2025 WI 14

SUPREME COURT OF WISCONSIN

No. 24-05

In the Matter of Amendment of Supreme Court Rule 13.045

FILED

APR 24, 2025

Samuel A. Christensen
Clerk of Supreme Court
Madison, WI

On July 3, 2024, 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 (Petitioners), filed the present rule petition, asking the court to amend Supreme Court Rule 13.045(1) to increase the annual assessment of attorneys for the Public Interest Legal Services Fund (PILSF), which supports legal services to people of limited means in non-criminal matters. The current assessment is $50 annually. The Petitioners request an increase to a $75 annual assessment, beginning on July 1, 2025, and then to $100, beginning July 1, 2027.

At closed conference on September 3, 2024, this court voted to solicit public comment and schedule this matter for a public hearing. A letter to interested persons was circulated on September 5, 2024. On September 9, 2024, the State Bar of Wisconsin requested an extension of

the comment period. By letter dated September 19, 2024, the court extended the comment period to December 13, 2024. The court received 34 comments in response to the petition. The State Bar of Wisconsin filed a comment indicating that it generally supported the goals of the petition, but did not take a formal position on whether the court should grant the petition. Attorney Lisa Lawless filed a comment in opposition to the petition.

The remaining comments all supported granting the petition. Those comments were filed by the following groups and individuals: The Center Against Sexual & Domestic Abuse; Everyone Cooperating to Help Everyone Else; Rainbow House Domestic Abuse Services; Wisconsin Coalition Against Sexual Assault; United Way of Marathon County; Christine Ann Domestic Abuse Services, Inc.; Catholic Multicultural Center; Tenant Resource Center; Homeless Services Consortium of Dane County; Wisconsin Trust Account Foundation, Inc.; Wisconsin Elder Coalition; Wisconsin Primary Health Care Association; Wisconsin Justice Initiative; American Civil Liberties Union of Wisconsin Foundation; New Beginnings APFV; Madison Area Technical College; Vital Strategies; Brighter Tomorrows; Kids Matter, Inc.; End Domestic Abuse Wisconsin; Center for Veterans Issues; Northcentral Technical College; North Central Community Action Program; Attorney John Kaiser; Attorney Steven Silverstein; Attorney John T. Bannen; Attorney Jeffrey Jay Patzke; Attorney Kira E. Loehr; Judge David D. Raasch (ret.); Marquette University Law School Students; and various Pro Bono Partners from Quarles and Brady, LLP.

The court issued an order for a public hearing on January 17, 2025. The court held a hearing on the petition on March 13, 2025. The petition was presented by the Honorable Richard Sankovitz (ret.) of Wisconsin

Access to Justice. The following individuals spoke in favor of the petition: Attorney James Gramling, Board of Directors of the Wisconsin Justice Initiative; Connor Gorrell, 2025 Juris Doctor Candidate, Marquette University Law School; the Honorable William Domina, Waukesha Count Circuit Court; Mike Rust, Chief Operating Officer, ABC for Rural Health, Inc.; Loreen Glaman, Co-Chair, Wisconsin Elder Justice Coalition; Jeff Patzke, Judicare and Legal Action of Wisconsin volunteer; and Angela Medcalf, Staff Attorney at the Legal Services Program at Vivent Health. Ryan M. Billings, President of the State Bar of Wisconsin, provided information concerning State Bar membership views on the petition. No parties spoke in opposition. At the ensuing open administrative conference, the court voted 4-3 to grant the petition.

As we wrote in adopting the first PILSF assessment, Wisconsin's citizens "increasingly lack access to legal representation for fundamental civil legal issues such as custody matters, domestic violence, housing, government benefits, and health care." S. Ct. Order 04-05, 2005 WI 35, at 2. In our legal system, "access to justice is sometimes synonymous with access to a lawyer," and without one, individuals' pressing legal needs may remain unmet, or they may be forced to pursue those needs pro se. See id. at 2-3.

Those words are just as true today and yet, in the twenty years since, we have never adjusted the PILSF assessment to keep up with inflation. This is at a time when other sources of funding like federal

grants have been cut or stopped entirely.[1] Moreover, today there are still far too few attorneys to serve the critical legal needs of low-income people. According to a forthcoming report by the Wisconsin Trust Account Foundation (WisTAF), "[t]here is roughly one attorney for every 4,300 people in Wisconsin with incomes below 125% of the federal poverty level." And one public-interest legal services organization, Legal Action of Wisconsin, reports that it must decline services to otherwise eligible people as much as 75% of the time due to a lack of resources. In short, the need for civil legal aid far exceeds the currently available resources.

Our court, and attorneys across the state, bear a special responsibility to address this critical unmet need. The Wisconsin Constitution vests this court with responsibility for the administration of justice in our state. See Wis. Const. art. VII. Additionally, lawyers are officers of the court, with their own professional responsibilities to the legal system. See Green Lake County v. Waupaca County, 113 Wis. 435, 436, 89 N.W.2d 549 (1902) (explaining that 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"). Although the bench and bar alone cannot

[1] See Hope Kirwan, Groups serving marginalized communities may be left out of state funding for crime victims, Wis. Pub. Radio (Mar. 26, 2024), available at: https://www.wpr.org/news/voca-marginalized-communities-left-out-of-state-funding-crime-victims (explaining that federal grants to Wisconsin under the Victims of Crime Act were cut by nearly 70%).

shoulder the full burden of meeting the unmet civil legal needs of low-income people, we all bear a responsibility to do our part.

This assessment, which supports direct legal services to people in need, is "necessary to maintain the integrity and efficiency of the judicial system of this state, and [is] fully consistent with the heightened obligations of lawyers, both to our justice system and to assist this court with the effective administration of justice." See S. Ct. Order 04-05, 2005 WI 35, at 5 (citing State v. Holmes, 106 Wis. 2d 31, 44, 315 N.W.2d 703 (1982)). And as we explained when we first adopted it, the PILSF assessment is constitutional. Id. at 5-6.

Therefore,

IT IS ORDERED that, effective July 1, 2025:

SECTION 1. Supreme Court Rule 13.045(1) is amended to read:

13.045(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. ~~The~~ Commencing with the State Bar's 2026 fiscal year (July 1, 2025 through June 30, 2026), the assessment shall be $~~50.00~~75.00. Commencing with the State Bar's 2028 fiscal year (July 1, 2027 through June 30, 2028), 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.

IT IS FURTHER ORDERED that notice of the above amendments be given by a single publication of a copy of this order in the official publications designated in SCR 80.01, including the official publishers' online databases, and on the Wisconsin court system's web site. The State Bar of Wisconsin shall provide notice of this order.

Samuel A. Christensen
Clerk of Supreme Court

¶1 REBECCA GRASSL BRADLEY, J. *(dissenting).* In 1794, then-Congressman James Madison said, "[I] [can]not undertake to lay [my] finger on that article in the . . . Constitution which granted a right to Congress of expending, on objects of benevolence, the money of their constituents." 4 Annals of Cong. 170 (1794). Although Congress has expended taxpayer money on "objects of benevolence" with impunity (notwithstanding the admonition of the Father of the Constitution) at least the legislative branch possesses the power of the purse. This court does not, so the majority orders the attorneys it oversees to expend their money on the majority's chosen objects of benevolence, despite no constitutional authority to do so.

¶2 By increasing the amount attorneys are required to pay for the Public Interest Legal Services Fund (PILSF), the majority doubles-down on this court's original usurpation of exclusive legislative authority and improperly taxes attorneys for the privilege of practicing law in this state. Although the goals of the program are laudable, as Justice David T. Prosser observed at this program's inception twenty years ago, "a laudatory end does not justify an illegitimate means." S. Ct. Order 04-05, 2005 WI 35, ¶1 (Prosser, J., dissenting) (attached to this dissent as Appendix 1). Because the majority authorizes an unconstitutional means to achieve its ends, I respectfully dissent.

¶3 Mirroring the United States Constitution, the Wisconsin Constitution enshrines the "tripartite division" of the branches of government, "each with distinct functions and powers." Gabler v. Crime Victims Rights Bd., 2017 WI 67, ¶11, 376 Wis. 2d 147, 897

N.W.2d 384 (citation omitted). The Wisconsin Constitution vests "the legislative power . . . in a senate and assembly," "the executive power . . . in a governor," and the "judicial power . . . in a unified court system." Wis. Const. art. IV, § 1; id. art. V, § 1; id. art. VII, § 2. As Justice Prosser observed, the constitution gives the legislature——not the judiciary——exclusive power to levy taxes. S. Ct. Order 04-05, 2005 WI 35, ¶¶19-20 (Prosser, J., dissenting) (citing Wis. Const. art. XIII); see also State ex rel. Thompson v. Giessel, 265 Wis. 207, 213, 60 N.W.2d 763 (1953) ("The legislature has plenary power over the whole subject of taxation.").

