



Texas Supreme Court Changes

BY KENT RUTTER

Much happened at the Texas Supreme Court in 2005. As Chief Justice Wallace Jefferson completed his first term at the helm, three new justices arrived at the court — the greatest number of newcomers in any year since 1988. Amid these changes, the court kept working through the summer and into the fall on the high-profile, politically charged issue of school finance reform, culminating in the November release of an 88-page opinion holding the current system unconstitutional.

Trends and Statistics — Despite the turnover on the court and the challenges of the school finance litigation, the court continued to decide causes at close to its normal pace. The court issued opinions in 81 causes during the first 11 months of 2005, compared to 92 during the first 11 months of 2004.

The justices agreed with one another in 2005 far more than they disagreed, as evidenced by the prevalence of per curiam opinions. The court issues per curiam opinions, which typically are shorter than signed opinions and are decided without oral argument, only when at least six justices agree to do so. For several years, approximately one-third of the causes decided by

the court were decided with per curiam opinions.¹ During the first 11 months of 2005, the percentage of per curiam opinions jumped to 44 percent.²

Another indication of agreement was that dissenting opinions remained relatively rare in 2005. As recently as 2001, there were 40 percent as many dissenting opinions as deciding opinions (i.e., signed majority opinions and per curiam opinions); over the next three years, that percentage steadily declined to 16 percent.³ During the first 11 months of 2005, the percentage remained relatively low at 15 percent.⁴

New Justices in 2005 — The first of the 2005 arrivals was Justice Paul Green, who joined the court on Jan. 1. A native of San Antonio, Justice Green attended St. Mary's University School of Law and practiced law in San Antonio for 17 years. During that time, he served as president of the San Antonio Bar Association and as a director of the State Bar of Texas. Justice Green is familiar to many Texans from his 10 years on the Fourth Court of Appeals in San Antonio. Because Justice Green was elected to a full six-year term, having defeated Justice Steven Smith in the 2004 Republican primary, he will not need to run for re-election until 2010.

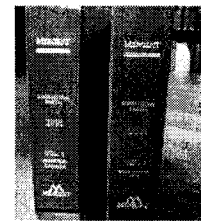
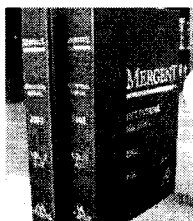
Like Justice Green, Justice Phil Johnson comes to the Texas

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2005 YEAR IN REVIEW

Supreme Court from the court of appeals. Justice Johnson hails from Lubbock, where he graduated from Texas Tech University School of Law, practiced law for 23 years, and served as president of the Lubbock County Bar Association. He was elected to the Seventh Court of Appeals in Amarillo in 1998 and was elected chief justice in 2002. In March 2005, Gov. Perry appointed Justice Johnson to the seat left vacant when former Justice Michael H. Schneider was appointed to the U.S. District Court in Tyler. Justice Johnson is the first West Texan to serve on the court since Justice Barbara Culver of Midland, who served briefly in 1988. Justice Johnson must run for election in 2006 to fill the remaining two years of Justice Schneider's term, which ends in 2008.

The most recent addition to the court, Justice Don Willett, has a different resume but similar experience, having overseen the drafting of hundreds of opinions by the Texas Attorney General's office before his appointment to the court. After completing law and graduate school at Duke University, Justice Willett served as a Fifth Circuit law clerk and practiced law at Haynes and Boone, L.L.P. in Austin. Long active in politics, Justice Willett left private practice to serve as an advisor to then-Gov. Bush. After the 2000 election, Justice Willett fol-

lowed President Bush to Washington, where he served as special assistant to the president. He later joined the U.S. Department of Justice, where he was involved in the federal judicial selection process, before returning to Texas to serve as chief legal adviser to Attorney General Greg Abbott. In August 2005, Justice Willett was appointed by Gov. Perry to fill the Texas Supreme Court seat vacated by former Justice Priscilla Owen upon her appointment to the Fifth Circuit. Justice Willett is running for election in 2006 to a full six-year term.

