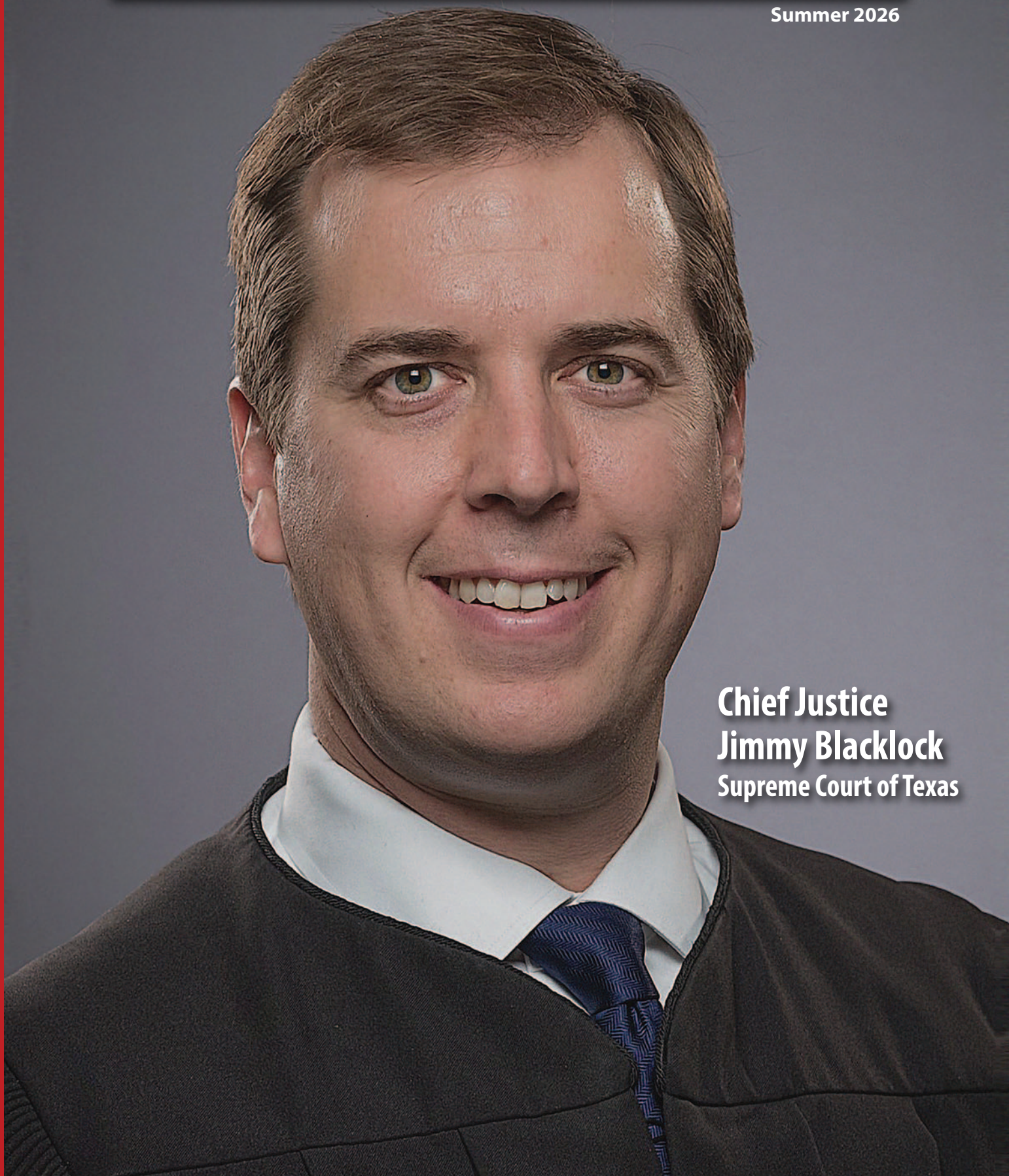
TEXAS CIVIL JUSTICE LEAGUE JOURNAL | No Regulation by Litigation Summer 2026

TEXAS CIVIL JUSTICE LEAGUE

JOURNAL

Summer 2026



Chief Justice Jimmy Blacklock

Supreme Court of Texas

TEXAS CIVIL JUSTICE LEAGUE JOURNAL | No Regulation by Litigation Summer 2026

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Established in 1986, the Texas Civil Justice League:

- is a non-partisan, member driven, statewide business coalition committed to a fair and equitable business climate.
- cost-effectively extends corporate legal department benefits by monitoring court rulings and legislation, alerting members to challenges that threaten the state's judicial system.
- is the only statewide legal reform coalition governed by a board of directors composed of business and statewide association leaders.
- is the state's oldest and most effective legal reform organization. Business leaders and former legislators founded the Texas Civil Justice League to enact recommendations issued by the 1987 House/Senate Joint Committee on Liability Insurance and Tort Law Procedure.
- works closely with business and professional associations to achieve mutual public policy objectives.
- actively seeks and incorporates members' input into legislative proposals.
- takes fiscal responsibility seriously, leveraging membership dues into meaningful, long-term civil justice reform.
- is a national leader in the lawsuit reform movement and has assisted in the organization of similar state groups in many other states.
- is a charter member of the American Tort Reform Association and collaborates with other national groups including the U.S. Chamber of Commerce's Institute for Legal Reform.

For membership, please contact the Texas Civil Justice League by calling 512-320-0474 or by emailing info@tcjl.com

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Chairman's Corner

by Hector Rivero

This year TCJL will celebrate its 40th birthday. It is a good time to reflect on where we have been, where we are today, and where we might be going in the future.

Looking back, we see four decades of astounding success in reshaping Texas' business liability landscape. A big part of this effort has taken place in the legislative arena, but it's important to remember that since TCJL's inception, our prime mission has always been to help secure and maintain a Texas Supreme Court that is second to none in integrity, scholarship, independence, and impartiality. Simply comparing the 1986 Court with the one we have today speaks to the tireless commitment of the League and its members. It's one thing to turn a court scandalized by "Justice for Sale" into a court considered as one of, if not the, best high court in the nation. It's another to keep it that way for 40 years.

That brings us to the present day. As it was in the beginning, it is now and ever after. If the judiciary cannot be counted on to apply the law as the Legislature writes it, enforce contracts as the parties write them, insist on due process of law when threatened by anybody (including the state), and protect separation of powers (even at the cost of annoying the other two branches of government), then we have forfeited governance by the rule of law. Without that rule and the stability it confers, no business could function for very long in this state.

There is a reason people flock to Texas to start or relocate businesses. Surely, the Legislature has done its part by enacting reasonable rules governing business liability. But even so, we have seen (and see in other states) that courts can frustrate the Legislature's will if they have a mind to. This year we have four Supreme Court justices (and several intermediate courts of appeals justices) who have contested elections in November. If we don't step up and support the justices with established records of doing what we rely on our courts to do, we risk losing everything we have achieved in the last 40 years. This is unacceptable, and we cannot allow it to happen.

Of course, the future depends much on how we handle the present. In large part, as the quality of the judiciary goes so goes the business climate. If we maintain and enhance that quality, we can be confident of a predictable liability system. If the quality erodes, the effectiveness of hard-fought reforms to the liability system will erode as well. Which way will the future go?

At our annual meeting last November, the TCJL Board of Directors approved the creation of a committee to help determine how best to plan for that future. In some ways, the problems that plagued the Texas business climate in 1986 are recurring today. Part of this recurrence is the general unfamiliarity of members of the Legislature with past reform efforts and their positive effects on business. But another, and perhaps growing, part of it involves a shift in philosophy towards policies that produce a more litigious civil justice system. We consider this philosophy as a grave threat to the business climate that makes our planning for the future even more imperative. We have to get this right.

