

# OHIO SUPREME COURT

Justices	 Michael P. Donnelly	 Melody Stewart	 Pat Fischer	 Judith French	 Sharon L. Kennedy	 Maureen O'Connor	 Pat DeWine
Confidence Score	Mild Democrat	Mild Democrat	Strong Republican	Strong Republican	Strong Republican	Strong Republican	Strong Republican
Opinion Partners	✓	✓					
Dissenting Minority			✓		✓		✓
Determining Majority	✓	✓		✓		✓	
Lone Dissenter	✓						

## SUMMARY

- ▶ Number of justices: **7**
- ▶ Number of cases: **436**
- ▶ Percentage of cases with a unanimous ruling: **67.2% (293)**
- ▶ Justice most often writing the majority opinion: **O'Connor (32)**
- ▶ Per curiam decisions: **280**
- ▶ Concurring opinions: **66**
- ▶ Justice with most concurring opinions: **Kennedy (18)**
- ▶ Dissenting opinions: **83**
- ▶ Justice with most dissenting opinions: **Donnelly (26)**

## COURT CONTENTION

The Ohio Supreme Court was one of the most contentious courts in the nation in 2020. At least one justice disagreed with the majority's ruling in 143 cases, which was 32.8 percent of the time the court issued a ruling.

### Opinion partners

The two justices who allied with one another most often in dissent were Justices Donnelly and Stewart. Donnelly and Stewart dissented together 12 times in cases with two dissenters, which was 41.4 percent of all cases with two dissenters. Among all cases, Donnelly and Stewart dissented together 20 times. In our *Ballotpedia Courts: State Partisanship* study, Donnelly and Stewart both recorded Mild Democratic Confidence Scores. Donnelly and Stewart were the only justices on the court who recorded Democratic Confidence Scores in our study.

### Dissenting minority

In 2020 the Ohio Supreme Court decided 24 cases by split decision. No justice dissented in all 24 of the cases decided by split decision. Justice Kennedy dissented in the cases decided by split decision 12 times, which was more than any other justice on the court. The group of three justices who allied most often in dissent were Justices Dewine, Fischer, and Kennedy. Dewine, Fischer, and Kennedy dissented in the same case five times, which was 20.8 percent of all cases in which three justices dissented. In our *Ballotpedia Courts: State Partisanship* Study DeWine recorded a Strong Republican Confidence Score, Fischer recorded a Strong Republican Confidence Score, and Kennedy recorded a Strong Republican Confidence Score.

### Determining majority

No justice ruled in the majority in all 24 cases decided by split decision. Justice O'Connor ruled in the majority 15 times among all split decisions, which was more than any other justice on the court. Justices Donnelly, French, O'Connor, and Stewart allied in the majority four times in split decisions, which was more than any other group of four justices on the court. In our *Ballotpedia Courts: State Partisanship* study, Donnelly recorded a mild Democrat Confidence Score, Stewart recorded a mild Democrat Confidence Score, French recorded a Strong Republican Confidence Score, and O'Connor recorded a Strong Republican Confidence Score.

