The Right to Simple Justice: The Primary First Principle

Lorie S. Gildea
Matt Tews

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THE RIGHT TO SIMPLE JUSTICE:
THE PRIMARY FIRST PRINCIPLE

Chief Justice Lorie S. Gildea† and Matt Tews††

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Access to justice is one of the promises of Minnesota. This promise is reflected in our constitution, where the people of Minnesota promised each other that in our state each individual has the right “to obtain justice freely . . . promptly and without delay.”1 Given the import our founders placed on access to justice, the delivery on that promise may rightly be described as a “first principle” of Minnesota.2 In this article, we begin with a historical perspective on Minnesota’s commitment to the first principle of access to justice. Then, we turn to the present reality regarding that commitment here and elsewhere, focusing on some of the consequences of a less-than-steadfast adherence to the timely delivery of access to justice. Finally, we conclude with recommendations to ensure that the promise of access to justice continues to be a reality in Minnesota.

† Lorie S. Gildea is the Chief Justice of the Minnesota Supreme Court.
†† Matt Tews was Chief Justice Lorie S. Gildea’s judicial clerk for the 2011–2012 term.

1. Article I, section 8 of the Minnesota Constitution provides: “Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws.”

2. Alexander Hamilton wrote in the Federalist papers that first principles were “primary truths upon which all subsequent reasonings must depend.” The Federalist No. 31, at 236 (Alexander Hamilton) (Howard Mumford Jones ed., 1972).
I. HISTORICAL PERSPECTIVE

Minnesotans have long understood that access to justice requires the courts to be open to all. This bedrock principle is enshrined in Article I, Section 8 of our constitution, and it is also the focus of one of our supreme court’s earliest cases, *Davis v. Pierse.* The case was decided against the backdrop of the Civil War, and it involved a statute passed by our Legislature that was intended to aid the Union in its “efforts to put down [the] . . . rebellion.” In that statute, the Legislature "suspend[ed] the privilege of all persons aiding the rebellion . . . [from] prosecuting and defending actions and judicial proceedings" in Minnesota. F.A.W. Davis, a resident and citizen of the secessionist State of Mississippi, sought redress in a Minnesota court in connection with property located in Minnesota in which Davis claimed an interest. The statute, however, ostensibly prevented Davis from pressing a claim in Minnesota state court.

Davis argued the statute was unconstitutional and void. The court agreed. Speaking eloquently for the court, our first chief justice, Lafayette Emmett, described the Legislature’s decision to pass such a law in the midst of national crisis as “forgetting justice, and disregarding the wholesome restraints of our fundamental law.” After rejecting various grounds on which to save the statute, Chief Justice Emmett concluded that while striking the statute down may be unpopular, all Minnesotans “must regard as [a] matter of pride and gratulation, that in this State no one, not even the worst of felons, can be denied the right to simple justice.”

The result in *Davis v. Pierse* is grounded in the importance our supreme court placed on the principle of access to justice. That priority is also reflected in how the courts in Minnesota are organized, funded, and governed. Based on the principle that all in Minnesota are entitled to access to justice, our court system transformed itself in the last century to be better positioned to

3. See *Davis v. Pierse*, 7 Minn. 13, 23, 7 Gil. 1, 11 (1862) (“[I]n this State no one, not even the worst of felons, can be denied the right to simple justice.”).
4. *Id.* at 23, 7 Gil. at 11.
5. *Id.* at 16, 7 Gil. at 3.
6. *Id.* at 15, 7 Gil. at 3.
7. *Id.* at 17, 7 Gil. at 6.
8. *Id.* at 14, 7 Gil. at 1–2.
9. *Id.* at 16, 7 Gil. at 4.
10. *Id.* at 25, 7 Gil. at 11.
11. See *id.*
deliver access to justice to all. The process was a long one, beginning in the late 1980s and not concluding until the 21st century was in its infancy.

