



or other ruling by the district court that occurs outside the strict ten-day period is “void.” \_\_\_ S.W.3d at \_\_\_. But then the Court holds that, after the ten-day period expires, “the district court has a ministerial duty to sign a judgment affirming the administrative decision, which can then form the basis of the appeal.” \_\_\_ S.W.3d at \_\_\_.

I believe the Court’s resolution: (1) wholly ignores our law that the district court lacks jurisdiction to make any rulings after the ten-day period expires; (2) places an unnecessary burden on the applicant if the trial court fails to render and sign a written judgment within the time period; and (3) thwarts the obvious legislative intent that the district court have power over the appeal only within the constricted timetable. I would hold that, if a district court does not render and sign a written judgment from which the applicant may further appeal within the ten-day period, the administrative decision is not only deemed final and enforceable *but also* becomes the final judgment by operation of law so that the applicant can timely perfect an appeal to the court of appeals. Accordingly, I dissent.

## **I. APPLICABLE LAW**

Section 11.67 of the Texas Alcoholic Beverage Code affords an applicant whose alcohol permit is refused, canceled, or suspended the right to appeal to a district court and then the court of appeals. The relevant part reads:

- (a) An appeal from an order of the commission or administrator refusing, cancelling, or suspending a permit or license may be taken to the district court of the county in which the applicant, licensee, or permittee resides or in which the owner of involved real or personal property resides.

(b) The appeal shall be under the substantial evidence rule and against the commission alone as defendant. The rules applicable to ordinary civil suits apply, with the following exceptions, which shall be construed literally:

- (1) the appeal shall be perfected and filed within 30 days after the date the order, decision, or ruling of the commission or administrator becomes final and appealable;
- (2) the case shall be tried before a judge within 10 days from the date it is filed;
- (3) neither party is entitled to a jury; and
- (4) the order, decision, or ruling of the commission or administrator may be suspended or modified by the court pending a trial on the merits, but the final judgment of the district court may not be modified or suspended pending appeal.

TEX. ALCO. BEV. CODE § 11.67 (a)-(b).

Under the statutory scheme, the district court hearing the appeal must conduct its substantial-evidence hearing within ten days after the appeal is filed. *See* TEX. ALCO. BEV. CODE § 11.67(b)(2). The district court has discretion to suspend the administrative ruling's effect pending the hearing. TEX. ALCO. BEV. CODE § 11.67(b)(4). However, the district court's final judgment takes immediate effect and may not be suspended pending an appeal to the court of appeals. TEX. ALCO. BEV. CODE § 11.67(b)(4).

In construing earlier versions of section 11.67, this Court has held that the statute requires that the district court complete all its proceedings within ten days from the date the appeal is filed. *Cook v. Walker*, 529 S.W.2d 762 (Tex. 1975); *Cook v. Spears*, 524 S.W.2d 290 (Tex. 1975). Moreover, we have held that any district court proceedings or rulings occurring after the ten-day period are “functus officio” and thus are void and have no effect. *Spears*, 524 S.W.2d at 292. And, we have also held that,

if the district court fails to hear and render judgment within the ten days, the administrative decision become final and enforceable. *Spears*, 524 S.W.2d at 292.

## II. ANALYSIS

### A. WHAT THE TEN-DAY STATUTORY PERIOD REQUIRES

In both *Spears* and *Walker*, this Court recognized that an applicant loses his right to an appeal in the district court if the district court does not try the appeal and render judgment within the ten-day statutory period. *Spears*, 524 S.W.2d at 292; *see also Walker*, 529 S.W.2d at 762-63. In these original proceedings, the Court only considered whether mandamus should issue to preclude the district court from taking any further action after the ten-day period expired.

In *Spears*, the Alcoholic Beverage Commission ordered a five-day suspension of an alcohol license. *Spears*, 524 S.W.2d at 290. The licensee appealed to the district court under section 11.67(b)'s predecessor, article 666-15e, section 7a. Though the statute required a trial within ten days, the district court did not set the case for trial until one month later. At that time, the licensee moved for a continuance, and the parties agreed to try the case another month later. On the trial date, the licensee urged two motions, one for a continuance and the other to compel the Commission to disclose certain information. The district court granted both motions but stayed the disclosure order pending the Commission's seeking mandamus relief from these rulings. *Spears*, 524 S.W.2d at 291.

