

No. 26364 -- State of West Virginia ex rel. The Affiliated Construction Trades Foundation, a division of the West Virginia Building and Construction Trades Council, AFL-CIO, and all those similarly situated v. William F. Vieweg, Commissioner, Bureau of Employment Programs, and Compensation Programs Performance Council

Maynard, Justice, concurring:

The majority decision in this case is right because it reaches the correct result and it does so by applying age-old principles of law.

This Court can be proud of this decision because it exhibits a fidelity to our common law and our constitutional doctrine of separation of powers.

It also displays a willingness of the Court to fulfill its intended function of independence from the clamor of popular opinion, political expediency and moralistic editorializing which has been long on rhetoric and short on facts and law.

This decision is really quite simple and straightforward. An executive officer exercised his discretion to do an act which he and his advisors determined to be in the State's best interest. This executive

officer set forth in detail his legitimate reasons for doing this act. Some people did not like what the executive officer did, and they ran to this Court for help. The fact is, however, that this Court has no business telling an executive officer what to do under these circumstances just because some people would have done it differently. I reiterate that there is simply no authority empowering this Court to tell the executive branch of government how to conduct its affairs.

In fulfilling our constitutional role of applying the well-established law to the facts of this case, it is irrelevant what we think of the viability of the lawsuits dismissed by Commissioner Vieweg.

It is irrelevant what we think of coal companies. It is irrelevant what we think of the current Governor and his policies. It is irrelevant who we think is ultimately responsible for the deficit in the workers' compensation fund. Our philosophies on "fundamental principles of justice" or whether we think the Commissioner's actions "pass the smell test" are likewise irrelevant. All of these considerations are for pundits and armchair politicians, not for judges.

Finally, that is what disappoints me about the two dissenting opinions filed in this case. Like much of what the public has heard on this matter, the dissents are full of speculation, surmises, guesses, and dark suspicions and devoid of sound legal analysis. The winners in this case are not only Commissioner Vieweg and the Performance Council, but also the rule of law. The job of this Court is to decide cases according to the applicable law and without passion, prejudice and partiality. Here, the Court did its job. Accordingly, I concur.