¶4 Inherent in the judicial power vested in the supreme court is the authority to regulate the practice of law, as well as general authority to "regulate[] the court's budget, court administration, the bar, and practice and procedure." State v. Holmes, 106 Wis. 2d 31, 45, 315 N.W.2d 703 (1982); See also Flynn v. Dep't of Admin., 216 Wis. 2d 521, 550, 576 N.W.2d 245 (1998) ("The court has exercised its inherent authority to regulate members of the bench and bar."). That authority allows the court to allocate funds appropriated by the legislature for court functioning——not to raise revenue beyond the legislature's appropriation, much less for third parties. See Flynn, 216 Wis. 2d at 549 ("Wis. Const. art. VII, § 3 gives this court authority to formulate and carry into effect its budget——funds appropriated by the legislature for the court's use.").

¶5 As Attorney Lisa Lawless explained in her Comment to the petition, the majority's imposition of a tax on Wisconsin attorneys

to raise revenue for the Wisconsin Trust Account Foundation, Inc. (WisTAF) lacks a limiting principle. The majority's rationale for the PILSF assessment could justify any number of meritorious——but utterly unconstitutional——judicial fundraising efforts at attorneys' expense, provided the majority deems the legislature's appropriation insufficient to fund, for example, courthouse construction or staff salaries. See Comment of Lawless at 13-21, Rule Pet. 24-05. The majority could also tap attorneys to subsidize its preferred social causes, with nothing more than an assertion that such funding is "necessary to maintain the integrity and efficiency of the judicial system." S. Ct. Order 04-05, 2005 WI 35, p. 5.

¶6 The court compels bar membership as a condition of practicing law in Wisconsin, having declared the "right to practice law is not a right but is a privilege subject to regulation." Lathrop v. Donohue, 10 Wis. 2d 230, 237, 102 N.W.2d 404 (citing Petition for Integration of the Bar of Minnesota, 216 Minn. 195, 12 N.W.2d 515, 518 (1943)). Because regulation costs money, license fees may be charged to "cover the cost and the expense of supervision or regulation." State v. Jackman, 60 Wis. 2d 700, 707, 211 N.W.2d 480 (1973). Those fees, however, must be germane to the regulation of the legal profession and the improvement of the quality of the legal services it provides. Keller v. State Bar of Cal., 496 U.S. 1, 13-14 (1990). Otherwise, the charges amount to taxes disguised as regulatory fees, and nothing in the Wisconsin Constitution authorizes this court to impose them. See Jackman, 60 Wis. 2d 700, 707; S. Ct. Order 04-05, 2005 WI 35, ¶23-

28 (Prosser, J., dissenting). A lawfully imposed fee has the primary purpose of covering costs and expenses of supervision and regulation; an impermissible tax has the primary purpose of raising revenue. Jackman, 60 Wis. 2d at 707.

¶7 Unlike fees charged to fund attorney disciplinary proceedings, committee activities, or the Wisconsin Lawyers' Fund for Client Protection, the tax the majority imposes generates revenue for WisTAF.[1] As conceded in WisTAF's petition to this court, the "purpose [in seeking these funds] is to further the goal for which WisTAF was established: the continued funding of the provision of civil legal services for the people of Wisconsin who have a desperate need but cannot afford a lawyer." Rule Pet. 24-05 at 13. The PILSF assessment has nothing to do with regulating attorneys or improving the quality of the services they provide. Unlike funds set aside to compensate victims of attorney misconduct or to prosecute attorney disciplinary matters, both of which are grounded in the bar's collective responsibility for attorney conduct toward the public, the PILSF assessment augments funding from other public and private sources to provide professional legal assistance for those who cannot afford lawyers. See Comment of Lawless at 9, Rule Pet. 24-05 (citing several cases that support the collective responsibility component of attorney regulation). While a noble goal, this court lacks any authority to fund private organizations, much less to compel lawyers to pay

[1] Attorney Lawless' Comment, attached to this dissent as Appendix 2, cites cases from other states illustrating the types of programs commonly (and properly) covered by mandatory bar fees collected from attorneys. See Comment of Lawless at 9 n.3, 13 n.4, 21 n.7, Rule Pet. 24-05.

for it. Such funding is the prerogative of the political branches of government, or private organizations.

¶8 Advocates for the petition label the PILSF assessment a "fee" and deny it is a tax, invoking this court's inherent authority to regulate the practice of law in this state as a basis for its imposition. That argument elevates form (and title) over substance——contrary to precedent governing whether a charge constitutes a tax. See Bentivenga v. City of Delavan, 2014 WI App 118, ¶¶6-7, 358 Wis. 2d 610, 856 N.W.2d 546 ("The purpose, and not the name it is given, determines whether a government charge constitutes a tax.")(citing City of Milwaukee v. Milwaukee & Suburban Trans. Corp., 6 Wis. 2d 299, 305-06, 94 N.W.2d 584 (1959)). The court's authority to impose a fee on attorneys hinges upon its connection to covering the cost of regulating attorneys practicing law in Wisconsin.

¶9 The PILSF assessment bears no relationship to the cost of regulating attorneys in this state, rendering it an impermissible, purely revenue-raising tax. The majority claims "[t]his assessment, which supports direct legal services to people in need, is 'necessary to maintain the integrity and efficiency of the judicial system of this state . . . .'" S. Ct. Order 24-05, 2025 WI 14 at 5(citation omitted). Conclusory recitations of prior error are analytically flimsy and cannot justify an unconstitutional action. The majority cites no authority whatsoever for a court order requiring attorneys to fund private organizations. There is no plausible nexus between the unaffordability of civil legal services and the regulation of the

practice of law. If there were, the court could ostensibly dictate the hourly rate lawyers may charge.

¶10 Promulgating the Rules of Professional Conduct for Attorneys constitutes a permissible method of regulating the bar. SCR Chapter 20. The Preamble to those rules says, "A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel." SCR ch. 20 Preamble. This is more than a mere exhortation. Supreme Court Rule 20:6.1 makes the provision of pro bono legal services a "professional responsibility" of every lawyer: "Every lawyer has a professional responsibility to provide legal services to those unable to pay."[2]

[2] Supreme Court Rule 20:6.1 provides in full as follows:

> Voluntary pro bono publico service
>
> Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility the lawyer should:
>
> (a) provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to:
>
> (1) persons of limited means or
>
> (2)charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

The majority should trust lawyers to fulfill their professional responsibility.

¶11 In addition to declaring the provision of pro bono legal services a professional responsibility, SCR 20:6.1 also says, "a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means." The court could facilitate such financial support by ordering the addition of a line item on the annual bar dues statement via which attorneys could voluntarily contribute. The majority refuses this lawful option in favor of an unconstitutional mandatory tax.

¶12 There are reasons to view the PILSF assessment's efficacy skeptically, many of which Justice Prosser expressed in his dissent twenty years ago. See S. Ct. Order 04-05, 2005 WI 35,

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(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

¶¶29–32 (Prosser, J., dissenting). Regardless, this court should have first considered its constitutionality, an inquiry it never made in 2005 and neglects now. Because the PILSF assessment constitutes an unconstitutional tax on attorneys, the court has no authority to impose it. However well-intentioned, the majority's action violates the Wisconsin Constitution. I respectfully dissent.

¶13 I am authorized to state that ANNETTE KINGSLAND ZIEGLER, C.J., and BRIAN HAGEDORN, J., join in this dissent.

Appendix 1: Dissent of Justice David T. Prosser
S. Ct. Order 04-05, 2005 WI 35

¶1 DAVID T. PROSSER, J. *(dissenting).* The petition of the Wisconsin Trust Account Foundation, Inc. (WisTAF) asking this court to adopt a rule imposing a mandatory annual assessment on active members of the State Bar to pay for civil legal services for the poor has no precedent in our state. By adopting a modified version of the petition, the court breaks new ground and assumes powers that it does not possess. Because a laudatory end does not justify an illegitimate means, I respectfully dissent.

I

¶2 The State Bar of Wisconsin is a unified bar. Thus, as a general rule, to practice law in Wisconsin, a person must be a member of the State Bar.

¶3 Wisconsin lawyers may not "opt out" of membership in the Bar without losing their licenses. As a result, the Bar must carefully circumscribe its programs and activities to protect its members' constitutional rights. A unified bar, as opposed to a voluntary bar, violates a member's First Amendment rights if the bar spends the member's dues on political or ideological activities that are not reasonably related to regulating or enhancing the quality of the legal profession. See Keller v. State Bar of California, 496 U.S. 1, 15-16 (1990).

¶4 Keller involved the California Bar Association, a unified bar that used its members' dues to fund lobbying activities and promote a political agenda. The California Supreme Court concluded that the California Bar, which is recognized by statute as having a mission to promote the

improvement of the administration of justice and is given numerous quasi-regulatory functions to perform, should be considered a "government agency." See Keller v. State Bar of California, 767 P.2d 1020 (Cal. 1989). The California court viewed the Bar's "governmental" status as conveying a right to act like a government agency, or a government official: "If the bar is considered a governmental agency, then the distinction between revenue derived from mandatory dues and revenue from other sources is immaterial." Id. at 1029.

¶5 The United States Supreme Court disagreed. It reasoned that a bar association is more analogous to a labor organization than a government agency. Keller, 496 U.S. at 12. In the course of its opinion, the Court cited Lathrop v. Donohue, 367 U.S. 820 (1961), the case in which Wisconsin's unified or "integrated" bar was challenged. It quoted Lathrop to the effect that, "We think that the Supreme Court of Wisconsin, in order to further the State's legitimate interests in raising the quality of professional services, may constitutionally require that the costs of improving the profession in this fashion should be shared by the subjects and beneficiaries of the regulatory program . . . even though the organization . . . also engages in some legislative activity." Id. at 8 (quoting Lathrop, 367 U.S. at 843). The Keller Court added, with respect to the California Bar, that it is "appropriate that all of the lawyers who derive benefit from the unique status of being among those admitted to practice before the courts should be called upon to pay a fair share of the cost

of the [Bar's] professional involvement in this effort." Id. at 12.

