

# No. 08-0316

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*In The Supreme Court Of Texas  
Austin, Texas*

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**METHODIST HEALTHCARE SYSTEM OF SAN ANTONIO, LTD., L.L.P.,  
W.C. SCHORLEMER, M.D. AND ROBERT SCHORLEMER, M.D.**  
*Petitioners*

v.

**EMMALENE RANKIN,**  
*Respondent*

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CASE No. 04-07-00305-CV  
FROM THE FOURTH COURT OF APPEALS, SAN ANTONIO, TEXAS

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**REPLY OF METHODIST HEALTHCARE SYSTEM TO EMMALENE  
RANKIN'S RESPONSE TO THE PETITIONS FOR REVIEW**

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**TABLE OF CONTENTS**

INDEX OF AUTHORITIES ..... ii

INTRODUCTION ..... 1

The court of appeals erroneously held that the ten-year statute of response for health care liability claims violates the Open Courts provision of the Texas Constitution. The court of appeals failed to distinguish statutes of repose from statutes of limitations. It failed to properly balance Emmalene Rankin’s individual rights against the Legislature’s concerns. The court of appeals’ judgment should be reversed because it guarantees a right not found in the Open Courts provision.

ARGUMENT..... 1

I. Rankin — Like The Court Of Appeals — Ignores This Court’s Precedent; A Thorough Analysis Reveals No Open Courts Violation ..... 1

II. Rankin — Like The Court Of Appeals — Conflates Statutes Of Repose With Statutes Of Limitations..... 3

III. Rankin Concedes This Court Has Jurisdiction Over This Important Case ..... 5

CONCLUSION AND PRAYER FOR RELIEF ..... 5

CERTIFICATE OF SERVICE..... 7

## INDEX OF AUTHORITIES

### Cases

<i>Dubin v. Carrier Corp.</i> , 798 S.W.2d 1 (Tex. App.—Houston [14th Dist.] 1989, writ dism'd by agrmt.) ....	2
<i>Holubec v. Brandenberger</i> , 111 S.W.3d 32 (Tex. 2003) .....	4
<i>Lebohm v. City of Galveston</i> , 275 S.W.2d 951 (Tex. 1955) .....	1, 4
<i>Pochucha v. Galbraith Eng'g Consultants, Inc.</i> , 243 S.W.3d 138 (Tex. App.—San Antonio 2007, pet. granted [No. 07-1051]) .....	4
<i>Rankin v. Methodist Healthcare Sys.</i> , 261 S.W.3d 93 (Tex. App.—San Antonio 2008, pets. filed) .....	2, 3
<i>Sax v. Votteler</i> , 648 S.W.2d 661 (Tex. 1983) .....	1
<i>Texas Ass'n of Bus. v. Texas Air Control Bd.</i> , 852 S.W.2d 440 (Tex. 1993) .....	1
<i>Trinity River Auth. v. URS Consultants, Inc.</i> , 889 S.W.2d 259 (Tex. 1994) .....	2, 5
<i>Weiner v. Wasson</i> , 900 S.W.2d 316 (Tex. 1995) .....	3
<i>Zaragosa v. Chemetron Invests., Inc.</i> , 122 S.W.3d 341 (Tex. App.—Fort Worth 2003, no pet.) .....	2

### Constitutional Provisions, Statutes, and Rules

TEX. CIV. PRAC. & REM. CODE ANN. § 16.008 .....	2
TEX. CONST. art. I, § 13 .....	3
TEX. CONST. art. I, § 19 .....	3
TEX. GOV'T CODE ANN. § 22.001(a)(3) .....	5

## INTRODUCTION

The court of appeals erroneously held that the ten-year statute of repose for health care liability claims violates the Open Courts provision of the Texas Constitution. The court of appeals failed to distinguish statutes of repose from statutes of limitations. It failed to properly balance Emmalene Rankin's individual rights against the Legislature's concerns. The court of appeals' judgment should be reversed because it guarantees a right not found in the Open Courts provision.

## ARGUMENT

### **I. Rankin — Like The Court Of Appeals — Ignores This Court's Precedent; A Thorough Analysis Reveals No Open Courts Violation.**

Rankin claims that the statute of repose for health care liability claims abrogates a well-recognized cause of action. *See* Response at 4-9. Even if the statute of repose does abrogate a well-recognized cause of action (which Methodist denies), this Court's precedent requires Rankin to show that the Legislature acted arbitrarily and unreasonably when it enacted Section 74.251(b)'s statute of repose. *See, e.g., Lebohm v. City of Galveston*, 275 S.W.2d 951, 955 (Tex. 1955). This Rankin cannot do.

Rankin must discredit the Legislature's actions by considering not only herself as the affected individual, but also the more global issues the Legislature necessarily addressed when it enacted Section 74.251(b). *See, e.g., Sax v. Votteler*, 648 S.W.2d 661, 666 (Tex. 1983); *Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 448 (Tex. 1993). Yet both Rankin and the court of appeals myopically focus on Rankin individually and whether she could have discovered her alleged injury within the ten

years permitted by the Legislature’s statute of repose. *See, e.g.*, Response at viii, 1 (¶ 6), 12-13; *Rankin v. Methodist Healthcare Sys.*, 261 S.W.3d 93, 99-101 (Tex. App.—San Antonio 2008, pets. filed).

Neither Rankin nor the court of appeals seriously considers the broader legislative concerns outlined in the petitions. *See id.* While the court of appeals acknowledges these concerns as “legitimate,” it nonetheless ignores them whenever a claim is “inherently undiscoverable.”