Prior to the transformation, Minnesota’s court system was funded primarily at the county level. This county-funded system had many disadvantages, including an unequal delivery of services, “[s]everance of . . . policy decisions from the funding decisions,” “[f]ragmented and . . . limited fiscal oversight,” and the dependence of the third branch of state government on the uncoordinated decisions of eighty-seven county governments. In order to remedy these problems, in 1989 the judiciary embarked on a fifteen-year transformation toward exclusive state funding. Complete state funding was achieved on July 1, 2005. The fact that the Minnesota Judiciary’s funding now comes from one source helps to present a unified and coordinated budgetary message. It also helps to ensure that the funding provided to the Judicial Branch is used to promote branch-wide strategic initiatives and priorities.

As part of the transition to state funding, in 2005 the judiciary also introduced a new governance model. By order of chief justice Kathleen Blatz, the policy-making authority for the Judicial Branch was delegated to the newly formed Minnesota Judicial Council. The Judicial Council, a twenty-five-member body chaired by the chief justice, is made up of nineteen judges, including the chief judge of the court of appeals and the chief judge of each of the ten judicial districts, five court administrators, and one “at-large appointment from within the Judicial Branch.” Council members work in courthouses around the state and at both the district and appellate levels.

The “right to simple justice” that Chief Justice Emmett wrote about in *Davis v. Pierse* means that the people of Minnesota deserve

13. *Id. at 18–19.
14. *Id. at 19.
15. *Id. at 23.
16. *See id. at 18–23.
17. *In re Order Establishing Judicial Council, Adm-04-8003 (Minn. Dec. 10, 2004).*
19. *Id.*
20. *Davis v. Pierse, 7 Minn. 13, 23, 7 Gil. 1, 11 (1862).*
a court system that provides equal access to timely justice no matter where in the state they live. In other words, justice should look the same all around Minnesota. With the transition to state funding complete, and through the leadership of the Judicial Council, the judiciary in Minnesota is better positioned to ensure that all Minnesotans have the same access to justice, and thereby honor the “right to simple justice.”

II. PRESENT REALITY

_Davis v. Pierse_ stands for the principle that closing the courthouse doors to even one person, “even the worst of felons,” and even in a time of crisis, impugns “our fundamental law” and denies the constitutional “right to simple justice.” Yet in Minnesota and across our nation, judicial budget constraints are threatening—quite literally—to close courthouse doors. Bill Robinson, President of the American Bar Association, expressed the problem in these terms: “The simple truth is inadequate funding threatens to undermine the ability of our state courts to function properly.”

The problem of inadequate funding has put America’s state courts in crisis. From Washington to Florida and

21. _Id._
26. _See_ THE CONSTITUTION PROJECT, THE COST OF JUSTICE: BUDGETARY THREATS TO AMERICA’S COURTS 5 (2006) [hereinafter COST OF JUSTICE] (describing how a $100 million cut to the judicial budget forced the chief justice of the Florida Supreme Court to beg the state bar to lobby for court funding).
Maine\textsuperscript{27} to California,\textsuperscript{28} courts are struggling to provide quality judicial services. Across the nation, studies have shown that today’s courts are “less efficient, and judicial decisionmaking is [becoming] less expeditious.”\textsuperscript{29} And in some states, long delays and inefficiencies are threatening to deny citizens a “basic access to justice.”\textsuperscript{30}

The cause of this unprecedented crisis is decreasing judicial branch budgets.\textsuperscript{31} While state court budgets have been in decline over the last decade,\textsuperscript{32} the financial crisis beginning in 2008 brought on the deepest cuts.\textsuperscript{33} In the three years after 2008, “the courts of most states [were] forced to make do with 10 to 15\% less funding than they had in 2007.”\textsuperscript{34} These cuts were made despite the fact that the courts of every state make up only a tiny portion of the overall budget; “not a single state in America spends more than 4 percent of its annual budget on its judiciary, and . . . many states fund their courts at less than 1 percent.”\textsuperscript{35} In many jurisdictions, the cuts have been exacerbated by the increased filings that have accompanied the economic downturn.\textsuperscript{36}

\textsuperscript{27.} Criminal Justice System Faces Crises Due to State Budget Cuts, ASSOCIATED PRESS, Oct. 26, 2011, available at http://www.syracuse.com/news/index.ssf/2011/10/criminal_justice_system_faces.html (discussing how, since 2007, Maine’s judiciary budget has been cut but the court system has seen a fifty percent increase in civil filings).