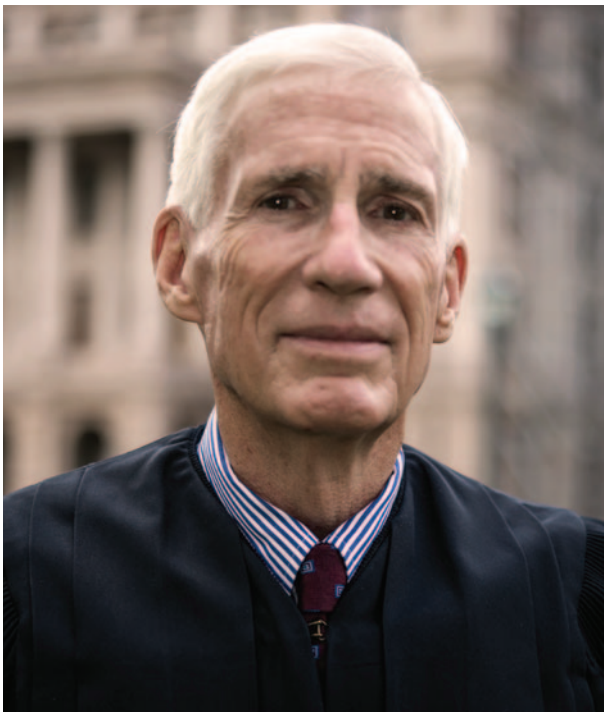
Considering the gravity of the situation, we hope to come before the Board in the coming months with options about how to proceed. We also welcome input from all members, whether participants in the planning committee or not, on the best way to move forward. With the 2027 legislative session just over the horizon, we don't have a lot of time to act. But we also have a Board and membership consisting of the finest people, associations, and companies that are possible to convene in one organization. If anyone can figure it out, we can.

I am proud to serve the League as its Chair and to be associated with you all. Thank you for your continuing dedication and support of our mission.

Hector Rivero
President & CEO
Texas Chemistry Council

Hon. Scott Brister, Chief Justice

Texas 15th Court of Appeals



In framing a government . . . , the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

THE FEDERALIST No. 51 (James Madison)

The older the civilization, the longer the lawsuits.

Will Durant, The Story of Civilization: Caesar and Christ.

Without a civil justice system, contracts may be disregarded, torts inflicted without remedy, and government officials may choose to disregard the law. But as with any other branch, the difficulty in the civil justice system is ensuring that judges don't do too much or too little. It is an appellate judge's job to correct either form of abuse, but with 1,000 local trial judges disposing of over 400,000 cases each year, we cannot review every order for possible mistakes.

The Fifteenth Court of Appeals (on which I serve along with my colleagues Scott Field and April Farris) was the first new intermediate appellate court created in Texas since 1967. We were directed "to give special attention to those cases the Legislature has defined as critical to the State's interests," and we exercise statewide jurisdiction so that "all Texas voters have a say in electing the justices who decide cases affecting the State's interests."[1] In the 18 months since our creation, those cases have primarily been suits by or against the State of Texas and its officers and agencies—such as whether the State can issue A-to-F school ratings (yes), whether the Attorney General without express rule-making authority from the Legislature can require DAs to submit annual reports (no), whether the State can require standby generating power to avoid threats to the power grid in extreme weather (yes), whether the State must pay counties to detain criminal defendants in jail when they are incompetent to stand trial but the state hospital system has no room (no), whether the Comptroller may decline to send state funds intended for "property-poor" school districts to a county that uniformly appraises local properties too low (yes), and whether a city ordinance can restrict enforcement of state drug laws (no).

Handling civil litigation expeditiously often involves combined effort by both the courts and the Legislature. For example, when the Legislature in 1995 began requiring expert reports to support medical malpractice suits, the Texas Supreme Court still had to intervene 13 years later to order a trial court to dismiss a negligent hospital credentialing claim by 224 former patients who had no expert with expertise in hospital credentialing. The Legislature can supply tools to improve the civil justice system, but the voters must supply judges who will use them. I salute the Texas Civil Justice League for its long-standing work in both these fields.

1 Kelley v. Homminga, 706 S.W.3d 829, 832–34 (Tex. 2025).

Believe in the Rule of Law?

Then Prove It by Supporting Texas Supreme Court, 15th Court of Appeals, and Intermediate Appellate Justices in Their Campaigns

If you don't read anything else in this newsletter, please read this. The matter is too serious to overlook or ignore.

If you looked at some of our posts during the legislative session and since then, you have seen us trying like hell to raise the alarm about the erosion of rule of law principles that used to be a given in the legislative process. That is no longer the case. We are now fighting for recognition of fundamental, foundational values that go to the heart of a republican form of government: the Bill of Rights, the independence of the judiciary, due process of law, separation of powers, and the absolute right of every party hailed into a Texas courtroom to a full, unfettered defense. Not just a small handful, but numerous legislative proposals would have infringed, if not abolished, one or more of these basic protections. And, as we have reported, a few got through anyway.

That is why we have got to do *everything we can* to assist our appellate justices who are running for re-election next year. There is simply no excuse for not doing so, and if we fail, we have only ourselves to blame.

Since the mid-1990s, we have had the incredible good fortune of an unbroken line of Texas Supreme Court justices whose sole purpose in their service to the people has been to uphold the principles we state above. We cannot think of a single example in the last 30 years in which we thought that the Court departed from them, even when it divided over a particularly difficult close call. Simply compare the Texas Supreme Court to its counterparts in other states. We rest our case.

It is easy to become complacent and assume that because things have gone so well for so long that they will continue to do so for all time. That tendency has to be resisted to the utmost of our strength. Dial back the clock two years. What happened to the Texas Court of Criminal Appeals? Three well-regarded incumbents got beat in their primaries. Now dial back again to 2014. Three well-regarded Texas Supreme Court justices had to fight for their lives to keep their seats because a small group of people willing to spend a lot of money to unseat them tried to do so. And we saw in the 2024 Texas House primaries what havoc a small group of people with an axe to grind and more money than they know what to do with can wreak in legislative elections.

But fighting out policy issues in legislative elections is nonetheless appropriate, whatever we think about those issues or the campaign tactics of those who promote them. If those kinds of tactics cross over into judicial elections, however, they will present a grave threat to the rule of law in this state. As long as we make our judges run in partisan elections, especially in the *Citizens United* era, we face the increasing risk that single-issue judicial candidates with virtually unlimited funding will upend the entire system in favor of narrow political objectives. In that event, we can kiss the Texas Miracle goodbye forever.

The 2026 judicial campaign season has begun. You know that because we've been talking about it since the end of the *last* election. Let's take the statewide courts first. Four Texas Supreme Courts seats are on the ballot, Chief Justice Blacklock, Justice Busby, Justice Sullivan, and whomever the Governor appoints to fill retiring Justice Jeff Boyd's place, plus all three members of the 15th Court, Chief Justice Brister and Justices Field and Farris. We estimate (this our number, not anybody else's) that to run a statewide judicial race will cost a bare minimum of $3 million. That, of course, won't buy any TV ads, but it should allow the candidates to leverage social media and other relatively inexpensive ways to contact voters at a reasonable level of penetration. We're already at $21 million for seven statewide seats. And we still have at least 20 intermediate courts of appeals justices to think about.

So how are we (we mean, the businesses, associations, professionals, and individuals who care deeply about preserving the quality and independence of the judiciary) going to come up with sufficient resources to fund even the minimum level necessary? Obviously, direct contributions to the justices' campaigns are the first level. If you have a PAC, dedicate whatever you can afford to judicial races. If your PAC doesn't give to judicial candidates, change the rules so that it can or, at the very least, make a PAC-to-PAC contribution to us. To be blunt, there is almost no amount of money that most of us in the traditional business and trade and professional association community could contribute to another statewide candidate that will even be noticeable. Campaigns at the top of the ticket have long since entered the realm of megadonors and super-PACs. But we can still make a difference—and perhaps a decisive one—in the down-ballot judicial races.

