Court far afield in overturning amendment

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As I See It

By Jeffrey Piccola

In one of the most outrageous examples yet of how far afield our state judicial system has run, Commonwealth Court has now decided to overturn Pennsylvania's 1995 constitutional amendment allowing children to testify in criminal cases via closed-circuit television or videotape.

It ruled against the amendment by a narrow 4-3 vote on May 20, declaring it "null and void," and once again relegating the will of the citizens of Pennsylvania to a position far below the will of the court.

No reasonable person could ever doubt that this amendment, passed in two consecutive sessions of the Legislature and approved by voters in a 1995 referendum, expressed what the people wanted their state government to do.

In fact, Pennsylvanians voted overwhelmingly in favor of the amendment, which promised to protect young victims of crime from the added trauma of having to testify before those who were accused of harming them.

So why did Commonwealth Court vote to overrule the amendment? Because of an alleged technicality.

According to the majority opinion of the court, the 1995 referendum contained a single question which actually amended two different parts of the state Constitution; therefore, the court says, it should have been put before voters in two separate questions rather than one.

This technicality contradicts what many other states consider to be legal, however, and in fact, what has been upheld by the U.S. Supreme Court in similar cases.

Commonwealth Court Judge Dan Pellegrini was among those who voted against overturning the amendment.

As he explained in his dissenting opinion on the case, "Other states have held that a single constitutional amendment may cover several propositions if they are not distinct or essentially unrelated ... so long as all parts of the amendment are germane to the accomplishment of a single objective, and all are legitimately connected to one subject."

Judge James R. Kelley, who also voted against voiding the amendment, wrote in his own dissenting opinion that Pennsylvania's voters "properly exercised their [inalienable] right to alter the form of their government by adopting the amendment ... It is the function and duty of this court, as an arm of that government, to [comply with] their instructions?

This requirement to obey the will of the people, as Judge Kelley defines it, was flagrantly undermined when the court overturned the amendment and the citizens of Pennsylvania should be outraged.

By declaring the referendum null and void, Commonwealth Court may just as well have declared the people's right to rule their own government and their right to protect their children null and void as well.

Unfortunately, the incidence of our judicial system fracturing its legal boundaries and its moral and ethical obligations is becoming more commonplace in Pennsylvania.

This latest decision is just one more example of a blatant abuse of power that exists in our courts, and which must be halted through legislative reform and a renewed dedication to serving the citizens of the commonwealth.

As a former chairman of the House Judiciary Committee who had the opportunity to work with the prime sponsor of the constitutional amendment, Sen. Stewart Greenleaf, R-Montgomery, I am appalled that four judges in one of the highest courts in Pennsylvania could show such careless disregard for the welfare of children, the voice of the people, and the will of the state Legislature.

Their lamentable decision not only flouts their responsibilities to the voters, it also prevents Pennsylvania from becoming one of the more than 40 states that permit videotaped testimony from children, and from being in line with what the U.S. Supreme Court has already said is an acceptable practice.

Also, as an attorney, I am disappointed and angered that the Pennsylvania Bar Association supported this action. This organization has once again demonstrated that is too is out of touch with the will of the people, and has proven its arrogance in believing a constitutional amendment can be set aside by the courts.

I commend Judge Pellegrini, Judge Kelley and Judge Bonnie Leadbetter for their good sense in dissenting from this grievous opinion, which wipes out years of work by child advocates and legislators and disregards a statewide referendum.

When the rule-making power of the courts is worth more in the eyes of a handful of judges than the votes of over a million citizens, it's time to make substantial changes.

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