

## JUDICIAL MODERNIZATION SERIES

### *Louisiana's Judiciary: Improving Access, Fairness and Transparency*

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The Louisiana Association of Business and Industry (LABI) is embarking on a four-part series to increase public understanding of Louisiana's judiciary in the hopes of implementing best practices that will promote trust in our vast court system. To achieve this goal, LABI is steered by three major guideposts: greater access, transparency and efficiency. One path to improved transparency and access is simply through modernization of the court system. LABI will publish four installments in this series aimed at doing just that. Part I will address improving access to our courts through better, more coordinated technology. Part II will detail the need for more robust ethics rules and enforcement and Part III will examine how to achieve greater transparency in judicial funding and expenditures. Finally, Part IV will discuss the potential realignment of judgeships, a topic of particular importance this year as our Legislature embarks upon its decennial duty to evaluate many district boundaries.

## INTRODUCTION

For decades, public scrutiny from active voters, engaged civic and special interest groups, members of the media and elected officials has resulted in fairly transparent and accountable executive and legislative branches. But those same conditions have room for growth in our judiciary, where scrutiny and know-how are reserved for those with business before the courts – attorneys, law clerks, law enforcement, plaintiffs and defendants. Unless we find ourselves in court, most of us have very little knowledge of how justice is administered in Louisiana, be it effective or not. The result is a critical third branch of government in need of improvement and well-defined standards of transparency and accountability to the public.

The Louisiana Association of Business and Industry, as a member-driven organization representing more than 2,000 employers large and small, seeks to promote a robust business climate in our state. It's why we're engaged with policymakers, it's why we advocate at the Capitol. However, when it comes to our judiciary, more and more, we find that decisions made in courtrooms have a profound effect on policy. And yet the judiciary is the one branch of our government about which the public knows the least.

The administration of our largely taxpayer-funded judiciary and the policies emanating from it have garnered the business community's engagement for decades, whether through LABI's Civil Justice Reform Council or the 2014 campaign for more transparent judicial budgets. Two years ago, LABI recognized the need to prioritize and focus on the judiciary due to the growing impact judicial decisions have had on the business community in recent years. Our organization thus made a concerted effort to increase its knowledge of and engagement with the judiciary, which in turn elicited enthusiastic responses from jurisdictions where best practices are in place, and the encouragement of those frustrated with a general lack of transparency in the current system.

## ACCESSIBILITY THROUGH TECHNOLOGY

COVID-19 upended the logistical functions of nearly all aspects of governance, including our court systems. When the pandemic ground life to a halt, most American courts, and certainly those in Louisiana, did not have practices or technology in place to shift from a mainly in-person model to a primarily remote model. Thankfully, Congress allocated relief dollars to the courts for new technology, ensuring the public's continued access to courtrooms. Some Louisiana courts leveraged those dollars to invest in infrastructure aimed at improving access, through identifying ways to innovate and improve technology to better serve Louisiana citizens. We commend this work and not only encourage our courts to continue it, but also push further to make more significant modernizations to bring Louisiana courts in line with other states, ensuring greater transparency, uniformity and accessibility and protecting the fiscal sustainability of our judiciary.

We understand that technology upgrades will not only require a financial investment but a cultural shift. Several district courts and even a handful of clerks of court do not currently have a website. Some may have a basic website with little more than contact information — a far cry from the organized online presence and resources we find with the Louisiana Legislature, for example. But the fact that we have not invested financially or culturally in technology in the past cannot be a reason to further delay innovation. Many clerks of court across the state and some individual judges have made technological advancement a priority, but unfortunately, there has not been one, unified and consistent approach to modernization. Clerks and courts have implemented varying online systems and platforms, many of which are not compatible with existing technology or with systems used by other courts.

Electronic filing and online docket accessibility save time and reduce cost for both court systems and litigants. Maintaining court records on an electronic database gives court staffs, judges and the public easier access to case documents that are matters of public record. The urgent need for upgraded, uniform and integrated technology in our court system is even more necessary in Louisiana because, unlike other states, we do not have a “unified” judiciary, either financially or administratively.

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***This means we risk having 42 different operating systems for our district courts. Even worse — because each parish elects its own clerk of court to manage filing, recordation and access to public documents, even though many judicial districts span across multiple parishes, we could have as many as 64 different systems. In at least one case, a single judicial district has multiple incompatible systems operating within the district.***

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E-Filing and E-document management systems are not new. **In fact, many states around the country including several of our neighboring states have already mandated them and implemented sophisticated software tools to ensure standardized filing processes.** The list includes Georgia, Texas, Mississippi, Wisconsin, Iowa and Minnesota.

**Our Legislature should insist on cooperation and promote the shared goals of the clerks of court and the Supreme Court to standardize district court websites.** An initial step should include establishing a task force to develop plans for the implementation and oversight of the courts’ transition to E-filing and E-document management systems, with a hard deadline for the transition. Paying for the purchase and implementation of new technology must, of course, be part of the discussion. However, we believe lawmakers and policymakers cannot make informed decisions about funding strategies until a uniform system for tracking judicial revenues and expenditures is adopted and made readily available to the public. Once that information is available, investing in the coordinated modernization of our judiciary’s technology should be a top priority.

## ENHANCING TRANSPARENCY IN JUDICIARY ETHICS

It is essential for any functioning judiciary that citizens trust the process is fair and impartial. A well-functioning third branch of government cannot exist unless people have confidence in both their judges and the proceedings they conduct. Judges must, therefore, be held publicly accountable to the highest legal and ethical standards.

