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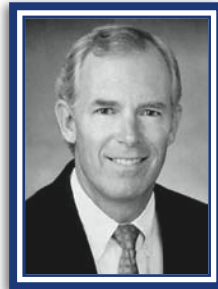
**OUR MISSION**

Texans for Lawsuit Reform is a volunteer-led organization working to restore fairness and balance to our civil justice system through political action; legal, academic, and market research; and grassroots initiatives. The common goal of our more than 15,000 supporters is to make Texas the Beacon State for Civil Justice in America.

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## Improving the Effectiveness of Our Civil Justice System



*Richard W. Weekley*

The Texas Legislature, with the support of Governor Perry, Lt. Governor Dewhurst and Speaker Craddick, has enacted the most comprehensive reform of civil justice laws in our nation's history. Legislators listened to their constituents, considered the public policies at issue, and studied the often complex and arcane details of each bill.

The positive impacts for our state are a restored respect for the fairness of the law, enhanced access to health care, and an improved competitive environment for business and industry that is fueling a robust economy and enormous job growth.

Abuses to the civil justice system remain and others will emerge, such as the current venue problem described in this issue (which is the only TLR proposal this session that can be described as "tort reform"). The future thrust of reforming the civil justice system, however, will address the impact of juror selection and jury service on the impartiality of trials, the modernization of the antiquated Texas court system, the efficiency and accountability of our judiciary, and the quality of our state's judges.

It is critical that citizens from throughout our society answer the call to jury service and, when they do, that the trial process treats them respectfully, does not waste their time, and gives them every opportunity to make informed decisions.

Texas must modernize the structure of its antiquated court system, which has been built in bits and pieces over the last century and a half. Rationalizing our courts will make them more efficient and accountable and better ensure that cases are assigned to judges whose experience and knowledge make them best suited to handle particular types of lawsuits.

In close, I report that TLR is working with a large coalition of lawyers, judges and other concerned Texans who believe that it is crucial to the future of our state to improve our methods of selecting, retaining and removing judges. It is important to attract the best men and women to service in the judiciary. We are working on ideas to provide judges a stable and independent judicial environment, while making sure that judges stay accountable to the people for their competence and honesty through retention elections. We will discuss judicial selection and removal in detail in a future TLR Advocate.

Sincerely,



Richard W. Weekley  
 Chairman & CEO

# The Lawsuit Explosion Against Dredgers In Texas: A Loophole in Tort Reform

Abusive litigation is endangering one of the mainsprings of the Texas economy. More than 300 million tons of cargo pass through Texas ports each year, producing more than \$178 billion in business sales. Scores of major port facilities are located along a thousand miles of channel maintained by the U.S. Army Corps of Engineers. Texas ports handle almost 15,000 vessels – 20% of the national total. Marine and related transportation contributes tens of billions of dollars to the economy of our state, and Texas ports contribute billions of dollars in local and state tax revenue annually.

Our port trade is a key driver of the Texas economy and supports hundreds of thousands of jobs in Texas. Our ports require frequent dredging to maintain and improve them to keep pace with our growing maritime commerce. Unfortunately, the recent explosion of lawsuits in Texas courts against dredging companies under the Jones Act (a federal statute governing injury claims by maritime workers) is threatening to make dredging in Texas so expensive that projects along the Texas Gulf Coast are seriously at risk. This endangers the future viability of our state as a major center of global commerce.

The general venue rule in Texas for almost all workers is that lawsuits against corporations must be brought in the county of the defendant's principal place of business or in the county where the incident causing the alleged injury occurred. These two venues represent the traditional choice not only in Texas but nationally. In fact, when plaintiffs choose to file Jones Act cases in federal court, venue is permitted only where the defendant resides.

Usually, a Texas plaintiff may file suit in his own home county only when the defendant has no place of business in Texas and the accident did not occur within the state. Not so for Jones Act cases – under a special loophole, Jones Act cases may be brought at will in the county of the plaintiff's residence.

This exception has touched off an explosion of lawsuits filed primarily by two law firms, selecting venue in just four South Texas counties – Starr, Hidalgo, Cameron and Zapata.

