



which they were hired.<sup>2</sup> In *Outman v. Allen ISD Board of Trustees*, the court of appeals held that two professional employees of a school district who publicly charged a colleague with insubordination and unauthorized conduct were as a matter of law immune from liability for defamation because their actions were plainly “incident to or within the scope of” their duties.<sup>3</sup> These two decisions, requiring different levels of proof to establish immunity, are in direct conflict, even by the Court’s hypertechnical standards.<sup>4</sup> A decision subsequent to both, *Enriquez v. Khouri*, reaches a result consistent with *Outman* and inconsistent with the present case on essentially indistinguishable facts.<sup>5</sup>

This Court can easily resolve the conflict; plain statutory language gives it jurisdiction. And it certainly ought to do so, for obvious reasons: to remove needless uncertainty in this area of the law and give school employees clearer direction, to save the parties in this case and other cases the expense and delay of continuing to litigate an issue that can easily be settled, to spare the lower courts from further struggling with the issue, and to prevent the public’s resources from being wasted in pointless court proceedings. But the Court refuses to give direction, without any good legal or jurisprudential reason, and therefore I respectfully dissent.

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<sup>2</sup> 1999 WL 1012964, 1999 Tex. App. LEXIS 8340, [http://courtstuff.com/cgi-bin/as\\_web.exe?c05\\_00.ask+D+3183126](http://courtstuff.com/cgi-bin/as_web.exe?c05_00.ask+D+3183126) (Tex. App.—Dallas 1999) (unpublished opinion).

<sup>3</sup> 1999 WL 817694, 1999 Tex. App. LEXIS 7691, [http://courtstuff.com/cgi-bin/as\\_web.exe?c05\\_00.ask+D+1630829](http://courtstuff.com/cgi-bin/as_web.exe?c05_00.ask+D+1630829) (Tex. App.—Dallas 1999, no pet.) (unpublished opinion).

<sup>4</sup> See, e.g., *Coastal Corp. v. Garza*, 979 S.W.2d 318, 319 (Tex. 1998).

<sup>5</sup> 13 S.W.3d 458 (Tex. App.—El Paso 2000, no pet.) (holding that a school district employee was immune from liability for defamation for statements made concerning other employees who had been terminated from a program because the statements were made, as a matter of law, within the scope of the defendant’s duties).

Were the parties appealing from a final judgment, this Court’s jurisdiction would be undeniable because the case involves the construction of a statute, section 22.051(a), and because the issues raised are important to the State’s jurisprudence, both of which are grounds for jurisdiction under section 22.001(a) of the Texas Government Code.<sup>6</sup> But because this is an interlocutory appeal — one from the denial of a motion for summary judgment based on an assertion of immunity<sup>7</sup> — this Court’s jurisdiction is limited. Section 22.225(b)(3) of the Government Code<sup>8</sup> prohibits an interlocutory appeal to this Court except, as provided in subsection (c), in a case “in which the justices of the courts of appeals disagree on a question of law material to the decision or in which one of the courts of appeals holds differently from a prior decision of another court of appeals or of the supreme court, as provided by Subdivisions (1) and (2)

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<sup>6</sup> TEX. GOV’T CODE § 22.001(a)(3), (6) (“The supreme court has appellate jurisdiction, except in criminal law matters, coextensive with the limits of the state and extending to all questions of law arising in the following cases when they have been brought to the courts of appeals from appealable judgment of the trial courts: . . . (3) a case involving the construction or validity of a statute necessary to a determination of the case; . . . and (6) any other case in which it appears that an error of law has been committed by the court of appeals, and that error is of such importance to the jurisprudence of the state that, in the opinion of the supreme court, it requires correction, but excluding those cases in which the jurisdiction of the court of appeals is made final by statute.”).

<sup>7</sup> See TEX. CIV. PRAC. & REM. CODE § 51.014(a)(5) (“A person may appeal from an interlocutory order of a district court, county court at law, or county court that . . . (5) denies a motion for summary judgment that is based on an assertion of immunity by an individual who is an officer or employee of the state or a political subdivision of the state . . .”).

