

# FACT SHEET:

## LOUISIANA'S JUDICIAL CLIMATE

August 2014



Louisiana's economy is out-performing the nation in many indicators, including unemployment levels, per capita income growth, and a revitalized manufacturing sector expanding faster than any other state.<sup>1</sup> Louisiana's workforce eclipsed two million jobs this year—a record-breaking number—with predictions of more jobs to come.<sup>2</sup> Increasingly part of a global economy, Louisiana ranks No. 1 in the country this year in export intensity with nearly 10 percent export growth in recent years, compared to a 20 percent decrease on average nationwide.<sup>3</sup> Rivalry with our peers is unprecedented, and we are not just competing against Texas and Mississippi for jobs but with nations around the globe.

Our state is all too familiar with boom-and-bust cycles. In the 1970s, Louisiana employment grew by over 40 percent, while the U.S. average was just over 25 percent.<sup>4</sup> Just as quickly as the economy expanded, a dramatic recession took over, and unemployment in Louisiana more than doubled to 12.7 percent in 1983.<sup>5</sup> The state and the business community must be prepared and competitive for whatever the future brings. **To harness the momentum of the economic success underway today, the state must tackle long-standing and persistent obstacles for growth, including a shortage of skilled workers, deteriorating**

**infrastructure, excessive governmental regulations and mandates, and a highly litigious climate.**

Prior to the 2014 regular legislative session, it had been nearly two decades since the Louisiana Legislature has enacted significant tort reforms. Meanwhile, **Louisiana's reputation and reality as a poster child for lawsuit abuse is an ever-present challenge to businesses and citizens alike.** An efficient and fair civil justice system is necessary to incentivize safe products and services and to provide justice to victims when wrongdoing occurs. However, America maintains the most expensive tort system in the world to the tune of \$865 billion every year, and studies show victims receive less than 15-cents of every dollar.<sup>6</sup> Within this broken system, Louisiana ranks No. 7 nationwide on the Tort Activity Index, No. 49 for our lawsuit climate, and No. 2 on the Judicial Hellholes list.<sup>7</sup>

Nearly six out of 10 Louisiana Association of Business and Industry (LABI) members report that frivolous lawsuits increase the costs of doing business, savings they could otherwise re-invest in their business and in the economy.<sup>8</sup> Furthermore, 76 percent of Louisiana voters surveyed in February 2014 agree that state laws need to be strengthened to limit the number of frivolous lawsuits filed.<sup>9</sup>

## February 2014 Poll Shows Majority of Louisiana Voters Back Lawsuit Reform

- 76 percent of respondents agree that state laws need to be strengthened to limit the number of frivolous lawsuits filed.
- 71 percent of survey respondents agree that lawsuit reform will make it easier for Louisiana to attract new businesses and keep existing businesses in the state.
- 70 percent say frivolous lawsuits hurt Louisiana through higher prices for consumer products.
- 69 percent of the respondents believe their constitutional right to a jury trial trumps other concerns, and a majority of respondents support lowering the jury trial threshold. Of note, lower-income and African-American respondents were more likely to support the lower threshold.

[To see all results click here.](#)

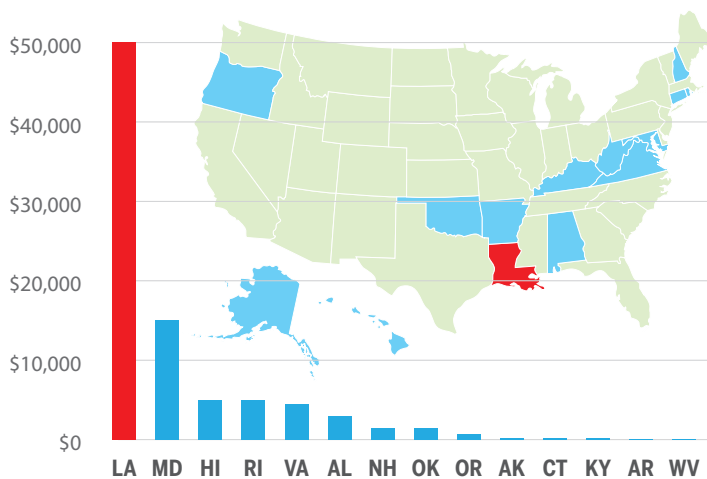
LABI's issue brief, [Making the Case to Improve Louisiana's Business Climate Through Lawsuit Reform](#), provides detailed evidence of the realities and challenges of Louisiana's litigious environment but also offers a number of solutions. **In the 2014 session of the Louisiana Legislature, working with our partners from across the state and legislative allies, LABI prioritized lawsuit reform** in order to improve the judicial climate and reduce the number of frivolous lawsuits and the associated costs to the community. We commend the Louisiana Legislature for passing three major lawsuit reform proposals in 2014 that will:

1. Discourage frivolous legacy lawsuits and speed up more regulatory cleanups prior to costly and lengthy litigation, enacting a compromise solution agreed upon by landowners, the business community, and the oil and gas industry (Act 400 by Sen. Robert Adley);
2. Deter excessive state-led lawsuits that can lead to governmental overreach by prohibiting the state's use of contingency fee contracts, requiring hourly fee schedules with maximum rates that outside attorneys can be paid, and bringing transparency to the process of state-led litigation (Act 796 by Rep. Stuart Bishop); and
3. Curtail unauthorized and excessive litigation filed by the Southeast Flood Protection Authority-East against oil and gas companies that have operated with legal permits in the coastal zone for decades, laying the groundwork to end the lawsuit while leaving the independence and autonomy of the board intact (Act 544 by Sen. Bret Allain). *See page 4 for details on the new laws.*

The new laws passed in the 2014 session represent an important start to a series of changes that must be made to Louisiana's plaintiff-friendly laws, legal infrastructure, and judicial climate. **Despite the clear evidence that Louisiana needs to make big changes in many areas, our successes in 2014 only begin to scratch the surface of the tort reform needs in our state.** Trial lawyers, judges, and others in the judiciary vocally and aggressively opposed several major initiatives, fueling discomfort and reluctance by legislators on both sides of the aisle to vote in support of business owners, civic leaders, and taxpayers directly affected by this persistent problem.