¶6 Having reaffirmed the principle of a unified bar, the Supreme Court curtailed bar activities funded with mandatory dues. It limited the use of dues to activities justified by the State's interest in regulating the legal profession and improving the quality of legal services, id. at 13-14, and it decried the use of mandatory dues for activities of an ideological nature. Id. at 14. See also Alper v. The Florida Bar, 771 So. 2d 523, 525-26 (Fla. 2000) (dues to fund ballot initiatives on merit selection of judges did not violate First Amendment only because dissenters could opt-out by demanding a refund of dues spent for that purpose).

¶7 In the wake of Keller, some courts have determined that a state bar may permissibly support causes of an ideological nature if membership in the bar is not mandatory, or if the bar permits its members to demand refunds of mandatory dues used for ideological activity. If a bar chooses to follow the latter procedure, it must adopt certain safeguards to assure that no money serves impermissible purposes and that the complaining members have a chance to obtain complete information about and receive a fair hearing on the contested issues. Accord Chicago Teachers Union v. Hudson, 475 U.S. 292, 304-09 (1986) (Union's dues collection procedures constitutionally defective).

¶8 This court is clearly cognizant of the Keller/Hudson formula, as evidenced by Supreme Court Rule 10.03(5)(b).[1] This

[1] SCR 10.03(5)(b) provides:

> 1. The State Bar may engage in and fund any activity that is reasonably intended for the purposes of the association. The State Bar may not use compulsory dues of any member who objects to that use for political or ideological activities that are not reasonably intended for the purpose of regulating the legal profession or improving the quality of legal services. The state bar shall fund those political or ideological activities by the use of voluntary dues, user fees or other sources of revenue.
>
> 2. Prior to the beginning of each fiscal year, the state bar shall publish written notice of the activities that can be supported by compulsory dues and the activities that cannot be supported by compulsory dues. The notice shall indicate the cost of each activity, including all appropriate indirect expense, and the amount of dues to be devoted to each activity. The notice shall set forth each member's pro rata portion, according to class of membership, of the dues to be devoted to activities that cannot be supported by compulsory dues. The notice shall be sent to every member of the state bar together with the annual dues statement. A member of the state bar may withhold the pro rata portion of dues budgeted for activities that cannot be supported by compulsory dues.
>
> 3. A member of the state bar who contends that the state bar incorrectly set the amount of dues that can be withheld may deliver to the state bar a written demand for arbitration. Any such demand shall be delivered within 30 days of receipt of the member's dues statement.

rule recognizes that "The State Bar may not use compulsory dues of any member who objects to that use for political or ideological activities that are not reasonably intended for the purpose of regulating the legal profession or improving the quality of legal services." SCR 10.03(5)(b)1.

¶9 If one interprets the new mandatory assessment for WisTAF as a component of mandatory bar dues, the assessment is plainly contrary to First Amendment principles. The Wisconsin Trust Account Foundation is organized under SCR Chapter 13. It presently receives money from the interest on trust accounts under SCR 20:1.15(c)(1) and makes grants to organizations. Between 2000 and 2004, WisTAF made grants totaling $7,637,335 to such organizations as the American Civil Liberties Union of

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> 4. If one or more timely demands for arbitration are delivered, the state bar shall promptly submit the matter to arbitration before an impartial arbitrator. All such demands for arbitration shall be consolidated for hearing. No later than 7 calendar days before the hearing, any member requesting arbitration shall file with the arbitrator a statement specifying with reasonable particularity each activity he or she believes should not be supported by compulsory dues under this paragraph and the reasons for the objection. The costs of the arbitration shall be paid by the state bar.
>
> 5. In the event the decision of the arbitrator results in an increased pro rata reduction of dues for members who have delivered timely demands for arbitration for a fiscal year, the state bar shall offer such increased pro rata reduction to members first admitted to the state bar during that fiscal year and after the date of the arbitrator's decision.

SCR 10.03(5)(a), SCR 10.03(6), and SCR 10.03(6m) are amended by the new rule.

Wisconsin, Inc. ($105,000), the AIDS Resource Center of Wisconsin ($5,000), and Legal Action of Wisconsin ($3,313,824).[2] These organizations are singled out because, according to the State Ethics Board, they employ registered lobbyists.

¶10 Some of these organizations not only lobby the legislature but also "lobby" the courts on rules petitions. In addition, they take action somewhat analogous to lobbying by filing amicus briefs in this court, the court of appeals, and federal courts. For example, Legal Action has filed appellate briefs in a number of important cases.[3]

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[2] Legal Action of Wisconsin has now merged with Legal Services of Northeastern Wisconsin and Western Wisconsin Legal Services. Together these organizations received $4,287,809 between 2000 and 2004.

[3] See Kolupar v. Wilde Pontiac Cadillac, 2004 WI 112, 275 Wis. 2d 1, 683 N.W.2d 58 (attorney's fee and costs award); Baierl v. McTaggart, 2001 WI 107, 245 Wis. 2d 632, 629 N.W.2d 277 (landlord-tenant dispute); Flynn v. DOA, 216 Wis. 2d 521, 576 N.W.2d 245 (1998) (propriety of legislative action lapsing three million dollars from court automation fund); Joni B. v. State, 202 Wis. 2d 1, 549 N.W.2d 411 (1996) (parent's right to counsel in CHIPS proceedings) (ACLU filed a separate amicus brief); Rent-A-Center Inc. v. Hall, 181 Wis. 2d 243, 510 N.W.2d 789 (1993) (rent-to-own industry practices); Pliss v. Peppertree Resort Villas, Inc., 2003 WI App 102, 264 Wis. 2d 735, 663 N.W.2d 851 (unfair trade practices); Dawson v. Goldammer, 2003 WI App 3, 259 Wis. 2d 664, 657 N.W.2d 432 (landlord-tenant dispute); Blumer v. DHFS, 2000 WI App 150, 237 Wis. 2d 810, 615 N.W.2d 647 (method of determining medical assistance eligibility); Gorchals v. DHFS, 224 Wis. 2d 541, 591 N.W.2d 615 (Ct. App. 1999) (undue hardship waiver in medical assistance claims).

Legal Action of Wisconsin also filed amicus briefs in Wisconsin DHFS v. Blumer, 534 U.S. 473 (2002) and Secretary of Labor v. Lauritzen, 835 F.2d 1529 (7th Cir. 1987).

¶11 WisTAF itself recently supported a petition for an original action seeking a determination that the Wisconsin Constitution provides a right to counsel for indigent litigants in civil cases. See Kelly v. Circuit Court for Brown County, et al., No. 04-0999-OA.

¶12 The issue is not whether Legal Action of Wisconsin or the Wisconsin Coalition for Advocacy (another frequent appellate litigant), or other WisTAF grant recipients, are delivering important legal services, acting responsibly and lawfully, or performing at a high level. These organizations do excellent and necessary work. The issue is whether this court may compel members of the State Bar of Wisconsin to support these organizations by mandatory assessments for WisTAF. After all, by urging the adoption of a mandatory assessment and advocating mandatory pro bono reporting requirements,[4] some of these organizations are, in effect, lobbying against positions taken by the State Bar of Wisconsin.

¶13 Advocates of the new assessment contend that mandatory assessments of this sort are commonplace in other states. This is not correct. Thirty-two states plus the District of Columbia have unified bars. In only 2 of these states is there a mandatory non-refundable assessment of bar members to support legal services. In Texas, the legislature, not the court, imposed a $65 mandatory assessment to fund both civil and

[4] Petition 04-07 (In the Matter of the Amendment of Supreme Court Rules, Chapter 20, Rules of Professional Conduct for Attorneys), pending before this court.

criminal legal services. The Texas legislation is scheduled to sunset. In Missouri, the Board of Governors of the Missouri Bar increased mandatory bar dues by $20 to support civil legal services. This action was preceded by a study conducted by the Missouri Bar Foundation, a study conducted by the University of Missouri, and a legislative resolution asking the bar to show what Missouri lawyers were doing to help meet the legal service needs of the poor.

¶14 The truth is, there is no other state in which a supreme court has unilaterally imposed a mandatory non-refundable assessment on members of a unified bar. Wisconsin is unique.

II

¶15 The WisTAF petition made a pro forma effort to distinguish the new charge from bar dues. It labeled the charge an "assessment," and did not propose amending SCR Chapter 10 entitled "Regulation of the State Bar," to include the "assessment" in bar dues. Nonetheless, the petition asked that the "assessment" be collected with bar dues ("The annual assessments shall be collected at the same time and in the same manner as the annual membership dues for the State Bar are collected," SCR 13.045(2)), and incautiously earmarked the assessment for a "public interest legal service fund of the State Bar."

