



VIEWPOINT

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Ohio Supreme Court: Activist no more

Ohio's high court back on right track

By David Owsiany

What a difference just a few years make. Since 2002, three justices who played an important and controversial role in defining the Ohio Supreme Court's direction for a number of years have retired. Their replacements quietly have helped move the court in a direction that significantly benefits Ohio and its residents.

Throughout the 1990s, a consistent four-justice majority, dubbed the Gang of Four by some commentators, engaged in a series of usurpations of legislative authority that was inconsistent with the Ohio Constitution.

From workers' compensation and tort reform to school funding, the court found itself embroiled in political battles with the General Assembly. By substituting its policy preferences for that of the legislature, the Gang of Four ignored the court's traditional role of applying the law in a neutral manner and assumed the policymaking role reserved for the legislative branch of government.

A prime example is reforming the personal-injury lawsuit system. The General Assembly had adopted a series of tort-reform laws that placed reasonable limits on Ohio's out-of-control liability system. The legislature passed these statutes after hearing testimony and reviewing reports showing the liability system was hurting economic growth, making Ohio businesses less competitive and costing people millions of dollars in "tort taxes" as the costs of litigation are passed on to consumers. The reports also showed the system rewarded personal-injury trial attorneys at the expense of injured plaintiffs.

On at least three occasions during the 1990s, the court struck down various aspects of these tort-reform laws. Fortunately, this did not deter legislators from continuing to address the pressing public-policy issues presented by Ohio's uncontrolled liability system.

In 2005, the General Assembly passed and Gov. Bob Taft signed a tort-reform statute. The legislation, among other things, provided for caps on pain-and-suffering damages and placed reasonable time limits on filing lawsuits.

In two recent cases, one from December and one in January, the court ruled on challenges to these recently enacted reforms. The new majority of the court is committed to respecting the role of the legislature and recognizes and follows the long-held standard that, because the constitution places the legislative public policy-making authority in the hands of the General Assembly, statutes passed by the General Assembly and signed into law by the governor have a "strong presumption of constitutionality." The new majority will overturn a statute only if it appears "beyond a reasonable doubt" that the statute is "clearly incompatible" with the constitution. Applying this standard, the court upheld the tort-reform statutes at issue in the recent cases.

In his dissenting opinion in the most-recent case, Justice Paul E. Pfeifer, the only member of the Gang of Four still on the court, stated, "I do not agree that this court owes all legislation passed by the General Assembly the presumption of constitutionality." He concluded the court should have struck down the statutes.

Pfeifer is more than happy, however, to give the presumption of constitutionality to other statutes. For example, in a 2003 opinion upholding a statute that banned the carrying of concealed weapons, he wrote it "is fundamental that a court must presume the constitutionality of lawfully enacted legislation." It is difficult to explain Pfeifer's recent change of heart on the presumption of constitutionality when considering challenges to statutes. It may be that he liked the ban on carrying concealed weapons but disagreed with tort reform as a matter of public policy.

Fortunately, this type of constitutional sleight of hand no longer commands a majority of the court.

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