In 2008, when Governor Bobby Jindal was elected for the first time, many term-limited legislators felt they had a clear mandate from their constituents to achieve ethics reform in Louisiana. There was very little opposition to reforming the legislative and executive branches, but fairly heated debate when it came to the judiciary. The Governor and Legislature attempted to make substantial changes to judicial ethics financial disclosure standards as part of the ethics reform package, which led to a jurisdictional showdown. Some judges balked at the possibility of the Legislature creating and enforcing rules governing their ethics and financial disclosures. As a compromise, the Louisiana Supreme Court promised it would strengthen its disclosure rules for the state judiciary to an equivalent standard, but it did not make the same commitment to enact other reforms like prohibitions on certain outside income sources, and limitations and reporting requirements for certain “perks” and other gifts from lawyers and litigants. The Supreme Court did follow through on its promise to enact

financial disclosure provisions for judges comparable to the provisions adopted by the Legislature later that year. But unlike legislative disclosures, this information was not easily accessible, and it took 12 years and an extensive amount of legislative and public pressure to get the information available online.

Incidentally, the Supreme Court's move towards greater transparency in financial disclosures came just a month after it also made changes to the public's access of judicial misconduct proceedings – a process that has long been cloaked in secrecy. This change, too, only catalyzed after immense pressure delivered through a series of probing media stories published contemporaneously with legislative efforts to exert more authority and oversight of the judiciary.

**Transparency in the judiciary should not come by piecemeal change** that occurs only in response to the public uncovering flaws in the process. The Supreme Court should be more proactive in facilitating transparency to regain the public's trust that the judiciary is abiding by its canons, administering tax dollars effectively and providing justice for our citizens.

## ENHANCING TRANSPARENCY IN JUDICIAL FUNDING AND BUDGETING

Advocating for greater transparency in judicial funding is not new for LABI. But the Legislature continues to struggle to gain an understanding of how our judiciary is funded, despite judicial appropriations being a legislative function. The lack of understanding stems not from a lack of trying. The Legislature has formed groups and task forces over the years to study funding of the judiciary, but still has not been able to gather the necessary data to form a comprehensive understanding of how our courts are funded or how they spend money, including taxpayer dollars. During the 2019 hearings of the Louisiana Commission on Judicial System Funding, Louisiana Supreme Court staff reported **that data necessary simply to estimate the cost of state and local court operations does not exist**. This is untenable, and Louisianans should not and cannot continue to accept the current state of affairs. Technology and social norms have eliminated all excuses left to oppose such modernization efforts. **First, a uniform budget system is needed, allowing for real-time tracking of dollars in and out of each courthouse. Second, this information should be published on each court's website so taxpayers can see how their dollars are being used. This level of transparency and access is needed to increase citizen's and lawmakers' trust in the judiciary.**

## MODERNIZING JUDICIAL DISTRICT LINES

The Louisiana Constitution tasks our Legislature with drawing boundary lines of districts for our congressmen, legislators, Public Service Commissioners and members of the Board of Elementary and Secondary Education when new census figures are released every 10 years. The Constitution contains no such requirement for the courts. Instead, it simply grants the Legislature authority to make changes to the boundaries of existing judicial districts and/or the number of judges assigned to each district.

**The boundary lines for Louisiana's 42 district courts and five courts of appeal have never been comprehensively redrawn, and the Supreme Court districts are still based on census data from 1990.** During the most recent redistricting effort in 2011, legislative leaders chose not to pursue legislation to redraw Louisiana's judicial districts because, according to leadership, they "[were] not able to agree on a [redistricting] plan" with the Supreme Court's seven justices.

While Louisiana's population has changed dramatically over the past nearly four decades, the Legislature has repeatedly chosen not to consider population as a major factor in evaluating judicial district lines. Hurricanes alone have caused major shifts in Louisiana's population and demographics, not to mention economic growth in certain regions, migration to major cities and more. **Yet despite these massive population shifts and even recent trends showing a reduction in population in many areas of our state, the size of our judiciary has never been reduced, expanded in areas of growth or realigned in a meaningful way. At the same time, caseloads for judges are consistently declining, with district court and courts of appeal filings down 22 percent and 35 percent respectively over the past 10 years.** This combination calls for a serious review of judicial lines and the possibility in some cases for consolidation of resources.

*Long-standing traditions and customs within the judiciary, robust political influence of the stakeholders involved and true apathy from citizens with no cause to be in court have prevented the Legislature from ever taking any meaningful steps to realign our judiciary.*

LABI, the public and a growing contingent of legislators believe the time has come for real change. First, our current system, which in many cases prioritizes parish lines and local political influence over practicality and fairness, can and should be made more efficient. And second, Louisiana's out-of-date judicial districts must be realigned to reflect the current needs of our state and our population. Louisiana taxpayers deserve this much from their third branch of government that continues to exercise more influence over Louisiana's business community.

## CONCLUSION

The judiciary is a critical branch of government that should be held to the same standards of transparency and accountability to the public as the other two branches. LABI, as a member-driven organization representing more than 2,000 employers large and small, recognizes that if we are not willing to put in the time and energy to understand and advocate for modernization and work with all stakeholders, we cannot stand in surprise of or disapproval of the status quo.

**LABI's goals are simple - to increase public understanding of our judiciary in the hopes of implementing best practices that may be consistently applied.** After two years of research, we believe the best road toward greater transparency and access is through modernization of the court system. In the coming weeks, we look forward to sharing specific ideas and recommendations for more coordinated technology, more transparent judicial budgets, more stringent ethics standards and potential realignment of judgeships. Already, we have engaged numerous stakeholders and experts on these topics, and we look forward to continuing to do so.