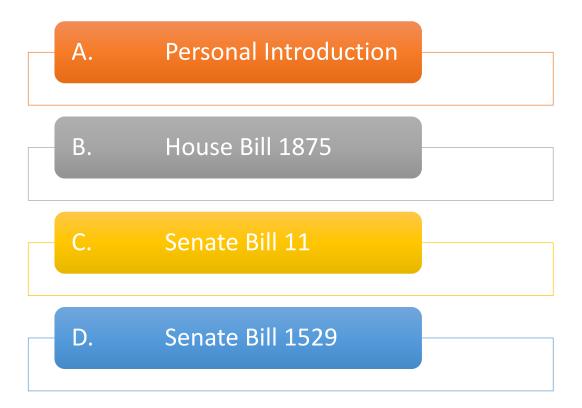
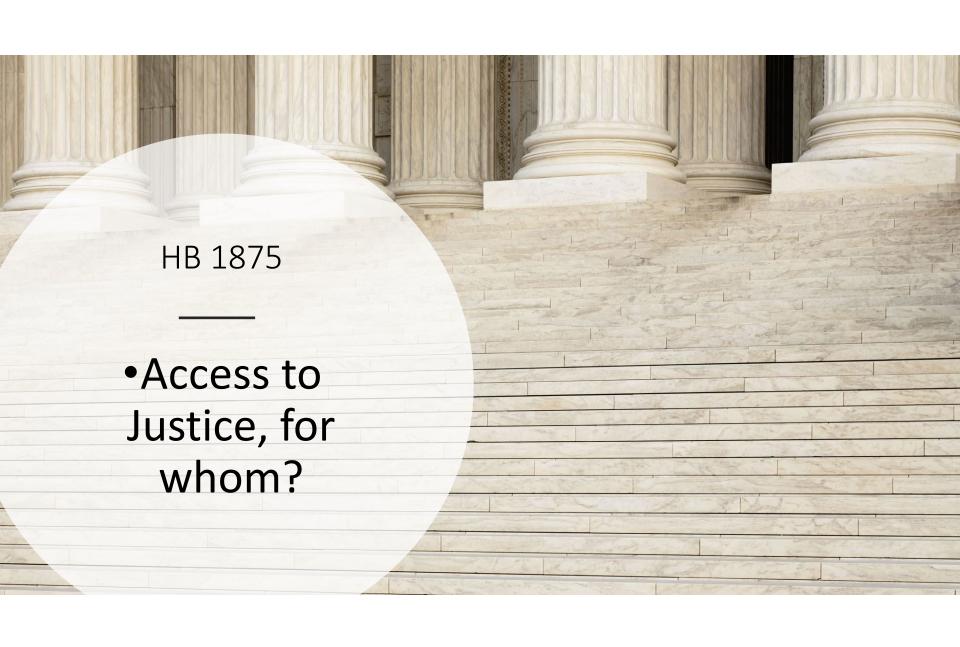
# Texas Business Courts and Court Reorganization In Texas

- Women And The Law CLE
  - February 2023

Chief Justice Darlene Byrne, Austin

#### Introduction





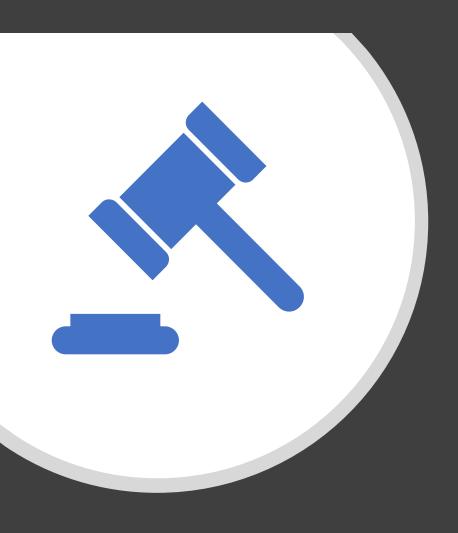
### Specialized business trial and appellate courts

- Jurisdiction Statewide
- Includes:
  - Derivative action
  - Action over \$10 million
- No jurisdiction over governmental entity except by consent
- Must sever certain claims unless all parties and judge agree



