annual funding is expected to go from \$44.5 million to roughly \$13 million.”). VOCA has long supported a variety of programs assisting victims of crime, including not only shelters and suppliers of food and other necessities, but also legal services to victims of domestic violence, trafficking, and other crimes. VOCA created a Crime Victims Fund that is funded by fines and penalties arising from federal criminal prosecutions. That Fund has shrunk substantially as certain federal prosecutions declined and funding was diverted to other uses, resulting in the devastating losses facing legal aid programs that had received some of that funding. New caps on annual VOCA funding per grantee also mean that some legal services agencies will see reductions of 50-90% in their VOCA grants for the next three-year VOCA funding cycle. This funding loss has been devastating and has already led to staff layoffs at Legal Action of Wisconsin and curtailment of some programs for crime victims.



## DISCUSSION

As the information set forth above demonstrates, the combination of high need for civil legal aid and reduced funding for those services has created a crisis for low-income Wisconsinites facing life-altering legal problems. This Court should act promptly in response to that crisis by adjusting the assessment on lawyers for the Public Interest Legal Services Fund to a level more commensurate with the need in 2024. As noted above, the \$50 assessment, which this court recognized was insufficient even in 2005 (*In re WisTAF*, 2005 WI 35, at 4), has remained unchanged for too long. Accounting for inflation, the assessment is worth only \$31 in 2005 dollars; put another way, the assessment would have to be at least \$80 to match the buying power \$50 had in 2005. *Bureau of Labor Statistics Inflation Calculator*.<sup>25</sup>

Increasing the assessment will not only help low-income litigants, but it will also improve the functioning and integrity of the legal system and enhance respect for the rule of law—a respect that depends on faith in the fairness of the courts. Although lawyers cannot be expected to fund civil legal aid alone, their special role in the legal system – and the benefits they derive from investing in its healthy functioning – justify maintaining a steady level of their contribution towards helping to address the current crisis and enhancing one of the few stable sources of funding available to legal aid programs in the state.

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<sup>25</sup> The assessment for the Office of Lawyer Regulation, to which this Court compared the PILSF assessment (*In re WisTAF*, 2005 WI 25, at 6), has been increased periodically to maintain the Office's ability to fulfill its purposes.

## I. Civil legal aid enhances court functioning and legitimacy.

Civil legal aid is critical both to the functioning and to the institutional legitimacy of the courts and legal system. As the Hon. Thomas Hruz, a Wisconsin Court of Appeals Judge and member of WATJC, has observed, “civil legal representation” is important to “providing all litigants with the impression they were given a ‘fair shot’ and were properly heard on the merits, enabling judges to correctly and efficiently resolve the cases before them.” Hruz, “Notes from the Bench,” Wisconsin Access to Justice Commission Blog (Feb. 24, 2023).

Our adversarial legal system functions best when litigants have lawyers who can effectively explain the law to them and skillfully present the facts and legal arguments pertinent to their cases. *Bridging the Gap* at 8 (“Our merit-driven adversary system depends upon both parties being well represented. Research confirms, unsurprisingly, that a party with a lawyer can achieve significantly better results than a party who is unrepresented.”). Parties represented by lawyers are more likely to resolve conflicts prior to trial, and courts can more accurately ascertain the facts and justly apply the law when all parties are represented, resulting in better outcomes. *See, e.g.,* Jarvis et al., Report to the Judicial Council of California, Sargent Shriver Civil Counsel Act Evaluation (June 2020) (“*Shriver Act Eval.*”) (describing outcome studies of pilot programs providing representation in evictions, child custody disputes, and guardianship and conservatorships); Poppe & Rachlinski, “Do Lawyers Matter? The Effect of Legal Representation in Civil Disputes,” 43 *Pepp. L. Rev.* 881 (2016). Reducing the number of unrepresented

litigants also reduces the administrative burden on courts, allowing the judicial system to perform its work more efficiently. See *In re WisTAF*, 2005 WI 35, at 3; *McDonald v. Longley*, 4 F.4th 229, 250 (5th Cir. 2021) (“decreasing the number of *pro se* litigants reduces the administrative burdens those litigants place on” courts).<sup>26</sup>