<sup>8</sup> TEX. GOV’T CODE § 22.225(b)(3) (“Except as provided by Subsection (c) or (d), a judgment of a court of appeals is conclusive on the law and facts, and a writ of error is not allowed from the supreme court, in . . . (3) . . . interlocutory appeals that are allowed by law . . .”).

of Section 22.001(a).”<sup>9</sup> The latter provisions are an affirmative grant of jurisdiction resembling the exceptions just stated.<sup>10</sup>

The respondent moved the Court to dismiss the petition for review for want of jurisdiction on the ground that the case did not fall within the exceptions in section 22.225(c). In response, petitioners argued that the court of appeals’ decision conflicted with decisions in four other cases: *Williams v. Chatman*,<sup>11</sup> *Beresford v. Gonzales*,<sup>12</sup> *Outman v. Allen ISD Board of Trustees*,<sup>13</sup> and *Enriquez v. Khouri*.<sup>14</sup> After requesting and receiving full briefing on all issues, the Court denied the petition for review, rather than dismissing it for want of jurisdiction, and denied the respondent’s motion to dismiss.<sup>15</sup>

Petitioners moved for rehearing, stating:

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<sup>9</sup> *Id.* § 22.225(c) (“This section does not deprive the supreme court of jurisdiction of a civil case brought to the court of appeals from an appealable judgment of a trial court in which the justices of the courts of appeals disagree on a question of law material to the decision or in which one of the courts of appeals holds differently from a prior decision of another court of appeals or of the supreme court, as provided by Subdivisions (1) and (2) of Section 22.001(a).”).

<sup>10</sup> *Id.* § 22.002(a)(1)-(2) (“The supreme court has appellate jurisdiction, except in criminal law matters, coextensive with the limits of the state and extending to all questions of law arising in the following cases when they have been brought to the courts of appeals from appealable judgment of the trial courts: (1) a case in which the justices of a court of appeals disagree on a question of law material to the decision; (2) a case in which one of the courts of appeals holds differently from a prior decision of another court of appeals or of the supreme court on a question of law material to a decision of the case . . .”).

<sup>11</sup> 17 S.W.3d 694 (Tex. App.—Amarillo 1999, pet. denied).

<sup>12</sup> 1999 Tex. App. LEXIS 8689 (Tex. App.—Corpus Christi 1999, no pet.) (unpublished opinion).

<sup>13</sup> 1999 WL 817694, 1999 Tex. App. LEXIS 7691 (Tex. App.—Dallas 1999, no pet.) (unpublished opinion).

<sup>14</sup> 13 S.W.3d 458 (Tex. App.—El Paso 2000, no pet.).

<sup>15</sup> 43 Tex. Sup. Ct. J. 1224 (Sept. 21, 2000).

By denying the motion to dismiss for want of jurisdiction, the Court acknowledged that it has jurisdiction to review the lower court's judgment in this case because the court held differently on a material issue of law that one or more other courts of appeals.

The motion then turned to the merits of the case. The response did not take issue with the statement just quoted or address jurisdiction but likewise devoted itself to the merits. The Court granted the motion and set the case for oral argument on March 21, 2001.<sup>16</sup> There, when petitioners' counsel was asked about jurisdiction, he answered that he was under the impression that the Court had resolved that issue by denying the petition rather than dismissing it, denying respondent's motion to dismiss, and then granting the motion for rehearing that did not address jurisdiction.

Counsel was, of course, correct. The issue had been resolved, just exactly as the Court explains today: "jurisdiction remains an issue until five justices agree".<sup>17</sup> At least five justices did agree on the jurisdictional issue — and then denied the respondent's motion to dismiss for want of jurisdiction. How else could the motion have been denied? Had more than four justices wanted to grant it, it would have been granted and the petition dismissed. But what if the denial of the petition and motion was a mistake? One might well surmise that the Court did not grant the motion for rehearing and hear oral argument so that it could dismiss the petition, rather than deny it, with an opinion that contributes nothing to the jurisprudence. The respondent certainly requested no such relief; she was understandably quite content with the denial of the petition, as her response to the motion for rehearing made clear. A win is a win, after all. And besides, the Court's resources are hardly so abundant that we can volunteer to squander them on more arguments

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<sup>16</sup> 44 Tex. Sup. Ct. J. 316, 318 (Jan. 11, 2001).

<sup>17</sup> *Ante* at \_\_\_\_.

and opinions about why we have no jurisdiction, especially over petitions we have already denied, whether rightly or wrongly. Legally, logically, practically, the Court could have had but one reason to grant the motion for rehearing, put the parties to the further expense of oral argument, and commit its resources to a plenary decision in the case: and that was to resolve the conflict described in the motion for rehearing regarding school employees' immunity. Yet the Court opts to avoid providing guidance on this important, recurring issue, despite the undeniable conflict in the courts of appeals and the rather plain language of the jurisdictional statutes.

