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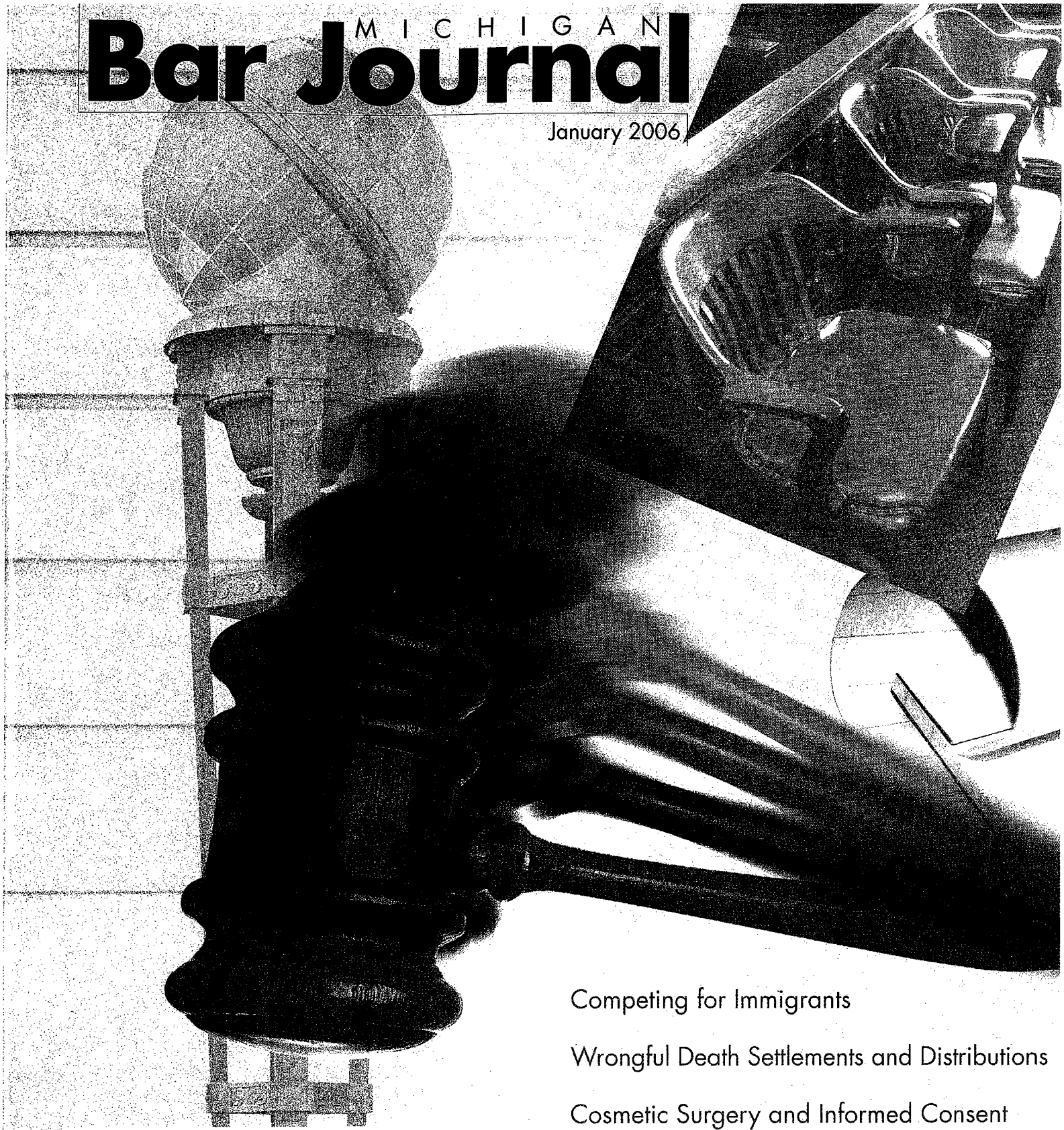

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# The Michigan Supreme Court

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## A CRITICAL LOOK AT THE JURISPRUDENCE OF THE MICHIGAN SUPREME COURT

***By Victor E. Schwartz***

Is it all just "politics" on the Michigan Supreme Court? That is the suggestion that some critics of the Court, including learned Professor Nelson P. Miller, have raised.[1] Yet, many others consider the Michigan Supreme Court to be the "finest court in the nation," and the qualifications of two of its members led some pundits to suggest that they be considered potential U.S. Supreme Court nominees.[2] The Court's decisions make clear that it is not about politics; rather, the Court's focus is on the rule of law.