#### HB1875 Continued:

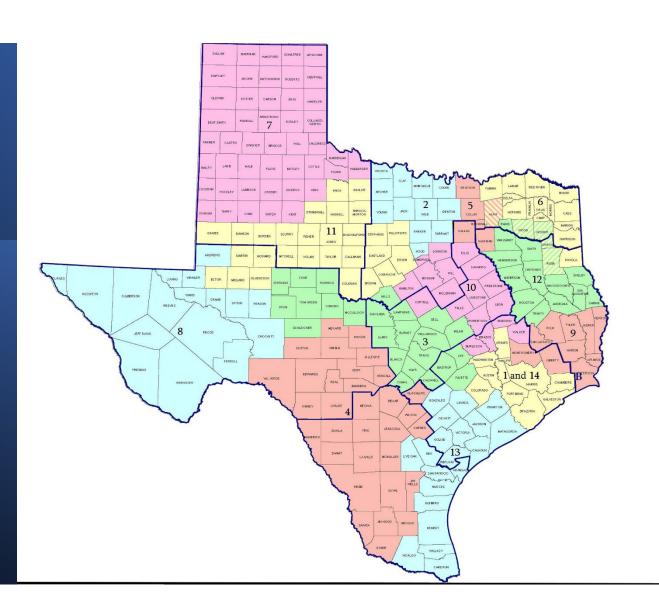
- Specific qualifications for judges/justices
- Appointed by governor with advice/consent of Senate
  - 7 judges and 7 justices (panels of 3)
- Terms 2 years
- Governor may not appoint:
  - More than 3 in the same county
  - Majority of the same political party
- Travis County offices, but "convenient" sitting locations
- Right to trial by jury



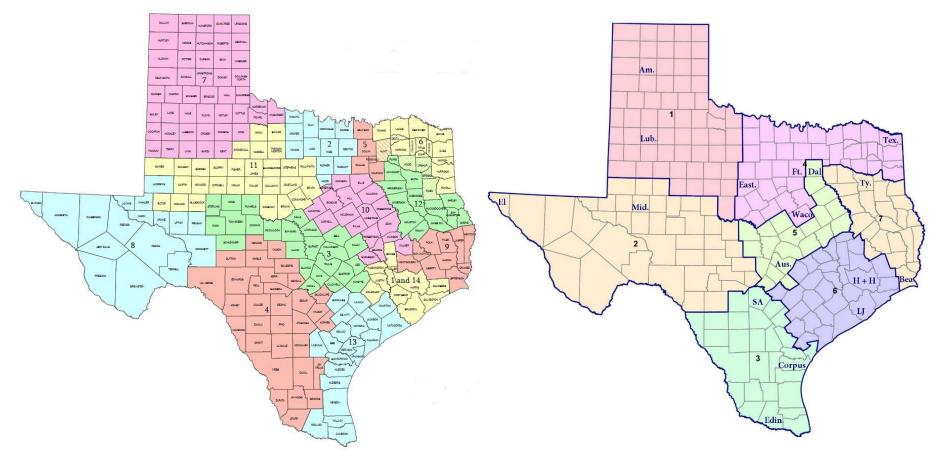
### HB1875 - Impact and Issues

- Special Courts for Big Dollar Business Disputes
- Cost
- Impact on Your Practice
- Appointed Trial and Appellate Courts
- Constitutional Questions

