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Twenty Years Later: Was It a Success? Revisiting the Unification of Trial Courts in North Dakota

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TWENTY YEARS LATER: WAS IT A SUCCESS? REVISITING THE UNIFICATION OF TRIAL COURTS IN NORTH DAKOTA

KATHLEEN M. JOHNSON AND JARED WALL*

ABSTRACT

“Prior to unification we had a judiciary unnecessarily restricted by limits on jurisdiction, geography, and resources. Today, we are in a much better position to respond to the needs of our citizens.”¹

In 1995, North Dakota’s judicial system received a drastic makeover. Prior to this makeover, North Dakota operated a six-court judicial system consisting of a supreme court, district courts, county courts of increased jurisdiction, county justice courts, county courts, and municipal courts. In 1991, legislation abolished county courts and consolidated the trial courts into a single-level trial court of general jurisdiction. As a result of this legislation and subsequent unification, North Dakota’s judicial system morphed into a three-tiered court system consisting of a supreme court, district courts, and municipal courts.

But this transformation was no easy feat; it was a massive undertaking that was met with fierce resistance and required nearly a decade to implement. In Part I, this article examines the history of trial court unification, beginning with a brief history of North Dakota’s judicial system in existence prior to the 1990s. Parts II and III of this article discuss the legislative history leading up to the enactment of the unifying legislation in 1991, House Bill No. 1517. Additionally, Parts IV and V of this article describe procedural and substantive provisions of House Bill No. 1517 and discuss the North Dakota Supreme Court’s (“Supreme Court”) role in

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1. E-mail from Frank Racek, Presiding Judge, East Central Judicial District, to Gail Hagerty, Presiding Judge, South Central Judicial District (June 16, 2015, 10:04 a.m. CDT) (on file with the North Dakota Law Review). Judge Racek was elected county judge from 1988–1993 and was elected district judge in 1994, 1996, 2002, 2008, and 2014. *Biographical Sketches of the North Dakota District Court Judges*, NORTH DAKOTA SUPREME COURT, <http://www.ndcourts.gov/court/bios/Racek.htm>.

implementation. This article concludes in Part VI with a discussion regarding whether trial court unification has been successful in North Dakota.

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I. HISTORY OF NORTH DAKOTA’S JUDICIAL SYSTEM PRIOR TO 1990

In 1889, the enactment of the North Dakota Constitution created the Supreme Court and a system of district courts with original jurisdiction,

including district courts, county courts, and municipal courts.² At this time, most judges were not law-trained, and the district courts had limited jurisdiction.³ In 1927, a Judicial Council was established to “evaluate suggestions for improvement of the administration of justice, to recommend changes in procedures, and to coordinate continuing judicial education.”⁴ Now known as the Judicial Conference, the Judicial Council was instrumental in modernizing and streamlining North Dakota’s judicial system.⁵

North Dakota’s judicial system remained largely unchanged until 1959, when the legislature abolished justice of the peace courts and replaced them with a three-tiered county justice system that included county justices, police magistrates, and county judges of increased jurisdiction.⁶ Coincidentally, the creation of this three-tiered county justice system ultimately hindered future consolidation efforts.⁷

The movement toward trial court unification began as early as 1979, when the legislature considered a proposal requesting state funding for a single-level trial court.⁸ Additional studies were ordered and the proposal was ultimately defeated, but the effort paved the way for judicial improvements in the following legislative session.⁹ In 1981, the legislature appropriated state funds to provide for district court judges.¹⁰ That same year the legislature advanced trial court unification further when it consolidated county justice courts and county courts of increased jurisdiction into a single-level county court system.¹¹ The new county court system was uniform and required all county court judges to be law-trained.¹² Additionally, county court practice and procedure was modified to be consistent with practice and procedure in district courts.¹³

2. N.D. CONST. art. IV, § 85, adopted by N.D. CONST. art. VI, § 1 (repealed 1976); *see also The District Courts in North Dakota*, NORTH DAKOTA SUPREME COURT, <http://www.ndcourts.gov/history/district/creation.htm> (last visited July 14, 2015).

3. N.D. CONST. art. IV, § 94, adopted by N.D. CONST. art. VI, § 1 (repealed 1976).

4. Herbert L. Meschke & Ted Smith, *The North Dakota Supreme Court: A Century of Advances*, 76 N.D. L. REV. 217, 249 (2000).

5. *Id.* at 249.

6. 1959 N.D. Laws 437-39; *see also* James P. White, *The New North Dakota County Justice Court: Positive Progress in Judicial Reform*, 36 N.D. L. REV. 246, 247-50 (1960).

7. *See* discussion *infra* Part III.

8. Meschke & Smith, *supra* note 4, at 290.

9. *Id.* at 290-91.

10. 1981 N.D. Laws 61-62.

11. 1981 N.D. Laws 857-72 codified at N.D. CENT. CODE § 27-07.1, *repealed by* 1991 N.D. Laws 1043.

12. *Id.* at 859, *repealed by* 1991 N.D. Laws ch. 326, § 203, at 1043.

13. *Id.* at 863, *repealed by* 1991 N.D. Laws ch. 326, § 203, at 1043.

Throughout the 1980s, North Dakota operated a supreme court, district courts, county courts, and municipal courts.¹⁴ The district courts and county courts had many similarities but were also very different.¹⁵ County judges served, and were employed by, the counties in which they were chambered.¹⁶ They served four-year terms and handled primarily criminal misdemeanor and noncriminal traffic cases, initial hearings in felony criminal cases, small claims cases, probates and guardianships, and civil cases valued up to \$10,000.¹⁷ Counties were statutorily bound to pay county judges a minimum salary but were not required to pay benefits such as health insurance or retirement.¹⁸ Some counties did, however, offer fringe benefits, but they were not required by law to do so.¹⁹ Thus, compensation packages for county judges varied greatly between counties.²⁰

In contrast, district judges were state employees who served six-year terms.²¹ As state employees, district judges were entitled to retirement benefits under the North Dakota Public Employees Retirement System (“NDPERS”).²² In addition, district judges primarily handled family cases, felony criminal cases after initial proceedings, and civil cases valued over \$10,000.²³ The significant differences in terms, salaries, benefits, and jurisdictional limitations between district judges and county judges precipitated the drastic makeover North Dakota’s judicial system received in 1991.²⁴

II. THE PUSH FOR UNIFICATION

During the 1991 North Dakota Legislative Session, there were three major efforts underway to significantly transform North Dakota’s judicial system.²⁵ Each proposal was supported and furthered by a different group of interested parties: (1) district court judges; (2) county court judges; and

14. *Id.* at 859, *repealed by* 1991 N.D. Laws ch. 326, § 203, at 1043.

15. *See infra* text accompanying notes 16-24.

16. 1981 N.D. Laws 858.

17. 1981 N.D. Laws 862.

18. *See* BUDGET COMM. ON GOV’T ADMIN., REPORT OF THE NORTH DAKOTA LEGISLATIVE COUNCIL, 52d Sess., at 38-39, 41 (1991).

19. *See id.*; *see also* H.B. 1516, 52d Leg. Assemb., Reg. Sess. (N.D. 1991).

20. *See supra* text accompanying note 19.

21. N.D. CONST. art. VI (establishing district court judgeships).

22. *See generally* *Legislative Newsletter Number 4* (CTY. JUDGES ASS’N), Jan. 25, 1991, at 1 (on file with the North Dakota Law Review).

23. 1981 N.D. Laws 862.

24. *See infra* Parts II.A-B.

25. *See* discussion *infra* Parts II.A-C.

(3) the North Dakota Consensus Council (“Consensus Council”),²⁶ a local non-profit and nonpartisan organization tasked with mediating diverse viewpoints to reach a common ground.²⁷

A group of district court judges supported a plan known as the Ad Hoc Proposal.²⁸ County judges supported a series of bill drafts to further their objectives, and the Consensus Council presented two companion legislative bills, one of which was ultimately enacted.²⁹ This bill, known as House Bill No. 1517 (“H.B. 1517”), was primarily responsible for the consolidation of the trial courts in North Dakota.³⁰ Although competing bills were proposed by different parties with distinct interests, their goals were aligned.³¹ The main goal of trial court unification was to promote effective and efficient administration of North Dakota’s judicial system.³²

A. AD HOC PROPOSAL

During the 1989 North Dakota Legislative Session, a committee was established to assist the judiciary in developing a plan for trial court unification.³³ This committee, known as the Ad Hoc Commission on Court Unification, was comprised of one Supreme Court justice, three district court judges, three county court judges, two attorneys, and the state court administrator.³⁴ Together, they drafted Senate Bill No. 2026 (“S.B. 2026”), known as the Ad Hoc Proposal, in an effort to consolidate trial courts in North Dakota.³⁵

26. THE N.D. CONSENSUS COUNCIL, INC., A NORTH DAKOTA CONSENSUS FOR TRIAL COURT UNIFICATION AND REDUCTION IN THE NUMBER OF JUDGESHIPS OVER THE DECADE: 1991 HOUSE BILL NO. 1517, 52d Sess., at 12 (May 7, 1991) [hereinafter A NORTH DAKOTA CONSENSUS FOR TRIAL COURT UNIFICATION].