The next level is using our collective networks within our industries, trades, and professions to get the word out about the importance of voting in these races. And it's not just about doing one's duty as a

See **Believe**, page 14

TCJL 2024 Annual Meeting

Chief Justice Scott Brister, Logan Harrell, Mia McCord

Chief Justice Scott Brister, Carol Sims, Justice Evan Young

Todd Olsen, James Henson

Hon. Tom Phillips, Hon. Xavier Rodriguez, Hon. Jane Bland

Justices Evan Young, Jane Bland

Mary Tipps, Jo Betsy Norton

TCJL 2025 Annual Meeting

Justice David Gunn

Chief Justice Jimmy Blacklock

Hon. Drew Darby, Laramie Stroud

Judge Jerry Bullard, George Christian, Justice Scott Field

Justices James Sullivan, Clarissa Silva, Brett Busby, Aron Peña, Jenny Cron, Jaime Tijerina

Justices Jenny Cron, Jim Worthen, Clarissa Silva, Ysmael Fonseca

Mark Csoros, Hon. Tom Phillips, Chief Justice Jim Worthen

Robert Levy, Hector Rivero

Justice Scott Field, Judge Jerry Bullard, Chief Justice Scott Brister

A Primer on the Texas Standing Doctrine

The enactment of SB 8 in 2023 and subsequent legislation allowing members of the public to enforce state policy by way of private litigation has put Texas courts in a difficult, if not untenable, position. Under ordinary circumstances, parties to private litigation must have a "justiciable" interest in a controversy to confer jurisdiction on a court to resolve the dispute. Jurisdictional issues arise in several ways, but the recent legislative trend has introduced a new element to courts' consideration of their own jurisdiction: the no-injury lawsuit (or "private right of action") for which the Legislature by statute dictates the court's jurisdiction in advance.

As we have seen in the SB 8 litigation, parties whom the statute has adversely affected have raised the question of whether courts have jurisdiction to hear SB 8 claims, despite the Legislature's clear intention to compel them to do so. (Ironically, some parties who defend SB 8 in some of these lawsuits have likewise argued that the courts have no jurisdiction to hear challenges to SB 8.) These suits have thus put the so-called "standing doctrine" at the center of public policy debates over contentious issues. "Standing" merely means "the capacity of a party to bring a lawsuit in court," or conversely, the power of a court to hear and determine a particular dispute. The question of standing goes to the subject matter jurisdiction of the court. If a party doesn't have it, the court must dismiss the case. Moreover, standing cannot be waived and can be raised by any party at any time at both the trial and appellate levels. Judges can also raise the issue *sua sponte*. There is no getting around it.

Federal Standing Doctrine

Both federal and state courts apply the "standing doctrine," though often in different ways. In federal courts, the doctrine

is derived from Article III, §§ 1 and 2 of the U.S. Constitution. Section 1 vests judicial power in federal courts. Section 2 empowers those courts to decide specific "cases" and "controversies." For example, federal courts have jurisdiction over cases involving federal laws, officials, admiralty and maritime law, controversies between states, or controversies between citizens of different states. The "case or controversy" requirement is referred to as "justiciability," and the standing doctrine guides courts in determining whether a particular dispute is "justiciable." The doctrine protects separation of powers because it "ensure[s] that federal courts do not exceed their authority as it has been traditionally understood." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). Additionally, it "prevent[s] the judicial process from being used to usurp the powers of political branches." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). In other words, federal courts cannot answer abstract questions or give advisory opinions.

So what are the elements of the standing doctrine? Federal courts ask three questions:

- Has the plaintiff suffered an "injury in fact"?
- Is the plaintiff's injury "fairly traceable to the challenged action of the defendant"?
- Is it "'likely' … that the injury will be 'redressed by a favorable decision'"?

Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992). That sounds all well and good, but what exactly does it mean? The most important element is "injury in fact." SCOTUS has construed that phrase to mean that the injury must be "concrete," "particularized," and "actual or imminent." TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2203 (2021). We can break these terms down more specifically, but you get the idea. The "traceability" standard is murkier, but courts generally require either "proximate causation" or "but-for" causation. See *Lexmark Int'l, Inc. v. Static Control Components, Inc.,* 572 U.W. 118, 134 n.6 (2014) ("Proximate causation is not a requirement for Article III standing, which requires only that the plaintiff's injury be fairly traceable to the defendant's conduct."); *Duke Power Co. v. Carolina Env't Study Grp.*, 438 U.S. 59, 74-78) (traceability prong met because there was "but-for cause"). Similarly murky is the redressability standard, which generally requires the court's judgment to actually remedy the plaintiff's harm, such as "enjoining the action or awarding damages for the action …." *FDA v. All. For Hippocratic Med.,* 144 S. Ct. 1540, 1555 (2024).

Federal courts have also discussed a variant of the standing doctrine known as "prudential standing." This term refers to a case in which a plaintiff meets the requirements for Article III standing, but the court decides not to hear it for other reasons. SCOTUS has not ruled out prudential standing altogether, so the concept continues to linger on.

It is important to point out that SCOTUS has drawn a fairly bright line between its constitutional jurisdiction and Congress's power to expand that jurisdiction by statute. In other words, Congress cannot merely decree that an injury is "concrete" in order to force the federal courts to hear no-injury cases or controversies. As SCOTUS has held, "an injury in law is not an injury in fact." *TransUnion*,

141 S. Ct. at 2205. It should be noted, however, that three of the current SCOTUS justices have taken the position that violations of "private rights" are concrete enough to confer standing. *TransUnion*, 141 S. Ct. 2215-25. At least for now, however, SCOTUS appears very reluctant to open the floodgates to any private right of action Congress, in its infinite wisdom, decides to send its way.

Texas Standing Doctrine

All state courts subscribe to the standing doctrine in one way or another. In general, state constitutions don't precisely track the Article III "case" or "controversy" language. The Texas Constitution is one of those. Article II, § 1, specifically separates the legislative, executive, and judicial branches into three departments, each of which "shall [not] exercise any power properly attached to either of the others, except in the instances herein expressly permitted." Additionally, our constitution includes an open courts provision providing that "[a]ll courts shall be open, and every person for an injury done to him, in his lands, goods, person or reputation, shall have remedy by due course of law." Art. I, § 13.

The Texas Supreme Court has interpreted these provisions in terms of federal standing doctrine for the most part. The Court has held that in general standing requires "a real controversy between the parties, which … will actually be determined by the judicial declaration sought." *Tex. Ass'n of Bus. V. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993). Like the federal courts, Texas standing doctrine consists of the three elements of "injury in fact," traceability, and redressability. "Injury in fact" must "concrete or particularized, actual or imminent." *Heckman v. Williamson County*, 369 S.W.2d 137, 155 (Tex. 2012). "Traceability" means that the injury may not "result[] from the independent action of some third party not before the court." *Meyers v. JDC/ Firethorne, Ltd.*, 548 S.W.3d 477, 485 (Tex. 2018). And "redressability" requires a finding that there is a "substantial likelihood" that the requested relief will remedy the plaintiff's injury along the lines of federal law. *Id.* The Court has recognized a "taxpayer standing" exception that follows federal municipal taxpayer standing rules. Under this exception a taxpayer (of property taxes, not sales taxes) may challenge a "significant" illegal expenditure of public funds. See generally *Williams v. Lara*, 52 S.W.3d 171 (Tex. 2001).

