

JUSTICE PRISCILLA OWEN
Nominee to U.S. Court of Appeals for the Fifth Circuit (Texas)
(Nominated May 9, 2001)

- Since 1995, Justice Priscilla Owen has served as a distinguished and respected Justice on the Supreme Court of Texas.
 - The American Bar Association *unanimously* rated Justice Owen “Well Qualified,” its highest possible rating.
 - Justice Owen has significant bipartisan support, including from three former *Democrat* judges on the Texas Supreme Court and a bipartisan group of 15 past Presidents of the State Bar of Texas.
 - The seat to which Justice Owen has been nominated has been designated a “judicial emergency” by the Judicial Conference of the United States. Nonetheless, she has been forced to wait since May 2001 for a Senate vote.
- In 1994, Justice Owen was first elected to the Texas Supreme Court. In 2000, she overwhelmingly won a second term, with 84% of the vote.
 - During Justice Owen’s 2000 re-election bid, every major newspaper in Texas endorsed her.
- Before joining the Texas Supreme Court, Justice Owen was a partner with the well-respected Texas law firm of Andrews & Kurth. She practiced commercial litigation for 17 years.
- Justice Owen is a member of the American Law Institute, the American Judicature Society, the American Bar Association, and a Fellow of the American and Houston Bar Associations.
- Justice Owen has engaged in significant pro bono and community activity.
 - Justice Owen has served as the liaison to the Texas Supreme Court’s Mediation Task Force and to statewide committees on providing legal services to the poor and *pro bono* legal services. She was part of a committee that successfully encouraged the Texas Legislature to enact legislation that has resulted in millions of dollars per year in additional funds for providers of legal services to the poor. Justice Owen also serves as a member of the board of the A.A. White Dispute Resolution Institute.
 - Justice Owen was instrumental in organizing a group known as Family Law 2000, which seeks to find ways to educate parents about the effect that the dissolution of a marriage can have on their children and to lessen the adversarial nature of legal proceedings when a marriage is dissolved.

- Justice Owen serves on the board of Texas Hearing & Service Dogs. Additionally, she is a member of St. Barnabas Episcopal Mission in Austin, Texas, where she teaches Sunday School and serves as the head of the altar guild.
- Some interest groups have criticized Justice Owen's rulings in a small number of cases interpreting a Texas parental notice abortion statute. Importantly, by law, the Texas Supreme Court hears cases arising under this law only rarely – namely, when *both* lower courts have required parental notice and not granted an exception. In some of those cases, Justice Owen agreed with the lower courts and voted to require notice to a parent; on other occasions, she voted to grant an exception to the parental notice requirement or to remand based on the facts of the case. She thus has voted to grant a judicial bypass *more* readily than the lower-court judges in these cases. Justice Owen was in the majority in 11 of the 14 cases. Her decisions in all instances have been based on her interpretation of the requirements of the ambiguous Texas statute in light of governing U.S. Supreme Court precedent, as her decisions explain.
- Justice Owen has not questioned *Roe v. Wade* in her decisions, and she has testified that, as a lower-court judge, she would adhere to and strictly follow *Roe v. Wade*.
- Justice Owen earned a B.A. *cum laude* from Baylor University and graduated *cum laude* from Baylor Law School in 1977. She was a member of the Baylor Law Review, and has been honored as Baylor Young Lawyer of the Year and as a Baylor University Outstanding Young Alumna.
- After graduating from law school, Justice Owen earned the highest score in the state on the December 1997 Texas Bar Exam.

STATEMENTS BY SELECT SUPPORTERS OF JUSTICE PRISCILLA OWEN

Raul Gonzalez, Former Democratic Justice on the Supreme Court of Texas

“I found her to be apolitical, extremely bright, diligent in her work, and of the highest integrity. I recommend her for confirmation without reservation.” (*Letter to Sen. Leahy*, July 19, 2002).

John L. Hill, Former Democratic Chief Justice on the Supreme Court of Texas

“After years of closely observing Justice Owen’s work, I can assert with confidence that her approach to judicial decision-making is restrained, that her opinions are fair and well reasoned, and that her integrity is beyond reproach. . . . I know personally just how impeccable Justice Owen’s credentials are.” (*Letter to Sen. Leahy*, July 19, 2002).

Jack Hightower, Former Democratic Justice on the Supreme Court of Texas

“I am a Democrat and my political philosophy is Democratic, but I have tried very hard not to let preconceived philosophy influence my decision on matters before the court. I believe that Justice Owen has done the same.” (*Letter to Sen. Feinstein*, August 20, 2002).