Chief among LABI's proposals for lawsuit reform that failed in the 2014 regular legislative session is lowering the jury trial threshold. Louisiana is one of a handful of states that limits a citizen's constitutional right to a trial by jury, instead requiring a civil trial occur before an elected judge. Furthermore, Louisiana citizens have the highest bar to cross with a \$50,000 minimum civil claim in order to request a trial by a jury of our peers.<sup>10</sup> After Louisiana's jury trial threshold, the next highest state is Maryland at \$15,000.<sup>11</sup> The threshold in Southern states like Florida, Georgia, Mississippi, Texas, and Tennessee, among others, is zero.<sup>12</sup> Louisiana's bar for a jury trial is 28 times higher than the national average. Putting power into the hands of an elected judge allows entrepreneurial trial lawyers to "judge shop" to legally and openly seek a venue with a track record that is more profitable for them. **This market created by the Legislature and unique to Louisiana incentivizes both the filing and settlement of lawsuits under \$50,000, driving up costs and encouraging frivolous cases.**

## Jury Trial Thresholds



*“But all too often small businesses are unfairly targeted by aggressive lawyers trying to score a big win. Many people don’t realize that the cost of defending itself against even one frivolous lawsuit could be enough to force a small business owner to close up shop.”*

– Tim Stine –  
Stine Lumber, Lake Charles

Opponents argue that lowering the jury trial threshold will over-burden courts that already have full dockets – with absolutely no evidence or data to support that position. Opponents argue that it will be difficult to seat a jury if more trials are requested, especially in rural areas, even as 49 other states find a way to secure juries with lower or zero thresholds. Opponents argue that jury trials are expensive, even as current Louisiana law authorizes the court to order the party requesting the jury trial to pay for the costs before the trial begins, including juror fees and expenses and charges of the jury commission, the clerk of court, and the sheriff.<sup>13</sup>

Lawsuit reform is complicated, full of legal terminology, and highly technical. **Those that defend the current litigation climate generally stand to benefit from it,** and that is exactly the behavior displayed during the legislative session. Judges worked openly and furiously to lobby legislators behind the scenes and in committee testimony. They enlisted local officials to write letters on their behalf who in one particular case, when questioned, responded quite simply that they opposed the bill only because of the request by the district judge to do so. On the day of a key vote, legislators even received an emailed letter from the Chief Justice of the Louisiana Supreme Court outlining concerns and deeming the change “premature.”<sup>14</sup> See appendix 2

Meanwhile, as the members of the judiciary worked to maintain the status quo, those citizens losing opportunities for jobs and prosperity and paying more for goods and services were consumed with day-to-day life. The vast majority of small business owners are likely unaware their local judge or clerk of court was actively lobbying against their interests in Baton Rouge. While they may not have the time and resources to engage in the legislative process to the extent the judiciary does, **69 percent of Louisiana voters surveyed believe their constitutional right to a jury trial trumps all other concerns such as more jury trials or increasing judicial workload.**<sup>15</sup>

The reality is that Louisiana’s status as a litigious state has plagued us for years, costing real jobs and economic opportunities. We should no longer stand by and allow such abuses to occur because those with a stake in the legal system aggressively argue against it. LABI and our allies across the state will make lawsuit reform a priority in 2015 and every year thereafter until such fundamental changes are enacted that create a fair, efficient, and accountable civil justice system. **This fact sheet serves as a baseline, outlining major components of Louisiana’s judicial system that are out of line with other states and directly challenging the assertions of opponents during the 2014 legislative session when fighting against legal reform.**

## Progress Made in 2014 with the Support of LABI and the Business Community

### Reformed Legacy Lawsuits

Newly enacted legacy lawsuit reforms will discourage frivolous claims and speed up more regulatory cleanups prior to costly and lengthy litigation. The Louisiana Legislature should be commended for taking action to address the longstanding, unique Louisiana challenge of “legacy lawsuits” whereby landowners allege pollution or contamination of property resulting from the exploration and production activities of oil and gas companies. [Act 400](#) by Sen. Robert Adley (R-Benton) builds upon reforms previously passed by the Louisiana Legislature to offer additional clarity on the procedures and process for cleanup. A 2012 Louisiana State University study noted that legacy lawsuits led to the loss of 1,200 new wells, \$6.8 billion in drilling investments, 30,000 job opportunities, and more than \$10 billion in Louisiana economic output.<sup>16</sup>

Legacy lawsuits typically allege damages from actions that occurred years or even decades prior to the suit and seek to hold both the current operator as well as all prior owners and operators liable for environmental activities occurring throughout the site’s history. The result is protracted litigation and stalled cleanup. A total of 360 legacy lawsuit cases have been filed since 2001.<sup>17</sup> The highest concentration is in southwest Louisiana, but filings have occurred in more than 40 parishes across the state.<sup>18</sup>

The new law represents compromise legislation, agreed upon by both oil and gas companies and the Louisiana Landowner’s Association, to:

- Specify a “rebuttable presumption” that, if a responsible party admits liability for regulatory cleanup, then the cleanup plan structured and approved by the Louisiana Department of Natural Resources is the most feasible plan to evaluate and remediate environmental damage, strengthening the limited admissions process and generating more regulatory cleanups prior to lengthy and costly litigation;
- Define “contamination” to ensure that a claim is based on unsafe or unsuitable levels, not merely the presence of a substance;
- Clarify the types and standards for damages that can be recovered in legacy lawsuits, injecting predictability into the process for all parties; and
- Authorize attorney fees in favor of the party who is dismissed on a motion for preliminary dismissal, discouraging frivolous claims aimed at numerous people and companies in the chain of title.

### Reduced Excessive Litigation by Public Bodies

To deter excessive public lawsuits that can lead to state overreach and the regulation of private industry through litigation, this new law will prohibit the state’s use of contingency fee contracts and cap the rates that outside attorneys can be paid. Prior to passage of [Act 796](#) by Rep. Stuart Bishop (R-Lafayette), the state frequently pursued litigation using private attorneys who receive their payment in a court settlement negotiation, rather than

hourly rates. This process has been conducted without competitive bids or significant oversight.

Louisiana now joins state legislatures across the country, which are moving to restrict the use of contingency fee contracts by public entities. Best-practice reforms include transparency provisions, fee schedules with maximum rates, and improved record-keeping—all part of Louisiana's new law, which:

- Codifies the 1997 Louisiana Supreme Court ruling to prohibit contingency fee contracts by state agencies, boards and commissions in the absence of express statutory authority;
- Requires that any recovery or award of attorney fees, including settlement, belongs to the state and prohibits the payment of attorney fees out of state funds in the absence of express statutory authority or by the Joint Legislative Committee on the Budget between legislative sessions;
- Clarifies that special attorneys employed by state agencies, boards, and commissions are prohibited from receiving "anything of economic value" from a third party as payment for services rendered;
- Establishes a maximum hourly rate for state contracts with outside counsels of \$500 per hour and in the event of settlement or final judgment, reduce the fees to an amount equivalent to \$500 per hour or the maximum rate approved by the Attorney Fee Review Board, whichever is greater;
- Requires record keeping for state contracts with private attorneys, including the hours worked and expenses incurred; and
- Requires additional information in applications to the attorney general and the governor by state boards and commissions to employ outside attorneys, including a copy of the proposed contract, a statement showing real necessity exists, reasons for the action, compensation to be paid, and the statutory authority if the contract contains a contingent fee.

## **Curtailed Unauthorized Governmental Lawsuit Against Industry**

As a case in point of excessive public litigation, a lawsuit was filed in 2013 by the Southeast Flood Protection Authority-East against oil and gas companies that have operated with legal permits in the coastal zone for decades. [Act 544](#) by Sen. Bret Allain (R-Franklin) was enacted to clarify the governmental entities that are authorized to bring a lawsuit from activity regulated by state or federal coastal use permits. In time, it will effectively end the unauthorized lawsuit brought by the flood protection authority while leaving the independence and autonomy of the board intact.

