



CHIEF JUSTICE PHILLIPS issued a dissenting opinion, in which JUSTICE HANKINSON joined.

JUSTICE HECHT issued a dissenting opinion.

This matter is yet another chapter in the 2000 congressional redistricting controversy. Governor Rick Perry and former Secretary of State Henry Cuellar (the State defendants), Susan Weddington, several congressional members, the Associated Republicans of Texas, and Charles Babb directly appeal the final judgment from a bench trial held in Travis County, Texas. We determine two issues:

- Does the Attorney General, under the separation-of-powers doctrine, have the authority to require the trial court to adopt his redistricting plan and render judgment that his plan is the baseline state court plan for the federal court redistricting proceedings?
- Did the trial court violate the parties' due course of law rights when it rendered a judgment based on a party's new plans not in evidence at trial without giving the parties an opportunity for a meaningful hearing?

We conclude that the Attorney General's assertion that he speaks for the Legislature and thus the trial court must adopt his plan violates the separation-of-powers doctrine. Moreover, under the facts here, we conclude that the manner in which the trial court rendered its judgment violated the parties' due course of law rights. Accordingly, we vacate the trial court's October 10, 2001 judgment and remand the case to the trial court for proceedings consistent with this opinion.

## I. BACKGROUND

On September 10, 2001, this Court determined that the Travis County trial court had dominant jurisdiction to hear the plaintiffs' claims that, under the 2000 census, the existing Texas congressional districts are unconstitutional and that the trial court must adopt a new redistricting plan. *Perry et al. v. Del*

*Rio et al.*, \_\_ S.W.3d \_\_. Following our decision, the Travis County trial court set the case for trial beginning September 17, 2001. The trial court received evidence and heard testimony and arguments from all the parties about the various proposed congressional redistricting plans they urged the trial court to adopt. On September 28, 2001, the parties rested, closed, and presented arguments to the trial court.

On October 1, 2001, the trial court notified the parties that it was, on its own motion, appointing the Texas Legislative Council to act as the trial court's expert in deciding the issues in this case. The trial court issued an order to this effect and required the Texas Legislative Council's staff to maintain as confidential the trial court's dealings and communications with the staff. The State defendants objected to this order. They argued that not only was the trial court's order impermissible under the Texas Rules of Civil Procedure, but it also created a conflict of interest because the Texas Legislative Council's staff are the Lieutenant Governor's and Speaker of the House's employees.

Two days later, on October 3, 2001, the trial court entered an order announcing its intent to adopt Plan 1065C for Texas' congressional districts. The trial court attached Plan 1065C to the order and identified an Internet site where the parties could view the plan. Further, the trial court invited all parties to file comments, proposed changes, or requested modifications to this plan by October 9, 2001. The trial court also stated that it was preparing findings of fact and conclusions of law.

On October 9, 2001, the Democratic Congressional Interveners and the Del Rio and Cotera Plaintiffs filed objections to Plan 1065C. On that same day, Speaker Laney submitted proposed modifications to Plan 1065C and requested that the trial court incorporate his proposed new plans, different from those he offered during the trial, into Plan 1065C.

Sometime after 10:00 a.m. on October 10, 2001, the trial court notified the parties by facsimile that

it was “seriously considering” adopting several changes Speaker Laney proposed. The trial court briefly explained the changes it was considering making to Plan 1065C and asked the parties to submit comments on these proposed changes by noon that day. Unlike its previous order identifying Plan 1065C as the proposed plan, the trial court did not attach a map showing what the new proposed plan looked like. Also, it did not refer the parties to an Internet site where they could view the plan.

Later that day, the trial court rendered its final judgment. And, rather than adopting Plan 1065C, the trial court adopted a new plan designated Plan 1089C. The trial court’s judgment states that Plan 1089C incorporates certain proposals the parties submitted. Moreover, the trial court’s judgment permanently enjoins further use of the existing thirty Texas congressional districts in any primary or general election.

Throughout the state-court proceedings, litigation has been pending in the United States District Court for the Eastern District of Texas (the “Tyler court”) before a three-judge panel. But the Tyler court has deferred to the state court litigation, as *Grove v. Emison*, 507 U.S. 25 (1993), requires. It previously rescheduled its redistricting proceedings to begin on October 1, 2001, and ordered the parties to file any state court plan — which the Tyler court would use as a baseline for its redistricting trial — by that date. At the Travis County trial court’s request, on October 1, the Tyler court extended the filing deadline until October 3. The Tyler court also ordered the parties to file expert reports and proposed exhibits and to submit statements of position by October 11 and 12, respectively.

