IN THE SUPREME COURT OF TEXAS

NO. 05-0126

CITY OF ROCKWALL, TEXAS, PETITIONER,

v.

VESTER T. HUGHES, AS SOLE INDEPENDENT EXECUTOR OF THE ESTATE OF W. W. CARUTH, DECEASED, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS

Argued January 25, 2006

JUSTICE JOHNSON delivered the opinion of the Court, in which CHIEF JUSTICE JEFFERSON, JUSTICE WAINWRIGHT, JUSTICE MEDINA, and JUSTICE GREEN joined.

JUSTICE WILLET filed a dissenting opinion, in which JUSTICE HECHT, JUSTICE O'NEILL, and JUSTICE BRISTER joined.

A municipality generally must annex land pursuant to a plan giving three years' notice of its intent to annex. If an area is exempt from the three-year notice requirement, then annexation can take place by use of abbreviated procedures with less notice of a city's intent to annex.

In this case, a landowner sought inclusion in the City of Rockwall's three-year annexation plan. The City denied the request, claimed the proposed annexation was statutorily exempt from the three-year requirement, and gave notice of intent to annex the landowner's territory under abbreviated procedures. The landowner requested that the City arbitrate the dispute. When the City

refused, the landowner sought a court order compelling arbitration. The trial court refused to compel arbitration and dismissed the landowner's case for lack of jurisdiction. The court of appeals held that the City must arbitrate. We reverse the judgment of the court of appeals and affirm the trial court's judgment dismissing the suit.

I. Background

A. Annexation Law

The Texas Constitution confers on cities the power to annex land. TEX. CONST. art. XI, § 5. The Legislature prescribes procedures to be used by cities in conducting annexations. *See* TEX. LOC. GOV'T CODE ch. 43;[1] *Alexander Oil Co. v. City of Seguin*, 825 S.W.2d 434, 439 (Tex. 1991). Statutory annexation procedures require municipalities to prepare annexation plans specifically identifying areas which may be annexed beginning on the third anniversary of the date the plan is adopted or amended (a "three-year plan"). *See* TEX. LOC. GOV'T CODE § 43.052(c). Subchapter 43C sets out annexation procedures for areas included in such three-year plans. *See id*. §§ 43.051-.057.

Section 43.052(h) lists several types of exemptions from three-year plans. One type of area exempted is a "sparsely-populated" area. *Id*. § 43.052(h)(l). If an area is exempt from inclusion in a three-year plan, annexation occurs according to procedures set out in subchapter 43C-1. *See id*. § 43.061 ("This subchapter applies to an area proposed for annexation that is not required to be included in a municipal annexation plan under Section 43.052."). Annexations of section 43.052(h)(l) sparsely-populated areas may be initiated subject to 30 days' notice of the first hearing

[1] Further references to Local Government Code provisions will generally be by reference to the chapter, section, or subsection number.

on the proposed annexation. *Id*. § 43.062(b). Annexations under subchapter 43C-1 procedures generally must be completed within ninety days of the time proceedings are begun. *Id*. § 43.064. Cities are prohibited from using the section 43.052(h)(1) "sparsely populated" exemption to circumvent requirements that annexations be pursuant to a three-year plan. *Id*. § 43.052(i).

The controversy before us primarily involves subsections 43.052(c), (h), and (i) which in pertinent part provide as follows:

> (c) A municipality shall prepare an annexation plan that specifically identifies annexations that may occur beginning on the third anniversary of the date the annexation plan is adopted. The municipality may amend the plan to specifically identify annexations that may occur beginning on the third anniversary of the date the plan is amended.
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> . . . .
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> (h) This section [43.052] does not apply to an area proposed for annexation if: (1) the area contains fewer than 100 separate tracts of land on which one or more residential dwellings are located on each tract . . . .
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> (i) A municipality may not circumvent the requirements of this section by proposing to separately annex two or more areas described by Subsection (h)(1) if no reason exists under generally accepted municipal planning principles and practices for separately annexing the areas. If a municipality proposes to separately annex areas in violation of this section, a person residing or owning land in the area may petition the municipality to include the area in the municipality's annexation plan. If the municipality fails to take action on the petition, the petitioner may request arbitration of the dispute. The petitioner must request the appointment of an arbitrator in writing to the municipality. Sections 43.0564(b), (c), and (e) apply to the appointment of an arbitrator and the conduct of an arbitration proceeding under this subsection.

