

OHIO'S SUPREME COURT: CAUTIOUSLY SUPPORTING THE SANCTITY OF LIFE

Eric C. Bohnet¹

The opinions of the Supreme Court of Ohio have generally reflected a great deal of caution and deference to the legislature with regard to issues affecting the right to life. The good news is the Ohio courts have not taken any major steps to undermine the right to life in the state, as courts elsewhere have frequently done. Ohio's constitution has not been used as an excuse to expand rights to abortion and other life-destroying processes beyond what has been required by the federal courts. Moreover, when the Ohio legislature has acted to protect life, the state courts have read the resulting statutes broadly in order to give them full effect without narrowing constructions. The Court has also recognized the intrinsic value of human life in its decisions applying and developing the state's common law.

But the record is far from perfect. The Court has frequently shown reluctance to read statutes as protecting the unborn unless such protection is explicit. It has also occasionally issued disturbing rulings applying the common law or administering the state's judicial system.

There are indications that respect for human life by Ohio's highest court will improve in the coming years. Several justices who tended to be hostile to the right to life have retired in recent years. Conversely, the newer justices have all demonstrated or indicated support for the right to life in non-judicial roles prior to joining the court, and most have shown pro-life inclinations in their early opinions. All but one of the current justices received the recommendation of Ohio Right to Life PAC during their most recent campaigns.

In particular, Justice Lundberg Stratton has been a consistent pro-life voice on the court for a decade, and recent additions Justices O'Donnell and Lanzinger have shown an early tendency to join her approach to these issues. The 2006 elections appear to have further strengthened the pro-life contingent on the court, as Justice Cupp, a former pro-life leader in the state senate, replaced Justice Resnick, who compiled a mixed record on right to life issues. If these early signals prove to be accurate predictors of these four justices' views, they would form a pro-life majority on the

¹ Attorney at Law, Indianapolis, Indiana

court, likely to be frequently joined by justices such as Moyers and O'Connor, whose records on pro-life issues have been mixed.

I. LIFE ISSUES

The Court has not stood in the way of legislative efforts to protect life, but it has frequently failed to regard life as a fundamental and inalienable right. When the legislature has not explicitly provided protections for endangered life, the Ohio court has seldom found such protections to be either inherent or implied. This is particularly true with regard to unborn children, who seem to be viewed as entities the legislature can protect but who have no inherent right to such protection.

Abortion

The Supreme Court of Ohio has not ruled directly on the status of abortion under the Ohio constitution. However, it has interpreted the judicial bypass provision of Ohio's parental consent law to give district courts broad discretion to deny petitions by minors seeking abortions without parental consent.²

The court has refused to establish specific criteria for lower courts to consider when evaluating bypass petitions beyond what had been written into the statute by the legislature. Such specificity might have required judges to make specific findings on each criterion, any of which could have provided a basis for reversal on appeal. Retaining the broad standard established by the legislature makes it easier for judges to deny permission by focusing on one or two key factors. Likewise, it makes such decisions more difficult to reverse on appeal because the reviewing court examines only whether there was a sufficient factual basis for the judge's overall decision without analyzing the basis for each factual finding.

The Court has also let stand a lower court decision approving Ohio's informed consent law.³ The lower court found that abortion had some protection under the Ohio Constitution but that such protection was subject to a balancing of "the state's 'profound interest in potential life'

² *In re Jane Doe 1*, 566 N.E.2d 1181 (Ohio 1991).

³ *Preterm Cleveland v. Voinovich*, 624 N.E.2d 194 (Ohio 1993), *aff'g Preterm Cleveland v. Voinovich*, 624 N.E.2d 194 (Ohio Ct.App. 1993).

against a woman’s personal right to choose whether she should bear a child.”⁴ Applying this balance, the court found the Ohio Constitution did not impose restrictions upon the state’s ability to restrict abortion beyond those federal courts have found in the United States Constitution.⁵ Despite the dissent of Justices Douglas, Resnick and Pfeifer, the Supreme Court of Ohio refused to hear the case, thereby letting the lower court’s decision stand.