However, after the trial court rendered its October 10 judgment that adopted a redistricting plan different from Plan 1065C, the Tyler court again extended its trial-schedule deadlines. In its October 11 order, the Tyler court recognized that when it set the October 11 and 12 deadlines, it had “not

contemplated major changes to the state court plan [Plan 1065C] filed on October 3.” But it concluded that *Grove* compels it to use Plan 1089C, rather than Plan 1065C, as a baseline state plan. Thus, the Tyler court ordered that it would continue its trial until October 22, 2001, and extended the deadlines for the parties to file their position statements and exhibits.

On October 12, 2001, the State defendants, whom the Attorney General has represented throughout the proceedings, perfected their direct appeal with this Court. On October 15, 2001, the Associated Republicans of Texas and Charles Babb perfected their appeal. On that day, after considering the parties’ jurisdictional statements and objections, we noted probable jurisdiction under Rule 57 of the Texas Rules of Appellate Procedure and ordered the parties to file briefs on an expedited schedule. Then, on October 16, 2001, Susan Weddington, Chair of the Republican Party of Texas, and Congressmen Tom DeLay, Joe Barton, John Culberson, Sam Johnson, and Kevin Brady (“Congressman DeLay” collectively) perfected their direct appeal and moved to consolidate their appeal with the State defendants’ appeal. We noted probable jurisdiction and granted the motion to consolidate. The Court heard oral arguments on October 18, 2001.

## **II. JURISDICTION**

Our State’s existing congressional redistricting plan is embodied in Article 197h of the Texas Revised Civil Statutes. In 1996, a federal district court held that three congressional districts in Article 197h were unconstitutional. *Vera v. Bush*, 933 F. Supp. 1341, 1347 (S.D. Tex. 1996). The *Vera* court entered an interim remedial order that redrew the three districts to correct the constitutional infirmities. 933 F. Supp. at 1352. Because the Legislature never enacted a new plan, the federal court’s remedial order

and the unaffected districts in Article 197h remained in effect for future elections. *See Vera v. Bush*, 980 F. Supp. 252, 253 (S.D. Tex. 1997). However, the 2000 census demonstrates that Texas is now entitled to two additional congressional delegates. Therefore, Texas' existing plan with thirty congressional districts is presumptively unconstitutional. *See* U.S. CONST. amend. XIV, § 2.

This Court has direct-appeal jurisdiction from “an order of a trial court granting or denying an interlocutory or permanent injunction on the ground of the constitutionality of a statute of this state.” TEX. GOV'T. CODE § 22.001(c); *see* TEX. CONST. art. V, § 3-b. Here, the trial court's order enjoins parties from using the State's existing thirty congressional districts — which Article 197h and the *Vera* court's 1996 remedial order reflect — in any election. Additionally, when this Court has appellate jurisdiction over any issue, it acquires “extended jurisdiction” over all other questions of law properly preserved and presented. *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 749 n.39 (Tex. 1995); *City of Corpus Christi v. Pub. Util. Comm'n*, 572 S.W.2d 290, 294 (Tex. 1978). Accordingly, we have direct-appeal jurisdiction to consider all the legal errors alleged in the various parties' appeals. *See Edgewood*, 917 S.W.2d at 749 n.39; *City of Corpus Christi*, 572 S.W.2d at 294.

### **III. THE PARTIES' CONTENTIONS**

#### **A. THE STATE DEFENDANTS**

Because the trial court failed to adopt the Attorney General's proposed redistricting plan, the State defendants contend the trial court violated our separation-of-powers doctrine. *See* TEX. CONST. art. II, § 1. The State defendants assert that, absent a legislative redistricting plan, the Attorney General has the

inherent power to fill the legislative void and present the State's policy preferences on redistricting. The State defendants argue the trial court should have deferred to the plan the Attorney General submitted on the State defendants' behalf, because Texas' Attorney General is authorized to represent the State's interests in redistricting litigation. According to the State defendants, the trial court abandoned its adjudicatory role when it adopted its own plan without finding any legal errors in the Attorney General's or other parties' proposed plans.

