IN THE SUPREME COURT OF TEXAS

NO. 05-0171

SOUTHWESTERN BELL TELEPHONE COMPANY, L.P.,
D/B/A SBC TEXAS, PETITIONER,

v.

WILLIAM C. MITCHELL, BENEFICIARY OF
LOUISE MITCHELL, DECEDENT, RESPONDENT

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

Argued March 23, 2006

CHIEF JUSTICE JEFFERSON, joined by JUSTICE O'NEILL and JUSTICE MEDINA, dissenting.

As I noted in dissent six years ago, I believe *Downs* was wrongly decided. *Continental Casualty Co. v. Downs*, 81 S.W.3d 803, 808 (Tex. 2002) (Jefferson, J., dissenting). Echoes of my dissent ring in the Court's decision today, but the vindication associated with the Court's ruling comes at too high a price. A dissent does many things—it pinpoints perceived faults in the Court's opinion, it speaks to a future Court, it may suggest a legislative fix—but it is not the law. The *Downs* Court declared the statute's meaning even if a subsequent Legislature determined that it misconstrued legislative intent. A Court's decision on statutory construction is not infallible, but it must be final so that Texas citizens know how to conduct their affairs and can engage the political process to modify policy that has purportedly gone awry. Such is the case here. To continue to press

a dissent after the Legislature has had occasion to change the law essentially refutes the constitutional principle, laid down in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 178 (1803), that the *Court* ultimately declares the law's meaning.

Downs stated the law, and we should not so quickly cast it aside. *Dickerson v. United States*, 530 U.S. 428, 443 (2000)("Whether or not we would agree with *Miranda*'s reasoning and its resulting rule, were we addressing the issue in the first instance, the principles of *stare decisis* weigh heavily against overruling it now."). The Legislature altered the law as announced in *Downs*, but *Downs* still governs cases filed before the legislative amendment. Because the Court overrules *Downs*, and because I would not apply *Downs* prospectively only, I respectfully dissent.

I
Overruling *Downs*

Stare decisis has its greatest force in cases involving statutory construction. *Grapevine Excavation, Inc. v. Maryland Lloyds*, 35 S.W.3d 1, 5 (Tex. 2000). "More practically, it results in predictability in the law, which allows people to rationally order their conduct and affairs." *Id.* Thus, "'in most matters it is more important that the applicable rule of law be settled than that it be settled right.'" *John R. Sand & Gravel Co. v. United States*, 552 U.S. ___, ___ (2008) (quoting *Burnet v. Coronado Oil & Gas Co*., 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting)). A willingness to abandon precedent merely because we no longer believe the decision is correct "substitute[s] disruption, confusion, and uncertainty for necessary legal stability." *Id*.; *see also Weiner v. Wasson*, 900 S.W.2d 316, 320 (Tex. 1995)(noting that "if we did not follow our own decisions, no issue could ever be resolved" and cautioning that "[t]he potential volume of speculative

relitigation under such circumstances alone ought to persuade us that *stare decisis* is a sound policy").

Downs, a 5-4 decision, was thoroughly briefed (including submissions from the Texas Workers' Compensation Commission and a chorus of other amici, at least one of which also urges us today to overrule the decision), and it was carefully considered. Bell makes a number of arguments for overruling *Downs*, most of which were raised and, to my dismay, rejected in *Downs*. The only new reason advanced is that the Legislature amended section 409.021 nine months after our decision. That is enough, says Bell, to conclude that *Downs* was "manifestly erroneous." While it is true that the Seventy-Eighth Legislature amended section 409.021 in 2003, its actions provide no insight into the Seventy-First Legislature's intent when enacting the law some fourteen years earlier. *Massachusetts v. EPA*, 549 U.S. 497, ___ (2007) (noting that what subsequent Congresses have done "tells us nothing about what Congress meant" when it previously amended the statute at issue); *United States v. Price*, 361 U.S. 304, 313 (1960) (holding that "the views of a subsequent Congress form a hazardous basis for infer ring the intent of an earlier one"); *Rowan Oil Co. v. Tex. Employment Comm'n*, 263 S.W.2d 140, 144 (Tex. 1953) (observing that "neither does one session of the Legislature have the power to construe the Acts or declare the intent of a past session"); *see also* Texas Workers' Compensation Act, 71st Leg., 2d C.S., ch. 1, § 5.21(a), (b), 1989 Tex. Gen. Laws 1, 51. Moreover, even in the face of swifter and clearer subsequent legislative action, we have nonetheless abided by our prior decisions. *See Storage & Processors, Inc. v. Reyes*, 134 S.W.3d 190, 192 (Tex. 2004) (noting that "[a]lthough the Legislature ten weeks later amended the Labor Code

to prohibit pre-injury waivers, *Lawrence* remains the law for those claims, like Reyes', brought by workers who both signed non-subscriber agreements and suffered injury before [the amendment]").

Legislatures write statutes; courts construe them. *Cf.* THE FEDERALIST NO. 78, at 466 (Alexander Hamilton) (Clinton Rossiter ed., 1961)("The interpretation of the laws is the proper and peculiar province of the courts."). We did so in *Downs*, and subsequent legislative action should not affect our construction. This is not to suggest we are infallible. When there are "compelling reasons" for doing so, *Weiner*, 900 S.W.2d at 320, we can, and should, reexamine our decisions, *Gutierrez v. Collins,* 583 S.W.2d 312, 317 (Tex. 1979) ("*Stare decisis* prevents change for the sake of change; it does not prevent any change at all."). But when the principal arguments for overruling a case are the same contentions we rejected the first time around, we should not be so quick to reconsider. In overruling *Downs*, the Court does a disservice to those who abided by the decision (as well as Continental Casualty, the *Downs* petitioner) and trades stability for disruption, confusion, and uncertainty. *John R. Sand & Gravel Co.*, 552 U.S. at ___. Today's decision encourages the very sort of "speculative relitigation" we warned against in *Weiner*. We should not abandon *stare decisis* principles here.

