

No. _____

**In the
Supreme Court of Texas**

TEXAS LOTTERY COMMISSION,
Petitioner,

v.

FIRST STATE BANK OF DEQUEEN; STONE STREET CAPITAL, INC.;
AND CLETIUS L. IRVAN,
Respondents.

On Petition for Review from the
Third Court of Appeals, Austin

PETITION FOR REVIEW

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for
Civil Litigation

JAMES C. HO
Solicitor General
State Bar No. 24052766

BRANTLEY STARR
Assistant Solicitor General
State Bar No. 24046904

P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
[Tel.] (512) 936-1695
[Fax] (512) 474-2697

COUNSEL FOR PETITIONER

IDENTITY OF PARTIES AND COUNSEL

Parties to the Trial Court's Order:

Texas Lottery Commission	Defendant/Appellant/Petitioner
First State Bank of DeQueen, Stone Street Capital, Inc., and Cletius L. Irvan	Plaintiffs/Appellees/Respondents

Counsel for Petitioner:

James C. Ho Solicitor General State Bar No. 24052766	Counsel in the Supreme Court
--	------------------------------

Brantley Starr
Assistant Solicitor General
State Bar No. 24046904

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
[Tel.] (512) 936-1695
[Fax] (512) 474-2697

Don Cruse Assistant Solicitor General State Bar No. 24040744	Counsel in the Court of Appeals
--	---------------------------------

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711
[Tel] (512) 936-1700
[Fax] (512) 474-2697

Ann Hartley
Assistant Attorney General
State Bar No. 09157700
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 017)
Austin, Texas 78711
[Tel] (512) 936-1313
[Fax] (512) 370-9974

Trial Counsel

Counsel for Respondents:

Jeffrey S. Boyd
THOMPSON AND KNIGHT, LLP
98 San Jacinto Blvd., Ste. 1900
Austin, Texas 78701
[Tel.] (512) 469-6109
[Fax] (512) 482-5095

Trial and Appellate Counsel

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STATEMENT OF THE CASE

- Nature of the Case:* Declaratory judgment claim
- Trial Court:* The Honorable Derwood Johnson
53rd District Court, Travis County, Texas
- Trial Court Disposition:* After severing all other claims, the court rendered final judgment on the declaratory judgment claim involving the Uniform Commercial Code (Tab A).
- Parties in Court of Appeals:* *Appellant*—Texas Lottery Commission
Appellees—First State Bank of DeQueen; Stone Street Capital, Inc.; and Cletius L. Irvan
- Court of Appeals:* Third Court of Appeals, Austin; opinion by Justice Pemberton, joined by Justice Puryear; dissent by Justice Patterson
- Court of Appeals Disposition:* Affirmed. *Tex. Lottery Comm’n v. First State Bank of DeQueen, et al.*, __ S.W.3d __, 2008 WL 2065923 (Tex. App.—Austin May 16, 2008, pet. filed) (Tab B).

STATEMENT OF JURISDICTION

This Court has multiple bases of jurisdiction over this appeal from the final judgment below: (1) the justices of the court of appeals disagree on the question of law material to the decision of the case; (2) the case involves the construction or validity of two statutes necessary to a determination of the case; and (3) the error committed by the court of appeals is important to the jurisprudence of the State. TEX. GOV'T CODE §22.001(a)(1), (3), (6).

ISSUE PRESENTED

The Lottery Act, as amended in 1999, contains a number of provisions designed to safeguard lottery winners against predatory business practices. Included in these provisions are various protections—including judicial review, advice of counsel, and oversight by the Texas Lottery Commission—that must be provided before a lottery winner may legally assign future lottery payments to another person. The Lottery Act also imposes a categorical prohibition on lottery winners from assigning their last two years of scheduled lottery payments to any person under any condition.

The Legislature undisputedly possesses the constitutional authority to protect consumers, including lottery winners, against predatory business practices. Yet the court of appeals below nullified these protections in their entirety, over a sharp dissent. Specifically, the majority below held that a previously enacted, generally applicable provision of the Uniform Commercial Code rendered the Lottery Act amendments “entirely ineffective.” In doing so, the court below contravened (1) the intent of the Legislature in adopting the 1999 amendments, (2) established canons of statutory interpretation, including the last-in-time rule, the canon that favors specific over generally applicable statutes, and the canon against surplusage, and (3) traditional principles of judicial deference to state agencies.