Of the four cases petitioners cite for jurisdiction, *Williams v. Chatman*, the Court says, is not in such direct conflict with the court of appeals' decision in this case to invoke our limited jurisdiction. Perhaps so, given the Court's cribbed view of its "conflicts" jurisdiction. Another case, *Beresford v. Gonzales*, the Court does not deign to mention; suffice it to say, however, that the court of appeals' decision in the present case conflicts no more with *Beresford* than with *Williams*. That leaves two other cases cited by the petitioners, *Enriquez v. Khouri* and *Outman v. Allen ISD Board of Trustees*. *Enriquez*, the Court says, was not a "prior decision", as required by one of the exceptions in section 22.225(c), but was, in fact, issued after the court of appeals' decision in the present case. And *Outman*, the Court says, was not a decision of "another court", again in the language of part of section 22.225(c), because that case and the present one were decided by different panels of the same court of appeals. Furthermore, the Court says, a conflict with *Outman* cannot be used to invoke this Court's jurisdiction because the opinion in that case was unpublished.

So: does this Court lack jurisdiction over the present interlocutory appeal under section 22.225(c) because, although the decisions in *Outman* and *Enriquez* directly conflict with court of appeals' decision here, (1) *Outman* was not decided by "another court", (2) *Enriquez* was not "prior", and *Outman* was not published? The answers to the last two questions, at least, is no.

Whether the phrase "another court" in section 22.225(c) should be read to refer to another panel of the same court is not, in a historical context, entirely clear. Before the 1978 amendment to article V, section 6 of the Texas Constitution, each court of appeals had only three members and could not sit in panels or "sections".<sup>18</sup> The statutory provision that is now section 22.225(c) predates the 1978 change. We have never construed the "another court" requirement of that statute, but we did construe similar language in another jurisdictional statute in *Coultress v. City of San Antonio*, a 1916 decision.<sup>19</sup> We held that the requirement that one court conflict with another necessarily involved two separate courts, reasoning that it was impossible for a court to conflict with itself because its decision in a case served to overrule any prior inconsistent decisions in other cases, hence leaving no conflict.<sup>20</sup> This holding in *Coultress* makes sense as applied to three-justice courts of appeals, but its rationale is undercut when a larger court sits in

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<sup>18</sup> Compare Tex. S. J. Res. 45, § 1, 65th Leg., R.S., 1977 Tex. Gen. Laws 3366 (adopted May 24, 1977) (amending article V, section 6 of the Texas Constitution, effective Nov. 7, 1978, to read "The Legislature shall . . . divide this State into . . . Supreme judicial districts . . . and shall establish a Court of Civil Appeals in each of said districts, which shall consist of a Chief Justice and at least two Associate Justices . . . . The Court of Civil Appeals may sit in sections as authorized by law." ), with Tex. S. J. Res. 16, 22nd Leg., R.S., 1891 Tex. Gen. Laws 197 (approved April 28, 1891) (amending art. V, section 6 of the Texas Constitution, effective August 11, 1891, to read: "The Legislature shall . . . divide this State into . . . supreme judicial districts . . . and shall establish a Court of Civil Appeals in each of said districts, which shall consist of a Chief Justice and two associate Justices.").

<sup>19</sup> 187 S.W. 194 (Tex. 1916).

<sup>20</sup> *Id.* at 195.

panels. Although we have more recently held in *O'Connor v. First Court of Appeals* that “a court of appeals is a single, unitary body, even though it may sit in panels”, and that “the decision of a panel constitutes the decision of the whole court” so that en banc review is “necessary to maintain uniformity of the court’s decisions”, and therefore “[a] nonpanel member’s dissent from denial of en banc review serves the same salutary purposes served by any other dissenting opinion”,<sup>21</sup> as a practical matter, not every conflict between panels of the same court is resolved en banc. I doubt that one panel’s decision can be said to overrule a prior panel’s decision merely because they conflict, although this Court has never addressed that issue. Accordingly, one might argue that since 1978 “another court” should be understood to mean either another court or another panel of a court, but I think this would stretch the language too far. The best reading of section 22.225(c), even after 1978, is that “another court” means a separate court.