Bipartisan Group of 15 Former Presidents of the State Bar of Texas

“Although we profess different party affiliations and span the spectrum of views of legal and policy issues, we stand united in affirming that Justice Owen is a truly unique and outstanding candidate for appointment to the Fifth Circuit. . . . The status of our profession in Texas has been significantly enhanced by Justice Owen’s advocacy of pro bono service and leadership for the membership of the State Bar of Texas. Justice Owen has served on committees regarding legal services to the poor and diligently worked with others to obtain legislation that provides substantial resources for those delivering legal services to the poor. Justice Owen also has been a long-time advocate for an updated and reformed system of judicial retention in Texas.” (*Letter to Sen. Leahy*, July 15, 2002).

Senator Kay Bailey Hutchison

“Priscilla Owen is an experienced jurist of integrity who embodies the qualities we seek in our federal judges. Despite an exemplary public record, Priscilla Owen has been targeted by special interest groups, her views mischaracterized and her opinions distorted. . . . She has endured baseless criticism and empty charges with poise, validating her even more as an outstanding, qualified nominee who should be confirmed by the United States Senate.” (Press Release March 27, 2003).

Judge Alberto Gonzales, Counsel to President Bush, former Texas Supreme Court Justice

“As someone who had the privilege of serving with Priscilla Owen on the Texas Supreme Court, I can say without hesitation that she is extraordinarily well qualified to serve as a judge on the federal appeals court. Some have questioned Justice Owen’s qualifications because she and I disagreed on the interpretation of a new Texas parental notification statute in 2000. As all judges know, cases of statutory construction often result in disagreements among judges honestly struggling to interpret the statute, particularly when the statute is vague or ambiguous. The fact that Justice Owen and I disagreed in some cases is unremarkable. . . . She is an outstanding jurist and will perform superbly as a federal appeals court judge.” (*Dallas Morning News*, July 16, 2002).

Hector De Leon, Past President of Legal Aid

“As the immediate past president of Legal Aid of Central Texas, it is of particular significance to me that Justice Owen has served as the liaison from the Texas Supreme Court to statewide committees regarding legal services to the poor and pro bono legal services. Undoubtedly, Justice Owen has an understanding of and a commitment to the availability of legal services to those who are disadvantaged and unable to pay for such legal services. It is that type of insight and empathy that Justice Owen will bring to the Fifth Circuit.” (*Letter to Sen. Leahy*, June 26, 2002).

Senator Florence Shapiro, chief author of Senate bill, Texas Parental Notification Act

“I am shocked and saddened to see that partisan and extremist opponents of Justice Owen’s nomination have attempted to portray her as an activist judge, as nothing could be further from the truth. Her opinions interpreting the Texas Parental Notification Act serve as prime examples of her judicial restraint. . . . The Parental Notification Act is emphatically not about whether a minor is able to have an abortion, but whether her parent should be notified. . . . Justice Owen is the kind of judge that the people of the 5th Circuit need on the bench – an experienced jurist who follows the law and uses common sense.” (*Letter to Sen. Leahy*, July 15, 2002).

Ann Stone, Republicans for Choice

“I worry that if we in the pro-choice movement attack even those judicial nominees who are responsible and acclaimed jurists that we will appear like the ‘boy who cried wolf’ when really bad nominees come forward.” (*Press Release*, July 23, 2002).

Mary O’Reilly, Life-time Member of the NAACP and Democrat

“I met Justice Owen in January, 1995, while working with her on the Supreme Court of Texas Gender Neutral Task Force. . . . I worked with Justice Owen on Family Law 2000, an important state-wide effort, initiated in great part by Justice Owen. . . . In the almost eight years I have know Justice Owen, she has always been refined, approachable, even-tempered and intellectually honest.” (*Letter to Sen. Feinstein*, August 14, 2002).

Lori Ploeger, Former Law Clerk to Justice Owen

“During my time with her, I developed a deep and abiding respect for her abilities, her work ethic, and, most importantly, her character. Justice Owen is a woman of integrity who has a profound respect for the rule of law and our legal system. She takes her responsibilities seriously and carries them out diligently and earnestly. . . . Justice Owen is a role model for me and for other women attorneys in Texas.” (*Letter to Sen. Leahy*, June 27, 2002).