\textsuperscript{28.} See generally WEINSTEIN & PORTER, supra note 22, at 2–16 (describing how a lack of funding has negatively affected California’s, and especially Los Angeles’, courts).

\textsuperscript{29.} N.Y. STATE BAR ASS’N, REPORT OF THE EXECUTIVE COMMITTEE ON THE IMPACT OF RECENT BUDGET CUTS IN NEW YORK STATE COURT FUNDING 1 (2012).

\textsuperscript{30.} Editorial, Threadbare American Justice, N.Y. TIMES, Aug. 18, 2011, at A20 [hereinafter Threadbare American Justice].

\textsuperscript{31.} CRISIS IN THE COURTS, supra note 24, at 3.

\textsuperscript{32.} Dixon, supra note 22, at 1.

\textsuperscript{33.} See CRISIS IN THE COURTS, supra note 24, at 4.

\textsuperscript{34.} Id.

\textsuperscript{35.} Edwin Meese III & William T. Robinson, Our Liberty Depends on Funding Our Courts, So They Can Protect All of Us, FOX NEWS, Jan. 16, 2012, http://www.foxnews.com/opinion/2012/01/16/our-liberty-depends-on-funding-our-courts-so-can-protect-all-us/; see also COST OF JUSTICE, supra note 26, at 2–3 (“In most states, the entire budget for the state judicial system amounts to less than four percent of the state’s overall annual budget.”).

\textsuperscript{36.} WASHINGTON ECON. GRP., INC., THE ECONOMIC IMPACTS ON THE GEORGIA ECONOMY OF DELAYS IN GEORGIA’S STATE COURTS DUE TO RECENT REDUCTIONS IN FUNDING FOR THE JUDICIAL SYSTEM 3–4 (2011) [hereinafter DELAYS IN GEORGIA] (discussing that caseloads are increasing while the judiciary budget is decreasing in Georgia); John Schwartz, Critics Say Budget Cuts for Courts Risk Rights, N.Y. TIMES, Nov. 27, 2011, at A18 (noting that courts are seeing an increased case load as a result of the financial crisis).
State judicial branches have responded to this decrease in financial support in a variety of ways. Courts in Alabama, California, Oregon, Iowa, South Carolina, and Ohio have been forced to close courthouses on certain days of the week. New Hampshire’s chief justice effectively suspended civil jury trials for a year. Delaware and Oregon have even had to postpone criminal trials. Many states, including New York and Kansas, have either raised filing fees, increased surcharges, or both. The judicial branches of South Carolina, California, Colorado, and Connecticut, among others, have laid off, furloughed, or frozen the hiring of employees. And most drastically, some states, including Washington, Utah, and California, have permanently closed some courthouses.

We, in Minnesota, have not been immune to the crisis. In 2003, it was estimated that, due to extremely high caseloads caused by a shrinking budget, our district court judges had on average only 120 seconds of court time to spend on many case types. More recently, our court offices have been forced to keep shorter hours. And with funding cuts leaving the judiciary with ten percent fewer people to do the work, “[b]acklogs and delays are increasing in
Minnesota.” For example, in 2009, almost one-third of our serious felony cases took over one year to process, and in some districts it was taking “more than a year for a misdemeanor case to be set for trial.” On the civil side, the delays caused by inadequate funding have the business community watching the court system “with increasing concern.” Overall, the budgetary pressure placed on our court system has negative constitutional, public safety, and economic impacts.

