

## From the desks of . . .

**James Hackenberg, Esq., David J. Richards, Jr.  
Steve Byron, Esq., James O'Leary, Esq., Elaine Tassi, Esq., John  
O'Donnell, Esq., Caterina Cocca-Fulton, Esq., Geoffrey W. Weaver, Esq.**

Dear Fellow Republicans:

We, the undersigned, are writing you today to respond to several allegations made by Curt Lau in a recent letter. We had no intention of involving ourselves in this race at such an early stage, but feel that we have a professional obligation to correct the misstatements put forward by Mr. Lau, who is Judge Colleen Mary O'Toole's campaign chairman.

While, as a non-lawyer, we do not expect Mr. Lau to be as familiar with the courts as we are, we do expect him to be more familiar with the facts before lending his name and his party title to a candidate in a contested Republican primary. Here are the facts:

Judge O'Toole voted to free convicted Lake County murderer Jennifer Jeffries. If some error had been committed warranting her release, we would stand by Judge O'Toole and her decision today. However, she was reversed by the all-Republican Ohio Supreme Court. The Justices stated that her interpretation of the law was "incorrect and based on an unreasonable interpretation of Evid.R. 410 and of our holding in *Frazier*." *State v. Jeffries*, 2008-Ohio-3865, par 12.

Judge O'Toole also voted to free a defendant who assaulted three police officers, including striking one of the officers over the head with a deadly weapon. We believe that releasing a defendant who did harm to any of the brave men and women who put on the uniform of law enforcement every day should only be done when the law demands it. However, in this case, the law demanded that the defendant stay in prison. The Supreme Court of Ohio said that Judge O'Toole was "patently wrong" and her "decision misconstrued the law of Ohio and its application to the facts of this case." Moreover, the Supreme Court said Judge O'Toole's decision "unfortunately injected doubt into an area of law where there should be none." *State v. Fulmer*, 2008-Ohio-936, par. 65 & 79.

The Ohio Supreme Court has rejected several other opinions using language directed at Judge O'Toole that is rarely seen coming out of our state's highest court. In one case, they said Judge O'Toole's opinion "added its own phrases to this statute and unnecessarily manipulated and confused it." *Elston v. Howland Local Schools*, 2007-Ohio-2070, par. 26. She has also been rebuked by the Ohio Supreme Court for adding requirements to the law not found in the legislation passed by the Ohio legislature. *In re Schaefer*, 2006-Ohio-5513, par. 64.

As we all know, judges are to be objective and impartial in following the law, and are to set aside any personal biases in rendering their decisions. Judge O'Toole, in a dissenting opinion on a case, suggested that judges ignore this obligation and encouraged judges to do just the opposite, that is, to substitute their own personal opinion as a measure of lawfulness rather than using the objective standard based on the law and well-established legal precedent. *Manley v. Personacare*, Case 2005-L-174.

There are many other cases we could cite to, but the facts speak for themselves. Judicial activism? Legislating from the bench? Ignoring the law? You be the judge.

The Supreme Court reviews capital cases from the common pleas courts, sometimes accepts cases where different courts of appeal conflict in their decisions on the same issue, and almost always limits itself to accepting only other cases of constitutional importance or of public or great general interest. When the Supreme Court does not accept a case, it has nothing to do with the validity of the decision of the court of appeals – in no way can the Supreme Court's refusal to take the case be termed an "affirmance" of the appellate court's decision.

In opinions authored by Judge O'Toole that the Ohio Supreme Court accepted, she has been reversed 78% of the time, while cases in which Judge O'Toole was not part of the majority were reversed only 12.5% of the time by the Supreme Court (during the time that Judge O'Toole has been on the bench). The error rate is many times greater when Judge O'Toole is one of the judges in the majority – regardless of the other judge or judges who vote for and sign onto the opinion with her. Of all of her reversals by the Supreme Court, Judge O'Toole aligned herself with the more liberal members of the court, except in only two cases where Judge Grendell, the only other Republican judge on the Court of Appeals, agreed with her.

By contrast, Common Pleas Court Judge Gene Lucci has the integrity, experience, and conservative values that we need on the Court of Appeals. Judge Lucci has stood for the Constitution and the rule of law from his 12 years as a police officer, through his 20 years as a lawyer, and now in his 10<sup>th</sup> year as a Judge. We know both of the candidates in this race because we appeared in front of them, reviewed their decisions, or worked at the Court of Appeals. Based on that knowledge, we are compelled to endorse the only true conservative in this race, and the only candidate whose knowledge and respect for the law have been obvious throughout his career. We urge you to endorse and elect Judge Eugene A. Lucci to the Eleventh District Court of Appeals.

If you would like to know more, we are happy to speak to you at any time and encourage you to contact us.

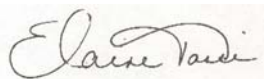
Best Regards,



I. James Hackenberg, Esq.



Steve Byron, Esq.




Elaine Tassi, Esq.



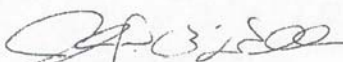
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Geoffrey W. Weaver, Esq.

**Judge Eugene A. Lucci of the Lake County Common Pleas Court  
seeking election to the Court of Appeals of Ohio, Eleventh District**

**Friends of Judge Eugene A. Lucci**

Walter J. McNamara III, Treasurer  
8440 Station Street, Mentor, Ohio 44060  
Tel. (440) 336-1077, (440) 255-9100; Fax (440) 974-1585  
[FriendsofJudgeLucci@gmail.com](mailto:FriendsofJudgeLucci@gmail.com)