Senate Bill 11



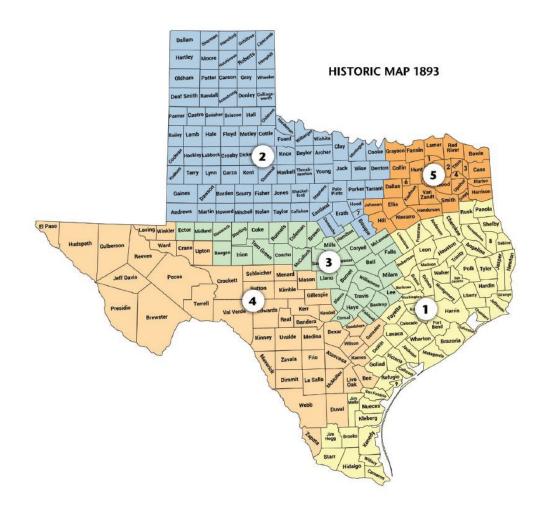
#### **Appellate Redistricting**

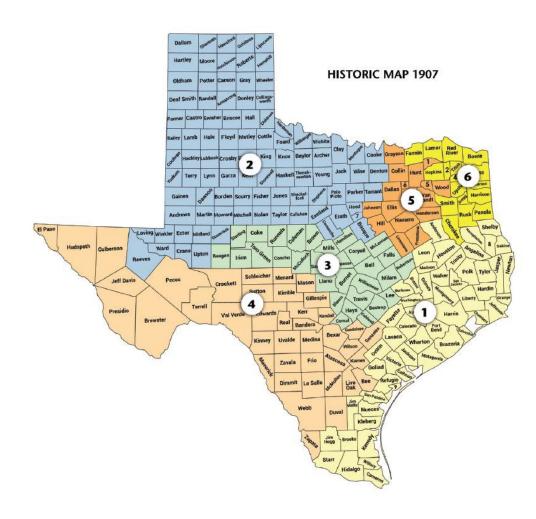


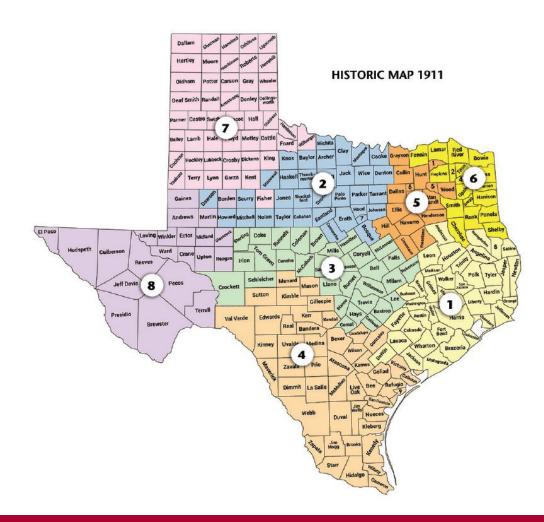
- 1891 Constitutional Amendments to Tex.
   Const. art. V, § 6
  - Required TxLege to establish intermediate appellate courts in appellate districts
    - "[N]ot less than two nor more than three"
    - But could create "such additional districts as the increase of population and business may require"
    - Limited number of justices on each court to only three
      - This artificial limitation wasn't changed until nearly a century later in 1978, allowing CoAs to sit in three-justice panels instead of forcing entire CoA to hear every case

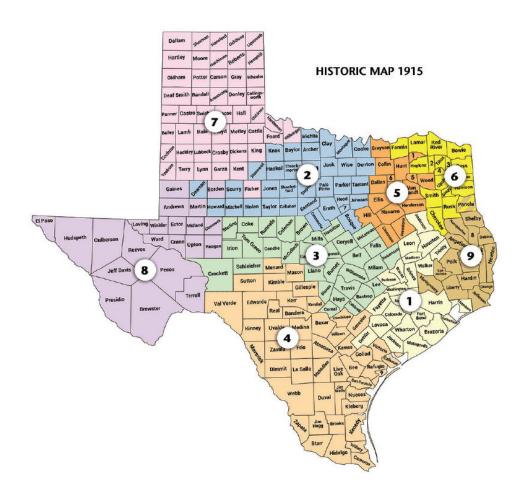
So, for 87 years—because of the artificial constitutional limitation on the number of justices per CoA—TxLege was forced to create new courts instead of merely adding new justices to existing CoAs to meet the demand of increasing population and caseloads