Protection of the Unborn from Criminal Violence

With regard to the interpretation of criminal statutes to protect the unborn, Ohio’s highest court has deferred to its state legislature. It has refused to read criminal statutes as protecting unborn children unless the unborn are specifically included in the statutory text but has not hindered the legislature’s ability to provide such protections.

Fortunately, many of Ohio’s criminal statutes include specific language to protect the unborn. Statutes prohibiting “causing the death of another” also include the phrase “or unlawful termination of another’s pregnancy,” which in turn is defined as “causing the death of an unborn member of the species homo sapiens, who is or was carried in the womb of another, as a result of injuries inflicted during the period that begins with fertilization and that continues unless and until live birth occurs.”⁶ Other statutes protect “another’s unborn” or “such other person’s unborn,” which are terms defined as “a member of the species homo sapiens, who is or was carried in the womb of another, during a period that begins with fertilization and that continues unless and until live birth occurs.”⁷ Each of these definitions is then modified by a further clause exempting the mother of the unborn child and her medical providers.⁸ The Supreme Court of Ohio has not acted to interpret or directly apply any of the statutes using these definitions.

Where statutes have not included such explicit protection for the unborn, the Court has only occasionally held the unborn to be protected. In criminal statutes, the protection has been denied unless made explicitly by statute. The Court has ruled an unborn child is not protected by

⁴ *Id.* at 576.

⁵ *Id.* at 578-584.

⁶ Ohio Rev. Code. Ann. § 2903.09(A).

⁷ RC § 2903.09(B).

⁸ RC § 2903.09(C).

the criminal child endangerment statute,⁹ because the mother who had taken cocaine during her pregnancy “did not become a parent until the birth of the child,” and the baby who suffered physical harm from the cocaine “did not become a ‘child’ within the contemplation of the statute until she was born.”¹⁰ The Court noted it had interpreted an earlier version of the vehicular manslaughter statute (that did not explicitly protect the unborn) as nonetheless applying when the fetus was born alive.¹¹

Importantly, this insistence on specific statutory language has been limited to the interpretation of criminal statutes and does not apply to civil remedies. The Court has emphasized “the *Gray* case was a criminal case” in which it had been required “to strictly construe the criminal statute against the state and liberally construe the statute in favor of the accused.”¹² It explained civil statutes were not construed so narrowly but that “the opposite is true” because the statute “mandates the court to liberally construe and interpret the sections . . . so as to provide for the care and protection of children and their constitutional and legal rights. Thus *Gray* has no application to the case now before us.” *Id.* In the civil case, the court declined to decide whether a fetus would be regarded as a child but held that “when a newborn child’s toxicology screen yields a positive result for an illegal drug due to prenatal maternal drug abuse, the newborn is, for purposes of R.C. 2151.03, *per se* an abused child.”¹³

In another civil context, the Supreme Court of Ohio has also ruled “a cause of action may arise under the wrongful death statute when a viable fetus is stillborn since a life capable of independent existence has expired.”¹⁴ Although it refused to extend this recognition of personhood to pre-viable fetuses, it noted “the rights of an unborn child are no strangers to our law.”¹⁵

While the court’s jurisprudence in this area certainly falls short of a full recognition of the value of human life, it does appear to follow the laws written by the legislature. The gaps in

⁹ R.C. 2919.22(A)

¹⁰ *State v. Gray*, 584 N.E.2d 710, 515-516 (Ohio 1992).

¹¹ *Id.* at 517 (citing *State v. Dickinson*, 275 N.E.2d 599 (Ohio 1971)).

¹² *In re Baby Boy Blackshear*, 736 N.E.2d 462, 199 n. 2 (Ohio 2000).

¹³ *Id.* at 465.

¹⁴ *Werling v. Sandy*, 476 N.E.2d 1053, 1055 (Ohio 1985).

¹⁵ *Id.* at 1054.

the state's jurisprudence could easily be filled by legislation defining "person" to include the unborn for the purpose of all state laws.

Wrongful Birth/Wrongful Life

The Supreme Court of Ohio has frequently been asked to decide tort cases in which plaintiffs sought damages for negligence prolonging an allegedly "unwanted" life. It has consistently refused to treat extended life or parenthood as a harm and has, therefore, refused to award damages for a child's birth or the extension of someone's life. One notable exception has been its finding that costs associated with pregnancy and birth could be awarded to parents whose desire to avoid conception or to abort a disabled child were thwarted by the negligence of healthcare providers.