Federal and Texas standing doctrine do not seamlessly coincide, however, on what constitutes a "concrete injury." The question arises when a plaintiff alleges a "legal injury" alone, that is, a statutory or constitutional violation. There is also uncertainty as to whether the Legislature can confer standing by statute, as it has attempted to do in SB 8. SCOTX has, for exmple, held that constitutional harms are "sufficient" injuries to confer standing. *Heckman*, 369 S.W.3d at 155. It has also stated that "[g]enerally, unless standing is conferred by statute, 'a plaintiff must demonstrate … an interest in a conflict distinct from that of the general public, such that the defendant's actions have caused the plaintiff some particular injury." *Sneed v. Webre*, 465 S.W.3d 169, 180 (Tex. 2015); see also *Scott v. Bd. of Adjustment*, 405 S.W.2d. 55, 56, holding that "[w]ithin constitutional bounds, the Legislature may grant a right to a citizen or to a taxpayer to bring an action against a public body or a right of review on behalf of the public without proof of particular or pecuniary damage peculiar to the person bringing the suit").

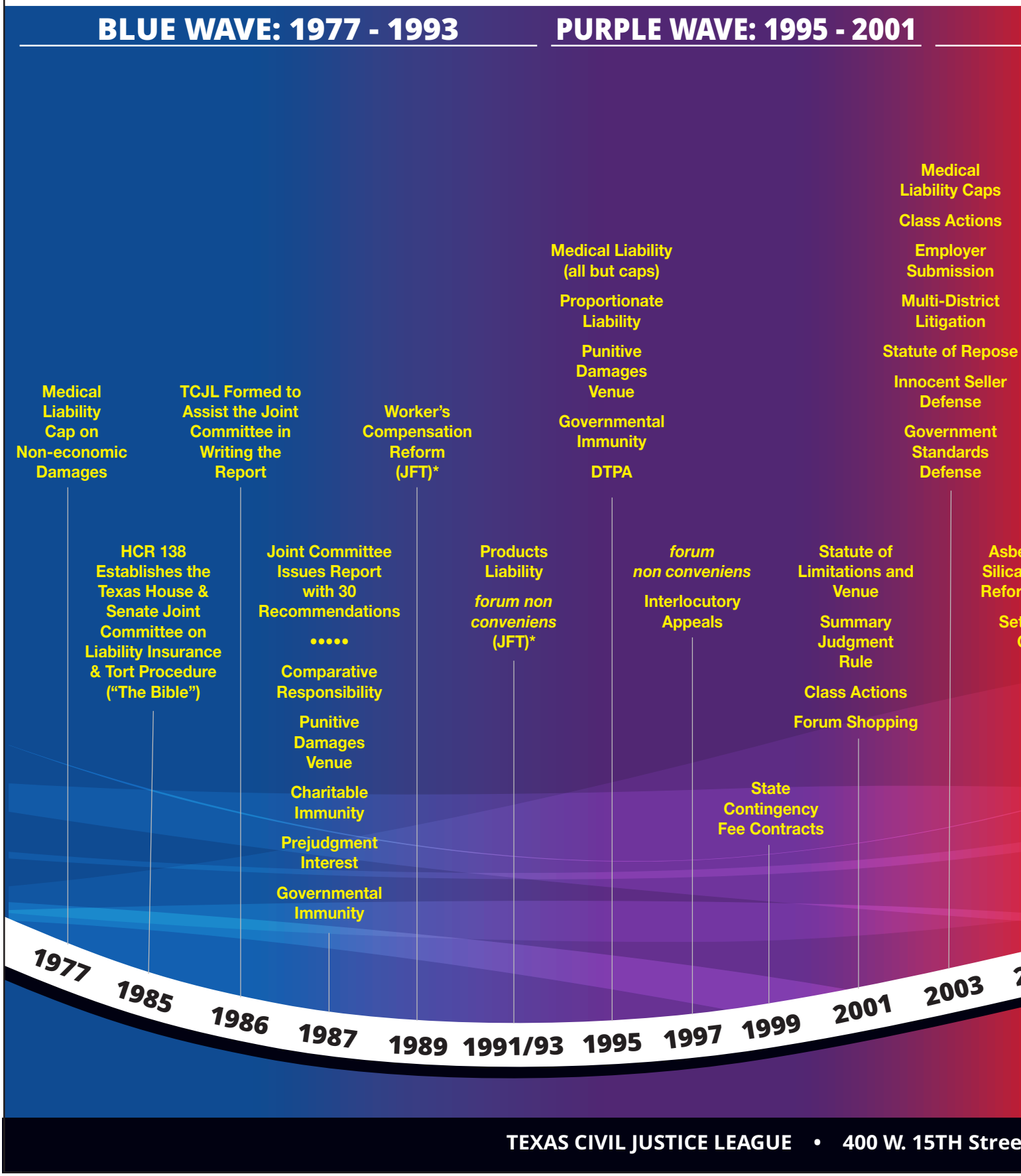
These statements would seem to suggest that the Legislature by statute may authorize a private right of action for a purely legal injury. If the *Scott* case has any precedential value, it still speaks only to taxpayer standing, challenges to actions of a "public body," or a "right of review," which does not sound like an action for damages for a purely legal injury, as SB 8 authorizes. The interlineation in *Sneed*, "unless standing is conferred by statute," does not directly address standing for a legal injury, either. Perhaps the SB 8 standing controversy will provide SCOTX with the right case to decide this question.

"[w]ithin constitutional bounds, the Legislature may grant a right to a citizen or to a taxpayer to bring an action against a public body or a right of review on behalf of the public without proof of particular or pecuniary damage peculiar to the person bringing the suit"

It should be noted that two SCOTX justices have recently raised this issue in another context. *In re Novartis Corporation* (No. 24-0239; October 24, 2025) arose from a qui tam action brought by a private party, Health Selection Group, LLC (HSG), against Novartis under the Texas Medicaid Fraud Prevention Act (§§ 36.001-.132, Human Resources Code) alleging that Novartis defrauded the Medicaid program of millions of dollars through fraudulent marketing schemes. The state declined to take over the action from the qui tam relator, so Novartis moved to dismiss on the basis that the relator lacked standing. The state opposed the motion. The Harrison County district

See **Primer**, page 14

Texas Tort Reform: A H



Historical Perspective

A Primer on the Texas Standing Doctrine

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judge denied it, and the Texarkana Court of Appeals followed suit. Novartis sought mandamus relief from SCOTX.

The Court likewise denied Novartis's petition. In a concurring opinion, Justices Young and Sullivan acknowledged that since the 15th Court of Appeals will have jurisdiction over the appeal, the Court acted properly in deferring until it had the benefit of that court's ruling. As to Novartis's standing argument, the concurring justices observed that any analysis of standing should begin with Justice Scalia's opinion in *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765 (2000), which upheld the Article III standing of a qui tam relator under the federal False Claims Act. There the high court held that an assignee of the government's damages claim can have standing "to assert the injury in fact suffered by the assignor." But, as the justices pointed out, the Texas statute "'employs a penalty scheme and is not an action for the recovery of damages,' with money being 'exacted as punishment for either a wrong to the state or a civil wrong (as distinguished from compensation for an injured party's loss." Consequently, the justices queried "[h]ow can it be said, given these statutory differences, that the State has some injury in fact (as opposed to an injury in law) that it could assign to a *qui tam* relator like HSG?"

Novartis also raised a constitutional question of whether private relators may represent the government in litigation to begin with. In several cases SCOTUS Justices Thomas, Kavanaugh, and Barrett have expressed doubts that *qui tam* provisions comport with Article II separation of powers. Pointing to the Texas Constitution, art. V, § 21, which assigns the authority to represent the state in court to the attorney general and county and district attorneys, Justices Young and Sullivan opined that "[i]f Texas's *qui tam* statute suffers from either of the constitutional flaws Novartis purports to identify, our legislature needs to know it soon and to hear it from a statewide court."