The potential constitutional consequences of the budgetary crisis are significant. Both the United States and Minnesota Constitutions separate government into three distinct branches: executive, legislative, and judicial. One of the primary purposes of this system is for each branch to balance and check the others, in order to prevent consolidations or abuses of power. It is of vital importance to this system of checks and balances that the judicial branch remains independent and coequal with the political branches.

Our justice system is the cornerstone of our democracy. The core constitutional function of the judicial branch is to “protect individual rights and liberties against overreaching by [the] political and popular majorities” represented by the other two branches. The courts are where people go to protect or defend the things that are most dear to them; whether it be their family, property, or freedom, it is ultimately the justice system that protects

53. Id.
54. Weise, supra note 22.
56. Meese & Robinson, supra note 35 (“The Founding Fathers separated our government into three co-equal branches by design, with each, at times, checking the other branches and holding them to their limited purpose.”).
57. This core principle has been recognized numerous times throughout the centuries, perhaps never so persuasively as when Montesquieu opined that there is no liberty “if the power of judging is not separate from legislative power and from executive power.” Montesquieu, The Spirit of the Laws 157 (Anne M. Cohler et al. eds., Cambridge Univ. Press 1989) (1752); see also Cost of Justice, supra note 26, at 1 (“The Constitution . . . establishes a judiciary that is independent from and equal in stature to the executive and legislative branches.”); cf. John Locke, Two Treatises on Civil Government: Book II, §§ 143, 150, 159 (Ballantyne Press 1884) (1690) (opining that the separation of powers is the key to good government).
58. See, e.g., Montesquieu, supra note 57; see also Crisis in the Courts, supra note 24, at 19 (“Strong, effective, and independent justice systems are a core element of our democracy.”).
the people and safeguards their rights. Despite its important role, the judicial branch has always been considered the weakest of the three branches. The judiciary lacks the power to fund itself and strives to separate itself from the political process. As such, the courts are in “continual jeopardy of being overpowered” by the other branches. One way the political branches can overpower the judicial branch is by cutting its public funding. Inadequate funding undermines the judicial system’s ability “to fulfill [its] important constitutional duties” and protect the rights that the public holds dear. In essence, “[e]ven the most eloquent constitution is worthless with no one to enforce it,” and no one can get “justice if the courts are closed.”

Unfortunately, courts across the country are swamped by huge dockets and decreasing budgets, and as a result, it is doubtful that any fully deliver the justice that our citizens need and deserve. When our courts function properly, delivering efficient and thoughtful results, public confidence in the government is strengthened. But “[w]hen they begin to fail, faith in the entire system of government deteriorates.” Thus, “[t]he court crisis affects more than just the justice system. It compromises citizen[s’] faith in our government.” It is therefore of vital constitutional importance that our courts be adequately funded.

60. See Schwartz, supra note 36.
61. See The Federalist No. 78, at 491 (Alexander Hamilton) (Benjamin Fletcher Wright ed., 1972) (“[T]he judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks.” (footnote omitted)).
62. Id.
63. Cf. M’Culloch v. Maryland, 17 U.S. 316, 391 (1819) (noting that the “right to tax, without limit or control, is essentially a power to destroy”). Likewise, the power to fund or not to fund is essentially the power to destroy.
64. Cost of Justice, supra note 26, at 1.
65. Crisis in the Courts, supra note 24, at 19.
66. Weise, supra note 22 (quoting Stephen Jack, President, Am. Bar Ass’n) (internal quotation marks omitted).
67. Threadbare American Justice, supra note 30.
68. See Crisis in the Courts, supra note 24, at 19.
69. Id.
70. Id.
71. Cf. Youngstown Sheet & Tube Co. v. Sawyer (Steel Seizure), 343 U.S. 579, 655 (1952) (Jackson, J., concurring) (“With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations. Such institutions may be destined to pass away. But it is the duty of the Court to be last, not first, to give them up.”); G. Gregg
Not only do budget constraints impact the judiciary’s ability to meet its constitutional obligations, but cuts to judicial branches also have negative consequences for public safety, with high human costs. A key court function is to ensure public safety and order through the fair and expeditious handling of criminal cases. But across the country, delays brought on by the judicial budget crisis are adversely affecting courts’ ability to resolve cases promptly.\(^72\)