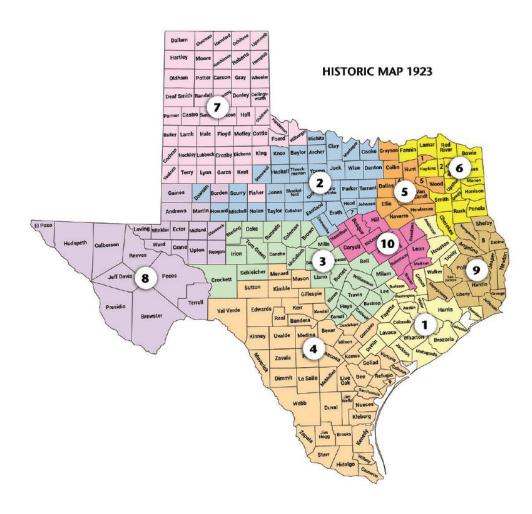


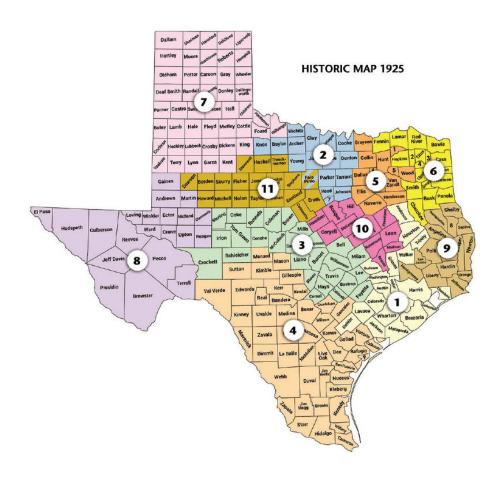




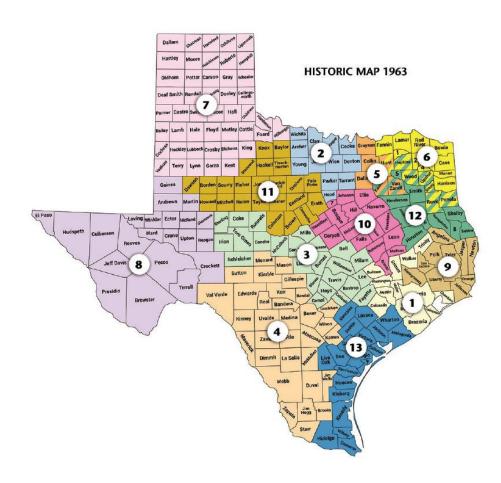


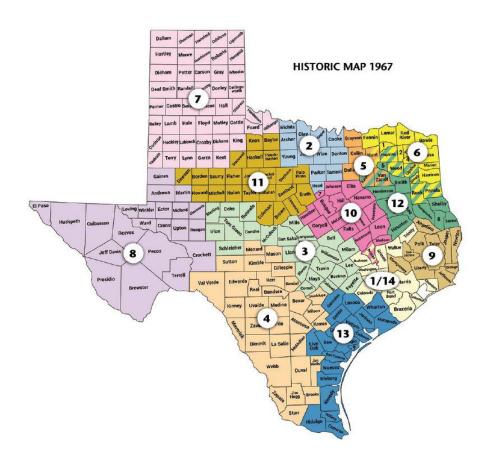












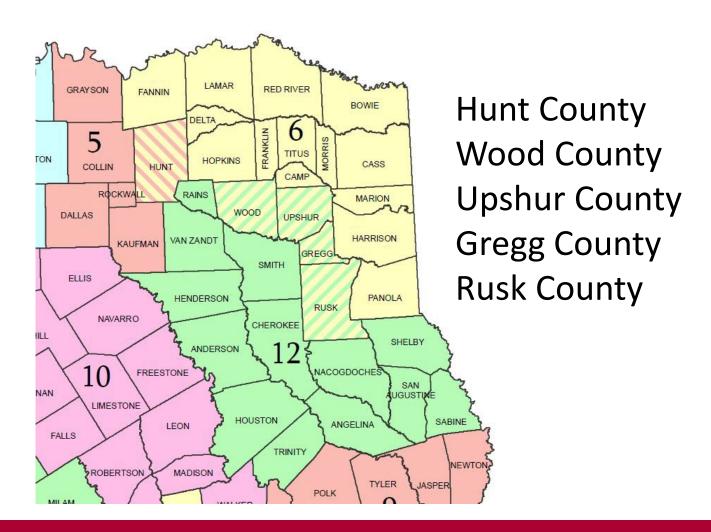
- For nearly 40 years since 1984, the number of intermediate appellate justices has remained at 80
  - Yet the Texas population has increased 80% during that time
  - Number of attorneys supporting these 80 justices (staff attorneys and law clerks) has *increased* 50%—68, from 135 to 203



#### TABLE 11 INTERMEDIATE APPELLATE COURTS IN TOP 10 STATES BY POPULATION

State	Population	No. of Intermediate Appellate Courts	No. of Divisions	No. of Judges	Population per Judge
Federal Courts <sup>219</sup>	328,239,523	13	0	Total: 179 Largest: 29 Smallest: 6	1,833,740
California <sup>220</sup>	39,512,223	6	16 (number within districts varies)	Total: 98 Largest: 32 Smallest: 10	403,186
Texas	28,995,881	14	0	Total: 80 Largest: 13 Smallest: 3	362,449
Florida <sup>221</sup>	21,477,737	5	0	Total: 64 Largest: 15 Smallest: 10	335,590
New York <sup>222</sup>	19,453,561	4	0	Total: 58 Largest: 21 Smallest: 10	335,406
Illinois <sup>223</sup>	12,671,821	5	6 (all within 1st district)	Total: 54 Largest: 24 Smallest: 7	234,663
Pennsylvania <sup>224</sup>	12,801,989	2	0	Total: 31 Largest: 21 Smallest: 10	412,967
Ohio <sup>225</sup>	11,689,100	12	0	Total: 69 Largest: 12 Smallest: 4	169,407
Georgia <sup>226</sup>	10,617,423	1	0	15	707,828
North Carolina <sup>227</sup>	10,488,084	1	0	15	699,206