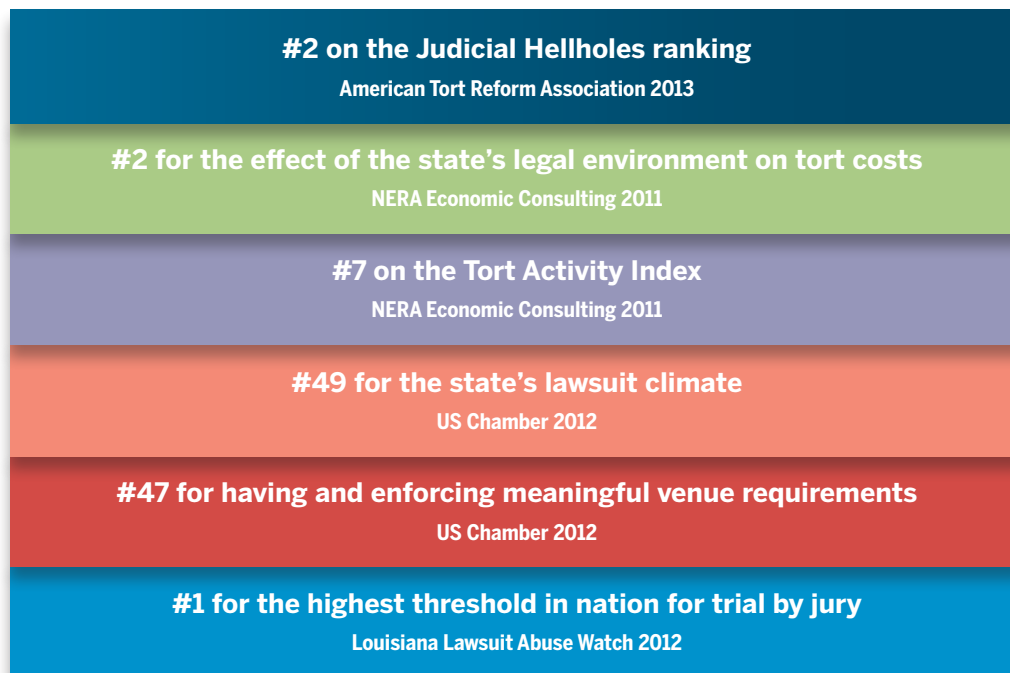
The new law also specifies that money received by state or local government for the enforcement of the Coastal Zone Management Act must only be used for integrated coastal protection and "improving the resiliency of the coastal area." The law is applicable to both future claims as well as existing and pending actions. The goals of building the state's economy while protecting our coast can coexist and flourish together in Louisiana, as it always has. Litigation is not the answer.

# MYTHS & FACTS

## 1. MYTH: Louisiana is just like the rest of the country. We don't have a lawsuit problem.

**FACT:** National economists rank Louisiana's tort activity index at No. 7 in the United States, which encompasses a range of metrics such as lawyer concentration, tort suits, and verdicts.<sup>19</sup> **Among 16 Southern states, Louisiana rises to No. 3 for the number of civil lawsuits filed in state general jurisdiction courts for our population size.**<sup>20</sup>

More than 134,000 civil cases were filed in Louisiana in 2012.<sup>21</sup> With regard to other states, both Alabama and Kentucky provide a similar geographic distribution and population size and demographic for comparison. In Alabama, just 42,489 civil cases were filed in general jurisdiction courts in 2012.<sup>22</sup> Alabama had an estimated 1,081 civil lawsuits filed per 100,000 people while Louisiana courts had 2,717 lawsuits filed per 100,000 people.<sup>23</sup> In Kentucky, there were 47,672 civil suits filed in Kentucky in 2013.<sup>24</sup> In neighboring Texas, 231,489 cases were filed – just double that of Louisiana, despite a population six times larger (26 million).<sup>25</sup>





## 2. MYTH: Louisiana citizens have a right to a trial by jury.

**FACT:** Although the U.S. Constitution explicitly guarantees a citizen's right to a trial by jury when grievances exceed \$20, the Louisiana Constitution is silent. Instead, this drafting loophole allowed Louisiana lawmakers to limit citizens' rights in 1993, setting an exceedingly high bar for civil jury trials. The current Legislature has thus far refused to right this wrong, voting instead to continue to deny Louisianans the absolute right to a civil jury trial. Despite the fact that more than 134,000 civil cases were filed in Louisiana in 2012, only 235 civil jury trials were conducted (less than two percent).<sup>26</sup> **At the low end, some judicial districts actually had zero civil jury trials.** At the high end, in more populous areas, there were still just 41 civil jury trials in Orleans Parish and 37 in the 19th Judicial District Court in Baton Rouge. The third highest number of civil jury trials was in the 24th Judicial District Court (Jefferson) with just 21 trials in all of 2012.

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*“... where the value in controversy shall exceed twenty dollars,  
the right of trial by jury shall be preserved...”*

– Seventh Amendment to the U.S. Constitution –

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A review of civil jury trials in all Judicial District Courts reveals that **there are more district judges in Louisiana than there were civil jury trials in 2012.**<sup>27</sup> In 30 of the 43 districts, the Legislature has authorized more judges than civil jury trials heard in a year. In all but two courts (Orleans and the 19th), no judge would have been required to preside over more than two civil jury trials in 2012.

**TABLE 1: Number of Civil Jury Trials and Judges, By District Court**

*Source: Louisiana Supreme Court<sup>28</sup>*

Judicial District Court	Parishes	2012 Civil Jury Trials	Number of Judges <sup>29</sup>
<b>STATEWIDE</b>		<b>235</b>	<b>236</b>
Orleans Civil	Orleans	41	14
19 <sup>th</sup>	East Baton Rouge	37	15
24 <sup>th</sup>	Jefferson	21	16
15 <sup>th</sup>	Acadia, Lafayette, Vermilion	16	13
14 <sup>th</sup>	Calcasieu	11	9
21 <sup>st</sup>	Livingston, St. Helena, Tangipahoa	10	9
1 <sup>st</sup>	Caddo	10	11
22 <sup>nd</sup>	St. Tammany, Washington	10	12
23 <sup>rd</sup>	Ascension, Assumption, St. James	10	5

