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HEADLINE: ROLE REVERSAL HIGH COURT AGAIN TRIES HAND AT
LAWMAKING

BODY:

A majority on the **Ohio Supreme Court** has confused its role of checking the powers of the General Assembly. The court instead has turned into a legislative bulldozer, upending whatever law conflicts with the ideological bent of the majority, legal and constitutional principles be damned.

The latest victim in what has become the justices' perennial 4-3 split is the state's civil-justice-reform law, or **tort reform**, a balanced statute that limits certain damages awards by judges and juries.

Trial lawyers and the Ohio AFL-CIO in December 1997 predictably filed a constitutional challenge to the sweeping legislation. Sadly, but just as predictably, the court this week torpedoed the law, contending that it violated the Ohio Constitution's separation of powers and the ban against including more than one subject in a single bill. The court majority -- Democrats Alice Robie Resnick and Francis E. Sweeney, and Republicans Andrew Douglas and Paul E. Pfeifer -- consistently refuses to acknowledge that there can be legislated limits to plaintiffs' awards in civil cases.

In this decision, they cloak their allegiance to the plaintiffs' bar behind a fig leaf of devotion to separation of powers. In effect, the majority has declared that the General Assembly has no constitutional authority to address the legitimate public-policy question of civil damages.

Any court that renders as many decisions on the same 4-3 split as this one is not making every effort simply to interpret the law and apply the constitution. Justices should remember they are not elected to consider how they would have voted for the law had they been legislators.

The legislature can write criminal law as it sees fit, limiting or increasing to various degrees the judiciary's power to sentence and fine lawbreakers and limiting or, in some cases, eliminating parole.

The legislature has prescribed the death penalty for certain cases. No matter

how much a particular crime may incense a judge or jury, if it does not fall within those specified as punishable by the death penalty, such a sanction may not be imposed.

The legislature sets judicial pay and maximum jury compensation. When the Supreme Court wants the criminal-sentencing laws reformed, where does it turn? The legislature. The court can't change the code by fiat.

In civil law, however, the **tort-reform** statute suddenly, in the words of Justice Resnick, author of the majority opinion, "marks the first time in modern history that the General Assembly has openly challenged this court's authority to prescribe rules governing the courts of Ohio and to render definitive interpretations of the Ohio Constitution binding upon the other branches." Hyperbolic nonsense.

The **tort-reform** law, which took effect in 1997, capped most noneconomic damages at \$ 500,000 and punitive damages at \$ 250,000, or three times compensatory damages, whichever is greater. Punitive damages are to punish misconduct. The law did not attempt to limit economic damages.

The statute also put a 15-year limit on the filing of most lawsuits and a six-year limit for medical claims and professional-malpractice claims.

Chief Justice Thomas J. Moyer, in his dissenting opinion, correctly argued the court zealously and prematurely reviewed the law. Challenges had not yet come up through the lower courts. Moyer also said the majority "unnecessarily construed the actions and language of the General Assembly in the most negative light."

His assessment of the court's majority opinion doesn't bode well for relations with the legislature, which in coming months is set to debate a complex proposal for juvenile-justice reform. Moyer's comments imply as well that the fissure between the two factions on the court, which has him on the losing side, has widened perhaps beyond repair.

The big losers, however, are the people of Ohio and their constitutional system of state government.

The legislature not only has the right, it has a duty to act upon the great public policy questions of the day, those issues affecting the public welfare -- including the awarding of damages in civil cases.

The court majority's declaration that the legislature has no such right is an act of arrogance and an affront to the doctrine of separation of powers.