Should this Court give effect to the 1999 amendments to the Lottery Act specifically adopted by the Legislature to protect lottery winners against predatory business practices?

No. 08-_____

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Respondents.

On Petition for Review from the
Third Court of Appeals, Austin

PETITION FOR REVIEW

TO THE HONORABLE SUPREME COURT OF TEXAS:

The Legislature is charged with the duty and authority to enact consumer protection laws, including protections against predatory business practices. For as long as Texas has administered a statewide Lottery, the Legislature has protected prizewinners from predatory business practices by limiting their ability to assign future lottery payments. Yet the court of appeals below, over a sharp dissent, invalidated these protections in their entirety. In doing so, the court relied upon not a conflicting federal or state constitutional provision, or an inconsistent provision of federal statutory law, but instead on a previously enacted, generally applicable provision of the Uniform Commercial Code.

The ruling below directly contradicts the Legislature’s intent in adopting the 1999 Lottery Act amendments; indeed, it expressly rendered those provisions “entirely ineffective.” There is no basis for ignoring the Legislature’s intent in this case. To the contrary, the ruling below defies all relevant canons of statutory construction—including the last-in-time rule, the canon that favors specific over generally applicable statutes, and the canon against surplusage—as well as the tradition of judicial deference to state agencies. Moreover, if carried to its logical conclusion, the ruling below jeopardizes consumer protections against predatory practices in other provisions of Texas law, as well as the Lottery Act. These protections must be restored. Despite similar lawsuits across the country (including other suits initiated by Stone Street Capital), no other court to date has ever reached this result. Accordingly, this petition for review should be granted.

STATEMENT OF FACTS

A. The Lottery Act Has Protected Winners Against Predatory Practices Since 1991.

Texas voters approved a constitutional amendment creating the Texas Lottery in 1991. *See* Act of Aug. 26, 1991, 72d Leg., 1st C.S., ch. 6, 1991 Tex. Gen. Laws 197 (hereinafter “Tex. H.B. 54”). The Texas Lottery pays some of its prizes in annual installments over several years. House Research Organization, Bill Analysis, Tex. H.B. 1799, 76th Leg., R.S., at 1 (1999) (Tab C); CR.93. The prospect of receiving payments in the remote, distant future creates the risk that finance companies can seduce lottery winners into selling those payments for an immediate payout worth only pennies on the dollar. Tab C, at 4; CR.93. To protect

against such predatory practices, the Legislature initially imposed a categorical prohibition on assigning any future payments under any condition. Tab C, at 4; Tex. H.B. 54, at 218.

The Legislature modified these protections in 1999 when it amended the Lottery Act to authorize—but strictly regulate—the assignment of lottery winnings. Act of May 31, 1999, 76th Leg., R.S., ch. 1394, 1999 Tex. Gen. Laws 4717 (Tab D) (enrolled version of House Bill 1799); CR.98. During debate on the bill, members identified the need for “more consumer protections to prevent shady operators from taking advantage of newly wealthy lottery prize winners. In many states, private finance companies offering to buy lottery assignments have been investigated for ethical abuses. Often, the finance company hires the ‘independent’ legal counsel and barrages the prize winner with persuasive sales pitches.” Tab C, at 4. Accordingly, the 1999 amendments authorize lottery winners to assign future payments, but only “subject to specified consumer protection safeguards.” CR.93. In addition, the bill maintains the longstanding ban on assigning the final two years of lottery payments (the amounts most vulnerable to being undervalued by prizewinners). TEX. GOV’T CODE §466.410(a) (“installment prize payments due within the final two years of the prize payment schedule may not be assigned”).

As amended, the Lottery Act now allows a lottery winner to assign future lottery winnings—other than the final two years of payments—provided that he or she: (1) file suit in, and obtain the approval of, Travis County district court, *id.* §466.410(a), (b)(1); (2) serve a copy of the petition and any hearing notice on the Lottery Commission, to give the

Commission a chance to intervene, *id.* §466.410(b)(1); (3) provide an affidavit testifying that the prizewinner has been advised by legal counsel regarding the assignment, has had the opportunity to receive independent tax and financial advice, has received a Truth in Lending disclosure regarding the assignment, and has been advised in writing that he or she can cancel the assignment within three business days of signing it, *id.* §466.410(b)(3)(B), (E)-(F); and (4) if married, submit a sworn or notarized statement by the spouse that consents to the assignment, *id.* §466.410(c).