16 <sup>th</sup>	Iberia, St. Martin, St. Mary	9	8
27 <sup>th</sup>	St. Landry	8	4
4 <sup>th</sup>	Morehouse, Ouachita	7	11
32 <sup>nd</sup>	Terrebonne	7	5
18 <sup>th</sup>	Iberville, Pointe Coupee, West Baton Rouge	5	4
17 <sup>th</sup>	Lafourche	4	5
9 <sup>th</sup>	Rapides	3	7
26 <sup>th</sup>	Bossier, Webster	3	6
2 <sup>nd</sup>	Bienville, Claiborne, Jackson	2	3
3 <sup>rd</sup>	Lincoln, Union	2	3
5 <sup>th</sup>	Franklin, Richland, West Carroll	2	3
12 <sup>th</sup>	Avoyelles	2	2
20 <sup>th</sup>	East Feliciana, West Feliciana	2	2
29 <sup>th</sup>	St. Charles	2	3
30 <sup>th</sup>	Vernon	2	3
31 <sup>st</sup>	Jefferson Davis	2	1
34 <sup>th</sup>	St. Bernard	2	5
10 <sup>th</sup>	Natchitoches	1	2
28 <sup>th</sup>	LaSalle	1	1
36 <sup>th</sup>	Beauregard	1	2
38 <sup>th</sup>	Cameron	1	1
40 <sup>th</sup>	St. John the Baptist	1	3
6 <sup>th</sup>	East Carroll, Madison, Tensas	0	2
7 <sup>th</sup>	Catahoula, Concordia	0	2
8 <sup>th</sup>	Winn	0	1
11 <sup>th</sup>	Sabine	0	1
13 <sup>th</sup>	Evangeline	0	2
25 <sup>th</sup>	Plaquemines	0	2
33 <sup>rd</sup>	Allen	0	2
35 <sup>th</sup>	Grant	0	1
37 <sup>th</sup>	Caldwell	0	1
39 <sup>th</sup>	Red River	0	1
42 <sup>nd</sup>	DeSoto	0	2

**There are 36 states with \$0 thresholds for a jury trial, and there is absolutely no evidence of an overwhelming workload.**<sup>30</sup> Studies have shown that less than one percent of civil cases go to jury trial in states with no jury threshold.<sup>31</sup> In our neighbor Texas, where the threshold is \$0, just .58 percent of civil cases go to jury trial.<sup>32</sup> In Alabama, of the 42,489 civil cases filed in general jurisdiction courts in 2012, just 344 jury trials were held in the state – even with a \$3,000 jury trial threshold.<sup>33</sup> **While Louisiana has 236 judges, Alabama has just 144.**<sup>34</sup>



### 3. MYTH: Louisiana's judges are overworked, and dockets are already full.

**FACT:** The national median number of full-time judges in the U.S. per 100,000 population is 2.8.<sup>35</sup> **Louisiana has nearly double the national median number of judges per capita with 5.2 judges for every 100,000 people in the state,** whereas Alabama has 3, Kentucky has 1.7, and South Carolina has 1.<sup>36</sup> All of these states have close to the same population as Louisiana but with far lower jury trial thresholds than Louisiana. (Alabama's threshold is \$3,000. Kentucky's is \$250. South Carolina's is \$0.) Yet, there are fewer judges required in these states. The same trend holds true with our immediate neighbors. Mississippi has 1.7 judges per 100,000 people, Texas has 1.8, and Arkansas has 4.1 – all with lower jury trial thresholds and fewer judges.<sup>37</sup> (Mississippi's threshold is \$0. Texas' is \$0. Arkansas' is \$100.)<sup>38</sup>

**TABLE 2: Number of Judges Per Capita, By State**

Source: National Center for State Courts<sup>39</sup>

General Jurisdiction Courts	Full-Time Judges	Per 100,000 Population	Ranking
North Dakota	44	<b>6.5</b>	1
Oklahoma	241	<b>6.4</b>	2
Kansas	167	<b>5.8</b>	3
Connecticut	201	<b>5.6</b>	4
Alaska	40	<b>5.6</b>	5
Missouri	334	<b>5.6</b>	6
<b>Louisiana</b>	<b>236</b>	<b>5.2</b>	<b>7</b>
South Dakota	41	<b>5.0</b>	8
Indiana	315	<b>4.9</b>	9
New Jersey	412	<b>4.7</b>	10
Montana	44	<b>4.4</b>	11
Wisconsin	248	<b>4.4</b>	12
New Mexico	88	<b>4.3</b>	13
Arkansas	120	<b>4.1</b>	14
Wyoming	22	<b>3.9</b>	15
West Virginia	70	<b>3.8</b>	16
Pennsylvania	450	<b>3.5</b>	17
Hawaii	48	<b>3.5</b>	18
Ohio	394	<b>3.4</b>	19
Florida	599	<b>3.2</b>	20
Alabama	144	<b>3.0</b>	21
Nebraska	55	<b>3.0</b>	22
<b>National Median</b>		<b>2.8</b>	
Washington	188	<b>2.8</b>	23
Idaho	43	<b>2.7</b>	24
Maryland	157	<b>2.7</b>	25
Nevada	72	<b>2.7</b>	26
Utah	71	<b>2.6</b>	27
Tennessee	154	<b>2.4</b>	28
New York	455	<b>2.3</b>	29
Oregon	174	<b>2.3</b>	30
Georgia	205	<b>2.1</b>	31
Rhode Island	22	<b>2.1</b>	32
Maine	53	<b>2.0</b>	33
Virginia	157	<b>2.0</b>	34
Texas	454	<b>1.8</b>	35
Mississippi	51	<b>1.7</b>	36
Kentucky	146	<b>1.7</b>	37
Colorado	164	<b>1.6</b>	38
Vermont	30	<b>1.6</b>	39
New Hampshire	21	<b>1.6</b>	40
Arizona	174	<b>1.4</b>	41
Massachusetts	82	<b>1.3</b>	42
North Carolina	111	<b>1.2</b>	43
Michigan	228	<b>1.2</b>	44
Delaware	19	<b>1.1</b>	45
South Carolina	46	<b>1.0</b>	46

**Louisiana’s judges are middle of the pack nationally for their total criminal and civil caseload, ranking slightly below the U.S. average in general jurisdiction courts.**<sup>40</sup> One thousand six hundred and twenty-three non-traffic cases are filed per year for each Louisiana judge, while nationally judges receive an estimated 1,780 cases.<sup>41</sup> Alabama is close to Louisiana’s number at 1,567.<sup>42</sup> Kentucky is lower at 1,340 while South Carolina has more than 5,000 non-traffic cases filed per judge.<sup>43</sup>

**TABLE 3: Incoming Cases Per Judge, By State**

*Source: National Center for State Courts<sup>44</sup>*

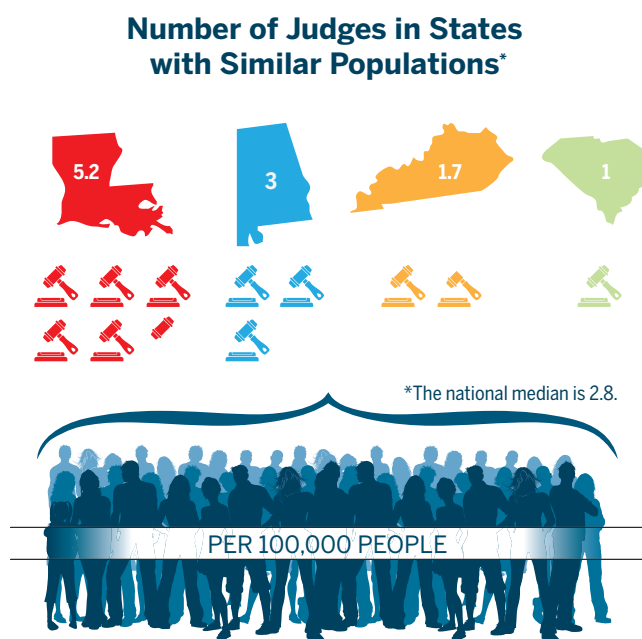
State	Incoming Non-Traffic Cases Per Judge	Ranking
South Carolina	5,060	1
New Jersey	3,410	2
Florida	3,100	3
South Dakota	2,741	4
Utah	2,644	5
Indiana	2,638	6
Maine	2,555	7
North Carolina	2,214	8
North Dakota	2,192	9
Georgia	2,157	10
Maryland	2,068	11
Vermont	2,044	12
Tennessee	2,017	13
Oregon	1,982	14
Texas	1,976	15
Connecticut	1,960	16
Wisconsin	1,956	17
Ohio	1,900	18
Missouri	1,898	19
Arkansas	1,863	20
Virginia	1,843	21
Nevada	1,826	22
Kansas	1,782	23
<b>National Median</b>	<b>1,780</b>	<b>-</b>