On mandamus review, the Commission argued that the district court "lost jurisdiction" to enter any orders, because the ten-day period for a trial on appeal had passed. *Spears*, 524 S.W.2d at 291. In

discussing the legislative history of article 666-15e, this Court noted that the statute's earliest version required only that an appeal be tried within ten days or at the earliest possible time thereafter "in the event the Judge is not able to try such cause within such ten (10) day period." *Spears*, 524 S.W.2d at 291 n.2 (citations and emphasis omitted). But, in 1937, the Legislature amended the provision and struck the language permitting a judge to extend the trial beyond that ten-day period. *Spears*, 524 S.W.2d at 291; see Act of May 22, 1937, 45th Leg., R.S., ch. 448, art. I, § 15, 1937 Tex. Gen. Laws 1053, 1066. And, when the Legislature added article 666-15e to the Liquor Control Act in 1967, it declared that the statutory terms, including the ten-day trial rule, "shall be considered literally." *Spears*, 524 S.W.2d at 291; see Act of May 25, 1961, 57th Leg., R.S., ch. 262, § 1, 1961 Tex. Gen. Laws 559, 561.

Because of the Legislature's repeated attempts to limit the time in which the district court could try the appeal, we concluded "that the time for an appeal endured for ten days and that there [was] no authority to extend that time." *Spears*, 524 S.W.2d at 291. Applying this conclusion to the facts, we determined that the licensee's right to an appeal in the district court expired ten days after the appeal was filed. *Spears*, 524 S.W.2d at 292. Moreover, we determined that any orders issued after the ten-day period, such as the district court's continuance and discovery rulings, were void. *Spears*, 524 S.W.2d at 292. We then determined that the Commission's suspension order became the final and enforceable decision. *Spears*, 524 S.W.2d at 292. Based on these conclusions, we held that mandamus relief would be "immaterial" and thus denied the petition. *Spears*, 524 S.W.2d at 292.

In *Cook v. Walker*, the Court reached the same legal conclusion but ordered a different result. See *Walker*, 529 S.W.2d at 762-63. In *Walker*, the licensee appealed an administrative order canceling

his licenses. The district court stayed the suspension order pending the trial and set that trial for over a month later. *Walker*, 529 S.W.2d at 762. The Court held that *Spears* governed, and therefore, the licensee lost his right to an appeal in the district court ten days after he filed the appeal. However, rather than denying mandamus relief as in *Spears*, the *Walker* Court issued mandamus relief and ordered the district court to set aside its order staying the Commission's decision and to proceed to judgment approving the Commission's order. *Walker*, 529 S.W.2d at 763.

Here, Garza contends that *Spears* and *Walker* do not apply because the district court actually heard the appeal within the ten-day period, and therefore, the district court's out-of-time judgment has full force and effect. To support his position that the district court's judgment rendered after the ten-day period is not void, Garza relies on *Fox v. Medina*, 848 S.W.2d 866 (Tex. App.—Corpus Christi 1993, no writ). In *Fox*, the district court tried the applicant's appeal and orally rendered judgment in open court within the ten-day period. However, the district court did not sign a judgment until the statutory period expired. *Fox*, 848 S.W.2d at 870. The court of appeals did not require the appellant to obtain a signed judgment within the ten days and, instead, held that the district court need only hear the appeal and make a decision within the ten days. *Fox*, 848 S.W.2d at 870. If this occurs, the court of appeals further held, the district court can sign a judgment reflecting that decision after the statutory time period expires. *Fox*, 848 S.W.2d at 870. The court of appeals explained that this approach precludes parties from automatically losing the district court appeal based on a deemed affirmance of the administrative decision and from losing their further appellate rights. *Fox*, 848 S.W.2d at 871 n.3.

