Supreme Court of Texas

No. 24-0426

In re Dallas County, Texas and Marian Brown,
in her official capacity as Dallas County Sheriff,

Relators

On Petition for Writ of Mandamus

JUSTICE YOUNG delivered the opinion of the Court.

The fourteen intermediate appellate courts of Texas sit in thirteen regions. Five courts of appeals' regions overlap in whole or in part. For many cases involving the state government, one of those courts effectively exercises statewide appellate jurisdiction. That statewide reach exists because, although the State resides and may litigate in every portion of its territory, the legislature has long directed certain kinds of cases to the district courts of Travis County, where the state capital is located, regardless of the geographic focus of the underlying dispute. Appeals of those cases then proceed to the Third Court of Appeals, whose justices are elected by the voters of Travis and nearby counties.

In 2023, the legislature reaffirmed the propriety of statewide jurisdiction for a range of cases that implicate the State's interests. The legislature also concluded, however, that such statewide jurisdiction

should not be vested in an appellate court elected by only a portion of the State's population. The legislature passed and Governor Abbott signed S.B. 1045, which creates a new court of appeals—the first in Texas since 1967—that will exercise exclusive intermediate appellate jurisdiction over enumerated categories of cases from all 254 counties. S.B. 1045 also requires most pending appeals that lie within the exclusive jurisdiction of the new Fifteenth Court of Appeals to be transferred to that court, which will come into existence on September 1, 2024.

This petition arises from one of those pending appeals. Dallas County sued state officials in Travis County over a dispute regarding the State's alleged failure to take custody of criminal defendants who have been adjudicated incompetent to stand trial. The district court denied the State's plea to the jurisdiction, leading to an appeal in the Third Court. For procedural reasons, it is too late for that court to resolve the appeal before its mandatory transfer to the Fifteenth Court. Dallas County, however, prefers to remain in the Third Court.

Invoking our exclusive original jurisdiction under S.B. 1045, as well as our constitutional and statutory original jurisdiction, the County asks us to bar the transfer of the appeal and declare that S.B. 1045 is unconstitutional. The County makes three key attacks. It contends that the Fifteenth Court's geographic range unconstitutionally covers the entire state; that its jurisdictional scope is unconstitutional for various reasons; and that its new justices will be unconstitutionally installed because they will not be elected until November 2026 despite having been appointed in September 2024. Accordingly, the County asks this Court to direct the Third Court to retain jurisdiction over the appeal rather than

to transfer it to the Fifteenth Court.

We conclude that we have jurisdiction over Dallas County's petition. The question for us is purely legal: which court must decide the underlying appeal? Either way, it will be a court that exercises statewide jurisdiction—the court to which the legislature has routed cases like this one before S.B. 1045 or the court that the legislature, by enacting S.B. 1045, has determined should now hear such cases.

We hold that S.B. 1045 is constitutional with respect to the challenges that Dallas County raises. We therefore deny relief, which means that the appeal must be transferred as scheduled.

I

A

Article V of the Texas Constitution gives the legislature substantial power to create courts. Some courts, including courts of appeals, are constitutionally enumerated. *See* Tex. Const. art. V, § 6(a) ("The state shall be divided into courts of appeals districts . . . ."). The legislature also "may establish such other courts as it may deem necessary." *Id.* § 1. This case stems from the legislature's decision to create a new court of appeals that, unlike the fourteen already in existence, is not a geographic subdivision of the state.

Senate Bill 1045 lays the groundwork for the Fifteenth Court—formally called the "Court of Appeals for the Fifteenth Court of Appeals District"—which will come into existence on September 1, 2024. Act of May 21, 2023, 88th Leg., R.S., ch. 459, 2023 Tex. Sess. Law. Serv. 1115. There is significant geographic overlap among several of the fourteen

preexisting courts of appeals' districts,[1] but the new district will overlap with all of them because it will be "composed of all counties in this state." S.B. 1045, § 1.01 (codified at Tex. Gov't Code § 22.201(p)). The Fifteenth Court shall have "exclusive intermediate appellate jurisdiction over" many matters brought by or against the State, "matters in which a party to the proceeding files a petition, motion, or other pleading challenging the constitutionality or validity of a state statute or rule and the attorney general is a party to the case," and "any other matter as provided by law." *Id.* § 1.05 (codified at Tex. Gov't Code § 22.220(d)). The legislature has divested the Fifteenth Court, however, of jurisdiction over criminal cases. *Id.* § 2.01 (codified as an amendment to Tex. Code Crim. Proc. art. 4.01(2)). In short, the Fifteenth Court will exclusively exercise the statewide appellate jurisdiction that the Third Court previously exercised,[2]

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[1] What is familiar to Texas appellate practitioners comes as a surprise elsewhere: "Texas has the only intermediate appellate system in the nation with overlapping geographical appellate districts." James T. Worthen, *The Organizational and Structural Development of Intermediate Appellate Courts in Texas, 1892–2003*, 46 S. Tex. L. Rev. 33, 63–64 (2004). The boundaries for two of those districts—the First and Fourteenth, both based in Houston—are coterminous. The Fifth, Sixth, and Twelfth Districts each contain counties that are also in another appellate district. As Chief Justice Worthen describes, the legislature has repeatedly adjusted the districts to create or withdraw overlap. *Id.* at 64–66.

[2] Previously, the Third Court effectively exercised statewide jurisdiction over many appeals that implicated the State's interests because, regardless of geographic nexus, the underlying suit had to be filed in Travis County. *See* Tex. Gov't Code §§ 22.201(d), .220(a) (providing the Third Court with appellate jurisdiction over civil cases in Travis County); *see also, e.g.*, Tex. Water Code § 5.354 ("A suit instituted under Section 5.351 or 5.352 of this code must be brought in a district court in Travis County."). Some cases proceeded directly to the Third Court from an agency, bypassing any trial court. *See, e.g.*, Tex. Util. Code § 39.001(e) ("Judicial review of the validity of competition rules shall be

jurisdiction over some appeals that would have been heard in different courts before S.B. 1045 (because of docket-equalization transfers from the Third Court or because the underlying cases did not have to be litigated in Travis County), and any other jurisdiction conferred by separate statutes, but it will not hear criminal cases.

In anticipation of the new court's advent, the governor has named three justices to fill the initial vacancies starting on September 1. They will face confirmation by the senate in the next legislative session and the positions will appear on the November 2026 general-election ballot. The parties to this case discuss the longstanding statutory method to fill vacancies of this sort. *See* Tex. Elec. Code § 202.002(b). Under the statute, "[i]f a vacancy occurs after the 74th day before a general election day, an election for the unexpired term may not be held at that general election," so "[t]he appointment to fill the vacancy continues until the next succeeding general election and until a successor has been elected and has qualified for the office." *Id.* The County observes that the State has known of the vacancies for far more than seventy-four days. For that and other reasons, the parties dispute whether Article V, § 28(a) of the Constitution permits the application of § 202.002(b) or instead requires that the new judicial positions be placed on the upcoming ballot.

Separately, and as directed by the legislature, this Court adopted rules for "transferring to the Fifteenth Court of Appeals from another court of appeals the appeals over which the Fifteenth Court of Appeals has exclusive intermediate appellate jurisdiction." S.B. 1045, § 1.08; *see*

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commenced in the Court of Appeals for the Third Court of Appeals District . . . .") (amended by S.B. 1045, § 1.13 to substitute "Fifteenth" for "Third").

