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## **Amicus Practice in the Texas Appellate Courts**

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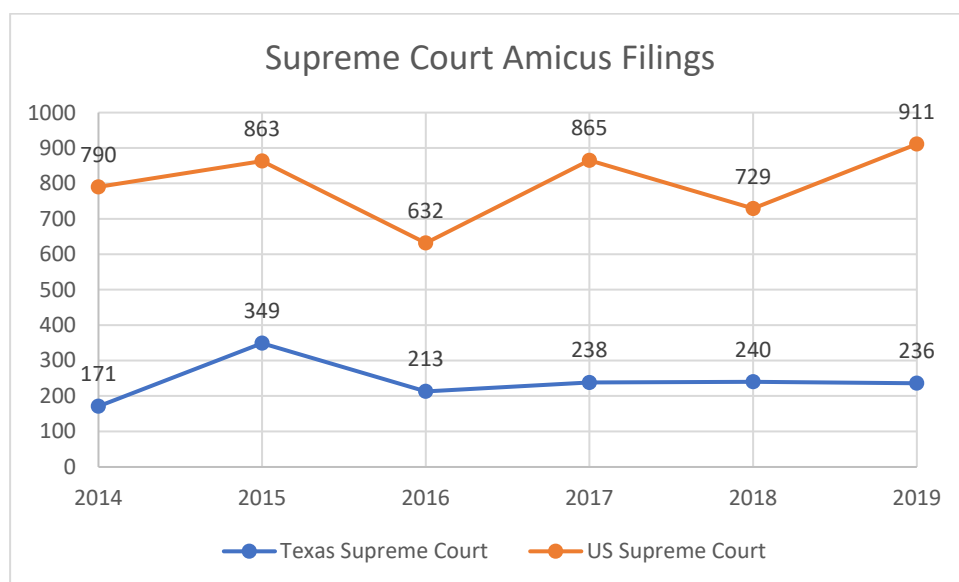
## **Table of Contents**

I.	Amicus Practice in the Texas Courts of Appeals .....	1
II.	Amicus Practice in the Supreme Court of Texas .....	3
	A. Amicus Filers.....	4
	B. Grant Rate.....	4
	C. Success Rate .....	5
III.	Conclusion.....	6

## Amicus Practice in the Texas Appellate Courts

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The practice of submitting amicus briefs to educate a court and influence its decisions, an established practice at the US Supreme Court, is taking root in Texas appellate courts as well. The number of amicus filings in Texas does not rise to the level of the US Supreme Court (see chart below),<sup>2</sup> but amicus filings play an important role in state court proceedings.



### I. Amicus Practice in the Texas Courts of Appeals

According to appellate court judges, amicus filings are an underused resource in the intermediate courts of appeals. In a survey conducted last year, two-thirds of responding appellate judges (nearly all of whom sit on the courts of appeals), stated that amicus briefs “shaped the reasoning of one or more cases” in which they authored the majority opinion.<sup>3</sup> In an older survey, nearly three-fourths of responding appellate judges felt that an amicus brief filed before oral argument in the intermediate court of appeals would have “the greatest impact on that case.”<sup>4</sup>