I disagree with Garza's contention, and *Fox's* conclusion, that section 11.67 allows a district court

to sign a written judgment after the ten days pass to memorialize a decision that court made within the ten-day period. Accepting this position would enable the district court to disregard the statute's time limitations and indefinitely delay the case's finality for further appeal purposes. Furthermore, this result entirely contradicts our prior holding that the district court lacks jurisdiction to take any action after the ten-day period expires. *See Spears*, 524 S.W.2d at 292. Moreover, it runs afoul of the Legislature's express determination to limit the district court proceedings, which we have construed literally (as the Legislature requires) to mean the district court's power to act, to ten days. *See TEX. ALCO. BEV. CODE* § 11.67(b); *Spears*, 524 S.W.2d at 291.

Consistent with our jurisprudence, I conclude that section 11.67(b) limits the district court's jurisdiction to hear the case, render judgment, and sign a written judgment for purposes of further appeal, to ten days from the date the appeal is filed. This means the district court lacks jurisdiction to render a judgment, sign a written judgment, or otherwise entertain or rule on any motions after that ten-day period expires. Consequently, any orders the district court enters after the ten-day period expires are void. Moreover, the administrative decision is deemed affirmed by operation of law once the ten-day period expires. *See Walker*, 529 S.W.2d at 762; *Spears*, 524 S.W.2d at 292.

My conclusion that the district court here lacked jurisdiction to render the out-of-time judgment reaffirms *Spears*. However, it conflicts with *Walker* to the extent that, in that case, the Court issued mandamus relief to require the district court "to proceed to judgment approving the order of the Commission." *See Walker*, 529 S.W.2d at 763. This is because, under the legal principles announced in *Spears* and recognized in *Walker*, the district court does not have jurisdiction to make any rulings —

including rendering judgment or signing a written judgment merely approving the administrative decision—after the ten-day time period expires. Accordingly, I would disapprove of *Walker* and the cases that presume a district court has power to render judgment, ministerially sign a written judgment, grant a new trial, or vacate, modify or reform a judgment after the ten-day trial period expires. See *Texas Alco. Beverage Com'n v. Top of the Strip, Inc.*, 993 S.W.2d 242, 248 (Tex. App.—San Antonio 1999, pet. denied); *El-Kareh v. Texas Alco. Beverage Com'n*, 874 S.W.2d 192, 196 (Tex. App.—Houston [14th Dist.] 1994, no writ); *Fox*, 848 S.W.2d at 870-71.

Here, the district court tried the appeal and took the matter under advisement within the ten-day period. But it rendered and signed its written judgment outside the statutory time period. Thus, the court of appeals correctly concluded that, because the district court lost jurisdiction to enter any orders after ten days, the district court's judgment is void.

#### **B. THE RIGHT TO FURTHER APPEAL TO THE COURT OF APPEALS**

Here, because the district court lost jurisdiction over the appeal after ten days passed, the court of appeals held that it too lacked jurisdiction and dismissed the appeal. \_\_\_ S.W.3d at \_\_\_. Garza argues that the court of appeals' interpreting section 11.67 to prohibit it from exercising jurisdiction over the appeal violates his constitutional rights of due process and due course of law under the Fourteenth Amendment of the United States Constitution and article I, section 19 of the Texas Constitution. He also contends that this interpretation violates the open courts and separation of powers provisions of the Texas Constitution article I, section 13 and article II, section 1. Garza points out that he complied with all statutory requisites

for the appeal to the district court and should not be penalized because that court failed to timely render judgment.

In *Spears* and *Walker*, both mandamus proceedings, whether the district court's failure to timely render and sign an appealable judgment precluded the licensee's right to a further appeal in the court of appeals was not squarely before the Court. *Walker*, 529 S.W.2d at 762-63; *Spears*, 524 S.W.2d at 292. Instead, the Court had to determine whether mandamus should issue to preclude the district court from making rulings and rendering judgment outside the ten-day period. However, upon reviewing this issue now squarely before the Court, I agree that prohibiting a party from exercising its statutory right to a further appeal if a district court fails to render judgment within the ten-day period creates a constitutional concern. The United States Supreme Court has held that, though due process does not require a state to provide appellate review, when a state does establish an appellate right, "it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause." *Lindsey v. Normet*, 405 U.S. 56, 77 (1972).