Furthermore, the State defendants argue that the trial court's judgment adopting Plan 1089C at the eleventh hour, without providing the parties an adequate opportunity to comment and to submit evidence about this new plan, rendered the bench trial meaningless. The State defendants urge that the trial court's order appointing the Texas Legislative Council as an expert and requiring the Council's staff to keep its dealings with the trial court confidential further exemplifies the trial court's irregular proceedings.

#### **B. WEDDINGTON, CONGRESSMAN DeLAY, ART, AND BABB**

Weddington, Congressman DeLay, ART, and Babb argue that the trial court violated their due course of law rights by adopting Plan 1089C in its final judgment without affording the parties notice and an opportunity to comment on that plan, review its statistics, or provide it to their experts for study. Relying on this Court's decision in *Terrazas v. Ramirez*, 829 S.W.2d 712 (Tex. 1991), they contend that a trial court cannot adopt a redistricting plan without hearing evidence on the plan and affording interested parties a forum in which to test the plan.

Moreover, Weddington, Congressman DeLay, ART, and Babb assert that there is no evidence to support the trial court's findings of facts and conclusions of law about Plan 1089C. They argue that in

contrast to the more than nine redistricting plans the parties proposed during the bench trial — along with expert testimony to support and criticize each proposed plan — Plan 1089C was never introduced or subjected to expert scrutiny at trial.

Finally, Weddington, Congressman DeLay, ART, and Babb contend that Plan 1089C is motivated by improper criteria because it is an incumbent protection plan. Moreover, they argue that Plan 1089C violates the Voting Rights Act by not protecting minority voters.

### **C. SPEAKER LANEY AND DEL RIO AND COTERA, ET AL.**

Speaker Laney and the Del Rio and Cotera Plaintiffs contend that all the appellants raise only factually based arguments that this Court does not have jurisdiction to consider. Specifically, they contend appellants' arguments that Plan 1089C violates the Voting Rights Act and that the Court should adopt the plans they supported at trial require factual determinations.

Furthermore, Speaker Laney and the Plaintiffs assert that the Attorney General does not have authority to unilaterally impose a congressional redistricting plan on this State. They argue that *Terrazas* stands only for the proposition that the Attorney General can suggest possible redistricting remedies just as any other party can do at trial. Also, they urge that the separation-of-powers doctrine precludes extending executive branch authority to congressional redistricting. And Speaker Laney and the Plaintiffs refute the Attorney General's claim that federal jurisprudence supports his position that the trial court should treat executive officials as if they speak for the Legislature.

Finally, Speaker Laney and the Plaintiffs argue that Plan 1089C was the product of a fair process. He contends that some of his post-trial proposed modifications to Plan 1065C, which the trial court

adopted in Plan 1089C, answer the trial court’s question at trial about whether Speaker Laney and Lieutenant Governor Ratliff had merged their two maps together. They had not. But Speaker Laney urges that his modifications reflect “a careful merging” of the plans he and the Lieutenant Governor proposed. According to Speaker Laney, the need for an additional hearing is unfounded because the parties presented evidence to the court on an equal footing and had the opportunity to comment on the trial court’s initial proposal. Moreover, he contends, the trial court ultimately should be able to select its own remedial plan.

#### **IV. APPLICABLE LAW**

##### **A. STANDARD OF REVIEW**

Our review on direct appeal is constitutionally confined to questions of law. TEX. CONST. art. V, § 3-b; TEX. GOV’T CODE § 22.001(b); TEX. R. APP. P. 57.2; *O’Quinn v. State Bar of Texas*, 763 S.W.2d 397, 399 (Tex. 1988). We review questions raising constitutional violations *de novo*. See *City of College Station v. Turtle Rock Corp.*, 680 S.W.2d 802, 804 (Tex. 1984); *State/Operating Contractors ABS Emissions, Inc. v. Operating Contractors/State*, 985 S.W.2d 646, 650-51 (Tex. App.— Austin 1999, pet. denied).

##### **B. SEPARATION OF POWERS**

The Texas Constitution’s separation-of-powers doctrine provides:

The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in

the instances herein expressly permitted.

TEX. CONST. art. II, § 1.