The effect is most obvious in the criminal context. The United States Constitution guarantees a criminal defendant the right to a speedy trial.\(^73\) In most states, whether a defendant’s right to a speedy trial has been violated is determined by statute, criminal procedure, and case law.\(^74\) With many states facing delays in their criminal dockets, they have been forced to either “warehouse[e]” untried defendants in local jails (at additional expense to other government agencies) or release[e] potentially violent offenders simply because further pre-trial detention is either constitutionally impermissible or practically impossible.”\(^75\)

In some states, speedy trial violations—or releases in lieu of speedy trial violations—have come in cases with drastic consequences. Georgia courts have dismissed several indictments against people because they could not be brought to trial fast.

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\(^72\) Crisis in the Courts, supra note 24, at 5; see also N.Y. State Bar Ass’n, supra note 29, at 1; Threadbare American Justice, supra note 30 (“As they cut spending on the courts, state legislatures are degrading public safety by delaying the resolution of criminal cases; [and] hurting vulnerable populations like children and the elderly . . . .”).

\(^73\) U.S. Const. amend. VI. The Minnesota Constitution guarantees criminal defendants the same right. Minn. Const. art. I, § 6; see also State v. Widell, 258 N.W.2d 795, 796 (Minn. 1977).

\(^74\) Minnesota Rule of Criminal Procedure 11.09 provides that, following a speedy trial demand, a criminal defendant’s trial must commence within sixty days unless good cause is shown. If a trial does not start within sixty days, a presumption is raised in favor of concluding that the defendant’s speedy trial right was violated, and the courts look to a four-factor balancing test to determine whether it has been deprived. See, e.g., Widell, 258 N.W.2d at 796 (citing Barker v. Wingo, 407 U.S. 514 (1972)) (providing that the four factors to be considered are the length of the delay; the reason for the delay; whether the defendant asserted his right to a speedy trial; and whether the delay prejudiced the defendant).

\(^75\) Crisis in the Courts, supra note 24, at 6; see also Cost of Justice, supra note 26, at 4 (delaying criminal trials means that “[i]nocent people may . . . languish in jail, or potentially dangerous criminals may be released, denying justice to crime victims and endangering public safety”).
enough. In one instance, two murder suspects were set free because prosecutors took four years to indict the suspects. The prosecutors in that case claimed that “strained resources were partly to blame for the delay.” Budget constraints causing delays in Oregon’s criminal justice system resulted in three criminal defendants being released in a single day due to speedy trial violations. In Washington State, crowded court calendars have caused speedy trial violations for a decade. In one tragic case, a violent felon was “[r]eleased from prison, . . . broke into the home of a young mother and raped her, and while fleeing from police, crashed his vehicle into a motorist, killing [an] innocent bystander.”

In Minnesota, criminal appellants have had convictions reversed on speedy trial grounds in recent years. In State v. Colbert, Colbert’s simple robbery and first-degree aggravated robbery convictions were overturned due to a speedy trial violation. Colbert was arrested on October 16, 2007, and made a speedy trial demand on November 7, 2007, but his trial did not start until August 5, 2009; 659 days after arrest. Colbert’s trial was delayed several times, but at least six months of the delay were attributable