The primary objective of the Consensus Council is to provide the opportunity, forums, and assistance in the development of basic agreements and to assure the continued productivity and creativity of the consensus process. The Council does not endorse the specific recommendations of the forums it provides, nor does the Council engage in legislative advocacy on the issues which are subjects of these consensus services. The staff assistance provided by the Council consists of nonpartisan analysis, study, research, and related document preparation. The Council makes the results of these forums available to the public as a means to enrich the diversity of ideas and proposals for public discussion for the benefit of the citizens of North Dakota.

Id.

27. See discussion *infra* Part II.A-C.

28. See *Legislative Newsletter Number 4*, *supra* note 22, at 1.

29. See discussion *infra* Part II.B-C.

30. See H.B. 1517, 52d Leg. Assemb., Reg. Sess., 1991 N.D. Laws 974.

31. See discussion *infra* Part III.A-C.

32. See discussion *infra* Part III.A-C.

33. H.C.R. 3033, 51st Leg. Assemb., Reg. Sess. (N.D. 1989).

34. See BUDGET COMM. ON GOV'T ADMIN., *supra*, note 18, at 39.

35. *Id.* at 41.

Submitted to the legislature in 1991, the Ad Hoc Proposal sought unification by abolishing county courts altogether and reducing the total number of district judgeships.³⁶ The Ad Hoc Proposal created a four-year interim period beginning in 1995, wherein county judges would serve as “interim district judges,” although their duties would essentially remain the same as the previous county judges’ duties.³⁷ In addition, a companion bill, Senate Bill No. 2027 (“S.B. 2027”), authorized counties to contract with the district courts during the interim to handle county court services previously handled by county judges.³⁸ S.B. 2026 also granted the Supreme Court authority to determine whether a vacant district court judgeship could be abolished during the interim.³⁹

B. COUNTY JUDGES’ PROPOSAL

County judges were generally supportive of a consolidated court system, but believed the Ad Hoc Proposal insufficiently represented their interests.⁴⁰ With respect to compensation and judicial responsibilities, county judges wished to be treated equally to district judges.⁴¹ As a result, the county judges requested: (1) standard six-year terms, (2) an increased and consistent minimum salary, (3) participation in NDPERS and health insurance benefits equivalent to those provided to state employees, and (4) a reduction in the number of judgeships through the process of attrition.⁴²

In response to the Ad Hoc Proposal, several individual legislative bills were drafted to further the county judges’ interests.⁴³ Senate Bill No. 2028 (“S.B. 2028”) sought to increase county judges’ terms from four years to six years and to allow county judges to participate in the selection of the North Dakota Supreme Court Chief Justice as well as the election of the presiding judge of the their judicial district.⁴⁴ Senate Bill No. 2351 (“S.B. 2351”) created a salary commission for county judge salary recommendations, and Senate Bill No. 2352 (“S.B. 2352”) proposed

36. *Id.* at 38-39.

37. See BUDGET COMM. ON GOV’T ADMIN., *supra*, note 18, at 39.

38. S.B. 2027, 52d Leg. Assemb., Reg. Sess. (N.D. 1991).

39. *Id.*

40. *Legislative Newsletter Number 1* (CTY. JUDGES ASS’N), Jan. 11, 1991, at 1 (on file with the North Dakota Law Review).

41. *Id.*

42. *Id.*

43. THE NORTH DAKOTA CONSENSUS COUNCIL, INC., JUDICIAL BRANCH BILLS INTRODUCED IN THE FIFTY-SECOND LEGISLATIVE ASSEMBLY: BRIEF BILL DESCRIPTIONS, 52d Sess., at 2 (Feb. 11, 1991).

44. *Legislative Newsletter. Number 1 supra* note 40, at 2; see also S.B. 2028, 52d Leg. Assemb., Reg. Sess., 1991 N.D. Laws 1045.

increased salaries for county judges.⁴⁵ Under Senate Bill No. 2487 (“S.B. 2487”), county judges requested eligibility to participate in NDPERS to receive state retirement benefits and health insurance coverage.⁴⁶

C. CONSENSUS COUNCIL PROPOSAL

The Consensus Council considered the comments and suggestions of the stakeholders in trial court unification and drafted bills with their goals in mind.⁴⁷ While county judges and district judges held a primary stake in the outcome of consolidation legislation, other primary stakeholders included state and county governments, attorneys, judicial system employees, and the citizens of North Dakota.⁴⁸ The Consensus Council drafted two companion bills proposing trial court unification through the abolition of county courts and a reduction in the total number of judgeships.⁴⁹ House Bill No. 1516 (“H.B. 1516”) provided the substantive provisions for trial court unification, and H.B. 1517 provided the technical changes to the relevant statutes.⁵⁰ Together, these two bills sought to create a single trial court of general jurisdiction by: (1) abolishing county courts, (2) establishing additional district court judgeships to supplant the abolished county court judgeships, (3) reducing the total number of judgeships through attrition, and (4) retaining access to justice in rural communities.⁵¹

Under H.B. 1516, county courts would be abolished within four years, and then-serving county judges would automatically transition to district court judges.⁵² Thereafter, the total number of judgeships would be reduced from fifty-three to forty-six by the year 2000 through attrition.⁵³ Under the attrition process, judicial vacancies occurring through voluntary resignation, retirement, or death could be abolished.⁵⁴ Finally, a rural chambering

45. S.B. 2351, 52d Leg. Assemb., Reg. Sess., 1991 N.D. Laws 1052; S.B. 2352, 52d Leg. Assemb., Reg. Sess., 1991 N.D. Laws 1051.

46. S.B. 2487, 52d Leg. Assemb., Reg. Sess. (N.D. 1991).

47. A NORTH DAKOTA CONSENSUS FOR TRIAL COURT UNIFICATION, *supra* note 26, at 1-2.

48. *Id.*

49. *Id.*

50. *Id.*; *see also* H.B. 1516, 52d Leg. Assemb., Reg. Sess. (N.D. 1991); H.B. 1517, 52d Leg. Assemb., Reg. Sess., 1991 N.D. Laws 974.

51. *See* H.B. 1516, 52d Leg. Assemb., Reg. Sess. (N.D. 1991); H.B. 1517, 52d Leg. Assemb., Reg. Sess., 1991 N.D. Laws 974.

52. 1991 S. Standing Comm. Minutes: Hearing on Bill No. 1516 & 1517 Before the S. Comm. on the Judiciary, 52d Leg. Sess. (1991). Although the goal was for then-serving county judges to automatically become district judges so as not to challenge their job security, enactment of subsequent legislation required county judges to run for their district judgeship counterparts during the 1994 general election.

53. 1991 S. Standing Comm. Minutes: Hearing on Bill No. 1516 & 1517 Before the S. Comm. on the Judiciary, *supra* note 52 (statement of Bruce Levi).

54. *See id.* (statement of Dist. Judge Bruce Bohlman).

provision sought to maintain rural access to justice by ensuring approximately thirty percent of judges were chambered in cities with populations under 10,000 people.⁵⁵ These provisions would become effective through enactment of H.B. 1517, which amended the relevant statutory sections of the North Dakota Century Code.⁵⁶

III. THE 1991 LEGISLATIVE SESSION

During the 1991 Legislative Session, testimony was presented on each of the three competing trial court unification efforts.⁵⁷ The Ad Hoc and County Judges' proposals were considered but were ultimately defeated.⁵⁸ After the Ad Hoc and County Judges' proposals were defeated, the focus of the unification effort shifted to determine the viability of the Consensus Council's Proposal.⁵⁹ Support for the Consensus Council's Proposal increased, and H.B. 1517 was ultimately passed in 1991, with amendments incorporating H.B. 1516.⁶⁰

A. AD HOC AND COUNTY JUDGES' PROPOSALS DEFEATED

The district judges were steadfast in their support for the Ad Hoc Proposal and continued to push for a reduction in the number of judgeships.⁶¹ On January 23, 1991, the Senate Judiciary Committee held a hearing on the Ad Hoc Proposal.⁶² At the hearing, District Judge Bruce Bohlman⁶³ testified in favor of the Ad Hoc Proposal but noted, "Judges can't agree because jobs will be cut."⁶⁴

Meanwhile, the county judges remained informed of legislative developments by utilizing newsletters drafted by a member of the County Judges Association, Burleigh County Judge Gail Hagerty.⁶⁵ Surveys were

55. *Id.* (statement of Rep. Kretschmar).

56. *Id.*; see also, H.B. 1517 52d Leg. Assemb., Reg. Sess., 1991 N.D. Laws 974.

57. See *infra* Part III.A-E.

58. See *infra* Part III.A.

59. See discussion *infra* Part III.A-E.

60. See H.B. 1516, 52d Leg. Assemb., Reg. Sess. (N.D. 1991); H.B. 1517, 52d Leg. Assemb., Reg. Sess., 1991 N.D. Laws 974.

