

Analyzing Key Pa. Supreme Court Decisions

METHODOLOGY

This scorecard looks at seminal Pennsylvania Supreme Court cases since 2015 involving state constitutional separation of powers questions and identified either by the Court as “cases of public interest” or by the greater legal community as such. For both the current bench (i.e., Chief Justice Debra Todd, alongside Justices Christine Donohue, Kevin Dougherty, David Wecht, Sallie Updyke Mundy, P. Kevin Brobson, and Daniel McCaffery) and the preceding ones (i.e., under Chief Justice Thomas G. Saylor from 2015 to April 1, 2021 and Chief Justice Max Baer from April 1, 2021 to December 31, 2022), it evaluates individual justices’ behavior based on whether they adhered to their statutory function as chief interpreters of state law. For each justice, the question posed is not whether they reached the “correct” outcome, but whether their reasoning reflected a serious concern for the limitations of his or her judicial office under the Pennsylvania Constitution and the primacy of the constitutional or statutory text in a particular case. In evaluating their seriousness, this scorecard uses as its guide the late Justice Antonin Scalia’s [2012 essay](#) defining the distinction between common-law judges and modern judges in a tripartite system of ordered government:

[I]f one accepts the principle that the object of judicial interpretation is to determine the intent of the legislature, being bound by genuine but unexpressed legislative intent rather than the law [itself] is only the theoretical threat. The practical threat is that, under the guise or even the self-delusion of pursuing unexpressed legislative intents, common-law judges will in fact pursue their own objectives and desires, extending their lawmaking proclivities from the common law to the statutory field. When you are told to decide, not on the basis of what the legislature said, but on the basis of what it meant, and are assured that there is no necessary connection between the two, your best shot at figuring out what the legislature meant is to ask yourself what a wise and intelligent person should have meant; and that will surely bring you to the conclusion that the law means what you think it ought to mean—which is precisely how judges decide things under the common law.