76. See, e.g., Kemp v. State, 724 S.E.2d 41, 46 (Ga. Ct. App. 2012) (reversing and remanding a conviction for a determination of whether a defendant’s speedy trial right was violated due to congested court calendars).  
77. Criminal Justice System Faces Crises Due to State Budget Cuts, supra note 27.  
78. Id.  
79. See State v. Adams, 116 P.3d 898 (Or. 2005); State v. Davids, 116 P.3d 894 (Or. 2005); State v. Johnson, 116 P.3d 879 (Or. 2005); see also COST OF JUSTICE, supra note 26, at 7 (noting that at least two wily Oregonian thieves have caught on to the budgetary constraints in the judiciary and discussing how an accused car thief went on a spree in which he allegedly stole five cars from sale lots. “He was arrested and released three times in one month because the judicial system lacked resources to provide him with a lawyer and thus could not prosecute him. Another car thief was arrested and released seventeen times”).  
80. Crisis in Washington, supra note 25, at 4, 34.  
81. Id. at 4.  
84. Id. at *1.
to the court’s calendar congestion. While the prosecutor argued that delay due to the court’s overcrowded calendar should not count against the State, the court of appeals explained that “[o]vercrowding in the court system is not a valid reason for denying a defendant a speedy trial,” and that “[t]he responsibility for an overburdened judicial system cannot, after all, rest with the defendant.” In concluding that Colbert’s conviction must be reversed due to a speedy trial violation, the court lamented that “the delays in this case likely were an undesirable consequence of the budgetary constraints on our judicial system.”

While speedy trial violations in the criminal realm are the most apparent consequence of overcrowded courts, the ramifications of delays can be just as significant in the civil realm. The Minnesota Constitution’s guarantee of prompt justice does not distinguish criminal and civil cases. But, because speedy trial and other legitimate public safety concerns make it important to prioritize criminal cases, delays in the civil actions are often more lengthy. For example, in many states, custody disputes are being delayed for years; plaintiffs with meritorious claims are being forced to settle cases for far less than they are worth rather than wait for justice, and court services to the indigent, crime victims, homeless, non-English speakers, and the disabled are being curtailed or eliminated.

Sadly, delays due to a lack of funding in sensitive civil matters can lead to tragic results. In Washington, overcrowding in the court system caused significant delays in child welfare cases. In one such case, child welfare officials attempted to permanently remove a three-year-old girl from her mother, a woman with drug and other substance abuse problems, so that the girl could be adopted. But the delays lasted so long that the original officials were taken off the case, and new officials decided to reunite the girl

85. Id. at *4.
86. Id. (citations omitted).
87. Id. at *6 (emphasis added).
88. CRISIS IN THE COURTS, supra note 24, at 5; Schwartz, supra note 36 (discussing that a Georgia district court put a moratorium on all civil trials in 2009 in an effort to meet criminal defendants’ speedy trial demands).
89. Dixon, supra note 22, at 43.
90. Id.
91. CRISIS IN THE COURTS, supra note 24, at 5.
93. Id. at 5, 20.
with her mother. 94 Tragically, the mother viciously kicked her little girl to death within a year. 95 Here, in Minnesota, budget cuts to the court-funded guardian ad litem program have also resulted in tragedy. In 2004, a court evaluator (without the assistance of a guardian ad litem due to budget constraints) recommended that a young girl be placed into the care of a convicted child-sex offender. 96 Only months later, the man was “charged with three counts of felony sexual molestation involving [that] little girl.” 97 As these examples illustrate, the human costs associated with judicial budget cuts have been great.

Delays in the judicial system also have significant negative impacts on businesses and state economies. It has long been generally accepted that “legal institutions are crucial to economic development.” 98 The theory is fairly simple. Legal institutions provide ordered society, and order makes economic development more likely. 99 Moreover, it is widely accepted that delays in the administration of justice increase the cost on litigants and their law firms, preventing them from using their resources elsewhere. 100 These truisms have been confirmed in recent studies on the effects of underfunded courts in Georgia and California.

