

PUBLIC COMMENTS

HB 1875

HOUSE COMMITTEE ON JUDICIARY & CIVIL JURISPRUDENCE

Hearing Date: April 6, 2021 8:00 AM

F John Podvin Jr

Chair, Texas Business Law Foundation

Dallas, TX

I am writing to register my support for HB 1875 – relating to the creation of Business Courts and Courts of Business Appeals in the State of Texas. Please vote in favor of this bill so Texas can join the 25 other states who have a form of business courts, which will support Texas businesses and help to attract out of state businesses and jobs to Texas to keep our economy strong.

Irene Kosturakis

BMC Software, Inc. as Area Vice President-Chief Intellectual Property Counsel

Houston, TX

First, thank you, Chairman Landgraf for sponsoring HB 1875. This bill - relating to the creation of Business Courts and Courts of Business Appeals in the State of Texas - is important for and long overdue to be enacted in Texas. I am writing to register my support for HB 1875. Please vote in favor of this bill so Texas can join the 25 other states that have a form of business courts, which will support Texas corporations and help to attract out-of-state businesses and jobs to Texas to keep our economy strong.

John Ale

Self (retired attorney)

Houston, TX

To the Honorable Members of the House Committee on the Judiciary and Jurisprudence:

As a near 40-year Texas lawyer and former Chair of the 4000+-member Business Law Section of the State Bar, I'd like to register my strong support for HB 1875, creating business courts in Texas.

In my years of private practice at Vinson & Elkins and Skadden Arps, and heading the legal departments of three Texas-headquartered companies listed on the New York Stock Exchange, I have encountered many times business-specialty courts in Delaware and elsewhere. A majority of states now have some form of business courts. They provide experienced resolution of issues that arise in large-scale commercial litigation. Similar courts will help to continue to retain and attract business to Texas, creating more jobs for our citizens.

We already have seen the benefits of courts that focus exclusively on civil, criminal, family, and probate matters. Business courts similarly would help assure prompt, reasoned, and consistent justice to the financial and commercial engines that power our State and provide Texans with jobs. They also would free up district judges around the State to hear the human tort, consumer, and other cases rather than consuming their time with large, discovery- and motion-intensive, purely business disputes—a true win-win.

I urge the Judiciary and Civil Jurisprudence Committee to report favorably on HB 1875.

Respectfully,

John C. Ale

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Martin Woodward

self/attorney

Frisco, TX

I write in opposition to this bill, which would create a special court for special interests. As a Texas lawyer who has practiced here for 25 years, I don't see any good coming from exempting certain interests from the single justice system that serves all of Texas. The nature of a justice system is that all are subject to the same one. This bill sends the wrong message to the public, and, in any event, it is not needed. I urge one and all to vote against this bill, and to preserve our fine system of justice in Texas that does not require carve-outs for special interests. Thank you for reading my comment.

John Sherwood

John C Sherwood

Dallas, TX

I am a practicing Civil Trial Attorney holding 3 Board Certifications. The creation of a "Business Court" is a waste of taxpayer monies and wholly unnecessary as the current judicial system is capable of handling any case (despite the amount in controversy). As a litigator the nuances of a small case (say (\$50,000) and a larger case (\$1,000,000 plus) are few. Please vote against this unnecessary piece of legislation.

Mohammad Abdel-Rahman

Self Attorney

houston, TX

the context of this opposition specifically pertains to personal injury settings. in a personal injury setting, there are often times a company that is responsible or partly responsible for a dangerous or reckless act arising out of negligence of an employee. to allow them to hide behind a cloak getting special rules in a special court will not be beneficial to hurt texans.

Chelsea Weeks

self

Sugar Land, TX

I oppose to this bill.

Jesus Garcia

Self

Houston, TX

This is not good for our civil court system. Businesses should not have special courts with special rules only for them. If courts throughout this country are treating business entities like citizens, then all of us should be in the same court and with the same rules. Why is a business more special than the hard working individual of this great state? The civil judicial system works perfectly fine with all of us being treated as equals. It should remain that way. Thank you for your consideration.