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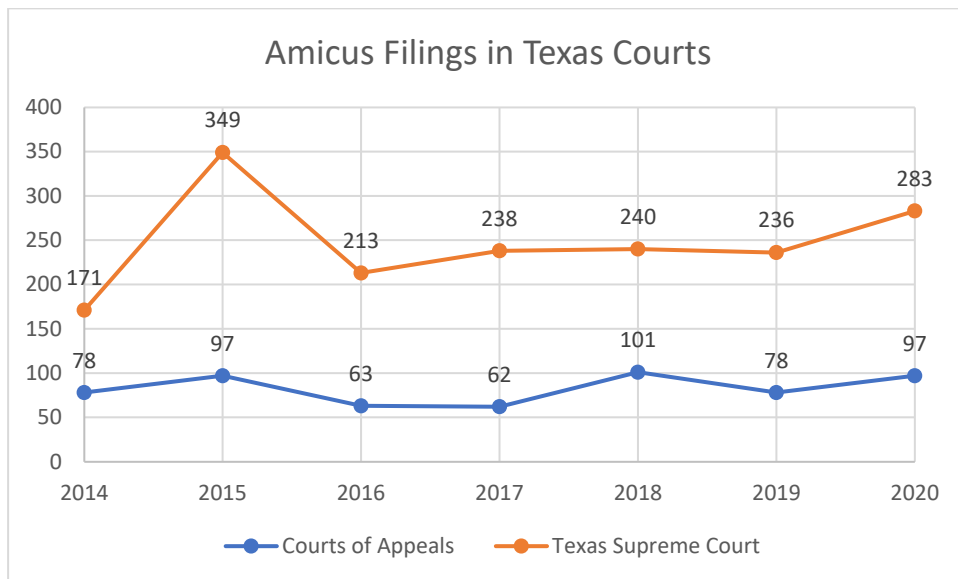
<sup>1</sup> Special thanks to Haynes and Boone associates Jessica Berkowitz, Camie Carlock, Andrea Levenson, Laura Paskeoff, and Joanna Pearce for the invaluable research assistance they provided for this article.

<sup>2</sup> The filing numbers for the US Supreme Court relate only to argued cases, so the overall gap in amicus practice between the courts is even larger. Anthony J. Franze and R. Reeves Anderson, *Amicus Curiae at the Supreme Court: Last Term and the Decade in Review*, THE NATIONAL LAW JOURNAL, Nov. 18, 2020, at 2.

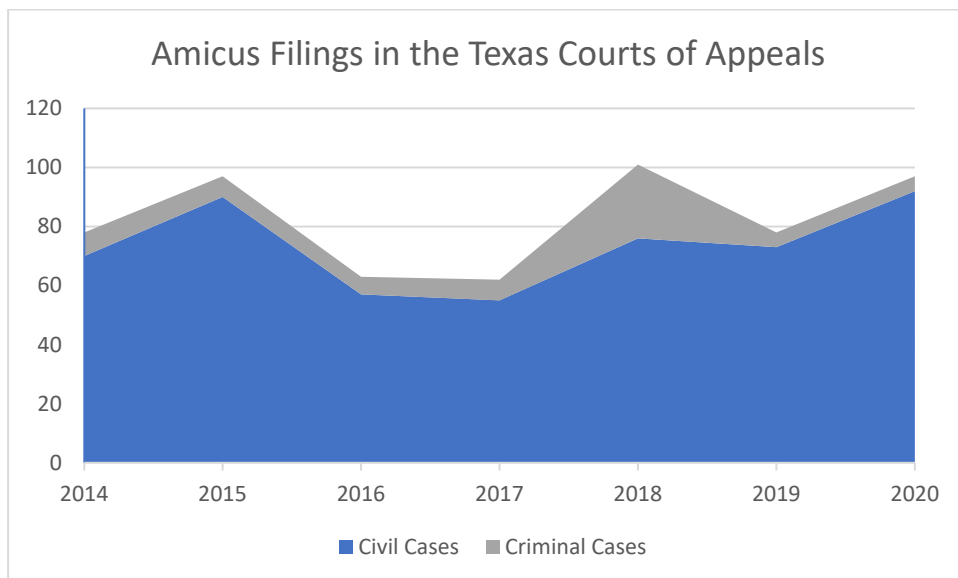
<sup>3</sup> Scott Rothenberg, Kent Rutter, and JoAnn Storey, *Results of the 2020 Texas Appellate Judicial Survey*, UT Law CLE 30th Annual Conference on State and Federal Appeals, June 4-5, 2020, at 13.

<sup>4</sup> Scott Rothenberg, *Effective Use of Amicus Briefs*, State Bar of Texas Advanced Civil Appellate Practice Course, Sept. 6-7, 2012, at 4.

Appellate practitioners are gradually heeding the call. Although filings in the Texas Supreme Court are triple those in the intermediate courts of appeals, filings in the lower courts have risen by as much as 63% over the last three years.



As demonstrated in the charts below, however, the total filings do not tell the whole story. Intermediate amicus activity is overwhelmingly concentrated in civil cases and in just a few larger courts of appeals—with the Austin Court of Appeals receiving nearly three times more amicus filings than the next most active court.



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