Final Approval of Amendments to the Texas Rules of Appellate Procedure Related to the Fifteenth Court of Appeals, Misc. Docket No. 24-9041 (Tex. June 28, 2024) (adopting Tex. R. App. P. 27a). As noted in the Court's comments to Rule 27a, "appeals that were filed between September 1, 2023, and August 31, 2024, and of which the Fifteenth Court of Appeals has exclusive intermediate appellate jurisdiction," will be immediately transferred to that court. *Id.*; *see* S.B. 1045, § 1.15(b).[3]

B

The present case involves one of the appeals that is set for transfer.

In March 2023, Dallas County and its sheriff, Marian Brown, sued the Texas Health and Human Services Commission.[4] The County alleges that HHSC has failed to accept the transfer of inmates from county jails to state hospitals after a court has found those inmates, who are charged with crimes, to be incapable of standing trial. The County further contends that HHSC's failure has imposed unjustified costs on the County, which must retain custody and pay for the inmates' treatment. Nothing about these underlying facts matters to the petition that we resolve today, and we express no views on the parties' underlying dispute.

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[3] To ensure compliance with the statutory mandate, the courts of appeals have endeavored to identify all cases on their docket subject to immediate transfer. Because September 1 falls on a Sunday, this Court will order that the affected cases be transferred from the transferor courts by Friday, August 30, which ensures that the Fifteenth Court can accept those cases as soon as it comes into existence.

[4] More precisely, the plaintiffs below (and relators here) sued two individual defendants, who are the real parties in interest here: Cecile Young, HHSC's Executive Commissioner, and Michelle Hillstrom, the HHSC official overseeing the region that includes Dallas County. We refer to the "County" to include both relators and to "HHSC" to mean both named real parties in interest.

What does matter is the procedural pathway through which the parties will resolve that dispute. Specifically, after the trial court denied HHSC's plea to the jurisdiction, HHSC appealed to the Third Court on January 10, 2024. By that time, the standard civil appellate docketing statement included a question about whether an appeal involves matters that would bring it within the Fifteenth Court's exclusive jurisdiction, thus requiring transfer to that court. HHSC responded in the affirmative, and the County has not disputed that answer. Briefing was completed on June 11, 2024.

On May 22, however, the County filed in this Court what is styled as a "petition for writ of injunction," urging this Court to grant relief that would prevent the appeal from being transferred to the Fifteenth Court. Section 3.02 of S.B. 1045 confers on this Court "exclusive and original jurisdiction over a challenge to the constitutionality of this Act or any part of this Act" and states that we "may issue injunctive or declaratory relief in connection with the challenge." On the basis of that jurisdictional provision, as well as our original jurisdiction conferred by the Constitution, *see* Tex. Const. art. V, § 3(a), and by statute, *see* Tex. Gov't Code § 22.002(a), relators assert that this Court has jurisdiction to grant the relief that the County requests.

The County's petition, which we treat as a petition for writ of mandamus, claims entitlement to this relief on the ground that the Fifteenth Court is unconstitutional in various respects. This Court called for briefs on the merits, and we have expedited our review. For the following reasons, and without holding oral argument, we conclude that we must deny the requested relief.

II

We begin by ensuring that we have jurisdiction to reach the merits. HHSC has identified several potential obstacles. It challenges the County's standing; raises ripeness issues; asserts that the petition for writ of injunction (as styled by the County) falls outside our original jurisdiction; contends that there is no waiver of sovereign immunity, requiring us to proceed, if at all, under the Uniform Declaratory Judgments Act (which would require us to assess the facial validity of the County's claim to avoid immunity); and argues that we lack jurisdiction to consider the County's challenges to the governor's appointments. We conclude that none of these concerns affects our ability to consider the County's petition on the merits, and we have found no other jurisdictional issue on our own.

First, HHSC alleges that the County did not demonstrate that when it filed its petition in this Court on May 22, 2024, the "threatened injury"—the case's transfer to the Fifteenth Court—was "certainly impending." *See In re Abbott*, 601 S.W.3d 802, 812 (Tex. 2020). We agree with HHSC that courts must ordinarily "determine standing based on facts pleaded at the outset of the suit." *State v. Zurawski*, 690 S.W.3d 644, 658 (Tex. 2024). But we disagree that the County lacked *standing* then or at any other time. If a justiciability problem existed, it would not be one of standing but of ripeness or potential mootness.

Standing existed because the transfer from a valid and constitutional court to an allegedly invalid and unconstitutional court—the County's claimed injury—was not speculative. The transfer was ordained by S.B. 1045 the moment that HHSC's appeal was filed. S.B.

1045 requires *every* pending case within the Fifteenth Court's exclusive jurisdiction that was filed within the past year, including this one, to be transferred with immediate effect upon that court's creation. S.B. 1045, § 1.15(b). The County's legal theory is that the new court is unconstitutional in its design and that the process of selecting its justices compounded its constitutional deficiency. Every litigant has a clear right to have its case decided by a legitimate court staffed only by lawfully empaneled judges. *Cf., e.g.*, *Nguyen v. United States*, 539 U.S. 69, 82 (2003) ("[T]his Court has never doubted its power to vacate the judgment entered by an improperly constituted court of appeals, even when there was a quorum of judges competent to consider the appeal."). Under S.B. 1045, the transfer of the County's case to the allegedly unconstitutional court is inexorably commanded by law. If the Third Court had managed to resolve the case before September 1 (briefing, again, did not conclude until June 11), a losing party would have the right to seek rehearing. Whether any court but the Fifteenth Court could entertain a motion for rehearing after September 1 is formally an open question, but the very fact that a transfer of the case to the Fifteenth Court could occur even if the Third Court *had* resolved the merits illustrates the extent of the alleged injury posed by the transfer requirement.

Ripeness—the idea that it is too *early* to resolve a dispute—is a better objection. But it is one that still fails here. In May 2024, the Third Court had more than three months before it would lose jurisdiction. And if it managed to rule before this Court ordered the case to be transferred, perhaps no party would have sought rehearing. At that early point, it would have been sensible to see if the case could be resolved without

having to rush to a decision about S.B. 1045's constitutionality. After all, if the Third Court did rule without any resulting issue on rehearing—or if the parties settled the case, or if the case disappeared for any other reason—the dispute about the transfer would become moot. Potential mootness is one good reason to avoid adjudicating unripe disputes.

But "a claim's lack of ripeness when filed is not a jurisdictional infirmity requiring dismissal *if the case has matured*." *Perry v. Del Rio*, 66 S.W.3d 239, 252 (Tex. 2001) (emphasis added). We have recently applied this principle when addressing another challenge to a statute's constitutionality. *See Zurawski*, 690 S.W.3d at 658 n.13 (quoting *Del Rio*, 66 S.W.3d at 251–52). Here, any ripeness issue has been alleviated, not just by the mere passage of time as we draw closer and closer to September 1, but for an objective, procedural reason. Specifically, the Third Court has not yet set the underlying case for submission. Texas Rule of Appellate Procedure 39.8 dictates that a court of appeals' clerk must notify parties "at least 21 days before the date the case is set for argument or submission without argument." Twenty-one days before September 1 was August 11. Because that date has passed,[5] any judgment from the Third Court could issue only after that court no longer had the authority to do so because of S.B. 1045's transfer requirement. *See* Tex. R. App. P. 43.1. No court may adjudicate a case after losing jurisdiction over it, of course. Any ripeness concerns have vanished.