61. *Legislative Newsletter Number 4*, *supra* note 22, at 1.

62. See 1991 S. Standing Comm. Minutes: *Hearing on Bill No. SB 2026 & SB 2027 Before the S. Comm. on the Judiciary*, 52d Leg. Sess. (N.D. 1991).

63. Bruce E. Bohlman was a district judge in the Northeast Central Judicial District, appointed in 1987, elected in 1988, 1992, and 1998, and retired in 2004. He was also a surrogate judge from 2005–2013. *Biographical Sketches of the North Dakota District Court Judges*, NORTH DAKOTA SUPREME COURT, <https://www.ndcourts.gov/court/bios/bohlman.htm>.

64. 1991 S. Standing Comm. Minutes: *Hearing on Bill No. SB 2026 & SB 2027 Before the S. Comm. on the Judiciary*, *supra* note 62 (statement of Dist. Judge Bruce Bohlman).

65. Gail Hagerty is the presiding judge of the South Central Judicial District and was elected in 1994, 1996, 2002, 2008, and 2014. She was also a Burleigh County Judge from 1987–1994.

also circulated through the newsletters, allowing then-serving county judges to provide input on pending legislation and other consolidation efforts.⁶⁶ A January 25, 1991, newsletter noted mounting frustrations between county and district judges: “[Judge] Bohlman urged against further study and indicated that the judges would probably never reach agreement. He suggested that if you got three judges together, they couldn’t agree on how to kill a rat in a bathtub.”⁶⁷

While the Ad Hoc Proposal failed to gain momentum, procedural problems plagued the county judges’ retirement bill.⁶⁸ Under S.B. 2487, the county judges sought to participate in NDPERS, but all bills affecting NDPERS required consideration by a certain deadline and that deadline had passed.⁶⁹ After this setback, a recommendation was made to require counties to pay retirement benefits to county judges, rather than to have those benefits provided by the state.⁷⁰ This idea was quickly dismissed because the county judges believed county commissioners would find it unfavorable.⁷¹

Meanwhile, some progress was made regarding increased salaries for county judges.⁷² On February 1, 1991, the newsletter reported, “the county commissioners and the [A]ssociation [of Counties] have a commitment to deal equitably with county judges in providing both salary and benefits.”⁷³ Additionally, a discussion regarding the legislation submitted by the county judges to extend their terms from four years to six years was delayed.⁷⁴ While there was no opposition to the increased term bill, action was delayed until decisions concerning the Ad Hoc Proposal were made.⁷⁵ Shortly

Biographical Sketches of the North Dakota District Court Judges, NORTH DAKOTA SUPREME COURT, <https://www.ndcourts.gov/court/bios/hagerty.htm>.

66. See discussion *infra* Parts III.B-C.

67. *Legislative Newsletter Number 4*, *supra* note 22, at 1.

68. *Id.*

69. *Id.*; see also 1991 S. *Standing Comm. Minutes: Hearing on Bill No. 2487 Before the S. Comm. on State and Fed. Government*, 52nd Leg. Sess. (N.D. 1991); *Legislative Newsletter Number 4*, *supra* note 22, at 1.

70. *Legislative Newsletter Number 4*, *supra* note 22, at 1.

71. *Id.* (“Both Judge [Donavin] Grenz and Justice [Gerald] VandeWalle were quick to point out that such a position would put [county judges] at odds with the county commissioners, and we all know that is not an advantageous position for [county judges].”)

72. *Legislative Newsletter Number 5* (CTY. JUDGES ASS’N), Feb. 1, 1991, at 1 (on file with the North Dakota Law Review).

73. *Id.*

74. *Legislative Newsletter Number 2* (CTY. JUDGES ASS’N), Jan. 17, 1991, at 1 (on file with the North Dakota Law Review).

75. *Id.*

thereafter, both the Ad Hoc Proposal and the county judges' retirement bill were defeated in the Senate.⁷⁶

B. INCREASED SUPPORT FOR H.B. 1516

After the Ad Hoc Proposal and a majority of the county judges' bills were defeated, only the Consensus Council's Proposal under H.B. 1516 and H.B. 1517 remained as a viable option to establish a consolidated trial court during the 1991 Legislative Session. District judges and county judges were faced with the decision to either support trial court consolidation under H.B. 1516 or risk tabling the issue until the 1993 Legislative Session. A February 15, 1991, county judge newsletter summarized the major provisions of H.B. 1516:

[T]he unification bill which is called the "consensus council bill" would create a unified court system effective January 2, 1995. All existing county judges could run for new district court judgeships in November, 1994. A new district court judgeship would be created for each county judgeship existing in 1994. A reduction of total trial court judgeships from 53 to 46 would need to occur by the year 2000 through a process of attrition. The Supreme Court could move judgeships upon death or retirement to allocate judicial resources as needed in the state.⁷⁷

The district judges generally supported trial court consolidation under H.B. 1516, but believed the total number of judges should be reduced from forty-six to thirty-five.⁷⁸ District Judges Bruce Bohlman and Lawrence Leclerc⁷⁹ represented the district judges at a House Judiciary Committee hearing held on February 5, 1991.⁸⁰ Judge Bohlman stated, "We did various case load studies and population [studies] and came to the conclusion that if you used the national averages we would have a total of 35 judges in the state. We have 53 and compromised at 42. I'm not sure

76. *Legislative Newsletter Number 8* (CTY. JUDGES ASS'N), Feb. 22, 1991, at 1 (on file with the North Dakota Law Review).

77. *Legislative Newsletter Number 7* (CTY. JUDGES ASS'N), Feb. 15, 1991, at 3 (on file with the North Dakota Law Review).

78. See 1991 *H. Standing Comm. Minutes: Hearing on Bill No. HB 1516 & 1517 Before the H. Comm. on the Judiciary*, 52d Leg. Sess. (1991) (statement of Dist. Judge Bruce Bohlman)

79. Lawrence A. Leclerc was a district judge of the East Central Judicial District, appointed in 1979, elected in 1980, 1986, 1992, and 1998, and retired in 2004. He was also a surrogate judge in 2005. *Biographical Sketches of the North Dakota District Court Judges*, NORTH DAKOTA SUPREME COURT, <https://www.ndcourts.gov/court/bios/leclerc.htm>.

80. 1991 *H. Standing Comm. Minutes: Hearing on Bill No. HB 1516 & 1517 Before the H. Comm. on the Judiciary*, *supra* note 78 (statement of Dist. Judge Bruce Bohlman).

how the Consensus Council reached 46.”⁸¹ Judge Bohlman also suggested the reduction in the number of judges through attrition was an impossible feat under specified time restraints because its success was contingent upon the occurrence of unpredictable events; specifically, the resignation, retirement, or death of then-serving judges.⁸²

The county judges were also generally supportive of trial court consolidation under H.B. 1516 because it was more favorable to them than the Ad Hoc Proposal.⁸³ Although some county judges expressed hesitation in supporting H.B. 1516, others urged the county judges to unite:

Although HB1516 may not be perfect in everyone[']s opinion, it is the only viable means to obtain a true unified system with equal benefits and pay scale. It places current county and district court judges on equal footing on the issue of reduction in the number of judges. I would strongly urge all county judges to support HB 1516, for if we do [not], we will continue to be shafted and will have no one to blame [but] ourselves.⁸⁴

As support for H.B. 1516 by county judges increased, so too did tensions between county judges and county commissioners over the pending county judges' salary bill.⁸⁵

C. TENSIONS RISE

While hearings on H.B. 1516 were concluding in the Senate Judiciary Committee, the county judges' salary bill was presented to the House Judiciary Committee.⁸⁶ Initially, the county commissioners agreed to support the county judges' salary bill because they believed it would prolong the existence of county courts.⁸⁷ Thus, county commissioners felt

81. *Id.*

82. *Id.* (“The easy decision is to consolidate the courts because we really don’t need two trial courts. The tough decision is how to reduce the number of judges significantly by the year 2000. Vacancy has to have occurred either by death, retirement or resignation and we can’t depend on that. Certain positions have to be cut and [we] can’t do that by attrition but by absolute time tables. . . . I am in favor of [H.B. 1516] but I think it has to address some of the tough decisions.”)

83. *Legislative Newsletter Number 7*, *supra* note 77, at 3. Further, the newsletter states,

County judges who have spoken out to this point seem to believe that the seven or eight principles for unification in which our Association adopted in November 1990 are contained in principle [in] House Bill 1516. Favorable testimony has been received by both committees from county judges and Supreme Court justices.

Id.

84. *Legislative Newsletter Number 8* (CTY. JUDGES ASS’N), Feb. 22, 1991, at 4 (on file with the North Dakota Law Review).

85. See discussion *infra* Part III.C.

86. *Legislative Newsletter Number 10* (CTY. JUDGES ASS’N), Mar. 5, 1991, at 1 (on file with the North Dakota Law Review).