The chilling words of one of those plaintiffs' lawyers reveal his reasoning in choosing the counties in which he files these lawsuits:

*“Cases filed in Starr County, which is traditionally the best venue in the State of Texas. That venue probably adds about seventy-five percent to the value of the case.”*

Starr County, located on the Rio Grande River two counties west of the Gulf, is a rural, agricultural county, not directly involved in maritime trade.

This plaintiffs' attorney goes on to say:

*“Maybe in Harris County, Galveston County, we need to show here's what the company did wrong, all right? But when you're in Starr County, traditionally, you need to just show that the guy was working and he was hurt. And that's the hurdle; just to prove that he wasn't hurt at Wal-Mart, buying something on his off time, and traditionally you win the case. That's how we win those cases.”*

In talking about another county in which he files many lawsuits, this lawyer says:

*“But generally speaking, Hidalgo County is a more sophisticated county...Generally you'll get...a lot of school teachers on the jury. Most of the people that you are going to get as jurors in Hidalgo County are people that have some relationship to some government entity; that the biggest employer: schools, I guess hospitals, and it is very easy for me as representative of the plaintiff to knock out all those jurors that will be good for your [defendant's] interest. Very easy. Generally speaking, if the judge will give me two hours, which I can generally get from the particular judge in Hidalgo County, I can knock out all those jurors. [Inaudible] I've busted several panels, by that I mean knocked out jurors that are favorable to your case, that are against me. And the Hidalgo County judge is going to give me my two hours; that's enough to knock out jurors and then you're left with a jury who is favorably disposed to the case.”*



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Hidalgo County, also an inland county on the Rio Grande River, is not a center of maritime trade.

The number of personal injury lawsuits against dredgers in South Texas counties is dramatically higher than the number of lawsuits filed against dredgers in other states. Between 2003 and 2006, eight dredging companies had a total of 186 Jones Act lawsuits filed against them nationwide, and 107 (58%) of those were filed in South Texas. Sixty-seven of those 107 lawsuits in South Texas were filed by just one law firm.

Not only are recent Jones Act lawsuits in South Texas unusual as compared to other states, but they are also startling as compared to similar lawsuits filed in the past. One Texas-based dredging company, in business since 1940, had fifteen Jones Act cases filed against it in South Texas in 2005 and 2006. In the previous eight years, only four such cases had been filed against that same company. Another company involved in major dredging projects in Texas and around the world employs 10% of its workforce from Texas, but 60% of the total Jones Act lawsuits filed against it come from that 10% of its total workforce.

The effects of these lawsuits are threatening the vitality of Texas's crucial maritime industry and placing the jobs of Texans at risk. Needed dredging projects are not being completed, creating potential logjams for maritime commerce. The increased cost of doing business in Texas is being factored in the bids submitted on dredging contracts. The dredging industry is unique in that most dredging companies work almost exclusively for the US Army Corps of Engineers. If this situation is allowed to continue, the increased costs will be borne directly by the American taxpayer. Recently, there were two major dredging projects cancelled in Texas due to the higher costs attributed to lawsuits.

TLR is working to close the loophole and assure that federal Jones Act cases that are filed in Texas courts are subject to the sound principles of the Texas general venue statute. Plaintiffs in Jones Act cases should be allowed to sue in the Texas county where the injury-causing incidents occurred or in the Texas county of the corporate defendant's principal place of business, permitting plaintiff to sue in his or her county of residence only if neither of those venues applies.

## TLR's Secret Weapon – You

TLR is an effective and successful civil justice reform organization because we do extensive research, we make reasonable proposals for reform, we work closely with state leaders and Members of the Legislature, and because we have a secret weapon – you. In past legislative sessions, TLR supporters from all over the state have communicated with their elected representatives in support of the reforms that have helped restore balance and fairness to Texas civil justice. Legislators appreciate hearing from their constituents on critical issues. There is nothing more effective in legislative advocacy than direct communication from the people that a legislator represents.

We will need your help again in the current legislative session. We will be asking you to contact your lawmakers in the House and Senate to let them know your thoughts about venue reform, court reorganization, and other civil justice matters.