In the late 1990s, Governor John Engler appointed three well-qualified appellate court judges to the Michigan Supreme Court: Clifford W. Taylor on September 1, 1997; Robert P. Young, Jr. on January 3, 1999; and Stephen J. Markman on October 1, 1999. Michigan voters elected Justices Taylor and Young to full eight-year terms in 2000. That year, Michigan citizens also elected Justice Markman to complete the remaining four years of the term to which he was appointed. They subsequently elected him to a full eight-year term in 2004.

This article considers the judicial philosophy of the Court and closely examines its jurisprudence over the past four years. What is revealed is a court with a profound respect for the legislature as the body charged with making public policy. It also shows judges who see themselves as interpreters of the law, not creators of the law. An objective evaluation shows that the Court's decisions are among the most thoroughly reasoned of any state high court, elected or appointed, and regardless of political affiliation.

### Judicial Philosophy

Over the past 40 years, the balance of power in a number of states has shifted from state legislatures to the judicial branch. Some state court judges have shown an increasing willingness to overturn clear public policy choices of the legislative branch.[3] The Michigan Supreme Court has not followed this path. To the contrary, it has demonstrated a deep respect for the fundamental principle of constitutional government: separation of powers. The current majority on the Michigan Supreme Court describe themselves as "judicial traditionalists" who believe judges are properly constrained to apply

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## A CRITICAL LOOK

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the actual text of the Constitution and statutes to the particular facts of the case before them.

A majority of the Michigan Supreme Court justices have explained their view of the proper separation of powers, and particularly the prerogative of the people's representatives in the legislature to make public policy decisions:

> *We, the majority, apply the text of the constitution, a statute, or an ordinance according to its ordinary meaning. We are prepared to live with the result of the plain application of such texts, regardless of whether we personally agree with the outcome. We subscribe to the notion that judges are not the lawgivers in our society; rather, they are the interpreters of the law.*[4]

Upon becoming chief justice, Clifford Taylor commented that the "hard part" about judging is that "[e]ven though I may want a case to turn out a certain way, I must be disciplined enough to have it turn out a different way if the law requires it. That's what good judges do. They are not driven by outcomes—they are driven by the law."[5] The Court's decisions bear out this judicial philosophy.

Some have questioned whether the Michigan Supreme Court is too quick to overturn older decisions, in disregard of the doctrine lawyers call stare decisis, the following of precedent. Among them are Professor Nelson P. Miller, who has suggested that Governor Engler's appointments to the court have led to "an unusually high rate of overturning its own precedents." The only objective support for this assessment is found in a student note published in the *Albany Law Review*.[6] But this "objective" source attributes the overruling of 25 cases between 1998 and 2002 to the *current* majority.[7] A closer review reveals that 11 of these 25 cases (44 percent) were decided *before* the current majority joined the Court or had the support of at least one member of the minority.[8]

When the Court has overturned prior rulings, it has always done so in well-reasoned opinions with appropriate respect for the value of stability in the legal system. But the Court has properly recognized that stare decisis is not a cement block; when the fundamental reasons for an old rule have changed, courts properly consider changing that rule. The Court discussed the purpose and application of stare decisis in *Robinson v City of Detroit*:[9]

> *Stare decisis is generally "the preferred course because 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." However, stare decisis is not to be applied mechanically to forever prevent the court from overruling earlier erroneous decisions determining the meaning of statutes.*[10]

Both logic and public interest considerations echo that stare decisis is not to be followed "blindly."[11] Before overturning precedent, the Court has carefully considered whether a question of law was wrongly decided. Then it has considered if there are "real world reliance interests which would be adversely affected by overturning a case." Justice Maura D. Corrigan, a member of the current majority, has observed that "if a prior decision of this court reflects an abuse of judicial power at the expense of the legislative authority, a failure to recognize and correct that excess, even if done in the name of stare decisis, would perpetuate an unacceptable abuse of judicial power."[12] Chief Justice Taylor has recognized that even a bad decision should not be overturned if "so entrenched and life-altering that a court cannot change it."[13] The Court has not overturned cases on a "flavor of the month" basis.