87. *Id.*

slighted by the county judges' renewed support for trial court consolidation under H.B. 1516.⁸⁸

In response to the county judges' renewed support for H.B. 1516, Morton County Commissioner Richard Bendish testified in opposition to it at a House Judiciary Committee hearing: "The apparent support of unification by the county judges has caused many [commissioners] to reconsider the wisdom of placing these new salary levels in state statute, prior to final action on unification."⁸⁹ A March 5, 1991, newsletter expanded on the county commissioners' concerns,

[Morton County Commissioner Richard] Bendish told [County Judge Gail Hagerty] that he feels the county judges have breached their agreement with the commissioners by supporting unification. He said the salary increases [under the county judges' salary bill] were agreed to because the counties believed by doing so they could help ensure that the county court system would continue at least until the year 2000.⁹⁰

Despite the county commissioners' perceived flip-flop in support for H.B. 1516 by the county judges, the county judges maintained their support for unification remained consistent throughout the legislative session.⁹¹

D. DEMISE OF H.B. 1516

On March 3, 1991, the Senate Judiciary Committee amended H.B. 1516 and recommended its passage.⁹² The amendments included changes to the rural chambering and judgeship reduction provisions.⁹³ As amended, the legislation required no more than seventy percent of the district judges to be chambered in cities with populations greater than 7,500, rather than populations of 10,000 as proposed in the original draft.⁹⁴ Additionally, the judgeship reduction provision was amended to require reduction in the number of judgeships to forty-two by January 2, 2001, as opposed to forty-six required by the original draft.⁹⁵ After these amendments were approved by the Senate, H.B. 1516 was returned to the House for consideration.⁹⁶

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. 1991 S. Standing Comm. Minutes: Hearing on Bill No. HB 1516 & 1517 Before the S. Comm. on the Judiciary, *supra* note 52 (statement of Sen. Stenehjem).

93. *Id.*

94. *Id.*

95. *Id.*

96. *Legislative Newsletter Number 15* (CTY. JUDGES ASS'N), Apr. 4, 1991, at 1 (on file with the North Dakota Law Review).

House members, however, determined the fiscal implications were too costly, and on March 28, 1991, H.B. 1516 was defeated.⁹⁷

E. RESURRECTION OF H.B. 1517

The demise of H.B. 1516 was a devastating blow to consolidation efforts.⁹⁸ With the end of the legislative session in sight, it appeared unlikely that consolidation would occur before the end of the 1991 Legislative Session.⁹⁹ Although H.B. 1516 had been defeated, H.B. 1517 was still alive.¹⁰⁰ In a final effort to unify the trial courts before the close of the 1991 Legislative Session, a committee, known as the Conference Committee, was established to consider amendments to H.B. 1517 that incorporated provisions of H.B. 1516.¹⁰¹

The Conference Committee discussed the equitable distribution of court revenues and expenditures between the state and the counties because uncertainty regarding fiscal implications was the primary cause of H.B. 1516's demise.¹⁰² Because insufficient studies existed regarding the fiscal implications to state and local budgets, the Conference Committee suggested passing the underlying consolidation legislation and tabling the fiscal issues for future study.¹⁰³ To accomplish this, the Conference Committee recommended including in H.B. 1517 a statement of legislative intent to reserve the issue of equitable distribution of court revenues and expenditures for future study and determination.¹⁰⁴ Both the House and Senate adopted the Conference Committee's proposal, and H.B. 1517 passed by an overwhelming majority.¹⁰⁵

IV. 1991 ENACTMENT OF H.B. 1517

On April 11, 1991, Governor George Sinner signed H.B. 1517 into law.¹⁰⁶ The bill established a single trial court of general jurisdiction in North Dakota by abolishing county courts and reducing the total number of district court judgeships.¹⁰⁷ In addition to substantive provisions, the bill contained technical provisions modifying relevant statutes of the North

97. *Id.*; see also H. JOURNAL, 52d Leg. Assemb., Reg. Sess., 1509-10 (N.D. 1991).

98. *Legislative Newsletter Number 15*, *supra* note 96, at 1.

99. *Id.*

100. *Id.*

101. *Id.*

102. A NORTH DAKOTA CONSENSUS FOR TRIAL COURT UNIFICATION, *supra* note 26, at 11.

103. *Id.*

104. *Id.*

105. *Id.*

106. H. JOURNAL, 52d Leg. Assemb., Reg. Sess. 1946 (N.D. 1991).

107. H.B. 1517, 52d Leg. Assemb., Reg. Sess., 1991 N.D. Laws 974.

Dakota Century Code.¹⁰⁸ Together, these provisions provided for the effective implementation of a unified court system over the course of the following decade.¹⁰⁹

A. ABOLITION OF COUNTY COURTS AND COUNTY JUDGESHIPS

The most significant substantive provision of H.B. 1517 was the provision that abolished county courts and county judgeships and created additional district court judgeships.¹¹⁰ Under H.B. 1517, the terms of all county judgeships were terminated as of January 1, 1995, and were replaced by new district court judgeships.¹¹¹ Unlike previous proposals, however, H.B. 1517 did not automatically transition the county judges into a district court judgeship.¹¹² Instead, county judges were required to run for their district judgeship counterpart in the 1994 general election.¹¹³ In addition, this legislation established initial staggered terms of two, four, and six years for the new district court judgeships, with each judgeship receiving six-year terms thereafter.¹¹⁴

B. REDUCTION IN DISTRICT COURT JUDGESHIPS

In 1991, there were fifty-three judges in North Dakota, including twenty-six county judges and twenty-seven district judges.¹¹⁵ Although the bill initially created an equal number of district judgeships to supplant the abolished county judgeships, the bill also required a reduction in the total number of district judgeships from fifty-three to forty-two during the following decade.¹¹⁶ Thus, the bill mandated the elimination of eleven judgeships by 2001.¹¹⁷ In an effort to avoid threatening job security through mandatory termination of judgeships, the bill sought reduction through gradual attrition resulting from the resignation, retirement, or death of then-serving district judges.¹¹⁸

108. *Id.*

109. *Id.*

110. *Id.*

111. H.B. 1517, 52d Leg. Assemb., Reg. Sess., 1991 N.D. Laws 974.

112. *Id.*

113. *Id.*

114. *Id.*

115. A NORTH DAKOTA CONSENSUS FOR TRIAL COURT UNIFICATION, *supra* note 26, Appendix 2, at 2.

116. H.B. 1517, 52d Leg. Assemb., Reg. Sess., 1991 N.D. Laws 974.

117. *Id.*

118. *Id.*

Amendments to the bill created a process for reducing the number of judgeships to forty-two by 2001.¹¹⁹ First, when a judicial vacancy occurred through resignation, retirement, or death, the Supreme Court was required to determine whether the office was necessary for effective judicial administration.¹²⁰ If the Supreme Court determined the office was not necessary for effective judicial administration, the Supreme Court could abolish the position.¹²¹ Second, the Supreme Court had the authority to abolish offices of district court judges, regardless of whether a position was vacant, if it determined the office was not necessary for effective judicial administration.¹²²

The authority to abolish vacant judgeships was a new authority granted to the Supreme Court through enactment of H.B. 1517.¹²³ Previously, vacant judgeships were filled without consideration as to whether the position was necessary for effective judicial administration.¹²⁴ In the eight years following the enactment of H.B. 1517, the Supreme Court abolished ten vacant judgeships and one occupied judgeship and successfully reached the mandatory reduction in judgeships by 2001.

V. THE 1993 LEGISLATIVE SESSION: RESISTANCE TO UNIFICATION

With the process of trial court unification well on its way, it was necessary for the legislature to enact legislation to efficiently implement trial court consolidation.¹²⁵ Before it could consider such legislation, however, the legislature had to address an effort to repeal the unification legislation passed during the previous legislative session.¹²⁶ In 1993, House Bill No. 1503 (“H.B. 1503”) was submitted in an effort to repeal consolidation legislation codified under chapter 27-05 of the North Dakota Century Code.¹²⁷ After H.B. 1503 was defeated, the legislature considered several bills that addressed: (1) the timetable for the reduction in the

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.* This provision was effective as of July 1, 1995, and required a one-year notice to the affected judge with an opportunity for a hearing. If the Supreme Court determined an occupied judgeship was not necessary for effective judicial administration, the judicial office would then terminate at the end of the judge’s term.

123. *Id.*

124. *See id.*

125. *See* H.B. 1517, 52d Leg. Sess., Reg. Sess., 1991 N.D. Laws 974.

126. *See* discussion *infra* Part V.A.