HHSC ultimately concedes that if we examine the case as "an issue of ripeness," "this dispute is likely ripe because without a submission date

[5] In fact, the relevant submission date would be two days earlier—Friday, August 9—because, as we have explained, this Court has directed that cases be transferred *out* by August 30. *See supra* note 3.

or a pending motion to expedite, it is exceedingly unlikely that the Third Court will resolve this case within the next six weeks." The further passage of time since that brief's filing amplifies the point; if S.B. 1045 is good law, it is now *certain* that the Third Court cannot resolve the appeal.

Nor is the possibility of mootness a concern. True, this case—like any case—could still become moot in other ways. But "mootness is difficult to establish. The party asserting it must prove that intervening events make it 'impossible for a court to grant any effectual relief whatever to the prevailing party.'" *Abbott v. Mexican Am. Legis. Caucus,* 647 S.W.3d 681, 689 (Tex. 2022) (quoting *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 161 (2016)). Courts do not act in anticipation of potential mootness, either; only after a case becomes moot does a court lose jurisdiction.

HHSC next argues that we can provide only mandamus—and not injunctive—relief. But even assuming that mandamus is the only basis for this Court to exercise its original jurisdiction, it is enough. "[I]n cases in which this court's jurisdiction to issue a writ of mandamus has attached the court necessarily has the correlative authority to issue a writ of injunction to make the writ of mandamus effective." *In re Occidental Chem. Corp.*, 561 S.W.3d 146, 156 (Tex. 2018) (quoting *Lane v. Ross*, 249 S.W.2d 591, 593 (Tex. 1952)). Regardless, mandamus relief would alone suffice to redress the alleged injury. Were we to issue the writ, it would be based on a conclusion that the Fifteenth Court was unconstitutionally created; the writ would compel the Third Court to disregard the planned transfer and to instead proceed with adjudicating the appeal.

Despite labeling its petition as one seeking an injunction, the

County has asked us to construe the petition as whatever "writ or request for relief more appropriately applies." Because the *substance* and not the *form* of the petition is what matters, "incorrect identity of the writ sought is of no significance." *City of Dallas v. Dixon*, 365 S.W.2d 919, 922 (Tex. 1963), *rev'd on other grounds sub nom. Donovan v. City of Dallas*, 377 U.S. 408, 411 (1964)). Accordingly, even if we could proceed only if the petition sought mandamus relief, we may treat the petition as seeking that relief, which S.B. 1045 allows us to award if the County is entitled to it. This Court has "exclusive and original jurisdiction over a challenge to [S.B. 1045's] constitutionality" and can "issue injunctive or declaratory relief in connection with the challenge." S.B. 1045, § 3.02. We have previously construed identical language as giving us authority to consider requests for mandamus relief, *In re Allcat Claims Serv., L.P.*, 356 S.W.3d 455, 462 (Tex. 2011) ("The Act clearly expresses legislative intent that the Court consider the constitutionality of its provisions."), and we do so again here. Even aside from this authority, our original mandamus jurisdiction would lead to the same result; the statute merely emphasizes that it would be improper for any inferior court to consider this issue in the first instance. *Cf.* Tex. R. App. P. 52.3(e) (directing relators to first seek mandamus review in a court of appeals absent "a compelling reason not to do so").

Third, HHSC argues that we lack jurisdiction because S.B. 1045 does not independently waive the State's sovereign immunity. According to HHSC, we must therefore rely on the UDJA, which requires a facially valid claim to waive immunity. The parties dispute this point in great detail, but we need not resolve it. The petition instead represents a matter of internal judicial administration—the determination of whether

one particular court of appeals must retain a case on its docket or instead must transfer the case to another court. In this context, that choice will turn on our assessment of the constitutionality of a statute that directs one outcome rather than the other. No separate waiver of sovereign immunity is required for the judiciary to ensure its own compliance with our State's highest law when undertaking the judicial task itself.[6] A writ of mandamus in this circumstance would compel *the judiciary* to act in a way that follows the law, and as we have explained, this Court has the authority to grant mandamus relief if we conclude that S.B. 1045 is unconstitutional.

Finally, HHSC contends that we lack jurisdiction to address the constitutionality of the governor's planned appointments of the first three justices of the Fifteenth Court. According to HHSC, those challenges are cognizable exclusively through a writ of quo warranto. "An action in the nature of quo warranto is available if . . . a person usurps, intrudes into, *or unlawfully holds* or executes a franchise or an office." Tex. Civ. Prac. & Rem. Code § 66.001(1) (emphasis added). "The purpose of a quo warranto proceeding is to question the right of a person or corporation, including a municipality, to exercise a public franchise or office." *Alexander Oil Co v. City of Seguin*, 825 S.W.2d 434, 436–37 (Tex. 1991). The writ is exclusive and can only be brought by the attorney general, a county attorney, or a district attorney. *Hamman v. Hayes*, 391 S.W.2d

[6] The underlying suit may or may not be barred by sovereign immunity—that is the very question that the appeal will consider. The ultimate answer to that question has no bearing on our jurisdiction to consider this petition, which merely raises the internal procedural question of *which* appellate court has jurisdiction to decide whether the trial court has jurisdiction over the substantive dispute.

73, 74–75 (Tex. Civ. App.—Beaumont 1965, writ ref'd) ("The authorities in this State indicate that a proceeding in quo warranto is the exclusive legal remedy afforded to the public by which it may protect itself against the usurpation or unlawful occupancy of a public office by an illegal occupancy.").

The County avers that it is not seeking a writ of quo warranto and that its challenge instead falls within an exception to the exclusivity of the writ that applies when parties allege an act is void, rather than voidable. *See Alexander Oil Co.*, 825 S.W.2d at 436 ("The only proper method for attacking the validity of a city's annexation of territory is by quo warranto proceeding, *unless the annexation is wholly void*." (emphasis added)).

Assuming for argument's sake that the general quo warranto rule is applicable in this context, we agree that the exception would likewise apply. We have previously recognized it in annexation cases. *See, e.g.*, *Laidlaw Waste Sys., Inc. v. City of Wilmer*, 904 S.W.2d 656, 658 (Tex. 1995). But the rationale is just as fitting here. The County's contention is that S.B. 1045 has created a court whose membership is established in a void and unconstitutional manner—by allowing for appointment until November 2026 despite the intervening general election in November 2024 following the creation of the judicial positions. This challenge—like Dallas County's other claims—is cognizable when construed as seeking mandamus relief ordering the Third Court to disregard HHSC's docketing statement and, on the ground that a transfer to an unconstitutional court would be a clear abuse of discretion, to proceed

with adjudicating the case.[7]

HHSC's objections have assisted us in confirming our jurisdiction. Like all courts, we benefit when the parties identify even arguable jurisdictional obstacles. Raising such issues complies with the duty of candor to the court and the duties of officers of the court; they facilitate a court's discharge of its own obligation to adjudicate only cases within its authority. Having resolved these jurisdictional issues and found no others, we conclude that our jurisdiction is secure. We therefore proceed to the merits.

