



Supreme Court stays law establishing business courts


Shawn Ashley, Quorum Call

(QC) The Oklahoma Supreme Court issued a stay Tuesday that prevents the bill that creates new business courts from taking effect.

The stay came after the court heard oral arguments regarding [SB0632](#) ’s constitutionality earlier in the day.

[SB0632](#) , by Senate President Pro Tempore Lonnie Paxton, R-Tuttle, and House Speaker Kyle Hilbert, R-Bristow, requires each business court created to be categorized and name numerically. The bill requires Business Court Division I be located in Oklahoma County and quartered in Oklahoma City and Business Court Division II be located in Tulsa County and quartered in Tulsa. It requires the Supreme Court to promulgate rules for the implementation and administration of the business courts as required by Article VII of the Oklahoma Constitution. It requires both business court divisions be quartered in a location determined by the Supreme Court chief justice in consultation with any state officials or private parties needed to secure appropriate court and office space. The bill establishes proper venue for the respective divisions. It requires a business court judge receive an annual salary equal to that of a Supreme Court associate justice. It requires each business court have a secretary-bailiff. It permits each business court judge to appoint a law clerk, who must be an attorney licensed to practice law in this state, who will serve at the will of the appointing judge with an annual salary to be set by the Supreme Court chief justice. It permits each business court judge to appoint additional necessary court personnel subject to the approval of the Supreme Court chief justice. It establishes requirements for business court judges. The bill establishes business courts' jurisdiction over certain cases. The bill establishes the process for bringing an action in business court. The bill creates a process for jury trials in business courts. The bill requires the Supreme Court provide for electronic filing of documents in the business courts and to promulgate rules for the filing of documents transmitted by electronic devices. It establishes a fee of \$1,500 for the filing any action in, or upon the filing of a motion for removal to, a business court division. It requires other fees be charged and collected pursuant to the fee schedule established for district courts.

Establishing the courts has been a major focus of Stitt each of the last two sessions. During the 2024 session, he told legislative budget negotiators he would not veto the fiscal year 2025 budget if lawmakers approved legislation related to business courts, among other things. The Legislature agreed and passed Senate Bill 473, which established judges positions for the courts in Oklahoma and Tulsa Counties and created a task force to work out the details and mechanics of the courts.

Implementing the task force recommendations for the creation of the business courts was one of a group of policy issues intertwined with the FY2026 budget in negotiations in the 2025 legislative session, Stitt and budget negotiators said in mid-May when they announced their budget agreement. That led to the passage of [SB0632](#) .

The Legislature authorized the Supreme Court to create a business court division within the Oklahoma and Tulsa County district courts in 2004. During Tuesday's arguments, Justice James Edmondson noted that division was never funded.

The Legislature amended that section of law when they passed SB0632, petitioners' attorney Bob Burke said, removing the Supreme Court's authority to establish the division and creating it itself. That, he argued, violated the Oklahoma Constitution, which gives the Supreme Court supervisory authority over the court system.

Ben Lepak, Stitt's general counsel, argued the Legislature has the constitutional power to create through statute entities that "...exercise adjudicative authority or render decisions in individual cases.

"That's exactly what we have here. Whether they are district courts, not district courts, whether we call them district judges or not district judges, an agency or a commission. What we have here is the Legislature exercising its legitimate authority to create a body that is adjudicative in nature and appealable to this court," Lepak said.

Burke contended the ambiguity in the law was another constitutional problem. On one hand, he said, business courts are portrayed as a division of the district court, but they are not entirely subject to the supervision of the Supreme Court or the presiding district judge and the pay scale for the judges would be different than that of district judges, among other things. Responding to justices' questions, Burke said the business courts were different than drug courts or mental health courts because the law allowed the district court to establish those, rather than required them to do so.

Justice Noma Gurich asked Burke if it would take a vote of the people to amend the Oklahoma Constitution to create business courts instead of legislative action. Burke agreed

Burke and Jason Waddell, an attorney and one of the petitioners in the case, also argued the method for appointing the business court judges violated the Constitution. Under the bill, the House Speaker submits three nominees to the Governor for his consideration. Whoever the Governor appoints is subject to advice and consent of Senate. Business court judges, according to the bill, would serve for eight years and then be eligible reappointment.

Burke and Waddell noted the business court judges would never stand for election as other district court judges do, disenfranchising Oklahoma voters.

The argument led to a back-and-forth exchange between Justice Douglas Combs and Lepak.

"This isn't a district court judge," Lepak said in response to a question from Combs. Combs said the bill included multiple references to the judges as district court judges, but Lepak argued those references were in the petitioners' brief, not the bill.

"[The bill] says that business court judges are district court judges and what the Legislature created is a division with the district court," Combs responded.

“That does not make them a district court judge,” said Lepak.

“My biggest gripe about this bill is that it deprives us of the ability to vote,” Burke said.

Lepak and Audrey Weaver, Stitt’s deputy general counsel, urged the court not to assume original jurisdiction and take the case. The petitioners, they argued, had not suffered “concrete and particularized” injuries a result of the law.

Lepak argued, “This is a test case...of the court’s fidelity to constitutional restraint and the separation of powers and to the principle that it is the elected branch’s job to make public policy and the courts’ job to say what the law is. The petitioners are inviting this court to abandon those principles, and you should decline.”

The court voted 6-3 to assume original jurisdiction and stay the bill’s implementation. Edmondson, Combs and Gurich were joined by Vice Chief Justice Dana Kuehn and Justices Richard Darby and James Winchester in the majority. The minority included Chief Justice Dustin Rowe and Justices M. John Kane and Travis Jett.

In a press release following the oral arguments but before the stay was issued, Stitt said, “Business courts are a game-changer for Oklahoma, so of course the old guard is panicking. Our business court system will make it easier for businesses to grow, invest, and hire more Oklahomans— because they’ll finally have certainty in how disputes are handled. We’re ready to move forward. This lawsuit is exactly what you’d expect from trial lawyers who treat the courtroom like a business model. They’re worried about losing billable hours and that’s why they’re scrambling to stop our progress before it starts— we’re moving their cheese.”

Stitt added, "This lawsuit is a textbook example of attorneys trying to use the courts to block progress. They have no actual injury, no client affected by the law, and no standing to be here. They’re asking the Supreme Court to stop a law they simply don’t like— that’s not how the Constitution work. We have full faith that the Oklahoma Supreme Court will fall on the right side of this issue."