127. H.B. 1503, 53d Leg. Sess., Reg. Sess. (N.D. 1993).

number of district court judgeships, (2) district judge chamber locations, and (3) responsibility for witness fees and expenses in criminal cases.¹²⁸

A. THE “HUNKE PLAN”

District Judge Maurice Hunke¹²⁹ opposed trial court unification under H.B. 1517 and supported an effort to repeal the enacted consolidation legislation.¹³⁰ Dubbed the “Hunke Plan,” H.B. 1503 proposed county courts and district courts would remain autonomous while the total number of county and district judges would be reduced to forty-six, rather than forty-two as mandated by H.B. 1517.¹³¹ Additionally, H.B. 1503 proposed equal salaries for county judges and district judges, except in counties where the caseload was less than the statewide median.¹³² In those counties, county judges’ salaries would be slightly less.¹³³ In order to achieve this goal, the Hunke Plan proposed the state would reimburse counties for a portion of the county judges’ salaries.¹³⁴ In addition, the Supreme Court would be given authority to recommend the number and location of district judgeships, with the legislature retaining ultimate control through the appropriations process.¹³⁵

Although the Hunke Plan touted getting “more done in less time with fewer people and hav[ing] less cost . . . [while] preserv[ing] . . . services in rural areas,”¹³⁶ many were concerned that enactment of H.B. 1503, and subsequent revocation of H.B. 1517, would reverse the progress made toward consolidation.¹³⁷ Further, the Hunke Plan requested four more judges than H.B. 1517, and there was concern this would result in increased costs to taxpayers without improving or streamlining the judicial system.¹³⁸

128. *See infra* Part V.B.

129. Maurice R. Hunke was a district judge of the Southwest Judicial District, appointed in 1981 and elected in 1982, 1988, and 1994. *Biographical Sketches of the North Dakota District Court Judges*, NORTH DAKOTA SUPREME COURT, <http://www.ndcourts.gov/court/bios/hunke.htm>.

130. *See infra* text accompanying notes 140-41.

131. H.B. 1503, 53d Leg. Assemb., Reg. Sess. (N.D. 1993); H.B. 1517, 52d Leg. Assemb., Reg. Sess., 1991 N.D. Laws 974. The authors acknowledge H.B. 1517 is no longer a house bill at this stage, however, we continue to refer to the trial court consolidation legislation passed in 1991 as “H.B. 1517” for consistency and ease of the reader.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. 1993 H. Standing Comm. Minutes: Hearing on Bill No. 1503 Before the H. Comm. on the Judiciary, 53d Leg. Sess. (statement of Dist. Judge Maurice Hunke).

137. Letter from Gail Hagerty, Burleigh Cty. Judge, to Bob Martinson, Rep., N.D. House of Representatives (Feb. 9, 1993) (on file with the North Dakota Law Review).

138. *Id.*; *see* H.B. 1503, 53d Leg. Assemb., Reg. Sess. (N.D. 1993); H.B. 1517, 52d Leg. Assemb., Reg. Sess., 1991 N.D. Laws 974.

The county judges participated in a survey to determine the level of support for the Hunke Plan, and on January 22, 1993, the newsletter reported, “Thanks to everyone who has taken the time to respond to the questionnaire concerning the level of support for the Hunke plan [among] the county judges. Suffice it to say, there isn’t any.”¹³⁹ On January 26, 1993, Judge Hunke sent a memorandum letter to district and county judges, claiming H.B. 1503 was “a compromise on the delicate issue of trial court consolidation,” but that “[a]ll provisions of the [Consensus Council’s] proposal enacted as HB 1517 by the 1991 legislative session that are inconsistent with the above will be repealed.”¹⁴⁰ Judge Hunke continued:

I am advised that 1503 has an excellent chance of passage and particularly so if we can get a few county judges to speak favorably about it. For those county judges who are reluctant to say anything publicly (or among other county judges), a private communication to legislators from your area will be very effective and helpful.¹⁴¹

County Judge Gail Hagerty wrote to Judge Hunke on January 27, 1993:

There is some pride among the county judges in the way that we have discussed divergent views, compromised personal interests and worked together to support a plan which we feel would best serve the needs of the people of North Dakota.

Twenty of twenty-six county judges have responded to my questionnaire concerning the Hunke proposal. Not one indicated that they no longer support the trial court consolidation plan enacted by House Bill 1517 in 1991. Nor did any of the county judges indicate that they supported your proposal in place of House Bill 1517. The county judges overwhelmingly reject your proposal.

However, two county judges indicated they felt the “Hunke plan” should be given consideration if current law is repealed. One indicated that he believes your proposal is a workable alternative which should not be dismissed out of hand. Of course,

139. *Legislative Newsletter Number 4* (CTY. JUDGES ASS’N), Jan. 22, 1993, at 1 (on file with the North Dakota Law Review).

140. Letter from Maurice R. Hunke, Southwest Judicial Dist. Judge, to County and District Judges (Jan. 26, 1993) (on file with the North Dakota Law Review).

141. *Id.*

your plan has not been given the years of study and fine-tuning which have been invested in House Bill 1517.¹⁴²

The following day, County Judge Zane Anderson¹⁴³ responded to Judge Hagerty by letter, stating he wished to go on the record in support of Judge Hunke's proposal.¹⁴⁴ Judge Anderson wrote, "Given the apparent conservative mind set of the present legislature and the projected cost to the state of unification, is it not realistic to expect that the legislature might delay implementation or even kill unification altogether?"¹⁴⁵ Judge Anderson also stated, "The target number of 42 judges in the unification law is not realistic and it is unfortunate that for political reasons the county judges' association wants to be on record as supporting that number."¹⁴⁶

On February 2, 1993, a hearing on H.B. 1503 was held before the House Judiciary Committee.¹⁴⁷ At the hearing, Judge Hunke testified in favor of H.B. 1503 and discussed potential problems with H.B. 1517.¹⁴⁸ He stated, "[H.B.] 1517 is the enemy of efficiency and economy, it is destructive of docket currency . . . it avoids individual judge's infallibility, it deprives various areas of the state of the judicial services they need and, most importantly of all, it is extravagantly and unnecessarily expensive."¹⁴⁹ County Judge Burt Riskedahl¹⁵⁰ testified against H.B. 1503 because it maintained separation of county courts and district courts.¹⁵¹ He stated, "We have to reduce the number of judges and . . . that isn't going to happen unless judges are general practitioners rather than specialists."¹⁵²

142. Letter from Gail Hagerty, Burleigh Cty. Judge, to Maurice R. Hunke, Southwest Judicial Dist. Judge (Jan. 27, 1993) (on file with the North Dakota Law Review).

143. Zane Anderson was a district judge for the Southwest Judicial District, elected in 1994, 2000, 2006, and 2012. He was a multi-county judge from 1990–1994. *Biographical Sketches of the North Dakota District Court Judges*, NORTH DAKOTA SUPREME COURT, <https://www.ndcourts.gov/court/bios/anderson.htm>.

144. Letter from Zane Anderson, Cty. Judge of Adams, Bowman, Hettinger, and Slope Counties, to Gail Hagerty, Burleigh Cty. Judge (Jan. 28, 1993) (on file with the North Dakota Law Review).

145. *Id.*

146. *Id.*

147. *1993 H. Standing Comm. Minutes: Hearing on Bill No. 1503 Before the H. Comm. on the Judiciary*, *supra* note 136.

148. *Id.* (statement of Dist. Judge Maurice Hunke).

149. *Id.*

150. Burt L. Riskedahl was a district judge for the South Central Judicial District, elected in 1994, 1996, and 2002. He was also a Burleigh County Judge from 1979–1994. *Biographical Sketches of the North Dakota District Court Judges*, NORTH DAKOTA SUPREME COURT, www.ndcourts.gov/court/bios/riskedahl.htm.

151. *1993 H. Standing Comm. Minutes: Hearing on Bill No. 1503 Before the H. Judiciary Comm.*, *supra* note 136 (statement of Cty. Judge Burt Riskedahl).

152. *Id.*

On February 5, 1993, the county judges' newsletter updated readers: "The Bismarck Tribune suggested your editor 'sniped' at Judge Hunke in a recent letter addressed to Judge Hunke and copied to all the county judges. She reluctantly accepts that characterization."¹⁵³ The newsletter further updated readers: "Burt came back from the hearing somewhat discouraged. He's concerned that the rhetoric of the 1503 proponents has appeal to the legislators because it is being sold as a real 'cost saver' for the state."¹⁵⁴ At that same hearing, however, Chief Justice Gerald VandeWalle¹⁵⁵ recommended progressing forward with trial court unification and stated, "[T]he legislature has given us this bill to implement and we will implement this [bill], in the 1993 session to the best of our ability."¹⁵⁶ The House Judiciary Committee voted 12-1 to recommend to the House that H.B. 1503 be defeated.¹⁵⁷

A February 10, 1993, newsletter discussed the advantages and disadvantages of both H.B. 1517 and H.B. 1503.¹⁵⁸ County Judge Richard Geiger¹⁵⁹ stated,

HB1517 gives to the state flexibility to deal with issues within the judicial system that do not now exist, nor would be provided by HB1503. First, HB1517 provides for flexibility in reducing the number of judges. HB1503 makes an effort to provide for reduction of judges, but it will never be able to reduce judgeships to the extent HB1517 and court consolidation allows. The reason for this is that HB1503 still maintains separate jurisdictions of the two trial courts as they now exist.¹⁶⁰

153. *Legislative Newsletter Number 7* (CTY. JUDGES ASS'N), Feb. 5, 1993, at 1 (on file with the North Dakota Law Review).