¶16 When the court was confronted with the implications of the Keller decision, however, it scurried to rewrite the proposed rule in an attempt to remove evidence of the many ties

between the WisTAF assessment and the State Bar. After scrubbing down the rule, the court effectively maintains the ties because WisTAF needs the Bar to collect money from its members, to enforce discipline against its members, and ultimately to reinstate its members once they pay up. Failure to pay the WisTAF assessment to the State Bar will result in suspension of an attorney's license to practice law in the same manner as a failure to pay membership dues, irrespective of how euphemistically the new rule portrays the assessment.

¶17 Ironically, the court's effort to distance the WisTAF assessment from the Bar could be counterproductive in a legal sense, inasmuch as a court-imposed mandatory assessment on Bar members to support a private charity is no more viable than a court-imposed mandatory assessment to support political or ideological activities. The court must try to defend its assessment as of value to Bar members.

III

¶18 If the "assessment" is construed as something other than a component of membership dues, the question arises as to what the assessment is. The State Bar's "WisTAF Petition Study Committee" (2004) discussed this question, namely, whether the assessment is a tax or a licensing fee, and implied that the assessment could easily be seen as a tax.

¶19 The Wisconsin Constitution gives the legislature exclusive power to levy taxes. Wis. Const. art. XIII.

> The legislature has plenary power over the whole subject of taxation. It may select the objects therefor, determine the amount of taxes to be raised, the purposes to which they will be devoted, and the manner in which property shall be valued for taxation. It may exempt property from taxation and limit the exercise of the taxing power of municipal corporations. These rules are subject only to constitutional restrictions and limitations.

State ex rel. Thomson v. Giessel, 265 Wis. 207, 213, 60 N.W.2d 763 (1953). See also Bryant v. Robbins, 70 Wis. 258, 271, 35 N.W. 545 (1887) ("the laying of taxes is properly the exercise of a legislative, as distinguished from a judicial, function").

¶20 The Wisconsin Constitution gives the legislature authority to delegate its taxing power in certain circumstances. It may delegate the power to tax property to municipal governments. Wis. Const. art. VIII, § 1. It may also delegate the taxing power, like its other powers, to administrative agencies. Clintonville Transfer Line v. PSC, 248 Wis. 59, 78, 21 N.W.2d 5 (1945). It may not delegate a taxing power to the judiciary.

¶21 Nothing in the Wisconsin Constitution gives this court the authority to impose a tax directly. The proper function of the court is to apply tax law set out by the legislature. Marina Fontana v. Village of Fontana-On-Geneva Lake, 107 Wis. 2d 226, 240, 319 N.W.2d 900 (Ct. App. 1982).

¶22 The mandatory state bar assessment has always been denominated a fee, not a tax, because bar dues are "in the same category as an annual license fee imposed upon any occupation or

profession which is subject to state regulation." Lathrop v. Donohue, 10 Wis. 2d 230, 238, 102 N.W.2d 404 (1960).

¶23 This court has identified a distinct difference between license fees and taxes. State v. Jackman, 60 Wis. 2d 700, 211 N.W.2d 480 (1973). In Jackman, we stated: "A tax is one whose primary purpose is to obtain revenue, while a license fee is one made primarily for regulation and whatever fee is provided is to cover the cost and the expense of supervision or regulation." Id. at 707, (citing State ex rel. Attorney General v. Wisconsin Constructors, Inc., 222 Wis. 279, 268 N.W. 238 (1936)).

¶24 In Jackman, the amount collected by the government in fees was roughly equal to the cost of a motorboat licensing program along with two related enforcement and boat safety programs. The court found that a surplus of $200,000 over 10 years (out of total revenues of more than $3 million) indicated that the primary purpose of the fee was not to raise revenue. Id. at 710. Instead, the fee was intrinsically related to the goal of boating safety.

¶25 Until now, the fees or assessments imposed on the State Bar were consistent with Jackman. Like the boat registration fee, the State Bar's dues go beyond the administrative cost of licensing Wisconsin lawyers. They help fund various services, such as lawyer referral, committee activity, and the lawyers assistance program, for State Bar members. The State Bar also uses the dues to publish the

Wisconsin Lawyer magazine and a variety of other bar publications.

¶26 However, as in Jackman, the scope of activities funded by the Bar was limited to activities designed to benefit the payors. In Jackman, that benefit came in the form of increased boat safety——both from the State's control over the number of licensed boats and the State's ability to provide increased safety patrols. In the same way, the State Bar's fees have benefited the lawyers who paid the fees.

¶27 The $50 assessment does not operate similarly. New revenue is not being generated for the primary purpose of paying the "cost and the expense of supervision or regulation" of the Bar's members. It is being generated for the socially desirable objective of providing civil legal services for persons who cannot afford an attorney. The assessment is rationalized as necessary to fill a serious hole in legal services funding.

¶28 Raising questions about the nature of the mandatory assessment is not intended to discredit the importance of providing civil legal services to the poor. It is intended to spotlight the precedent being set by this rule because there is no clear stopping point. The Texas legislature assessed members of the Texas Bar for criminal defense services as well as civil legal services. Experience in Texas and Minnesota reveals that mandatory assessments need not be limited to $50 per year. In fact, WisTAF acknowledges in a statement supporting the Kelly original action petition that the $50 assessment "will not completely meet the need of poor people in Wisconsin for the

assistance of counsel." The court's own order now says the same thing.

IV

¶29 In my view, the court has not given sufficient consideration to the potential adverse effects of this rule. First, the assessment may affect bar membership by prompting some active members to move to emeritus or inactive status, or to drop their membership entirely. Second, some members may shift contributions from the Wisconsin Law Foundation to payment of the mandatory assessment. Third, some members may divert section dues to payment of the mandatory assessment. Fourth, some members may reduce their pro bono service contribution because of the mandatory assessment, inasmuch as an attorney who contributes 100 hours of pro bono work must pay the same $50 flat fee as an attorney who does nothing.

¶30 Undoubtedly, some members will resent the fact that their financial contributions to the Law Foundation and their pro bono contributions of time and talent receive no credit whatsoever under the new rule. The rule thus creates a perverse incentive for an attorney to pay the $50 and stop contributing. This reaction would not be noble, but a court that exacts a mandatory assessment instead of working to inspire or credit voluntary contributions and service can have no complaint.

¶31 The court also fails to recognize the uneven impact of the assessment on Wisconsin attorneys. More than 80 percent of the law firms in Wisconsin have less than three attorneys. Many are solo practitioners. Some of these attorneys do very well

but others are marginal. What is nearly certain is that most attorneys in these small firms pay their own bar dues. This contrasts with the attorneys in many large law firms whose bar dues are paid by the firm.

¶32 In the abstract, $50 is not a large amount of money, but the new $50 assessment will arrive in the mail at the same time as state bar membership dues, section dues, supreme court assessments for the Office of Lawyer Regulation and the Board of Bar Examiners, the mandatory contribution to the Clients' Security Fund, and requests to assist the Law Foundation. Consequently, the assessment should not be evaluated in isolation because it arrives as part of a much bigger bill.

V

¶33 The court rushed to approve the WisTAF petition within hours of the public hearing. Its debate on the issues was incomplete. It has been trying to patch up its defective product ever since. Unlike the Washington Supreme Court, this court did not contribute any money for a study of legal services for the poor in civil cases. Unlike several courts, this court did not work with the legislature to leverage additional public funding for legal services. Unlike some other courts, this court rejected an opt-out provision to protect constitutional rights. It bluntly rejected a voluntary check off.

¶34 The majority resents any disagreement with this rule as uncaring and uninformed, viewing it as a frivolous snit about $50. I disagree. This court's action is unprecedented and carries serious constitutional implications for attorneys

throughout the United States. A remedy this drastic should have been preceded by judicial education, heartfelt persuasion, and a serious effort to obtain public funding. Because it was not, I respectfully dissent.

¶35 I am authorized to state that JUSTICE JON P. WILCOX joins this dissent.

Appendix 2: Comment by Attorney Lisa Lawless, Rule Petition 24-05 (Dec. 17, 2024)

SUPREME COURT OF WISCONSIN

In the Matter of the Amendment
of Supreme Court Rule 13.045

Rule Petition No. 24-05

COMMENT TO PETITION BY STATE BAR MEMBER

I, Lisa M. Lawless, a member of the State Bar of Wisconsin, file the following comment in response to Rule Petition 24-05, Attorney Assessments for Public Interest Legal Services (the "PILSF Petition"). I file this as an interested member of the State Bar, to provide the Court an analysis and conclusions concerning the constitutionality of the PILSF Assessment that has been charged to Wisconsin lawyers since 2006.

In this comment, I am speaking solely for myself as an individual Bar member, to provide this analysis and argument I have prepared. I file this in opposition to the PILSF Petition and to the PILSF Assessment as a whole, because, as shown below, the PILSF Assessment is unconstitutional because it is a tax upon lawyers. Under the separation of powers and considering the powers of the Supreme Court under the Wisconsin Constitution, the Supreme Court does not have the power to impose taxes. The PILSF Assessment is not a cost of practicing law, which the Supreme Court can properly impose on lawyers to pass on to lawyers the cost of practicing law. Rather, it is a fee imposed upon lawyers to provide

funds to legal services organizations to provide them funding to provide civil legal services to the indigent.

