

**JOSEPH P. SWALLOW**  
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HOUSE JUDICIARY COMMITTEE  
MI HOUSE OF REPRESENTATIVES  
STATE CAPITOL BUILDING  
PO BOX 30014  
LANSING MI 48909-7514

SENATE JUDICIARY COMMITTEE  
MI SENATE  
STATE CAPITOL BUILDING  
PO BOX 30036  
LANSING MI 48909-7536

Re: HB 5094; A bill that eliminates the judges of the 87<sup>th</sup>, 88<sup>th</sup> and 89<sup>th</sup> District Courts

Please allow me to introduce myself. I previously served four consecutive terms in the House and was concurrently a member of the House Judiciary Committee. Prior to that, I served a term as a Prosecuting Attorney of Alpena County and my Post-Legislature career includes 32 years as a Circuit Judge in northeast Michigan. Therefore, I may be able to provide some institutional memory in regard to the above-captioned Legislation.

I write now because it concerns me that this Bill denudes constitutionally established Courts of their elected judges. Further, I have concern over past legislative fixes in this area that raise questions of constitutional propriety.

I was a member of the House at the birth of the District Court, and perhaps the following history may be helpful.

During the 73rd Legislature (1965-66), a paramount responsibility was to find a substitute for the Justice of the Peace System that had been abolished by the new 1963 Constitution\*. A new District Court System, requiring a two-thirds vote of the Legislature, was proposed and supported by the Supreme Court, Governor's office and State Bar.

Some of the members, including myself, believed that adding the Justice of Peace jurisdiction (misdemeanors and small claims) to the already existing Probate Courts made more sense, particularly in northern Michigan where the Probate Courts with very small case loads were often staffed by part-time probate judges. (Generally

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\* All Constitutional reference and subsequent Section references herein are to The Constitution's Judicial Article being Article VI of the 1963 Constitution of the State of Michigan.

these part-time judges supplemented their income by practicing law which from the outset raised concerns over conflict of interest.)

Further, Section 15 of the Judicial Article provided an open invitation for the combination of existing courts and judges.

The combination proposal (using existing courts and judges) passed the House, but was ultimately not to be, as the pressure to create one hundred plus new jobs for lawyer judges won the day.

So, in view of that action taken by the 75th Legislature, action by a subsequent Legislature, granting all probate judges full-time status and adjusting compensation accordingly, it should come as no surprise that today the state has an excessive number of judges.

However, the proposed fixes have created even more problems. In my view, under the pretense of solving the problem of excessive judges, the Constitution of our state has been compromised by actions taken with the support of those entities who should be most responsible for its enforcement.

For example, some legislative fixes have foisted judges upon county jurisdictions where the resident electors were denied any opportunity whatsoever to participate in the election of the judge. Also, by legislative fiat and Supreme Court order, we have witnessed the advent of the homogenized judge. A homogenized judge being one who combines the duties of all courts within a county, without regard to the constitutional separation of courts and the specific court to which the judge has been elected. (See Sections 1, 11 and 15)

Section 23 of the Judicial Article has often been cited as authority for this homogenization of the judges and courts. Historically, this explanation fails miserably. Initially, the Article was intended only as a bridge to fill judicial vacancies by appointing a retired judge to serve temporarily until a new judge, absent any incumbency designation, could be elected. Unfortunately, political forces led the charge to amend this Article so as to allow appointment by the Governor to fill judicial vacancies. But, even the existing language of the Constitution, "to perform judicial duties for limited periods or specific assignments", does not grant authority to turn the judicial system on its head.

Institutional publicity in an attempt to disguise and bolster the homogenization of the courts has been misleading. For example, the "family court" has been often touted as a positive example of judicial activism. But, search the Constitution high and low and you cannot find any mention of a family court. This tactic should alert us to an oft forgotten lesson of history: if the Constitution can be manipulated for a seemingly good purpose, it can also be manipulated for a bad purpose.

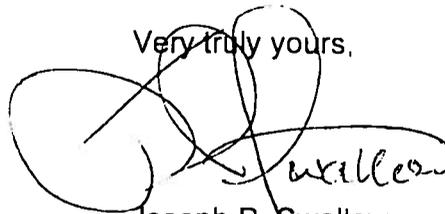
This latter tactic, in my view, focuses on the greater problem. For, over the last decades, judicial efficiency or economy has been methodically used as the reason to centralize administrative control over the state's trial judges. This control has been accompanied by concurrent expansion of the bureaucratic arm of the Supreme Court, i.e. the State Court Administrators Office.

This reordering of control over the trial courts has been accomplished despite Section 13, which specifies, "supervisory and general control" of the trial courts to be at the county or regional level.

Consider too the fact that Supreme Court elections in Michigan now lead the nation in receipt of special interest contributions. The resulting impact of this funding has been a political polarization within a court whose constitutional role should be one of an impartial nonpartisan.

So, can it reasonably be said that HB5094's elimination of a few outstate judges is but a small part of a larger trend to deprive our state of an independent non-partisan judiciary? In this sense, the Bill should invite your strictest scrutiny before granting approval.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Swallow". The signature is stylized with large loops and a long horizontal stroke at the end.

Joseph P. Swallow  
Circuit Judge Retired