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Business Court Passes on Challenge to Its Own Constitutionality

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After a highly successful, productive and largely uncontroversial first 18 months, the burgeoning Texas Business Court recently faced its first constitutional challenge.

In *Brown v. Exxon Mobil Corp.*, former Exxon executive Artis Brown — represented by prominent plaintiffs’ lawyer Tony Buzbee — asked the Business Court to declare itself unconstitutional. He took issue with the court’s (1) geographic scope and (2) method of judicial selection. But those complaints aren’t novel. They largely mirror arguments that were raised — and rejected — back in 2023 when the Legislature passed H.B. 19, which created the Business Court.

Those arguments were unlikely to gain traction in court. For one thing, the Business Court is not the proper forum to resolve them. The Texas Supreme Court has exclusive jurisdiction over constitutional challenges to the Business Court. On the merits, Brown’s arguments run headlong into the Texas Constitution and centuries of Texas Supreme Court precedent upholding the Legislature’s broad power to create statutory courts. One recent decision looms especially large: *In re Dallas County*, in which the Texas Supreme Court rejected a constitutional challenge to the new Fifteenth Court of Appeals.

Since 1891, the Supreme Court repeatedly has confirmed that the Legislature has broad authority to create and define the contours of specialty courts. There’s no reason to expect the current Supreme Court to treat the Business Court any differently.

The Constitutional Challenge

Exxon removed Brown’s suit from Harris County to the Business Court on internal-affairs and qualified-transaction grounds. Brown sought remand, and he also filed a motion “challenging the constitutionality of the Texas Business Court.” While the Business Court recently granted that remand, it did so strictly on statutory grounds, leaving the constitutional question unaddressed. The premise of his constitutional argument was that, although the Legislature created the Business Court as a statutory court, in substance it’s a district court, which means it must comply with the constitutional requirements that govern district courts. Brown took issue with two features of the Business Court in particular: (1) its statewide jurisdiction, which Brown argued is inconsistent with the requirement that the state be divided into judicial districts, and (2) its judges, which are appointed by the Governor with the advice and consent of the Senate, instead of being elected.

Brown’s argument — that the Business Court is a district court in disguise — isn’t novel. It was first raised by opponents to the Business Court (aided by then-UT Professor Stephen Vladeck) during the 88th legislative session in 2023. They contended that the Business Court was a *de facto* district court because it had overlapping jurisdiction with, and its judges had the same powers as, the district courts. On that view, the court couldn’t have statewide jurisdiction or appointed judges. The Legislature reject-

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ed those arguments, passing H.B. 19 with bipartisan support in both houses.

Brown’s motion picked up where the Business Court’s opponents left off — arguing that the Business Court is a district court for constitutional purposes because it “essentially functions” as one.

Analysis

The Business Court Is Not the Proper Forum for Brown’s Constitutional Challenge.

As a threshold matter, Brown pressed his arguments in the wrong forum. Like it did with the Fifteenth Court, the Legislature granted the Texas Supreme Court “exclusive and original jurisdiction” over any challenge to the constitutionality of the Business Court. This approach enhances stability and reduces uncertainty by empowering the Supreme Court to promptly — and definitively — resolve any constitutional challenges. Consistent with that framework, on May 29 the Business Court granted Brown’s motion to remand purely on statutory jurisdictional grounds. The court did not adjudicate Brown’s constitutional arguments.

The Constitutional Arguments Fail on the Merits.

Texas’s Tradition of Statutory Courts

Brown’s constitutional arguments overlook Texas’s long history of creating statutory courts with special powers, and the Legislature’s broad authority to create them. That legislative flexibility stems from the failure of the 1876 Texas Constitution’s “rigid judicial framework” for statutory courts, as the Court noted in *In re Dallas County*. In those days, the Legislature attempted to create specialty statutory courts but was rebuffed by the judiciary, which repeatedly blocked the new courts by reading the 1876 constitution narrowly. In direct response, Texans amended their constitution in 1891 to entrust the Legislature with tremendous authority over the creation and juris-

diction of state courts. The amendment empowered the Legislature to “establish such other courts as it may deem necessary, and prescribe the jurisdiction and organization thereof.”

In the decades that followed, the Legislature frequently exercised its new powers. And, beginning with its 1897 decision in *Harris County v. Stewart*, the Supreme Court repeatedly blessed these new courts — relying heavily on the 1891 constitutional amendment — which “place[d] the subject” of statutory courts at “the complete disposal of the legislature.”