If it would assist the Court, I would be happy to appear at the hearing of the PILS Petition to briefly discuss these issues and answer any questions the Court may have arising from the following analysis and conclusions.

BACKGROUND

To provide personal background, I have been a member of the State Bar of Wisconsin since 1993. I am also a licensed member of the State Bars of Georgia and California. The Georgia and California Bars have lines on their annual bar dues statement providing for donations for civil legal services. Those are optional donations, giving attorneys the choice whether to donate and to determine the amount. For example, the Georgia Bar has a line for optional donation for the Georgia Legal Service Program, listing the donation as "Optional" and suggesting a donation of $100. *See* https://www.gabar.org/docs/default-source/membership/join/licensefeenoticeprorationschedule.pdf?sfvrsn=696438dc_4 As another example, the California Bar includes a line on the annual fee statement for "Access to Justice," for the Justice Gap Fund. It is listed as an "Optional Donation," with a recommended donation of $100.

Additionally, I am currently a member of the Board of Governors of the State Bar of Wisconsin representing District 2 (Milwaukee), serving since July 2022. In addition to the past two years, I also have served on the Board of Governors (BOG) in 2004-2008, 2011-2015, and 2017-2021. I was on BOG when the original petition was filed requesting the

WisTAF fee assessment on lawyers to fund civil legal services for the indigent. After the Court adopted the assessment in 2005, BOG discussed member concerns regarding the assessment and what action, if any, BOG would take concerning it.

Of course, the funding of legal services for the indigent in Wisconsin is a pressing public need and extremely important. The organizations that provide these civil legal services do incredibly important work which serves persons throughout our state. However, at the time of the original WisTAF assessment (2005-2006) and continuing to today, I had and have significant concerns about the constitutionality of a mandatory fee on lawyers to fund this public purpose. In 2006, I personally researched that issue and prepared a draft brief, which I circulated to BOG for discussion purposes. (It was not filed with the Court back then.). Much of that work product is contained in this comment.

The following analysis and conclusions are provided to assist the Court in deciding the PILS Petition. Under the oath we took to become Wisconsin attorneys, we swore to "support the constitution of the United States and the constitution of the State of Wisconsin." SCR 40.15. Thus, it is our duty as Wisconsin lawyers to support the federal and state constitutions and to speak up in the face of unconstitutional rules and initiatives.

For the reasons shown below, the Court should vacate the original PILSF Assessment and instead adopt a voluntary donation rule. Wisconsin attorneys should have the choice whether to make a donation to the PILSF, allowing them to

make it according to their own conscience and personal charitable priorities and considering their own financial circumstances.

Part I, below, discusses the constitutionality of the PILSF Assessment and provides analysis and authorities supporting the conclusion that it is unconstitutional. Part II addresses the specific issue of fees versus taxes and addresses certain case law that has been recently shared by supporters of the Petition for BOG's consideration of the discussion of what, if any, action to take on the PILSF Petition.

LEGAL ANALYSIS OF CONSTITUTIONALITY OF THE PILS ASSESSMENT

The PILSF Assessment is currently $50 annually and lawyers must pay it as a condition of practicing law, along with their State Bar dues and other assessments such as the assessments for the Officer of Lawyer Regulation ("OLR"), the Wisconsin Lawyers' Fund for Client Protection ("Client Protection Fund"), and the Board of Bar Examiners ("BBE"). The PILS Petition seeks to increase this assessment to $75 per year beginning July 1, 2025, and to $100 per year beginning July 1, 2027.

I. The PILSF Assessment Violates the Separation of Powers Because it is a Tax Imposed by the Judiciary and not a Cost of Regulating Attorneys.

"The doctrine of separation of powers is implicitly found in the tripartite division of government between the judicial, legislative and executive branches. Each branch has exclusive core constitutional powers, in which the other branches may not intrude." *Flynn v. Dept. of Admin.*, 216

Wis. 2d 521, 545, ¶ 38, 576 N.W.2d 245 (Wis. 1998). There are also areas of shared power between the branches of government.

To determine whether the PILSF Assessment unconstitutionally infringes the legislative power, the Court must first determine whether the subject matter of the statute falls within powers constitutionally granted to the judiciary. *See Flynn*, 216 Wis. 2d at 546, ¶ 39 (citing *State ex rel. Friedrich v. Dane Cnty Cir. Ct.*, 192 Wis. 2d 1, 14, 531 N.W.2d 32 (Wis. 1995)). The Court also must determine whether the subject matter of the assessment falls within the legislature's constitutional powers. If the subject matter of the rule is within the legislature's constitutional powers but neither the judiciary's nor executive's powers, it is within the legislature's "core zone of exclusive power and any exercise of authority by another branch of government is unconstitutional." *Flynn*, 216 Wis. 2d at 546, ¶ 39.

A. The Judiciary has the Inherent Power to Supervise and Administer the Court System and to Regulate the Admission and Discipline of Lawyers.

"The Wisconsin Constitution grants three separate and distinct branches of jurisdiction to this Court: (1) appellate jurisdiction; (2) general superintending control over inferior courts; and (3) original jurisdiction at certain proceedings at law and in equity." *Arneson v. Jezwinski*, 206 Wis. 2d 217, 225, 556 N.W.2d 721 (Wis. 1996). Specifically, Article VII, Section 3 of the Wisconsin Constitution provides: "The supreme court shall have superintending and administrative authority over all courts." This authority establishes "a duty

of the supreme court to exercise . . . administrative authority to promote the efficient and effective operation of the state's court system." *In re Jerrell*, 2005 WI 105, ¶ 41, 283 Wis. 2d 145, 699 N.W.2d 110 (internal quotations & citation omitted). Although this supervisory authority is "unquestionably broad and flexible," such authority "***will not be invoked lightly***." *Id.* (emphasis added); *see also Arneson*, 206 Wis. 2d at 226 ("However, we do not use such power lightly.").

The Court only exercises its superintending authority hesitantly, and only when it is "absolutely essential" to the administration of justice. *See In re Hon. Charles E. Kading* 70 Wis. 2d 508, 518, 235 N.W.2d 409 (1975). "This court will not exercise its superintending power where there is another adequate remedy . . . ." *Arneson*, 206 Wis. 2d at 226.

The Wisconsin Constitution "expressly confers upon this court superintending and administrative authority over the lower state courts." *State v. Jennings*, 2002 WI 44, ¶ 13, 252 Wis. 2d 228, 647 N.W.2 d142. This establishes a duty to exercise " 'administrative authority to promote the efficient and effective operation of the state's court system.' " *Id.* ¶ 14 (quoting *In re Grady*, 118 Wis. 2d 762, 783, 348 N.W.2d 559 (1984)). Superintending powers contemplate ongoing, continuing supervision of the lower courts in response to changing needs and circumstances. *Flynn*, 216 Wis. 2d at 548, ¶ 44.

1. **The Court May Not Impose Fees On Lawyers For Costs Unrelated to the Regulation of Lawyers.**

"[T]he authorities are well-nigh unanimous that the power to admit attorneys to the practice of law is a judicial function." *State v. Cannon*, 206 Wis. 374, 240 N.W.2 441, 451 (1932). "The court has exercised its inherent authority to regulate members of the bench and bar." *Flynn*, 216 Wis. 2d at 549, ¶ 47. The Court's inherent power under its superintending authority includes regulation of attorneys, regulation of the courts, and regulation of judges. *Jerrell*, 2005 WI 105, ¶¶ 87, 88 (Abrahamson, C.J., concurring) ("Using inherent, implied, or superintending power, or a combination thereof, the court has…exercised its power over courts, judges, and attorneys to protect the state, the public, the litigants, and the due administration of justice."; examples include establishment of the integrated bar and compelled payment of fees, and promulgation of the code of judicial ethics).

As held by this Court and courts throughout the United States, the regulation of lawyers includes admission requirements, discipline, and the requirement that attorneys contribute to a client protection fund, to compensate victims of attorney misfeasance or malfeasance. The inherent authority of the judiciary to regulate the practice of law includes the authority to impose fees necessary to carry out the court's responsibilities in this area. *In re Attorney Discipline System*, 79 Cal. Rptr. 2d 836, 842 (Cal. 1998).

The only fees this Court may charge attorneys, however, are those necessary for the regulation of attorneys, including for admission,[1] discipline, and continuing education requirements. *See In re Attorney Discipline System*, 79 Cal. Rptr. 2d 836, 843 (Cal. 1998) ("Bar membership fees used to fund attorney discipline are not taxes or appropriations, however. '[F]ees charged in connection with regulatory activities which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes.'") (internal quotations omitted) (quoting *Sinclair Paint Co. v. State Bd. of Equalization*, 15 Cal. 4th 866, 876 (1997)).[2]

Members of the State Bar may be charged fees that are necessary for the regulation of the legal profession and the improvement of the quality of legal services. *Keller v. State Bar of Cal.*, 496 U.S. 1, 14 (1990). In considering what fees

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[1] *Petition of Rhode Island Bar Ass'n*, 374 A.2d 802, 803 (R.I. 1977) (bar membership fees are a licensing fee not a tax, exacted for regulation only, without which the integrated bar would be impossible; "We concur with the view that the requirement that anyone admitted to practice law in the state be a member of the unified bar and pay dues thereto constitutes proper regulation of those engaged in the practice of law.").