Section 11.67 does not expressly describe how a party may appeal to the court of appeals when the district court does not render and sign a judgment within the ten days. But this Court must interpret statutes in manner that renders them constitutional. TEX. GOV'T CODE § 311.021(1); *Proctor v. Andrews*, 972 S.W.2d 729, 735 (Tex. 1998). Consequently, I would hold that a district court's failure to render and sign a judgment within the ten-day period does not prohibit a party from appealing to the court of appeals. Consistent with *Spears*, I would hold that the administrative decision deemed affirmed by operation of law is not only "final and enforceable," but it also becomes the appealable signed final judgment necessary to

perfect an appeal to the court of appeals. *See Spears*, 524 S.W.2d at 292; *see also* TEX. R. APP. P. 26.1. Therefore, the time in which a license applicant has to appeal to the court of appeals would run from the date the administrative decision is deemed affirmed because the district court failed to timely render and sign a judgment. This resolution best reconciles the express legislative intent that we literally construe the provision limiting the district court's time to decide an appeal with the equally express legislative intent that a party have a right to appeal to the court of appeals. *See* TEX. ALCO. BEV. CODE §§ 11.67(b), 61.34(b); *Spears*, 524 S.W.2d at 292.

Here, the jurisprudence existing when the ten-day period expired in Garza's appeal to the district court required that the administrative decision became final and enforceable by operation of law. *Spears*, 524 S.W.2d at 292. Moreover, under existing law, the judgment the district court signed after the ten-day period expired was void. *Spears*, 524 S.W.2d at 292. The legal proposition that I advocate, although consistent with our jurisprudence and the legislative intent that section 11.67 expresses, was not evident when Garza's appeal was pending in the district court or when the court of appeals dismissed the appeal. And, if Garza had the benefit of this rule when the ten-day period expired in the district court, he would have known that the administrative decision that was deemed affirmed under *Spears* also became the signed final judgment for purposes of perfecting an appeal. Thus, under my proposed rule, Garza would have known how to timely perfect an appeal to the court of appeals.

Therefore, I would remand this case to the district court in the interest of justice. *See* TEX. R. APP. P. 60.3; *Exxon Corp. v. Tidwell*, 867 S.W.2d 19, 23 (Tex. 1993). For the reasons discussed above, the district court would lack jurisdiction to make any rulings in this case, and the remand to the district court

here would be only for purposes of starting the timetable for Garza to perfect an appeal, if any, to the court of appeals. In other words, consistent with the rule I advocate, upon remand Garza could appeal to the court of appeals the administrative decision deemed affirmed and deemed the signed final judgment by operation of law. The remand would become effective, and the appellate time table would begin to run, after the time for filing any motions for rehearing in this Court expires. *See* TEX. R. APP. P. 64.

### C. OTHER CONSTITUTIONAL CHALLENGES

Garza incorrectly contends that interpreting section 11.67 to require a hearing and rendition within ten days violates the Texas Constitution's open courts and separation of powers provisions. *See* TEX. CONST. art. I, § 13, art. II, § 1. Garza does not demonstrate how this construction violates any of three guarantees the open courts provision provides. *See Trinity River Auth. v. URS Consultants, Inc.*, 889 S.W.2d 259, 261 (Tex. 1994); *Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 448 (Tex. 1993). Further, the cases Garza relies on are distinguishable, because they involve open courts challenges to statutes that allegedly impeded the parties' rights to bring common-law claims. *See Neagle v. Nelson*, 685 S.W.2d 11, 11-12 (Tex. 1985); *Nelson v. Krusen*, 678 S.W.2d 918, 919 (Tex. 1984). This case does not involve a common law claim, but only rights created under a statutory scheme.

Similarly, Garza only contends that interpreting section 11.67 to require a hearing and rendition within ten days interferes with the district court's ability— not some other branch of government's ability — to hear and decide an appeal. Thus, Garza has not shown a separation of powers violation. *See Proctor*, 972 S.W.2d at 733 (The Texas Constitution's separation of powers provision provides "the three

branches of the state government and prohibits any of the three departments from exercising any power properly attached to either of the other branches.”).