III

The County argues that our Constitution requires that every court of appeals district cover only a subdivision of the State's territory. While the County's arguments are far from frivolous, we cannot agree that the

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[7] It is not clear that HHSC is correct to argue that the County's challenge to the appointment of the new justices does not fall within S.B. 1045's grant of original jurisdiction, which extends to "challenge[s] to the constitutionality of [S.B. 1045] or any part of [S.B. 1045]." S.B. 1045 dictates that the Fifteenth Court's "initial vacancies . . . shall be filled by appointment," and the appointment in turn is governed by provisions of the *Election Code*, as discussed below. *See infra* Part III.C. But it is S.B. 1045, including its timing for the creation of the court, that creates the alleged unconstitutionality; to the extent the Election Code's operation leads to unconstitutional outcomes, it is because S.B. 1045 invites them. We do not resolve this question, however, because even if HHSC is correct, the County's claim easily falls within the Court's broader authority to issue writs of mandamus. *See* Tex. Gov't Code § 22.002(a). To take a comparable example, in *In re Reece*, we held that we could exercise our "general original jurisdiction to issue writs of mandamus" even though we could not issue a writ of habeas corpus, as there was "nothing in the statutory grant of our mandamus jurisdiction precluding us from granting relief here" and the legislature did not "include[] language designating habeas corpus as the exclusive remedy for unlawful confinement." 341 S.W.3d 360, 373–74 (Tex. 2011). Likewise, nothing in the Election Code or § 22.002's grant of original jurisdiction would prevent the Court from exercising its authority to issue a writ of mandamus directed to the Third Court.

constitutional text imposes such a requirement. Without substantive change since 1891, the Constitution has mandated that "[t]he state shall be divided into courts of appeals districts." Tex. Const. art. V, § 6(a). That mandate has been and remains satisfied. The State *is* divided into courts of appeals districts, a fact that is not changed by the existence of the Fifteenth Court. All existing courts of appeals remain in place; a new one has been added. At most, the text forbids having a *single* court of appeals—the situation that the 1891 amendments to Article V changed. S.B. 1045 does not remotely seek a return to that distant past with one appellate court for the whole State. Short of that, § 6(a) includes express and substantial grants of legislative discretion over the structure and jurisdiction of the courts of appeals.

Given the text, as well as our constitutional history and tradition, we cannot conclude that the legislature exceeded its authority in enacting S.B. 1045 and creating the Fifteenth Court.[8] We address the County's three specific charges of unconstitutionality: because of the Fifteenth Court's statewide reach; because of its jurisdictional scope (and because S.B. 1045 withdraws jurisdiction from other courts of appeals); and because its justices are not on the November 2024 general-election ballot.

A

Article V, § 6(a) is part of a complex constitutional history that is central to understanding the text as it stands today. The 1876 Constitution dictated that "[t]he judicial power of this State shall be

[8] In addition to briefing from the parties, several helpful amicus briefs have provided useful analysis of the relevant constitutional history. Both sides of the dispute have received amicus support, which has assisted us in resolving the case.

vested in one Supreme Court, in a Court of Appeals, in District Courts, in County Courts, in Commissioners' Courts, in Justices of the Peace, and in such other courts as may be established by law." Tex. Const. art. V, § 1 (1876). This Court then consisted of only "a chief justice and two associate justices," and the lone court of appeals likewise "consist[ed] of three judges," *id.* §§ 2, 5, who were elected statewide like the justices of this Court. At that point, this Court's jurisdiction was "appellate only," extending solely "to civil cases of which the District Courts have original or appellate jurisdiction." *Id.* § 3. The statewide court of appeals, by contrast, had appellate jurisdiction "in all criminal cases, of whatever grade, and in all civil cases, unless hereafter otherwise provided by law, of which the County Courts have original or appellate jurisdiction." *Id.* § 6. So, "despite its name," the court of appeals "was not an intermediate court, [as it] had final say in criminal appeals" and in "civil matters involving less than $1,000." *In re Reece*, 341 S.W.3d 360, 379 (Tex. 2011) (Willett, J., dissenting).

The rigid judicial framework in the 1876 Constitution was unsuccessful. "[B]y the close of the 1870s[, Texas] was undergoing a dramatic transformation." James L. Haley, *The Texas Supreme Court: A Narrative History, 1836–1986*, at 95 (2013). The State's population increased dramatically after the Civil War, nearly doubling between 1870 and 1880. *Id.* The judiciary labored to keep up. In 1879, the court of appeals was 200 cases behind its docket, and this Court was *900* cases behind. *Id.* "The Supreme Court was falling so far behind that either the right to appeal had to be severely curtailed or the system had to be radically revised." George D. Braden, *The Constitution of the State of*

Texas: An Annotated and Comparative Analysis 399 (1973). Compounding the dilemma, this Court released a series of decisions that quickly and effectively "nullified" the 1876 Constitution's promise that "[t]he judicial power of this State" could be "vested in . . . such other courts as may be established by law." *Harris County v. Stewart*, 41 S.W. 650, 655 (Tex. 1897). According to the 1870s Court, "[i]t was certainly the object of the framers of the Constitution to mark out a complete judicial system," which was "not subject to change by the action of the Legislature, except as a change may have been provided for." *Ex parte Towles*, 48 Tex. 413, 439 (1877). In other words, even the textually expressed basis for constitutional flexibility was stymied.

The People tried again in 1891. This time, their solutions largely stuck. The 1891 amendment made three particularly significant changes to Texas's appellate system. First, in addition to the preexisting "shall vest" language, the amended Constitution explicitly stated that "[t]he Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto." Tex. S.J. Res. 16, 22d Leg., R.S., 1891 Tex. Gen. Laws 197, 197. Second, the Court of Criminal Appeals became the successor to the old court of appeals; it received "appellate jurisdiction coextensive with the limits of the State and in all criminal cases of whatever grade, with such exceptions and under such regulations as may be prescribed by law." *Id.* at 198. Third, the 1891 amendment directed the legislature to establish at least two intermediate civil appellate courts:

> The Legislature shall, as soon as practicable after the adoption of this amendment, divide the State into not less

> than two nor more than three supreme judicial districts, and thereafter into such additional districts as the increase of population and business may require, and shall establish a Court of Civil Appeals in each of said districts, which shall consist of a chief justice and two associate justices, who shall have the qualifications as herein prescribed for justices of the Supreme Court. Said Court of Civil Appeals shall have appellate jurisdiction coextensive with the limits of their respective districts, which shall extend to all civil cases which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law; Provided, That the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error . . . . Said courts shall have such other jurisdiction, original and appellate, as may be prescribed by law.

Id. at 198–99.

Among the core goals of these textual changes "was to avoid the force" of this Court's line of cases that had limited the legislature's ability to shape the judiciary in response to the State's changing needs. *Stewart*, 41 S.W. at 655. By "ridding the state of the incubus which the construction contended for had saddled upon it," the drafters hoped to "render elastic the judicial system provided for in the constitution." *Id.*

The 1891 amendment led to real and immediate change. The "kitchen-sink reform" spurred the legislature to "create[] three new intermediate courts of civil appeals (in Galveston, Fort Worth, and Austin)." *In re Reece*, 321 S.W.3d at 380 (Willett, J., dissenting). Those three courts of appeals were quickly followed by two new appellate courts in San Antonio and Dallas. *See* James T. Worthen, *The Organizational and Structural Development of Intermediate Appellate Courts in Texas, 1892–2003*, 46 S. Tex. L. Rev. 33, 36 (2004). And this Court responded to the new constitutional text, disavowing our earlier approach and holding

that Article V, § 1's new "other courts" language had restored "the full power of the legislature over the subject of creating inferior courts." *Stewart*, 41 S.W. at 655.