- This artificial accretion of CoAs has resulted in geographically overlapping appellate districts
  - Texas is the only state in the union to do this
  - Not including the ten counties in the 1st & 14th CoAs, five counties are in two different CoA districts
    - Hunt County in Dallas & Texarkana CoA districts
    - Gregg, Rusk, Upshur & Wood Counties in Texarkana & Tyler CoA districts



- 29 district courts answer to more than one CoA district
  - 22 district courts in two CoA districts
  - 3 district courts in *three* CoA districts
    - 12th, 155th & 253d
  - 4 district courts in *four* CoA districts
    - 21st, 25th, 25th (second) & 335th

District	Counties in District	Appellate Courts	
	(Batting Satisfaction)		
1st	Jasper, Newton / Sabine, San Augustine	Beaumont / Tyler	
8th	Delta, Franklin, Hopkins / Rains	Texarkana / Tyler	
12th	Grimes / Madison, Walker	Houston (2) / Waco	
21st	Washington / Bastrop, Lee / Burleson	Houston (2) / Austin / Waco	
25th	Colorado / Guadalupe / Gonzales, Lavaca	Houston (2) / San Antonio / Corpus Christ	
2nd 25th	Colorado / Guadalupe / Gonzales, Lavaca	Houston (2) / San Antonio / Corpus Christ	
35th	Mills / Brown	Austin / Eastland	
36th	McMullen / Aransas, Bee, Live Oak, San Patricio	San Antonio / Corpus Christi	
39th	Kent / Haskell, Stonewall, Throckmorton	Amarillo / Eastland	
50th	Cottle, King / Baylor, Knox	Amarillo / Eastland	
63rd	Kinney, Val Verde / Terrell	San Antonio / El Paso	
83rd	Val Verde / Pecos, Terrell	San Antonio / El Paso	
90th	Young / Stephens	Fort Worth / Eastland	
106th	Garza, Lynn / Dawson, Gaines	Amarillo / Eastland	
112th	Sutton / Crockett, Pecos, Reagan, Upton	San Antonio / El Paso	
115th	Marion / Upshur	Texarkana / Tyler	
123rd	Panola / Shelby	Texarkana / Tyler	
155th	Austin / Fayette	Houston (2) / Austin	
156th	McMullen / Aransas, Bee, Live Oak, San Patricio	San Antonio / Corpus Christi	
220th	Bosque, Hamilton / Comanche	Waco / Eastland	
253rd	Chambers / Liberty	Houston (2) / Beaumont	
258th	Polk, San Jacinto / Trinity	Beaumont / Tyler	
274th	Hays, Comal / Guadalupe	Austin / San Antonio	
335th	Washington / Bastrop, Lee / Burleson	Houston (2) / Austin / Waco	
343rd	McMullen / Aransas, Bee, Live Oak, San Patricio	San Antonio / Corpus Christi	
354th	Hunt / Rains	Dallas / Tyler	
369th	Leon / Anderson, Cherokee	Waco / Tyler	
411th	Polk, San Jacinto / Trinity	Beaumont / Tyler	
452nd	McCulloch / Edwards, Kimble, Mason, Menard	Austin / San Antonio	

#### 2020 TLR Study

- https://tlrfoundation.com/foundation\_papers/int ermediate-appellate-courts-in-texas-a-systemneeding-structural-repair/
  - Primary author was the TLR General Counsel, Lee Parsley
    - Former SCOTX Rules Attorney

Supports SB 11

Authored by Sen. Joan Huffman

Filed at the beginning of the 87th R.S. on January 12, 2021

Low bill number indicated its high priority

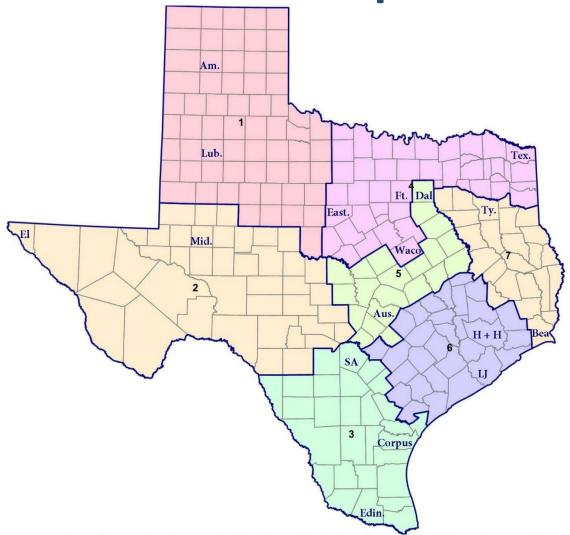
Was basically an empty shell for the next 10 weeks until late March, providing no substantive details as to the actual proposed reorganization