Online Oral Arguments — A final development of interest to practitioners is that oral arguments heard by the Texas Supreme Court in 2005 (and late 2004) are now available on the court's website, www.supreme.courts.state.tx.us. For the first time, practitioners desiring more information about causes decided by (or pending in) the Texas Supreme Court have convenient online access to not only the briefs, but the oral arguments as well.

Notes

1. According to figures from the Office of Court Administration, in FY 2001 the court decided 88 causes by issuing 59 signed majority opinions (67 percent) and 29 per curiam opinions (33 percent). In FY 2002, the court



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decided 107 causes by issuing 77 signed majority opinions (72 percent) and 30 per curiam opinions (28 percent). In FY 2003, the court decided 89 causes by issuing 60 signed majority opinions (67 percent) and 29 per curiam opinions (33 percent). In FY 2004, the court decided 86 causes by issuing 55 signed majority opinions (64 percent) and 31 per curiam opinions (36 percent).

2. In the first 11 months of 2005, the court issued 81 deciding opinions, including 45 signed majority opinions (56 percent) and 36 per curiam opinions (44 percent).
3. According to figures from the Office of Court Administration, in FY 2001 the court issued 88 deciding opinions; there were 35 dissents (40 percent), including 28 opinions dissenting from the entire judgment and seven opinions dissenting only in part. In FY 2002, the court issued 107 deciding opinions; there were 25 dissents (28 percent), including 24 opinions dissenting from the entire judgment and one opinion dissenting only in part. In FY 2003, the court issued 89 deciding opinions; there were 25 dissents (28 percent), including 24 opinions dissenting from the entire judgment and one opinion dissenting only in part. In FY 2004, the court issued 86 deciding opinions; there were 14 dissents (16 percent), including 12 opinions dissenting from the entire judgment and two opinions dissenting only in part.
4. In the first 11 months of 2005, the court issued 81 deciding opinions; there were 12 dissents (15 percent), including 10 opinions dissenting from the entire judgment and two opinions dissenting only in part.

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School Finance

BY DAVID THOMPSON

On Nov. 22, 2005, the Supreme Court of Texas issued its much-anticipated decision in *Neeley v. West Orange-Cove CISD*, finding that the Texas school finance system has evolved into an unconstitutional state property tax in violation of Article VIII, Section 1-e of the Texas Constitution. The court also found that, at least on the current record, the system meets the equity and adequacy requirements of Article VII, Section 1. The court gave the state until June 1, 2006, to correct the unconstitutional elements of the system, setting the stage for another special session of the Texas Legislature in spring 2006.

With regard to the state property tax claim brought by the West Orange-Cove plaintiffs, a group of 47 school districts educating over one-fourth of the state's 4.3 million school children, the court ruled that it was not even a close question that the state has deprived districts of "meaningful discretion" over their own local property tax rates, and that the statutory tax cap of \$1.50 for maintenance and operations has become both a "floor" and a "ceiling." The court accepted Judge John Dietz's trial court findings and conclusions that the system must allow districts a reasonable opportunity to meet the state's various requirements and high academic standards, while still exercising meaningful control over their own tax rates and the use of tax revenues to meet their communities' priorities. The court noted

that "[t]he current situation has become virtually indistinguishable from one in which the State simply set an ad valorem tax rate of \$1.50 and redistributed the revenue to the districts."

The extent to which the state has shifted the cost of supporting public education to local property taxes is particularly striking, as recognized by the Supreme Court's reliance on facts established by Judge Dietz. The court noted that the state now funds only 38 percent of the cost of public education — its lowest percentage level in more than 50 years. Further, in the 1993-1994 school year, only 2 percent of the districts, with 1 percent of the students in Texas, were taxing at the maximum \$1.50 M&O tax rate. By 2003-2004, 48 percent of Texas districts with 59 percent of the students were taxing at \$1.50, and 67 percent of the districts with 85 percent of the students were taxing at or above \$1.45. Also, over 97 percent of the capacity of the system was exhausted by 2003-2004.

The Supreme Court reversed the trial court and rejected the plaintiffs' argument that the school finance system is not adequate, as required by Article VII, Section 1 of the Texas Constitution. However, the court ruled in the plaintiffs' favor on all of the key legal issues related to adequacy, and strongly rejected an assortment of arguments the state made. In particular, the court found that the issue of adequacy is justiciable and not