

## WILL THE MICHIGAN SUPREME COURT “OVERRIDE THE OVERRULINGS”?

By: Morley Witus

Law reviews usually just gather dust on the shelves of law libraries. Professor Robert Sedler of the Wayne State University Law School hopes his new law review article will have an immediate impact on Michigan law, by giving the Michigan Supreme Court the green light to make an abrupt U-turn.

Over the last decade, the Michigan Supreme Court, led by a four-justice conservative majority, issued several decisions that altered Michigan law. Now that the composition of the Court has changed, liberals would like to reverse many of these rulings. The problem is that Supreme Court rulings are not supposed to be overturned just because they may have been wrongly decided. This is the doctrine of stare decisis, which generally requires the Court to adhere to its past decisions (however mistaken), absent compelling special justification for overturning them.

It's easy to make fun of stare decisis. In *Gulliver's Travels*, Jonathan Swift defined stare decisis as “a maxim among ... lawyers, that whatever has been done before may legally be done again: and therefore they take special care to record all the decisions formerly made against common justice and the general reason of mankind.” But Professor Sedler concedes that stare decisis is necessary, otherwise the law might change every time the composition of the Court changes.

Professor Sedler believes he has a principled strategy, consistent with stare decisis, to justify overturning many of the decisions from the conservative decade. He contends that about three dozen of the Michigan Supreme Court's decisions from 1999-2009 overruled prior decisions of the Court, and these overrulings favored the defense in civil cases and the prosecution in criminal cases. He claims that in overruling the prior precedents, the conservative majority ignored stare decisis and simply overruled the precedent if they thought it was wrong. Thus Professor Sedler says the Court flouted the doctrine of stare decisis, and this makes the overrulings “illegitimate.” Therefore, he concludes, the overrulings themselves can be overruled without flouting the doctrine of stare decisis.

So Professor Sedler is offering the new majority on the Court a theory to justify overruling the conservative majority's overrulings, without making it look like the law is just a matter of raw politics.

A couple observations:

First, a general concern, without taking sides in this debate. Most lawyers and citizens want cases decided on the merits, they don't want result-oriented, ideological decisions from either side of the political spectrum. That's why the statue of justice wears a blindfold – the ideal is a neutral judge, not a partisan judge. The Michigan Supreme

Court should strive to uphold this ideal, protect the integrity of the law, and keep politics out of it.

Second, I haven't studied the overrulings discussed in Professor Sedler's article. But let's suppose that a particular overruling both reached the wrong conclusion on the merits and disregarded the principles of stare decisis. I wonder if this situation would fit any of the recognized exceptions to stare decisis and therefore justify overruling the overruling. Apart from Professor Sedler's article, is there any authority or precedent for disregarding an overruling on the ground that the overruling failed to fit any of the special justifications for deviating from the normal rule of stare decisis? I take it that Professor Sedler believes this is a one-of-a-kind situation that has not occurred before, which warrants carving out a new exception to stare decisis.

Court-watchers, stay tuned!

(Professor Sedler's article, "The Michigan Supreme Court, Stare Decisis, and Overruling the Overrulings," will be published in the next Wayne State University Law Review, Vol. 55, no. 4)