

Special appearance

Ohio Supreme Court justice visits Wayne County to swear in Smail

By **BOBBY WARREN**
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WOOSTER — “Hi, I’m Sharon. ... Sharon. ... It’s Sharon.”

That’s how introductions went Friday morning as Ohio Supreme Court Justice Sharon L. Kennedy entered a downtown courtroom Friday to give the oath of office to a good friend of hers, Sue Smail.

As people greeted “Justice Kennedy,” she replied, “It’s Sharon. Just Sharon.” Or, when she introduced herself, it was, “Hi, I’m Sharon.”

So, it went as Kennedy was introduced to nearly every person who packed Common Pleas Judge Mark K. Wiest’s courtroom for the ceremony.

Sue Smail was appointed in August to serve out the remainder of Jim Carmichael’s term. He died in July. While she took the oath of office after her appointment, this one was special because it was after her first victory in an election, said Jim Smail, her husband. She wanted it to be special, which is why she invited Kennedy.

It was only fitting for Kennedy to be at Sue Smail’s swearing in because she invited the Smails to her ceremony at the Ohio Supreme Court.

Kennedy served as a trial judge in the domestic relations court in Butler County. It was a position she held until she became a justice in 2012. She first ran to fill an unexpired term on the bench, and she successfully ran for reelection in 2014.

It was during the 2012 election, when Kennedy was crisscrossing the state, she met Sue and Jim Smail. They have since become



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Ohio Supreme Court Justice Sharon L. Kennedy (right) gave the oath of office Friday in Wayne County to a good friend of hers, Sue Smail, who was sworn in as a Wayne County commissioner.

very good friends.

“That is why I jumped at the chance to be here,” Kennedy said Friday morning following the ceremony.

“Because of our friendship, I asked if she would be available” to perform the oath of office,” Sue Smail said. “I was honored that she would travel from Cincinnati to swear me in, but she didn’t even hesitate when I asked. She is honest, forthright and genuine. Hopefully, she will one day be the chief justice.”

Since being elected to the Ohio Supreme Court, Kennedy said she has found the work “rewarding and exciting.” As a domestic relations judge, she was a specialist.

“It was like I traveled back in time to when I was a lawyer and doing a multitude of different legal work,” Kennedy said of the transition. “Not only do you do the criminal work, but you also do civil litigation, domestic

relations, juvenile court work and attorney discipline. But, you do things at the Supreme Court that you wouldn’t have the opportunity to do but by being there, like Public Utility Commission of Ohio appeals, Board of Tax appeals and individual cases from the workers’ compensation area.”

The kinds of cases that stand out for Kennedy are the ones where the justices have to deal with constitutional questions, and “We are asked as to what the text is and what the meaning of those words are. ...

“Being one who subscribes to the text is to be given meaning in its place and time, and that we should hold true to those values as a jurist,” Kennedy said. “Justices shouldn’t read rights into the Constitution that do not exist or elevate statutory provisions into constitutional protections.”

With Kennedy’s penchant for original intent, trying to understand what the framers of the Constitution meant and intended when they drafted and debated the document, one of the more meaningful cases for her involved the Toledo City School District

Board of Education vs. the State Board of Education. The Toledo board, and others, argued the state did not have authority to retroactively reduce school funding. The funding was reduced because of discrepancies in average daily attendance.

In reaching the decision, Kennedy researched what was debated in 1850-1851 regarding “retroactive laws.” The settled meaning “did not reach laws affecting government entities,” she wrote. Thus, “We hold that the Retroactivity Clause ... does not protect political subdivisions, like school districts, that are created by the state to carry out its governmental functions. Therefore, the legislature was able to authorize the department to adjust local school funding calculations and to retroactively immunize the department from liability for any legal claim of reimbursement by a school district for a reduction of school foundation funding, without violating the Retroactivity Clause.”

The ruling, issued in May, reversed a 10th District Court of Appeals decision.