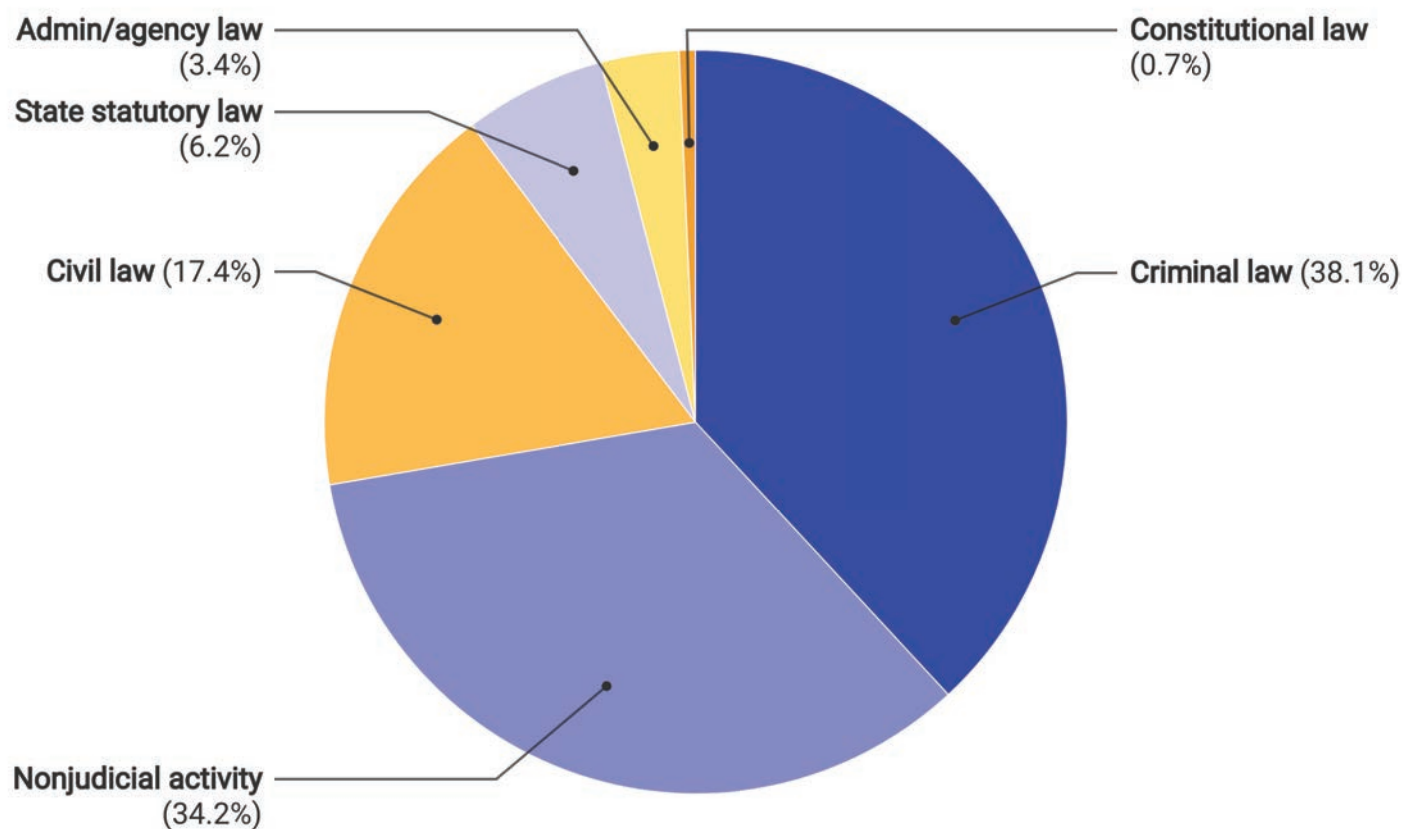
### Lone dissenter

In 2020, Justice Donnelly dissented alone 31 times, which was more than any other justice. There was a lone dissenter in 55 cases. Justice Fischer was a lone dissenter 10 times.

## COURT JURISDICTION

The Ohio Supreme Court has appellate jurisdiction in cases regarding the state or national constitution, cases that originated in the courts of appeals, cases of conflicting opinions in the appellate courts, and cases involving the death penalty. It may also review the Public Utilities Commission and the Board of Tax Appeals.

### Case types decided by Ohio Supreme Court, 2020



**BALLOT**PEDIA

The most common cases heard by the Ohio Supreme Court in 2020 were criminal cases. Of the 436 cases it heard 166 were criminal cases, which was 38.1 percent of its caseload. A criminal case involves a final criminal appeal before the court of last resort.