Arizona	1,778	24
Delaware	1,728	25
Pennsylvania	1,725	26
<b>Louisiana</b>	<b>1,623</b>	<b>27</b>
New Mexico	1,569	28
Alabama	1,567	29
Oklahoma	1,490	30
Colorado	1,425	31
Michigan	1,344	32
Kentucky	1,340	33
Washington	1,329	34
New York	1,231	35
Montana	1,042	36
Hawaii	1,023	37
Nebraska	1,002	38
New Hampshire	1,001	39
Wyoming	866	40
Rhode Island	776	41
West Virginia	691	42
Mississippi	541	43
Alaska	537	44
Idaho	516	45
Massachusetts	379	46

#### 4. MYTH: The Louisiana judiciary is underfunded by the State.

**FACT:** For Fiscal Year 2015, the judiciary was appropriated \$179 million by the Louisiana Legislature, of which \$169 million was State General Fund.<sup>45</sup> **This represented a nearly seven percent increase over the Fiscal Year 2014 budget of \$167 million, even as the state faced a significant multi-year deficit addressed through reductions across state agencies and services.** In recent years, despite these state budget shortfalls, the number of central office staff in the Louisiana judiciary has stayed the same or increased.<sup>46</sup> Meanwhile, 19 states had to make layoffs of staff and 17 states reduced their court hours of operation. Seventeen more states actually delayed filling their judicial vacancies.<sup>47</sup>

It is important to note that information on the budget and expenditures of the Louisiana judiciary, the judicial district courts, clerks of court, and related agencies is not readily available. Unlike the other branches of government, where hundreds of hours of public hearings and debate take place before and after enactment of the annual state budget, **the judiciary does not engage the public in making its budget request and makes only limited budgetary information readily available to the public after the fact.** As a result, the budgetary information contained in this section was compiled from a variety of sources and relies primarily on national think tanks and limited data from the Louisiana Supreme Court.



Although Louisiana does not have a unified state court funding system, the state's budget trends much like two-thirds of other states that receive a significant source of funding from the State General Fund and state legislatures determine the allocation.<sup>48</sup> This state appropriation funds the operations of the Louisiana Supreme Court, appeals courts, family and juvenile courts, the administrative office of the courts, as well as the salaries of all trial court judges.<sup>49</sup> In fact, nearly all states fund the salaries of trial court judges. In Louisiana, the state also funds a portion of parish and city court judges' salaries as well as all retired and ad hoc judges.

Courthouse fees and fines play an important role in the finances of the judicial system. **In April 2012, the National Center for State Courts estimated that Louisiana's general jurisdiction courts had the third highest civil filing fee in the country at \$476.**<sup>50</sup> Neighboring states ranged from \$150 in Arkansas to \$252 in Texas to \$350 in Mississippi. In Kentucky and South Carolina—states with similar population size and demographics—the civil filing fees were \$115 and \$150 respectively.

## Public Access and Oversight of the Third Branch of Government

Information and data on the operations of Louisiana courts is difficult to find, in stark contrast with most state agencies. **Open meeting laws** do not apply to the judicial branch, and court proceedings are generally not broadcast in the same way as legislative hearings, for example.<sup>51</sup> Citizen watchdog groups report that even when members of the community attend court proceedings in person, sidebars and meetings in chambers make it difficult for the public to access the process and even in the courtroom itself, there are difficulties with audio more than 10 percent of the time.<sup>52</sup>

With regard to **public records**, the Louisiana Supreme Court has stated that the court is not “without authority to protect itself and its committees from being required to disclose sensitive documents...”<sup>53</sup> The Louisiana Supreme Court publishes an annual report with overview statistics, yet at the time of publication (August 2014), data on cases and trials was only available from 2012.<sup>54</sup> It is difficult, if not impossible, to find information on the budgets, staffing, and operations of individual judicial districts, including the offices of clerks of court. Neither revenue sources nor expenditures are easily accessible to the public, unlike for example, the contract database run by the State of Louisiana known as LaTrac. Centralized information on items of interest to the public such as filing fees for civil cases does not appear to be compiled or available online. An independent national review notes Louisiana has no process in law to evaluate the performance of judges or even access the administrative records of the court.<sup>55</sup> Louisiana’s judiciary also gets failing scores for making court decisions and opinions readily available to the public.<sup>56</sup>

In addition to exceptions in public records and open meetings laws, judges are completely exempted from the statutory **Louisiana Code of Governmental Ethics** and authorized to establish their own ethical provisions in the Code of Judicial Conduct.<sup>57</sup> The lack of statutory requirements for judicial conflict of interest and financial disclosure laws are behind **Louisiana’s F grade for Judicial Accountability** from the State Integrity Investigation.<sup>58</sup> According to these national groups, there are no restrictions in Louisiana law to prevent nepotism or patronage by members of the judiciary nor are there requirements in law for independent reviews of judicial financial disclosure forms. When financial disclosure was enacted for members of the executive branch, legislators, and boards and commissions, the judicial branch was encouraged by a legislative resolution to enact similar standards upon itself, which it did.<sup>59</sup> However, the judges’ completed forms do not appear to be available and searchable online in the same manner as similar documentation for all other public officials.

The principle of judicial independence as a separate branch of government is an important and historic American tenet. However, independence and accountability can be promoted simultaneously. As one expert notes: “Judicial independence does not imply immunity from oversight or from criticism.”<sup>60</sup> The absence of very basic information on court operations and budgeting has required Herculean efforts by civil society, such as Court Watch NOLA’s 100 volunteers who made 2,647 separate courtroom observations in 2013 alone just to secure such data as the length of delays, continuances, and number of days to resolve a case.<sup>61</sup> There is much the Louisiana judiciary could do to improve access for its citizens and taxpayers.