### Demonstrating a Profound Respect for the Legislature

Michigan's Supreme Court justices express frustration that some state judiciaries have "muscled the legislature out of the way" and "displaced the people's policy choices with the courts."[14] In a recent interview with his law school alma mater, Justice Taylor commented:

> *[O]ne of the greatest issues here, and in the country, is whether courts are improperly usurping legislative authority. I believe our court is on the forefront of this discussion. We strive to not engage in policymaking from the bench. When any court gets into policymaking, outside the common law, it becomes inevitably partisan and is usually crowding out the legislature. This is unfortunate as it miscomprehends the proper delegations of power to both us and the legislature in the Constitution.*[15]

Justice Robert Young has expressed similar views in the proper role of the judiciary vis-à-vis the legislature:

> *It is my belief that the judicial culture of the last 40 years has fully embraced judicial activism, a philosophy that I believe is fundamentally elitist and which is unquestionably founded on the belief that we judges, being more intelligent and better educated than the rabble who are elected to our legislatures, are in a superior position to make refined social policy judgments about the critical questions of the day. . . . I think the framers of our Constitution would be baffled, if not horrified, to learn that our courts, not our legislatures, were deciding such fundamental [social questions] . . . on bases that some would suggest are simply contrived constitutional grounds that have no link to the text of our Constitution.*[16]

Justice Young has observed that the judiciary is "institutionally incompetent" to make legislative social policy decisions.[17] He appreciates that appellate courts decide cases on particular facts.[18] They cannot hold hearings, call back witnesses, or subpoena documents. Nor can they engage in the public discussion, debate, and compromise that characterize the political branches of government.

For the Michigan Supreme Court, such observations are not mere rhetoric or abstract theory, but a judicial philosophy applied in each and every case. For instance, the Court recently demonstrated its respect for the separation of powers in *Henry v Dow Chemical Co.*[19] In that case, the five justices signing the majority opinion refused to legislate from the bench to create a new legal claim for medical monitoring absent present physical injury.[20] They followed Michigan precedent that a claim in tort law was based on an existing, not a speculative, injury. Their ruling also respected the constitutional principle of separation of powers. The Court's opinion clearly explains why it refused to permit this type

of claim. People living and working near a chemical plant in Michigan filed the case. The Court recognized that many public and private interests had to be considered in deciding whether to create a new medical monitoring cause of action. For example, allowing uninjured people to recover could create a potentially limitless pool of plaintiffs, clog court dockets, and "drain resources needed to compensate those with manifest physical injuries and a more immediate need for medical care."[21] Judicial administration of a medical monitoring trust fund would strain court resources. On the other hand, plaintiffs could easily spend a lump-sum award on a new car or flat-screen television instead of on medical monitoring.

Recognizing that courts have little expertise or objective guidance on how to set up medical monitoring programs and would be "craft[ing] public policy in the dark," the Court decided not to create this potentially problematic new cause of action. It explained that "the people's representatives in the Legislature... are better suited to undertake the complex task of balancing the competing societal interests at stake."[22] It was for the Michigan Legislature, not the court, to decide whether to create a claim that would be "a new and potentially societally dislocating change to the common law."[23]

The Michigan Supreme Court also has demonstrated its respect for the separation of powers in upholding rational civil justice reforms. Unlike some state courts that have struck down limitations on liability on the basis of obscure or vague state constitutional provisions, engaging in "judicial nullification" of the policy choices of the state's legislature,[24] the Michigan Supreme Court has respected the "lawmaking" branch of government.[25] Most recently, the Court upheld a law that was intended to help assure that Michigan citizens pay less for rental cars by limiting the absolute liability of the car rental company for acts of those who rent their vehicles.[26] "Damage caps are constitutional in causes of action springing out of the common law because the Legislature has the power under our Constitution to abolish or modify nonvested, common-law rights and remedies," the Court explained.[27] It also found that the legislature had a rational basis for enacting the law: its desire to reduce insurance costs or to increase consumers' choice of providers.[28] The Court was not willing to "usher in a new *Lochner* era,"[29] referring to turn-of-the-20th-century rulings in which the Supreme Court of the United States invalidated various "economic" laws,[30] which the justices found to be unsound public policy; for example, regulation of hours and wages. U.S. Supreme Court has since repudiated its *Lochner*-era cases,[31] and the Michigan Supreme Court echoed this repudiation when it observed "economic regulation, such as the measure we deal with today, has consistently been held to be an issue for the political process, not for the courts."[32]