The legitimacy of the legal system in which judges and lawyers work depends upon the belief that the system functions fairly. As the State Bar of Wisconsin committee tasked by this Court with studying the problem of access to justice observed:

The rule of law depends in substantial part on the public’s trust in the fairness of the system. For unrepresented litigants intimidated at the front door to the courthouse or government office building by the complexities of the law, or even for those who brave the proceedings but taste defeat, one result is cynicism. It is all too easy to blame defeat not on the merits but on how the odds were stacked, and on procedures designed for lawyers, not lay people. Such cynicism seriously threatens the credibility and legitimacy of the tribunals, including our courts, where such disputes must be resolved to preserve the peace and order of the community.

*Bridging the Justice Gap* at 8-9.

Lack of access to legal representation for low-income people frustrates everyone involved in the system, including the judges who must make decisions

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<sup>26</sup> The literature on the justice gap uniformly stresses that unrepresented litigants pose a substantial problem for the courts, both in terms of efficiency and fairness. See, e.g., American Bar Association Commission on the Future of Legal Services, *Report on the Future of Legal Services in the United States* at 15 (ABA 2016) (“The unmet need for legal services adversely impacts all users of the justice system, particularly in state courts. The Conference of Chief Justices has reported that large numbers of unrepresented litigants clog the courts, consume the time of court personnel, increase the legal fees of opposing parties due to disruptions and delays, increase the number of cases that advance to litigation, and result in cases decided on technical errors rather than the merits. These problems affect all litigants . . .”).



without adequately presented evidence. In one study, 60% of judges in Massachusetts believed “that lack of representation negatively impacted the court’s ability to ensure equal justice to unrepresented litigants because they are hindered in the presentation of evidence.” Boston Bar Ass’n Statewide Task Force to Expand Civil Legal Aid, *Investing in Justice: A Roadmap to Cost-Effective Funding of Civil Legal Aid in Massachusetts* at 3 (2014); see also Hruz, *supra* (observing that trial court records reveal that “despite the best efforts of the trial judge and even sometimes opposing counsel, the unrepresented civil litigant fails woefully to represent his or her best interests.”). If judges fear that they cannot ensure just outcomes for unrepresented litigants, it is difficult for participants or public observers to feel the system is working as it should.<sup>27</sup>

As this Court observed in establishing the PILSF assessment nearly 20 years ago:

In our complicated legal system, access to justice is sometimes synonymous with access to a lawyer. . . . [L]itigants attempting to navigate the legal system on their own experience frustration at the complexity of the endeavor and pose an enormous challenge for our courts in terms of increased staff time, administrative costs, and decreased efficiency. The result undermines public trust and confidence in the courts as effective and responsive social institutions.

*In re WisTAF*, 2005 WI 35, at 2-3.

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<sup>27</sup> The judiciary’s awareness of the importance of improving access to representation for poor people is reflected in the members of this Court’s commitment in 2005 to paying the assessment. *In re WisTAF*, 2005 WI 35, at 7 (“Although the petition does not encompass judicial, emeritus, or inactive members of the State Bar as defined in SCR 10.03, we emphasize the importance of this assessment to our justice system. The justices of the Wisconsin Supreme Court will pay the assessment.”). The Court amended the rule in 2008 to formally include all active judges in the assessment. *In the matter of the Amendment of SCR 13.015 and SCR 13.045*, 2008 WI 18 (March 25, 2008).

Litigants who have lawyers are more likely to perceive that the system took their positions seriously and resolved their disputes fairly. *Shriver Act Eval.* at 28-29. They are more likely to “feel that they understand the procedures used and the decisions made.” Zimmerman & Tyler, “Between Access to Counsel and Access to Justice: A Psychological Perspective,” 37 *Fordham Urb. L.J.* 473, 505 (2010). Conversely, litigants who were “denied access to the system, due to lack of financial resources to consult with and retain counsel” have “negative feelings about the courts and the law.” *Id.* at 504. “[H]aving a lawyer was linked to higher levels of legitimacy and respect for the law.” *Id.* at 495-96.