## The TLR Story: Democracy in Action

TLR has just released a new DVD that chronicles the story of TLR from the earliest days of our organization until now. Entitled, "The TLR Story: Democracy in Action," the DVD recalls the days when Texas was the "lawsuit capitol of the world" and TLR reformers were told that any meaningful reforms were "impossible" because of the political strength of the plaintiffs' personal injury lawyers. You will receive the DVD in the mail soon. We hope you will share it with your friends and family, as well as with groups in your community who may want to use the DVD for a short, informational program.

[WWW.TORTREFORM.COM](http://WWW.TORTREFORM.COM)

TLR has redesigned and updated our website with you in mind. We invite you to take a look at the changes. We hope you will check the website regularly during this legislative session for the latest information about legislation impacting our civil justice system.

# Court Reorganization

## WHAT'S WRONG WITH THE TEXAS COURT SYSTEM?

The Texas court system, cobbled together and expanded over more than 150 years, is frequently described as Byzantine, abstruse and illogical. It is confusing even to lawyers and incomprehensible and intimidating to ordinary citizens. While we have many fine, hardworking judges who do their best to handle court matters efficiently and fairly, they are hindered rather than helped by our current court structure and the lack of adequate funding.

The current judicial organization – or more accurately, disorganization – is ill equipped to handle modern litigation. From small claims to complex lawsuits, the inequities and inefficiencies in our courts are a barrier to timely and balanced civil justice. Our judges should be given the organizational structure, administrative tools, and funding necessary for them to conduct the fair and efficient administration of justice in Texas.

Listed below are several of the problems in the current court system.

- Texas has seven major different types of trial courts: constitutional county courts, statutory county courts, statutory probate courts, justice of the peace courts, small claims courts, and municipal courts.
- The actual jurisdiction of a particular type of court may vary from one county to another. For example, in some counties the statutory county courts have co-extensive jurisdiction with district courts; in other counties, their jurisdiction is limited to cases with an amount in controversy of \$100,000 or less.
- A citizen who wants to file a claim may face a bewildering number of choices. There are circumstances in which a claimant must determine whether to sue in a probate court, a constitutional county court, a statutory county court, or a state district court.
- The same civil case that would be tried to a twelve person jury in district court would be tried to a six person jury if filed in any other trial court.
- Only seven percent of Texas's justices of the peace are lawyers. These judges often have jurisdiction over cases worth millions of dollars. Such cases should be presided over by judges with law degrees and legal experience.
- A justice of the peace can evict a tenant from a commercial property worth millions of dollars, yet the losing party cannot appeal beyond the constitutional or statutory county court.
- Many Texas trial judges must answer to two different courts of appeals, and some must answer to four. It is not unusual for courts of appeals to differ on important questions of law. Therefore a trial judge – and the parties and attorneys who appear before the judge – have more certainty when the judge is answerable to only one appellate court. Texas is the only state in the nation in which trial judges answer to more than one intermediate court of appeals.
- Routinely, cases are transferred in Texas from state courts of appeals with heavy caseloads to those courts of appeals with lighter caseloads. This adds an unfortunate element of randomness and unpredictability for the trial judges, as well as the parties to a lawsuit and their attorneys.
- District court vacancies are filled by appointment by the Governor but statutory county court vacancies are filled by county commissioners, even though those courts frequently have jurisdiction over the same matters.
- The Governor, rather than the Supreme Court, appoints regional administrative judges, reducing the Supreme Court's capacity to administer the state judiciary. This is problematic in two ways. First, the Supreme Court is better positioned than the Governor to know which judges are most suitable for administrative positions. Second, the Supreme Court could better manage the judiciary if it were appointing the regional administrative judges.
- Judicial administrative regions for our courts do not geographically conform to the state's courts of appeals regions, adding to confusion and inefficiency.



- Several Texas trial judges are supervised by more than one regional administrative judge, blurring the lines of responsibility and accountability.
- Litigation is so costly and expensive that many people choose not to pursue small claims unless they can be handled with minimal time and expense. Texas does not have an adequate small claims system.
- Texas courts also lack a coherent and consistent system of assigning complex and difficult litigation to the judges most capable of managing complex lawsuits.
- Texas does not compensate its judges at a level that reflects the important work that judges do for our state, nor is their pay on a par with other populous states.
- The State of Texas spends only four-tenths of one percent of its budget on the judiciary, by far the lowest of any major state.
- Texas relies too much on county funding of its courts, adding to the confusion and lack of administrative accountability in the judicial system.