In the context of an elderly adult, the Court has found "there is no cause of action for 'wrongful living.'"¹⁶ It explained the "difficult issue is what damages flow from the 'harm' caused the plaintiff," and cited with approval cases "finding that human life cannot be a compensable harm."¹⁷ Hence, medical providers could not be held liable for negligently prolonging life.¹⁸ Similarly, a child born with birth defects could not sue her pre-natal doctors for failing to give her parents information that would have caused them to abort her.¹⁹

The Court has allowed medical malpractice actions against a physician who negligently fails to perform a sterilization procedure.²⁰ However, it also adopted the "limited damages" rule for such cases "which limits the damages to the pregnancy itself and does not include child-rearing expenses."²¹ It explained this limitation was required "by Ohio's public policy that the birth of a normal, healthy child cannot be an injury to her parents."²² In another case, where a disabled child was conceived and born following a negligent sterilization procedure, the Court held expenses associated with the disability were not recoverable.²³

¹⁶ *Anderson v. St. Francis-St. George Hospital, Inc.*, 671 N.E.2d 225, 228 (Ohio 1996).

¹⁷ *Id.* at 228 (citing *Cockrum cv. Baumgartner*, 447 N.E.2d 385, 389 (Ill. 1983)).

¹⁸ *Id.*

¹⁹ *Hester v. Dwivedi*, 733 N.E.2d 1161 (Ohio 2000).

²⁰ *Johnson v. University hospitals of Cleveland*, 540 N.E.2d 1370 (Ohio 1989).

²¹ *Id.* at 1378.

²² *Id.*

²³ *Simmerer v. Dabbas*, 733 N.E.2d 1169 (Ohio 2000).

The “limited damages” rule was also authorized by the Court where the physician’s negligence came after conception but prevented the parents from learning of a child’s disability that would have caused them to abort the child.²⁴ There was no majority opinion on the case as only two justices, O’Connor & Moyer, agreed with the entire holding, and neither of those justices joined the other’s opinion. Justice Pfeifer and since-retired Justice Resnick would have allowed recovery of costs associated with raising a child, and the remaining justices would have disallowed recovery altogether. Although their approaches differed, both justices who supported the entire holding did so based at least partly on the difficulty and impropriety of weighing the relative costs and benefits of raising a child. As Chief Justice Moyer explained,

Ohio’s public policy is that the birth of a human being is not an injury to parents. . . . We will not hold that a genetically unhealthy child is inherently less valuable than a healthy child and thereby force courts to decide which children qualify as unhealthy and what costs qualify as extraordinary.²⁵

This line of cases is encouraging, firmly establishing the principle that the law of Ohio regards human life as having inherent value and that even the severely disabled are regarded as valuable members of society rather than as burdens. The exception of *Schirmer* is disappointing, as it allows damages for a lost chance to abort a baby. But it at least recognizes that, once children are born, their value is viewed as exceeding any burden associated with their care.

Bioethics

The Supreme Court of Ohio has yet to address any issues related to human cloning or destructive embryo research.

Healthcare Rights of Conscience

The Ohio Constitution, Article 1, §7, explicitly provides, “nor shall any interference with the right of conscience be permitted.” There have not been any opportunities for the state’s Supreme Court to determine whether this or other provisions allow pro-life health care workers to refuse to participate in actions or procedures, such as abortion or euthanasia, that would violate their conscience or religious beliefs. However, the state legislature has provided neither

²⁴ *Schirmer v. Mt. Auburn Obstetrics & Gynecologic Associates, Inc.*, 844 N.E.2d 1160 (Ohio 2006).