### III. THE COURT’S OPINION

The Court holds that, if the district court fails to render judgment within the allotted time, “the district court has a ministerial duty to sign a judgment affirming the administrative decision, which can then form the basis of an appeal” to the court of appeals. \_\_\_ S.W.3d at \_\_\_. But the Court does not reconcile this holding with its writing that repeatedly recognizes — and declines to overrule — the previous cases holding that any district court rulings or proceedings occurring outside the ten day period are void. Somehow, by designating the district court’s duty to sign a judgment affirming the administrative decision as “ministerial,” the Court believes this magically empowers the district court with jurisdiction when none exists.

Moreover, the Court misplaces its reliance on *Dunn v. Dunn* to support its view that the district court retains jurisdiction after the ten-day period to ministerially sign a judgment affirming the administrative decision. *Dunn v. Dunn*, 439 S.W.2d 830, 832 (Tex. 1969). In that case, the Court simply affirmed the validity of oral pronouncements from the bench by holding that, once a trial court orally renders judgment in open court, its entry of a written judgment is purely a ministerial act. *Dunn*, 439 S.W.2d at 832. The Court did not hold that a district court may sign a written judgment, even one merely affirming an administrative decision that became enforceable by operation of law, despite the district court’s having lost jurisdiction over the case. Nonetheless, the Court’s opinion here allows this result. *Contra State ex rel.*

*Latty v. Owens*, 907 S.W.2d 484, 486 (Tex. 1995) (“Judicial action taken after the court’s jurisdiction over a cause has expired is a nullity.”) (citations omitted).

Additionally, the Court’s holding that the district court has authority to ministerially sign a judgment affirming the administrative decision outside the statutory time period certainly “fixes” Garza’s predicament; however, it does not resolve how future parties in Garza’s position may compel the district court to perform this ministerial duty. Undoubtedly, such parties who do not obtain a timely judgment through no fault of their own will be forced to file additional motions or seek relief from the appellate courts to require the district court to sign a judgment. The appellant should not bear this onerous and often costly burden.

Finally, though the Court recognizes the Legislature’s intent that the appeal in the district court be strictly confined to the ten-day period, its holding entirely disregards the rationale behind this intent expressed in the statute’s plain language. Section 11.67 provides that the district court may modify or suspend the administrative decision to deny a license pending the substantial-evidence trial. TEX. ALCO. BEV. CODE § 11.67(b)(4). But the district court’s final judgment may not be modified or suspended pending further appeal. TEX. ALCO. BEV. CODE § 11.67(b)(4). As the Court recognizes, this ensures that a business denied an alcohol license because of its possible danger to the public will not be able to continue operations pending that business pursuing all its appellate rights. *See* \_\_\_ S.W.3d at \_\_\_. However, under the Court’s holding, if a district court suspends an adverse administrative decision but does not render and sign a written judgment within the ten-day period, that suspension order arguably stands and the business can continue operations until the district court decides to, or is compelled to, perform its ministerial duty.

#### IV. CONCLUSION

Today, the Court reaffirms that section 11.67 of the Texas Alcoholic Beverage Code requires a district court to hear the appeal and render a judgment within ten days of the time the appeal is filed. It also reaffirms that any ruling a district court makes after the ten-day period expires is void. However, in resolving the fundamental issue presented here — how a party enjoys its further appellate rights when the district court fails to timely render and sign a written judgment — the Court completely contradicts these legal principles, leaves questions unanswered, and thwarts the Legislature’s express directive.

I would hold that, when a district court does not render and sign a written judgment from which to appeal within the statutory ten-day period, the administrative decision is deemed affirmed by operation of law. Then, as a matter of first impression, I would hold that the administrative decision that is deemed affirmed also becomes the signed final judgment for purposes of perfecting an appeal to the court of appeals. Because the Court’s resolution creates unnecessary contradictions and problems, I dissent.

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James A. Baker, Justice

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