- Shell bill did specify remedying the current overlap of various counties within more than one appellate district
  - Hunt county in Dallas & Texarkana CoA districts
    - Remove Hunt County from the Dallas CoA district
  - Gregg, Rusk, Upshur & Wood Counties in Texarkana & Tyler CoA districts
    - Remove Gregg & Rusk Counties from the Texarkana CoA district
    - Remove Upshur & Wood Counties from the Tyler CoA district

- SB11 was referred to the Senate Jurisprudence Committee on March 3d
- SCOTX CJ Hecht gave his State of the Texas Judiciary address on March 23d
  - Estimated a three-year backlog of cases coming out of the trial courts due to pandemic
- Public hearing on SB11 was scheduled for April Fool's Day at 9AM

- No written information regarding the details of the proposed redistricting plan was disseminated to the judiciary until 9PM on March 29, 2021 just 2 days before the 9AM hearing on April 1st
- Actual bill text of SB11 wasn't circulated until nearly 9PM the night before the hearing, with some justices not receiving it until the morning of the 9AM hearing

#### SB11 Map



- Reduced CoA districts by half—from 14 to 7
- Combined San Antonio & Corpus/Edinburg CoAs
  - Over **220 miles** apart
- Combined Fort Worth, Eastland, Waco & Texarkana CoAs
  - Over 300 miles between Eastland and Texarkana
  - Nearly 275 miles between Waco and Texarkana

#### CSSB11

- Combined Dallas & Austin CoAs
  - Nearly 200 miles apart
- Moved Kerrville in Kerr County to El Paso's CoA

district

• Nearly 500 miles apart



- Created new courthouses in Midland & Lake Jackson
  - Lake Jackson is in Sen. Huffman's district
- Combined Lubbock with existing Amarillo CoA
- Combined Midland with existing El Paso CoA
- Combined existing Houston CoAs with Lake Jackson
- Combined existing Beaumont and Tyler CoAs



- Jettisoned historical CoA numbers
  - 1st & 14th CoAs become the 6th
  - 2d, 10th, 11th & 6th CoAs become the 4th
  - 3d CoA becomes the 5th
  - 4th & 13th CoAs become the 3d
  - 7th CoA becomes the 1st
  - 8th CoA becomes the 2d



- Kept all 80 current justices, but 7 were designated to different courthouses
  - 1 Fort Worth justice to Lake Jackson
  - 1 Austin justice to Lake Jackson
  - 1 Beaumont justice to Lake Jackson
  - 2 San Antonio justices to Midland
  - 2 Amarillo justices to Lubbock



- 5 were designated not only to different courthouses but to different CoA districts
  - 1 Fort Worth justice (4th) to Lake Jackson (6th)
  - 1 Austin justice (5th) to Lake Jackson (6th)
  - 1 Beaumont justice (7th) to Lake Jackson (6th)
  - 2 San Antonio justices (3d) to Midland (2d)
- All these transferred seats would have expired in & been filled by districtwide election in 2022

#### **SB11**

Number of justices on each proposed CoA:

• 1st (Amarillo/Lubbock):	4
<ul><li>2nd (El Paso/Midland):</li></ul>	5
<ul><li>3rd (San Antonio/Corpus/Edinburg):</li></ul>	11
• 4th (Fort Worth/Eastland/Texarkana/Waco):	15
• 5th (Dallas/Austin):	18
• 6th (Houston/Lake Jackson):	21
• 7th (Beaumont/Tyler):	6



One new mega CoA district would have *4 chief justices* 

#### **SB11**

Four new mega CoA districts would have *2 chief justices* 

SCOTX's docket would be needed to resolve disputes between chief justices in the same mega CoA district

#### **SB11**

Unofficial cost estimate: **\$40** *million* 



### **April 1st Hearing on SB11**

- The hearing can be viewed online related to testimony on both SB11 and SB1529
  - Watch at:
     https://tlcsenate.granicus.
     com/MediaPlayer.php?vie
     w id=49&clip id=15611



# April 1st Hearing on SB11

#### 2 witnesses testified in favor

• TLR General Counsel Lee Parsley

15 against

19 "on"

1 registered in favor

17 registered against

7 registered "on"

1 provided written testimony against



#### April 1st Hearing on SB11

- Nearly 1/3 of the Texas intermediate appellate judiciary (25) participated in the hearing
  - Included over half the chief justices (8)
    - Chief of the Chiefs
  - Justices from both sides of the aisle participated

#### Stated Reasons for Redistricting

- SB11 Author's Statement of Intent in the Senate Research Center Bill Analysis:
  - "S.B. 11 addresses these problems by restructuring the current courts of appeals to improve judicial efficiency, distribute workload more evenly across the state's 80 appellate justices, and improve consistency and predictability in the state's jurisprudence."