Lawrence Bowman, Attorney

ABOTA

Dallas, TX

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This is unnecessary. The citizens of Texas are well-served by the existence of a court system that serves all the people. This is founded on an inaccurate view that somehow the existing popularly elected judiciary and jurors are inadequate to hear business disputes, which they have been handling adequately for over 100 years. Do any of the proponents of this Bill actually try jury trials? Where is the data to support such a radical, anti-democratic change? Who is supporting this Bill other than Exxon? Why is this deemed necessary and what fact-based experience supports this offered change? How is the current system judged to be inadequate? This is unnecessary, cynical and problematic on many levels, beginning with the Texas Constitution.

What experienced lawyers and judges support or oppose this bill. Let's get that out in the open and not let something like this slide in secretly. Let's put daylight on this to show who is supporting it and why and what data supports this change. I suggest when these matters are made public this very bad idea should be abandoned.

Francis Gonzalez

self

Houston, TX

This bill should no pass companies need to be liable for the damages their company causes other families especially when a love one loses their life for something that can be prevented. being that my cousin has died on companies time the hurt that his sibling go through and the hurt my aunt goes through because she had to bury her child, No matter the age it hurts. Just imagine if it was you or your family who is responsible for the sibling or children or spouses left behind.

Kevin Haynes

Kherkher Garcia, LLP

Houston, TX

I strongly oppose this bill. Businesses should not be entitled to special treatment with special rules - and certainly not be entitled to special rights that Texas citizens do not enjoy. All should be considered equal under law. The Texas judicial system is more than apt to handle disputes involving business.

richard sayles

self

Dallas, TX

opposed,, based on 46 years of trying business cases, for both plaintiffs and defendants

Eric Hawley

Kherkher Garcia, Llp

The Woodlands, TX

I'm a lawyer in Houston, Texas. I have been practicing commercial litigation on both the plaintiff and defense side for over 10 years and a significant portion of my current clients include businesses and executives. Accordingly, many of my clients would be directly impacted by this bill. I oppose this bill. I don't believe this bill would help my practice or my clients. I don't think it will make the system more efficient. I don't see how the system created by this bill will be beneficial. This bill would create unpredictability, unfairness, and will complicate matters unnecessarily. Although our judicial system is not perfect, I do not believe that this bill is the solution, but instead would be a step backwards.

Edgar Hernandez

Kherkher Garcia

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Houston, TX

In my line of work I deal with a large number of companies handling the transport of goods, which regularly overlook federal as well as state laws my concern with this bill is if this Court will truly benefit the community or will be used as a tool to mitigate the economic loss of companies. Opening the door for large companies to take advantage of the everyday man puts profits before people.

Matthew Menter

Self - Attorney

Houston, TX

This Bill is the first step in a slippery slope to give large businesses special privileges to the detriment of Texas residents. Already, this poorly written proposed law provides for severance of personal injury claims, but does not detail what happens to those severed claims. Procedurally, severance does not alone change the court which will rule on such claims, it only separates issues to eliminate confusion or allow threshold issues to be decided separately. If large businesses are going to conduct their business in Texas, they should be held accountable in the same courts as every other Texan. This law attempts to create a state sanctioned, quasi-arbitration court that will only open the door to future laws that disadvantage Texans. It is unclear what makes this proposed law necessary. Either this law suggests that large business matters are more important and they shouldn't wait like other Texans for their day in court, or they are saying that district judges are too incompetent to comprehend their complex grievances. Neither is true. Texans have dealt with so much in these last few years through a pandemic, natural disasters, economic instability etc. Yes these issues have further clogged courts, but are big businesses more important than all of the everyday Texans. Are they saying they can't be bothered to wait their turn like everyone else? I can't imagine many Texas voters would think so.