Victor Schwartz, Tort Law Professor and Co-author of most widely used torts textbook in United States

“This past weekend, I reviewed most of [Justice Owen’s] principal opinions in tort law. My review of Justice Owen’s opinions indicates that any characterization of Justice Owen as pro-plaintiff or pro-defendant is untrue. Those who have attacked her as being pro-defendant have engaged in selective review of her opinions, and have mischaracterized her fundamental approach to tort law. Justice Owen’s fundamental approach to tort law is to make it stable. . . . My fundamental point is that in the area of tort law, Justice Owen is a moderate jurist; she is neither a trailblazer for plaintiffs nor a captive of corporate interests.” (*Letter to Sen. Leahy*, July 18, 2002).

Editorial Board, *Dallas Morning News*

“Justice Owen’s lifelong record is one of accomplishment and integrity. She is one of the few judicial nominees to receive a unanimous ‘well qualified’ rating from the American Bar Association.” (February 10, 2002).

Editorial Board, *Washington Post*

“She should be confirmed. Justice Owen is indisputably well qualified Liberals will no doubt disagree with some opinions she would write on the 5th Circuit, but this is not the standard by which a president’s lower-court nominees should be judged.” (July 24, 2002).

Texas Supreme Court Chief Justice, Tom Phillips

“She’s what Bush said (in nominating her): She tries to follow the legislative will in every case and apply the law, not invent it.” (*Houston Chronicle*, May 10, 2001).

**Herbert Reynolds, Baylor University President and Chancellor Emeritus; former Chair,
Texas Commission on Judicial Efficiency**

“Justice Owen is a superlative individual in every way. She is extremely bright, she possesses great integrity and is equipped with the character and moral virtues necessary for the high office she holds as well as the high office for which she has been nominated . . . Based on my knowledge of Justice Owen for the past 30 years, I believe that you simply cannot make a more solid choice for the 5th U.S. Circuit Court of Appeals.”
(Letter to Senate Judiciary Committee, March 25, 2002).

PRISCILLA OWEN
Responses to False Allegations

ALLEGATION: Justice Owen has been an activist in cases involving interpretation of Texas' parental notice statute.

RESPONSES:

- The cases in question involved the Texas parental notice statute. Justice Owen has not questioned *Roe v. Wade* in her decisions, and she has testified that, as a lower-court judge, she would adhere to and strictly follow *Roe v. Wade*.
- The Texas law enacted in 1999 requires notice to a parent when a minor women seeks an abortion, but allows exceptions when the trial court judge concludes (i) that the minor is mature and sufficiently well informed to make the decision without notification to a parent, (ii) that notification would not be in the best interest of the minor, or (iii) that notification may lead to physical, sexual, or emotional abuse of the minor.
 - The Texas statute is a parental *notice* statute, not a parental consent statute. It does not prevent the minor from having an abortion or require the consent of a parent. The law requires notice to a parent absent one of the exceptions.
 - More than 40 States have laws requiring parental consent or notice when a minor women seeks an abortion.
- Justice Owen has interpreted the exceptions in the Texas parental notice statute fairly and neutrally in accord with United States Supreme Court precedent. She has expressly relied on U.S. Supreme Court cases addressing similar laws to interpret the statutory exceptions.
 - The cases of 12 girls seeking an exception to the parental notice requirement have reached the Texas Supreme Court in 14 separate cases. (The cases of two girls reached the Supreme Court on more than one occasion after remands to the lower court.)
 - Under Texas law, the only parental notice cases that reach the Texas Supreme Court are those in which *both* lower courts (the trial court and the intermediate appeals court) have denied the claimed exception and thus required notice to a parent.
 - Justice Owen agreed with the lower courts and voted to require parental notice in 10 of the 14 cases. She voted to reverse the lower court and grant the exception outright in 2 cases and voted to remand for further trial court proceedings in 2 cases. Her decisions therefore have allowed exceptions to the parental notice requirement *more readily* than the lower-court judges in these cases.

- Justice Owen was in the majority of the Texas Supreme Court in 11 of these 14 cases. The full Court voted to require parental notice in 7 cases, to grant the exception outright in 3 cases, and to remand in 4 cases.
- Florence Shapiro, the chief author of the Senate bill that led to the Texas Parental Notification Act, wrote to the U.S. Senate that “Justice Owen’s opinions throughout the series of cases looked carefully at the new statute and at the governing U.S. Supreme Court precedent upon which the language of the statute was based, to determine what the Legislature intended the Act to do.” She concluded that “Justice Owen is the kind of judge that the people of the 5th Circuit need on the bench – an experienced jurist who follows the law and uses common sense.”