²⁵ *Id.* at 1170 (Moyer, C.J. concurring in judgment).

private hospitals nor public hospitals, nor any person may be required to provide abortions, and neither civil liability nor disciplinary action may be based on refusal to participate in an abortion.²⁶ It has also specifically allowed employer-provided health insurance to exclude coverage of abortion except for complications and to protect the life of the mother.²⁷

In a somewhat related issue, the Supreme Court did discipline a lower court judge for offering a criminal defendant a reduced sentence if she would promise not to abort her current pregnancy.²⁸ In doing so, the Court found the judge had “exhibited partiality in her sentencing choice based on whether [a criminal defendant] acted in accordance with Cleary’s personal views.”²⁹ It further found the judge’s bias was “extrajudicial,” because her improper conduct was “based on her personal moral stand against abortion.”³⁰

Although *Cleary* is a disappointment, it would be fairly easy to distinguish from a case involving a healthcare professional’s right of conscience. First of all, “bias” is a special problem in the judiciary, and the allegation against the judge was that she acted on her own biases rather than the law. Secondly, the case does imply non-participation is an appropriate means of avoiding violating the right of conscience. Indeed, the Court explained that “we are convinced that Cleary should have at least disqualified herself from ruling” if she could not set aside her pro-life beliefs.³¹ Such a refusal to participate would be basically what a healthcare worker would seek in order to avoid having to perform an abortion or participate in euthanasia.

Such a claimant will also be able to cite the free exercise protection of the Ohio Constitution, which the state supreme court has held to be “broader, and we therefore vary from the federal test for religiously neutral, evenly applied government actions.”³² The Ohio Court requires that “the state enactment must serve a compelling state interest and must be the least restrictive means of furthering that interest.”³³ Such protection applies to both “direct and

²⁶ R.C. § 4731.91.

²⁷ R.C. § 4112.01.

²⁸ *Cleveland Bar Association v. Cleary*, 754 N.E.2d 235 (Ohio 2001).

²⁹ *Id.* at 246.

³⁰ *Id.* at 247.

³¹ *Id.* at 248.

³² *Humphrey v. Lane*, 728 N.E.2d 1039, 1045 (Ohio 2000).

³³ *Id.*

indirect encroachments upon religious freedom.”³⁴ Applying this standard, the Court has held a prison guard could not be disciplined for keeping his hair longer than regulation length where his religion forbade him to cut it and where the state’s interests could be met by the less restrictive means of allowing the guard to wear his long hair pinned under his uniform cap.³⁵ This standard has also been used to hold “that the state may not compel a legally competent adult to submit to medical treatment which would violate that individual’s religious beliefs even though the treatment is arguably life-extending.”³⁶

While this Ohio standard of free exercise is broader than its federal counterpart that focuses on neutrality, the extent of actual protection depends upon how the concepts of “compelling interest” and “least restrictive means” are applied to a given case. If the court found interests such as ensuring access to abortion or certain contraceptives were “compelling interests” and that such interests could not be met without compelling some category of healthcare professionals to provide the services, then the standard would be little help.

Ohio’s intermediate appellate court has concluded that a conviction for criminal trespass did not violate the religious freedom of one who trespassed at an abortion clinic with the intent to prevent the performance of abortions, explaining that “public policy prohibits applying the defense of necessity to exonerate a person of liability for his or her legal conduct engaged in as a form of civil disobedience, no matter how laudable the person’s goals may be.”³⁷ The state Supreme Court declined to review the decision.

Assisted Suicide

The Supreme Court of Ohio has ruled that “under Ohio law, suicide, attempted suicide or aiding and abetting a suicide are not crimes.”³⁸ This is a change from the old common law prohibiting suicide. However, this decision did not restrict the legislature’s ability to reinstate the common law rules. The Ohio legislature has thus far permitted suicide and assisted suicide to remain legal, though it has declared assisting suicide to be “against the public policy of the

³⁴ *Id.*

³⁵ *Id.* at 1046.

³⁶ *In re Milton*, 505 N.E.2d 255, 260 (Ohio 1987).

³⁷ *Dayton v. Drake*, 590 N.E.2d 319, 322 (Ohio App. 1990).

³⁸ *State v. Sage*, 510 N.E.2d 343, 347 (Ohio 1987).

state,” and has authorized injunctions to prevent it.³⁹ But such acts are still not punishable as crimes in Ohio.

