

NO. 05-0272

**IN THE SUPREME COURT OF TEXAS
AUSTIN, TEXAS**

**ENTERGY GULF STATES, INC.,
PETITIONERS,**

V.

**JOHN SUMMERS,
RESPONDENT.**

**REQUEST OF *AMICI CURIAE*
THE HONORABLE SENATORS RODNEY ELLIS AND JEFF WENTWORTH,
AND THE HONORABLE REPRESENTATIVES
CRAIG EILAND AND BRYAN HUGHES
FOR SEPARATE TIME TO APPEAR AT ORAL ARGUMENT**

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TO THE HONORABLE SUPREME COURT OF TEXAS:

Amici Curiae the Honorable Texas Senators Rodney Ellis¹ and Jeff Wentworth,² and the Honorable Texas Representatives Craig Eiland³ and Bryan Hughes,⁴ make this request for separate time to appear at oral argument.

1. This Court has granted rehearing of this cause, and set it for oral argument on October 16, 2008.

2. *Amici* have tendered a brief to this Court for the sole purpose of ensuring that the Texas Constitution's separation of powers among the three branches of government is properly observed. As set forth in their brief, *amici*, all elected legislators, have established that this Court, in its opinion and judgment in this cause, has disregarded the express terms of the Legislature's enactments, and violated the separation of powers clause by impermissibly encroaching on the powers and functions expressly reserved to the Legislature.

3. *Amici* note that members of the judicial branch, especially members of this Court, regularly appear before committees of both houses of the Legislature on matters important to the governance of the state. The integrity of our Constitution and the authority of the Legislature to enact laws reflective of the public policy of this State are critical to the proper functioning of the organs of our government. It is the hope of *amici* that this court will extend the courtesy of separate time to argue so that they and this court can engage in a fruitful

¹ Senate District 13, Houston.

² Senate District 25, San Antonio.

³ House District 23, Texas City.

⁴ House District 5, Marshall.

discussion of the parameters of the Court's authority to interpret legislative enactments.

4. Texas Rule of Appellate Procedure⁵ 59.6 provides:

Argument by Amicus Curiae. With leave of court obtained before the argument and with a party's consent, an amicus may share allotted time with that party. Otherwise, counsel for amicus curiae may not argue.

TEX. R. APP. P. 59.6. Under the plain reading of that rule, an amicus is usually not entitled to separate time to argue, and may only appear during the time allotted to one of the parties.

5. But this Court has the authority to suspend its own rules. Texas Rule of Appellate Procedure 2 expressly states:

Suspension of Rules. On a party's motion or on its own initiative an appellate court may--to expedite a decision or for other good cause--suspend a rule's operation in a particular case and order a different procedure

TEX. R. APP. P. 2.

6. *Amici* have shown good cause for suspending the operation of Rule 59.6 in this case. As evidenced by the level of amicus participation and the wide press coverage, the citizens of the State of taken great interest in this case, and this Court, to ensure that its resolution of this dispute is in keeping with the separation of powers, should allow the *amici* legislators to appear.

⁵The Texas Legislature in 1941 gave this court rule-making power in civil actions. This Court adopted the Rules of Civil Procedure and the Rules of Appellate Procedure pursuant to that grant of authority. See TEX. GOV'T CODE 22.004; *Kennedy v. Hyde*, 682 S.W.2d 525, 529 (Tex. 1984).

CONCLUSION AND PRAYER

For the foregoing reasons, we respectfully urge this Court to grant us ten minutes of oral argument time, separate and apart from the oral argument time afforded the parties, to present our position. We also request this Court announce its disposition of this motion in sufficient time that, in the event the Court denies us leave to appear at oral argument, we will have sufficient time to approach the parties for permission to share time.

Respectfully submitted,



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COUNSEL FOR *AMICI CURIAE*

CERTIFICATE OF CONFERENCE

Steven Barkley, counsel for Respondent Summers, is not opposed to the relief requested herein. Jacqueline Stroh, counsel for Petitioner Entergy, is opposed.


A. Craig Eiland

CERTIFICATE OF SERVICE

I certify that on this 22nd day of September, 2008, I mailed a true and correct copy of *Request of Amici Curiae* by first class U.S. Mail to the following counsel of record:

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