In the ensuing years, the People repeatedly have given the legislature *more* discretion to shape the judiciary, never less. In 1927, voters overwhelmingly rejected an amendment that would have prevented the legislature from dividing the State into more than twelve courts of appeals districts. *See* Tex. Legis. Council, *Amendments to the Texas Constitution Since 1876*, at 63 (May 2024), https://tlc.texas.gov/docs/amendments/Constamend1876.pdf. More than fifty years later, in 1978, the People allowed the legislature to add more justices to each court of appeals district—which, until then, was rigidly set at exactly three per court. Tex. S.J. Res. 45, 65th Leg., R.S., 1977 Tex. Gen. Laws 3366, 3366. The new justices helped relieve "the strains from an ever-increasing caseload in the largest metropolitan areas," which had "continued unabated" despite having fourteen courts of appeals to shoulder the burden. Worthen, *supra*, at 36–38. The next amendment, which came just two years later, transformed the "Courts of Civil Appeals" into simply "Courts of Appeals" by giving them criminal jurisdiction. Tex. S.J. Res. 36, 66th Leg., R.S., 1979 Tex. Gen. Laws 3223, 3224–25. And in 1985, the People amended the Constitution to eliminate the remaining restrictions on *when* the legislature could create a new court of appeals by striking "as the population and business may require," thus leaving the choice purely to the legislature. Tex. S.J. Res. 14, 69th Leg., R.S., 1985 Tex. Gen. Laws 3355, 3356–57.

In other contexts, the Constitution clearly *limits* the legislature's

authority to mold the judiciary, including by imposing geographic restrictions. For example, Article V, Section 7a(*i*) dictates geographic limitations on the district courts. With a limited exception, which requires a popular vote, "[t]he legislature, the Judicial Districts Board, or the Legislative Redistricting Board may not redistrict the judicial districts to provide for any judicial district smaller in size than an entire county except as provided by this section." No such limit has been placed on the courts of appeals.[9]

The current form of Article V, § 6(a) came with the 1985 amendments. In material part, it reads as follows:

> The state shall be divided into courts of appeals districts, with each district having a Chief Justice, two or more other Justices, and such other officials as may be provided by law . . . . Said Court of Appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error. Said courts shall have such

[9] The People also know how to precisely describe the *subjects* over which courts shall exercise jurisdiction, which can limit the legislature's ability to withdraw that jurisdiction. *See Reasonover v. Reasonover*, 58 S.W.2d 817, 818 (Tex. 1933). The 1891 amendment gave district courts jurisdiction over "*all* criminal cases of the grade of felony," "*all* cases of divorce," "*all* suits to recover damages for slander or defamation of character"; and "*all* suits for trial of title to land and for the enforcement of liens thereon." Tex. S.J. Res. 16, *supra*, 1891 Tex. Gen. Laws at 199–200 (emphasis added). The 1985 amendment maximized legislative discretion in this context, too: "District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body." Tex. S.J. Res. 14, *supra*, 1985 Tex. Gen. Laws, at 3355, 3357. That is how the text remains today. *See* Tex. Const. art. V, § 8.

> other jurisdiction, original and appellate, as may be prescribed by law.

Tex. Const. art. V, § 6(a). The text thus leaves substantial room for the legislature to craft a comprehensive network of courts of appeals districts.

The Fifteenth Court is the legislature's first attempt in almost sixty years to create a new intermediate appellate court. The County argues that, for several reasons, the Fifteenth Court cannot be a constitutional court of appeals—that is, one that fits within Article V, § 6. Most significantly, the Fifteenth Court is "composed of all counties in this state." S.B. 1045, § 1.01. The argument that this characteristic dooms the Fifteenth Court hinges on the words "divide" and "district."

The County's reading—that those terms mean that *every* court of appeals must be a geographic subdivision of the State—is not implausible. But neither is it inevitable. Dictionary definitions can help inform meaning. In 1891 and 1985 alike, the word "divide" meant simply "to separate into parts, groups, sections, etc." *Divide*, Random House Dictionary of the English Language (2d ed. 1987); *see also Divide*, An American Dictionary of the English Language (1865) ("To be separated; to part; to open; to cleave; to sunder."). But even taking these definitions—with which we have no quarrel—nothing in the phrase "[t]he state shall be *divided* into courts of appeals districts" threatens the Fifteenth Court's constitutionality. "The state" *has* been "divided." The legislature immediately fulfilled its duty to "separate" the intermediate court system "into parts," which for over 130 years has meant geographic regions with various levels of overlap. What the Constitution actually

and expressly requires is present in Texas today.[10]

What about "district"? True, that word generally means "a division of territory, as of a country, state, or county, marked off for administrative, electoral, or other purposes." *District*, Random House Dictionary of the English Language (2d ed. 1987); *see also District*, An American Dictionary of the English Language (1865) ("A defined portion of a state or city for legislative, judicial, fiscal, or elective purposes."). But the word "district" can be used for statewide, state-run bodies, too. *See, e.g.*, *Our Statewide School District*, Haw. Dep't of Educ., https://www.teachinhawaii.org/district-profile/ (last visited Aug. 17, 2024) ("The Hawai'i State Department of Education is a large statewide school district comprised of 257 schools that are divided into seven smaller districts across the Hawaiian islands."); *see also Recovery School District*, La. Dep't of Educ., https://www.louisianabelieves.com/schools/recovery-school-district (last visited Aug. 17, 2024) (discussing Louisiana's statewide "Recovery School District," which seeks "to transform the lowest performing schools in the state"). At-large districts are hardly unknown, either—a city or other polity might have multiple districts that carve up the city alongside at-large districts that cover the entirety of the jurisdiction.

So, while "district" typically refers to territorial subdivisions—and the Texas courts of appeals have been defined that way until now—the word "district" cannot, standing alone, entail that requirement. Similarly, "circuit" is a legal term that commonly describes a court's

[10] From immediately after the 1891 constitutional amendment, at least three courts of appeals that do *not* have jurisdiction in every county have always existed. We accordingly may assume without deciding that Article V, § 6(a) requires at least two courts of appeals with that geographic limitation.

territorial reach, hearkening back to judges riding from Westminster on specified routes to hold court. *See, e.g.*, Sir John Baker, *An Introduction to English Legal History* 24–25 (5th ed. 2019); *Circuit*, Webster's New International Dictionary of the English Language (2d ed. 1934) (defining "circuit" to include "[a] regular or appointed journeying from place to place in the pursuit of one's calling, as of a judge, or a preacher," and "[a] judicial *district* established by law for a judge or judges to visit for the administration of justice" (emphasis added)). The federal appellate courts are called "circuits" to reflect their origins in this way. But when Congress created the Federal Circuit in 1982, it gave that court nationwide jurisdiction. *See* 28 U.S.C. § 1295(a)(1)–(2) (describing the Federal Circuit's "exclusive jurisdiction" to hear appeals from, among other courts, any "district court of the United States, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands" for specific kinds of cases). True, Article III does not require circuits (or districts). The point is what terms like these *mean*—they *often* refer to geographic subdivisions but do not *have* to do so. The meaning of the word "circuit" is broader than that, and so is the meaning of the word "district."