The Commission has consistently given full effect to these protections. CR.86.

B. The Legislature Amended Article 9 of the Uniform Commercial Code Prior to Enacting the 1999 Amendments to the Lottery Act.

Two weeks *before* enacting the 1999 Lottery Act amendments, CR.100-01, the Legislature amended Texas law to adopt various revisions to Article 9 of the Uniform Commercial Code, which governs rights of assignment. *See* Act of May 17, 1999, 76th Leg., R.S., ch. 414, 1999 Tex. Gen. Laws 2639 (Tab E) (relevant excerpts of Senate Bill 1058).

Only two sections of this 218-page bill are relevant to this case. CR.7, 163. Section 9.102 provides that Article 9 governs the assignability of eight types of accounts, including “winnings in a lottery or other game of chance” administered by any “state.” TEX. BUS. & COM. CODE §9.102(a)(2) (defining “account” to include “winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state.”). This is the only mention of a “lottery” anywhere in the legislation. Section 9.406 generally addresses

how assignments of rights to third parties shall be effected. Subsection (f)(1) provides that any restrictions on the right of assignment contained in any other “rule of law, statute, or regulation” shall be “ineffective.” TEX. BUS. & COM. CODE §9.406(f)(1). Subsection (f)(1) is the only clause of §9.406(f) relevant to this case and has not been amended since. The Legislature amended Subsection (f)(2) in 2001, CR.69-74, but that clause bears no relevance here, and neither the majority nor the dissent below drew any meaning from that amendment.

C. Respondents Attempt To Nullify the 1999 Lottery Act Protections.

In 1995, Cletius L. Irvan won a Texas Lottery prize worth almost \$9 million, to be paid in twenty annual payments of approximately \$450,000 once a year until 2014. CR.4-5. After the Legislature enacted the 1999 Lottery Act amendments, Irvan—now an Arkansas resident—assigned away all but his last two payments. CR.4, 76, 115.

Irvan later became indebted to the First State Bank of DeQueen (DeQueen) for almost \$200,000. CR.5. When Irvan became unable to satisfy the debt, DeQueen arranged for him to liquidate his final two lottery payments (totaling almost \$900,000) by assigning them to Stone Street Capital (Stone Street)—a nationwide purchaser of lottery winnings, structured settlements, and other instruments—for \$308,032. CR.5, 31. The parties sought a judicial blessing of the assignment by initiating a common law “composition of creditors” proceeding in Arkansas state court (similar to a filing under the U.S. Bankruptcy Code). CR.5, 45-55.

The Arkansas order violates the 1999 Lottery Act amendments in multiple ways. It allows the assignment of the last two years of lottery payments. CR.45-46. It also fails to

provide the safeguards guaranteed by the Lottery Act for assigning earlier payments, CR.45-55, such as the requirement that the prizewinner be represented by independent counsel, TEX. GOV'T CODE §466.410(b)(1)(B). The Arkansas court recognized the conflict with the Lottery Act but nevertheless sought to make its judgment binding in Texas, expressly stating that “notwithstanding . . . Government Code §466.410(a), the District Court for Travis County, 345th Judicial District shall grant this order full faith and credit.” CR.52.

DeQueen attempted to register the order in Travis County district court as a foreign judgment. CR.41-44. The Lottery Commission objected, citing the Lottery Act. CR. 125-26. In response, DeQueen, Stone Street, and Irvan filed a petition seeking, among other things, a declaratory judgment that the UCC nullifies the Lottery Act protections. CR.3-10. Plaintiffs moved for summary judgment on this issue. CR.17-29. The district court granted the motion, CR. 143, and severed the other pending claims, making its judgment final, CR.152-53. The court of appeals affirmed in a 2-1 decision. Tab B.

SUMMARY OF ARGUMENT

As in most states that administer lotteries, the Texas Legislature has enacted protections for prizewinners against predatory business practices, such as attempts by financial institutions to obtain future lottery payments for pennies on the dollar. At first, the Legislature barred any voluntary assignments of any future lottery payment. Under the 1999 amendments, voluntary assignments are now permitted, but only if, among other things, the prizewinner is represented by counsel independent of the finance company and the

assignment is approved by a Travis County district court. Additionally, the 1999 amendments bar the assignment of the last two years of payments, ensuring that prizewinners enjoy at least some of their payments at full value.