The Legislature is the department constitutionally responsible for apportioning the State into federal congressional legislative districts. U.S. CONST. amend. XIV, § 2; TEX. CONST. art. III, § 28; *Wise v. Lipscomb*, 437 U.S. 535, 539 (1978). When the Legislature does not act, citizens may sue and, then, it is the judiciary's role to determine the appropriate redistricting plan. *See Growe*, 507 U.S. at 33-34; *Scott v. Germano*, 381 U.S. 407, 409 (1965) (per curiam); *Maryland Comm. v. Tawes*, 377 U.S. 656, 676 (1964); *Terrazas*, 829 S.W.2d at 717-20.

Because of our Constitution's explicit prohibition against one government branch exercising a power attached to another, unless specific circumstances exist, "it is only by *express* constitutional provision that the executive department could legitimately exercise the redistricting power." *Terrazas*, 829 S.W.2d at 733 (Cornyn J., concurring) (emphasis in original). This is because "[t]he powers conferred by the Constitution upon the state officials are generally held to be exclusive, and except in the manner authorized by the Constitution, these powers cannot be enlarged or restricted." *Garcia v. Laughlin*, 285 S.W.2d 191, 194 (Tex. 1955).

The Attorney General is a member of the Executive Department whose primary duties are to render legal advice in opinions to various political agencies and to represent the State in civil litigation. *See* TEX. CONST. art. IV, §§ 1, 22; TEX. GOV'T CODE § 402.021. We have recognized that the Attorney General, as the State's chief legal officer, has broad discretionary power in carrying out his responsibility to represent the State. *Terrazas*, 829 S.W.2d at 722. But we have held that this power does not permit the Attorney General "to effectuate a valid reapportionment of senatorial districts himself," because only the trial court's

judgment can accomplish this when the Legislature fails to act. *Terrazas*, 829 S.W.2d at 722. This is because the Attorney General can only act within the limits of the Texas Constitution and statutes, and courts cannot enlarge the Attorney General's powers. *Terrazas*, 829 S.W.2d at 735 (Comyn, J., concurring); *State ex rel. Downs v. Harney*, 164 S.W.2d 55, 59 (Tex. Civ. App.—San Antonio 1942, writ ref'd w.o.m.).

### C. DUE COURSE OF LAW

The Texas Constitution provides that “[n]o citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.” TEX. CONST. art. I, § 19. Typically, what course of law is due depends on several factors, including the private interests affected, the risk that the procedures used may erroneously deprive an interest, and the government's interest, such as the burden that the procedural requirement would entail. *Univ. of Tex. Med. School v. Than*, 901 S.W.2d 926, 930 (Tex. 1995). We have recognized that our due course of law provision at a minimum requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Than*, 901 S.W.2d at 930; *see House of Tobacco, Inc. v. Calvert*, 394 S.W.2d 654, 657-58 (Tex. 1965); *Freeman v. Ortiz*, 153 S.W. 304, 304 (Tex. 1913). And, under certain circumstances, the right to be heard assures a full hearing before a court having jurisdiction over the matter, the right to introduce evidence at a meaningful time and in a meaningful manner, and the right to judicial findings based upon that evidence. *See Turcotte v. Trevino*, 499 S.W.2d 705, 723 (Tex. Civ. App.—Corpus Christi 1973, writ ref'd n.r.e.). This right also includes an opportunity to cross-examine witnesses, to produce witnesses, and to be heard on questions of law. *In re B\_\_M\_\_N\_\_*, 570 S.W.2d

493, 502 (Tex. Civ. App.—Texarkana 1978, no writ). It also involves the right to have judgment rendered only after trial. *Grigsby v. Peak*, 57 Tex. 142, 144 (1882); *Masonic Grand Ch. of Order of E. Star v. Sweatt*, 329 S.W.2d 334, 337 (Tex. Civ. App.—Fort Worth 1959, writ ref’d n.r.e.).

This Court has held in redistricting cases that Texas courts can order reapportionment “only after investigation and careful consideration of the many, diverse interests affected . . .” *Terrazas*, 829 S.W.2d at 718. We have also instructed that in redistricting cases Texas courts must attempt to consider the parties’ interests, as well as the public’s interest in general. *Terrazas*, 829 S.W.2d at 719.

## V. ANALYSIS

### A. SEPARATION OF POWERS

We disagree with the State defendants’ argument that the trial court violated our separation-of-powers doctrine when it did not defer to, or adopt, the redistricting plan the Attorney General proposed during the trial. To the contrary, it is the Attorney General’s position — that in congressional redistricting controversies he steps into the Legislature’s shoes if the Legislature does not act — that violates the separation-of-powers doctrine.