Under no uncertain terms, federal standing doctrine has rejected the authority of Congress to confer standing by statute. *TransUnion*, 141 S. Ct. at 2205. This is another way of saying that SCOTUS does not recognize a legal injury as an injury in fact. SCOTX, however, has not yet spoken on whether and under what circumstances it might permit an "injury in law" to be sufficient to confer standing on a party with no concrete injury at all. It has also not yet spoken decisively on whether it would adopt some version of prudential standing, although it has indicated that refusing taxpayer standing to sales tax payers (as opposed to property tax payers) was based on "prudential" considerations. *Williams*, 52 S.W.3d at 180.

There is more that could be said at this juncture, but much of it would be necessarily speculative. But given the Legislature's new predilection for creating private rights of action for legal injuries alone may mean that we get some answers sooner rather than later.

For a thorough discussion and exhaustive case review of the Texas standing doctrine, see David Hutchison, "Standing in Texas: Exploring Standing Under the Original Meaning of the Texas Constitution," *Texas Law Review,* Vol. 103: 227-267 (2024); https://texaslawreview.org/wp-content/uploads/2024/11/Hutchison.Printer-.pdf (accessed March 19, 2026).

Believe in the Rule of Law?

continued from page 7

citizen. These races are fundamentally important to jobs and the economy. They are also critical if we are to preserve the freedoms and way of life that we have been fortunate to enjoy for so long. For TCJL's part, that means revving up our judicial education campaign and giving people what they need to know about the experience and background of judicial candidates to make the best votes that they can. We have in the past, with some success, conducted targeted GOTV and voter education campaigns in certain parts of the state heavy with GOP primary voters. If we can get sufficient resources, we can do this again and at a higher and more effective level. But we have to have the resources.

We realize it's no fun to talk about this kind of thing. We also realize that we are repeating ourselves ad nauseam and probably sound like all the adults in Charlie Brown cartoons (some of us are old enough to remember those). But candidly, there is nothing more important to talk about or to do. In our view, the whole future of the state rides on it. Like it or not, if we don't do it, nobody else will. And if there is somebody out there who decides they don't like one or more members of the Court and who can afford to spend whatever it takes to unseat them, we may never be able to restore the level of judicial excellence and integrity that has prevailed at our highest court for more than three decades. And that tragedy will be on all of us.

New Statewide Court of Appeals Is a Boon to Texas Business and Industry

In 2023 the Texas Legislature created a new intermediate appellate court with statewide jurisdiction, the Fifteenth Court of Appeals. The court's initial term began on September 1, 2024.

The court has exclusive intermediate appellate jurisdiction over the following:

- constitutional challenges;
- matters arising out of or related to civil appeals brought by or against the State of Texas or a board, commission, department, office, or other agency in the executive branch of state government, including an institution of higher education;
- appeals from suits against an officer or employee of the state or a board, commission, department, office, or other agency in the executive branch arising out of that officer's or employee's official conduct (with specified exceptions); and
- appeals from the Texas Business Court (also created in 2023).

For its initial term expiring on December 31, 2026, the Governor appointed three justices, each with extensive appellate judicial experience: Chief Justice Scott Brister, who previously served on the Texas Supreme Court, as justice and chief justice of the Houston First and Fourteenth Courts of Appeals, and as presiding judge of the 234th District Court in Harris County; Justice Scott Field, a trial and appellate attorney who served on the Austin Court of Appeals and as judge of the 480th District Court in Williamson County; and Justice April Farris, an appellate attorney with experience in complex business litigation, former Assistant Solicitor General for the State of Texas, and former justice of the Houston First Court of Appeals. Effective September 1, 2027, the court will expand to five members, meaning that Governor Abbott will appoint two additional justices on or after that date.

The Fifteenth Court is of supreme importance to Texas business and industry. Created side-by-side with the new Texas Business Court, the statewide court of appeals has exclusive authority over Business Court decisions in litigation involving complex issues of corporate governance and high-stakes business disputes. Prior to the establishment of the Business Court, these matters had to wait in line in general jurisdiction district and county courts with overcrowded dockets, dramatically increasing the expense and time required to resolve business disputes. Appeals of decisions from these courts flowed up through the 14 intermediate appellate courts across the state, whose decisions were only binding within the specific geographical boundaries of their jurisdiction. This fragmentation often resulted in inconsistency and unpredictability of outcomes, exacerbated by the potential for conflicting authority among different courts of appeals districts. To make matters more difficult for business, the Texas Supreme Court only accepts about 100 cases a year, so in the vast majority of cases businesses who believe that the court of appeals got it wrong simply had to live with it (and the long years it took to finally resolve the dispute).

All of that has changed for the better. Complex business disputes now go directly to a trial court dedicated to resolving them quickly and efficiently. Parties are getting rulings within weeks instead of months (or in some cases years). If they are unhappy with the results at the Business Court, they can appeal directly to a statewide appellate court designed specifically to hear their cases and, like the Business Court, decide them in a fraction of the time it used to take in the old process. Additionally, the decisions of the Fifteenth Court apply statewide. No longer will different courts of appeals produce different rulings, binding only in the part of the state where the court is located and in potential conflict with its sister courts. One statewide court will also promote uniformity and develop a single, consistent body of law interpreting legal questions affecting businesses. Over time this body of law will become settled, allowing businesses to conduct their operations with certainty and confidence that the rules won't change in the middle of the game. Finally, the quality and consistency of the Fifteenth Court's decisions will generally obviate the need for the Texas Supreme Court to feel compelled to correct the errors of 14 courts of appeals. In other words, a costly and time-intensive step in the legal process has in most cases been eliminated. Instead of pouring resources into seemingly endless appeals, businesses can get back to doing business.

A little more than a year into the operation of the new court, the evidence is mounting that the Fifteenth Court (as well as the Business Court) is working precisely as the Legislature intended. Appeals are moving swiftly through the court, and thus far appeals from the court's decisions to the Texas Supreme Court seem to be few and far between. This positive trend is a tribute to the quality of Governor Abbott's appointments to the court and to the dedication and hard work of the jurists themselves. But we should not forget that Texas has an elected judiciary, and the Fifteenth Court is no exception. (Business Court judges are appointed for two-year terms, so they do have to run for election.) Each of the initial three appointees will face the voters this November, and the additional two that

See **New Statewide**, page 20

A Snapshot of the Texas Business Court's Docket

On September 1, 2024, pursuant to House Bill 19, the Texas Business Court came into existence and began accepting cases. According to House Bill 19's sponsor, the bill "is intended to streamline resolutions of business disputes and ensure the court is staffed by qualified and skilled judges, ideally giving businesses confidence in Texas's legal system and encouraging them to incorporate and headquarter in Texas." As the Business Court approaches its second anniversary, the Court is fulfilling its mission.

A. The Disputes

As anticipated, high-dollar and high-complexity cases are finding their way into the Business Court. As of March 25, 2026, a snapshot of the court's docket reveals some commonalities in the types of relationships between Business Court litigants. Buyer–seller disputes, involving some type of commercial conflict arising from a deal for goods or services, commonly land in the court. Also rising to the top are corporate-mismanagement disputes, which generally involve accusations against an entity's co-owner or executive for poor governance or fiduciary breaches.

B. The Industries

The industries involved in the pending cases generally mirror the makeup of Texas's commercial landscape, with nearly a third of the cases involving the energy sector.