Rather than lobby for repeal through the legislative process, finance companies around the country have instead pursued judicial nullification of these consumer protections under each state’s UCC. They have already litigated this question in seven other states to date. Yet no court has ever refused to enforce these protections based on a previously enacted UCC provision—until now.

The majority ruling below set aside legislative intent and rendered the 1999 Lottery Act provisions “entirely ineffective even though those restrictions were the focus of the 1999 amendments and even though that enactment occurred after the UCC amendments that session.” *DeQueen*, 2008 WL 2065923, at *5. This ruling violates numerous canons of statutory construction—including the last-in-time rule, the canon that favors specific over generally applicable statutes, and the canon against surplusage—as well as the tradition of judicial deference to state agencies. Moreover, it jeopardizes consumer protections against predatory business practices in other provisions of Texas law as well as the Lottery Act.

ARGUMENT

I. THIS COURT SHOULD GRANT THE PETITION FOR REVIEW AND RESTORE THE 1999 LOTTERY ACT PROTECTIONS AGAINST PREDATORY BUSINESS PRACTICES.

“It is a cardinal rule of statutory construction that we are to give effect to the intent of the Legislature.” *Fleming Foods of Tex., Inc. v. Rylander*, 6 S.W.3d 278, 284 (Tex. 1999).

The court of appeals has done precisely the opposite in denying effect to two entire Lottery Act statutes, comprising almost the entire 1999 bill. Indeed, the majority below admitted that its ruling rendered the Legislature’s enactment “entirely ineffective,” and did so “even though those restrictions were the focus of the 1999 amendments and even though that enactment occurred after the UCC amendments that session.” *DeQueen*, 2008 WL 2065923, at *5. There is no justification for the lower court’s disregard of legislative intent. To the contrary, the decision (1) contradicts numerous established canons of interpretation and traditional principles of deference to government agencies, and (2) finds no support in the text of the UCC.

A. Established Canons of Interpretation and Principles of Agency Deference Confirm That the 1999 Lottery Act Protections Must Be Given Effect.

The 1999 amendments to the Lottery Act and to the UCC are in undisputed conflict. The former plainly bars Irvan from assigning his last two payments, while the UCC permits such assignment. *Dequeen*, 2008 WL 2065923, at *5. Every applicable canon of construction directs that this conflict be resolved in favor of the Lottery Act.

Last in time rule. When a conflict arises between two statutes enacted by the Legislature at different times, the later-enacted statute must control. TEX. GOV’T CODE §311.025(a)-(b). The Legislature added the consumer protection provisions to the Lottery Act two weeks after it enacted the UCC bill. H.J. of Tex., 76th Leg., R.S. 4384 (1999) (May 30 final vote on H.B. 1799); H.J. of Tex., 76th Leg., R.S. 2492 (1999) (May 17 final vote on

S.B. 1058). Because the Legislature enacted the Lottery Act amendments after it took final action on the UCC bill, the Lottery Act must control.¹

Canon against surplusage. The same result would hold even if the conflicting provisions were enacted simultaneously. To begin with, under the canon against surplusage, courts must attempt to give meaning to every word and phrase employed by the Legislature. TEX. GOV'T CODE §311.021(2); *Lexington Ins. Co. v. Strayhorn*, 209 S.W.3d 83, 86 (Tex. 2006) (“We must presume that the entire statute . . . was intended to be effective.”). As this Court has noted, “[i]t is certainly true that we do not lightly presume the Legislature may have done a useless act, and will not read statutory language to be pointless if it is reasonably susceptible of another construction.” *Brown v. De La Cruz*, 156 S.W.3d 560, 566 (Tex. 2004). Yet that is precisely what the court of appeals has done here. It expressly rendered the Lottery Act assignment provisions “entirely ineffective.” *DeQueen*, 2008 WL 2065923, at *5. Indeed, not only does the decision below render two entire statutes ineffective, it renders almost an *entire bill* ineffective. The primary purpose of the 1999 legislation was to regulate “the assignment or deposit of certain lottery prizes.” Tab D, at 1.