[2] *See also Cantor v. Supreme Court of Pa.*, 353 F. Supp. 1307 (E.D. Pa. 1973) (denying constitutional challenge to court rule assessing attorneys to defray administrative and enforcement costs for attorney discipline program); *State ex rel. Ralston v. Turner* , 4 N.W.2d 302, 309 (Neb. 1942) (The inherent power of the judiciary "has been invoked in the admission, suspension, discipline and disbarment of attorneys and in these no legislative permission is considered requisite . . . ."); *In re Attorney Discipline System*, 79 Cal. Rptr. 2d 836, 841, 849 (Cal. 1998) (California Supreme Court has an "inherent responsibility and authority over the core functions of admission and discipline of attorneys"; collecting cases from throughout the United States holding similarly).

may be permissibly charged members of a mandatory bar under the First Amendment, the U.S. Supreme Court has explained: "the guiding standard must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or 'improving the quality of the legal service available to the people of the State.' " *Id.*

Client protection funds, for example, are routinely held to be a cost of attorney regulation. The regulation of the bar includes the power to require lawyers to bear a share of the costs for a client protection fund, to compensate clients who have been damaged by conduct of their attorneys.[3] The legal profession depends upon its reputation for honesty and integrity. Individual members of the bar must bear the cost of maintaining that reputation and contribute to the cost of client protection funds. Client protection funds are much like malpractice insurance, under which the costs of paying claims are distributed among all insureds in the form of premiums.

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[3] *In re Proposed Public Protection Fund Rule*, 707 A.2d 125, 126 (N.H. 1998) (Power of the court to supervise and discipline attorneys includes the power to require attorneys to contribute to a client protection fund to reimburse clients for losses caused by the dishonest conduct of New Hampshire lawyers, much like the rules on lawyer trust accounts, trust account certifications, and continuing legal education requirements.); *Beard v. N.C. State Bar*, 357 S.E.2d 694, 696 (N.C. 1987) (Annual assessment for client protection fund was held constitutional because it was a cost of regulation, "promulgated under the inherent power of the court to establish, control, and sustain the standards of the bar."); *Hagopian v. Justices of Supreme Judicial Court*, 429 F. Supp. 367 (D. Mass. 1977) (dismissing constitutional challenge to client protection fund rules); *In re Member of Bar of Supreme Court of Delaware*, 257 A.2d 382, 385 (Del. 1969) (Imposition of a client protection fund "is a valid exercise of our inherent power to maintain the standards required of the Bar, and to uphold its reputation by the imposition of collective responsibility for the conduct of its members.").

The funds are a cost of the attorney regulatory scheme, just like the costs of the disciplinary and enforcement program.

In granting the PILSF Assessment, the Court compared it to an assessment for client protection funds or for lawyer discipline. *In re Petition of WisTAF for a Rule Assessing Member of the State Bar of Wisconsin for an Annual Sum to Support Organizations that Provide Civil Legal Services to the Indigent of this State* ("PILSF Order"), 2005 WI 35, at 6 (3/24/2005).

In fact, the PILSF Assessment is distinguishable from those other fees in several very important ways. First, the PILSF Assessment does not represent the approximation of a cost that lawyers have created. It is not an estimation of cost at all, but rather an arbitrary figure that that the Court has determined that lawyers should reasonably donate for civil legal services for the poor. Second, the PILSF Assessment is not a fee for the cost of regulating lawyers -- it is not part of a shared cost of the disciplinary system or the cost of compensating clients for the failures of lawyers. Nor is it a cost of admission, education, or administration of the State Bar. Instead, it is a forced contribution to a fund that is used to serve society as a whole, which has been imposed to fill gaps that are caused by lack of government funding and lack of private donations generally. It would be no different than a forced contribution by the Court upon attorneys to help fund pay raises for court staff or construction of new courtrooms or courthouses in the midst of a funding crisis.

The Court's power over the practice of law relates to the admission, licensing, education, and discipline of Bar

members. It does not provide the Court the power to dictate how lawyers structure their practice or how they invest their resources or time. In establishing a mandatory bar association for this state, the Court explained that it has the power to ensure competency and diligence among attorneys, to control the quality of the legal system:

> We must reiterate, the primary duty of the courts as the judicial branch of our government is the proper and efficient administration of justice. Members of the legal profession by their admission to the bar become an important part of that process and this relationship is characterized by the statement that members of the bar are officers of the court. ***An independent, active, and intelligent bar is necessary to the efficient administration of justice by the courts. The labor of the courts is lightened, the competency of their personnel and the scholarship of their decisions are increased by the ability and the learning of the bar.*** The practice of the law in the broad sense, both in and out of the courts, is such a necessary part of and is so inexorably connected with the exercise of the judicial power that this court should continue to exercise its supervisory control of the practice of the law.
>
> The integration of the bar is no more undemocratic than the requirement of learning and good

> moral character of all who seek the privilege of practicing law. All members had the same opportunity and have freely chosen a profession subject traditionally to discipline and control by the courts. It is not undemocratic to require those who are privileged to practice law and are intrusted with the duty to secure or protect the property, rights, and liberties of others to become bound together in a united effort to increase their own capabilities, to maintain the high standards of the group, and to increase the effectiveness of their service to the public.

In re Integration of the Bar, 5 Wis. 2d 618, 622, 93 N.W.2d 601 (1958) (emphasis added).

The Court has broad disciplinary power over attorneys both in and out of court:

> The power of the court is not restricted in matters of discipline to misconduct connected only with cases pending in this court. The disciplinary power of the court extends to the entire field of the practice of the law by members who have been admitted to practice by this court. When a member of the bar is suspended or disbarred it is from the practice of the law, not only from appearing in court.

Id. at 626.

Moreover, the Court has made clear that other matters relating to the organization and administration of the bar are

left to the State Bar itself, to promote the purposes for which the bar was organized:

> The integrated State Bar of Wisconsin is independent and free to conduct its activities within the framework of such rules and by-laws. Within their confines this court expects the bar to act freely and independently on all matters which promote the purposes for which the bar was integrated subject to the general supervisory power of the court.

Id. at 626-27.

2. **The Power to Supervise and Administer the Court System Does not Include Imposing Taxes on Lawyers for a Program Benefiting the Public at Large.**

The PILSF Assessment does not fall within the Court's power to regulate the practice of law and shift the costs of that regulation to attorneys. The 2005 PILSF Order is clear that the assessment was not imposed as a cost of regulating lawyers.[4] Indeed, the Court praised the efforts of attorneys in providing pro bono legal services to needy persons and in providing donations to legal services organizations that

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[4] This is in contrast to cases upholding imposing costs upon lawyers for disciplinary programs. "[O]ur imposition of a fee upon practicing attorneys in order to fund a disciplinary system for attorneys not only is within our power, but also is necessary to fulfill our fundamental responsibilities concerning the regulation of the practice of law in our state." *In re Attorney Discipline System*, 79 Cal. Rptr. 2d 836, 859-60 (Cal. 1998); *see also Bd. of Overseers of the Bar v. Lee*, 422 A.2d 998, 1004 (Me. 1980) (Holding that the Maine rule requiring registration fees not a "tax." "It imposes upon attorneys a registration fee, which . . . is to be used to defray the costs of attorney registration, disciplinary investigation, hearing and enforcement, expenses of fee arbitrations . . . .").

provide such services. Rather, the assessment was imposed to help reduce the societal need for more of such services. Current funding and services are insufficient to meet all of society's needs for civil legal representation for the needy. Lawyers must address this societal need, the Court has determined, by making a mandatory donation to WisTAF, a grant-making organization.

Because the PILSF Assessment falls outside the Court's power to regulate attorneys, it falls outside the Court's authority entirely. The Court's superintending and administrative authority over ***the courts*** does not empower it to raise revenues from lawyers (or from any citizen) to fund the court system. That authority provides the Court the inherent power to keep the legal system operating and to provide due process. Descriptions of this authority make clear that is authority over the system and participants in it, which is funded by appropriations by the legislature.

The inherent power of the Court to supervise and administer the courts has been described as follows:

> "It is considered well established that a court has the inherent power to resort to a dismissal of an action in the orderly administration of justice. The general control of the judicial business before it is essential to the court if it is to function. 'Every court has inherent power, exercisable in its sound discretion, consistent within the Constitution and statutes, to control disposition of causes on its docket with economy of time and effort.' 14

> Am.Jur., Courts, p. 371, sec. 171, Inherent Powers of Courts, 1963 Supp., p. 77."

Jacobson v. Avestruz, 81 Wis. 2d 240, 245-46, 260 N.W.2d 240 (1977). The Court also has described the features of its inherent power to supervise and administer the court system as follows:

> Based upon these decisions, it is clear that this court has characterized the inherent power of courts as possessing two primary features: (1) the power must be such that it is related to the existence of the court and to the orderly and efficient exercise of its jurisdiction; and (2) the power must not extend the jurisdiction of the court nor abridge or negate those constitutional rights reserved to individuals. See 20 Am. Jur. 2d, Courts, sec. 78 (1965).