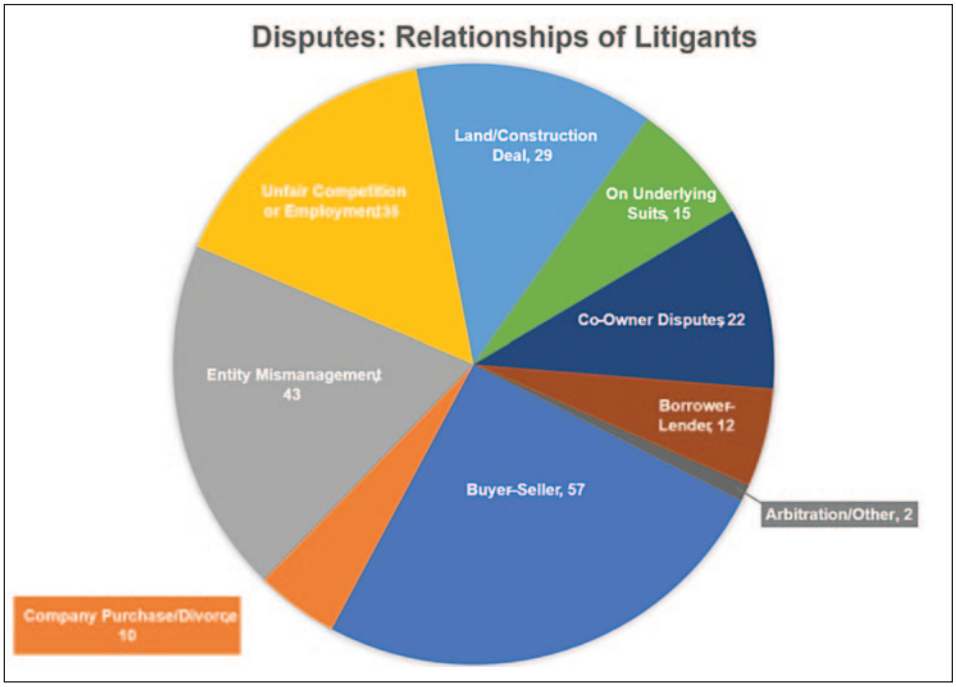
The real estate and construction industries are the most prevalent players in the early Business Court cases, with the technology industry also often appearing in these suits. House Bill 40, which went into effect September 1, 2025, expanded the Court's jurisdiction by adding concurrent jurisdiction over claims arising out of intellectual property, the Texas Uniform Trade Secrets Act, and arbitration-related disputes.

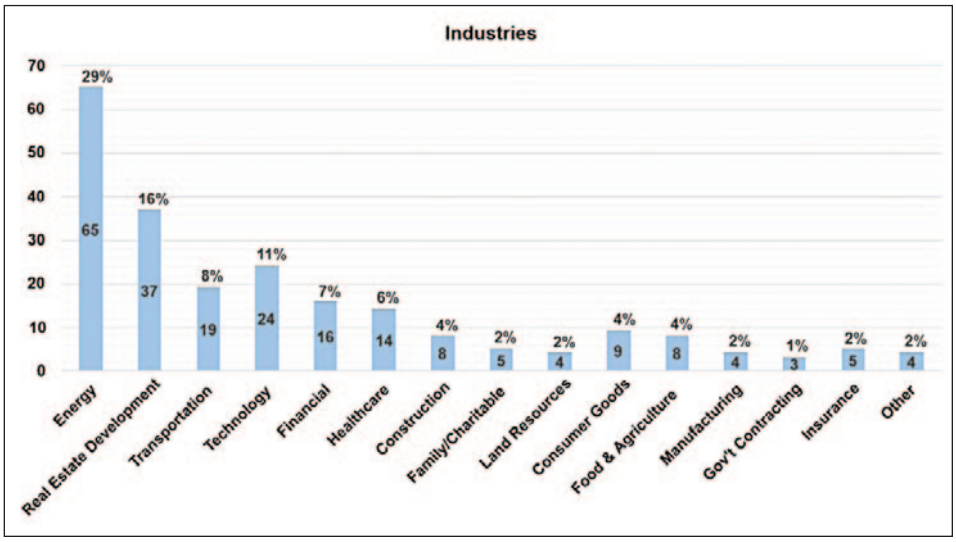
C. The Opinions

The Business Court is the first trial court in Texas's state judicial system to be charged with issuing written opinions for certain decisions, such as dispositive rulings upon a party's request and other rulings that are important to the state's

continued on page 17

Hon. Jerry Bullard, Judge
Texas Business Court, Eighth Division





jurisprudence. *See* TEX. R. CIV. P. 360. The Court has already begun discharging this duty, with over 80 opinions having been issued at the time of writing. All opinions are available on the Business Court's website at txcourts.gov/business-court.

The Court's initial opinions largely concerned its own authority to hear cases that commenced before September 1, 2024—the date specified in the statute's enabling legislation in House Bill 19 during the 88th Legislative Session. One early Business Court opinion illuminates the pleading standard for remanding a suit back to a court of general jurisdiction. In C Ten 31 *LLC v. Tarbox*, the court's Third Division ruled that, where the removing party has pleaded the dispute satisfies the monetary threshold and the plaintiff's petition does not plead otherwise, the party seeking remand bears the initial burden of proving the amount pleaded is fraudulent or that a lower amount is readily established. 2025 Tex. Bus. 1, 708 S.W.3d 223 (3d Div. 2025).

In another Business Court case, the Fifteenth Court of Appeals affirmed the Court's ability to reconsider prior remand orders and then remand a case to district court after a plaintiff pleaded its way out of the Business Court. See *In re ColossusBets Limited*, No. 15-25-00150-CV, 2026 WL 392034 (Tex.App.—15th Dist., Feb. 12, 2026, no pet. h.). In so holding, the Court of Appeals stated "[t]he Business Court statute does not prevent parties from choosing what claims to file, even if that means forgoing certain business-related claims to avoid that court's reach. Id., at *4.

This snapshot reveals that lawmakers' vision for the scope of the Texas Business Court's authority has come to early fruition in the court's first few months. The complex commercial litigation described in Chapter 25A of the Government Code is in full swing, with the lawyers in those suits forging the path within this brand-new forum.

Judicial Reception with Governor Greg Abbott

January 8 2026

Justice James Sullivan, Justice Scott Field

Senator Bryan Hughes, Justice James Sullivan

Todd Morgan, Carol Sims

Kerry Cammack, Hon. Harriet O'Neill, Chief Justice Scott Brister, Hon. Nathan Hecht

Justice Brett Busby, Justice Kyle Hawkins, Dr. John Coppedge

Chief Justice Scott Brister, 15th Court of Appeals

Justice April Farris

Justice Scott Field, Hon. Dale Wainwright

Judicial Reception with Governor Greg Abbott

Honoring Chief Justice Jimmy Blacklock, Justice Brett Busby, Justice James Sullivan, Justice Kyle Hawkins

Chief Justice Jimmy Blacklock, Supreme Court of Texas

Hon. Nathan Hecht, Governor Greg Abbott

TEXAS JUDGES

TEXASJUDGES.org

Judicial races are "down ballot." What this means is that they're typically at the end of a very long list of items needing voters' attention. The Texas Civil Justice League is reminding Texans that ballot fatigue is bad for our state – we are urging voters to become educated and to vote all the way through their ballots. Join us and help your circle of influence understand that:

- **Judges are important.** They have a direct impact on citizens, perhaps more than any other elected official, because they make decisions that can affect jobs, homes, children and personal freedoms.
- **Voters must take the responsibility to educate themselves** about judicial races. And they must vote! Turnout is important, for both the primaries and the general election.
- **Texans need to elect judges who are fair, impartial and well qualified.** It's easy to run as a single-issue candidate, but judges with activist agendas are not good for Texas. Learn about the people on your ballot and vote for the ones who will do a great job for our state.
- **See *TEXASJUDGES.org* for judicial candidate comparisons**

As Texans, we get to elect our judges. That's a big responsibility. Help us urge people to do their homework, to go to the polls, and to vote for good people who will make great judges.