1. That the Legislature amended *another* provision of the UCC in 2001 plainly does not alter this result, and the majority below did not hold otherwise. The 2001 legislation amended Subsection (f)(2) of UCC §9.406—without touching Subsection (f)(1) (the only provision at issue in this case, *DeQueen*, 2008 WL 2065923, at *5)—as part of a 22-page bill of technical amendments to Article 9 proposed by the American Law Institute. Act of May 17, 2001, 77th Leg., R.S., ch. 705, §11, 2001 Tex. Gen. Laws 1403, 1406. The 2001 legislation also included the text of Subsection (f)(1)—but only because the Texas Constitution expressly requires the republication “at length” of any statute that a bill proposes to amend. TEX. CONST. art. III, §36. Accordingly, no substantive meaning can be imputed to the republication of Subsection (f)(1) in the 2001 legislation. *See also* TEX. GOV'T CODE §311.025(c) (in the event of a conflict between a prior law and a republishing of that law to meet the constitution’s republishing requirement, the prior law controls).

Specific over general. Similarly, where two statutes conflict, courts construe the more specific provision (that is, the statute with the “more specific application,” *Columbia Hosp. Corp. of Houston v. Moore*, 92 S.W.3d 470, 473 (Tex. 2002)) as an exception to the general one. TEX. GOV’T CODE §311.026(b). *See also Daughters of Charity Health Servs. of Waco v. Linnstaedter*, 226 S.W.3d 409, 411 & n.12 (Tex. 2007) (both statutes “can be given effect” by treating one as a limited exception to the other).

Here, the Lottery Act plainly has the “more specific application” because it governs the assignability only of lottery payments received from the Texas Lottery Commission—whereas Article 9 of the UCC applies to the assignability of any number of rights, including lottery payments from any number of states. *Compare* TEX. GOV’T CODE §466.410 *with* TEX. BUS. & COM. CODE §9.102(a). *See also DeQueen*, 2008 WL 2065923, at *9 (Patterson, J., dissenting). Accordingly, courts should construe the Lottery Act protections as a narrow exception to Article 9 of the UCC.

Moreover, the canon favoring specific over general provisions applies even where, unlike here, the legislature enacted the general statute *after* the specific one (unless there is “manifest intent that the general provision prevail”). TEX. GOV’T CODE §311.026(b). *See also State v. The Praetorians*, 186 S.W.2d 973, 976 (Tex. 1945) (a later enacted law imposing a general excise tax on all organizations did not repeal a previously enacted law specifically exempting nonprofits). Indeed, that is precisely what other courts have done in similar lawsuits, including suits initiated by Stone Street itself. These courts have given

effect to protections for lottery winners even in states where the legislature enacted the UCC amendments *after* adopting the lottery safeguards. *See Stone St. Capital, LLC v. Cal. Lottery Comm'n*, No. B202411, at 9-10 (Cal. App. 2d, June 26, 2008) (holding that later enacted UCC provision did not repeal previous Lottery Act assignment restrictions) (affirming No. BC 368041, 2007 WL 5268205 (Los Angeles County Sup. Ct., Aug. 10, 2007)); *In re Duboff*, 290 B.R. 652, 656-57 (Bankr. C.D. Ill. 2003) (same). *A fortiori*, this Court must give effect to the Texas Legislature's enactment of safeguards after amending the UCC.

Agency deference. Finally, this result is confirmed by the tradition of judicial deference owed to administrative agencies including the Texas Lottery Commission. This Court gives serious consideration to an agency's construction of a statute so long as the agency is charged with the statute's enforcement and its construction is reasonable. *First Am. Title Ins. Co. v. Combs*, ___ S.W.3d ___, 2008 WL 2069840, at *3 (Tex. May 16, 2008). The Commission has given full and consistent effect to the various consumer protections established in the 1999 legislation. CR.86. Irvan and other lottery winners initially agreed to the Commission's interpretation by complying with the Lottery Act's assignment restrictions. CR.4, 76, 115. The Commission's administrative construction, undisturbed for almost a decade, further confirms that the Lottery Act amendments must be given effect.²

2. This conclusion is further bolstered by other provisions of the Code Construction Act, which direct courts to consider the legislature's goal, legislative history, former provisions, the bill's purpose, and the effect of the court's interpretation. TEX. GOV'T CODE §311.023(1), (3)-(5).