## **PRINCIPAL FEATURES OF TLR'S PROPOSALS FOR MODERNIZING THE STRUCTURE OF THE TEXAS JUDICIAL SYSTEM**

### **Improve the Supreme Court's Ability to Manage the Judicial System**

- Give the Texas Supreme Court discretionary jurisdiction in appeals of all final judgments and appealable interlocutory trial court orders, improving its ability to clarify important issues of law.
- Allow the Supreme Court discretion in how to equalize the caseloads of the fourteen courts of appeals. The Legislature, in its appropriations process, has been instructing the Supreme Court to equalize appellate dockets by transferring cases between the intermediate appellate courts. Trial judges, parties and lawyers should be able to have certainty that appeals will be to the court of appeals in whose district the lawsuit was tried.
- Require the Supreme Court, rather than the Governor, to appoint regional administrative judges, which will improve the lines of communication between the various tiers of courts.
- Require the regional administrative judge in consultation with local judges, to appoint the local administrative judges, which will improve the lines of communication between the various tiers of courts.

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## **Why Should We Care?**



*Richard J. Trabulsi, Jr.*

Why should the 15,000 supporters of Texans for Lawsuit Reform care about how the Texas court system is organized and administered? Isn't this something that should be left to judges and lawyers?

The supporters of TLR have worked for a dozen years to reform the Texas civil justice laws. But we must always be mindful that judges apply those laws. A good judge can give force to the civil justice reforms and a biased or indifferent judge can distort or ignore them. We have cared passionately about the legislative reforms that we have helped to accomplish, and we should care equally about the judicial system that administers those reforms.

After all, none of us knows from one day to the next when we might find ourselves in court as a plaintiff, a defendant or a juror. When we are in court, we want to have the best chance possible of being treated respectfully, competently and fairly. The proposals summarized in this Advocate are intended to accomplish goals that include assigning the most appropriate judge to a particular case or type of case, treating jurors respectfully and efficiently, and producing fair and impartial trials for the litigants.

The proposals summarized in this issue were substantially generated and developed by judges and lawyers. But the rule of law is a cornerstone of our free society and the administration of justice has a huge impact on all of us, all of the time. It is the right – and the obligation – of all civic minded citizens to make their voices heard on the administration of justice.

Certainly, all of us want our government to be organized in a rational and efficient way. If one were establishing a judicial system from scratch, it would look far different than the current Texas court structure. If a law firm or a business were as incoherently and confusingly organized as the current Texas judicial structure, failure of that law firm or business would be assured. We should care about modernizing our court system because we need this crucial governmental function to work well.

We need your help, as always, to accomplish these goals.

Sincerely,

A handwritten signature in blue ink that reads "Richard J. Trabulsi, Jr." The signature is written in a cursive style.

Richard J. Trabulsi, Jr.  
President

## Rationalize Trial Courts And Clarify Subject Matter Jurisdiction

- Convert statutory county courts and statutory probate courts into district courts, leaving current judges in place to continue doing their jobs.
- Provide district courts exclusive jurisdiction of civil actions in which the amount in controversy exceeds \$10,000.
- Amend constitutional county court jurisdiction by:
  - » Removing judicial authority from constitutional county courts in counties currently having a district court sitting only in that county (or a statutory county court at law sitting only in that county, if statutory county courts are not converted to district courts).
  - » Defining and making uniform the jurisdiction of the other constitutional county courts by giving them probate, guardianship, mental health, juvenile, and misdemeanor criminal jurisdiction.
  - » Increase the maximum amount in controversy for general civil jurisdiction in justice of the peace courts from \$5,000 to \$10,000.
- In eviction cases:
  - » Leave justice of the peace courts with jurisdiction in all residential eviction cases without regard to the amount in controversy.
  - » Provide justice of the peace courts jurisdiction in commercial eviction cases only if the amount in controversy is \$10,000 or less.
  - » Instruct the Supreme Court to promulgate rules of civil procedure by which courts can determine the amount in controversy in commercial eviction cases and to ensure the expeditious handling of commercial eviction cases in district court.
  - » Allow an appeal of all eviction cases to the intermediate appellate court.

