

House Concurrent Resolution 3021

Testimony of Tony J. Weiler

House Judiciary Committee

February 17, 2025

Chairman Klemin, and members of the House Judiciary Committee. My name is Tony Weiler, and I am the Executive Director of the State Bar Association of North Dakota (SBAND). We are the professional association of nearly 3,000 licensed North Dakota Lawyers. I work for a Board of 15 lawyers who meet to discuss all legislation that I put in front of them, and they voted that I appear before you today in Opposition to House Concurrent Resolution 3021, and I ask for a Do Not Pass recommendation.

The State Bar Association is a unified or mandatory bar association. That means that any licensed lawyer in North Dakota is a member of our association. We were the first mandatory bar association in the county, formed in 1921. There are currently 31 mandatory bars across the county. Because we are a mandatory bar, we are bound by the constitution to only take a position on issues that would improve the practice of law or discipline the profession. As such, we don't take a position on many issues at all. While there arguably may be many bills that would be considered improving the practice of law, we simply don't weigh in on many matters. You see me in the committee room a lot, because I feel it is important that the Bar is represented and acting as a resource to the legislature should questions arise.

This concurrent resolution could certainly impact the improvement of the legal profession in North Dakota and therefore I rise to testify in opposition. I have some serious concerns about Section 1 of HCR3021, including removing the Supreme Court's ability to promulgate rules and regulations regarding the admission to practice law, and discipline the profession. Further, removing judicial immunity may mean that we would have no judges in North Dakota, and we oppose these suggested changes that would be placed on a future ballot.

What I'd like to do primarily is focus Section 2 of the resolution regarding the Judicial Nominating Committee (JNC).

Section 13 of article VI of the Constitution requires that a judicial nominating committee be established by law, and that the governor shall fill any vacancies in the North Dakota Supreme Court, or a district court judgeship in the state. This resolution would remove the governor's power and replace that power with a bipartisan committee.

Currently, the JNC is established under Chapter 27-25 of the North Dakota Century Code. The JNC consists of 6 "permanent" members who serve with 3 "temporary members" for a District Court opening. The 6 permanent members work to fill a vacancy on the Supreme Court. The governor, chief justice, and president of SBAND each appoint 2 permanent members one of whom is a judge, former judge, or lawyer, and one whom is not a judge, former judge, or lawyer.

These are three-year terms, and a member may serve two consecutive terms. When a judicial district has a vacancy, each appointing authority shall appoint a temporary member of that judicial district. During Governor Burgum's term, he traditionally appointed a legislator from that district to serve in the temporary member role (including Rep. Satrom). The Executive Director of SBAND serves as the nonvoting secretary of the JNC.

When a district court or supreme court judge or justice resigns, or retires, Section 27-05-02.1 is triggered. That law requires the supreme court to determine, "within ninety days of receiving the notice of the vacancy from the governor" whether that judgeship should be retained in that district or transferred to another. Following that determination, the court may order the position filled in accordance with chapter 27-25, it may transfer the judgeship to another district, or it may abolish the judgeship.

Once the court makes its determination to retain and fill the judgeship, the JNC is convened by the governor and begins its work. We have sixty days to provide notice to members of the bar of the opening, do background work, hold interviews, and submit between two and seven names to the governor for appointment. Under section 27-25-04 the governor may fill the vacancy from the list submitted by the JNC, return the list and reconvene the JNC, or call a special election to fill the vacancy.

This resolution would put the question of taking the power to appoint away from the governor, and giving that power to a bipartisan committee established by law on the ballot (or the governor could call a special election). In my eleven and a half years serving as the secretary of the JNC, I've been involved in 35 nominating committee appointments. I have found the committee to be bipartisan and not focused on politics in the least.

The judicial nominating process in North Dakota works very well, and I don't see a need to make this change, take the power to appoint a judge or justice away from the governor and place it with a bipartisan committee. Therefore, I again encourage a DO NOT PASS. I'd be happy to answer any questions.

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