B. The Controversy

The estate of W. W. Caruth (the Estate) owns 405 acres of land (the Caruth property) within a part of the extraterritorial jurisdiction of the City, a home-rule city. In August 2004, the Estate

applied to the City for initial approval of a residential development plan for the Caruth property. After the Estate filed its application, the City initiated annexation procedures pursuant to section 43.052(h)(l) in regard to two areas: one included the Caruth property and another included land not contiguous to the Caruth property. The City sent notices of annexation to affected persons[2] pursuant to subchapter 43C-1 procedures for areas exempted from three-year annexation plans. The Estate objected to the City's attempt to annex using subchapter 43C-1 procedures and petitioned the City to include the Caruth property in the City's three-year annexation plan. The Rockwall City Council adopted a resolution rejecting the Estate's request. The Estate then asserted that the City was circumventing section 43.052(c)'s requirement that annexations be carried out pursuant to a three-year plan and requested arbitration pursuant to section 43.052(i). The City responded by advising the Estate that the proposed annexations were exempt from inclusion in a three-year plan and the Estate's "request for arbitration [was] not appropriate."

The Estate filed suit in district court seeking an order compelling arbitration pursuant to section 43.052(i) and a temporary restraining order and temporary injunction preventing the City from proceeding with annexation pending completion of arbitration, including related appeals, if any. The City responded, in part, by filing a plea to the jurisdiction asserting that the Estate did not have standing because the dispute concerned annexation procedures, the suit was a collateral attack on the annexation ordinances and proceedings and the only way to challenge alleged annexation procedural irregularities was through quo warranto proceedings. In support of its plea to the jurisdiction, the

[2] Section 43.052(i) refers to "persons residing or owning land in the area." We will refer to such persons as "landowners" for ease of reference.

City argued, in part, that section 43.052(i) authorized the Estate to request arbitration if the City did not take action on the Estate's petition to be included in a three-year plan but that the City took action on the petition by denying it. The trial court denied the Estate's applications, granted the City's plea to the jurisdiction and dismissed the action.

The Estate appealed. The court of appeals agreed with the Estate's interpretation of section 43.052(i):

> [W]e read the plain language of the statute to provide that, if the City fails to take action on the petition *to include the area in the [three-year] annexation plan*, the landowner may request arbitration of the dispute.

153 S.W.3d 709, 713-14 (emphasis added). The court of appeals reversed and remanded with instructions that the trial court compel arbitration and enjoin the City from proceeding with annexation pending the outcome of arbitration. *Id*. at 714.

In this Court, the City, supported by amicus curiae,[3] maintains that the court of appeals erred in concluding that section 43.052(i) grants a private right to the Estate to elect, and thereby require, arbitration of the Estate's claim even though the City took action on the Estate's petition by denying it.[4] The Estate, also supported by amicus curiae,[5] claims it has standing because section 43.052(i) grants it a substantive, private right to require the City to arbitrate the Estate's claim.

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[3] This Court has recieved briefs in support of the City's position from the Texas Municipal League and the Texas cities of Fate, Fort Worth, Denton, and Pearland.

[4] The City also maintains that even if section 43.052(i) grants a right to arbitration, the Estate still lacks standing because section 43.052(i) comprises a procedural part of the annexation process and violations of procedural requirements can only be challenged through quo warranto proceedings. We do not reach the argument and express no opinion on it.

[5] This Court has received briefs in support of the Estate from Brian Shannon, Associate Dean and Charles "Tex" Thornton Professor of Law at Texas Tech University and by the Texas Association of Builders.