## Reaching Well-Reasoned Opinions Based on Law, Not Politics

More often than not, members of the Court are in agreement when they decide cases. Since 2000, more than half of the Court's decisions have enjoyed the support of at least one of the "pre-Engler" justices in the minority.[33] One need only turn to the recent opinion of the Michigan Supreme Court in *Glass v Goeckel* for a perfect example showing the Court's opinions are dictated by principles of law, not politics.[34] The case pitted landowners and small businesses that sought exclusive use of their valuable beachfront property against Michigan residents who argued that they had the right to enjoy a walk along the shoreline of the Great Lakes. Those who believe politics motivates the decisions of the Court were probably surprised at the result. The Michigan Supreme Court unanimously reversed an appellate court decision for the property owners that would have permitted people to walk along private property bordering the shore, but only if they kept their feet in the water. Instead, after close consideration of the "public trust doctrine," the Supreme Court agreed that people might freely walk along the shore, even if others own that land.[35]

One year earlier, in *County of Wayne v Hathcock,* the Court rejected the notion that "a private entity's pursuit of profit was a 'public use' for constitutional takings purposes simply because one entity's profit maximization contributed to the health of the general economy."[36] In that case, the court overturned its 1981 decision in *Poletown,*[37] which allowed the City of Detroit to use its eminent domain power to bulldoze an entire neighborhood in order to sell the property to General Motors for an automobile plant. The *Poletown* decision was the first of its kind and set a national trend. But in *Hathcock,* the Court firmly rejected *Poletown,* this time in a case involving taking 500 acres of private property around an airport for development into an office park.

> *It is true, of course, that this Court must not "lightly overrule precedent." But because* Poletown *itself was such a radical departure from fundamental constitutional principles and over a century of this Court's eminent domain jurisprudence leading up to the 1963 Constitution, we must overrule* Poletown *in order to vindicate our Constitution, protect the people's property rights, and preserve the legitimacy of the judicial branch as the expositor—not creator—of fundamental law.*[38]

Thus, in a dispute pitting small property owners against economic development interests, the little guy won. To those who have suggested that the Court abandons stare decisis to protect business interests, *Glass* and *Hathcock* show the opposite to be true.

There are many other examples where those who suggest that the Court favors business over the "little guy" are operating by personal feelings rather than facts—the Court's actual decisions. For instance, in *Clark v Kmart Corp,* the Court reaffirmed the duty of a storekeeper for the safety of its customers.[39] It reinstated a $50,000 verdict to a woman who slipped and fell on a grape, finding the jury had sufficient evidence to find the store could have had constructive notice of a dangerous condition. It did so even though there was no direct evidence of how the grapes came to be on the floor of a checkout lane and how long they remained there prior to the fall.

The allegation that the Court echoes business was also shown to be unfounded in the case of *Cain v Waste Management, Inc.*[40] The Court ruled against an employer who challenged a workers' compensation ruling requiring it to compensate a truck driver based on the loss of two legs when the amputation of only one was

necessitated after a tragic accident. At issue was the definition of the word "loss." After closely examining the history and purpose of the workers' compensation statute and commonly understood meaning at the time of enactment, as well as case law from Michigan and other jurisdictions, the Court found that "loss" was not subject to a mechanical interpretation. It was defined based on utility and ability to work.

Another example of the Court's favoring workers' rights is *Elezovic v Ford Motor Co.*[41] In that case, the Court held that an individual supervisor could be held personally liable for sexual harassment under Michigan's Civil Rights Act, even if the employer is excused from liability because the plaintiff did not follow proper procedures in reporting the harassment. Clark, Cain, and Elezovic again show that this is a Court that fairly applies the law based on the facts of the case and the law, not politics or any purported desire to limit the liability of business.

## An Alternative Reason: Politics in Judicial Elections?

The facts demonstrate that the Michigan Supreme Court respects the rule of law. When they do, some in the media or in academia perceive the Court as influenced by "politics." These perceptions, which elevate feelings over facts, may logically stem from contentiousness of judicial elections in the state. In Michigan (and in many other parts of the country), the cost of judicial campaigns has skyrocketed. Their tone has substantially deteriorated.[42] These are facts upon which critics and supporters of the Court should agree. Once low-key contests, state judicial elections now draw the close attention (and financial contributions) of the full range of interest groups in addition to members of the bar.[43] The atmosphere where one side "wins" over another sets up a situation where the "losing side" sits and waits to level criticisms at the Court.