154. *Id.*

155. Gerald VandeWalle is the Chief Justice of the North Dakota Supreme Court. He was appointed to the Supreme Court in 1978, elected Chief Justice in 1993, and was reelected Chief Justice in 1995, 2000, 2005, 2010, and 2015. *Biographical Sketches of the North Dakota District Court Judges*, NORTH DAKOTA SUPREME COURT, www.ndcourts.gov/court/bios/vandewalle.htm.

156. *1993 H. Standing Comm. Minutes: Hearing on Bill No. 1503 Before the H. Comm. on the Judiciary*, *supra* note 136 (statement of Chief Justice Gerald VandeWalle).

157. *See generally id.*

158. *Legislative Newsletter Number 8* (CTY. JUDGES ASS'N.), Feb. 10, 1993, at 1 (on file with the North Dakota Law Review).

159. M. Richard Geiger is a district judge for the Northeast Judicial District, elected in 1994 and reelected in 2000, 2006, and 2012. He was also a county judge from 1987–1994. *Biographical Sketches of the North Dakota District Court Judges*, NORTH DAKOTA SUPREME COURT, www.ndcourts.gov/court/bios/geiger.htm.

160. *Legislative Newsletter Number 8*, *supra* note 158, at 1.

In opposition to H.B. 1503, County Judge Donovan Foughty¹⁶¹ added, “The efficiencies that will be created in this rural district will be considerable. We will be able to do the work with fewer judges because the workload will not be artificially segregated by jurisdictional limitations.”¹⁶²

On February 19, 1993, the newsletter headline read: “1503 DEFEATED” and announced H.B. 1503 was defeated by a vote of 75-22.¹⁶³ The newsletter further stated:

We are pleased that the legislators gave careful consideration to the arguments for and against the bill and decided that trial court unification will best serve the needs [of] the people of North Dakota. The fact that the Association of Counties is supportive of trial court unification may have had an impact on the margin by which HB1503 was defeated and certainly was a factor in the legislative consideration of the bill, as were contacts by county and district judges.

The fact is that Judge Hunke and the other district and county judges who supported HB1503 share our desire to make the judicial system work in the most effective way possible. While we have disagreed on one proposal intended to accomplish that end, together we can make a unified trial court work.”¹⁶⁴

After H.B. 1503 was defeated in early 1993, the focus reverted to passing legislation to implement H.B. 1517.¹⁶⁵

B. LEGISLATION FOR IMPLEMENTATION OF H.B. 1517

After the demise of H.B. 1503, the North Dakota Senate considered several bills that addressed: (1) the timetable for the reduction in the number of district court judgeships,¹⁶⁶ (2) the location of district court chambers to provide rural access to justice,¹⁶⁷ (3) the Supreme Court’s authority to respond to judicial vacancies,¹⁶⁸ and (4) the potential

161. Donovan J. Foughty is a district judge for the Northeast Judicial District, elected in 1994 and reelected in 1996, 2002, 2008, and 2014. He was also a county judge from 1987–1994. *Biographical Sketches of the North Dakota District Court Judges*, NORTH DAKOTA SUPREME COURT, www.ndcourts.gov/court/bios/foughty.htm.

162. *Legislative Newsletter Number 8*, *supra* 158, at 1.

163. *Legislative Newsletter Number 10* (CTY. JUDGES ASS’N), Feb. 19, 1993, at 1 (on file with the North Dakota Law Review).

164. *Id.*

165. *See infra* Part V.B.

166. S.B. 2032, 53rd Leg. Assemb., Reg. Sess., 1993 N.D. Laws 1111-12.

167. S.B. 2033, 53rd Leg. Assemb., Reg. Sess., 1993 N.D. Laws 1113.

168. S.B. 2080, 53rd Leg. Assemb., Reg. Sess., 1993 N.D. Laws 1108-09.

unconstitutionality of the initial staggered judicial terms.¹⁶⁹ In addition, discrepancies in the language of H.B. 1517 were discovered during the interim review, and it was necessary for the legislature to correct those inconsistencies.¹⁷⁰

The Court Services Committee analyzed H.B. 1517 during the 1991–1993 interim and discovered two discrepancies in the language of the bill.¹⁷¹ H.B. 1517 required a reduction in the total number of judges to forty-two by January 2, 2001.¹⁷² As enacted, however, the legislation required two district court judgeships be abolished in the two days between December 31, 2000, and January 2, 2001.¹⁷³ As a result, the legislature enacted Senate Bill No. 2032 (“S.B. 2032”) as a “technical correction” amending the number of judges required to trigger the Supreme Court’s authority to abolish positions on July 1, 1999, from forty-four to forty-two.¹⁷⁴

Under H.B. 1517, the office of county judge would be abolished as of January 1, 1995.¹⁷⁵ At that time, additional district court judgeships would be established and filled by candidates elected during the 1994 general election.¹⁷⁶ Under H.B. 1517, the Supreme Court was required to designate staggered terms for the additional judgeships with initial terms of two, four, and six years.¹⁷⁷ In November of 1991, however, North Dakota Attorney General Nicholas Spaeth sent an advisory letter to State Senator William Goetz suggesting the staggered term requirement was unconstitutional because it violated article 6 section 9 of the North Dakota Constitution, which requires district judges to serve six-year terms.¹⁷⁸

In response, the legislature considered Senate Bill 2034 (“S.B. 2034”), which provided that the new judgeships established by H.B. 1517 on

169. See S.B. 2032, 53d Leg. Sess. (N.D. 1991); S.B. 2033, 53d Leg. Sess. (N.D. 1991); S.B. 2034, 53d Leg. Sess. (N.D. 1991); S.B. 2080, 53d Leg. Sess. (N.D. 1991); S.B. 2081, 53d Leg. Sess. (N.D. 1991); S.B. 2087, 53d Leg. Sess. (N.D. 1991); see also S. JOURNAL, 53d Leg. Assemb., Reg. Sess. 393, 406-07 (N.D. 1993) (remarks of Sen. Stenehjem) (arguing the staggered terms were not unconstitutional).

170. See S.B. 2032, 53d Leg. Sess. (N.D. 1991); S.B. 2033, 53d Leg. Sess. (N.D. 1991); S.B. 2080, 53d Leg. Sess. (N.D. 1991).

171. COURT SERVICES COMMITTEE, REPORT OF THE LEGISLATIVE COUNCIL 85-87 (1993).

172. H.B. 1517, 52d Leg. Assemb., Reg. Sess., 1991 N.D. Laws 974-1044.

173. *Id.*

174. 1993 S. Standing Comm. Minutes: Hearing on Bill No. SB 2032 Before the S. Comm. on the Judiciary, 53d Leg. Sess. (N.D. 1993) (testimony of Katherine Chester Ver Weyst).

175. H.B. 1517, 52d Leg. Assemb., Reg. Sess., 1991 N.D. Laws 974.

176. *Id.*

177. *Id.*

178. COURT SERVICES COMMITTEE, *supra* note 171, at 87; Letter from Nicholas Spaeth, North Dakota Attorney General, to Senator William Goetz (Nov. 7, 1991), <http://www.ag.nd.gov/Opinions/1991/Advice/110791-Goetz.pdf>.

January 2, 1995, would be classified as interim district judgeships with limited jurisdiction.¹⁷⁹ But under S.B. 2034, the interim district judges did not have jurisdiction to hear AA felony cases.¹⁸⁰ Nevertheless, the Legislative Council and Court Services Committee reviewed the constitutionality of the staggered term provision and concluded the research did not support a finding of unconstitutionality.¹⁸¹ Thereafter, S.B. 2034 was defeated on the Senate floor.¹⁸²

The 1993 legislature also considered streamlining the Supreme Court's ability to efficiently transfer and reduce the number of district court judgeships required under H.B. 1517.¹⁸³ Senate Bill 2080 ("S.B. 2080") addressed this issue by expanding the Supreme Court's authority to transfer judgeships from one judicial district to another.¹⁸⁴ It also identified two additional bases for the Supreme Court to find a vacancy in a judgeship and consider its removal.¹⁸⁵

Under H.B. 1517, the Supreme Court only had authority to abolish a district court judgeship when a vacancy occurred.¹⁸⁶ But in order for the Supreme Court to exercise its authority to abolish a judgeship, the vacancy had to occur as a result of the death or resignation of a judge before the end of their term.¹⁸⁷ This prohibited the Supreme Court from addressing the situation where a judge did not seek reelection.¹⁸⁸ Senate Bill 2080 remedied this issue by expanding the definition of "vacancy" to include a judicial announcement not to seek reelection in addition to the failure of a judge to timely file a petition for candidacy with the Secretary of State.¹⁸⁹ After the conclusion of the 1993 Legislative Session, the Supreme Court was in a strong position to implement the trial court unification requirements mandated by H.B. 1517.

179. S.B. 2034, 53d Leg. Assemb., Reg. Sess. (N.D. 1993).

180. *Id.*

181. *Id.*; see also COURT SERVICES COMMITTEE, *supra* note 171, at 87.