Texasjudges.org is hosted by the TCJL Foundation, a 501(c)(3) non-profit organization. Contributions to the TCJL Foundation are 100% tax-deductible as a charitable contribution. *texasjudges.org/donate*

2026 TCJL Amicus Report

The year 2025 was a fairly standard year for the amicus program. We filed seven briefs, five in the Texas Supreme Court, one in the Texarkana Court of Appeals, and one in the Superior Court of Pennsylvania. (For frame of reference purposes, we filed five briefs in 2024, a whopping 11 in 2023, and 10 in 2022.) Since we started this part of the business in 1995, we have filed 107 briefs (for which we have a record) in federal and state courts, with the lion's share in the Texas Supreme Court.

If we look at the last four years in the aggregate, the range of issues we have written about pretty much cover the waterfront of Texas tort, contract, and public law. These include:

- The constitutionality of statutes (public adjuster regulation; Ch. 33 settlement credits; constitutionality of SB 8's no injury cause of action);
- Statutory construction (government standards defense; cap on supersedeas bonds; Dram Shop statute; PUC jurisdiction; Ch. 542A, Insurance Code, attorney's fees);
- Contract interpretation (insurance policies; joint operating agreements; damages; oil and gas leases/produced water);
- Contract enforcement (forum selection clauses; arbitration provisions; indemnity provisions);
- Eminent domain/easements (transmission lines, evidence of private sales, court jurisdiction);
- Workers' compensation (OCIPs, statutory employer, third-party liability);
- Tort duties (electric utilities, owners and general contractors, negligent entrustment);
- Employer liability;
- UI/UIM claims (abatement, bifurcated trials, extracontractual claims);
- Product liability;
- Non-economic damages;
- Class actions;
- Discovery disputes (apex depositions; corporate representative depositions; electronic discovery; in-person jury trials; shared discovery orders; paid or incurred/medical bills);
- Jurisdiction (subject matter jurisdiction, standing).

Our general criteria for accepting a brief request have not changed over the years. First, the issue must implicate businesses or health care providers in general. That means, for example, if we write on the interpretation of an oil and gas lease or an insurance policy, we do it to defend the principle that sophisticated parties should have the freedom to contract as they please and that courts should honor the plain text of the parties' agreement. Second, we cannot write in a case if we are asked to take a position inconsistent with a previous brief, our legislative policy statement, or other prior expression of opinion. Nothing would destroy our credibility more than speaking out of both sides of our mouth, either with the courts or the Legislature. Third, we do not join other amicus briefs or (with a very few exceptions) allow other parties to join ours. That means we don't write "me too" briefs that simply parrot a particular party line, and we only write if we think we have something to say that the court won't hear anywhere else.

One of the great benefits of membership in TCJL is access to the amicus program. Time and time again our members have requested our participation in cases involving not only a lot of money, but important legal principles that, if the appeal does not succeed, could substantially and adversely affect their business practices and everyone else's to boot. We like to think that in most cases, the courts welcome our participation and take into consideration what we say (and it appears that the evidence from the justices and appellate attorneys with whom we work bears that out). That doesn't mean that our position prevails every time, but it does prevail most of the time. That should come as no surprise, given the incredibly successful appellate counsel and in-house lawyers with whom we ordinarily work. If we can provide that extra element—the voice of the business community as a whole—we have done our work well.

New Statewide Court of Appeals Is a Boon to Texas Business and Industry

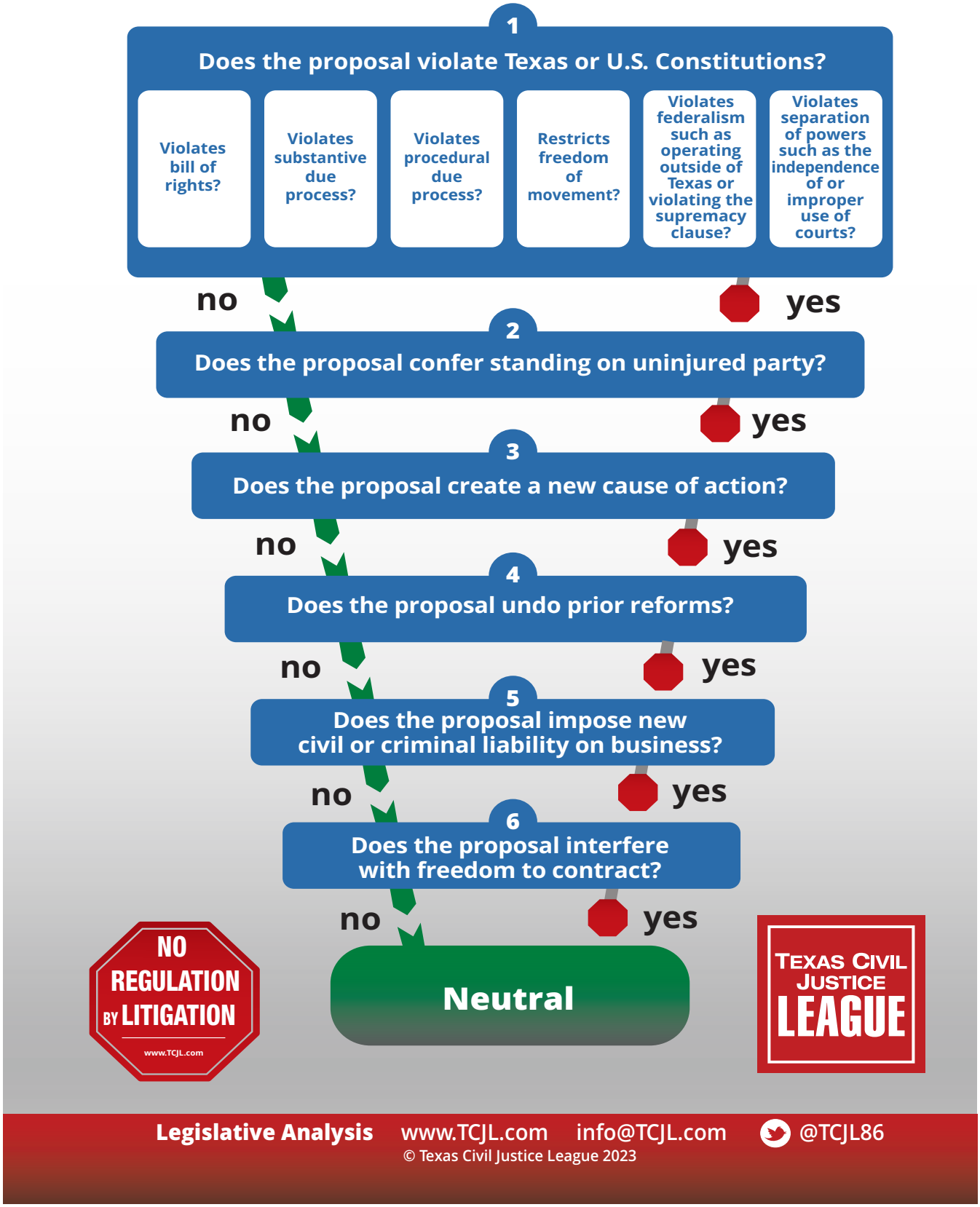
continued from page 15

will be appointed in the fall of 2027 will go before the electorate in 2028. Given the vagaries of partisan politics, there can be no guarantee that the excellence we currently see on the court can be indefinitely maintained.

That's why business and industry must be vigilant about this court and do everything possible to support experienced and qualified candidates, such as the three incumbents on this year's ballot. Failure to do so could frustrate the Legislature's purpose in creating the court and undermine the stability of Texas business law in the future. But if we do our part, we can look forward to sustaining and building upon the strongest business climate in the country.

TCJL Business Conservative Principles

Preserving the Texas Miracle



Legislative Analysis www.TCJL.com info@TCJL.com @TCJL86

In Memory of Walter Fisher

Walter Conrad Fisher IV • May 18, 1954 – May 17, 2026

Walter Conrad Fisher IV passed on May 17, 2026, at the age of 71. Born on May 18, 1954, in Uvalde, Texas, Walter lived in Bulverde, Texas.