David Cherry, JD

Self/Retired Attorney

Waco, TX

I am opposed to HB 1875. I am retired from the active practice of law. When actively practicing I was Board Certified in Civil Trial Law by the TBLS and focused my practice on commercial litigation. I am a past president of TEX-ABOTA and currently serve on the National Board of ABOTA. I testified against the first version of HB 1875 in 2013 and the subsequently proposed versions have not changed the basic problem with the proposal---we do not need another court system. I have tried jury and non-jury cases in various counties and found every judge to be competent and capable of handling complex cases. Our judicial system and litigants would be better served if the legislature fully and adequately funded the current courts. HB 1875 calls for providing the latest technology to these unnecessary courts. If there is money for this idea you should, instead, provide the latest technology to the current courts. I'll leave to others the task of pointing out the practical procedural. actual, on the ground., day to day, practice problems which arise under HB 1875.

Thank you for considering my comments.

David Cherry

Roger Mandel, Partner

Jeeves Mandel law Group,PC

Ft. Worth, TX

To the Committee:

I have been litigating complex business litigation in Dallas County District Courts since I first began practicing in 1987. I have never had any significant problems with the Dallas County judiciary, whether Republicans or Democrats, not competently handling large business cases. While some of those judges may not have come to the bench with a business litigation background, they quickly became familiar with this type of litigation. Of course, every large commercial dispute is unique, and it is the job of

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the lawyers on both sides to educate the judges about the complexities of the legal and factual issues in a particular case. Uniformly, the judges have been up to the task of learning and handling those issues. If the premise of the bill is that district court judges in counties like Dallas cannot be counted upon to skillfully handle large business disputes, that premise is sadly mistaken.

The uniqueness of business disputes points out the fallacy of one of the apparent fundamental premise of the bill: that business court judges can develop specialized expertise. In Delaware Chancery Court, the disputes are limited to derivative actions, typically disputes over mergers and acquisitions. The proposed business courts would hear all large business disputes: securities fraud, breach of contract, derivative suits, oil and gas disputes, partnership disputes, and on and on. There is very little chance that one species of case would occur frequently enough for the business court judges to develop particular expertise in any specific subject matter. I would venture to say that many West Texas district judges will have the background and experience to better handle oil and gas cases than appointed judges from Dallas and Harris Counties. There may be other types of litigation as well that arise more frequently in certain geographic areas such that the local judges would have more expertise than business court judges from other parts of the state.

Nor is there any particular expertise that can be developed for handling cases exceeding \$10 million. District judges handle tort cases of that size routinely. And, in my experience, there is very little difference in the way \$2 to \$7 million cases are handled as compared to those worth in excess of \$10 million. There is simply nothing that makes a \$10 million business dispute harder to handle or require expertise different than the expertise requires for the other large cases routinely handled well by our district judges.

In short, the bill appears to be a solution in search of a problem.

Further, it will undoubtedly create significant problems. A defendant will remove a case to business court. A plaintiff will move to remand. The appeal is automatically subject to interlocutory appeal. Already large, time consuming expense cases will have an extra year and six figures in attorneys fees added to them before the merits are ever considered.

I urge the Committee to reject the bill.

Mary Pape

Self

Auatin, TX

Highly support. This is very much needed

J. Scott Sheehan

Self

Houston, TX

This is a good bill that is long overdue. Texas needs to step up and establish business courts like 25 other states. This will greatly enhance the ability of Texas to attract new business headquarters. Please consider passing this bill.

Richard Tulli

Self -- Recently Retired Business Lawyer

Dallas, TX

As a recently retired business lawyer in Texas for 40 years, I'm writing to register my support for HB 1875, relating to the creation of Business Courts and Courts of Business Appeals in the State of Texas. Please vote in favor of this bill; it's important to Texas because business courts will be a benefit to businesses in Texas of all types and sizes and, therefore, encourage the formation and retention of businesses in Texas and the relocation of businesses to Texas. I understand that many other large commercial states already have business courts, so Texas should cease to be at an economic disadvantage in comparison with those other states.