182. 1993 S. Standing Comm. Minutes: Hearing on Bill No. SB 2080 Before the S. Comm. on the Judiciary, 53d Leg. Sess. (1993) (statement of Jim Ganje, State Court Admin. Staff Att'y).

183. S.B. 2080, 53d Leg. Assemb., Reg. Sess., 1993 N.D. 1575.

184. *Id.*

185. *Id.*

186. H.B. 1517, 52d Leg. Assemb., Reg. Sess., 1991 N.D. Laws 1006.

187. 1991 H. Standing Comm. Minutes: Hearing on Bill No. HB 1516 & 1517 Before the H. Comm. on the Judiciary, *supra* note 78 (statement of Dist. Judge Bruce Bohlman).

188. 1993 S. Standing Comm. Minutes: Hearing on Bill No. SB 2080 Before the S. Comm. on the Judiciary, *supra* note 182 (statement of Chief Justice Gerald VandeWalle).

189. S.B. 2080, 53d Leg. Assemb., Reg. Sess., 1993 N.D. Laws 1108.

VI. 1995–2015: A LOOK BACK ON SUCCESS

After extensive preparation, the state’s trial court unification plans were successfully accomplished, resulting in a unified system fully capable of rendering effective judicial administration.¹⁹⁰ In order to accomplish this unusual undertaking, the Legislative Assembly relied heavily on the Supreme Court to implement the reorganization of the trial court system.¹⁹¹ Through careful and reasoned analysis, the Supreme Court reduced the number of judgeships from fifty-three to forty-two almost exclusively by abolishing vacant judgeships through attrition.¹⁹² This process ensured the judiciary remained responsive to the present and future needs of the state’s citizens.¹⁹³ As a result, the trial court system originally envisioned by H.B. 1517 was finally brought to fruition.¹⁹⁴

A. THE SUPREME COURT’S ROLE IN IMPLEMENTATION

After successful passage of H.B. 1517 was secured and the state’s efforts to unify its trial courts were enshrined into law, the Supreme Court was tasked with implementing the state’s unified court system.¹⁹⁵ In order to fulfill its responsibility, the Supreme Court was granted nearly unbridled authority to design and develop the newly unified court system.¹⁹⁶ Although the Supreme Court was granted authority over shaping the state courts’ administrative and election districts,¹⁹⁷ regulating the composition of the judicial districts,¹⁹⁸ and, most importantly, determining the number of judges in each judicial district,¹⁹⁹ the Supreme Court was statutorily bound to reduce the number of district court judgeships while ensuring that such unification did not hinder effective judicial administration or prevent access to justice and legal services in the future.²⁰⁰ Moreover, the Supreme Court remained mindful that their decisions would impact their respected judicial colleagues, who were at risk of losing their judgeships, and the court

190. See discussion *infra* Part VI.A.

191. *Id.*

192. *Id.*

193. *Id.*

194. See discussion *infra* Part VI.B.

195. See N.D. CENT. CODE ch. 27-05 (2015).

196. See N.D. CENT. CODE §§ 27-05-00.1(3), 27-05-01, 27-05-02.1 (2015).

197. N.D. CENT. CODE §§ 27-05-00.1, 27-05-02 (2015).

198. N.D. CENT. CODE § 27-05-00.1(3) (2015).

199. N.D. CENT. CODE § 27-05-01 (2015).

200. H.B. 1517, 52d Leg. Assemb., Reg. Sess., 1991 N.D. Laws 974 (enacted as N.D. CENT. CODE § 27-05-01(2) of the 1989 Supplement to the North Dakota Century Code).

system's ability to serve its citizens.²⁰¹ Despite the difficulty in fulfilling the mandate, in 2001, the Supreme Court successfully implemented a single-level court system, which reduced the number of judgeships throughout the state while ensuring the state's judicial system continued to render effective judicial administration and access to justice.²⁰²

In authorizing the unification of the state's trial courts, the North Dakota Legislative Assembly required the Supreme Court to reduce the number of judgeships from fifty-three to forty-two, a twenty-one percent reduction in judgeships throughout the state.²⁰³ Interestingly, there was little explanation or justification for this seemingly arbitrary target number of district judges.²⁰⁴ Although the Supreme Court disagreed at times with the lack of discretion it was granted with regard to determining the appropriate number of judgeships to ensure effective judicial administration,²⁰⁵ it abided by the Legislative Assembly's order to reduce the state's judgeships to forty-two by 2001 and, when possible, did so

201. *E.g.*, *In re* Judicial Vacancy in Dist. Judgeship No. 1, 1998 ND 25, ¶¶ 18-21, 574 N.W.2d 199 (Meschke, J., Statement for Filling Vacancy) ("According to the final report in December 1997 from the National Center of State Courts on the North Dakota District Court Weighted Caseload study, the Southeast Judicial District currently needs seven trial judges. If we abolish this one, the Southeast District would be one judge short of meeting the needs for judicial services to the people there." (citations omitted)); *See e.g.*, Judicial Vacancy in S. Cent. Judicial Dist., 1998 ND 58, ¶ 9, 574 N.W.2d 593 (describing the Supreme Court's goal to "heed the legislative intent [of N.D. CENT. CODE § 27-05-01] to abolish judgeships through attrition rather than by abolition of occupied judgeships."); *see also* Judicial Vacancy in Se. Judicial Dist., 1998 ND 25, ¶ 37 (Maring, J., Statement for Filling Vacancy) (describing "the unenviable position of taking away a job from one of [the court's] colleagues").

202. Upon abolishing the judgeship in Bowman, the Supreme Court had successfully unified the trial courts and reduced the number of judgeships to forty-two as mandated by N.D. CENT. CODE ch. 27-05. *See* Abolition of Judgeship, 1999 ND 226, ¶ 7, 603 N.W.2d 57; *see also* H. JOURNAL, 57th Leg. Assemb., Reg. Sess. 69, 75 (N.D. 2001), <http://www.legis.nd.gov/assembly/57-2001/journals/HR02.pdf>.

203. *Id.*

204. In describing the H.B. 1517 mandate to reduce the number of judges to forty-two, in his 1995 State of the Judiciary Address, Chief Justice VandeWalle quoted the National Center for State Courts observing "there appears to be no empirical justification for the particular number, and yet it was used repeatedly and finally passed into law." H. JOURNAL, 54th Leg. Assemb., Reg. Sess. 78-79 (N.D. 1995).

205. *In re* Judicial Vacancy in Dist. Judgeship No. 1, ¶ 25, 574 N.W. 2d at 202 (Meschke, J., State for Filling Vacancy) ("In my opinion, we should ask the 1999 Legislative session to back away from the mandatory-reduction-of-judgeships law and to amend it to authorize a more flexible approach. The Legislature should give the Supreme Court authority to abolish, move, or keep four judgeships besides the forty-two minimum mandated. While some more judgeships might reasonably be abolished temporarily where the current Weighted Caseload study suggests they are not presently needed, the judicial branch ought to have a discretionary safety net of trial-judge positions. The Legislature can, and should, delegate on-going discretionary authority to this Court to re-create and place those judgeships when and where they are needed, as changes and experience require.").

through attrition rather than through compelled transfer or termination of an occupied judgeship.²⁰⁶

By 1995, the Supreme Court had reduced the number of judges from fifty-three to forty-eight through attrition in response to judicial vacancies caused by judges' resignations or decisions to not seek reelection.²⁰⁷ In reaching its decisions, the Supreme Court consulted with judges and attorneys from the affected judicial districts²⁰⁸ and required those judicial districts to submit a report addressing the following criteria:²⁰⁹ "(1) [p]opulation; (2) [c]aseloads and unusual case types; (3) [t]rends in [p]opulation and caseloads; (4) [i]mpact of proposed vacancy disposition on travel requirements; (5) [a]ge or possible retirement of remaining judges in the affected judicial district; and (6) [a]vailability of facilities (e.g., law enforcement, correctional, and court facilities)."²¹⁰ By carefully considering these factors to determine whether a vacant judgeship was necessary for effective judicial administration, the Supreme Court eliminated ten judgeships through attrition, reducing the number of judgeships to forty-three in 1999.²¹¹

Despite its efforts to reduce the number of judgeships through attrition to avoid terminating an occupied judgeship, the Supreme Court found itself in the "unenviable position" of having to take a job from "one of [its] colleagues."²¹² With twelve of the forty-three remaining judgeships' terms expiring in December 2000,²¹³ the Supreme Court was required, for the first

206. *See, e.g.*, Abolition of Judgeship, 1999 ND 226, ¶¶ 38-40, 603 N.W.2d 57, 64; *see also* H. JOURNAL, 57th Leg. Assemb., Reg. Sess. 69, 75 (N.D. 2001), <http://www.legis.nd.gov/assembly/57-2001/journals/HR02.pdf>. ("[Abolishing Judgeship No. 5] is the last reduction the court is required to make although the court is authorized and will continue to make transfers when vacancies occur and transfers are necessary.")

