Stare Decisis: The U.S. Supreme Court's Recent Willingness to Overturn Longstanding Precedent and Its Potential Effect on State Appellate Courts

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(by **Casey Alan Coyle** and **Michael Libuser**)

Courts have long extolled the benefits of *stare decisis*, saying that it "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). Indeed, it has been said that, without the doctrine, "we may fairly be said to have no law." *Commonwealth v. Thompson*, 985 A.2d 928, 953–54 (Pa. 2009) (quoting *McDowell v. Oyer*, 21 Pa. 417, 423 (1853)). Recently, however, the U.S. Supreme Court has departed from longstanding precedent in several cases—most notably in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022)—leading some members of the High Court to accuse it of making a "laughing-stock" of *stare decisis*. *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2295 (2024) (Kagan, J., dissenting, joined by Sotomayor and Jackson, JJ.).

The public's confidence in the High Court has suffered as a result. According to a recent Gallup poll, the approval of the U.S. Supreme Court is near a historic low, with only 43% of Americans approving of its performance. The current approval rate is "statistically similar to its ratings over the past three years since it declined to block a Texas abortion law in 2021 and later overturned *Roe v. Wade* in the landmark 2022 [*Dobbs*] decision." Megan Brenan, *Approval of U.S. Supreme Court Stalled Near Historical Low*, Gallup (July 30, 2024). Thus, there is ostensibly a direct correlation between adherence to precedent and the public's view of the courts.

Two appeals pending before the Pennsylvania Supreme Court are about to test that theory. Those appeals—*Freilich v. SEPTA*, No. 10 EAP 2024, and *Yoder v. McCarthy*, No. 43 EAP 2024— collectively seek to overturn over 150 years of precedent, including a pair of unanimous decisions that were argued on the same day more than a decade ago, *Zauflik v. Pennsbury School District*, 104 A.3d 1096 (Pa. 2014), and *Patton v. Worthington*, 89 A.3d 643 (Pa. 2014).

Freilich

Freilich involves a purported "as applied" challenge to Section 8528 of the Sovereign Immunity Act, 42 Pa.C.S. §8528, under Article I, Section 6 ("right to jury trial") and Article I, Section 11 ("remedies clause") of the Pennsylvania Constitution. Section 8528 limits damages arising from the same cause or transaction or occurrence—or series of causes of action or transactions or occurrences—to $250,000 per plaintiff or $1 million in the aggregate in actions against Commonwealth parties. Section 8553 of the Political Subdivision Tort Claims Act, 42 Pa.C.S. §8553 ("Tort Claims Act"), similarly limits damages arising from the same cause or transaction or occurrence—or series of causes of action or transactions or occurrences—to $500,000 in the aggregate in actions against local agencies or their employees. The Sovereign Immunity Act and Tort Claims Act are "interpreted consistently, as they deal with indistinguishable subject matter," *Finn v. City of Philadelphia*, 664 A.2d 1342, 1344 (Pa. 1995), and have "no legally significant differences" in the way they operate, *Lyles v. PennDOT*, 516 A.2d 701, 703 (Pa. 1986).

Over the last 40 years, the Pennsylvania Supreme Court and the Pennsylvania Commonwealth Court have upheld statutory caps on damages on at least eight separate occasions amid a flurry of constitutional challenges. For instance, in *Smith v. City of Philadelphia*, 516 A.2d 306 (Pa. 1986), the Pennsylvania Supreme Court held that Section 8553 of the Tort Claims Act was constitutional under Article I, Section 11 of the Pennsylvania Constitution, reasoning: "If the legislature may abolish a cause of action, surely it may also limit the recovery on the actions which are permitted. To hold otherwise would be, in our view, to grant with one hand what we take away with the other.