Although *Outman* was decided by the same court that decided the present case, and *Enriquez* was a subsequent decision, that is not the end of the jurisdictional matter. Section 22.225 “does not deprive the supreme court of jurisdiction of a civil case brought to the court of appeals from an appealable judgment of a trial court in which the justices of the courts of appeals disagree on a question of law material to the decision”. That is precisely the kind of case we have here: one in which the justices of the courts of appeals — at least the courts for the Fifth and Eighth Districts in Dallas and El Paso, respectively — disagree on a question of law that is material to the decision in the present case, namely, the proper application of the immunity provided to school district professional employees by section 22.051(a) of the

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<sup>21</sup> 837 S.W.2d 94, 96 (Tex. 1992).

Education Code. Section 22.225(c) plainly does not require that the justices be sitting on the same case — indeed, it would be impossible for justices of the “courts” — plural — of appeals to sit on the same case. Nor is there a requirement that the justices be sitting on different courts, or in prior or subsequent cases. Taking the language of the jurisdictional statute literally, as this Court has repeatedly insisted must be done, when there is a disagreement among the justices of the courts of appeals on a question of law that is material to the decision in a case, this Court is not prohibited by § 22.225(b) from resolving that disagreement.

The last phrase of § 22.225(c) — “as provided by Subdivisions (1) and (2) of Section 22.001(a)” — may intend some clarification or limitation on the preceding phrases, or may merely be a reference to similar provisions. Section 22.001(a)(1) gives this Court jurisdiction over “a case in which the justices of a court of appeals disagree on a question of law material to the decision”. Here “court” is singular. But section 22.001 is a recodification of former article 1728, which gave this Court jurisdiction over “[t]hose [cases] in which the judges of the Courts of Appeals may disagree upon any question of law material to the decision”.<sup>22</sup> Article 1728 was not clear, one way or the other, whether the Court is given jurisdiction of a case involving issues over which justices of different courts in different cases disagree. It may reasonably be construed to refer to any case involving a point of law on which the justices of the courts of appeals — plural — disagree, in that same case or others. Or the choice of the plural “cases” may have necessitated the use of plurals throughout. The Legislature did not intend to eliminate this ambiguity by

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<sup>22</sup> TEX. REV. CIV. STAT. art.1728 (1925), as amended through Act of May 31, 1981, 67th Leg., R. S., ch. 291, § 17, 1981 Tex. Gen. Laws 761, 773.

recodifying article 1728 because that recodification, like most others, was intended to be “without substantive change” to any provision.<sup>23</sup> But even if elimination of the ambiguity was an unintended consequence of recodification,<sup>24</sup> the recodified section 22.001(a)(1) cannot be used to cloud the meaning of the more precise language of § 22.225(c), which was unchanged by recodification.<sup>25</sup>

Moreover, section 22.001(a)(1) is one of several *grants* of jurisdiction. The Court could take jurisdiction over an interlocutory appeal under any other part of that section (section 22.001(a)(6), importance to the jurisprudence, is most commonly asserted) if not prohibited from doing so by section 22.225(b), with the exception in subsection (c). The clearer language of section 22.225(c) does not preclude this Court from taking jurisdiction over a case involving legal issues on which justices in other cases or on other courts disagree. And importantly, the language of section 22.225(c) does not differ from its pre-codification version.<sup>26</sup> Thus, even if the grant in section 22.001(a)(1) is unclear, section 22.225 does not prohibit jurisdiction, and there are other grants in section 22.001(a) — in this case, for cases involving the construction of a statute and cases that are important to the jurisprudence.

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<sup>23</sup> Act of May 17, 1985, 69th Leg., R.S., ch. 480, § 1.001, 1985 Tex. Gen. Laws 1720, 2046.

<sup>24</sup> See *Fleming Foods, Inc. v. Rylander*, 6 S.W.3d 278, 286 (Tex. 1999).

<sup>25</sup> TEX. REV. CIV. STAT. art. 1821 (1925), as amended through Act of May 29, 1983, 68th Leg., R.S., ch. 839, §1, 1983 Tex. Gen. Laws 4767, 4768 (“It is provided, however, that nothing contained herein shall be construed to deprive the Supreme Court of jurisdiction of any civil case brought to the Court of Appeals from an appealable judgment of the trial court in which the judges of the Courts of Appeal may disagree upon any question of law material to the decision, or in which the one of the Courts of Appeals holds differently from a prior decision of another Court of Appeals or of the Supreme Court upon a question of law, as provided for in Subdivisions (1) and (2) of Article 1728.”).