Id. at 247. In another case, this Court explained its inherent power as that necessary to "carry out judicial functions delegated to" the courts:

> Inherent judicial power has been explained by this court in the following terms: ". . . when the people by means of the constitution established courts, they became endowed with all judicial powers essential to carry out the judicial functions delegated to them. But the constitution makes no attempt to catalogue the powers granted. . . . These powers are known as incidental, implied, or inherent

> powers, all of which terms are used to describe those powers which must necessarily be used by the various departments of government in order that they may efficiently perform the functions imposed upon them by' the people."

In re Hon. Charles E. Kading, 70 Wis. 2d 508, 517, 238 N.W.2d 409 (1975) (footnote omitted).

This Court has a "general superintending control over all inferior courts," which "is as broad and flexible as necessary to insure the due administration of justice in the courts of this state." *Id.* at 519-20. "Judicial power extends beyond the power to adjudicate a particular controversy and encompasses the power to regulate matters related to adjudication. . . . In the past, in the exercise of its judicial power this court has regulated the court's budget, court administration, the bar, and practice and procedure, has appointed counsel at public expense, has created a judicial code of ethics and has disciplined judges." *State v. Holmes*, 106 Wis. 2d 31, 44, 45, 315 N.W.2d 703 (1982).

Thus, this Court's inherent power includes that which is "necessarily related to the existence of the courts and to the orderly and efficient exercise of its jurisdiction." *Id.* at 247. Such powers include, for example, the authority to assess the costs of impaneling a jury. *Id.* They also include the power to prescribe the requirements for the waiver of counsel in a plea colloquy with the court. *State v. Ernst*, 2005 WI 107, 283 Wis. 2d 300, 699 N.W.2d 92. "Superintending and administrative authority allows courts to formulate

'procedural rules not specifically required by the Constitution or the [Legislature].' " *Ernst*, 2005 WI 107, ¶ 19 (quoting *U.S. v. Hasting*, 461 U.S. 499 (1983)). The Court's inherent power also includes the power of courts to appoint their own bailiffs, to convene proceedings *ex parte* to determine whether air-conditioning of its courtroom is necessary for the efficient functioning of the court, and to order an air conditioner if necessary. *State ex rel Moran v. Dept. of Admin.*, 103 Wis. 2d 311, 317, 307 N.W.2d 658 (1981) (court had power to order Department of Administration to issue payment to purchase Lexis computerized research software, spending monies from the Court's budget).

The Court held that it was empowered to impose the PILSF Assessment upon attorneys under its superintending authority to ensure the "due administration of justice." If that were true, there would be no limit upon the power of the judiciary to raise funds for the justice system by taxing lawyers (or any citizen). If legislative funding were inadequate to serve all needs of the court system, the Court could, under this reasoning, impose a fee upon attorneys to help defray any budgetary shortfall. That is not the law.

As shown above, the superintending authority to ensure the due administration of justice is the authority over the lower courts, to ensure the proper functioning of the legal system. Through this power, the Court imposes procedural requirements to ensure due process, enacts rules of judicial and attorney ethics, and the like – mandates on the functioning of the system. The inherent powers of the judiciary are "those necessary for the judiciary to 'accomplish

its constitutionally or legislatively mandated functions.'" *Flynn*, 216 Wis. 2d at 548, ¶ 42.

Regarding the funds necessary to operate the judicial system, the Court has the power to draw up its budget and to spend appropriated monies accordingly. Included in the constitutional administrative authority is the "power to formulate and carry into effect the budget for the court system . . . ." *State ex rel Moran v. Dept. of Admin.*, 103 Wis. 2d 311, 317, 307 N.W.2d 658 (1981). Thus, "Wis. Const. art. VII, § 3 gives this court authority to formulate and carry into effect its budget—***funds appropriated by the legislature for the court's use***." *Flynn*, 216 Wis. 2d at 549, ¶ 45 (emphasis added). "One of the powers and responsibilities of an autonomous administrative body is to consider and approve a budget governing the use of funds by those subject to its control." *Moran*, 103 Wis. 2d at 317.

The Court has only the power to formulate and implement its budget – it does not have the power to raise funds by imposing fees on lawyers for the operation of the court system. The Court's budget is funded by appropriations from the legislature. The Court is not empowered to raise funds for the operation of court system apart from appropriations of the legislature. There is no authority or precedent allowing this Court (or, indeed, any court) to visit costs of the judicial system upon lawyers.[5] Indeed, the

[5] Most modern-day constitutional court provisions "give state supreme courts extensive superintending, supervisory, and administrative authority over the day-to-day operations of courts in the state, including, in some cases, a unified judicial budget." Buenger, "Of Money & Judicial Independence: Can Inherent Powers Protect State

Constitution bars courts from requiring lawyers to provide legal representation to needy persons without compensation. *State ex rel. Scott v. Roper*, 688 S.W.2d 757, 769 (Mo. 1985) (Missouri courts had no inherent power to appoint counsel or to compel attorneys to serve in civil actions without compensation.); *In Interest of D.B.*, 385 So. 2d 83 (Fla. 1980) (bar should not bear the entire fiscal burden of the state's responsibility to provide counsel in juvenile dependency proceedings); *Green Lake Cnty v. Waupaca Cnty*, 113 Wis. 425, 89 N.W. 549, 552 (1902) (Lawyers have an ethical obligation to perform legal services for those who cannot afford to pay for them; noting that at times lawyers may be compensated less than their full fee for representing indigent persons, and that they should represent indigent persons for reduced feeds "cheerfully, taking the small fee given by the law, without complaining.").

It is true that attorneys have an ethical obligation to provide pro bono services for persons of limited means. Funding for legal representation for low-income persons is a public policy falling within the realm of legislative priorities, however – it is not an obligation of the legal profession alone. *State ex rel. Stephan v. Smith*, 747 P.2d 816, 835-36 (Kan. 1987) ("The obligation to provide counsel for indigent

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Courts in Tough Fiscal Times?," 92 KY. L.J. 979, 1017 (2003). Examples of the inherent power of the courts to ensure "the efficient functioning and prompt and just disposition of litigation and business of the court" include, for example: "controlling courtroom behavior, ensuring that a court has adequate facilities for conducting court, hiring sufficient personnel to carry out the business of the court, managing dockets, controlling discovery, appointing and paying for court experts, and compelling payment of witness fees." *Id.* at 1023-24 (2003) (footnotes & citations omitted).

[criminal] defendants is that of the State, not of the individual attorney."). "The emerging view is that the responsibility to provide the Sixth Amendment right to counsel is a public responsibility that is not to be borne *entirely* by the private bar." *State ex rel. Stephan v. Smith*, 747 P.2d 816, 841 (Kan. 1987).

Courts throughout the country are under extreme difficulties in meeting basic funding needs, and they are beholden to the legislature, a separate but co-equal branch of government, to fund their existence. Buenger, *supra* p.18 n.5, at pp. 979-82 (courts are forced to curtail hours, lay off employees, close courtrooms and courthouses, and terminate programs). When faced with funding crises so severe as to threaten the operation of the court system and to place justice in peril, supreme courts will on occasion find it necessary to take matters into their own hands and exercise their power to compel *the legislative branch* to fund vital court functions. There is no precedent or authority, however, to allow a court to compel lawyers to fund court functions or to bear a societal cost associated with legal services provided to the public.

Court orders compelling legislative funding are typically a last resort, exercised sparingly. "[T]he judiciary commits a separation of powers violation if it exercises a legislative power. We run the risk of doing just that when we order the legislature to fund the judiciary. After all, the spending power resides exclusively with the legislature, and the only time the judiciary acquires the power to compel funding is when it cannot independently and adequately administer justice because the legislature has not provided it

with the funds to do so." *Snyder v. Snyder*, 620 A.2d 1133, 1137 (Pa. 1993).[6]

As Justice Prosser points out in dissent, the PILSF Assessment sets a dangerous precedent "because there is no clear stopping point." PILSF Order at 12 (Prosser, J., dissenting); *see also Jerrell*, 2005 WI 105, ¶ 155 (Prosser, J., concurring in part & dissenting in part) ("If the majority opinion represents a proper use of the court's 'superintending . . . authority,' then, logically, there is no practical reason why the court could not dictate any aspect of police investigative procedure that is designed to secure evidence for use at trial. The people of Wisconsin have never bestowed this kind of power on the Wisconsin Supreme Court.").

B. The PILSF Assessment is a Tax Within the Exclusive Power of the Legislature.

It is undisputed that the PILSF Assessment is not a cost of regulating attorneys[7] and it is described by the Court in the PILSF Order as one small measure to reduce the gap in funding for civil legal services for low-income persons. The assessment will not completely close the gap in such funding,

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[6] "The use of inherent power to compel funds can be viewed as antidemocratic . . . ." Buenger, *supra* p.18 n.5, at p. 1040. The exercise of inherent power to compel funding "must take place only under the most egregious of circumstances, and even then only after all reasonable efforts have been made to secure funding through traditional channels." *Id.*

[7] "License fees imposed by this court to fund an attorney disciplinary system . . . would be charged in connection with regulatory activities that do not exceed the reasonable cost of disciplining attorneys. Therefore, the imposition of such fees would not invade the Legislature's exclusive power over taxation and appropriation." *In re Attorney Discipline System*, 79 Cal. Rptr. 2d 836, 844 (Cal. 1998).

and nor should attorneys bear complete responsibility to do so. By definition, therefore, the PILSF Assessment is a "tax."