The second most common cases that reached the supreme court were nonjudicial cases. Of the 436 cases it heard, 149 cases considered nonjudicial activity which was 34.2 percent of its caseload for the year. A case is considered nonjudicial activity if it does not involve a formal hearing and discussion before the court. Most commonly, disciplinary cases brought by the state bar association are nonjudicial activity. Procedural modifications are also considered nonjudicial activity.

The third most common cases that reached the court were civil cases. A civil case is one that involves a dispute between two parties, one of whom seeks reparations or damages. The Ohio Supreme Court heard 76 civil cases in 2020, which was 17.4 percent of its caseload for the year.

## PROMINENT CASES

### *Lunsford v. Sterilite of Ohio, LLC*

Justice	Michael P. Donnelly	Melody Stewart	Pat Fischer	Judith French	Sharon L. Kennedy	Maureen O'Connor	Pat DeWine
Lunsford v. Sterilite of Ohio, LLC	Joining Stewart's dissent	Writing a dissenting opinion	Joining majority opinion	Joining majority opinion	Writing majority opinion	Joining Stewart's dissent	Joining majority opinion

- ◆ **Contention:** Justice Kennedy wrote the majority opinion. She was joined by Justices DeWine, Fischer, and French. Justice Stewart wrote a dissenting opinion and was joined by Justices Donnelly and O'Connor.
- ◆ **Summary:** Two employees of Sterilite of Ohio, LLC brought suit against their employer. Sterilite has a substance abuse policy as a condition of employment. Their policy sets out three circumstances within which Sterilite may exercise its discretion to require employees to submit to mandatory drug testing: while investigating a workplace incident, when there is reasonable suspicion that the employee may be impaired, and at random periodic intervals. The means whereby the test may be conducted is by urinalysis. A supervisor must inform the employee when and where he or she must report for testing; if the employee does not report for testing within two and a half hours, the employee is subject to immediate termination. If the employee tests positive for illegal drugs, they are subject to discipline up to and including termination. The two employees were selected for random drug testing. They signed paperwork giving their consent to testing; however, they were not aware that they would be giving urine samples under direct observation. The two employees claimed that they were not able to produce a urine sample within the two and half hour time frame. They filed an eight-count complaint in a court of common pleas. At issue before the supreme court was the allegation that Sterilite and their testers invaded the appellee's privacy. The Supreme Court held that when an at-will employee consents, without objection, to the collection of his or her urine sample under the direct-observation method, the at-will employee has no cause of action for common-law invasion of privacy.
- ◆ **Majority argument:** Justice Sharon Kennedy wrote: "A fundamental principle of Ohio's employment-at-will doctrine is that any party to an employment-at-will relationship may terminate the relationship for 'any reason which is not contrary to law' ... And Sterilite [sic] had the right to condition employment on consent to drug testing under the direct-observation method, appellees had the right to refuse to submit to the direct-observation method, and because appellees were at-will employees, Sterilite had the right to terminate their employment for their failure to submit. Because Sterilite had the legal right to terminate appellees' employment at any time,

appellees' argument that their consent was involuntary because of their fear of termination necessarily fails." (*Lunsford v. Sterilite of Ohio, LLC*, Slip Opinion No. 2020-Ohio-4193, 16 (Ohio 2020))

- ◆ **Dissenting argument:** Justice Stewart wrote: "Whether appellees have an invasion-of-privacy cause of action against appellants has nothing to do with their status as at-will employees. An at will-employment relationship does not allow an employer to commit intentional torts against its employees. And appellees' complaint stated sufficient facts to show that Sterilite coerced appellees to submit to the humiliation of having their genitalia directly observed as each of them produced or attempted to produce a urine sample. Because I find that appellees' complaint states a claim for invasion of privacy sufficient to defeat a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted, I dissent." (*Lunsford v. Sterilite of Ohio, LLC*, Slip Opinion No. 2020-Ohio-4193, 17 (Ohio 2020))