II. Standard of Review

Statutory construction is a legal question we review de novo. In construing statutes, we ascertain and give effect to the Legislature's intent as expressed by the language of the statute. *See State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006). We use definitions prescribed by the Legislature and any technical or particular meaning the words have acquired. TEX. GOV'T CODE § 311.011(b). Otherwise, we construe the statute's words according to their plain and common meaning, *Texas Department of Transportation v. City of Sunset Valley*, 146 S.W.3d 637, 642 (Tex. 2004), unless a contrary intention is apparent from the context, *Taylor v. Firemen's and Policemen's Civil Service Commission of City of Lubbock*, 616 S.W.2d 187, 189 (Tex. 1981), or unless such a construction leads to absurd results. *Univ. of Tex. S.W. Med. Ctr. v. Loutzenhiser*, 140 S.W.3d 351, 356 (Tex. 2004); *see also Tex. Dep't of Protective and Regulatory Servs. v. Mega Child Care, Inc.*, 145 S.W.3d 170, 177 (Tex. 2004) (noting that when statutory text is unambiguous, courts must adopt the interpretation supported by the statute's plain language unless that interpretation would lead to absurd results). We presume the Legislature intended a just and reasonable result by enacting the statute. TEX. GOV'T CODE § 311.021(3).[6] When a statute's language is clear and unambiguous, it is inappropriate to resort to rules of construction or extrinsic aids to construe the language. *See St. Luke's Episcopal Hosp. v. Agbor*, 952 S.W.2d 503, 505 (Tex. 1997); *Ex parte Roloff*, 510 S.W.2d 913, 915 (Tex. 1974).

[6] We may also consider legislative history in construing a statute that is not ambiguous. *See* TEX. GOV'T CODE § 311.023(3). In this instance we are at a disadvantage because the language in question was crafted by a conference committee, and legislative history does not provide illumination as to how it was formulated.

III. Analysis

The statutory language on which the issue turns provides: "If the municipality fails to take action on the petition, the petitioner may request arbitration of the dispute . . . ." TEX. LOC. GOV'T CODE § 43.052(i). The Estate urges that the statute be read differently than the plain language reads. The Estate says that the statute "expressly provides for arbitration between a landowner and a city when the city, upon the petition of a landowner, fails to act *to include the landowner's property in a three year annexation plan*." (Emphasis added). The Estate asks that we affirm the court of appeals' construction to that effect. We decline to do so.

We first address the City's standing argument. In challenging the Estate's standing, the City cites *Alexander Oil Co. v. City of Seguin*, 825 S.W.2d 434 (Tex. 1991), for the proposition that the Estate does not have standing because the validity of the City's annexation can only be challenged by a quo warranto proceeding unless the proposed annexation is wholly void. *See id*. at 436 ("The only proper method for attacking the validity of a city's annexation of territory is by quo warranto proceeding, unless the annexation is wholly void."). The City reasons that the trial court lacked jurisdiction to hear a suit to compel arbitration because the Estate does not allege that the City has no power to annex the areas in question or that the annexation proceedings are otherwise wholly void, but rather alleges only that the City must annex pursuant to the three-year plan procedures of subchapter 43C as opposed to using the more expedited procedures of subchapter 43C-1.

In *Alexander Oil*, the City of Seguin passed an ordinance annexing land owned by Alexander Oil Company. *Id*. at 435. Alexander Oil filed suit alleging that Seguin failed to comply with

procedures required by the Municipal Annexation Act[7] such as providing proper notice for hearings, conducting the required hearings, and providing an annexation plan. *Id*. at 436. Seguin responded that because the ordinance annexing Alexander Oil's property was not void, a quo warranto[8] proceeding by the State was the only proper way to collaterally attack the ordinance and the case should be dismissed. *Id*. The Court agreed with Seguin that procedural irregularities render ordinances voidable, not void. *Id*. at 439. The Court also noted that the Legislature had not expressly provided a private action to set aside annexations where an annexation ordinance is merely voidable. *Id*. at 437. Thus, *Alexander Oil* affirmed the rule that unless an annexation is wholly void or the Legislature has expressly granted a private right to challenge the annexation in some manner, a quo warranto proceeding brought by the State is the only proper means of attacking a municipality's annexation in court. *Id*.