"A tax is one whose primary purpose is to obtain revenue, while a license fee is one made primarily for regulation and whatever fee is provided is to cover the cost and the expense of supervision or regulation." *State v. Jackman*, 60 Wis. 2d 700, 707, 211 N.W.2d 480 (1973) (emphasis added) (citing *State ex rel. Attorney General v. Wis. Constructors, Inc.*, 222 Wis. 279, 268 N.W. 238 (1936)). The assessment is not a license fee, because it does not represent the cost of regulating attorneys -- there are no supervisory or regulatory costs created by lawyers that it is intended to cover. It is rather an effort to fund-raise by imposing a mandatory $50 donation upon attorneys, solely to increase the monies available to WisTAF – its primary purpose is to generate revenue for WisTAF.

Extending the assessment to other expenses associated with the court system helps demonstrate that it is a tax and not a fee "to cover the cost and the expense of supervision or regulation" of attorneys. *Jackman*, 60 Wis. 2d at 707. For example, if the Court were to impose a $25 fee on all attorneys to help defray the budgetary crisis faced by the state circuit courts, that cost would not be to "cover the cost and the expense of supervision or regulation" of attorneys, but rather to raise revenues for the court system. Similarly, a $30 cost for court facilities would not be a cost of regulation or supervision of attorneys, but rather a measure to generate revenues from attorneys. Likewise, the mandatory donation to WisTAF is not a cost to supervise or regulate lawyers but

an effort to generate revenues to increase WisTAF's grant pool. All of these impositions would be taxes, and not license fees under *Jackman*.

"The Wisconsin Constitution gives the legislature the exclusive power to levy taxes." PILSF Order at 9 (Prosser, J, dissenting). Wis. Const. art. XIII. The taxation power is a power conferred on the legislative branch upon which the judiciary "absolutely may not intrude." *See Demmith v. Wis. Judicial Conf.*, 166 Wis. 2d 649, 663, 480 N.W.2d 502 (1992). The Constitution "empower[s] the legislature, not the judiciary, to make policy decisions regarding taxing and spending." *Flynn*, 216 Wis. 2d at 540, ¶ 25; *see also Bryant v. Robbins*, 70 Wis. 258, 271, 35 N.W. 545 (1887) ("the laying of taxes is properly the exercise of a legislative, as distinguished from a judicial, function."); *State ex rel. Thomson v. Giessel*, 265 Wis. 207, 213, 60 N.W.2d 763 (1953). The proper function of the court is to apply tax law set out by the legislature. *Marina Fontana v. Village of Fontana-on-Geneva Lake*, 107 Wis. 2d 226, 240, 319 N.W.2d 900 (Ct. App. 1982).

Although the judiciary has the authority to formulate and implement its budget, "the legislature . . . has clear constitutional authority to appropriate scarce resources." *Flynn*, 216 Wis. 2d at 552, ¶ 50. The legislature may not delegate a taxing power to the judiciary. PILSF Order at 10 (Prosser, J., dissenting). Nor has it done so here.

Because it is a tax and it falls squarely outside this Court's inherent authority to administer the courts, the PILSF Assessment "is within the legislature's core zone of exclusive

power" and thus the exercise of authority by the judiciary is unconstitutional as a violation of the separation of powers. *See Flynn*, 216 Wis. 2d at 546, ¶ 39; *see also In re Grady*, 118 Wis. 2d 762, 776, 348 N.W.2d 559 (1984) ("There are zones of authority constitutionally established for each branch of government upon which any other branch of government is prohibited from intruding. As to these areas of authority, the unreasonable burden or substantial interference test does not apply; *any* exercise of authority by another branch of government is unconstitutional.").

The PILSF Assessment is unconstitutional as a violation of the separation of powers. It therefore must be repealed.

II. The PILSF Assessment is a Tax and Not a Fee.

In its consideration of the current PILSF Petition, BOG was provided with a memorandum discussing whether the PILSF Assessment is a permissible fee within the Supreme Court's powers or an unconstitutional tax. Advocates of the PILSF Petition cited case law to argue that it is a fee, not a tax. However, as shown below, the PILSF Assessment does not constitute a fee charged by a government body or municipality for the costs of services it provides to citizens, for the services those persons receive. Rather, it is a tax.

As the Seventh Circuit has explained, exactions imposed upon citizens by the government may be divided into three categories: fines, fees, and taxes. A fine is designed to punish, and fees "compensate for a service that the state provides to the person or firms on whom ... the exaction falls . . ." *Empress Casino Joliet Corp. v. Balmoral Racing Club,*

Inc., 651 F.3d 722, 728 (7th Cir. 2011). " 'If the fee is a reasonable estimate of the cost imposed by the person required to pay the fee, then it is a user fee and is within the municipality's regulatory power. If it is calculated not just to recover a cost imposed on the municipality or its residents but to generate revenues that the municipality can use to offset unrelated costs or confer unrelated benefits, it is a tax, whatever its nominal designation.' " *Empress Casino*, 651 F.3d at 728-729 (quoting *Diginet, Inc. v. Western Union ATS, Inc.*, 958 F.2d 1388, 1399 (7th Cir.1992).)

As the court explained in *Empress Casino*, a tax is "an example of a state's taking money from one group of firms and giving it to another group..." 651 F.3d at 730.

The Court considered the distinction between fees and taxes in *Kathrein v. City of Evanston, Ill.*, 752 F.3d 680, 686–87 (7th Cir. 2014), to consider whether a demolition permit charge was a permissible fee or an unauthorized tax. In that case, the City of Evanston charged demolition companies a fee for a permit to demolish structures. The court reasoned that the fee was not charged for services provided by the city. Rather, it was charged to the persons "who perform the demolitions themselves, without utilizing any of the City's resources. The ordinance therefore imposes a tax." *Id.* at 687. The revenue from the demolition permits was used to support poor homeowners in the City and to slow the rate of demolitions. *Id.* at 686-687.

The purpose, not the name, determines whether a government charge constitutes a tax. *Bentivenga v. City of*

Delavan, 2014 WI App 118, ¶¶ 6-7, 358 Wis. 2d 610, 856 N.W.2d 546.

The PILSF Assessment is not a fee because it is not a cost imposed upon lawyers for services provided to them by the Supreme Court or its agencies. It is distinct from the assessments for OLR, the Client Protection Fund, and BBE. All of those assessments are passing on to lawyers the cost of practicing law, and the charge represents services provided by these Supreme Court agencies to lawyers.

In support of the PILSF Petition, Petitioners cite *McDonald v. Longley*, 4 F.4th 229 (5th Cir. 2021) to argue that the PILSF Assessment is a fee and not a tax. *McDonald* is a case involving a challenge to Texas state bar fees under the First Amendment. *McDonald* is not pertinent to the constitutional questions implicated by the PILSF Petition because *McDonald* does not involve a separation of powers challenge to the constitutional authority to charge the fee assessment. In *McDonald*, the court considered whether certain Texas bar assessments were a fee or a tax. The action sought injunctive relief against the fees. If they were a tax, then the action would be barred by the Anti-injunction Act. Therefore, the court considered whether the challenged Texas bar fees were a fee or tax for purpose of the Anti-injunction Act. For that purpose, the court held that they are fees. One of the fees was a legal services fee to fund civil legal services to the indigent. Notably, the legal services fee is imposed directly by the Texas legislature and not the Texas Supreme Court. *Id.* at 243.

The cases provided to BOG for consideration of the PILSF Petition all show that the PILSF Assessment is a tax, not a fee. They are consistent with the well-established principles discussed in *Empress Casino* and *Kathrein*: a fee is a charge imposed by the government for services the government provides to the person who is required to pay the fee. Fees are to cover the governmental body's expense of providing the service to the party paying the fee. Here, the PILSF Assessment is not a fee because it is not a charge imposed by the Supreme Court for services the Court provides to lawyers. (This is in contrast to the OLR, BBE, and Client Protection Fund fees, which are charges for services provided by Supreme Court agencies to lawyers.)

All the following cases cited in supported of the PILSF Petition show that fees are imposed to defray the government's cost of providing the service to the person receiving the service:

Case	**Fee**
Town of Hoard v. Clark Cnty., 2015 WI App 100, 366 Wis. 2d 239, 873 N.W.2d 241	Annual charge by Town on all property owners for cost of fire protection provided by the Town to property owners in the town. The charge covers the expense of providing the service of fire protection within the Town.
Rusk v. City of Milwaukee, 2007 WI App 7, 298 Wis. 2d 407, 414, 727 N.W.2d 358.	Reinspection fees charged to property owners for the service providing inspection services by the City to the property owner.
City of River Falls v. St. Bridget's Cath. Church of River Falls, 182 Wis. 2d 436, 438, 513 N.W.2d	The City charged a fee to property owners for its expense of making water available. It was a charge to cover the public

673 (Ct. App. 1994)	utility's expense of making water available, storing it, and ensuring delivery.
State v. Jackman, 60 Wis. 2d 700, 211 N.W.2d 480 (1973)	A boat registration fee was charged to cover the cost and expense of supervision or regulation of the party that has to pay the fee.

Dated this 13th day of December, 2024.

Respectfully submitted,

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