### *Torres Friedenbergl v. Friedenbergl*

Justice	Michael P. Donnelly	Melody Stewart	Pat Fischer	Judith French	Sharon L. Kennedy	Maureen O'Connor	Pat DeWine
Torres Friedenbergl v Friedenbergl	Joining Dewine's dissent	Joining Dewine's dissent	Joining majority opinion	Writing majority opinion	Concurring with the majority opinion	Joining majority opinion	Writing a dissenting opinion

- ◆ **Contention:** Justice French wrote the majority opinion. She was joined by Justices Fischer and O'Connor. Justice Kennedy concurred with the majority in judgment. Justice DeWine wrote a dissenting opinion and was joined by Justices Donnelly and Stewart.
- ◆ **Summary:** During divorce proceedings, both parents sought custody of their four children. The father issued subpoenas for the mother's mental health records to various doctors. The trial court ordered the records be submitted under seal to the court for a determination of their relevance. The trial judge concluded that the mother's requests for child custody and spousal support put her physical and mental health conditions at issue and waived the physician-patient privilege. The court ordered the release of the mental health records subject to protective order. The court of appeals affirmed. The supreme court affirmed, holding that while physician-patient communication is generally privileged, the other's filing of the divorce action with claims for child custody and support triggered an exception to the privilege.
- ◆ **Majority argument:** Justice Fischer wrote: "Both the trial court and the court of appeals correctly applied the statutory provisions defining the physician-patient privilege in Ohio. Although communications between a physician and patient are generally privileged under R.C. 2317.02(B)(1), Belinda's filing of this divorce

action, with claims for child custody and spousal support, triggered the R.C. 2317.02(B)(1)(a)(iii) exception to the privilege for communications that relate causally or historically to physical or mental injuries relevant to issues in the divorce action. By statute, Belinda's mental and physical conditions are mandatory considerations for the trial court's determination of her claims for both child custody and spousal support. See R.C. 3109.04(F)(1)(e) and 3105.18(C)(1)(c). And the trial court appropriately examined in camera the submitted mental-health records to determine their relevance before ordering their release, subject to a protective order." (*Torres Friedenber*g v. *Friedenber*g, Slip Opinion No. 2020-Ohio-3345, 15 (Ohio 2020))

- ◆ **Dissenting argument:** Justice DeWine wrote: "Because a majority of this court departs from the plain language of the statutory provisions regarding the physician-patient privilege, I respectfully dissent. The trial court ordered that Belinda Torres Friedenber's mental-health records be turned over to her husband Keith Friedenber simply because Belinda had asked for custody of their children and for spousal support in their divorce dispute. The statute establishing a privilege for physician-patient communications neither any time, requires nor permits such a result." (*Torres Friedenber*g v. *Friedenber*g, Slip Opinion No. 2020-Ohio-3345, 16 (Ohio 2020))

### *Youngstown City School District Board of Education v. State*

Justice	Michael P. Donnelly	Melody Stewart	Pat Fischer	Judith French	Sharon L. Kennedy	Maureen O'Connor	Pat DeWine
Youngstown City School District Board of Education v. State	Writing a dissenting opinion	Writing a dissenting opinion	Joining majority opinion	Writing a concurring opinion	Wrote an opinion concurring in judgement only	Writing majority opinion	Joined Kennedy's opinion concurring in judgement only

- ◆ **Contention:** Justice French wrote the majority opinion. She was joined by Justices Fischer and O'Connor. Justice French wrote a concurring opinion. Justice Kennedy concurred only with the majority in judgment. Justice Donnelly wrote a dissenting opinion. Justice Stewart wrote a dissenting opinion.
- ◆ **Summary:** House Bill 70 enacted new sections within the Ohio Rev. Code Chapter 3302 to authorize schools and school districts to create community learning centers at schools where academic performance was low. After the bill was signed into law Youngstown City School District Board of Education moved for declaratory judgment and permanent injunction arguing that the bill was unconstitutional as was the General Assembly's process in enacting it. Specifically, they argued that the assembly violated the three-consideration rule articulated in Article II, Section 15(C). They also argued that Article VI, Section 3 provides that a city school district has the power "by referendum vote to determine for itself the



number of members and the organization of the district board of education.” The trial court denied their motion, and the court of appeals affirmed. The supreme court affirmed the judgment of the lower courts.