B. Nothing in the UCC Amendment Denies Effect to the Later-Enacted Lottery Act Amendments.

The majority below ignored established canons of interpretation because it concluded that the plain language of UCC §9.406(f)(1) requires that any conflict with another statute be resolved in favor of the UCC. *DeQueen*, 2008 WL 2065923, at *5. But although that provision purports to apply to other duly-enacted laws, nothing in UCC §9.406(f)(1) renders *future* legislation ineffective. To the contrary, the Legislature was perfectly aware of how to make §9.406 apply to future legislation yet chose not to do so: Legislatures in at least 14 other states have expressly amended the UCC to render inconsistent *future* legislation ineffective unless such laws explicitly reference, and override, the UCC (a provision sometimes known as an “express reference” requirement).³ Indeed, Article 9 itself expressly contemplates that other laws providing a different rule for consumers may prevail over the UCC. TEX. BUS. & COMM. CODE §9.102(b)-(c). *See also DeQueen*, 2008 WL 2065923, at *8-9 (Patterson, J., dissenting) (noting that the UCC itself gives way to statutes that, like the Lottery Act, offer additional protections to a class of individuals).

What’s more, even if the Texas Legislature had amended the UCC to explicitly preempt consumer protection laws enacted in the future, such a provision could not be employed to nullify the clear intentions of a later-enacted statute. As the U.S. Supreme Court has repeatedly observed, clear and unambiguous later-enacted statutes must be given effect,

3. *See* ALA. CODE §7-9A-406(j); ARK. CODE §4-9-406(j); DEL. CODE tit. 6, §9-406(j); IOWA CODE §554.9406(j); MASS. GEN. LAWS ch. 106, §9-405(j); MISS. CODE §75-9-406(j); N.H. REV. STAT. §382-A:9-406(j); N.J. STAT. §12A:9-406(j); N.C. GEN. STAT. §25-9-406(j); OR. REV. STAT. §79.0406(10); TENN. CODE §47-9-406(j); W. VA. CODE §46-9-406(j); WYO. STAT. §34.1-9-406(j)-(k); 13 PA. CONS. STAT. §9406(j).

even in the face of explicit requirements of express reference. As Justice Scalia recently observed: “When the plain import of a later statute directly conflicts with an earlier statute, the later enactment governs, *regardless* of its compliance with any earlier-enacted requirement of an express reference or other ‘magical password.’” *Lockhart v. United States*, 546 U.S. 142, 149 (2005) (Scalia, J., concurring). *See also Warden, Lewisburg Penitentiary v. Marrero*, 417 U.S. 653, 659-60 n.10 (1974) (a later-enacted statute can satisfy a preexisting express reference requirement by “fair implication” even in the absence of an express reference); *Marcello v. Bonds*, 349 U.S. 302, 310 (1955) (giving effect to a later-enacted statute despite the absence of an express reference as required by the Administrative Procedure Act); *Great N. Ry. Co. v. United States*, 208 U.S. 452, 465 (1908) (because an express reference provision “has only the force of a statute, its provisions cannot justify a disregard of the will of Congress as manifested either expressly or by necessary implication in a subsequent enactment”).

This Court has expressed precisely the same view. *See Quick v. City of Austin*, 7 S.W.3d 109, 130 (Tex. 1998) (quoting *Great N. Ry. Co.*, 208 U.S. at 465). After all, “to hold that enactments of a particular class upon a given subject by one or more Legislatures may operate upon succeeding Legislatures as a limitation to that particular class of enactments upon the given subject would extend the doctrine of legislative interpretation to fields foreign to those in which it has been or appropriately may be applied.” *Watts v. Mann*, 187 S.W.2d 917, 924 (Tex. Civ. App.—Austin 1945, writ ref’d).

* * *

Established canons of construction and principles of deference require that this Court give effect to the consumer protection provisions of the Lottery Act. Nothing in the plain text of the UCC supports a contrary result. Accordingly, this Court should grant the petition and reverse the contrary ruling of the majority below.

II. THE ERRONEOUS DECISION BELOW HAS FAR-REACHING EFFECTS.

The conflict between the UCC amendments and the Lottery Act amendments is not an issue isolated just to this case. This identical issue is present in at least four other cases now pending in Travis County district court, where another financial institution, Seneca One LLC, is seeking to purchase the right to Texas Lottery prizewinners' final two payments.⁴ A variant of this issue was also involved in another appeal that was vacated due to the prizewinner filing for bankruptcy. *See In re Lottery Prize of Walter Gonzalez*, No. 06-05-00054-CV (Tex. App.—Texarkana Aug. 17, 2005).