The State defendants’ contentions about the Attorney General’s alleged role in this case have no basis in law. While congressional redistricting is typically a legislative function, U.S. CONST. amend. XIV, § 2, courts must resolve redistricting controversies when the legislature does not do so. *See, e.g., Vera*, 980 F. Supp. at 252; *Terrazas*, 829 S.W.2d at 717. In deciding a redistricting controversy, we have stated that “Texas courts may order apportionment . . . [but] that power ought to be used only after investigation and *careful consideration of the many, diverse interests affected . . .*” *Terrazas*, 829

S.W.2d at 718 (emphasis added). Moreover, “the trial court must attempt to consider the interests, not only of the parties in the case, but of others who are not present.” *Terrazas*, 829 S.W.2d at 719. Therefore, requiring that the trial court defer to, and adopt, the Attorney General’s plan thwarts our explicit guidelines for trial courts in redistricting cases.

To accept the State defendants’ position that the Attorney General becomes the Legislature’s voice when the Legislature fails to act would condone a constitutional violation. *See* TEX. CONST. art. II, § 1 (no branch of government “shall exercise any power properly attached to either of the others, except in the instances herein [the Constitution] expressly permitted.”). As a member of the executive branch, the Attorney General may not perform legislative functions unless expressly authorized to do so. *See* TEX. CONST. art. II, § 1; *Garcia*, 285 S.W.2d at 194-95; *Terrazas*, 829 S.W.2d at 733 (Comyn, J., concurring). Neither our Constitution nor Chapter 402 of the Government Code expressly authorizes the Attorney General’s position here. *See* TEX. CONST. art. IV, §§ 1, 22; TEX. GOV’T CODE § 402.021. And the State defendants provide us with no other authority giving the Attorney General the Legislature’s power to resolve the congressional redistricting controversy. As we stated in *Terrazas*, under these circumstances, only courts have the authority to effectuate a valid congressional reapportionment plan unless or until the Legislature acts. 829 S.W.2d at 720.

Accordingly, we agree with Speaker Laney’s and the Plaintiffs’ contentions that the Attorney General does not have the authority to act in the Legislature’s stead and dictate the remedy in a congressional redistricting case. Indeed, *Terrazas* and *Lawyer v. Department of Justice*, 521 U.S. 567, 577-78 (1997), demonstrate only the Attorney General’s authority to *propose* and *suggest* remedies and settle redistricting cases. But they do not provide for the unilateral legislative authority the Attorney General

now seeks. Because neither the Constitution nor a statute expressly gives the Attorney General legislative authority in redistricting cases, his claim that it exists is without merit.

## **B. DUE COURSE OF LAW**

We agree with Weddington, ART, and Babb that the manner in which the trial court arrived at its October 10 final judgment violated our Constitution's due course of law provision. For all we know, the redistricting plan could very well dictate our State's congressional elections for the next decade. *See Vera*, 980 F. Supp. at 253. Court-ordered redistricting cases require close scrutiny of several important factors and interests, including: compactness, regularity, contiguity, preservation of communities of interest, equal protection, and the integrity of natural and traditional county and city boundaries. *See generally Bush v. Vera*, 517 U.S. 952 (1996). Therefore, it is imperative in these cases that a court's procedures protect all interests involved.

Indeed, we have recognized that court-ordered redistricting could affect not only the parties to the litigation but also others in our State who should have the opportunity to intervene and be heard. *Terrazas*, 829 S.W.2d at 726. Also, we have recognized that courts in these cases must take careful consideration of the many, diverse interests affected. *Terrazas*, 829 S.W.2d at 718.

Undoubtedly, redistricting will impact nearly all Texas voters, because it will determine who they choose to represent their interests in Congress. *Than*, 901 S.W.2d at 930. Furthermore, there is a significant risk that all Texas citizens' interests may not be protected in redistricting litigation. *See Than*, 901 S.W.2d at 930. This is why a court cannot order a reapportionment plan for the State based upon nothing more than an agreement between the Governor, the Attorney General, and a few citizens. *See*

*Terrazas*, 829 S.W.2d at 714. And this is why we have held that, in redistricting cases, Texas courts may order apportionment only after investigation and careful consideration of all diverse interests affected. *See Terrazas*, 829 S.W.2d at 718.

