UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
Joel W. Solomon United States Courthouse
900 Georgia Avenue
Chattanooga, Tennessee 37402

I RESPECTFULLY DISSENT

July 2023

With the end of the Supreme Court's latest term, several of its opinions have generated considerable attention and discussion. And as is often the case, the more high-profile cases featured spirited dissents from the majority opinions by the Justices who were in the minority.

WHAT ARE DISSENTING OPINIONS

What are "dissents" and why are they written? Appellate courts, including the United States Supreme Court and the highest court of each state, are multi-judge courts. At the Supreme Court, all nine Justices consider the cases and decide them collectively. The same is true for the highest court in each state. For intermediate appellate courts, judges generally sit in panels of three to consider and decide cases. Only a majority of the panel, rather than the entire panel, is required to agree on the proper outcome of a case. The majority decision then becomes the official opinion of the court and binds all lower courts. The majority decision also serves as precedent to guide the deciding court in the future when it hears cases containing similar facts and law.

Many decisions are unanimous, and judges would prefer that all their decisions be such. But sometimes other judges on the court have opinions on the proper outcome that differ from the majority. When they do disagree, these judges dissent and may write an opinion setting out their disagreement.

WHY ARE DISSENTING OPINIONS WRITTEN

Dissents may be written for a number of reasons. Perhaps the judges in the minority disagree about the case's procedural posture. For example, they may disagree that the court even has jurisdiction over the case or may believe that the parties before the court are not the proper parties, that the parties do not have standing to bring their claims, or that the case is not yet ripe for decision. There are many other procedural reasons why one group of judges may disagree with another group of judges.

Or the judges in the minority may simply disagree with the majority on the facts and the law and come to a different decision based on the case's merits. Reasonable people can look at the same set of facts yet reach different conclusions. In writing a dissent, the minority points out what it perceives as deficiencies in the majority's logic, analysis, or conclusion. Often there is a

back-and-forth between the majority and minority before the final decision is issued; this dialogue can strengthen both sets of opinions. Sometimes the minority's draft dissent is so strong and persuasive that it convinces some judges in the majority to change their votes and move over to the dissent's side. This can result in the draft dissent becoming the majority opinion. Regardless of the impact on the majority, however, dissents put the dissenters' reasoning on the record and provide the public with a better picture of the issues and analysis.

Generally, dissenting opinions are written with the understanding that the dissenters are members of the same court and owe civility and collegiality to their majority colleagues. For this reason, the dissenters often end their opinions with "respectfully, I dissent."

DISSENTS CAN BECOME LAW

Sometimes the opinions expressed in a dissent will, over time, win over future judges and society at large to the point that they become the majority sentiment. A prime example is Justice John Marshall Harlan's famous dissent in the separate-but-equal case of *Plessy v. Ferguson*. Justice Harlan's dissent formed the basis of the Supreme Court decision in *Brown v. Board of Education*, decided over half a century after *Plessy*, which held that racial segregation of public schools was unconstitutional.

Dissents have a long and honored history in our country's judiciary. Their facilitation of respectful disagreement serves a noble and valuable purpose.

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