Those justices thrust into this system do not benefit from hostile elections. They are forced to spend a great deal of time raising money. They are placed in the very awkward position of "campaigning" for the bench. To their credit, the justices of the Michigan Supreme Court have withstood vicious attacks in the media; they have stood steadfast for the rule of law. They have not altered their judicial philosophy.[44] It is not surprising that several justices have expressed support for an appointive system.[45] If the Court were to "vote," it might well change the system. But that goes to the core point about the Michigan Supreme Court: the justices appreciate that whether to change Michigan's method of selecting judges, and how, like other public policy decisions, is a decision for the state legislature and the voters. Until that time comes, current members of the Court and future judicial candidates can only be expected to play by the current fundraising and ethical rules and to campaign with respect toward opponents and the dignity of the office. The Michigan Supreme Court justices have been able and, we expect, will continue, to rise above the election melee and base their decisions on the rule of law, rational development of the common law, the true meaning of statutes, and the state and federal constitutions. ◆

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### Footnotes

1. See Nelson P. Miller, "'Judicial Politics': Restoring the Michigan Supreme Court," in this edition of the *Michigan Bar Journal.*
2. See Patrick J. Wright, *The Finest Court in the Nation,* Wall St J, Oct. 13, 2005, at A15.
3. See Victor E. Schwartz and Leah Lorber, *Judicial Nullification of Civil Justice Reform Violates the Fundamental Federal Constitutional Principle of Separation of Powers: How to Restore the Right Balance,* 32 Rutgers L J 907, 911–12 (2001).
4. *MGM Grand Detroit, LLC v Community Coalition for Empowerment, Inc,* 465 Mich 303, 633 NW2d 357 (2001).
5. Todd C. Berg, *Chief Justice to Carry on Court's Textualist Tradition,* Mich L Weekly, Aug. 10, 2005 (quoting Justice Taylor).
6. Sarah K. Delaney, *Stare Decisis v the "New Majority": The Michigan Supreme Court's Practice of Overruling Precedent, 1998–2002,* 66 Albany L R 871 (2003).
7. See id. at 872, 905 app. 1.
8. Five of these cases were decided prior to the appointment of Justices Young and Markman to the Court, when members of the current majority remained in the minority. Id. at 905 app. 1 (citing *People v Graves,* 458 Mich 476, 581 NW2d 229 (1998); *McKenzie v Auto Club Ins Ass'n,* 458 Mich 214; 580 NW2d 424 (1998); *People v Kaufman,* 457 Mich 266, 577 NW2d 466 (1998); *Am Fed'n of State, County, & Mun Employees v Bd of Educ of Highland Park,* 577 NW2d 79 (Mich 1998); *People v Lemmon,* 456 Mich 625, 576 NW2d 129 (1998)). An additional three of the cited cases were decided after Justices Taylor and Young joined the Court, but prior to Justice Markman's appointment. Id. (citing *MacDougall v Schanz,* 461 Mich 15, 597 NW2d 148 (1999); *Smith v Globe Life Ins Co,* 460 Mich 446, 597 NW2d 28 (1999); *People v Lukity,* 460 Mich 484, 596 NW2d 607 (1999)). In three cases, Justice Cavanagh concurred in the overruling of precedent, joined by Justice Kelly in one instance. *People v Petit,* 466 Mich 624, 648 NW2d 193 (2002) (majority opinion joined by Justice Cavanagh); *Lesner v Liquid Disposal, Inc,* 466 Mich 95, 111–16, 643 NW2d 553, 561–64 (2002) (in which Justices Cavanagh and Kelly concurred in the overturning of precedent); *People v Hardiman,* 466 Mich 417, 432, 646 NW2d 158, 166–67 (2002) (in which Justice Cavanagh concurred in the overturning of precedent and dissented on other grounds).
9. *Robinson v City of Detroit,* 462 Mich 439, 463–66, 613 NW2d 307, 320–21 (2000).
10. Id. (citations omitted).
11. Todd C. Berg, *Chief Justice to Carry on Court's Textualist Tradition,* Mich L Weekly, Aug. 10, 2005 (quoting Justice Taylor).
12. *Robinson,* 462 Mich at 473 (Corrigan, J., concurring).
13. Id.; see also *Robinson,* 462 Mich at 465–66.
14. Justice Clifford W. Taylor, *Who's In Charge: A Traditional View of Separation of Powers,* 1997 Det CL Mich St U L R 769, 769, 771 (1997).
15. Justices Supreme, Geo Wash L Sch Mag (Sum. 2005), available at http://www.gwu.edu/~magazine/ 2005_law_summer/docs/feat_justices.html (last visited Aug. 25, 2005) (remarks of Chief Justice Taylor).
16. *Reflections of a Survivor of State Judicial Election Warfare in Judicial Elections: Past, Present, and Future,* Manhattan Inst. Conf. Series, No. 2, at 8–9 (Ctr. for Legal Pol'y 2001) (remarks of Justice Robert Young), available at http://www.manhattan-institute.org/html/mics_6.htm; see also Robert Young, *Reflections of a Survivor of State Judicial Election Warfare,* Manhattan Inst. Civ. Justice Rep. No. 2 (Ctr. for Legal Pol'y 2001), available at http://www.manhattan-institute.org/html/cjr_2.htm.
17. See id. at 9.
18. See id.
19. *Henry v Dow Chem Co,* 473 Mich 63, 701 NW2d 684 (2005).
20. Some jurisdictions accepted this cause of action early on, but the trend is that courts will not allow medical monitoring absent present physical injury. The Michigan Supreme Court is the fourth state supreme court to reject this new cause of action, joining the supreme courts of Kentucky, Alabama, and