Stewart confirmed the Legislature could give statutory courts concurrent jurisdiction with, and the same judicial powers as, district courts. Sixteen years later, in *Carter v. Missouri, Kansas & Topeka Railway Co.*, the Court held that the Legislature’s “broad power” over the statutory courts encompassed not only the courts’ territorial jurisdiction but also the manner of judicial selection.

Through *Stewart and Carter*, the Supreme Court outlined three key principles governing statutory courts:

- Their jurisdiction can be concurrent with a district court’s.
- Their judges can be appointed instead of elected.
- Their geographic reach is limited only by the Legislature’s discretion.

In *Jordan v. Crudgington*, the Supreme Court reaffirmed each of those principles. That 1950 decision involved a constitutional challenge to Potter County’s Domestic Relations Court — a statutory court with appointed judges and overlapping jurisdiction with the district courts.

The Court expressly rejected the challenger’s statutory-court-in-name-only argument, holding that “the premise that the court created by this Act is a district court merely because it exercises some of the jurisdiction of the district courts” was “without merit.” Instead, the Court explained, to “strike down” a statutory court, there must be “some specific sec-

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tion of the Constitution which condemns it.”

The Business Court Is Not a District Court

Brown contends that the Business Court is “essentially” a district court because it has overlapping jurisdiction with district courts and its judges have the same powers as district judges. But the Supreme Court already rejected virtually identical arguments in *Jordan*. Having concurrent jurisdiction with — or similar powers to — a district court doesn’t transform a statutory court into a district court.

Brown relies on two cases holding statutory courts unconstitutional: *Whitner v. Belknap and Reasonover v. Reasonover*. But those cases both involve jurisdiction stripping — the practice of creating a statutory court with *exclusive* jurisdiction over certain cases by eliminating the district courts’ power to hear them. There’s no jurisdiction stripping here: the Business Court has concurrent jurisdiction with the district courts. And even if the Business Court did have exclusive jurisdiction, it still wouldn’t be an issue. As the Supreme Court explained in *In re Dallas County*, the 1985 constitutional amendments expressly authorize the Legislature to do what *Whitner* and *Reasonover* forbade.

The Business Court isn’t a district court. It’s a statutory court, with specific jurisdictional rules and judicial qualifications designed to aid the Texas judiciary and economy. Under longstanding constitutional tradition and Supreme Court precedent, it’s not transformed into a district court just because it has overlapping jurisdiction and authority.

District Court Rules Don’t Apply to the Business Court

Once Brown’s core thesis is defeated, his two specific objections — to the Business Court’s statewide jurisdiction and method of judicial selection — fall away. *Carter* establishes that the Legislature has wide latitude in setting the “territo-

ry within which” a statutory court “may exercise its authority.” And *In re Dallas County* makes clear that statewide jurisdiction would be permissible even if the Business Court were subject to the constitutional requirements governing district courts. The Business Court’s geographical reach is thus a nonissue.

Brown’s objection to the appointment (rather than election) of the Business Court judges fares no better. *Carter* blessed Governor-appointed judges presiding over statutory courts more than a century ago. There “could be no court organized without a judge,” the Court explained, so the power to create a statutory court and “prescribe its ‘jurisdiction and organization,’” necessarily includes the power to establish “the manner in which the officers shall be chosen.”

Conclusion

The Texas Constitution empowers the Legislature to create specialized courts designed to meet the state’s unique needs. Since the constitution was amended in 1891, the Texas Supreme Court has consistently confirmed that the Legislature has wide latitude to create and design statutory courts. The Business Court is the latest example in the Legislature’s long line of successful statutory-court innovations. It fits comfortably within the Legislature’s power, and it’s not a district court in name or in substance.

The two qualities of the Business Court Brown objects to — its statewide reach and method of judicial selection — are features, not bugs. They allow the Business Court to speak with a single, statewide voice, enhancing stability and predictability. And they ensure that its judges are the cream of the crop, with the business acumen and experience needed to efficiently and effectively adjudicate the state’s most complex commercial disputes.

Here, the Business Court didn’t reach the constitutional question, instead remanding on jurisdictional grounds. But if the question ever reaches the Texas Supreme Court, it’s highly unlikely that we’ll see a departure from the Court’s

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century-long line of decisions consistently blessing the constitutionality of statutory courts just like this one.

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