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Larry Schoenbrun

self

Dallas, TX

I am writing to add my support for HB 1875 which provides for the creation of Business Courts and Courts of Business appeals in the State of Texas. I urge your vote in support of this bill so Texas can join with 25 other states who have formed business courts. The creation of a business court system will enhance Texas' position as the desirable location for business entities to locate and generate jobs for our citizens.

Karen Tankersley

Self--attorney

Irving, TX

I am writing to encourage the Texas Legislature to enact HB 1875 this year.

Texas has fallen behind the rest of the US in its approach to handling complex business and commercial litigation. 25 states now have specialized business courts to handle these cases, with largely consistent jurisdictions. All of the major commercial states Texas competes with to attract headquarters have specialized business courts.

While Texas has an excellent judiciary, none of our judges encounter complex business cases with the same frequency that will occur with a specialized business court. It is this expertise, resulting from a steady flow of these cases, that will produce the specialized expertise that has made business courts so efficient in other states, and that will save Texas business so much time and money.

A Texas business court can only work for the benefit of Texas business, and making Texas an attractive venue for business cases will benefit Texas trial lawyers and the number of good, well presented cases heard at all levels of our courts. For the Legislature to place what appear to be narrow personal interests of trial lawyers and judges ahead of the needs of Texas companies that drive our economy would be unfortunate.

The current structure of the Texas judicial system, with over 450 state district courts spread among 254 counties, and 14 separate appellate court districts, makes it very difficult to know what the law is in complex business cases, and how they will be administered. This creates a lot of uncertainty for businesses and their legal advisors in entering into agreements, and managing disputes that inevitably arise. Establishing a single state-wide business court jurisdiction in Texas to address complex business cases and appeals will over time add much predictability and efficiency to how Texas businesses manage their affairs.

Thank you for your good work for the benefit of Texas.

Byron Egan

self

Dallas, TX

Texas needs business courts to attract more corporate business to Texas. HB 1875 is a modest bill that can yield major benefits to Texas, Other states have business courts and Texas needs to have them to be competitive.

Chris Lacy, Vice President, General Counsel & Secretary

Southwestern Energy Company

Spring, TX

To the Honorable Members of the House Committee on the Judiciary and Jurisprudence:

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A Texas lawyer for nearly 17 years and as the Vice President, General Counsel & Secretary for an energy company headquartered in Texas, I'd like to register my strong support for HB 1875, creating business courts in Texas.

In 10 years of private practice as a litigation lawyer and as a member and now the head of the legal department of a Texas-headquartered company listed on the New York Stock Exchange, I have encountered many times business-specialty courts in Delaware and elsewhere. A majority of states now have some form of business courts. They provide experienced resolution of issues that arise in large-scale commercial litigation. Similar courts will help to continue to retain and attract business to Texas, creating more jobs for our citizens.

We already have seen the benefits of courts that focus exclusively on civil, criminal, and family matters. Business courts similarly would help assure prompt, reasoned, and consistent justice to the financial and commercial engines that power our State and provide Texans with jobs. They also would free up district judges around the State to hear the human tort, consumer, and other cases rather than consuming their time with large, discovery- and motion-intensive, purely business disputes—a true win-win.

I urge the Judiciary and Civil Jurisprudence Committee to report favorably on HB 1875.

Respectfully,

Chris Lacy

Michael Hurst, Mr.

N/A

Dallas, TX

To Whom It May Concern,

I write to add my voice to the growing number of individuals and organizations opposing HB 1875, which concerns the establishment of so-called specialized business courts in Texas. HB 1875 seems to me to equate to an attempt to create a two-tiered judicial system—with one tier catering to the needs of big business, and the other lesser tier dealing with all other matters.