The end result of this short-sighted focus is completely contrary to the Open Courts provision. Taken to its logical extreme, the court of appeals guarantees a cause of action for any party that cannot discover her cause of action within the applicable statute of repose, regardless of the legislative concerns addressed by that statute. The Open Courts provision offers no such guarantee, as Texas appellate courts have recognized. *See, e.g., Dubin v. Carrier Corp.*, 798 S.W.2d 1, 3 (Tex. App.—Houston [14th Dist.] 1989, writ dism’d by agrmt.) (validating 10-year statute of repose for builders); *Zaragosa v. Chemetron Invests., Inc.*, 122 S.W.3d 341, 346-47 (Tex. App.—Fort Worth 2003, no pet.) (validating 15-year statute of repose for product liability claims); *see also* Physicians’ Petition at 9-10 (collecting additional cases).

In a case involving negligent design of a building, this Court observed that the ten-year repose period “chosen by the Legislature [for architects and engineers] *strikes a fair balance* between the legislative purpose of protecting against stale claims and the rights of litigants to obtain redress for injuries.” *Trinity River Auth. v. URS Consultants, Inc.*, 889 S.W.2d 259, 264 (Tex. 1994) (emphasis added) (discussing TEX. CIV. PRAC. & REM.

CODE ANN. § 16.008). Accordingly, the Court held that the statute of repose did not violate the no due process provision of the Texas Constitution (TEX. CONST. art. I, § 19). Although the court of appeals attempted to discount *Trinity*, the *Trinity* holding applies with equal force to the due process protection of the Open Courts provision (TEX. CONST. art. I, § 13). *Cf. Weiner v. Wasson*, 900 S.W.2d 316, 322-23 (Tex. 1995) (Owen, J., dissenting) (discussing Open Courts history in relation to *Trinity*).

As outlined in prior briefing, a more careful analysis of this Court's balancing test reveals that the Legislature acted reasonably within the proper scope of its police power. *See* Methodist's Petition at 5-9; Physicians' Petition at 11-12. Contrary to the lower court's holding, there is no Open Courts violation here.

## **II. Rankin — Like The Court Of Appeals — Conflates Statutes Of Repose With Statutes Of Limitations.**

The court of appeals attempted to distinguish this Court's opinion in *Trinity* by concluding, without any analysis, that *Trinity* "did not involve an inherently undiscoverable claim." *Rankin v. Methodist Healthcare Sys.*, 261 S.W.3d at 100. But the negligently designed building in *Trinity* was not discovered, and apparently could not be discovered, until one of the building's walls collapsed, more than ten years after the structure was negligently designed and built.

The pertinent distinction rests between statutes of repose and statutes of limitations. *Trinity* teaches that a plaintiff cannot possess a cause of action if it does not arise within the statute of repose, regardless of the plaintiff's ability to discover, or diligence in discovering, the underlying facts upon which the claim might be based. The

purpose and effect of a statute of repose is fundamentally different from that of a statute of limitations. *Holubec v. Brandenberger*, 111 S.W.3d 32, 37 (Tex. 2003). The Legislature was aware of that difference when it enacted the statute of repose for health care liability claims. By ignoring that difference in an effort to guarantee the viability of “inherently undiscoverable” claims, the court of appeals ignores the separation of powers inherent in the Texas Constitution and its Open Courts provision.

This Court has recently granted review in another case from the Fourth Court of Appeals, where the lower court failed to adequately distinguish statutes of repose from statutes of limitations. *See Pochucha v. Galbraith Eng’g Consultants, Inc.*, 243 S.W.3d 138 (Tex. App.—San Antonio 2007, pet. granted [No. 07-1051]). The issue in that case is whether the ten-year statute of repose addressed in *Trinity* prohibits joining an engineer as a responsible third party, despite another statute that allows joinder after expiration of “limitations.” Any resolution in *Pochucha* is not likely to correct the court of appeals’ error in this case because both Rankin and the court of appeals have distinguished medical negligence claims from negligent design cases like *Pochucha*. *See* Response at 6.

According to Rankin, once this Court had adopted the discovery rule for medical negligence claims and had invoked the Open Courts provision to invalidate two-year statutes of limitations for those claims, the Legislature cannot subsequently craft a constitutionally permissible statute of repose for the same claims. *See* Response at 7, 10-12. With all due respect to the authority of this Court, the Legislature may indeed enact a ten-year, constitutionally permissible, statute of repose. *See Lebohm v. City of Galveston*,

275 S.W.2d at 955. To hold otherwise, as did the court of appeals, is error that should be addressed by this Court.

### **III. Rankin Concedes This Court Has Jurisdiction Over This Important Case.**

While Rankin may debate the exact basis of this Court’s jurisdiction, she explicitly concedes the Court has jurisdiction over this matter. *See* Response at viii-ix (citing TEX. GOV’T CODE ANN. § 22.001(a)(3)). Similarly, she does not contest the significant impact this case will have on the jurisprudence of the State. *Compare id. with* Methodist’s Petition at 11; *see also Trinity River Auth. v. URS Consultants, Inc.*, 889 S.W.2d at 260 (illustrating that “as applied” constitutional challenges, like the one here, raise important issues within the power of this Court to address). Accordingly, this Court should grant the petitions.

### **CONCLUSION AND PRAYER FOR RELIEF**

Like Rankin’s response to the petitions for review, the court of appeals gave short thrift to a thorough analysis of this Court’s precedents, the legislative history of Section 74.251(b), and the distinctions between statutes of repose and statutes of limitations. Without that analysis, the lower court’s opinion allows health care liability claims to be pursued indefinitely, despite the repeated best efforts of the Legislature. Methodist Hospital asks the Court to grant the petitions and, after full briefing and oral argument, reverse the court of appeals’ judgment.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that on October 20, 2008, this document was sent to the Court via Federal Express and copies were delivered by email and regular mail to the following:

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