The Estate does not urge that the City's annexation proceeding is void or that the City lacks power to annex the area in question. Nor does the Estate challenge the authorities. The City cites various cases for its contention that the annexation process in general is procedural. *See Werthmann v. City of Fort Worth*, 121 S.W.3d 803 (Tex. App.—Fort Worth 2003, no pet.); *City of Balch Springs v. Lucas*, 101 S.W.3d 116 (Tex. App.—Dallas 2002, no pet.); *City of San Antonio v. Hardee*, 70 S.W.3d 207 (Tex. App.—San Antonio 2001, no pet.). The Estate says those authorities simply are

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[7] TEX. REV. CIV. STAT. art 970a §§ 6, 10, *repealed by* Act of May 1, 1987, 70th Leg., R.S., ch. 149, § 49, 1987 Tex. Gen. Laws 1306, *now codified as* TEX. LOC. GOV'T CODE §§ 43.052, .053, .056. Further references are to the Local Government Code.

[8] Quo warranto proceedings are used by the State to protect itself and the good of the public through agents of the State who control the proceedings. *See Fuller Springs v. State ex rel. City of Lufkin*, 513 S.W.2d 17, 19 (Tex. 1974); *State ex rel. Candler v. Court of Civil Appeals, Fourth Supreme Judicial Dist.*, 75 S.W.2d 253 (1934); *Staples v. State*, 245 S.W. 639 (1922).

not applicable because none of them interpret the language of section 43.052(i) which is the issue in this case. The Estate maintains that it has standing because subsequent to *Alexander Oil* the Legislature expressly granted landowners a substantive private right to arbitration by enacting section 43.052(i). It argues that when the Legislature enacted comprehensive changes in 1999 to impose order in annexation law, the cornerstone of the changes was section 43.052(c)'s requirement that municipalities must prepare annexation plans specifically identifying areas that may be annexed beginning on the third anniversary of the date the plan is adopted or amended. According to the Estate, the exemptions of section 43.052(h) have been used regularly by cities to circumvent the three-year planning requirement. The Estate posits that by enacting section 43.052(i), the Legislature must have intended to protect against such abuse by requiring arbitration if a municipality fails to take action on a landowner's petition to incorporate the land into the city's three-year plan and that any other interpretation of the statute would lead to absurd results. As part of its argument, the Estate references the policy of the State which favors arbitration of disputes and the short time frame necessary to complete arbitration if there are no appeals from the arbitration award. *See Jack B. Anglin Co. v. Tipps*, 842 S.W.2d 266, 268 (Tex. 1992). The Estate also argues that it would be illogical for the Legislature to have crafted a detailed statutory framework around the requirement that municipalities enact three-year annexation plans, provide for exemptions to the three-year plan requirement, allow landowners to contest whether a city is circumventing the three-year plan requirement by requesting inclusion in a three-year plan, yet require a city to arbitrate the contest only if the city ignores, or "pocket vetoes," the petition.

But we are not persuaded that the process and result called for by the plain language of the statute is illogical, much less absurd. Subchapters 43C and 43C-1 contain extensive provisions in regard to annexations. Section 43.052(i) is detailed in specifying how and when the landowner may present a complaint to the city. It incorporates by reference part, but not all, of section 43.0564's arbitration procedures. And in the midst of the detailed language, we find that the Legislature specifically addressed when arbitration may be requested: "If the municipality fails to take action on the petition . . . ." In regard to "logic," it seems to us that by crafting language specifying when arbitration of the dispute could be requested, legislators logically would have considered that there are two instances in which a dispute would need to be resolved. The first instance is if the city did not bring the landowner's petition up for consideration, or, if it was brought up for consideration, the city failed to take action on it one way or the other (what the parties refer to in this case as a "pocket veto"). The second instance is if the city denied the petition and refused to put the land into a three-year plan. It follows, logically, that because the statutory language as enacted allows arbitration to be requested only in the first instance, the Legislature's intent was not to provide for arbitration in the second instance. *See Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981) ("It is a rule of statutory construction that every word of a statute must be presumed to have been used for a purpose . . . [and] we believe every word excluded from a statute must also be presumed to have been excluded for a purpose.").