Nevada. See Victor E. Schwartz, Leah Lorber & Emily J. Laird, *Medical Monitoring: The Right Way and the Wrong Way,* 70 Mo L R 349 (2005).

21. *Henry,* 473 Mich at 84, 701 NW at 694.
22. Id. at 68–69, 701 NW at 687.
23. Id. at 88–89, 701 NW at 697.
24. Victor E. Schwartz and Leah Lorber, *Judicial Nullification of Civil Justice Reform Violates the Fundamental Federal Constitutional Principle of Separation of Powers: How to Restore the Right Balance,* 32 Rutgers L J 907 (2001); Victor Schwartz, *Judicial Nullification of Tort Reform: Ignoring History, Logic, and Fundamentals of Constitutional Law,* 31 Seton Hall L R 688 (2001).
25. See, e.g., *Taylor v SmithKline Beecham Corp,* 468 Mich 1, 658 NW2d 127 (Mich 2003) (rejecting a challenge to a Michigan statute limiting liability of prescription drug manufacturers where the drug at issue was approved for safety and efficacy by the United States Food and Drug Administration).
26. *Phillips v Mirac, Inc,* 470 Mich 415, 685 NW2d 174 (2004).
27. Id. at 430, 685 NW2d at 183.
28. Id. at 434, 685 NW2d at 185.
29. Id. at 437, 685 NW2d at 187.
30. See *Lochner v New York,* 198 US 45 (1905); see also *Adkins v Children's Hospital of District of Columbia,* 261 US 525 (1923) (finding an infringement of constitutionally protected liberty of contract to require the employers of adult women to satisfy minimum wage standards).
31. See *Williamson v Lee Optical Co,* 348 US 483, 488 (1955) ("The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought."); see also *West Coast Hotel Co v Parrish,* 300 US 379, 391–400 (1937); Nebbia v New York, 291 US 502, 537–38 (1934).
32. *Phillips,* 470 Mich at 437, 685 NW2d at 187.
33. According to a review of published opinions of the Michigan Supreme Court, 33 of 77 opinions (43 percent) were unanimous in the 2000–2001 term and 40 of the court's opinions (52 percent) were joined by Justice Cavanagh, Justice Kelly, or both as either signers to the majority opinion, or as concurring with, or in the result, of the majority opinion. Michigan Chamber of Commerce, Review of the Published Opinions of the Michigan Supreme Court 2003–2004 Term 3 (2002), available at http://www.michamber.com/ba/MISupreme Court.pdf. Similarly, in the 2003–2004 term, 28 of 78 opinions (36 percent) were unanimous and 42 of the Court's opinions (54 percent) were joined by one member of the minority. Michigan Chamber of Commerce, Review of the Published Opinions of the Michigan Supreme Court 2003–2004 Term 1–2 (2004), available at http://www.michamber.com/ba/MISupremeCourt.pdf.
34. See *Glass v Goeckel,* 473 Mich 667, 703 NW2d 58 (2005).
35. There was some debate within the court in defining the scope of the public trust based on "an abstruse body of precedent," with the majority finding it defined by the ordinary high water mark, rather than the water's edge and the area of sand dampened by the water. 703 NW2d at 79 (Young, J., concurring in part and dissenting in part); see id. at *81–105 (Markman, J., concurring in part and dissenting in part).
36. *County of Wayne v Hathcock,* 471 Mich 445, 481, 684 NW2d 765, 786 (2004).
37. *Poletown Neighborhood Council v Detroit,* 410 Mich 616, 304 NW2d 455 (1981).
38. *Hathcock,* 471 Mich at 483, 684 NW2d at 787 (citations omitted).