Such a result would be absurd, or at least, unreasonable." Likewise, in *Griffin v. SEPTA*, 757 A.2d 448 (Pa. Commw. Ct. 2000), the *en banc* Commonwealth Court concluded that inflation did not render the statutory cap unconstitutional, opining that "the mere passage of time will not render the amount of the cap unconstitutional due to the influence of inflation." "Presumably," the court went on to state, "the legislature was aware of the effects of inflation and could have opted for some cap indexed to inflation. That the legislature did not index the cap to inflation but set forth an absolute dollar amount does not render the cap unconstitutional." By way of another example, in *Zauflik*, the Pennsylvania Supreme Court unanimously rejected the "creative argument" that the application of the damages cap violates Article I, Section 6 of the Pennsylvania Constitution. The Court determined that "[t]he damages cap does not present a condition or restriction on [the plaintiff's] right to have a jury hear her case; rather, the burden lies in the limited amount of recovery allowed, and that is obviously not the same thing."

Despite over four decades of unbroken precedent upholding the constitutionality of statutory caps on governmental tort liability, the Pennsylvania Supreme Court granted allocatur in *Freilich* in March. The Court agreed to hear, *inter alia*, whether Section 8528 violated the plaintiff's right to a remedy in Article I, Section 6 of the Pennsylvania Constitution "under the facts of [that] case." Briefing is set to be completed this month, and it is anticipated that oral argument will take place in the fall.

Yoder

Yoder concerns a challenge to statutory employer immunity. Under Section 302(b) of the Workers' Compensation Act, 77 P.S. §462 (WCA), general contractors are secondarily liable for the payment of workers' compensation benefits to the injured employees of their subcontractors. Thus, if the subcontractor-employer defaults, these general contractors must pay workers' compensations benefits to the subcontractor-employees. Therefore, although they are not the actual employers of the subcontractor-employers, general contractors are considered "statutory employers" of the subcontractor-employees due to their treatment under the WCA. In exchange for assuming secondary liability for the payment of workers' compensation benefits, statutory employers have immunity in tort for work-related injuries sustained by subcontractor-employees. This immunity "pertains by virtue of statutory-employer status alone, such that it is accorded even where the statutory employer has not been required to make any actual benefit payments." *Patton*, 89 A.3d at 645.

The Pennsylvania Supreme Court first recognized statutory employer immunity over a century ago in *Qualp v. James Stewart Co.*, 109 A. 780 (Pa. 1920). Since that time, the Pennsylvania Supreme Court has reiterated the validity of the doctrine on numerous occasions. For example, in *Fonner v. Shandon, Inc.*, 724 A.2d 903 (Pa. 1999), the Pennsylvania Supreme Court rejected the argument that the 1974 amendments to the WCA—which made it mandatory, rather than elective, for employers to provide workers' compensation coverage for employees—eliminated statutory employer immunity. The Court reasoned that "when the General Assembly amended Section 302(b) in 1974, it could have at the same time amended" a different section of the act—Section 203—to provide that a "statutory employer in reserve status could only escape liability for a common law suit if the statutory employer had the direct responsibility to pay workers' compensation benefits." As the Court noted, however, the General Assembly "did not make any changes in the 1974 or subsequent amendments to Section 203 in spite of established case law." More recently, in *Patton*, the Pennsylvania Supreme Court unanimously reaffirmed the validity of the "relatively straightforward" statutory-employer doctrine. In a notable concurring opinion, the late Chief Justice Max Baer described Section 203(b) as "clear and unambiguous" and the Pennsylvania Supreme Court's precedent as "consistent[]" over decades.

Notwithstanding the settled nature of statutory employer immunity, the Pennsylvania Supreme Court granted allocatur in *Yoder* in May. Among other issues, the Court agreed to hear whether it should overrule *Fonner* and hold that the 1974 amendments to the WCA "necessitates denying 'statutory employer' status to general contractors unless they in fact have been called on to pay workers' compensation benefits to the injured employee of a subcontractor." Briefing is set to be completed in the late fall, and it is anticipated that oral argument will take place in early 2025.

Conclusion

If the U.S. Supreme Court's fallen approval rating is, at least in part, a result of its own tendency to revisit and overturn prior case law, it serves as a warning to state appellate courts—overruling precedent can undermine public confidence in the courts and strike a blow to their perceived integrity. Whether that warning will discourage state appellate courts from revisiting well-settled precedent remains to be seen, but *Freilich* and *Yoder* are front and center on that issue. If state appellate courts' adherence to *stare decisis* ebbs and flows along the lines of the U.S. Supreme Court, they could contribute to a new era of "optional" *stare decisis* and, with it, find a corresponding

decline in public approval.

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