## 5. MYTH: As public servants, Louisiana's judges do not receive substantial compensation.

**FACT:** Louisiana judges are paid more than the national median judicial salary.<sup>62</sup> In fact, after adjusting for the cost of living, **the National Center for State Courts ranks the salary of Louisiana's district court judges at No. 11.**<sup>63</sup> Louisiana's district court judges have an average salary of \$143,253 annually, while the national median salary for judges in general jurisdiction courts is \$139,919.<sup>64</sup> By comparison, general jurisdiction trial judges in our neighboring states earned \$149,000 (Texas), \$138,982 (Arkansas) and \$112,128 (Mississippi).<sup>65</sup>

Of note, half of states have frozen judicial salaries in recent years due to the impact of the recession on state budgets.<sup>66</sup> In Louisiana, however, **the Legislature granted all judges in the state a five-year pay increase that was enacted in 2013.**<sup>67</sup> In July last year, district judges received an immediate four percent pay raise upon enactment of the bill. According to the law that was passed by the Legislature, they will receive another 2.1 percent in 2014 and again in 2015, 2016 and 2017. Salary increases were provided for Supreme Court judges, appeals judges, as well as parish and city judges in the same bill. It passed the House with 79 votes and the Senate with 27.<sup>68</sup>

**All of the raises were paid for with State General Funds.** The legislative fiscal note required \$2.5 million in State General Fund in Fiscal Year 2014 and will cost \$1.4 million this year and every year through Fiscal Year 2018.<sup>69</sup> When the salary increases are taken into account in July 2017, and holding other states at 2013 numbers, the salaries of Louisiana district court judges will rank No. 12 (in real terms, not when adjusted for cost of living).<sup>70</sup>



**Louisiana's general jurisdiction judges are paid \$143,253 annually on average.**  
**The US average is \$139,919.**

## 6. MYTH: Jury trials are too costly for Louisiana's courts

**FACT:** In Louisiana, **the party requesting a trial by jury is required by law to pay all costs associated with that trial.** When the case has been set for trial, the Code of Civil Procedure specifies "the court shall fix the amount of the bond to cover all costs related to the trial by jury" and set a time for filing the bond.<sup>71</sup> The law further authorizes courts to instead order the party requesting the jury trial to make a cash deposit no more than 30 days before the trial begins that "include sufficient funds for payment of all costs associated with a jury trial, including juror fees and expenses and charges of the jury commission, clerk of court, and sheriff."<sup>72</sup> Without this deposit in place by the deadline, the party making the request automatically waives the request for a jury trial.

According to Louisiana's Code of Civil Procedure, the required deposit cannot exceed \$2,000 for the first day and \$400 for each additional day the court estimates the trial will last.<sup>73</sup> Still, the court may require an additional amount to be filed during the trial if the original cash deposit is insufficient to pay jury costs. After payment of all jury costs, any unexpended amounts remaining in the cash deposit must be refunded by the clerk of court to the party filing the cash deposit. The clerks of court testified at the 2014 legislative session that they are often forced to expend resources on a jury trial and await reimbursement. However, of particular interest, the rules of the Louisiana Supreme Court actually do not allow courts to require a bond be filed or costs paid more than 180 days before trial — an obstacle that can be easily remedied by the Legislature or the courts.<sup>74</sup>

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*“We must take steps to increase citizen access and input into the legal system because lawsuit abuse affects everyone. It drives jobs out of our state. It increases the cost of everyday goods and services, like auto insurance and health care. And it hurts small business owners, entrepreneurs, and job creators.”*

– Suzanne Rouse –  
Tonti Management, New Orleans

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In committee testimony in 2014, the clerks of court also reported that many litigants in Louisiana cannot afford to pay the costs of a trial by jury, citing prisoners who file lawsuits as an example. However, there are various provisions in place in Louisiana law to ensure the costs are borne by the parties and the clerks of court receive payment even when a litigant files an affidavit of poverty or a lawsuit in forma pauperis (a legal term for an individual who is unable to pay the court costs because of poverty).<sup>75</sup>

First, a person who is unable to pay the costs of court due to poverty but wants a jury trial is required to file an affidavit with supporting documentation. There is a subsequent inquiry by the court, and a rebuttable presumption exists if his/her income is less than or equal to 125 percent of the federal poverty level or is receiving public assistance benefits at which point the clerk of court is also authorized to traverse the facts alleged in the affidavits of poverty. If the court allows a party to litigate without the payment of costs, records must be kept of all costs, and **if judgment is rendered in favor of the indigent party, then the other party must pay all costs due the public officers to whom the costs would be payable.** If judgment is rendered against the indigent plaintiff, he still must pay the costs he incurred and those recoverable by the adverse party. If the party is a prisoner, Louisiana law still requires him to pay the full amount of the filing fee, and the order granting a prisoner's request to proceed in forma pauperis results in an automatic stay on all proceedings until all costs of court and fees due the clerk are paid.<sup>76</sup>

Finally, in cases of poverty, there can be no compromise between the parties, no dismissal prior to judgment, and no release of claim or satisfaction of a judgment unless all court costs are paid to the clerk of court. The clerks of court are even granted a lien for the payment of such costs superior to that of any other party on any monies or assets transferred in settlement of the claim. Clearly, **the Legislature has provided every possible avenue for the courthouse to receive full payment and reimbursement for the costs of jury trial, and arguments that lowering the jury trial will increase costs to the clerks of court and local government should be viewed with some skepticism as a result.**



7. **MYTH: Louisiana is a rural state and cannot handle any potential new civil jury trials if the threshold is lowered from \$50,000.**

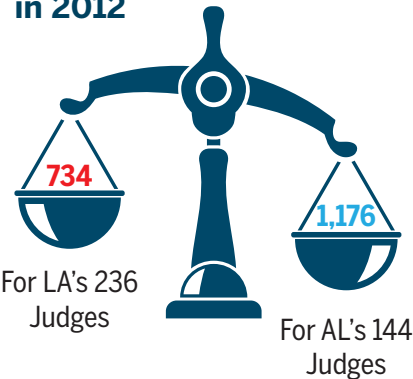
**FACT:** As noted above, **very few jury trials occur now in Louisiana.** Furthermore, there are not significantly more jury trials in other states with lower thresholds — even states with a mostly rural population like Alabama, Arkansas, and Mississippi. If these rural states are able to secure juries even with low or \$0 thresholds on civil cases, it is unclear why Louisiana would uniquely face a challenge in this area.