39. See *Clark v Kmart Corp,* 465 Mich 416, 634 NW2d 347 (2001).
40. See *Cain v Waste Mgmt, Inc,* 472 Mich 236, 697 NW2d 130 (2005).
41. See *Elezovic v Ford Motor Co,* 472 Mich 408, 419–26, 697 NW2d 851, 857–61 (2005) (finding that an agent of the employer could be held liable under Mich Comp Law § 37.2201(a), even where federal civil rights law would not allow such liability, because the clear language of the Michigan statute required such a result and varied from the federal law).
42. Mark A. Behrens and Cary Silverman, *The Case for Adopting Appointive Judicial Selection Systems for State Court Judges,* 11 Cornell J Law & Pub Pol'y 273, 275 (2002).
43. In recent years, the business community has supported judicial candidates they view as contributing to the fairness and predictability of the legal system. Some argue that business interests have been particularly influential in judicial races. But, historically, the single greatest source of contributions to judicial elections are local attorneys. Samantha Sanchez, Campaign Contributions and the Michigan Supreme Court, Mar. 2002, at 6 (finding that attorney donations constituted nearly $3 million of $8 million of campaign contributions to Michigan Supreme Court justices between 1990 and 1998). Most of those funds come from the plaintiffs' personal injury bar, which has a vested business interest in expanding liability. Id. at 9–10 (finding that the top five contributors to Supreme Court races between 1990 and 1998 in the legal field were three local personal injury law firms, the Michigan Trial Lawyers Association, and, in fifth place, a defense firm). In fact, in earlier years, the largest personal injury firms contributed more funds than all the corporations in Michigan at the time. *Reflections of a Survivor of State Judicial Election Warfare in Judicial Elections: Past, Present, and Future,* Manhattan Inst. Conf. Series, No. 2, at 14 (Ctr. for Legal Pol'y 2001), available at http://www.manhattan-institute.org/html/mics_6.htm (remarks of Justice Robert Young). It is only in recent years that the business community has started to play catch up in Michigan.
44. For example, Justices Taylor, Markman, and Young were reelected in 2000 despite an accusation in numerous television ads of being "anti-family" based on a study that the *Detroit Free Press* found based more on politics than the Court's decisions. See Dawson Bell, "Party Politics Enters High Court Race TV; Ads Slam Republican Judges," *Detroit Free Press,* Aug. 3, 2000, at 1B. Justice Young, who is African-American, was also portrayed by opponents as believing *Brown v Board of Education* was wrongly decided, a claim Justice Young vigorously disputed. See Dawson Bell, "Supreme Court Nominees Debate Testily; Candidates Rip Rivals, Ad Accusations," *Detroit Free Press,* Oct. 28, 2000, at 3A.
45. See, e.g., Todd C. Berg, *Chief Justice to Carry on Court's Textualist Tradition,* Mich Law. Weekly, Mar. 14, 2005; George Weeks, "Departing Justice Urges Judicial Term Limits," *Detroit News,* Jan. 16, 2005; Thomas J. Bray, *Op-ed, Who Judges the Judges?,* Wall St J, Nov. 21, 2000; Clifford W. Taylor, *Who's in Charge: A Traditional View of Separation of Powers,* Det C L Mich St U L R 769, 774 (1997).