The public is similarly more likely to have confidence in the fairness of the judicial process and the legitimacy of its outcomes when litigants have equal representation. Members of the public who have faith in the legal system are more likely to turn to that system to address their conflicts and to abide by its judgments. *Id.* at 482-83 (“[P]erceived procedural fairness enhances the perceived legitimacy of legal institutions as well as citizens’ commitment to the law.”).<sup>28</sup>

If the legal system depends upon public perceptions of its legitimacy and fairness, it has the farthest to go among people of color, for whom the system has historically been a source of oppression rather than justice. Adequate funding for

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<sup>28</sup> For a recent overview of research on the benefits of and conditions necessary for perceptions of legitimacy and procedural justice, see Mentovich, Prescott & Rabinovich-Einy, “Legitimacy & Online Proceedings: Procedural Justice, Access to Justice & the Role of Income,” 57 *Law & Soc. Rev.* 189, 191-192 (2023).

civil legal aid can thus also play a critical role in redressing the racial disparities in access to justice that contribute to skepticism of the legal system.<sup>29</sup>

Black and Latine people are more likely to experience legal problems, and to have more serious legal problems than white people. *Justice Needs* at 29, 36-37; Sandefur, *Accessing Justice in the Contemporary USA: Findings from the Community Needs & Services Study* at 9 (Amer. Bar Found. 2014). Black and Latine people are also more likely to be low-income,<sup>30</sup> and thus less likely to be able to afford a lawyer. By amplifying the voices of marginalized communities and advocating for equitable legal results, civil legal aid contributes to the broader movement for justice and equality, and to overall belief in the legitimacy of legal institutions.

**II. As officers of the courts, lawyers must contribute to the fair & effective functioning of the legal system from which they benefit.**

As noted in the first sentence in the Preamble to the Wisconsin Rules of Professional Conduct for Attorneys, “A lawyer, as a member of the legal profession,

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<sup>29</sup> While increasing access to civil legal services will disproportionately benefit access for people of color, who are more likely to be low-income, increasing funding *alone* will not fully address racial disparities in access. That is because the causes of racially disparate “access problems are broader than just structural and systemic restraints,” such as inadequate funding for legal services, as “there are also cultural and cognitive barriers to access that need to be considered. These cultural and cognitive barriers are certainly related to (and perhaps even stem from) the existing structural restraints of the system, but they have taken on a life of their own and deserve attention and study.” Greene, “Race, Class, and Access to Civil Justice,” 101 *Iowa L. Rev.* 1263, 1270 (2016). A primary factor is that people of color are less likely to seek legal help because they have less trust in the ability of the legal system – criminal or civil – to produce fair outcomes. *Id.* at 1268. Legal aid lawyers and others have likely had a role in creating this lack of trust and certainly have a duty to ameliorate it.

<sup>30</sup> *Justice Gap* at 24 (26% of Black households, 23% of Hispanic households, and 11% of white and Asian households have incomes below 125% of poverty).



is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.” SCR 20 Preamble: A Lawyer’s Responsibilities; *see also In re WisTAF*, 2005 WI 35, at 3. Lawyers “are admitted to the rank of the bar not only that they may practice their profession on behalf of those who can pay well for their services, but that they may assist the courts in the administration of justice.” *Green Lake County v. Waupaca County*, 113 Wis. 435, 436, 89 N.W.2d 549 (1902); *see also Lathrop v. Donohue*, 10 Wis. 2d 230, 237, 102 N.W.2d 404, 408 (1960), *aff’d*, 367 U.S. 820 (1961) (lawyers “have been considered essentially and primarily as officers of the court admitting them”) (*quoting In re Greer*, 52 Ariz. 385, 81 P.2d 96, 98 (1938)); *Matter of State Bar of Wisconsin: Membership*, 169 Wis. 2d 21, 26-27, 485 N.W.2d 225, 227-28 (1992) (Bablitch, J, concurring) (“Lawyers not only have a responsibility to their clients, they have an equal responsibility to the courts in which the rule of law is practiced, and to society as a whole to see that justice is done.”).<sup>31</sup>