A 2011 study on the economic impact of delays in Georgia’s court system recognized that the court system is a key to the economic development of Georgia because “the efficient disposition of civil, domestic relations and criminal cases impacts... both the business and social climate” of the state. 101 The study concluded that “[c]ourt delays due to the lack of proper funding represent dead-weight cost to the economy in terms of lost economic output, labor income and fiscal revenues.” 102 Lack of

94. Id.
95. Id.
96. COST OF JUSTICE, supra note 26, at 6–7.
97. Id.
99. See, e.g., id. at 1738–39.
100. See DELAYS IN GEORGIA, supra note 36, at 10–11 (stating that a major negative economic impact of court funding problems are the “[o]pportunities forgone as businesses and individuals deal with the uncertainty of having to wait for the Court System to hear their case and render a decision,” and acknowledging that “case delays result in additional costs for all litigants [though some costs can be quantified while others cannot]”); Weise, supra note 22 (“The longer [a case] drags out, the cost of representing [a] company increases.”).
101. DELAYS IN GEORGIA, supra note 36, at 1.
102. Id.
court funding over several years, according to the study, resulted in
the loss of between 3,457 and 7,098 private and public sector jobs.\textsuperscript{103} It was estimated that court delays brought on by a lack of
funding decreased the total income of Georgia’s workers anywhere
from $176 million to $375 million each year.\textsuperscript{104} And court delays
were projected to decrease Georgia’s GDP by between $243 million
and $583 million annually.\textsuperscript{105} Overall, the inadequately funded
courts in Georgia were expected to adversely affect Georgia’s
economy by between $337 million and $802 million annually.\textsuperscript{106}
After reviewing this eye-opening study, Carol W. Hunstein, Chief
Justice of the Georgia Supreme Court, opined that she did not
“know that you would have a new business or corporation that
would want to relocate in a state where you couldn’t get your
contract disputes or your business disputes resolved in a timely
fashion.”\textsuperscript{107}

A 2009 study of the economic impacts of court cutbacks on Los
Angeles made similar findings and conclusions.\textsuperscript{108} The main
impact of underfunding, according to the study, would be
courtroom closures resulting in delays.\textsuperscript{109} The study predicted that
the caseload clearance rates—the difference between the number
of cases filed and the number of cases disposed of—“would decline
at an even greater pace” due to cutbacks.\textsuperscript{110} As a result, “the
average time between filing and disposition [of civil cases would]
increase by more than 150 percent . . . [to an average of] four-and-a-
half years.”\textsuperscript{111} The study noted that delays in case dispositions raise
uncertainty among business and that “uncertainty makes businesses
less prone to invest and expand operations”\textsuperscript{112} because “generally,
resources at issue between litigants are removed from circulation

\textsuperscript{103} Significantly, most of the jobs lost were in the high-wage (and thus high
tax bracket), high-knowledge industries. Id. at 14.
\textsuperscript{104} Id. at 15.
\textsuperscript{105} Id.
\textsuperscript{106} Id. at 1.
\textsuperscript{107} Schwartz, supra note 36.
\textsuperscript{108} See Weinstein & Porter, supra note 22, at 17. The Los Angeles Superior
Court system is akin to many states’ entire trial court system. With over 600
courtrooms and over 2.8 million filings per year, it is the largest trial court system
in the country. Id. at 2.
\textsuperscript{109} Id. at 1.
\textsuperscript{110} Id. at 5–6.
\textsuperscript{111} Id. at 8 (emphasis added).
\textsuperscript{112} Id. at 10.
until disputes are resolved. Overall, the study concluded that the consequences of the judicial budget cuts, in Los Angeles alone, would be severe. Through 2013, those consequences were projected to be: “$30 billion in lost economic output, including losses of $13 billion resulting from decreased legal services and $15 billion associated with additional uncertainty on the part of litigants . . . [a]pproximately 150,000 lost jobs . . . [and] $1.6 billion in forgone state and local tax revenue.”

The Georgia and California studies demonstrate the irony of cutting judicial budgets. By underfunding the judiciary, legislatures “think [they are] saving a million dollars . . . But in fact [they are] incurring tens of millions of dollars of costs on consumers of the justice system who now have to wait, have to travel, have to incur additional fees—have to just generally have justice delayed.” Simply put, there are dire constitutional, public safety, and economic consequences to underfunding our court systems, consequences that plainly outweigh the illusory benefits offered to support such cuts.