#### COVID Trial Court Backlog

- CJ Hecht's 2021 State of the Judiciary—3-year backlog of trial court cases due to COVID
  - E.g., 9,000 jury trials to verdict in 2019—just 239 in 2020
  - From 186 jury trials per week to 4
- Therefore, 2021—just as the state was coming out of COVID restrictions—was this the time to reorganize the entire intermediate court of appeals?
- Would efficiency improve with the reorg while handling a 3-year backlog of cases?

#### Transfer Cases

- 10,395 appeals filed in FY2019
  - 9,897 opinions issued
- Over the past decade, transfer cases (including civil & criminal) make up approx. 5% of the intermediate appellate docket (about 520 cases in FY2019)
  - Does 500 out of 10,000 cases justify a \$40 million expenditure for new courthouses & infrastructure?
  - Under the redistricting plan, 9,500 cases would be impacted to accommodate 500 transferred cases.
  - Would transfers not occur in the new mega districts?



#### **En Banc Rehearing**

- Currently, Dallas CoA is our largest intermediate appellate court at 13 justices, with the next largest being the Houston CoAs at 9 justices apiece
- But under SB11, there would have been 3 CoAs larger than that:
  - 4th—15
  - 5th—18
  - 6th—21
- Would scheduling an en banc rehearing across the geographic reach of these mega CoA districts be challenging, expensive, and slow?

#### Multiple Chief Justices

 SCOTX docket would be needed to resolve disputes between any of the *4 chief justices* in the new 4th CoA district or *2 chief justices* in the 3d, 5th, 6th & 7th CoA districts

## **Certainty & Predictability**

#### **Precedence**

- Only SCOTX or the CCA can set binding statewide precedence
- With the new mega-districts, there will still be different precedence between the new mega-districts and maybe within one district as the mega-districts combine old districts

#### **Transfers**

 TRAP 41.3 commands that the law of the transferor court governs over conflicting authority of the transferee court



#### **Even Distribution of Workload**

#### Transfers

- Over 100 years ago the TxLege authorized the transfer of cases between the CoAs
  - Act of Apr. 19, 1895, 24<sup>th</sup> Leg., R.S. ch. 53 §1, 1895 Tex. Gen. Laws 79 now codified in Texas Government Code 73.001
  - A quarter-century ago in 1996, SCOTX first promulgated an order (Misc. Docket No. 96-9224) governing the transfer of cases between the CoAs in order to equalize their dockets
  - https://www.txcourts.gov/All Archived Documents /SupremeCourt/AdministrativeOrders/miscdocket/ 96/96-9224.pdf



#### **Even Distribution of Workload**

#### Transfers

- 15 years ago in 2006, SCOTX superseded and vacated the 1996 docket-equalization order and promulgated an order (Misc. Docket No. 06-9136) governing the transfer of cases between the CoAs to ensure docket equalization
  - https://www.txcourts.gov/All Archived Documents/SupremeCourt/ AdministrativeOrders/miscdocket/06/06913600.pdf
- For some four decades, the distribution of workload amongst the CoAs has been equalized, including in two comprehensive administrative orders promulgated by SCOTX in order to perfect the process



#### Election of Justices

- Could rural or smaller-city candidates ever again be elected to the CoA bench?
  - Eastland (3,836) or Texarkana (35,629) versus Fort Worth (942,323)
  - Edinburg (107,438) or Corpus (327,144) versus San Antonio (1,581,730)

#### **Election of Justices**

- How familiar will the electorate and local bar be with candidates from far-flung locales?
  - Dallas candidates in Austin & vice versa
  - Texarkana candidates in Fort Worth or Waco & vice versa?
  - El Paso candidates in Bandera or Kerr counties & vice versa?
  - What is the cost to run for such large districts and who funds the campaigns of the judicial candidates?

# Diversity and Politics

Would SB11 dilute diversity on the intermediate appellate bench?

Are there Voting & Equal Protection concerns?