Walter Conrad Fisher, IV – known to family and dear friends as "Cuatro" or "Taco" – passed away unexpectedly of natural causes on May 17, 2026, at his home in Bulverde, Texas, one day before his 72nd birthday. One of the most well-liked and well-respected figures in Texas government over the past half-century, Walter devoted his life in service to the Lone Star State he loved.

Walter was born on May 18, 1954, in Uvalde, Texas, to Walter Conrad "Connie" Fisher III and Wanda Shaw Fisher. His early years were spent in San Antonio before the family relocated to Del Rio in 1965. There he made many lifelong friends with whom he engaged in much inspired mischief in the halls of Del Rio High School and in neighboring Ciudad Acuña, as well as fishing and skiing on Lake Amistad and hunting on cousin Hilary Doran's ranch.

After graduating high school in 1972, he enrolled at the University of Texas at Austin, which he attended on and off (mostly in even-numbered years) while working for the House of Representatives. He eventually earned a BA in Government but also had many credit hours in English and Philosophy, which explains why he might surprise colleagues during some fraught episode of legislative maneuvering with an appropriate quote from Shakespeare or Nietzsche. He thought he'd go to law school but never quite made it, instead quipping, "I'm not a lawyer, but I play one on TV."

Walter was a fifth-generation Texan – his great-great-grandfather emigrated from Germany in 1840, when Texas was still a Republic, and in 1876, a forebear who ran a mercantile business in Medina was driven west to Bandera by nearby Comanche raids. Walter was a voracious reader, especially of Texas history and literature. Sam Houston was one of his idols. Works by J. Frank Dobie, Walter Prescott Webb and Larry McMurtry, among others, lined his shelves, with Lonesome Dove, The Raven, The Gay Place and Empire of the Summer Moon among his favorites. It was no coincidence that a man who loved Texas history so deeply would devote his career to its governing institutions.

Walter began his career under the pink granite dome of the Texas State Capitol on January 14, 1975, when he was hired by Rusty Kelley as an assistant sergeant at arms (aka "go-fer") in the House of Representatives. That was the 64th Legislative Session. His last appearance in that chamber was exactly 50 years later, on January 14, 2025, when, at the request of Secretary of State Jane Nelson, he served as co-Parliamentarian for the opening of the 89th Legislative Session. For Walter, the intervening half-century was one long love affair with the Legislature, its processes and its people.

Walter stayed with the Texas House of Representatives until 1986, eventually serving as Reading Clerk and Assistant Parliamentarian. During those years he learned the intricacies of parliamentary procedure and ego-managing from masters like Bob Kelly and Bob "Big Daddy" Johnson. In 1986 he moved "outside" to join the Texas Municipal League as Legislative Director, spending ten years successfully advocating for cities throughout the state before being lured back to the Legislature in 1996.

Although he started on the West side of the Capitol in the House, Walter spent the bulk of his government service on the East side, serving as Senate Parliamentarian or Senior Advisor under five Lieutenant Governors of both parties. He started serving the Senate in 1996, when then-Lieutenant Governor Bob Bullock "asked" Walter to be the next Senate Parliamentarian. Walter obviously had no choice (if you know, you know) and was glad to do it anyway, proud to succeed his mentor Bob Johnson who had sadly passed away the previous year. After his first session, Bullock evaluated Walter's performance saying, "You're no Johnson, but you're not bad." High praise coming from Bob Bullock (if you know, you know).

Walter served as Senate Parliamentarian for eight years (including four Regular and three Special Called Sessions), deciding thousands of points of order – some mundane and some extremely consequential. One of the most important occurred in 2000 when then-Lieutenant Governor Rick Perry became Governor after George Bush's election as President. The Senators had to elect a new Lieutenant Governor from among their own ranks. There being no precedent, Walter ruled that the election could be held by secret ballot, thus allowing the Senators to vote their consciences without contending with factions and egos or fear of reprisal. His ruling was upheld by the Texas Supreme Court and Senator Bill "Obi-Wan" Ratliff was elected, ensuring that the 2001 Legislative Session would be, if not harmonious, at least as productive as possible.

In 2004, Walter left the Parliamentarian's desk to once again put his knowledge and skills to work as a lobbyist. Partnering with the Texas Capitol Group, he built a successful practice, advocating for a diverse group of private clients in industries like banking, telecommunications, alcoholic beverages and energy, as well as doing pro bono work for nonprofits whose causes he supported. Though he vigorously and effectively represented his clients' interests, his compass was always pointed toward what was best for the state and he would push back if asked to do something contrary to its interests. Frequently listed in Capitol Inside's Texas Lobby Power Rankings, in 2019 Walter was inducted into the Texas Lobby Hall of Fame.

He did not think he would ever go back "in-house," but then in 2014, newly elected Lieutenant Governor Dan Patrick tapped Walter to be his Senior Advisor to help guide him in his first session as the Senate's Presiding Officer. Upon Walter's departure at the end of 2015, Lieutenant Governor Patrick praised him as "a brilliant maestro of the public policy process."

In 2017, Governor Greg Abbott asked Walter to be his Legislative Director. Being constitutionally unable to refuse a call to serve Texas and intrigued by the prospect of seeing the Legislature from the point of view of the Executive branch, Walter agreed. At the press conference announcing his new staff members, Governor Abbott said, "If you don't know Walter Fisher, you don't know Texas politics. He knows the rules better than the people who wrote the rules."

Walter returned to lobbying after the 2019 Session. He officially retired in 2021 but scores of legislators, presiding officers, staff members and lobbyists continued privately to seek his sage advice which he gladly provided on the QT. During an especially contentious session he was entreated to go to the Capitol and just "walk the halls," as his mere presence would have a calming effect on the members of the warring factions. His loyalty was not to any party or person but to the legislative process and the Legislature as an institution. He likened it to a living thing, optimistically saying that even when things seemed irrevocably broken, the institution would always heal itself, like a lizard regrowing its severed tail.

Walter was an avid outdoorsman and spent many days hunting or fishing when the Legislature was not in session. His happiest times were spent quail and turkey hunting on his ranch near Cuero, fishing for reds and speckled trout out of Alligator Head in Port O'Connor, and guiding legislators and lobbyists on deer hunts at the Doran Ranch.

Walter gave generously of his time, talent and treasure to conservation and preservation causes he believed in among them the Gulf Coast Conservation Association, Ducks Unlimited and the Chisholm Trail Heritage Museum in Cuero — and also served on the boards of the Texas Civil Justice League, Glasshouse Policy and the Board of Visitors for the McDonald Observatory.

Walter deeply loved the many dogs he had over the years. It didn't matter if they were mutts or purebreds, every single one of them was "the best dog ever." (Though he would hate to admit it, he was also quite fond of Trio, the three-legged cat.) Kinky Friedman said, "When you die and go to heaven, all the dogs and cats you've ever had in your life come running to meet you." Walter quoted that often and hoped it was true.

Walter is survived by his beloved wife and junior high school sweetheart, Judy Bruce Fisher, of Bulverde; his sister, Grace Fisher Renbarger, and brother-in-law, Bob Renbarger of Austin; niece, Madeline Renbarger of Brooklyn, New York; half-sister Rachel Fisher, her husband Patrick Cootes, and their children Margot and Isaac Fisher of London, England. He was preceded in death by his parents, Walter Conrad Fisher III and Wanda Shaw Fisher.

Walter will be buried in the Texas State Cemetery, among the distinguished Texans whose service to the state merits that lasting honor. A memorial service will be held on Thursday, June 11, 2026 at 2:00 p.m. in the Senate Chamber. In lieu of flowers, remembrances may be made to any local animal shelter or dog (or cat) rescue organization.

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