

Press Release

October 15, 2008

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RE: Texas Supreme Court rehearing of *Entergy Gulf States Inc. v. John Summers*, 9 a.m., October 16, 2008, in the Hillcrest Classroom in the Underwood Law Library at Southern Methodist University's Dedman School of Law, Dallas, Texas

Legislators Concerned about Texas Supreme Court's Disregard for Legislative

Authority

On October 3, 2008, the Supreme Court of Texas denied a request from several members of the Texas Legislature to appear in the *Entergy v. Summers* case to advocate for the legislative powers and functions reserved for the Legislature as set forth in the Texas Constitution. This bipartisan group of legislators, including Senator Rodney Ellis, Chairman of the Senate Government Organization Committee, and Senator Jeff Wentworth, Chairman of the Senate Jurisprudence Committee, and Representatives Craig Eiland and Bryan Hughes, submitted a friend of the Court brief last year which argued that the Court disregarded the legislative intent behind the statute at issue in the *Entergy* case and violated the constitutional separation of powers between the Legislature and the Court.

“In the *Entergy* decision, this Court ignored the clear legislative intent behind the Texas workers' compensation laws and judicially bypassed the role of the Legislature as the policy making body of Texas government,” said lead counsel for the legislators, Representative Eiland.

The legislators asked the Court for separate time to appear before the Court when it hears oral arguments upon rehearing of the case in Dallas on Thursday, October 16, at the Southern Methodist University Law School. Each party is allotted 20 minutes by the Court; the legislators asked for 10. “We asked for 10 minutes of the Court's time to explain the constitutional crisis that this case represents,” said Senator Ellis. “They said they don't have 10 minutes for us.”

“The Court replied that we should ask one of the parties for 10 minutes of their time,” Senator Wentworth added. “The Court’s reply emphasizes its fundamental misunderstanding of why we’re involved in the case. Our interest lies solely with the issue of separation of powers. We are not advocating for one party. We were compelled to step forward when the Court ignored legislative authority,” Senator Wentworth said.

The lawmakers note that the Legislature has considered the issue of granting premises owners or other parties statutory immunity from liability under the workers’ compensation laws for over 25 years and never elected to grant it. “We rejected the idea in 1989 when we rewrote the workers’ compensation laws, and we rejected it for six consecutive sessions beginning in 1995,” said Representative Eiland. (A list of the rejected bills is attached.)

“We seek only to preserve the integrity of the judicial review of legislative enactments and to ensure that this Court does not usurp Legislative powers,” said Representative Eiland. “We had hoped that goal was shared by all the officers of this State, whether legislative, executive, or judicial. The Court’s denial of our request further demonstrates its disregard for legislative authority.”

Third Party/Stat. Employer Bills since 1995

1995

HB 2279 Combs, et al. – Left pending in House committee.

1997

HB 3024 Brimer – Introduced and referred House committee.

1999

SB 1404 Fraser – Introduced and referred to Senate committee.

2001

HB 3120 Ritter – Reported from House committee.

HB 3459 Brimer- Introduced and referred to House committee.

2003

SB 675 Estes – Reported from Senate committee.

HB 2982 Nixon – Left pending in House committee.

2005

HB1626 Nixon – Introduced and referred to House committee.