Words must be read in light of their historical and linguistic context. We agree that "district" could be read to prevent the legislature from replacing all existing courts of appeals with a single statewide court of appeals. But it is too far a leap from that premise to the County's larger conclusion, which is that no court of appeals district, no matter the context, may have statewide scope. Instead, we must tether ourselves "to the *fair meaning* of the text," not "the hyperliteral meaning of each word

in the text." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 356 (2012). Otherwise, we risk "los[ing] sight of the forest for the trees." *Id.* (quoting *N.Y. Tr. Co. v. Comm'r*, 68 F.2d 19, 20 (2d Cir. 1933) (L. Hand, J.)). The risk of error—of constraining the legislature in its representative function—is compounded when even the "hyperliteral" meaning does not require rigidity.

As this Court has said, "courts should resist rulings anchored in hyper-technical readings of isolated words or phrases," as "the meaning of words read in isolation is frequently contrary to the meaning of words read contextually in light of what surrounds them." *In re Off. of Att'y Gen. of Tex.*, 456 S.W.3d 153, 155 (Tex. 2015). "Our guiding principle when interpreting the Texas Constitution is to give effect to the intent of the voters who adopted it," *Degan v. Bd. of Trs. of Dall. Police & Fire Pension Sys.*, 594 S.W.3d 309, 313 (Tex. 2020), which requires sensitivity to the full context of the constitutional language and history.

In our view, interpreting Article V, § 6(a) to prohibit the legislature from adding a statewide court of appeals district on top of existing geographically based districts is neither compelled by the plain text nor consistent with the larger context. That interpretation would undermine, not bolster, what the People expected Article V's language to convey. Our constitutional history, and not just the plain text, confirms this view. Substantial geographic overlap among the districts is permissible, for example. While that overlap has had its critics, their objections sound in policy; the existence of the overlap has been part of our system for a century and has survived multiple constitutional amendments without controversy. *See, e.g.*, Worthen, *supra*, at 63–66. Likewise, almost

immediately after the 1891 amendment's creation of the current system for the courts of appeals, the legislature mandated certain transfers of appeals among districts, which creates overlap of jurisdiction in practice; this Court upheld such transfers. *See Bond v. Carter*, 72 S.W. 1059 (Tex. 1903). And, as we have discussed, the legislature has always had the practical ability to create statewide intermediate appellate jurisdiction. That, in fact, is the very practice that the County *defends*. The County is not asking for its case to be appealed to the Fifth Court of Appeals in Dallas—it wants to keep it in the Third Court of Appeals in Austin.

So whatever else it means for the State to be divided into appellate districts, it does *not* mean that each district will be a *distinct* division of the State, that any case is free from being sent across Texas to a far-flung court of appeals, or that one court may not be given effective statewide reach over at least some cases. These departures from a purely geography-based appellate system—in which each appellate court would resolve every appeal arising from its geographic territory—confirm that flexibility is a paramount value of Article V, § 6(a). The County is left with the contention that, even if the Constitution is indifferent to those other features, every court of appeals must have a geographic reach that is less than the entire State. Under that theory, there is no constitutional objection to retaining our existing courts of appeals and adding another that covers 253 counties (or perhaps 253 counties and all but a sliver of the 254th, given that the Constitution expressly forbids district courts but not courts of appeals from covering only parts of a county).

If the Constitution's text and history actually required this result—that the Fifteenth Court be deemed unconstitutional until it

loses some tiny slice of territory occupied exclusively by cacti and scorpions—that would be the end of the matter. But Texas courts favor the "textually permissible interpretation that furthers rather than obstructs the document's [here, Article V, § 6(a)'s] purpose." Scalia & Garner, *supra*, at 63. "[I]f the 'language is susceptible of two constructions, one of which will carry out and the other defeat [its] manifest object,'" courts should apply "'the former construction.'" *Id.* (alteration in original) (quoting *Citizens Bank of Bryan v. First State Bank*, 580 S.W.2d 344, 348 (Tex. 1979)). Reading "divided" and "district" with maximum rigidity would violate this principle.

So while we agree with the County that the text in light of constitutional history is the touchstone of constitutional interpretation, we do not agree with its reading. Indeed, as we have described, accepting the County's invitation would be to repeat history—this Court's mistaken rigidity about the 1876 Constitution wreaked havoc and required a massive expenditure of energy from the legislature and the People. *See Stewart*, 41 S.W. at 141–42. The People then chose an "elastic" judiciary and have made it more so since the 1891 amendment. It is unsurprising that, until now, the legislature has primarily used its authority to create *regional* courts of appeals districts, given the infamous case backlogs and the sheer "vastness of the State" in eras without ready communication. Braden, *supra*, at 399. But the fact that the legislature did not immediately—or for a long time—use authority vested in it does not subject that authority to desuetude.

The County's four remaining arguments are unpersuasive. It argues that because six members of the State Commission on Judicial

Conduct "may not reside or hold a judgeship in the same court of appeals district as another member of the Commission," Tex. Const. art. V, § 1-a(2), the creation of a statewide court of appeals would make it impossible to staff those positions. We need not and do not resolve any dispute about membership on that Commission here, but we doubt the County's reading. It is at least plausible, for example, that someone living in the Eighth Court's district in El Paso and someone living in the Ninth Court's district in Beaumont would not qualify as residing in the "same" district merely because the Fifteenth Court covers the entire state. HHSC offers various ways to harmonize the provisions and still others may emerge. Regardless, we may not artificially constrict § 6(a)'s meaning to accommodate a particularly rigid reading of § 1-a(2).

Likewise, while it is true that the Texas Constitution refers to "State or district offices," Tex. Const. art. IV, § 12, nothing in our decision today turns on which kind of office S.B. 1045 creates. That question has no bearing on the Fifteenth Court's status as a constitutional court of appeals. Nor is the Fifteenth Court's constitutionality threatened by the lack of a "statewide judicial district of district courts," as the County suggests. The Fifteenth Court, like all other courts of appeals, generally has appellate jurisdiction over cases decided by the district and county courts within its district. *Id*. § 6(a). Since the Fifteenth Court's district is statewide, the court may exercise appellate jurisdiction over cases from any district and county court, subject to legislative restriction. Finally, our decision today is limited to Article V, § 6(a) and thus does not affect the senate, although we note the relevant provision's quite different language. *See Id.* art. III, § 25 ("The State shall be divided into Senatorial Districts of

contiguous territory . . . ." (emphasis added)).

B

The County also contends that a second feature of S.B. 1045 renders it unconstitutional: its jurisdictional structure. Specifically, the County contends that the grant of "exclusive" jurisdiction to the Fifteenth Court unconstitutionally drains jurisdiction from other courts of appeals; that the Fifteenth Court's jurisdiction is unconstitutionally tethered to subject matter rather than geography; and that S.B. 1045 unconstitutionally deprives the Fifteenth Court of criminal jurisdiction.

We reject these objections as well. The courts of appeals' jurisdiction is broad—as a *default*. But the text of Article V, § 6(a) gives the legislature a double helping of discretion to adjust that jurisdiction. The "Court[s] of Appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all cases of which the District Courts or County Courts have original or appellate jurisdiction, *under such restrictions and regulations as may be prescribed by law*." Tex. Const. art. V, § 6(a) (emphasis added). Moreover, the courts of appeals "shall have *such other jurisdiction,* original and appellate, *as may be prescribed by law*." *Id.* (emphasis added). The Constitution notably does not provide that the courts of appeals "shall have *exclusive* jurisdiction" over any type of case.