The National Center for State Courts notes **nearly 32 million people receive jury summons nationwide in a year, but only 1.5 million Americans are actually impaneled for service – which is less than one percent of the adult population.**<sup>78</sup> In Louisiana, the percent of adults actually impaneled drops to 0.5 percent (half of one percent).<sup>79</sup> Of these individuals, in Louisiana, four out of 10 served one day or trial or less and another 50 percent served just two to five days.<sup>80</sup>

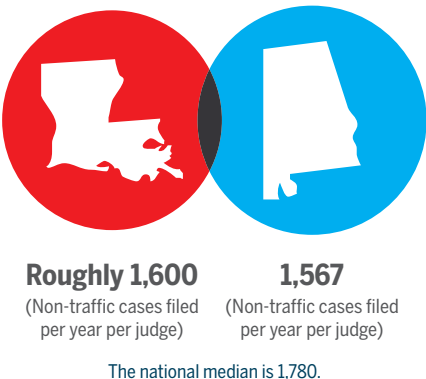
There are numerous national resources available on jury management and jury recruitment with best practices and creative tools that can be implemented by any Judicial District Court facing a challenge in securing qualified jurors. **Across the country, policies have been put in place to make jury service more convenient and inclusive. Such processes and procedures are left up to the judicial system, not the Louisiana Legislature.** In fact, decisions related to jury operations and trial practices are often “left to the discretion of individual courts and judges to be implemented on a court-by-court, judge-by-judge, or even trial-by-trial basis.”<sup>81</sup> A national study notes that Louisiana actually trends toward local control over jury operations — a system described as “somewhat permissive” on the continuum of state control vs. local control.<sup>82</sup> In 2013 performance figures reported to the Legislature, 98 percent of surveyed district court chief judges indicated that their court had taken steps that year to make jury service “more convenient or effective.”<sup>83</sup>

TABLE 4: Jury Trial Thresholds of Southern States	
Source: Louisiana Lawsuit Abuse Watch <sup>77</sup>	
Southern States	Jury Trial Threshold
Alabama	\$3,000
Arkansas	\$100
Florida	\$0
Georgia	\$0
Kentucky	\$250
Louisiana	\$50,000
Maryland	\$15,000
Mississippi	\$0
Missouri	\$0
North Carolina	\$0
Oklahoma	\$1,500
South Carolina	\$0
Tennessee	\$0
Texas	\$0
Virginia	\$4,500
West Virginia	\$20

**Number of Criminal Jury Trials in 2012**



**Caseload**



**Number of Civil Jury Trials in 2012**



## 8. MYTH: Louisiana's criminal justice system is more overwhelmed than other states and therefore there is not enough capacity for civil cases.

**FACT:** The number of criminal trials in Louisiana fell from 1,015 in 2011 to 734 in 2012.<sup>84</sup> While district attorneys may also serve as the parish attorney in civil cases, lowering of the jury trial threshold is not expected to materially increase their workloads in these civil matters.

Although Louisiana has a high number of criminal cases filed compared to other states, this does not seem to result in a similarly high number of jury trials.<sup>85</sup> **Louisiana district judges only presided over 734 criminal jury trials in 2012, which means fewer than five percent went to a jury.**<sup>86</sup> A national report noted that 76 percent of jury trials in Louisiana are for felonies or misdemeanors, whereas just 22 percent are civil trials.<sup>87</sup> This stands in contrast to all state courts nationally, where more than one-third of all trials are civil.<sup>88</sup>

Furthermore, as stated above, Louisiana ranks No. 7 in judges per capita and arguably could handle the additional caseload.<sup>89</sup> Alabama serves as an example of another Southern state with similar population size and demographic makeup — and ranks in the Top 10 nationwide for the number of criminal cases filed:

- **Alabama's 144 judges presided over 1,176 criminal jury trials and 344 civil jury trials with a \$3,000 threshold.**<sup>90</sup>
- **Louisiana's 236 judges presided over 734 criminal jury trials and 235 civil jury trials with a \$50,000 threshold.**<sup>91</sup>

The following table examines the caseload for Louisiana judges of both criminal and civil trials combined. The statewide average number of all jury trials presided over by each judge is 4.1. In 29 of the 43 Louisiana civil and criminal judicial districts, there are fewer than three jury trials per judge.

**TABLE 5: Louisiana Jury Trials and Judges, By District**

*Source: Louisiana Supreme Court<sup>92</sup>*

Judicial District Court	Parishes	2012 Civil Jury Trials	2012 Criminal Jury Trials	2012 Total Jury Trials	Number of Judges	Trials per Judge
<b>STATEWIDE</b>		<b>235</b>	<b>734</b>	<b>969</b>	<b>236</b>	<b>4.1</b>
Orleans	Orleans	41	190	231	14	16.5
5 <sup>th</sup>	Franklin, Richland, West Carroll	2	29	31	3	10.3
22 <sup>nd</sup>	St. Tammany, Washington	10	106	116	12	9.7
28 <sup>th</sup>	LaSalle	1	6	7	1	7.0
27 <sup>th</sup>	St. Landry	8	17	25	4	6.3
20 <sup>th</sup>	East Feliciana, West Feliciana	2	10	12	2	6.0
24 <sup>th</sup>	Jefferson	21	75	96	16	6.0
19 <sup>th</sup>	East Baton Rouge	37	45	82	15	5.5
32 <sup>nd</sup>	Terrebonne	7	19	26	5	5.2
31 <sup>st</sup>	Jefferson Davis	2	3	5	1	5.0
23 <sup>rd</sup>	Ascension, Assumption, St. James	10	14	24	5	4.8
1 <sup>st</sup>	Caddo	10	41	51	11	4.6
15 <sup>th</sup>	Acadia, Lafayette, Vermilion	16	40	56	13	4.3

11 <sup>th</sup>	Sabine	0	3	3	1	3.0
36 <sup>th</sup>	Beauregard	1	5	6	2	3.0
16 <sup>th</sup>	Iberia, St. Martin, St. Mary	9	14	23	8	2.9
21 <sup>st</sup>	Livingston, St. Helena, Tangipahoa	10	15	25	9	2.8
14 <sup>th</sup>	Calcasieu	11	13	24	9	2.7
40 <sup>th</sup>	St. John the Baptist	1	7	8	3	2.7
6 <sup>th</sup>	East Carroll, Madison, Tensas	0	5	5	2	2.5
10 <sup>th</sup>	Natchitoches	1	4	5	2	2.5
18 <sup>th</sup>	Iberville, Pointe Coupee, West Baton Rouge	5	5	10	4	2.5
26 <sup>th</sup>	Bossier, Webster	3	12	15	6	2.5
33 <sup>rd</sup>	Allen	0	5	5	2	2.5
2 <sup>nd</sup>	Bienville, Claiborne, Jackson	2	5	7	3	2.3
9 <sup>th</sup>	Rapides	3	13	16	7	2.3
12 <sup>th</sup>	Avoyelles	2	2	4	2	2.0
17 <sup>th</sup>	Lafourche	4	6	10	5	2.0
29 <sup>th</sup>	St. Charles	2	4	6	3	2.0
35 <sup>th</sup>	Grant	0	2	2	1	2.0
3 <sup>rd</sup>	Lincoln, Union	2	3	5	3	1.7
30 <sup>th</sup>	Vernon	2	3	5	3	1.7
13 <sup>th</sup>	Evangeline	0	3	3	2	1.5
42 <sup>nd</sup>	DeSoto	0	3	3	2	1.5
25 <sup>th</sup>	Plaquemines	0	2	2	2	1.0
37 <sup>th</sup>	Caldwell	0	1	1	1	1.0
38 <sup>th</sup>	Cameron	1	0	1	1	1.0
39 <sup>th</sup>	Red River	0	1	1	1	1.0
4 <sup>th</sup>	Morehouse, Ouachita	7	3	10	11	0.9
34 <sup>th</sup>	St. Bernard	2	2	4	5	0.8
7 <sup>th</sup>	Catahoula, Concordia	0	1	1	2	0.5
8 <sup>th</sup>	Winn	0	0	0	1	0.0

# ANALYSIS

## What does the data show?

Several conclusions can be drawn from the data in this report. First and foremost, Louisiana has a litigious climate, and too many lawsuits are filed. However, from publicly available research, the judiciary does not appear to be overwhelmed as a result. By all indications, **Louisiana has a high number of judges per capita, a below average caseload and an adequately funded judiciary.** The justification offered by judges, clerks of court, and local officials to maintain dramatic limitations on civil jury trials is not based in fact.

