



Opposing Judicial Philosophies Court Michigan Voters

by Peter T. Leeson

Summary

This coming November, Michigan voters not only will decide who sits on the state Supreme Court, they will determine whether the court is governed by a sensible, restrained judicial philosophy or an unpredictable, activist attitude. Restraint ensures a stable legal environment that encourages individual liberty, limited government, and economic prosperity. Judicial activism, on the other hand, endangers the rule of the law and threatens traditional American ideals of justice.

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Michigan voters, by their choices for our state's Supreme Court in the November election, will make known to the world which competing philosophy they endorse—judicial restraint or judicial activism.

Right now, the forces of judicial restraint are in ascendancy on the court. But if challenges to three incumbent justices are successful, the pendulum could swing in the other direction. Such a clear-cut choice lends national significance to the three Michigan Supreme Court spots up for grabs this year.

Judicial restraint, or “strict constructionism,” holds that a judge's duty is to interpret law in the context of the legislature's intent. Only if the legislature trespasses beyond its constitutional bounds does the court step in to reverse the voice of the people as expressed by the action of their elected representatives.

Judicial activism, on the other hand, means adjudicating not according to the rule of law, but according to the ideology, preferred policy position, or social whim of the judge. An activist court does not simply interpret the legislature's law; it creates its own. It views itself as a superlegislature whose duty is to knock the real legislature back in line when it passes laws the court considers undesirable.

Advocates of the rule of law and constitutionally limited government have long warned of the dangers of judicial activism. Activism creates an unstable legal system because judges assume the power to create laws that fit their own personal and changeable political views. An activist court is an arbitrary one that replaces the rule of law with the whims of individuals.

On the November ballot, incumbent Justices Stephen Markman, Clifford Taylor, and Robert Young represent the perspective of judicial restraint. Justice Taylor has described the philosophy of Michigan's Supreme Court majority this way: “Unlike other courts, this Court will not deprive the people of their right to self-govern by revising statutes under the guise of interpreting them.” Instead, he says, the “Court's duty is to defer to the legislature, unless the act in question is

unconstitutional, and to give legislation its plain meaning.” That means, “this Court does not engage in politics from the bench,” Taylor says. Rather, as believers in the traditional notion of judicial restraint, the Court majority merely “enforces . . . statutes according to their terms.”

Justice Taylor sees the bench he sits on as bringing “Michigan back to a traditional understanding of the rule of law and judicial restraint.” Justice Robert Young’s description of the Court’s philosophy echoes this. Young does not believe that the judiciary “is an auxiliary legislature, nor is the judiciary free to intervene in public policy decisions of the political branches and remake them.”

The Court’s pro-activist opponents have accused it of favoring “big business.” But as Justice Markman points out, this Court “is not pro-business or anti-business or pro- or anti- any other group. Rather, our commitment is to read the language of the law as faithfully as possible and let the chips fall where they may. Our responsibility is to interpret the law according to its terms, not to decide cases in favor of, or in opposition to, any particular group.”

How does this show up in reality? One example: Judicial restraint produced a victory for Michigan taxpayers in the case of Lansing’s so-called “rain tax.” The city of Lansing wanted to impose a tax for a storm-water system but did not want to submit it to a vote of the people as the 1978 Headlee Amendment requires. So, it falsely labeled the tax a “user fee” and imposed it without voter approval. But in December 1998, the Michigan Supreme Court ruled that the user fee was really a tax and threw it out because it had not been submitted to a vote. The message to Lansing was clear: You’re not above the law. An activist Court might have ruled that because the money was for a good cause, bending the constitution could be justified.

Michigan’s Supreme Court may be the nation’s best and most eloquent example of a high court committed to interpreting the law, not manufacturing it. The nation will be watching to see if Michigan voters support judicial restraint or opt instead for a wild ride on the activist side.

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