- ◆ **Majority argument:** Justice O’Connor wrote: “The Youngstown School Board fairly describes H.B. 70 as allowing an academic-distress commission to remove nearly all the power and authority from a city school board and to place that authority in a chief executive officer under the circumstances contemplated by the law. But Article VI, Section 3 does not prohibit this action, for the reason we recognized in *Ohio Congress of Parents & Teachers*, 111 Ohio St.3d 568, 2006-Ohio-5512, 857 N.E.2d 1148, at ¶ 47: the constitutional provision requires that a city’s electors be able to decide the number of members of and the organization of a school board but does not require that any specific power or authority be vested in the school board. Accordingly, to the extent that H.B. 70 allows a city’s electorate to ‘determine for itself the number of members and the organization of the district board of education,’ it does not violate Article VI, Section 3 of the Ohio Constitution.” (*Youngstown City School Dist. Bd. of Edn. v. State*, Slip Opinion No. 2020-Ohio-2903, 13 (Ohio 2020))
- ◆ **Justice Kennedy’s argument concurring in part and dissenting in part:** Justice Kennedy wrote: “Because I agree with the majority that the enactment of 2015 Am.Sub.H.B. No. 70 (“H.B. 70”) violates neither the three-consideration rule articulated in Article II, Section 15(C) of the Ohio Constitution nor the right of voters to decide the number of members and the organization of the district board of education as guaranteed by Article VI, Section 3, I join the judgment affirming the judgment of the Tenth District Court of Appeals. I disagree with the lead opinion’s analysis regarding Article II, Section 15(C), however, because in my view, that provision is directory only and not enforceable in the courts. For this reason, I concur in judgment only with regard to that part of the lead opinion.” (*Youngstown City School Dist. Bd. of Edn. v. State*, Slip Opinion No. 2020-Ohio-2903, 14 (Ohio 2020))
- ◆ **Justice French’s concurring argument:** “ I write separately, however, because I believe that it is time to overrule our flawed test in *Hoover v. Franklin Cty. Bd. of Commrs.*, 19 Ohio St.3d 1, 482 N.E.2d 575 (1985), for determining whether a legislative enactment violates the three-consideration rule in Article II, Section 15(C) of the Ohio Constitution. While I respect the principles of stare decisis, it is time to overrule *Hoover* because it was wrongly decided, it presents a rule that defies practical workability, and abandoning it would not create an undue hardship for those who have relied upon it.” (*Youngstown City School Dist. Bd. of Edn. v. State*, Slip Opinion No. 2020-Ohio-2903, 20 (Ohio 2020))
- ◆ **Justice Donnelly’s dissenting argument:** Justice Donnelly wrote: “Today, a majority of the court discards the three-consideration

rule set forth in the Constitution and accepts in its place the far less bothersome rule of one-and-done. In an egregious display of constitutional grade inflation, the majority gives passing marks to an act that was not considered three times by either house.” (*Youngstown City School Dist. Bd. of Edn. v. State*, Slip Opinion No. 2020-Ohio-2903, 24 (Ohio 2020))

- ◆ **Justice Stewart’s dissenting argument:** Justice Stewart wrote: “A majority of this court has decided that the amendments made to 2015 Am.Sub.H.B. No. 70 (“H.B. 70”) during its consideration by the General Assembly do not violate the requirement in the Ohio Constitution that a bill must be considered by each house of the General Assembly on three separate days. This decision is a complete abdication of this court’s responsibility as the guardian of the Constitution.” (*Youngstown City School Dist. Bd. of Edn. v. State*, Slip Opinion No. 2020-Ohio-2903, 44 (Ohio 2020))