The unique circumstances and constitutionally protected interests involved in court-ordered redistricting cases require that, before entering its final judgment on a redistricting plan, a trial court must afford all the parties a meaningful hearing. *See Than*, 901 S.W.2d at 930; *Freeman*, 153 S.W. at 304; *Grigsby*, 57 Tex. at 144; *In re B\_\_M\_\_N\_\_*, 570 S.W.2d at 502; *Sweatt*, 329 S.W.2d at 337. This does not unduly burden our courts; it is simply what our Constitution and the state-wide interests a court-ordered redistricting case affects require. *See Than*, 901 S.W.2d at 930; *Terrazas*, 829 S.W.2d at 718.

Here, the manner in which the trial court entered its final judgment did not comport with *Terrazas* and violated the parties' due course of law rights. On October 3, 2001, the trial court advised the parties that it intended to adopt Plan 1065C and gave the parties a meaningful period of time to comment on this plan. To this point, the trial court provided an adequate procedure by which it could give full and careful consideration to the interests its ruling may affect. *Terrazas*, 829 S.W.2d at 720.

In its October 10 mid-morning facsimile to the parties, the trial court set a noon deadline for any party to comment on Plan 1089C, a plan significantly different than the plan the trial court originally proposed to adopt. The trial court's facsimile made clear that it would not entertain any comments received after noon because the Tyler federal court's filing deadline was 5:00 p.m. Thus, the parties not only had little time to object to the new changes, they were deprived of a meaningful opportunity to present a motion for new trial. Once the trial court determined that it intended to substantially change its proposed redistricting plan, the constitutionally-protected interests involved, *Terrazas*, and our Constitution's due

course of law provision required the trial court to provide the parties a meaningful opportunity to be heard. *See Than*, 901 S.W.2d at 930; *Freeman*, 153 S.W. at 304; *Grigsby*, 57 Tex. at 144; *In re B\_\_M\_\_N\_\_*, 570 S.W.2d at 502; *Sweatt*, 329 S.W.2d at 337.

We do not mean to suggest that a trial court cannot make de minimis changes to its proposed redistricting plan without reopening the evidence. The proceedings must end at some point. But, here, the trial court's changes to Plan 1065C were extensive and significant — not de minimis. As the Tyler court noted in its October 11, 2001 order, the trial court made “major changes” to its initially proposed plan. Because the trial court did not provide the necessary due course of law when it made these wholesale changes, its October 10, 2001, judgment violated the parties' due course of law rights and therefore is invalid.

Because of the procedural infirmities in the way the trial court rendered its final judgment, that judgment, which adopts Plan 1089C, is wholly invalid. Seven of the nine Justices of this Court agree that Plan 1089C is invalid, while two do not reach the issue and would dismiss on jurisdictional grounds. However, our paths diverge on the proper disposition to follow. Justice Hecht would render judgment that Plan 1065C is the state court baseline plan for the Tyler court to use. But the contortions Justice Hecht must go through to reach that result are beyond the scope of our judicial power. First, by validating Plan 1065C, Justice Hecht would breathe life into a plan that the trial court never finally adopted and therefore does not exist. Second, Justice Hecht must wholly disregard Speaker Laney's and the Plaintiffs' objections and proposed changes to Plan 1065C. But to disregard them, Justice Hecht must make factual determinations about the evidence and judgment calls about what the trial court's findings might have been. This is entirely inappropriate, as our jurisdiction on direct appeal is constitutionally limited to questions of

law. TEX. CONST. art. V, § 3-b; TEX. GOV'T CODE § 22.001(b); TEX. R. APP. P. 57.2; *O'Quinn*, 763 S.W.2d at 399.

Additionally, although Justice Owen agrees that we must remand, she writes only to instruct the trial court how to conduct its proceedings. But her writing does nothing more than instruct the trial court on how to follow law that already exists. Moreover, it is entirely advisory, and our Constitution prohibits courts from issuing advisory opinions. TEX. CONST. art. II, § 1; *Texas Ass'n of Bus. v. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993).

## VI. CONCLUSION

We conclude that the manner in which the trial court arrived at its judgment violated the parties' due course of law rights. Consequently, we vacate the trial court's October 10, 2001 judgment and remand the case to the trial court for proceedings consistent with this opinion.

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James A. Baker  
Justice

Opinion delivered: October 19, 2001