

Significant Southern District of Ohio Cases

By Hon. Michael R. Merz

Since the founding of the Southern District of Ohio, there have been several significant cases. What follows is a synopsis of the top 10, in no particular order.

- In *Pembaur v. City of Cincinnati*,¹ the Supreme Court reversed the Sixth Circuit's decision dismissing a property owner's claim against respondent county for entering onto his property in violation of the Fourth Amendment because, in authorizing the sheriff to enter onto petitioner's property, the county prosecutor was acting as the final decision-maker for the county and, therefore, the sheriff's action represented respondent's official policy.
- Ohio's ban on recognition of same-sex marriages was held to be unconstitutional as applied by Judge Timothy S. Black.² Although the Sixth Circuit reversed, setting up a circuit split on the question, the Supreme Court found a substantive due process right to same-sex marriage.³
- A teacher at Dayton Christian Schools was suspended for being pregnant, then fired for consulting a lawyer about the suspension. The Ohio Civil Rights Commission began an investigation that Judge Rice preliminarily enjoined as an interference with the school's Free Exercise rights; they had claimed a Biblical basis for their actions. The Supreme Court reversed, extending *Younger* abstention to this case because of Ohio's interest in enforcing its civil rights laws.⁴
- In *Sheppard v. Maxwell*,⁵ the Supreme Court upheld Judge Carl Weinman's issuance of a writ of habeas corpus for Dr. Sam Sheppard because of pervasive and prejudicial pretrial and invasive trial publicity.
- In the capital case of *Bies v. Bobby*, this court held that, in the wake of the *Atkins v. Virginia* prohibition of executing the mentally retarded, a state court finding of fact—that a person is mentally retarded—is entitled to collateral estoppel effect. The Sixth Circuit affirmed, but the

Supreme Court unanimously reversed,⁶ allowing the issue to be re-tried in the state courts.

- *Brinkman v. Dayton Bd. of Educ.* was Dayton's school desegregation case, presided over by Judge Carl Rubin. The Supreme Court upheld this court's decision that the Dayton Board of Education had intentionally maintained a racially segregated public school system.⁷ It was during the pendency of this case that Judge Rubin's expert, Dr. Charles Glatt, was shot to death in the Dayton federal courthouse.
- In the Cincinnati racial profiling case, Judge Susan Dlott consolidated a number of police misconduct cases, including one arising out of a police shooting of an unarmed teenager. She convened a mediation process that sought to provide systemic reform, rather than just settling the individual cases. After a year of community consultation, the City of Cincinnati, the Fraternal Order of Police, the plaintiffs, and the Department of Justice agreed on an omnibus settlement agreement with an outside monitor for five years.⁸
- In *Elder-Beerman Stores Corp. v. Federated Dep't Stores Inc.*,⁹ the Sixth Circuit rejected the so-called hub-and-spoke theory of antitrust conspiracy. Arthur Beerman contended that Rike's separate exclusive dealing arrangements with many top name brands was in essence a horizontal conspiracy in restraint of trade. Judge Carl Weinman tried the case, which was the origin of the Southern District's local rule against post-verdict lawyer conversations with jurors.
- *Rose v. Giamatti*¹⁰ was Pete Rose's action to enjoin the commissioner of Major League Baseball from holding disciplinary hearings on the allegation that Rose had bet on games. Judge John Holschuh presided and denied a motion to remand to state court. Judge S. Arthur Spiegel took Rose's guilty plea in the associated tax fraud case.
- *Wickard v. Filburn*¹¹ is often said to

represent the furthest reaches of the Commerce Clause. Roscoe Filburn, a Montgomery County farmer, raised twice his allotment of wheat and sought to enjoin collection of a penalty tax on the theory that the wheat was all consumed on the farm and never entered interstate commerce. The Supreme Court upheld the penalty on the theory that Filburn's home production affected interstate commerce because he did not have to enter the market to buy chicken feed. ☺



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Endnotes

¹*Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986).

²*Obergefell v. Wymyslo*, 962 F. Supp. 2d 968 (S.D. Ohio 2013).

³*Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

⁴*Ohio Civil Rights Comm'n v. Dayton Christian Schs. Inc.*, 477 U.S. 619 (1986).

⁵*Sheppard v. Maxwell*, 384 U.S. 333 (1966).

⁶*Bobby v. Bies*, 556 U.S. 825 (2009).

⁷*Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526 (1979).

⁸*Tyehimba v. City of Cincinnati*, No. C-1-99-317, 2001 WL 1842470, at *1 (S.D. Ohio May 3, 2001).

⁹*Elder-Beerman Stores Corp. v. Federated Dep't Stores Inc.*, 459 F.2d 138 (1972).

¹⁰*Rose v. Giamatti*, 721 F.Supp. 906 (S.D. Ohio 1989).

¹¹*Wickard v. Filburn*, 317 U.S. 111 (1942).