<sup>26</sup> See *id.*

The “disagreement” clause of § 22.225(c) and § 22.001(a)(1) is often referred to as “dissent jurisdiction”,<sup>27</sup> but that label does not accurately reflect the statute, and its repeated use, equally as casual as recurrent, can hardly constitute an adjudication of the meaning of the clause. Accordingly, I would hold that the Court is not prohibited from taking jurisdiction of this case by section 22.225(b)(3) because of the exception in section 22.225(c), and that it should take jurisdiction under section 22.001(a)(3) & (6).

The Court gives only one reason for not following section 22.225(c) literally, which is that to do so conflates two separate exceptions in that statute. But this simply presumes that the Legislature intended two separate exceptions in section 22.225(c), a presumption for which the Court has no authority and which is not logically required. It is just as likely that the Legislature intended to restate and emphasize a broad exception to the prohibition in section 22.225(b) to allow this Court to resolve unnecessary conflicts on questions of law in the courts of appeals, saving the judiciary, litigants, and the public a great deal of time and money. I do not know whether that was the Legislature’s purpose — although it would certainly have been a laudable one — any more than the Court knows that it was not. Rather than speculate over what purposes the Legislature could have had in writing the statute as it did, we ought to follow the words it chose as precisely as we can. I do not see how this word-for-word adherence to the statute can fairly be said, in the Court’s words, to “def[y] the Legislature’s clear and express limits on our jurisdiction.”<sup>28</sup> This

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<sup>27</sup> See, e.g., *Gonzalez v. Avalos*, 907 S.W.2d 443, 444 (Tex. 1995); *Stafford v. Stafford*, 726 S.W.2d 14, 15 (Tex. 1987); *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 397 (Tex. 1997).

<sup>28</sup> Ante at \_\_\_\_.

exaggeration cannot obscure the Court's single-minded determination to narrow its jurisdiction with stinging respect for what the Legislature has provided.

Finally, the fact that the opinion in *Outman* was not designated for publication under Rule 47.3 of the Rules of Appellate Procedure does not deprive it of significance in determining this Court's jurisdiction for four reasons.

*First:* Neither the statutes conveying jurisdiction, nor their purposes, nor common sense supports the Court's position that it has jurisdiction over a case with an unpublished court of appeals opinion — the opinion in the present case was unpublished — if that *unpublished* opinion conflicts with a *published* opinion but not if it conflicts with *another* unpublished opinion. The following anomaly results. When the opinion being reviewed is unpublished, as it is here, and therefore less likely to affect the jurisprudence than a published opinion, the Court would nevertheless hold that it had “conflicts jurisdiction” over the case if the opinion conflicted with another published opinion. The Court could correct an error in an opinion without precedential value because a citable opinion was correct. But when the opinion being reviewed is published, citable, and thus of greater significance, the Court would hold that it lacks jurisdiction to correct error in the opinion based on a conflict with one or even a dozen unpublished opinions that were right. As long as only the wrong opinions are published, the Court has no jurisdiction to resolve a conflict. And to compound the harm, litigants cannot even cite the correct opinions to courts who have not yet addressed the issue. “Conflicts jurisdiction”, in the Court's view, not only fails to resolve conflicts, but creates injustice.

*Second:* The Court cannot use a rule of procedure — specifically, Rule 47.7 of the Texas Rules of Appellate Procedure, which gives unpublished opinions no precedential value — to reduce categorically its statutory jurisdiction. This Court’s “conflicts jurisdiction”, in various forms, traces back to an 1891 amendment to article V, section 3 of the Texas Constitution.<sup>29</sup> The Court’s present “conflicts jurisdiction” in interlocutory appeals was conferred by the Legislature in 1953.<sup>30</sup> A rule first permitting the use of unpublished opinions was adopted in 1941,<sup>31</sup> although unpublished opinions were sometimes used before then.<sup>32</sup> Not until 1982 did the Court adopt a rule limiting the precedential value of unpublished opinions.<sup>33</sup> No argument can be made that before 1982 unpublished opinions could not give rise to “conflicts jurisdiction”; until the 1982 rules change, the precedential value of unpublished opinions was not limited. The rules amendments cannot have diminished the Court’s “conflicts jurisdiction”. Article V, section 3 provides that the Supreme Court’s appellate jurisdiction “shall extend to all cases except in criminal law

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<sup>29</sup> See *Schintz v. Morris*, 35 S.W. 1041, 1041 (Tex. 1896).

<sup>30</sup> Act of May 19, 1953, 53rd Leg., R.S., ch. 424, § 1, 1953 Tex. Gen. Laws 1026.