## Create A True Small Claims System

- Eliminate the current small claims court (which is a justice of the peace acting as a “small claims” judge) and direct the Supreme Court to define “small claims” and to establish rules and procedures for the expeditious handling of small civil cases.

## Assign Complex Cases To Judges Most Capable of Handling Them

- Establish a mechanism for moving complex cases to trial judges having the expertise and resources to handle those complex cases.
  - » Convert the existing Multidistrict Litigation Panel into the Complex and Multidistrict Litigation Panel (“CMDL Panel”).
  - » In conjunction with its authority to consolidate and transfer factually similar cases, provide the CMDL Panel authority to transfer complex cases to trial judges having the knowledge and the resources to handle complex litigation.
  - » Provide a statutory definition of “complex case” to mean a civil action requiring continuous or exceptional judicial management.
  - » Provide that the CMDL Panel, in determining if a case is complex, shall consider factors such as: whether there are a large number of separately represented parties; whether coordination with related actions pending in other courts will be necessary; whether the case will benefit from assignment to a judge who is knowledgeable in a specific area of the law; whether it is likely that there will be numerous pretrial motions or novel legal issues to resolve; whether there will be a large number of witnesses or a substantial amount of documentary evidence; whether substantial post-judgment judicial supervision will be required.
  - » Provide that certain types of cases are presumed to be complex, such as class actions and lawsuits in which technical or scientific evidence is central to the case.
  - » Instruct the Supreme Court to further define “complex case” by rule to ensure that the panel is transferring only those cases that truly deserve exceptional judicial management.
  - » Provide that complex cases must be assigned to a trial court in the court of appeals district in which the case was originally filed to ensure that the case

*“Judges, therefore, should be always men of learning and experience in the laws, of exemplary morals, great patience, calmness, coolness, and attention. Their minds should not be distracted with jarring interests; they should not be dependent on any man, or body of men.”*

— John Adams, *Thoughts on Government*, 1776

remains in a geographic area that is convenient to the parties, attorneys, and judicial system.

- » Allow the trial judge to whom the case is transferred to conduct pretrial proceedings in his or her court or in any appropriate location in the court of appeals district, for the convenience of the parties, attorneys, and judicial system.
- » Require the trial judge to whom a complex case is assigned to return to the county in which the case was originally filed to conduct trial.
- » Provide funding for staff and material resources for the CMDL Panel and the trial judges to whom multidistrict cases and complex cases are assigned.
- » Does not change the current handling of multidistrict cases.
- In a complex or multidistrict case, allow the immediate appeal of an interlocutory trial court order if the order resolves a controlling question of law on which there is a substantial ground for difference of opinion and the appeal could help resolve the litigation. An interlocutory trial court order is one that is made before the conclusion of the trial.

## **Require Further Study Of Certain Reorganization Issues**

- Instruct the Office of Court Administration or some other appropriate body to study and report prior to the 2009 session on:
  - » Reducing the number of justices on the Supreme Court from nine to seven, and the number of judges on the Court of Criminal Appeals from nine to seven;
  - » Eliminating overlapping intermediate appellate court districts and reducing the number of intermediate appellate courts;
  - » Redistricting the district courts after merging the statutory county courts and probate courts into the district courts; and
  - » Funding the judiciary primarily from state funds. TLR favors increasing the compensation of Texas judges to a level that is commensurate with the importance of their work and is comparable to judicial compensation in other populous states.

## **Enhancing the Texas Jury Process**

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The United States and Texas Constitutions guarantee litigants the right to trial by a fair and impartial jury. Thomas Jefferson described it as “the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution.” To guarantee this right, it is necessary that our citizens answer the call to serve on a jury and that the process of selecting jurors be efficient and well designed to choose a fair and impartial jury.

While Texas has taken steps in recent years to improve its jury system, much remains to be done. Despite increased reimbursement for jury service, many citizens are not responding to jury summons. One of Texas’s most populous counties recently reported that only thirty percent of its citizens summoned for jury service actually appeared at the courthouse. The long and inefficient process of jury selection coupled with intrusive questioning leads many Texas citizens to evade jury duty. Moreover, the process of selecting jurors through the questioning of prospective jurors (called “voir dire”) is problematic. Attorneys, pursuing their duties as trial advocates, use voir

dire to select favorable jurors rather than fair and impartial jurors. Action must be taken by the courts and by the Legislature to improve Texas’s jury system to encourage citizen participation and to better ensure the right to a fair and impartial trial by jury.