ALLEGATION: Justice Owen was accused by her colleague, Justice Alberto Gonzales, of engaging in an “unconscionable act of judicial activism” in one parental notice case.

- The allegation is inaccurate, as Justice Owen explained at her hearing. Justice Gonzales’ concurring opinion explained that it would be an unconscionable act of judicial activism for any judge to bend the statute to advance his or her own personal views even though “the ramifications of such a law and the results of the Court’s decision here may be personally troubling to me as a parent.” Justice Gonzales *expressly* stated that “*every member of this Court* agrees that the duty of a judge is to follow the law as written by the Legislature.”
- Justice Gonzales’ concurring opinion never cited Justice Owen’s dissenting opinion. It did expressly refer twice, however, to the separate dissenting opinion of Justice Hecht. (Justice Owen did not join Justice Hecht’s separate dissent).
 - As Justice Gonzales’ opinion explained, Justice Hecht’s dissenting opinion had claimed that “the Court’s decisions [were] motivated by personal ideology.” Justice Gonzales responded that this suggestion was “simply wrong.” Justice Gonzales stated: “Justice Hecht charges that our decision demonstrates the Court’s determination to construe the Parental Notification Act as the Court believes the Act should be construed and not as the Legislature intended. I respectfully disagree. This decision demonstrates the Court’s determination to see to it that we discharge our responsibilities as judges, and that personal ideology is subordinated to the public will that is reflected in the words of the Parental Notification Act, including the provisions allowing a judicial bypass.”
- Justice Gonzales, who is now Counsel to President Bush, strongly supports Justice Owen’s confirmation. His 2002 op-ed in the *Dallas Morning News* stated emphatically that Justice Owen is “extraordinarily well qualified,” is “an outstanding jurist,” and will perform “superbly as a federal appeals court judge.” He noted that “[t]he fact that Justice Owen and I disagreed in some cases is unremarkable” and that “cases of statutory construction often result in disagreements among judges honestly struggling to interpret the statute, particularly when the statute is vague or ambiguous.”

ALLEGATION: Justice Owen has favored corporations over consumers.

- Justice Owen has interpreted the law as a judge fairly and neutrally. She is supported by three former Democrat Justices who served with her on the Texas Supreme Court and by 15 past Presidents of the State Bar of Texas. She received a *unanimous* “well-qualified” rating from the American Bar Association, the highest possible rating.
- Justice Owen has joined or authored a number of opinions that advanced the interests of consumers. To take only a few examples, she has supported the right of medical malpractice victims to recover from physicians who injured them, upheld the right of policyholders to recover from insurance companies, held that manufacturers had a legal duty to make a product child resistant, and upheld a \$5 million punitive damages verdict in a construction accident case. She has decided cases regardless of the parties to the case.

ALLEGATION: Justice Owen received campaign contributions from Enron and ruled on cases involving that corporation.

- Article 5 of the Texas Constitution provides that candidates for the state judiciary run in contested elections, and Canon 4D(1) of the Texas Code of Judicial Conduct provides that the candidates may solicit and accept campaign funds.
 - Justice Owen has long advocated reform and a system of appointed rather than elected state judges.
 - Some notable Fifth Circuit judges appointed by President Clinton were state judges who had run and been elected in contested elections – Judge Benavides and Judge Dennis, for example.
- In the 1994 election cycle, Justice Owen’s campaign committee received approximately \$1.2 million in contributions from more than 3,000 different contributors. Included in that total was \$8,800 from employees of Enron and its employee-funded political action committee. Employees of Enron thus contributed *less than* 1% of the total contributions to her committee. In the 2000 election cycle, her campaign committee received no contributions from Enron affiliates or employees.
- Judicial recusal is neither necessary nor appropriate in cases involving parties or counsel who contributed to that judge’s campaign committee. Otherwise, parties could game the system by contributing to judges they did not like and thereby triggering future recusals.
- The decisions of the Texas Supreme Court since Justice Owen took her seat in proceedings involving Enron have been ordinary. Of the 14 proceedings in which Enron was a party, Justice Owen’s vote can be characterized as favorable to Enron in six of the cases and adverse in five cases. With respect to the three remaining cases, one case cannot be characterized either way, one was dismissed by agreement of the parties, and in one she did not participate.