



★ TEXAS SUPREME COURT ★ DOLLAR DOCKET

In Texas, 48% of judges and 79% of lawyers say contributions significantly influence judicial decisions. - Texas Supreme Court poll

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Federal Court To Judge Supremacy of Justices' Secrecy

A federal district court in San Antonio is scrutinizing the Texas Supreme Court's practice of voting in secrecy on which cases to hear on appeal. Plaintiffs in *Aguirre v. Chief Justice Thomas Phillips* argue that the public has a First-Amendment right to know about fundamental decisions of elected officials—including the right to know how Texas justices vote when they determine who gets access to Texas' civil court of last resort.

Texas' high court agrees to hear about 10 percent of the 900 "petitions for review" that it receives each year. The court's nine justices secretly vote to reject the vast majority of these appeals, winnowing them down to just 90 or so cases that they do hear.

"Texans are asked to hold their judges accountable on election day just like all other elected officials," said Bonnie Tenneriello, an attorney for the plaintiffs from the National Voting Rights Institute. "There can be no accountability when 90 percent of a justice's decisions are kept under lock and key. Secrecy in Texas is particularly pernicious since the judges are often voting on cases brought by their biggest campaign contributors."

Judge Orlando Garcia heard Tenneriello argue against a state motion to dismiss the suit on October 3rd. Joined by Texans for Public Justice, Common Cause, LULAC and the *Texas Observer*, individual Texas voters filed the lawsuit in May 2002.

Appearing to be troubled by the court's secrecy, Judge Garcia repeatedly asked the court's public defender, Assistant Attorney General James Todd, "Is the Texas Supreme Court the only public body that in effect gets to vote on something and that vote is never reported publicly? Why should they be immune or excluded from that simple concept?"

Defending the court's secrecy, Todd invoked the conflict-of-interest issue raised by the plaintiffs, turning it on its head. He argued that concealing the information actually benefits the public because it shields the justices from the lawyers and litigants who bankroll

The Dollar Docket

Cases heard by the Texas Supreme Court in September and the corresponding contributions to justices from the parties and/or attorneys.

September 10, 2003

<i>In Re Kuntz</i>	\$318,251
<i>Ford Motor Co. v. Ridgway</i>	\$26,500
	\$0
<i>TX Dept. of Protective Services v. Mega Child Care</i>	\$0
	\$0

September 11, 2003

<i>TX Workers Comp v. Patient Advocates of TX</i>	\$0
	\$1,500

September 24, 2003

<i>Diversicare General Partner v. Rubio</i>	\$250
	\$0
<i>Excess Undewriters at Lloyds v. Frank's Casing & Crew Rentals</i>	\$70,100
	\$109,850
<i>TX Dept. of Criminal Justice v. Simons</i>	\$0
	\$0

Grand Total for September: \$526,451

their campaigns. Secrecy "actually insulates them [the justices] from the sort of pressure the plaintiffs are hypothesizing," Todd argued.

Under this logic, the justices—who come under donor pressure when they sign opinions—would best serve the public by keeping their opinions anonymous, too.

Absent from the courtroom, Chief Justice Phillips mounted a semantic media defense, arguing that it is a misnomer to call the input that the justices provide on whether or not to hear a case a "vote." Providing such information to the public might be "misleading," he cautioned, and could lead to "a lot of mischief."

Judge Garcia gave the parties 30 days to submit additional information before ruling. •