Although proponents of HB 1875 have asserted that Texas needs these courts to compete economically with other states, including Delaware, nothing could be further from the truth. Pro-growth policies have already made Texas one of the nation's most attractive states for businesses. And while it is true that many companies choose to incorporate in Delaware because of its business court system, Texas should not simply copy Delaware's model—there are dramatic differences between Texas and Delaware (and their respective economies). For example, more than 66% of Fortune 500 companies call the 49th largest state home, at least in the legal sense, and Delaware generates a significant portion of tax revenue from its ability to attract large companies. Texas, on the other hand, is a large state with diverse enterprises—big and small, and everything in between—calling it home.

With that said, Texas doesn't need HB 1875—it needs a court system that works for all Texans and businesses of all sizes. HB 1875 gives the appearance of being big business lobby's latest attempt to push legislation that recognizes large corporations' problems as deserving of more (and quicker) judicial attention. Put differently, HB 1875 will create a perception, if not the reality, of a justice system that unreasonably favors big business.

To be clear, I believe some of the proponents of HB 1875 are well intentioned. They see HB 1875 as an opportunity to bring more jobs to Texas, an admirable goal indeed. But HB 1875 is a Trojan horse, a boon to big business alone that is disguised as a pro-growth initiative for Texas as a whole. I cannot think of anyone who believes our judicial system cannot be improved, but let's focus instead on enhancing the courts for all Texans rather than just those of big business.

As lawyers, we work so incredibly hard to engender the trust of all people and businesses. By having 1 person select the judges who preside over these business courts, many will feel that they will never get a fair shake against big business.

Edmund Heimlich

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INFORMED CITIZENS

Austin, TX

The people of England had a system of checks virtually identical to ours after the Magna Carta and the establishment of Parliament in 1215. Over 800 years ago. But the system proved unable to secure the Rights, the Liberties, in that Great Charter, the Magna Carta. Why? The cause was the appointment of Judges by the head of the Executive Division, the King.

Our only concern with the Court and Court of Appeals established by this act is the appointment of Judges by the Governor. If they are not elected then they must be appointed by you, our Representatives in our Legislature. We also ask for an amendment to create similar Courts with jurisdiction over claims against the State of Texas.

Carved in stone on the wall of the Lincoln Memorial in D.C. is this quote:

IT IS AS MUCH THE DUTY OF GOVERNMENT TO RENDER PROMPT JUDGMENT AGAINST ITSELF IN FAVOR OF THE CITIZEN AS IT IS TO ADMINISTER THE SAME BETWEEN PRIVATE INDIVIDUALS.

Abraham Lincoln

There is a Court in D.C. known as the US Court of Federal Claims with jurisdiction to render judgments on claims against the United States. The Courts Brochure begins with this statement:

The Role of the United States Court of Federal Claims is integrally related to the fundamental principle of the United States Constitution that Individuals have Rights against the government.

This principle is equally true of our Texas Constitution. Our Texas Bill of Rights provides for this in Section 13 of that article, under the title of Excessive Bail or Fines; Cruel or Unusual Punishment, Open Court; Remedy by Due Course of law that All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy.

Sec. 13. EXCESSIVE BAIL OR FINES; CRUEL OR UNUSUAL PUNISHMENT; OPEN COURTS; REMEDY BY DUE COURSE OF LAW. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

It appears obvious from the inclusion of terms related to criminal justice the intent of the authors of this section was to secure remedy for a wrongful imprisonment. It is axiomatic that a victim of a wrongful imprisonment has suffered injuries. Injuries that include excessive bail, excessive fines, cruel punishment, and unusual punishment. The State and its actors may not have known this at the time but the reversal of the conviction is proof of these injuries. And for the State to deprive the victim of remedy is unquestionably an unusual punishment for someone who committed no crime. Our Constitutions, both State and Federal, make the people the Sovereign. Government entities may represent us. But their authority is limited by our Constitution. You were not delegated the power to close our Courts.

See www.informed.org and www.honorquest.org for more information.