Contrary to the Estate's position, we see benefits from reading the statute's language literally. One significant benefit is that by not reading language into the statute when the legislature did not put it there, we do not risk crossing the line between judicial and legislative powers of government

as prescribed by article II of the Texas Constitution. TEX. CONST. art. II, § 1. ("[N]o person, or collection of persons, being of one of these [three governmental] departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted."). Another benefit is that by interpreting statutes such as this in a straightforward manner, we build upon the principle that "ordinary citizens [should be] able 'to rely on the plain language of a statute to mean what it says.'" *Fitzgerald v. Advanced Spine Fixation Sys.*, 996 S.W.2d 864, 866 (Tex. 1999) (quoting *Addison v. Holly Hill Fruit Prods. Inc.*, 322 U.S. 607, 618 (1944)).

As presented in this case, construing the statute's language to mean what it says results in a landowner having the right to request arbitration only if a city refuses to include the area in question in a three-year plan, fails to deny the petition, and fails to otherwise accommodate the landowner. The statute as written, in effect, provides a structured method for landowners to seek redress from cities if landowners believe cities are annexing in violation of section 43.052(c). If a landowner petitions to be included in a three-year plan and the city acts on the petition in a way that is acceptable to the landowner, there is no dispute to be resolved. If the city denies the landowner's petition, then the landowner has notified the city of its specific complaint in writing and pursued and exhausted a legislatively-provided method for seeking redress before asking a State's attorney to disrupt the city's annexation process by filing a quo warranto action. *See* TEX. CIV. PRAC. & REM. CODE § 66.002(c) (quo warranto proceedings may be brought by the attorney general or county or district attorney on his or her own motion or at the request of an individual). And a city has the option of taking no action to either grant or deny the landowner's petition and, thereby, effectively agreeing to arbitration of the dispute if the landowner requests arbitration. Under this last scenario,

the arbitration essentially is a dispute resolution process agreed to by the parties. In the event multiple landowners submit petitions, the city might delay acting on the petitions in an attempt to have all the petitioning landowners agree to join in one arbitration to resolve the issue(s). If an agreement cannot be reached to join in one arbitration, the city might choose to either grant or deny each petition. The landowners whose petitions are denied have the option of seeking institution of a quo warranto action in which the claims of all landowners will be resolved, instead of the city and each landowner being involved in individual arbitration proceedings.

The literal language of the statute can be viewed as a legislative attempt to encourage cities and landowners to resolve their conflicts without court action. First, if the statute is interpreted according to its literal language—not mandating arbitration if a landowner's petition is denied—the result is that neither landowners nor cities have lost protections which they had prior to the statute's amendment. Landowners will continue to have the right to seek a quo warranto action to challenge the annexation. Cities will continue to be protected because a disinterested party such as the attorney general or a county or district attorney will review and weigh the strength of landowner claims before cities are subjected to litigation and disruption of their annexation processes. By giving landowners the right to request arbitration if cities delay taking action on their petitions, the Legislature gave landowners leverage to push the processes to conclusion, prevent pocket vetoes of petitions to be included in three-year plans and, if necessary, bolster arguments to state's attorneys in support of quo warranto actions to challenge proposed annexations.

But in any event, our standard for construing statutes is not to measure them for logic. *See Lee v. City of Houston*, 807 S.W.2d 290, 293 (Tex. 1991) ("Our function is not to question the

wisdom of the statute; rather, we must apply it as written."). As previously noted, our standard is to construe statutes to effectuate the intent of the Legislature, with the language of the statute as it was enacted to be our guide unless the context or an absurd result requires another construction. *See Fitzgerald*, 996 S.W.2d at 866 (Tex. 1999) ("[I]t is a fair assumption that the Legislature tries to say what it means, and therefore the words it chooses should be the surest guide to legislative intent."); *Jones v. Del Andersen & Assocs.*, 539 S.W.2d 348, 350 (Tex. 1976) ("[The intention of the Legislature] is to be found in the language of the statute itself . . . we cannot give Section 28 the limited construction advocated by Andersen. To do so would require that we read into the statute words which are not there."). In this instance, the context does not indicate that the plain meaning of the language was not intended. The sentence in question addresses a separate subject from the surrounding language: the circumstances under which a city can be requested to arbitrate. It would not have been inconsistent with the context of the sentence for the Legislature to have provided that a landowner could request arbitration if the municipality failed to act favorably upon the landowner's petition or failed to include the landowner's property in a three-year annexation plan. Clearly, though, there is a difference between the meaning of the statute as it is written and the statute as contended for by the Estate.