We cannot read these grants of authority to do anything less than give the legislature discretion about how to modify—both up and down—the courts of appeals' jurisdiction. To the extent that a court of appeals does not have default jurisdiction over a case, the legislature may add it by conferring "other jurisdiction," whether original or appellate. *Id.* And

if a court of appeals *does* have default jurisdiction over a case—such as an appeal from a district court within the court of appeals' district—the legislature may "prescribe[]" various "restrictions" on that jurisdiction. To "restrict" is "to confine or keep within limits, as of space, action, choice, intensity, or quantity." *Restrict*, Random House Dictionary of the English Language (2d ed. 1987); *see also Restrict*, Black's Law Dictionary (5th ed. 1979) ("To restrain within bounds; to limit; to confine."); *Restrict*, An American Dictionary of the English Language (1865) ("To restrain within bounds; to limit; to confine; as to restrict words to a particular meaning; to restrict patient to a certain diet.").

Exclusively routing certain categories of cases to the Fifteenth Court amounts to "restrict[ing]" the jurisdiction of the courts that otherwise could exercise it. We have long recognized the legislature's ability to limit appellate jurisdiction. "The appellate jurisdiction of the courts of civil appeals is not unlimited or absolute, but within constitutional limitations is subject to control by the legislature." *Gray v. Rankin*, 594 S.W.2d 409, 409 (Tex. 1980) (citing *Harbison v. McMurray*, 158 S.W.2d 284 (Tex. 1942)). In *Seale v. McCallum*, we held that "the Legislature was within its constitutional power" when it relied on its ability to "restrict" the jurisdiction of the courts of appeals to "deny appellate jurisdiction to the Courts of Civil Appeals over [certain] contested elections." 287 S.W. 45, 45 (Tex. 1926). We further noted that an 1895 statute's amount-in-controversy requirement, which limited the right to appeal to litigants whose controversies exceeded $100, had "either not been questioned during more than 30 years' time, or, when questioned, [was] sustained by the courts." *Id.* at 46–47; *see also Tune v.*

Tex. Dep't of Pub. Safety, 23 S.W.3d 358, 361 (Tex. 2000) (applying the $100 amount-in-controversy requirement to the dispute as a valid "'restriction or regulation' on the courts of appeals' general jurisdiction").

"[T]he principle is fixed that the Legislature has the power to limit the right of appeal." *Seale*, 287 S.W. at 47. Compared to the statutes at issue in *Gray*, *Seale*, and *Tune*, S.B. 1045 involves restrictions that are more significant, both for the Fifteenth Court and for the regional courts of appeals. The County has not demonstrated, however, that the restrictions are beyond those that "may be prescribed by law." Instead, by confining the courts of appeals to a certain subset of their allowable jurisdiction, S.B. 1045's directives fall within the plain meaning of "restriction."

The County posits three main arguments why S.B. 1045's jurisdictional provisions are unconstitutional. It first observes that the Constitution does not say that the legislature can craft "exceptions" to the courts of appeals' jurisdiction, even though the word "exceptions" is used elsewhere in Article V. We do not hold that the terms "restrictions and regulations" on the one hand and "exceptions" on the other can have no distinction in meaning. But whatever that distinction might entail in a different context, it is immaterial here; "restrict[ing]" jurisdiction and making "exceptions" to jurisdiction both deprive a court of some jurisdiction that it previously had.

Second, the County says that S.B. 1045 contravenes our decision in *Reasonover v. Reasonover*, 58 S.W.2d 817, 818 (Tex. 1933). That case involved the legislature's attempt to vest a statutory court with authority to hear divorce cases and then use its power to "conform the jurisdiction

of the district and other inferior courts thereto" to remove that jurisdiction from a constitutional district court. *See id.* at 817–18. We held that Article V, § 1's "may conform" language was "not intended to take away from and deprive the regular district courts of the jurisdiction specifically given them by the Constitution," observing that "[n]o provision of the Constitution anywhere intimates such a withdrawal or negation of jurisdiction." *Id.* at 818.[11]

Reasonover is easily distinguishable here. When we decided that case, the constitutional text rigidly fixed certain types of jurisdiction. Specifically, because the Constitution then provided that district courts "shall have original jurisdiction 'of *all* cases of divorce,'" we viewed it as leaving no room for legislative exception. *Id.* (quoting Tex. Const. art. V, § 8 (emphasis added)). But both then and now, the Constitution expressly allows the legislature to "restrict" the courts of appeals' jurisdiction. (The same is now true for district courts, too. *See supra* note 9.)

We think that the County's arguments are largely foreclosed, moreover, by our decision in *Bond*, which upheld docket-equalization transfers. 72 S.W. at 1059. By statute, this Court must transfer cases among courts of appeals to more evenly distribute the judicial workload. Such a transfer effectively strips the court of the region from which the case arose of jurisdiction over the appeal and gives that jurisdiction to

[11] The County reads S.B. 1045's grant of "exclusive jurisdiction" over specified cases as entailing subject-matter jurisdiction. If a case that *should* be transferred to the Fifteenth Court is retained and resolved by a different court of appeals, without objection from either party or that court, it would amount to an error of law. But whether the error stems from a lack of subject-matter jurisdiction—such that the decision could be set aside years later upon a showing that the case should have been transferred—is quite a different question, and one that we need not resolve today.

another court. For example, a case from Bexar County would ordinarily go to the Fourth Court of Appeals in San Antonio, but if docket congestion so requires, we could transfer it to the Seventh Court of Appeals in Amarillo—to be decided by judges who are in no way accountable to the voters in San Antonio. In *Bond*, however, we held that the "other jurisdiction . . . as may be prescribed by law" clause in Article V, § 6(a) was a sufficient basis for conferring jurisdiction on a court that otherwise would lack it, which in turn required upholding the constitutionality of the docket-equalization statute. *Id.* Unlike in that hypothetical case, however, the Fifteenth Court's justices *will* be electorally accountable to the citizens of *every* court of appeals district from which a case would otherwise come. It is hard to regard this circumstance as anything but a lesser intrusion into the ordinary judicial system than transferring an appeal to a court with no ties whatsoever to the transferor region.

Third, the County emphasizes that the 1980 amendment gave the courts of appeals criminal jurisdiction. According to the County, S.B. 1045's express limitation of the Fifteenth Court's jurisdiction to civil matters violates this provision. We disagree. Restricting the Fifteenth Court to certain civil cases is self-evidently a proper use of the authority to "prescribe[]" whatever "restrictions" on that court's jurisdiction the legislature deems proper. Tex. Const. art. V, § 6(a). Should the legislature later wish to confer criminal jurisdiction on that court (or "restore" such jurisdiction, if the default presumption is that a court of appeals has it), it may do so. For the same reasons, we reject the County's contention that the legislature unconstitutionally defined the Fifteenth Court's jurisdiction by reference to subject matter rather than

geography. This contention is not quite accurate; the legislature *did* define the geographic scope of the Fifteenth Court's district to include every county. S.B. 1045 then uses the legislature's authority to impose jurisdictional restrictions on both the Fifteenth Court itself and the other courts of appeals. These choices lie within the legislature's authority.