### **Action by the Courts**

The Texas Supreme Court has described the purpose of voir dire as protecting the parties’ constitutional right to a fair trial through the exposure of improper juror biases that form the basis of statutory disqualification. However, Texas has no procedural rule outlining the procedure of voir dire and the scope of questions appropriate during voir dire. As a result, attorneys often ask intrusive questions of prospective jurors, using the process to shape the most favorable jury for their client.

Jurors are also often required to complete a written questionnaire that inquires into their personal and professional background. Written jury questionnaires should be designed to disclose any statutory grounds for disqualifi-

cation and to speed the oral questioning of prospective jurors; however, they are often used to aid attorneys and their jury consultants in selecting the most favorable jury. Jury questionnaires often inquire into a juror's political preference, religious background, medical history, and personal habits such as favorite television shows, newspapers, or magazines, even though these are not relevant to the underlying litigation. Clearly, such questions are designed to "profile" prospective jurors as favorable to one litigant or another. Society's goal in jury selection, however, is to seat fair and impartial jurors, not partial ones.

The Texas Supreme Court should create rules to improve the process of voir dire. The rule should require judges to take a more active role in voir dire by making a brief, neutral opening statement of the case and conducting the initial questioning of prospective jurors to determine disqualifications. The rule should also define the scope of permissible voir dire questioning, allowing for appropriate case-specific written questionnaires. This will help in the selection of a fair and impartial jury rather than a favorable one. It will also lessen the burden of jury service on Texas citizens by reducing the overall time for service and limiting the scope of personal questions asked during the jury selection process.

In addition to the voir dire rule, the Texas Supreme Court should create rules that improve the quality of jurors' experiences in the courtroom. Texas currently has no rule expressly permitting jurors to take notes or to ask questions of witnesses during a civil trial. Texas also has no rule allowing attorneys to make mini-statements or summations during long civil trials for the benefit of jurors who are working to retain days or weeks of testimony. Many of these procedures were recommended by the American Bar Association and also by the 1997 Texas Jury Task Force that was commissioned by the Texas Supreme Court. These procedures have been successfully implemented in other states and have improved juror satisfaction in those jurisdictions. Texas courts should consider implementing these simple methods of improving the jury system.

### **Action by the Legislature**

The Texas Legislature can take a few simple steps to help ensure that Texas citizens share the responsibility of jury service equally and that certain personal information provided by jurors remains confidential.

Exemptions from jury service should be provided sparingly so that all Texas citizens share fairly in the civic duty of jury service. Currently, members of the Legislature and employees of the legislative branch are exempt from jury service regardless of whether the Legislature is in session. During legislative sessions, legislative and executive branch employees are consumed with government affairs and exempting them from jury service is sensible. Exempting these individuals from service when the Legislature is not in session, however, is not essential to the operation of state government and removes a number of civic-minded jurors from the jury pool. This provision should be amended to exempt legislators and legislative employees only when the Legislature is in session.

In addition, citizens who receive a judicial excuse from jury service should be required to reschedule jury service within one year. Currently, a juror who is excused is not required to fulfill the commitment required by the original summons. Moreover, potential jurors are often informed that the lawyers for all of the parties must agree before the court may release them for certain judicial excuses. This places the litigants and their attorneys in a precarious position with the potential jurors. The court should be prohibited from informing prospective jurors that the litigants must agree to his or her release for certain judicial excuses.

Also, the Legislature should require that jurors' personal information remain private. The law should provide that information disclosed on written jury-summons questionnaires and any supplemental written questionnaires be kept confidential. Currently, the law provides protection for completed jury-summons questionnaires but there are no provisions for supplemental questionnaires or incomplete questionnaires. Such information should not be disclosed to anyone other than the judge, court personnel, litigants, and attorneys in the case in which the person is a potential juror.

### **Texas is Ripe for Jury Reform**

The Texas Supreme Court recently commissioned a second task force to study jury administration. States such as Arizona, California, and New York continue to improve their jury systems to increase citizen participation and improve the selection of fair and impartial juries. Texas should act now to improve its jury system as it is central to the fair and impartial administration of justice.