The Court has ruled an appointed guardian could not be given power to terminate life support against the wishes of the child’s parents and that “the fact that a child is in a permanent vegetative state is not a sufficient reason to deny parental rights, absent evidence of abuse or neglect.”⁴⁰ Justice O’Connor dissented from this decision, arguing the “decision that a child-patient has permanently lost high-level brain function and should be allowed to die is a decision relating to medical care or treatment” that should be resolved according to the child’s best interests.⁴¹ She, therefore, concluded this decision was properly within the discretion of the court-appointed guardian and that “a discussion of parental rights is misplaced.”⁴² Justice Pfeifer also dissented in part, arguing proper probate court jurisdiction lay in the county where the baby had lived rather than the one where he was hospitalized.

This Court has issued a number of positive decisions on life issues. Most notably, its rulings on the central issue of abortion have deferred to the pro-life actions on the state legislature. The Court has also supported the legislature's efforts to establish criminal and civil remedies that protect the unborn from violence and abuse. With a few exceptions, its interpretations of the state's statutes and common law have also been consistent with a respect for human life.

Importantly, the Court's decisions that have failed to protect life are subject to correction by the Ohio legislature. It has never used its power to interpret the Ohio constitution in a manner that restricted the ability of legislative or executive officials to protect human life.

II. JUDICIAL RESTRAINT

With regard to life issues, the Supreme Court of Ohio has not shown a strong activist bent in either direction. It has been reluctant to extend protections of life beyond narrow statutory

³⁹ Ohio Rev. Code. Ann. § 3795.01-.03.

⁴⁰ *In re Guardianship of Stein*, 821 N.E.2d 1008, 1013 (Ohio 2004).

⁴¹ *Id.*, at 1021 (O’Connor, J., dissenting).

⁴² *Id.*

specifications, but it has also given full force to the life-protecting statutes the legislature enacts. It has not interpreted its state constitution as establishing any rights that would diminish the right to life and has seldom used its power to develop the common law in a manner that would infringe on the right to life. A notable exception is its recognition of a tort when a doctor fails to provide information that would have led a pregnant woman to abort her child. But even this was limited to costs of pregnancy, as the court refused to treat the birth and life of a child as an actionable harm.

Although the Court could have retained traditional common law protections, such as the prohibition against suicide, it has not restricted the legislature's ability to enact such a prohibition. Likewise, the legislature could improve criminal protection for the unborn by a blanket statement clarifying unborn children are to be regarded as persons for purposes of the criminal statutes.

On the central issue of abortion, the Court has declined to find any right to abortion in the Ohio Constitution beyond what the federal courts have required, and it has allowed legislative actions to be enforced without judicially-created restrictions.

This long-running record of restraint on life issues contrasts with several high-profile decisions on other issues during the 1990s, in which the Court struck down the state's public school financing system, a tort reform bill, and other important statutes and policies as violating the state constitution. This activist trend appears to have been reversed by the appointment and election of more originalist judges to the court. Only one of the justices (Pfeifer) who joined those controversial decisions is still on the court, while Chief Justice Moyer and Justice Lundberg Stratton dissented from those decisions. The newer justices all appear to be more originalist in their philosophies.

One example of this more restrained approach is the Court's decision to uphold the state's charter school program against challenges based on various portions of the state constitution.⁴³ Two members of the old activist majority, Resnick and Pfeiffer, found themselves in dissent. Justice Resnick argued the charter schools program violated the state constitution

⁴³ *State ex rel. Ohio Congress of Parents & Teachers v. State Bd. of Edn*, 857 N.E.2d 1148 (Ohio 2006).

“because it produces a hodgepodge of uncommon schools financed by the state” and “effects a schismatic educational program under which an assemblage of divergent and deregulated privately owned and managed community schools competes against public schools for public funds.”⁴⁴ Justice Pfeiffer thought the Ohio Constitution allowed some form of charter schools but argued the particular system should be struck down because “public schools receive less state money than they would in the absence of charter schools. The mathematically unavoidable result is public schools receive a greater percentage of their funding from local sources, which is unconstitutional.”⁴⁵ Justice Pfeiffer also insisted charter schools be held to the same standards as the public schools and found the current system inadequate, as “charter schools are currently exempt from many standards that public schools are required to meet.”⁴⁶ Justice O’Donnell also dissented, arguing the Supreme Court’s involvement was premature due to the lack of factual development in the case.⁴⁷