Without a doubt, the vast majority of judges in Louisiana are hardworking and well-intended individuals that render fair and efficient judgments in their communities every day. Nothing in this report indicates otherwise. That said, rather than work against changes, **increased access of Louisiana citizens to a fair, transparent, and efficient judicial system should be a priority for the judiciary. In addition to lowering the jury trial threshold, the judicial system should take bold steps to enhance transparency,** offering insight to the public on their budgeting and decision-making. Rather than protecting an unreasonable financial threshold, the courts should work with the Legislature to determine an appropriate threshold based on data and best practices, rather than assumptions.

## Why does it matter?

There is no question that volumes of time, energy, and resources are wasted on unnecessary lawsuits and settlements. When judges work to protect the status quo—without data-driven analysis—the courthouse may win the day, but the state ultimately loses. Costs of excessive and frivolous lawsuits are passed to Louisiana consumers, and the state's poor legal reputation makes it harder for the state to continue to win projects, grow existing businesses, and prosper economically. While the jury trial threshold is one critical and pressing need, numerous reforms must be made to Louisiana's laws and judicial system to truly move the state forward.

## What's next?

Building on the successes of the 2014 regular legislative session, **LABI and our members are emboldened and more determined than ever to change the Louisiana judicial system and bring a fair and balanced legal environment to businesses and taxpayers alike.** In 2015 and every year thereafter until we are successful, LABI will work with the Louisiana Legislature on policy and legal solutions and strive to elect legislators, judges, and others that put the rights of the people before the convenience of the courthouse.

For more information on how Louisiana can address the lawsuit climate, see LABI's Issue Brief: [\*\*Making the Case to Improve Louisiana's Business Climate through Lawsuit Reform.\*\*](#)

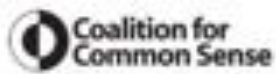
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*“The bottom line is Louisiana's poor legal climate makes it harder for small businesses owners to survive and thrive. We need lawsuit reform that will help bring integrity and fairness back to our courts... The purpose of our civil justice system is to provide an avenue of recourse for those who have been truly wronged. Not to enrich the pockets of some lawyers.”*

– Mike Carter –  
Monroe Rubber and Gasket, Monroe

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## APPENDIX 1: Louisiana Statewide Coalition Statement of Support for Lawsuit Reform



**WE SUPPORT CHANGE NOW TO IMPROVE LOUISIANA'S LAWSUIT CLIMATE.**

### WHY?

America maintains the most expensive tort system in the world to the tune of \$865 billion every year, yet studies show victims receive less than 15-cents of every dollar. Within this broken system, Louisiana ranks #7 nationwide on the Tort Activity Index, #49 for our lawsuit climate, and #2 on the *Judicial Hellholes* list.

Excessive litigation affects the economy in numerous ways, but first and foremost, by increasing the cost of doing business. Companies large and small have no choice but to share these costs with the consumer, whether through higher insurance premiums or direct costs of goods and services. This "tort tax" of unnecessary costs and waste is estimated at \$9,827 annually for a family of four. Ultimately, society as a whole feels the effect of excessive lawsuits, a silent weapon against job creation and economic growth. The poor legal climate in Louisiana costs as many as 50,000 new jobs every year, and changes to our system could result in \$1.1 billion in savings for Louisianans.

An efficient and fair civil justice system is necessary to incentivize safe products and services and to provide justice to victims when wrongdoing occurs. But Louisianans recognize that is not what is in place today. Although more than eight out of 10 Louisiana voters believe lawsuit reform is needed, policymakers have not done enough to recognize and fight the costs of excessive litigation and a poor legal climate.

*Page 1 of 2*





## APPENDIX 1 (continued)



### WHAT?

The vast majority of tort lawsuits are filed in state courts, and the laws regulating this system can be changed by state legislatures. The Louisiana regular legislative session convened March 10, 2014, and our organizations and companies have come together to support measures to improve Louisiana's legal system that incorporate the following principles:

1. *Limit the number of frivolous lawsuits filed in Louisiana, preserving a fair and efficient system for real claims and real victims.*
2. *Reduce the "tort tax" on every-day Louisianans, conserving resources for more important priorities for families, businesses, and the economy.*
3. *Inject transparency and fairness into a closed process, and hold our public entities accountable for decisions that add to the lawsuit climate in Louisiana.*
4. *Increase citizen access and input into the legal system.*

### WHO?

These partners, organizations, and companies have come together to urge the Louisiana Legislature and the Governor to take action this session to improve Louisiana's lawsuit climate.

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## APPENDIX 2: Chief Justice Letter to Legislators



### Supreme Court STATE OF LOUISIANA

CHIEF JUSTICE  
**Bernette Joshua Johnson**

400 ROUNDR STREET  
NEW ORLEANS, LOUISIANA, 70130  
TELEPHONE 504.380-2350  
FAX 504.380-2359  
EMAIL bjohnson@lsc.state.la.us

April 9, 2014

#### By E-Mail

To Members of the Louisiana House of Representatives and the Louisiana Senate:

As you know, I served as a civil trial judge for ten years before my election to the Louisiana Supreme Court in 1994. From that perspective I would offer the following observations on jury trials.

It is of no moment to courts whether the issue of lowering the jury threshold is framed as a tort reform issue, a "pro-business" issue, or a citizens' access to courts issue—such a fundamental change in court structure is one that will most certainly have an impact on the manner in which our courts operate. Finding time on dockets that may already be crowded with complex civil cases; cases in the "pipeline" requiring hearings, conferences and ongoing management and oversight; and time-sensitive criminal, juvenile and family matters will likely present significant challenges to judges, administrators, clerks and their staffs. Crowded dockets can easily translate into unwelcome delays, an unintended but arguably likely result of such a significant change in the law. There is a limit on the amount of time available to accommodate cases which go to trial, and even our hardest working judges may not have the time or space on their dockets available to provide for the increase in cases that will involve trial preparation and a jury. Bench trials, on the other hand, require far less time and fewer resources to handle.

Much commentary surrounds this issue, with anecdotal information as its main source. The absence of data needed to support the debate about the utility of lowering the jury threshold makes it especially important to ensure that the common sense implications of the proposed shift in policy are given their due. These implications will affect judges, justice system partners, lawyers, and litigants—all of whose interests need to be more fully incorporated into the debate about this issue.

## APPENDIX 2 (continued)

Additional data and information is needed in order to fully assess the impact of the legislation that is being proposed. Until such information is gathered and finds its way into the discussion about the merits and implications of such a major change in court structure, the decision to lower the jury threshold is premature.

Sincerely,



Bernette J. Johnson  
Chief Justice

Copy: Justices

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