A fully functioning adversarial system with lawyers on both sides benefits society at large, but it also directly benefits lawyers. Ethical rules, especially SCR 20:4.3, which prohibits giving legal advice to an unrepresented opposing party, make it more difficult for lawyers to communicate and reach reasonable resolutions with unrepresented parties. *See Brito & Campos Ugaz*, “Asymmetry of Representation in Poor People’s Courts,” 92 *Fordham L. Rev.* 1263, 1272-75 (2024).

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<sup>31</sup> Lawyers who provide *pro bono* services, consistent with SCR 20:6.1, and otherwise contribute to legal aid programs, such as through donations to the Wisconsin Equal Justice Fund, have a significant impact, but do not come close to meeting the needs of low-income people facing legal problems.

In addition, self-represented litigants may not trust opposing lawyers to deal fairly with them, further impeding settlement.<sup>32</sup> As the research cited above demonstrates, low-income litigants who have lawyers are more likely to achieve settlements that avoid the expense and risk of trial and benefit lawyers for both parties. *See, e.g., Shriver Act Eval.* at 16 (describing outcomes of eviction cases).

In litigated cases, lawyers are often frustrated by self-represented opponents' lack of understanding of and adherence to procedural rules, by the delays caused by those misunderstandings, by the ethical rules that constrain the lawyer but not self-represented litigants, and even by the leniency courts may show such parties. *See, e.g.,* Frederick, "Learning to Live with Pro Se Opponents," 22:7 *GP Solo* 48, 50 (Oct./Nov. 2005) ("[O]pposing a pro se litigant often means additional headaches. Lawyers complain that pro se litigants don't know or follow court rules, don't understand or obey the law, and, worse, that judges give them unfair leeway. . . . [L]awyers may legitimately find that dealing with a pro se litigant poses special ethical challenges.") Providing lawyers to low-income parties can mitigate these frustrations and inefficiencies for opposing lawyers.

In addition, and very importantly, lawyers derive financial and other professional benefits from enhanced public perceptions of the fairness and legitimacy of the legal system in which they work.<sup>33</sup> These special benefits to

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<sup>32</sup> Such mistrust may be warranted. *See, Engler, "Out of Sight and Out of Line: The Need for Regulation of Lawyers' Negotiations with Unrepresented Poor Persons," 85 Cal. L. Rev. 79 (1997).*

<sup>33</sup> Although the hypothesis does not appear to have been empirically tested, it stands to reason that, by enhancing public perceptions of the fairness and efficiency of the legal system, greater access to representation would lead more people with the ability to pay to

lawyers and the legal system in which they function justify special contributions to funding civil legal services for people in poverty. *In re WisTAF*, 2005 WI 35, at 5 (“We deem the assessment necessary to maintain the integrity and efficiency of the judicial system in this state, and fully consistent with the heightened obligations of lawyers . . . .”). Increasing lawyers’ contribution to civil legal services funding in a time of increased need for services and declining funds from other sources “is fully consistent with activities recognized as permissible under the state and federal constitutions.” *Id.* at 6; *see also McDonald*, 4 F.4th at 250 (“funding legal aid and encouraging *pro bono* service are permissible ends . . . to pursue” through mandatory lawyer dues).

### III. Other states require their lawyers to pay legal aid assessments.

In Illinois and Minnesota, lawyers pay mandatory registration fees or assessments that exceed the current assessment for Wisconsin lawyers. Minnesota lawyers pay \$75 annually (Minn. Admin. Order Rule 9-7-23), generating approximately \$2 million for legal services in 2023. Illinois lawyers pay \$95 per year (Ill. R. 756), generating approximately \$7 million in 2023.