II
Non-retroactive Application

Nor would I hold, as Bell urges, that *Downs* should be applied prospectively only. As a rule, our decisions apply retroactively. *Elbaor v. Smith*, 845 S.W.2d 240, 250 (Tex. 1992). Nevertheless, we have long recognized narrow exceptions to this rule—largely in common-law cases regarding torts and contracts. *See, e.g.*, *Felderhoff v. Felderhoff*, 473 S.W.2d 928, 933 (Tex. 1971) (limiting

prospective application of new tort-liability rule); *Pollard v. Steffens*, 343 S.W.2d 234, 238 (Tex. 1961) (expressing contrary presumption of non-retroactivity in contracts). In 1992, we adopted the Supreme Court's test articulated in *Chevron Oil Co. v. Huson*, 404 U.S. 97, 106–07 (1971), to determine when such exceptions should apply. *See Carrollton-Farmers Branch Indep. Sch. Dist. v. Edgewood Ind. Sch. Dist.*, 826 S.W.2d 489, 518–21 (Tex. 1992).

Since our adoption of the *Chevron Oil* test, however, the Supreme Court explicitly overruled it as it applies to constitutional decisions and suggested that prospective application was not only wrong as to constitutional decisions, but contrary to the role of the judiciary. The Court stated:

> When this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule . . . . [W]e can scarcely permit the substantive law [to] shift and spring according to the particular equities of [individual parties'] claims of actual reliance on an old rule and of harm from a retroactive application of the new rule.

Harper v. Va. Dep't of Taxation, 509 U.S. 86, 97 (1993) (internal quotation marks omitted). Specifically, the Court recognized that "'the nature of judicial review' . . . strips [courts] of the quintessentially 'legislat[ive]' prerogative to make rules of law retroactive or prospective as we see fit." *Id.* at 95 (quoting *Griffith v. Kentucky*, 479 U.S. 314, 322 (1987)). As Justice Scalia wrote in a concurring opinion: "Prospective decisionmaking is the handmaid of judicial activism, and the born enemy of *stare decisis*. . . . The true traditional view is that prospective decisionmaking is quite incompatible with the judicial power, and that courts have no authority to engage in the practice." *Id.* at 105–106 (Scalia, J., concurring) (emphasis omitted); *see also Hulin v. Fibreboard Corp.*, 178 F.3d 316, 333 (5th Cir. 1999) (noting that the Supreme Court has "substantially reject[ed] . . .

departures [from the retroactivity doctrine] and return[ed] to the general rule of adjudicative retroactivity, leaving only an indistinct possibility of the application of pure prospectivity in an extremely unusual and unforeseeable case.").

Even if *Chevron*'s rule is still viable, applying it here would ignore the Legislature's role in setting a statute's effective date. Although a legislature cannot interpret the law, *see Rowan Oil*, 263 S.W.2d at 144 ("one session of the legislature [does not] have the power to . . . declare the intent of a past session"), it can establish the effective date of a law it enacts—and, subject to constitutional restraints not raised here, can make that law retroactively effective if it so chooses. *See Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 313 (1994) ("[The Legislature] may even, within broad constitutional bounds, make such a change retroactive and thereby undo what it perceives to be the undesirable past consequences of what it perceives to be a misinterpretation of its work product. No such change, however, has the force of law unless it is implemented through legislation."). In this case, the Legislature was clear:

> This Act takes effect September 1, 2003, and applies only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after that date. *A claim based on a compensable injury that occurs before the effective date of this Act is governed by the law in effect on the date the compensable injury occurred, and the former law is continued in effect for that purpose.*

Act of May 28, 2003, 78th Leg., R.S., ch. 1100, § 2, 2003 Tex. Gen. Laws 3161, 3162 (emphasis added). Thus, the Legislature chose not to disrupt the law in effect prior to September 1, 2003—the law as interpreted by this Court in *Downs*, 81 S.W.3d at 804. The Legislature having made that choice, the Court should not disturb it. *See Lasater v. Lopez*, 217 S.W. 373, 376-77 (Tex. 1919)

(Courts "violate their true powers and endanger their own authority whenever they undertake the legislative role[.]").

"It is not the duty of the court to write the laws of our state, but the proper function of the courts is to enforce the laws as made by the Legislature." *Cent. Ed. Agency v. Ind. Sch. Dist.*, 254 S.W.2d 357, 361 (Tex. 1953). In *Downs*, this Court did just that, thereby announcing what section 409.021 of the Workers' Compensation Act had *always* meant. *See Rivers*, 511 U.S. at 312-13 ("A judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction."). I would reject Bell's argument that *Downs* not be given retroactive effect.

III
Conclusion

The Court holds today that, "without violating the principles of *stare decisis,*" it may overturn very recent precedent construing a statute. Ironically, those principles counsel just the opposite. When we observe the time-honored tradition of adherence to precedent, particularly in statutory cases, the democratic process generally works as intended. It worked here. The Court declared the law in *Downs*. Though I believed then (and do now) that the Court's statutory analysis was flawed, the *Downs* holding nevertheless bound all litigants. It should also bind the Court. It was entirely appropriate, of course, for a subsequent Legislature to revise the statute. But the fact that the Legislature changed the law does not alter its former validity. Otherwise, the force of any prior decision in which we have determined statutory meaning is subject to change, threatening the law's stability. I would affirm the court of appeals' judgment.

Wallace B. Jefferson
Chief Justice

Opinion delivered: December 19, 2008