The dissent agrees as to the standards for interpreting the statute and that "words matter" and "context matters." The dissent, however, says that "the most natural reading" of the statute results from adding words to make it mean something other than what the plain words mean. For the reasons we have set out, we disagree that the proper reading of the statute results from changing the language of the statute.

The dissent also references section 43.056(l), the provision for resolving disputes over whether a municipality has complied with the service plan adopted to provide full municipal services to the area to be annexed, and that section's use of the "[i]f the municipality fails to take action" language. A municipality's service plan must be adopted by the municipality's governing body and is a contractual obligation of the municipality by statute. *See* TEX. LOC. GOV'T CODE § 43.056(j), (k). Whatever construction is eventually given to the language of section 43.056(l)—and we venture none here because there is no controversy before us as to that section—it will be according to statutory construction principles. And that construction, when and if it occurs, must take into consideration the context of the language: section 43.065 addresses controversies regarding whether the municipality is fulfilling its service plan contractual commitment. The controversy presented by the present case and the statutory language of section 43.052(i) do not involve the question of whether a municipality is fulfilling a contractual obligation. The controversy involves a governmental decision of whether to annex territory, and if so, how.

In this regard, we note that sections 43.052(i) and 43.056(l) not only differ in the types of disputes they address, but also in how arbitrations of those disputes are to be conducted. Arbitration under section 43.056(l) must be in accordance with section 43.0565. Section 43.0565(d) specifies three options available to an arbitrator if the arbitrator finds that the municipality has not complied with its service plan requirements. But that same subsection provides that the municipality has the option of disannexing the area in lieu of complying with its service plan. In other words, even if an arbitration occurs pursuant to section 43.056(l), however it comes about, the municipality retains the

right to make its own decision as to annexation or disannexation of the property. That prerogative is expressly not ceded to an arbitrator by the statute.

Section 43.052(i), on the other hand, provides only that sections 43.0564(b), (c), and (e) apply to the arbitration referenced in 43.052(i). Those sections address procedures for selecting an arbitrator, setting a hearing, giving notice of the hearing, and powers of the arbitrator in regard to conducting the arbitration. Section 43.052(i) does not prescribe or incorporate any provisions as to issues to be decided by the arbitrator, how long the arbitration is to take, when the arbitrator is to issue a decision, or whether the parties have a right to appeal the arbitrator's decision—all of which are provided by subsections of 43.0564 but not incorporated by 43.052(i). Nor does section 43.052(i) specify what remedies an arbitrator may impose, as does section 43.0565(d).

In sum, subchapter 43C provides different methodologies for arbitration in three different situations: (1) disputes under section 43.052(i), (2) disputes during negotiations for services to be provided by the municipality, *see* section 43.0564, and (3) disputes about whether the service plan has been fulfilled. Disputes arising under each different section and its dispute resolution provision must be construed in its own context. That is what we do as to the controversy presented by this case: we construe the language of section 43.052(i) in its context.

The dissent also states that under our construction of the statute, if a city rejects the landowner's petition, the landowner has no further recourse. That is incorrect. The statute does not deprive the landowner of the right to a quo warranto action, which is the recourse long available to landowners.

If the Legislature desires to amend the statute to add words so that the statute will then say what is contended for by the Estate, we are confident it will do so. However, changing the meaning of the statute by adding words to it, we believe, is a legislative function, not a judicial function. *See* 67 TEX. JUR. 3d *Statutes* § 85 (2003) (noting that it is for the Legislature, not the courts, to remedy deficiencies, if any, in laws).

V. Conclusion

We decline to read additional language into the statute as the Estate urges us to do. We go no further than the unambiguous language of the statute to interpret it. Section 43.052(i) does not create a substantive private right for a landowner to compel arbitration if a municipality takes action on the landowner's petition by denying it, as the City did. Accordingly, the Estate lacks standing to pursue the suit it filed.

We reverse the judgment of the court of appeals and render judgment dismissing the Estate's suit.

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Phil Johnson
Justice

OPINION DELIVERED: January 25, 2008