The majority upheld the program against these and other challenges in an opinion written by Justice Lanzinger and joined by Moyer, Lundsberg Stratton, and O’Connor; Key to the court’s decision was the high standard it announced for judicial review of state statutes: “legislative enactments are entitled to a strong presumption of constitutionality” so that “a statute should not be declared unconstitutional unless it appears beyond a reasonable doubt that the legislation and constitutional provision are clearly incompatible.” (internal citations omitted).⁴⁸ Rather, “a statute must be enforced unless it is in clear and irreconcilable conflict with some express provision of the constitution.”⁴⁹

This standard for interpreting the state constitution should be useful in defending restrictions on abortion, since there is no express right to abortion in the state’s constitution.

It is notable that voting patterns on cases affecting the right to life have often cut across typical liberal-conservative lines, and few justices have consistently voted either for or against

⁴⁴ *Ohio Congress*, 857 N.E.2d at 1166 (Resnick, J., dissenting).

⁴⁵ *Id.* at 1170 (Pfeiffer, J., dissenting).

⁴⁶ *Id.* at 1170-71.

⁴⁷ *Id.* at 1171 (O’Donnell, J., dissenting).

⁴⁸ *Ohio Congress*, 857 N.E.2d at 1155.

⁴⁹ *Id.*

the pro-life position. Several past justices with a general reputation as activists or liberals frequently reached pro-life results, while some otherwise conservative justices have often voted against the pro-life position.

III. THE COURT

The justices of the Supreme Court of Ohio are elected to six-year terms, with vacancies filled by gubernatorial appointment. Although the actual ballot is non-partisan, candidates are nominated in partisan primaries, and the candidate’s partisan affiliation is often indicated by both partisan and non-partisan sources. Primaries are occasionally contested. Both primaries and general election contests have produced close elections, but no incumbent has faced opposition in a primary or been defeated since at least 2000. The last time an incumbent justice was defeated was 1986, when Chief Justice Moyer originally won his seat by defeating incumbent Frank D. Celebrezze Sr., who had been accused of involvement in scandals. These accusations had earlier brought down Chief Justice Celebrezze’s brother, Justice James P. Celebrezze, who was defeated for re-election in 1982.

Republicans have dominated recent contests. With the election of Republican Robert R. Cupp to fill the seat vacated by retiring Democrat Alice Robie Resnick, all seven of the current justices are Republicans. All but Justice Pfeifer were recommended by the Ohio Right to Life PAC during their most recent campaigns.

The Individual Justices:

Member	Appointed by/ Year Elected	Term Expires	Miscellaneous
Thomas J. Moyer, Chief Justice	1986	Dec. 31, 2010	-Biographical Information: Juris Doctor, The Ohio State University – 1964; Bachelor of Arts, Political Science, The Ohio State University – 1961;

			<p>Nominated by the Republican Party and recommended by Ohio Right to Life PAC; Court of Appeals Judge, 1979-1986; Executive Assistant to Governor James A. Rhodes, 1975 – 1979; Private practice of law 1966-1969 & 1972-1975; Deputy Assistant to the Governor - Dec. 1969 - Jan. 1971; Probate Court Referee for Commitments to Columbus State Hospital – 1968; Assistant Attorney General - 1964-1966 (Taxation and Workers' Compensation Sections)</p> <p>-Noteworthy Opinions: Chief Justice Moyer's record on life issues has been mixed. He has been in the majority on most of the decisions discussed in this paper that were decided during his 20-year tenure. Probably the most notable exception has been the parental notification case, in which his dissenting opinion would have established</p>
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			<p>more specific criteria for district courts to follow. <i>Jane Doe I</i>, 566 N.E.2d at 1185-86 (Moyer, C.J., dissenting). This would have required district courts to have made more specific findings before denying a judicial bypass, and would also have made it easier to reverse such denials on appeal. A review of his opinions suggests a sympathy with the right to life, but one that he frequently finds to be outweighed by other factors, particularly those relating to judicial consistency.</p>
Paul E. Pfeifer	1992	Jan. 1, 2011	<p>-Biographical Information: Juris Doctor, The Ohio State University – 1966; Bachelor of Arts in Economics, Political Science and History – 1963; Nominated by the Republican Party; Served in the Ohio Senate 1976-1992; Assistant President Pro-Tempore, 1985-1986; Minority Floor Leader,</p>