207. *See, e.g.*, Judge Vacancy in the Chamber at Bottineau, 522 N.W.2d 425 (N.D. 1993) (judgeship abolished upon the Honorable William Neumann's resignation); Judge Vacancy in the Chamber at Grafton, 512 N.W.2d 723 (N.D. 1994) (judgeship abolished after James H. O'Keefe did not seek reelection).

208. N.D. CENT. CODE § 27-05-02.1 (2015).

209. N.D. Sup. Ct. Admin. R. 7.2, § 3(6).

210. N.D. Sup. Ct. Admin. R. 7.2, § 4.

211. *See* Judge Vacancy in the Chamber at Linton, 473 N.W.2d 134 (N.D. 1991); Judge Vacancy in the Chamber at Williston, 473 N.W.2d 134 (N.D. 1991); Judge Vacancy in the Chamber at Bottineau, 522 N.W.2d 425 (N.D. 1993); Judge Vacancy in the Chamber at Grafton, 512 N.W.2d 723 (N.D. 1994); Judge Vacancy in the Chamber at Lisbon, 522 N.W.2d 747 (N.D. 1994); Judge Vacancy in the Chamber at Linton, 529 N.W.2d 870 (N.D. 1995); Judge Vacancy in the Chamber at Wahpeton, 575 N.W.2d 634 (N.D. 1996); Judicial Vacancy in Southeast Judicial Dist., 1998 ND 25, 574 N.W.2d 199; Judicial Vacancy in South Central Judicial Dist., 1998 ND 58, 574 N.W.2d 593; Judicial Vacancy in Nw. Judicial Dist., 1998 ND 59, 574 N.W.2d 591.

212. Judicial Vacancy in Se. Judicial Dist., ¶ 37, 574 N.W.2d at 203 (Maring, J., Statement for Filling Vacancy); *see* Abolition of Judgeship, 1999 ND 226, ¶ 3, 603 N.W.2d 57, 58.

213. Abolition of Judgeship, ¶ 4, 603 N.W.2d at 58 (Judgeships Nos. 6 and 7 in the Northeast Judicial District; Judgeship No. 2 in the Northeast Central Judicial District; Judgeships Nos. 6, 7, and 8 in the Northwest Judicial District; Judgeships Nos. 4 and 9 in the South Central Judicial

time, to “exercise the authority conferred on it under N.D.C.C. § 27-05-02.1(2) and (3)” and abolish an occupied judgeship.²¹⁴ Because there was no indication of any impending resignations or retirements, the Supreme Court consulted with the affected judicial districts and evaluated which judgeships were essential for effective judicial administration.²¹⁵ After conducting a review of the requested criteria,²¹⁶ the Supreme Court ordered the abolition of Judgeship No. 5, held by Zane Anderson in the Southwest Judicial District, stating:

Based upon our review and recognizing our state’s scarce judicial resources must be allocated in a manner to best achieve effective judicial administration, we are compelled to designate Judgeship No. 5 in the Southwest Judicial District with chambers in Bowman for abolition effective at the end of the current judicial term.

Our decision is based upon a review of caseloads and populations in each of the judicial districts and upon projections of population changes.²¹⁷

The Supreme Court continued, expressing its regret for the unfortunate decision to abolish an occupied judgeship and gratitude to a respected colleague:

The original legislative intent was to abolish judgeships through attrition rather than by abolition of an occupied judgeship. This Court’s hope had been that the 1999 Legislative Assembly would have seen fit to extend the time to January 1, 2003 to complete the reduction of judgeships. See Conference Committee’s proposed amendment to House Bill 1002. Given the actuarial statistics relating to our existing judges, reduction to 42 by 2003 solely by attrition would have been virtually assured. However, no extension was enacted. Unfortunately, this Court is forced to terminate a judgeship currently occupied by a good jurist and a dedicated public servant.

On behalf of the citizens of North Dakota, we express our appreciation to the Honorable Zane Anderson who has ably served the judicial needs of North Dakota in District Judgeship No. 5

District; Judgeship No. 8 in the Southeast Judicial District; and Judgeships Nos. 1, 3, and 5 in the Southwest Judicial District).

214. *Id.* ¶ 3.

215. *Id.* ¶¶ 4-6.

216. *Id.* ¶ 5.

217. *Id.* ¶¶ 7-8, 603 N.W.2d at 58-59.

since 1994 and previously as a county judge of a multi-county district serving Adams, Bowman, Hettinger and Slope counties.²¹⁸

By abolishing the occupied judgeship in Bowman, the Supreme Court had successfully reduced the number of judgeships throughout the state and brought the unification of the state's trial court system to a successful end.²¹⁹

B. THE FINAL PRODUCT OF H.B. 1517: A UNIFIED TRIAL COURT SYSTEM

After reducing the number of judgeships throughout the state from fifty-three to forty-two, the Supreme Court had fulfilled its unification responsibilities.²²⁰ In his 1999 State of the Judiciary Address, Chief Justice Gerald VandeWalle proudly proclaimed that North Dakota's unique approach to trial court unification had been successfully implemented, transforming the state's trial court system from a multi-level "system of literally hundreds of part-time and full-time judges" to a single-level system consisting of forty-two, full-time, law-trained trial judges.²²¹ North Dakota's implementation of trial court unification not only received praise by North Dakota jurists, it received national recognition.²²² In his State of the Judiciary Address, Chief Justice Gerald VandeWalle explained that because the "idea of reducing the number of judges in a state was so unique, it prompted the National Center for State Courts to send one of their experienced staff persons to examine [North Dakota]."²²³ The Chief Justice continued, quoting the National Center for State Courts' report discussing the implementation of the state's efforts to unify its trial court system, stating:

This legislation, which was driven in large part by economic considerations, is unique, not only in the scope of the proposed reduction, but in the manner of implementation. The Legislature

218. *Id.* ¶¶ 38-39, 603 N.W.2d at 64. Although the judgeship held by Judge Anderson was abolished in 2000, Judge Anderson ran against Judge Hunke in the 2000 election. Judge Anderson defeated Judge Hunke. North Dakota Secretary of State, *General Election 11-07-2000*, Archived Election Results, (Aug. 10, 2015), <https://vip.sos.nd.gov/pdfs/Abstracts%20by%20Year/2000s%20Election%20Results/2000/General%20Election%2011-07-2000.pdf>. Judge Anderson served the Southwest Judicial District until announcing his resignation in 2015. Letter from Zane Anderson, Southwest Judicial Dist. Judge, to Governor Jack Dalrymple (July 27, 2015).

219. H. JOURNAL, 57th Leg. Assemb., Reg. Sess. 70, 76 (N.D. 2001), <http://www.legis.nd.gov/assembly/57-2001/journals/HR02.pdf>.

220. *Id.*

221. H. JOURNAL, 56th Leg. Assemb., Reg. Sess. 57, 63 (N.D. 1999), <http://www.legis.nd.gov/assembly/56-1999/journals/HR02.pdf>.

222. H. JOURNAL, 54th Leg. Assemb., Reg. Sess. 77 (N.D. 1995).

223. *Id.*

has set some goals . . . but has left it up to the North Dakota Supreme Court to administer the changes with very few limits on the authority of the courts to shape administrative and election districts, to assign judges, and to determine which judgeships are to be eliminated. The project staff thought it important to document this phenomenon and made a site visit to North Dakota . . .²²⁴

As a result of the state's successful unification of its trial courts, it created a single-level court system capable of not only responding to the scarce judicial resources of the 1990s, but capable of adapting and responding to times of increased demand for judicial services as well. Since the explosion of economic development and growth experienced throughout the state in recent years, the Legislative Assembly has been forced to answer calls for increased judicial resources by adding judgeships throughout the state.²²⁵ In order to ensure the state's judicial districts are able to render effective judicial administration in light of the increased demand for judicial services, the Legislative Assembly continues to rely on the Supreme Court to oversee the organization and administration of its unified trial court system.²²⁶

224. *Id.*

225. *See* H. JOURNAL, 61st Leg. Assemb., Reg. Sess. 61, 64 (N.D. 2009), <http://www.legis.nd.gov/assembly/61-2009/journals/HR02.pdf>. ("The past five studies have shown a continuing need for five additional judges. I am not here today to ask you for five new judgeships, but I am here to ask for two new judgeships this biennium, one for the Southeast Judicial District and one for the Northwest Judicial District, and authorization for one new judgeship for the East Central Judicial District to be funded in the following biennium.")

226. *See* Chambering of the New Judgeship in the Nw. Judicial Dist., 2009 ND 133, 770 N.W.2d 221; Chambering of the New Judgeship in the Se. Judicial Dist., 2009 ND 134, 770 N.W.2d 218; Judicial Vacancy in Judgeship No. 1, Nw. Judicial Dist., 2010 ND 1, 782 N.W.2d 345; Judicial Vacancy in Judgeship No. 4, Se. Judicial Dist., 2010 ND 145, 810 N.W.2d 760; Chambering of Judgeship No. 10 in the Nw. Judicial Dist., 2013 ND 82, 831 N.W.2d 367; Chambering of Four New Dist. Judgeships, 2015 ND 138, 864 N.W.2d 286.