III. RECOMMENDATIONS

It is clear that our courts are in a budgetary crisis. But why? Why, with all the negative impacts associated with underfunded courts, have legislatures across the country seen fit to cut judicial budgets? There appear to be two answers. The first is the lack of a unified constituency for the courts. While many in the legal community are taking notice of the problem, more need to take action to present a united front to our state legislatures. The second, related to the first, is a lack of public knowledge of the problem. While the courts exist to serve all members of the public, most people “have had no experience with the courts and may not
recognize their importance unless, and until, they need them.\textsuperscript{118} It is incumbent upon all of us in the legal profession to do more to inform the public of what is at stake if the courts continue to suffer from budgetary setbacks.

In Minnesota, we have begun what must be an ongoing grassroots education campaign on the topic of an adequately funded justice system, and we have launched a broad-based, organized lobbying effort.\textsuperscript{119} We assembled a coalition of justice system partners to lobby on behalf of the justice system during the last budget-setting legislative session. As a result of these efforts, we were successful in reversing the trend of three straight years of budget cuts for our courts.\textsuperscript{120} We also saw our public defenders receive a very small increase in their budget.\textsuperscript{121} Other areas of the justice system, however, continued to suffer cuts, including civil legal services,\textsuperscript{122} confirming that there is so much work yet to be done.

The education campaign we began must continue, and it must be expanded if the justice system is going to be well-positioned for the hard conversations and the competition for the allocation of scarce public resources in the years to come. The Minnesota State Bar Association (MSBA) is partnering with the Judicial Branch in this effort. The MSBA has created the AMICUS Society as a way to solidify and institutionalize its commitment to the ongoing conversation with the people of Minnesota.\textsuperscript{123} Through the AMICUS Society, lawyers all across Minnesota have committed to

\begin{itemize}
\item \textsuperscript{118} Cost of Justice, supra note 26, at 2 (advocating drastic action and encouraging that “judges close their courtrooms and release [criminal] defendants . . . so that the public becomes aware of the budgetary crisis”); see also Jeffrey Jackson, Judicial Independence, Adequate Court Funding, and Inherent Judicial Powers, 52 Md. L. Rev. 217, 251 (1993).
\item \textsuperscript{119} See Terry Votel, Wherever Two or More Are Gathered, BENCH & B. MINN., (Dec. 14, 2010), http://mnbenchbar.com/2010/12/%E2%80%9Cwherever-two-or-more-are-gathered%E2%80%9D/ (discussing the Coalition to Preserve Minnesota’s Justice System’s concerted lobbying efforts).
\item \textsuperscript{121} Compare§ 10, 2011 Minn. Laws at 696, with§ 9, 2010 Minn. Laws at 278, and§ 9, 2009 Minn. Laws at 1027.
\item \textsuperscript{122} Compare§ 3, subd. 3(a), 2011 Minn. Laws at 695, with§ 3, subd. 3, 2010 Minn. Laws at 278, and§ 3, subd. 3, 2009 Minn. Laws at 1026.
\end{itemize}
shape opinions of leaders and legislators in their communities about the importance of adequate funding for Minnesota’s justice system.\textsuperscript{124} We are hopeful that by taking our case directly to the people in a sustained, organized way, our message will be heard and understood.

Ultimately, it is up to “we the people” of Minnesota to ensure that the promise we made to each other in our constitution continues to be a first principle in Minnesota. If we are successful, we will help keep the promise of Minnesota. We will also help to ensure that the inspiring command from our first chief justice—that in Minnesota no one can be denied the right to “simple justice”\textsuperscript{125}—continues to be reality.

\textsuperscript{124} Id.

\textsuperscript{125} Davis v. Pierse, 7 Minn. 13, 23, 7 Gil. 1, 11 (1862).