Other states, either through statute, court rules or mandatory bar rules, also require attorneys to fund civil legal aid. *See, e.g., Tex. State Bar Act § 81.054(c) &*

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turn to the legal system, and to lawyers, to resolve their disputes. *Cf.* Sandefur, “Elements of Professional Expertise: Understanding Relational & Substantive Expertise through Lawyers’ Impact,” 80 *Amer. Soc. Rev.* 909, 917 (2015) (observing that if all tenants had lawyers, “landlords might change their behavior by moving to universal representation themselves”).



(j); State Bar of Texas Legal Services Fee Information Page; Missouri (Mo. R. 6.01(m)); Pennsylvania (Pa.R.P.C. 1.15(u)).

#### **IV. Investments in civil legal aid benefit all state residents.**

While investments in legal aid most directly benefit low-income litigants, courts and lawyers, those investments also produce tangible benefits for the entire state.<sup>34</sup> WisTAF recently commissioned a study analyzing the economic impact of civil legal aid services provided by their grantees. Smith, *Economic Impact of Civil Legal Aid in Wisconsin* (July 2023). The study concluded that the 12 legal aid providers examined “generated a combined economic impact of \$176 million, representing an 8.4-to-1 return on the total funding they received in 2021.” *Id.* at 2.<sup>35</sup> The economic benefits included: \$18 million in cost savings for governments, charities, lending institutions and others through preventing crisis situations; \$73 million in direct economic benefits for disadvantaged households; \$14 million in direct return to health care providers; and a multiplier effect of \$71 million, from dollars entering Wisconsin that are spent in businesses throughout the state. *Id.*

Those economic benefits were the product of the work of lawyers who, among other outcomes for their clients, obtained 578 orders of protection or other injunctive relief in domestic violence situations and provided representation in 943

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<sup>34</sup> Civil legal aid programs funded by WisTAF serve residents in every county in Wisconsin, impacting a diverse group of individuals. *Growing Impact* at 10; *Stepping Up for Justice* at 10.

<sup>35</sup> Studies in other states have found similarly powerful direct and indirect benefits from expenditures on legal aid. *See, e.g.,* Flaherty, Meyer & Yost, *Economic Impact of Civil Legal Aid in Pennsylvania* (2020); *see also* Summary of Cost Benefit Analyses of Legal Services.

cases that helped individuals gain financial or emotional independence from an abuser. *Id.* at A-22. Civil legal aid lawyers also provided extended representation in 2,541 cases involving eviction, foreclosure, and other legal processes involving forced relocation. Legal representation delayed forced removal or stopped it completely in 95% of cases. *Id.* at A-23.

An increase in funding for legal aid will be a good investment for all Wisconsinites.

## CONCLUSION

In Wisconsin, attorney fee assessments under SCR 13.045 are an important and uniquely stable part of legal aid funding, not subject to fluctuations in interest rates or the vicissitudes of political funding battles or federal prosecutorial practices. The PILSF assessment has not, however, kept pace with inflation or with increases in the demand for and costs of providing legal services to low-income people. As the petition that led to the original assessment noted, “a \$50 assessment is an amount less than . . . the value of one billable hour per year.” Petition 04-05, at 13. In today’s dollars, the assessment amounts to much less.

For the reasons set forth above, the Petitioners request that the Court adopt the proposed amendment to SCR 13.045 and provide such other and further relief as the Court deems just and necessary.

Petitioners have consulted with the Civil Legal Aid Alliance of Wisconsin, the Executive Director of WisTAF, and staff leaders and current and incoming presidents of the State Bar of Wisconsin about this petition.

Respectfully submitted this 3rd day of July, 2024.