Nor is this issue unique to Texas. In fact, the Commission is aware of similar litigation in at least seven other states. The finance companies have lost five of those seven

4. *In re Matter Involving Assignment of Lottery Prize of Jaime G. Gomez; Seneca One LLC v. Texas Lottery Commission*, Cause No. D-1-GN-07-002229 (201st District Court, Travis County, Texas, July 18, 2007); *In re Matter Involving Assignment of Lottery Prize of Marvin J. Lane; Seneca One LLC v. Texas Lottery Commission*, Cause No. D-1-GN-07-002230 (201st District Court, Travis County, Texas, July 18, 2007); *In re Matter Involving Assignment of Lottery Prize of Amanda Salinas; Seneca One LLC v. Texas Lottery Commission*, Cause No. D-1-GN-07-001171 (353rd District Court, Travis County, Texas, July 18, 2007); *In re Matter Involving Assignment of Lottery Prize of Oliver Dooley; Seneca One LLC v. Texas Lottery Commission*, Cause No. D-1-GN-07-001135 (98th District Court, Travis County, Texas, Apr. 17, 2007). All but *Salinas* have been abated pending the outcome of this appeal. *Salinas* was nonsuited on November 14, 2007.

cases. Moreover, *not one court* has agreed with the majority below in applying the UCC to nullify a *subsequently enacted* lottery provision.⁵

What's more, if carried to its logical conclusion, the ruling below jeopardizes consumer protections approved by the Legislature in other provisions of Texas law, including but not limited to the Lottery Act, that purport to protect Texans from predatory business practices but do not specifically override the UCC in express terms. *See, e.g.*, TEX. TAX CODE §152.047(g) (car dealers who finance a car sale in house and then assign the note to pay all previously undeclared tax liability when the assignment takes place); TEX. CODE CRIM. P. art. 56.49 (crime victims may only assign their right to future compensation payments in certain circumstances).

PRAYER

For the foregoing reasons, the Court should grant the petition, reverse the court of appeals's judgment, and render judgment for the Texas Lottery Commission.

5. Five courts have reconciled the conflict in favor of enforcing protections for lottery winners—including two that did so even though the legislature had enacted those protections *prior to* adopting the UCC amendments. *See Stone St. Capital, LLC v. Cal. Lottery Comm'n*, No. B202411, at 9-10 (Cal. App. 2d, June 26, 2008) (earlier enacted lottery law prevailed over UCC); *In re Duboff*, 290 B.R. at 656-57 (same). *See also Va. State Lottery Dep't v. Settlement Funding*, No. CH-2003-183848, 2005 WL 3476682, at *3 (Va. Cir. Ct., Nov. 7, 2005) (later enacted lottery law prevailed over UCC); *In re Guluzian*, No. BK 04-10390-JMD, ADV 04-1142-JMD, 2004 WL 2813523, at *3 (Bankr. D.N.H. Dec. 3, 2004) (same); *Midland States Life Ins. Co. v. Cardillo*, 797 N.E.2d 11, 16 (Mass. App. Ct. 2003) (same).

To date, only two court rulings have favored the UCC provision, and in each of those rulings, the legislature enacted the UCC provision *after* adopting protections for lottery winners. Accordingly, those two rulings have no bearing on this petition. *See Stone St. Capital, Inc., et al. v. Ind. State Lottery Comm'n, et al.*, No. 49D03-0607-PL030514, 2006 WL 5838343 (Marion County Superior Ct., Ind. Sept. 25, 2006) (agreed order that later-enacted UCC prevailed); *Stone St. Capital, Inc. v. Ky. Lottery Corp.*, No. 05-CI-05747, 2005 WL 5239376 (Jefferson Cir. Ct. Div. 5, Ky. Nov. 22, 2005) (later-enacted UCC prevailed).

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

JAMES C. HO
Solicitor General
State Bar No. 24052766

BRANTLEY STARR
Assistant Solicitor General
State Bar No. 24046904

Office of the Attorney General
P.O. Box 12548, (MC 059)
Austin, Texas 78711-2548
[Tel.] (512) 936-1695
[Fax] (512) 474-2697

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that on June 30, 2008 a true and correct copy of this Petition for Review was served by certified U.S. mail, return receipt requested, on all appellate counsel of record in this proceeding as listed below:

Jeffrey S. Boyd
THOMPSON AND KNIGHT, LLP
98 San Jacinto Blvd., Ste. 1900
Austin, Texas 78701

COUNSEL FOR RESPONDENTS

Brantley Starr