

HOW A CASE IS DECIDED BY THE COURT

Discretion to Choose What to Review

Most, but not all, of more than 1,000 cases each year come to the Texas Supreme Court as appeals from decisions by one of the 14 state courts of appeals that review trial court judgments in their regions. A case can be appealed directly from a trial court to the Supreme Court, but usually only when the legal issue is critical, or time is essential and the Court likely would decide the case eventually or when a constitutional issue may be involved.

IN THE SUPREME COURT OF TEXAS	
TRAVIS CENTRAL APPRAISAL DISTRICT Petitioner,	
DIANE LEE NORMAN, Respondent.	
On Petition for Review from the Third Court of Appeals at Austin	
PETITION FOR REVIEW	
Walter A. Howell State Bar No. 24027222	Emily D. Newland State Bar No. 24027222
SWARTZ & EICHELBAUM	SCHWARTZ & EICHELBAUM

■ By court rule and by statute, the Supreme Court takes only appeals from a court that ruled a law unconstitutional, from a court of appeals ruling on a legal issue different from

how another court of appeals ruled in the same type of case or in a matter the Court determines is important to the “jurisprudence of the state.” All this constitutes the Court’s **jurisdiction** in the case — the power to decide it. ■ The first stage of an appeal in most cases to the Supreme Court is filing the **petition for**

Appellate disposition: Affirmed.

STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal under Texas Government Code Section 22.001(a)(2) because the decision of the Third Court of Appeals on the issue of exhaustion of administrative remedies conflicts with this Court’s decisions in *Van In*, *McCarthy*, 165 S.W.3d 351 (Tex. 2005) and *Wilmer Hutchins Indep. S*

review [1] in which attorneys argue solely that the case deserves the Court’s resolution

and that the Court has **jurisdiction [2]**. In the petition the attorneys set out the issues in the case **[3]** and give a short statement of facts.

■ If three justices have interest in the case, the Court, through the clerk, requests **briefing on the merits**, which is an argument about the case itself and not limited to why the Court should grant it. From that briefing, the Court will assign a law clerk to study the arguments, check the law and report with a **study memo**. ■ That memo then is circulated among the justices for discussion at conference. If four want to hear oral argument, the petition is granted, becomes a **cause** and is set for oral argument.

Texas Government Code Section 22.001(a)(6) because the Third Court of Appeals committed an error of law of such importance to the jurisprudence of the state that it requires correction.

ISSUES PRESENTED FOR REVIEW

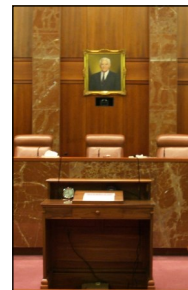
1: Has the Legislature clearly and unambiguously waived immunity from suit against political subdivisions under Chapter 451 of the Texas Labor Code?

2: Is a plaintiff suing a governmental entity under Chapter 451 of the Texas Labor Code required to exhaust administrative remedies prior to filing suit?

Two Ways a Petition May Be Granted

In usual practice the Texas Supreme Court grants a petition and sets the cause for oral argument. Four justices must agree to grant the case. Of more than 1,000 petitions most years, the Court grants between 80 and 90 and sets them for argument. ■ The Court hears all causes **en banc** — as a whole and not in panels. But the Court can decide cases without oral argument under its rules. In most of these the decision is announced in a **per curiam** opinion — *per curiam*, Latin, means “by the court” — if the issues are simple, the law settled and the decision corrects an error by the lower courts. ■ Six justices must vote to issue a **per curiam** opinion, although in general practice all who are not recused from the case will approve it. On rare occasion, a drafted **per curiam** opinion will draw a **dissent** or **concurrence** once it has been circulated for conference. That changes its nature — no longer an opinion “of the court” — and will be signed by the author as a **majority opinion**, even though it was not argued. And in rare cases, too, a cause that has been granted may be dismissed before or even after oral argument if the Court determines it does not have jurisdiction or if it contains a defect found by closer study.

‘May It Please the Court’: Oral Argument



A case that may have taken weeks in trial before a verdict and more than a year on appeal to an intermediate appellate court comes down for each side to 20 minutes in all but the most extraordinary appeal. Here, before all nine justices, a lawyer needs to be prepared, not ready with a speech. Lawyers argue their cases by answering rapid-fire questions from the bench as justices who have studied the case for months now wonder aloud by inconsistencies in the law or how its resolution will affect similar cases.

‘We Therefore Hold’

After months of consideration and study before argument, the opinion author is drawn by picking a face-down notecard with a case name on it. If he or she keeps four other justices with the draft opinion, it is issued as the majority after editing in conference and by memos and final checking by law clerks.