			<p>1983-1984; Senate Judiciary Committee Chairman for ten years; Private practice of law 1973-1992; Assistant County Prosecuting Attorney, 1973-1976; Assistant Ohio Attorney General, 1967-1970.</p> <p>-Other: Justice Pfeifer was a long time state legislator and also ran unsuccessfully for the United States Senate before becoming a judge. He was not pro-life when he served in the legislature and is the only Justice who has not been endorsed by Ohio Right to Life PAC. Since joining the Court in 1993 he has seldom supported pro-life positions.</p> <p>Articles/Speeches: Justice Pfeifer writes a weekly column that is available on the Court's website. These often describe and summarize recent decisions by the court. They are usually fairly neutral in tone, though some highlight dissents that he joins.</p>
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Evelyn Lundberg Stratton	Governor Voinovich (R)/ 1996	Jan. 1, 2009	<p>-Biographical Information: Bachelor of Arts: History, University of Akron – 1976; Juris Doctor: The Ohio State University – 1978; Court of Common Pleas Judge, 1989- 1996; Private practice 1979- 1988</p> <p>-Other: Nominated by the Republican Party; recommended by Ohio Right to Life PAC; Justice Evelyn Lundberg Stratton is the daughter of missionaries and has served on the Board of Trustees for the Dave Thomas Foundation for Adoption. Her biography on the Supreme Court’s website also highlights her work on adoption reforms and improving care for the mentally ill. During her ten years on the Supreme Court of Ohio she has been its most consistent pro-life justice.</p>
Maureen O’Connor	First elected 2002	Jan. 1, 2009	<p>-Biographical Information: Bachelor of Arts: Seton Hill College – 1973; Juris Doctor:</p>

			<p>Cleveland-Marshall College of Law – 1980; Lieutenant Governor of Ohio, 1999-2003; Prosecuting attorney, 1995-1999; County Court of Common Pleas Judge, 1993-1995; Probate Court Magistrate 1985-1993; Private practice 1981-1985.</p> <p>-Other: Nominated by the Republican Party; recommended by Ohio Right to Life PAC; Before joining the Court, Justice O’Connor was elected Lieutenant Governor of Ohio and campaigned for that office as a pro-lifer. Since joining the Court, however, she has twice voted against the right to life of disabled infants: voting to allow a court appointed guardian to withdraw life-preserving treatment in <i>Baby Stein</i>, and writing the lead opinion in <i>Schirmer</i> that allowed a recovery for birthing expenses based on a lost opportunity to abort. Her</p>
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			biographical information on the Court's website highlights her experience as a prosecutor and desire to protect the public from crime.
Terrence O'Donnell	Governor Taft (R)/ 2003	Dec. 31, 2012	-Biographical Information: Juris Doctor: Cleveland State University – 1971; Bachelor of Arts: Political Science, Kent State University – 1968; Court of Appeals Judge, 1995 to February 2003; County Court of Common Pleas Judge, 1980, 1982 to 1994; Private practice of law, 1974 to 1980; Director, Paralegal Education Program, David M. Myers College, 1974 to 1976; Law Clerk, Judge John M. Manos and Judge John V. Corrigan, 8 th District Court of Appeals, 1972 to 1974; Law Clerk, Justice