We do not suggest that there is *no* limit on the legislature's ability to divest courts of their jurisdiction, even as we confirm that the legislature's authority is broad. After all, the Constitution does not provide for the total divestiture of the judicial power, but instead states that "[t]he judicial power of this State *shall* be vested in one Supreme Court," in various other named courts, "and in such other courts as may be provided by law." *Id.* § 1 (emphasis added). The same provision, which broadly allows the legislature to create statutory courts and "prescribe the jurisdiction and organization thereof," also expressly allows the legislature to "conform the jurisdiction of the district and *other inferior courts* thereto." *Id.* (emphasis added). This Court, of course, is not an "inferior court" subject to that constraint. Provisions outside the Judiciary Article of our Constitution are likewise relevant in confirming that the judiciary's role is not so easily destroyed, despite the County's warnings to the contrary. Article I, § 19, for example, assures that "[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land."

Texas history and Texas law have always prized an independent judiciary, even as our Constitution has always granted substantial authority to the legislature to regulate important aspects of how the

judiciary serves the People of our State. We cannot negate the legislature's lawful authority out of fear of future abuse. To the contrary, the separation of powers requires that we respect the other branches' checks on the judiciary and not just our checks on them. The legislature's power to modify the courts' jurisdiction acts as a particularly important check on the judiciary, preventing the judiciary from aggrandizing power for itself. *See, e.g.*, *Patchak v. Zinke*, 583 U.S. 244, 254 (2018) ("Congress' power over federal jurisdiction is 'an essential ingredient of separation and equilibration of powers, restraining the courts from acting at certain times, and even restraining them from acting permanently regarding certain subjects.'" (quoting *Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 101 (1998))).

S.B. 1045's jurisdictional provisions, therefore, fit comfortably within the legislature's authority.[12]

C

The remaining question is whether the Fifteenth Court is constitutionally tainted because its justices will not appear on the ballot until the general election of November 2026 rather than November 2024. The Constitution provides that "[a] vacancy in the office of . . . Justice . . . of . . . the Court of Appeals . . . shall be filled by the Governor until *the next succeeding General Election* for state officers, and at that election the voters shall fill the vacancy for the unexpired term." Tex. Const. art. V, § 28(a) (emphasis added). According to the County, this provision

[12] Because we hold that the Fifteenth Court qualifies as a constitutional court under Article V, § 6(a), we do not further address the County's argument that the legislature could not have used its broader authority under Article V, § 1 to create the Fifteenth Court as a statutory court.

requires that the three vacancies be filled in the upcoming election. The County emphasizes that those vacancies have been well known at least since S.B. 1045 was signed into law in June 2023, which long predates the November 2024 election, and that S.B. 1045 became effective on September 1, 2023—more than a year before the next general election. Moreover, the County says, even if the Fifteenth Court's date of creation is the relevant time, the vacancies *still* arise before the upcoming election, so they must be filled in it. Because the governor instead will appoint the justices—who will take office immediately and serve through the November 2026 election, contingent on confirmation by the senate before the end of the 89th Legislature's regular session—the County contends that S.B. 1045 is for this further reason invalid and the justices' appointments are void *ab initio*.

We reject the County's reading. The appointment of the justices is prescribed by S.B. 1045, but it is § 202.002 of the Election Code that provides the mechanism for how the appointments unfold and when the new judicial positions must first appear on the ballot. We agree with the County, of course, that if § 202.002 contravenes the Constitution, we must disregard it. But we see no good argument to support that result.

To begin with an obvious point, a vacancy must arise at some point meaningfully *before* a general election to be part of that election. An officeholder who resigns or dies the day before an election creates a vacancy before the election, but for a host of practical and legal reasons, that vacancy must await a subsequent election. Ballots must be printed and mailed to overseas service members, as well as for voters at polling places in Texas, for example. And voters must also have a reasonable

chance to learn about candidates.

Elections to fill vacancies must be subject to reasonable regulations. *See*, *e.g.*, *State v. Hodges*, 92 S.W.3d 489, 496 (Tex. 2002). Reasonable regulation includes reasonable limits on ballot access for candidates. *See, e.g.*, *Burdick v. Takushi*, 504 U.S. 428, 441 (1992) (holding that Hawaii's prohibition on write-in voting did not violate the challengers' freedoms of expression and association); *Tex. Indep. Party v. Kirk*, 84 F.3d 178, 185-86 (5th Cir. 1996) (upholding various deadlines and requirements in the Texas Election Code as reasonable). To be placed on the ballot, a candidate for office must meet a variety of electoral deadlines. *See, e.g.*, Tex. Elec. Code ch. 172. And some form of the limitation on timing for filling vacancies has existed for decades. *See, e.g.*, Act of May 16, 1985, 69th Leg., R.S., ch. 211, § 1, sec. 202.002(a), 1985 Tex. Gen. Laws 802, 1007 (amended 2005) (vacancies occurring more than 65 days before the general election shall appear on the ballot).

The effective management of elections, in other words, requires a reasonable cutoff for ballot access. The legislature has sought to provide it in the Election Code: "If a vacancy occurs after the 74th day before a general election day, an election for the unexpired term may not be held at that general election. The appointment to fill the vacancy continues until the next succeeding general election and until a successor has been elected and has qualified for the office." Tex. Elec. Code § 202.002(b).

We conclude that § 202.002(b) provides a reasonable regulation that gives election officials throughout the State adequate time to prepare ballots for printing and mailing to individuals requiring absentee ballots. Nothing in Article V, § 28(a) requires defining "vacancy" without

reference to these principles. Because we find no conflict between § 28(a) and § 202.002(b) of the Election Code, we hold that the "next succeeding" election for purposes of a vacancy is the next election at which the candidate, subject to reasonable election regulations, is eligible. September 1 is less than seventy-four days before the November 5 general election, so S.B. 1045 operates in tandem with § 202.002(b) to require appointments until the subsequent general election. The new judicial positions should therefore appear on the November 2026 general-election ballot.

The County's contrary arguments are unavailing. There is no judicially discernible principle for how long is *too* long. A vacancy one day before the election is obviously incapable of being filled in that election. Two days, three days, and so on—where is the line? It must fall to the legislature to make rational rules to manage the election process while remaining within the constitutional requirement. Given the complexities of election procedures and the many federal and state legal requirements surrounding them, we conclude that, at a minimum, the County has not shown that it is entitled to mandamus relief on this basis.

Nor are we persuaded by the County's contention that the vacancies effectively arose last year despite formally arising on September 1, 2024. Despite S.B. 1045's *effective* date—September 1, 2023—the vacancies will not exist until the Fifteenth Court exists, and by law, that court will not exist until September 1, 2024. In an analogous case, we held that a court of appeals justice who submits a resignation identifying a future effective date does not thereby create a vacancy on the date the resignation was submitted. *See State ex. rel. Angelini v.*

Hardberger, 932 S.W.2d 489, 495 (Tex. 1996). Rather, the vacancy occurs on the date the justice actually leaves office or, in this case, the date the office is actually created, regardless of forewarning.

We accordingly deny relief with respect to the appointments set to be made to the Fifteenth Court.

IV

We hold that the Fifteenth Court is a constitutional court of appeals, that the jurisdictional provisions in S.B. 1045 do not violate Article V, § 6(a) of the Constitution, and that the appointment of the new court's justices complies with Article V, § 28(a) of the Constitution and applicable statutes. Without hearing oral argument, we construe the County's injunction request as a petition for writ of mandamus and deny all requested relief.

Evan A. Young
Justice

OPINION DELIVERED: August 23, 2024