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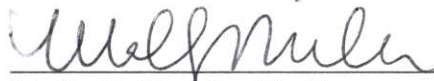
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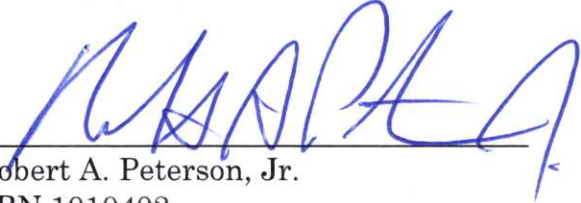
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## **Addendum**

### **Description of Petitioners**

The **Wisconsin Access to Justice Commission (WATJC)** was created by the Wisconsin Supreme Court at the request of the State Bar of Wisconsin to aid the courts in improving the administration of justice. WATJC's mission is to develop and encourage means of expanding access to the civil justice system for unrepresented low-income Wisconsin residents. WATJC's board members are appointed by the Wisconsin Supreme Court (5 directors), Governor (3), State Bar of Wisconsin (4), Wisconsin Senate (1), Wisconsin Assembly (1), Marquette University Law School (1), University of Wisconsin Law School (1), the Wisconsin Trust Account Foundation (1), and the Wisconsin Tribal Judges Association (1).

The **Wisconsin Equal Justice Fund (WEJF)** is a nonprofit organization raising private funds for three of the largest providers of legal aid services in the state: Disability Rights Wisconsin, Judicare Legal Aid, and Legal Action of Wisconsin. WEJF's vision is for every Wisconsinite in need to have attorney assistance regardless of their financial circumstances. We know that leads to fairer outcomes and a more efficient and effective court system. WEJF receives support and oversight from their 30-person Board of Directors consisting of attorneys from 13 of the 14 largest law firms in Wisconsin; attorneys from solo, small, and medium-sized law firms; several large Wisconsin corporations; both Wisconsin law schools; and leaders from the three WEJF beneficiary organizations.

**Judicare Legal Aid (JLA)** was organized by the State Bar of Wisconsin in 1966 to provide legal services to low-income people in Wisconsin, initially by paying private attorneys to provide representation to those who would otherwise be unable to hire a lawyer. JLA continues to involve the private bar, but now also provides services in its 33-county service area in northern Wisconsin through staff attorneys and advocates. JLA provides free civil legal help to those who cannot otherwise afford it. From educating clients about their rights to advocating on their behalf, JLA lawyers and legal advocates provide tailored services based on each person's unique situation. JLA provides legal services to Native American people statewide.

**Legal Action of Wisconsin** provides high quality civil legal services and advocacy, free of cost, to those most in need. The organization, which originated in 1968, serves approximately 20,000 people each year in 39 counties in southern Wisconsin and agricultural workers statewide.

**Legal Aid Society of Milwaukee** has provided quality, free civil legal services to eligible Milwaukee County residents for over a century. Legal Aid Society's mission and passion is equal justice for all and ensuring that the justice system works for everyone, not just those of means.

**Disability Rights Wisconsin (DRW)** is a private non-profit organization that protects the rights of people with disabilities statewide. DRW's mission is to advance the dignity, equality, and self-determination of people with disabilities. DRW pursues justice on matters related to human and legal rights. Created in 1977 in response to federal law as Wisconsin's "Protection & Advocacy" agency for people with developmental disabilities, DRW now provides a broad range of investigative, legal and training services benefiting people with disabilities.

**Advocacy & Benefits Counseling for Health, Inc. (ABC for Health)** is a Wisconsin-based, nonprofit public interest law firm that promotes health equity and social justice. Established in 1994, ABC for Health is dedicated to ensuring health care access for children and families. ABC for Health's mission is to provide health care consumers with the services and support they need to navigate a complex health care financing system.

**Centro Legal** works to expand access to the court system and to assure quality legal representation for clients regardless of income, ethnicity, or language by providing legal education and representation to low-income clients who are in transition out of poverty toward safety and self-sufficiency. Since 1991, Centro Legal has served thousands of families and individuals in the Milwaukee area. Through free and low-cost legal advice, representation, and mediation services for family law issues, the agency ensures that clients in transition move forward with stronger, more stable family foundations.