SB11 structure would have allowed for 5 Republican-dominant CoA districts and 2 Democrat-dominant districts



# What Happened with SB11?

- Voted out of the Senate Judiciary Committee at the conclusion of the April 1st hearing on a partyline vote of 3-2
- Sen. Huffman circulated a letter a week later, April 8, 2021, stating there wasn't enough time left in the 87th Regular Session to "move further in the legislative process"

# No Commission developed to study

Limited consultation with the bench or bar

Limited notice on the bill

Limited data to support



TLR vision

Process – None

#### What is wrong that needs to be fixed

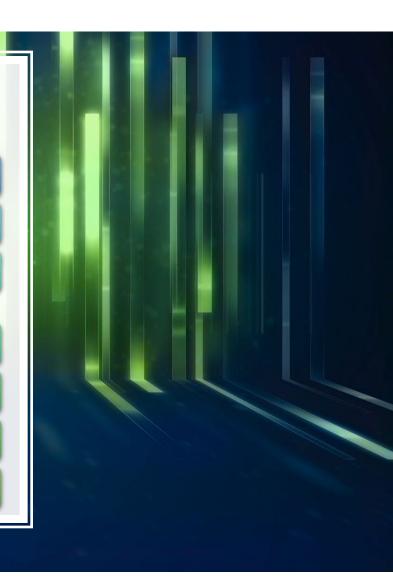
• Precedence, Confusion of Litigants, Transfer of Cases, Efficiency

Diversity and Rural v. Urban

Costs impact to taxpayers and Campaign Contributors

Covid Impact – Jury Trial Backlog

**En Banc Review** 



Senate Bill 1529



Creation of a Statewide Texas Court of Appeals

## **Exclusive** appellate jurisdiction:

"all cases or any matters arising out of or related to a civil case brought by or against the state or a state agency, board, or commission or by or against an officer of the state or a state agency, board, or commission."

#### What the New Court Looks like:

- 5 elected justices, Chief + 4
- Presides in Austin, TX
- Created January 1, 2023
- Initial vacancies filled by 2022 elections
- Paid the same as SCt & CCA justices
- Docket of approx. 30 cases per justice
- Cost a Minimum of \$14.5 million
- Limited Scope of Review



Cost of New Court – Minimum \$14.5 million Cost of Running for New Court – Big Money Donors

Overview

Diversity on the Bench

Impact on Rural Jurisdictions

What is the problem that needs to be fixed

**Docket Size** 

Overlapping Jurisdiction/Precedence

Forum Shopping

Art. V § 6 – Texas is to be "divided into court of appeals districts"

Constitutional Considerations

Not

Coextensive with the limits of the entire state like the Texas Supreme Court in Art. V § 3

#### Diversity on the Intermediate CoAs

- The Numbers Prior to the 2018 election
- Gender: 65% Male, 35% Female
- Race/Ethnicity: 82% White/Non-Hispanic
- 18% Minority
- Age: 25% 64+, 70% 45-65, 5% 25-44
- Selection: 56% Appointed, 44% Elected
- The Numbers for FY 2021 (ends August 2021)
- Gender: 50% Male, 50% Female
- Race Ethnicity: 70% White/Non-Hispanic
- 30% Minority
- Age: 26% 64+, 59% 45-65, 36% 25-44
- Selection: 31% Appointed, 69% Elected

Source: OCA Annual Report, 2018 and 2021

2023 Lege Session: House Interim Charges

Study potential solutions to improve the judicial efficiency of the state courts of appeals by analyzing caseloads and making appropriate recommendations.

Study the operations of specialty courts. Determine whether additional specialty courts should be considered to address needs within specific populations. Review specialty court methods and best practices that have been implemented for specialty courts in other states, including their impact on judicial efficiency.

March 23 House Committee Hearing

#### •Watch it here:

https://tlchouse.granicus.com/MediaPlayer.php?view id=46&clip id=23430

- Similar Themes
  - Business Trial and Appellate Courts
  - Statewide Government Issues Appellate Court
  - Redistricting???

#### Conclusion



Why should you as an attorney care about these bills?



What can you do if you care?



Questions?

#### Thank you

- Many Thanks to:
- Gray Reed &
   McGraw LLP
   1601 Elm Street, Ste.
   4600
   Dallas, Texas 75201
   www.grayreed.com
- And
- Dylan Drummond for allowing the use and modification of some PowerPoint slides related to SB11.

- <u>Presenter</u>:
- Darlene Byrne, Chief Justice
  - <u>Darlene.byrne@</u> txcourts.gov