Daryl Robertson

Texas Business Law Foundation

Dallas, TX

I am in favor and support HB 1875. At least 25 other states, including most of major commercial states that compete with Texas, have business courts to handle complex business and commercial litigation. The current structure of the Texas judicial system, with over 450 state district courts spread among 254 counties, and 14 separate appellate court districts, makes it very difficult to know what the law is in complex business cases, and how they will be administered. Establishing a single state-wide business court jurisdiction in Texas to address complex business cases and appeals will over time add much predictability and efficiency to how Texas businesses manage their affairs. A Texas business court can only work for the benefit of Texas business.

Ware Wendell, Executive Director

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Texas Watch

Austin, TX

Dear Chairman Leach and Members of the Committee:

Our non-partisan, non-profit organization advocates for consumers and working families. We believe our courts should be protected because they are the greatest protection consumers have in our state. In sessions past, we have expressed concerns about the creation of a specialty business court and our concerns remain.

First, we believe our courts, as currently constructed, do a fine job of adjudicating a range of disputes, including business matters. In our view, any such specialty courts are not needed, represent a duplicative expansion of government, and run counter to concepts of equal justice under the law.

Second, we believe our courts should be accountable to the citizens they serve, and the appointment method set forth in the legislation does not provide for this level of accountability. Instead, power is vested in the governor's hands. Our courts are a co-equal branch of government and Texans are served well by the opportunity to directly select their judges through elections. This promotes judicial independence and fidelity to the law, not to any one individual. The gubernatorial appointment method would upset the balance of powers that currently serves our state well.

We ask you to please vote NO on HB 1875.

Respectfully,
Ware Wendell
Executive Director
Texas Watch

Michael Tankersley
Texas Business Law Foundation
Dallas, TX

This is to address questions raised by Ms. Weatherly's testimony on HB 1875 today that time did not allow to be explored in the hearing.

To briefly summarize, Ms. Weatherly described two complex commercial cases she had tried to a verdict in rural locales and complimented the good work done by those judges, asserting that the business court contemplated by HB1875 is therefore unnecessary and is essentially an insult to Texas judges everywhere.

Ms. Weatherly's testimony mischaracterizes HB 1875's rationale for the Texas business court as being to get better or fairer results. That is incorrect.

The primary driver for a business court in Texas, and in the 25 states having them, is not that better, more well-reasoned or fair results will be delivered by the business court. The objective is that those results be delivered more efficiently.

Ms. Weatherly's testimony said nothing about the judicial efficiency ramifications of the two cases she tried.

What does efficiency mean in this context? - How much time and money was taken up by the litigation for all participants in the process, not least the court?

Would her clients have been better off if the cases had been settled favorably after six months of discovery and motion practice, rather than going to trial and winning there?

Trials are expensive, prompt settlements are not. Business court judges in other states pride themselves in knowing what makes business executives and investors tick, and using that knowledge to guide them to early settlements.

Business court judge war stories speak of settlements they engineered by the way they presented the sobering prospect of

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litigation to executives at the first conference, not cases where they delivered a wise verdict two years later.

Winning the trials undoubtedly provided more legal fees to Ms. Weatherly than would have settling the cases in six months.

Another serious efficiency and justice question not addressed by Ms. Weatherly is how much of the judges' time Ms. Weatherly's cases took away from other pressing matters on the judges' dockets.

Did the judge have less time to spend on parties seeking redress for individual rights and interests, family issues, loss of property and freedom, pro se litigants, injuries, small business commercial matters?

Taking Ms. Weatherly's cases to trial instead of settling them had to have absorbed a significant additional amount of the judges' limited time, to the relative detriment of the rest of the docket.

Would Ms. Weatherly's judges, if asked, agree, or disagree, that a steady diet of comparable cases would have reduced the amount of time and effort they had to invest in getting to the good results delivered in her cases?

The clear answer from the 25 other business courts is that familiarity breeds expertise, which increases efficiency, decreasing time used and money spent.

Thank you for your consideration of HB 1875.