<sup>31</sup> TEX. R. CIV. P. 452, Order of the Supreme Court of Texas, Adopting Rules of Civil Procedure, 136 Tex. 442, 580 (Oct. 29, 1940, eff. Sept. 1, 1941) (“Opinions shall be ordered not published when they present no question or application of any rule of law of interest or importance to the jurisprudence of the State.”), *amended by* Order of the Supreme Court of Texas, Adopting Amendments, 629-630 S.W.2d xli, xli-xlii (Apr. 15, 1982, eff. Aug. 15, 1982) (adding Rule 452(b)-(f)), *repealed by* Order of the Supreme Court of Texas, Adopting Amendments to the Rules of Civil Procedure, 705-706 S.W.2d xxxi (Apr. 10, 1986, eff. Sept. 1, 1986) (repealing Rule 452), *replaced by* TEX. R. APP. P. 90, Order of the Supreme Court of Texas, Promulgating New Rules of Appellate Procedure, 707-708 S.W.2d xxix, lxxxv-lxxxvi (Apr. 10, 1986, eff. Sept. 1, 1986), *replaced by* TEX. R. APP. P. 47, Order of the Supreme Court of Texas, Final Approval of Revisions to the Texas Rules of Appellate Procedure (Aug. 15, 1997, eff. Sept. 1, 1997).

<sup>32</sup> See *Cooper v. City of Dallas*, 18 S.W. 565, 565 (Tex. 1892) (referring to an unpublished 1884 opinion of the commission of appeals).

<sup>33</sup> TEX. R. CIV. P. 452(b)-(f), Order of the Supreme Court of Texas Adopting Amendments to the Rules of Civil Procedure, 629-630 S.W.2d (Texas Cases) xli, xli-xlii (Apr. 15, 1982, eff. Aug. 15, 1982).

matters and as otherwise provided in this Constitution or by law.”<sup>34</sup> The Constitution does not permit the Court to enlarge or diminish by rule its own jurisdiction over categories of cases — here, those with unpublished opinions.

*Third:* It is, of course, no answer to the last point that this Court can order opinions published.<sup>35</sup> The Court has no more power to affect its jurisdiction by choosing whether to apply its rules to publish opinions than by choosing whether to adopt those rules in the first place. As a practical matter, the Court rarely orders an unpublished opinion published, and has never done so in order to cause a conflict over which it would then assert jurisdiction. It refuses to do so here.

*Fourth:* The Court’s restrictive view of its “conflicts jurisdiction” not only results in anomalies, as I have already noted, but fosters the very conflicts and uncertainties in the law it was designed to prevent. To say that an opinion is unpublished these days means little more than that the court has not designated that it be included in the *South Western Reporter*. Unpublished opinions are often available from computer research services, as the opinions in this case and *Outman* are, on computer websites, as both of these opinions are, in published topical materials, and of course, from the courts that issued them and the parties that received them. In advising clients and representing them in courts, lawyers are often aware of unpublished opinions. Not knowing whether conflicts in judicial decisions can be resolved only heightens

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<sup>34</sup> TEX. CONST. art. V, § 3.

<sup>35</sup> See TEX. R. APP. P. 47.3(d) (“The Supreme Court or the Court of Criminal Appeals may, at any time, order a court of appeals’ opinion published.”).

the difficulties in giving meaningful legal advice. The Court’s refusal to give its “conflicts jurisdiction” functional content leaves Texas courts and litigants in a wasteful, costly uncertainty that is entirely avoidable.

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Confusion, and waste, which “conflicts jurisdiction” is designed to avoid, are the hallmarks of the Court’s “conflicts jurisdiction” jurisprudence. “Conflicts jurisdiction”, in the Court’s hands, is not a functional tool for resolving conflicts in the law but a contorted choreography for dancing around them. The parties to the case before us have invested their time and resources in requesting a resolution of a real conflict in the courts over an issue that affects not only these litigants but other school employees as well. That investment has been wasted. If petitioners are correct in their view of their statutory immunity, they and others will be put to trial unnecessarily, at further expense to themselves, and at a cost to taxpayers for wasted court time. If petitioners are incorrect, then litigants in the Eighth Court of Appeals District will have lost important rights because of that court’s overly expansive view of immunity. As confident as the Court seems to be that this is the right result, it might explain why real conflicts that cost private parties and the public time and money cannot be avoided despite a specific grant of jurisdiction whose obvious purpose is to prevent them.

I respectfully dissent.

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Nathan L. Hecht  
Justice

Opinion delivered: December 13, 2001