			<p>J.J.P. Corrigan, Supreme Court of Ohio, 1971 to 1972; Teacher, grades 7 and 8, St. Brendan School, North Olmsted, 1970, 1971; Instructor, speech and debate, Cuyahoga Community College, 1968 to 1970; Instructor, C.P.A. Business Law Review, Cleveland State University, 1976 to 1978</p> <p>-Other: Nominated by the Republican Party. Recommended by Ohio Right to Life PAC. Justice O'Donnell has only been involved in a small number of decisions affecting the right to life, but has consistently supported the pro-life position. His biography on the court's website notes</p>
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			<p>that he serves on the Board of Trustees of Our Lady of the Wayside, an organization dedicated to serving the needs of the mentally and physically challenged, and that his brother is a group home resident at one of the organization's facilities. He has also served on the boards of a Catholic high school and the Lawyers Guild of the Catholic Diocese of Cleveland.</p>
Judith Ann Lanzinger	2004	Dec. 31, 2010	<p>-Biographical Information: Bachelor of Education: English and Education, University of Toledo – 1968; Juris Doctor: University of Toledo – 1977; Master of Judicial Studies, National Judicial College and University of Nevada-Reno – 1992; Court of Appeals Judge, 2002-2004; County Common</p>

			<p>Pleas Judge, 1988-2003; Municipal Court Judge, 1985-1988; Adjunct Professor, University of Toledo College of Law, teaching Trial Practice, 1988-current; Private Practice, 1981-1985; Attorney, The Toledo Edison Company, 1978-1981</p> <p>-Noteworthy Opinions: Justice Lanzinger has only participated in one of the decisions discussed above, dissenting from the <i>Schirmer</i> decision and criticizing the majority holding as implicitly deciding that “abortion should be considered a proper course of treatment during prenatal care.” <i>Schirmer</i>, 844 N.E.2d at 1177-78 (Lanzinger, J., dissenting).</p> <p>-Other: Nominated by the Republican Party. Recommended by Ohio Right to Life PAC. Her biography lists participation in several Catholic organizations, though none that relate directly to life</p>
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			issues.
Robert R. Cupp	2006	Jan.1, 2013	<p>-Biographical Information: Juris Doctor: Ohio Northern's Pettit College of Law – 1976; Bachelor of Arts: Political Science, Ohio Northern University – 1973; Court of Appeals Judge, 2001-2006; Ohio Senate 1985-2000; President Pro Tempore 1997-2000; Member of Senate Judiciary Committee, Chair of Civil Justice Sub-committee; Private practice for 25 years City Prosecutor and Assistant Director of Law 1976-80; County Commissioner, 1981-1984, 2001-02</p> <p>-Other: Justice Cupp is the Court's newest justice, having been elected to his office in 2006. He replaces retiring justice Alice Robie Resnick, who had been the court's only Democrat. He compiled a solid pro-life voting record as a senator. On his campaign website he described his</p>

			<p>judicial philosophy as believing “strongly in the concepts of an independent judiciary, the separation of powers, and the value of precedent.” He explained that the judiciary “is not . . . capable of making public policy because the wide variety of options, interests, and costs must be fully explored with all available information and opinions and compromise must often be reached in order to make any progress. This is best handled by the legislature, which is designed for wide public input.”⁵⁰</p>
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CONCLUSION

The Supreme Court of Ohio has generally taken a hands-off approach to life issues. It has recognized the intrinsic value of life and has been skeptical of arguments that would undermine that value. It has consistently given full effect to legislative statutes protecting life. However, it has also been reluctant to extend protections for life beyond what is specifically dictated by the legislature. In exercising its power to interpret and develop the state’s common law, it has tended to follow a mildly pro-life course that has generally protected life but has occasionally carved out

⁵⁰ <http://www.cupforjustice.com/bio.htm>, November 30, 2006

exceptions to these protections, such as allowing limited damages for negligently preventing an abortion or not allowing wrongful death damages for the death of a pre-viable fetus.

There appears to be movement in the pro-life direction. Several justices with poor or mixed records on life issues have left the court in recent years and have been replaced by judges who, thus far, have been friendlier towards life issues. Long-time champion of life Justice Lundberg Stratton has consistently been joined by new additions O'Donnell and Lanzinger in the few life-related decisions since their ascension to the court. Justice Cupp is in his first year on the court, but his previous record as a legislator is encouraging. There may, therefore, be a majority of solid pro-lifers on the court for the first time since life issues became controversial. Two more justices, Moyer and O'Connor, have mixed records but still strong enough to win the recommendation of the Ohio Right to Life PAC during their most recent campaigns. Of the current justices, only Justice Pfeifer has consistently opposed the pro-life position.