

# Virginia: Judicially Honoring the Rule of Law

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The roots of legal controversies that deal with life issues are often watered by the growth of judicial activism. Courts were never meant, however, to be active in determining the law but were established to perform the duty of law interpreters. That constitutional fact is crystal clear in the Supreme Court of Virginia.

This article looks specifically at life issues such as abortion, protection of the unborn from criminal violence, assisted suicide, healthcare rights of conscience, cloning, destructive embryo research, and other life-related issues. It also includes a section on the courts' express or apparent philosophy concerning judicial restraint, judicial review, and a wealth of information on the justices themselves.

The following sections reveal a Supreme Court that understands and exhibits a desire to adhere to the strict statutory construction set forth in the Virginia Code, and follow the rule of law.

## I. LIFE ISSUES

### Abortion

The Virginia Supreme Court has dealt with very few life issues since the Supreme Court of the United States decided *Roe v. Wade*<sup>2</sup> and *Planned Parenthood v. Casey*.<sup>3</sup> The cases in Virginia follow statutory construction of the Virginia Code<sup>4</sup> and have not used any analysis of those cases.

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<sup>2</sup> 410 U.S. 113 (1973)(setting forth the constitutional right to abortion for the first time in the United States based on a trimester framework).

<sup>3</sup> 505 U.S. 833 (1992)(affirming *Roe*, but establishing a new “undue burden” standard for constitutional review of the right to abortion while also affirming that states have authority to limit that right as such limits are rationally related to a legitimate state purpose).

<sup>4</sup> Under Va Code Ann. §§ 18.2-71-76.2 (Michie 2006), a legal abortion may be performed in the first trimester with no restrictions; in the second trimester, a legal abortion must be performed in a licensed hospital; in the third

The only case before the Supreme Court of Virginia on abortion<sup>5</sup> is the 1981 decision of *Simopoulos v. Commonwealth*.<sup>6</sup> The defendant, an abortion doctor in Fairfax, Virginia, was convicted in Circuit Court of a violation of abortion statutes and appealed to the Supreme Court.<sup>7</sup> In particular, Dr. Simopoulos<sup>8</sup> was convicted of using procedures intended to initiate an abortion during the second trimester of pregnancy outside a licensed hospital, as required by §§18.2-71, and 18.2-73 of the Virginia Code (1950). He was also convicted of violating §18.2-74(c) (destruction of a fetus during third trimester), §§ 18.2-71-73, 18.2-74.1 (patient's condition must

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trimester, an abortion may be performed if the continuation of the pregnancy is likely to result in death or physical or mental impairment of the mother. The code defines an illegal abortion as a failure to meet the standards for legal abortion or causing or administering a drug or other means to a woman with the intent to destroy the unborn children or produce an abortion or miscarriage. Partial birth abortion is specifically prohibited in §18.2-71.1, which requires that a physician shall not knowingly perform a partial birth abortion that is not necessary to save the life of a mother. The attending physician must make every attempt to keep the infant alive, but the mother is the priority. We find it noteworthy that the partial birth abortion prohibition is the only abortion statute that uses the term "mother" for the patient. All other abortion statutes in the Va. Code use the term "woman" for the patient. For example, §18.2-71.2 allows any physician licensed by the Board of Medicine to perform an abortion or cause a miscarriage in the first trimester for any "woman." §18.2-73 provides for any physician licensed by the Board of Medicine to do an abortion or cause a miscarriage in the second trimester for any "woman" in a licensed state hospital under the supervision of the State Board Mental Health, Mental Retardation and Substance Abuse Services. §18.2-74 limits third trimester abortions unless done in a licensed hospital under like supervision, so long as the physician and two other physicians agree that without this abortion the "woman" may die or be substantially and irremediably impaired in her mental health or her physical death, requiring that this reason be noted in her medical record, and life support must be readily available for the aborted fetus. A woman who seeks an abortion in Virginia must give written consent accordingly under §18.2-76, and §18.2-76.1 prohibits any publication from promoting or encouraging abortion. Furthermore, a minor must obtain parental notice or pursue a judicial bypass decree to undergo an abortion without parental notice. Virginia has no residency requirement for obtaining an abortion within the state, but penalties for violation of the code's abortion provisions range from a Class 4 felony requiring imprisonment for two to ten years and/or a fine of \$100,000; a Class 3 misdemeanor for encouraging or promoting performance of an abortion; license revocation at anytime when second or third trimester abortions are performed outside a licensed hospital, when in the third trimester the attending physician and two consulting physicians do not certify medical necessity or substantial and irremediable impairment of mental or physical health of the mother; or if life support is unavailable for a child that is born as a result of an abortion, or is not used if necessary.

<sup>5</sup> *The Washington Post* in a May, 1978 article referenced a case that was misrepresented as being from the Virginia Supreme Court. See Eduardo Cue, *U.S. Judge Backs Curb on Medicaid Abortions in Va; Judge Affirms State Curb on Abortion Funds*, WASHINGTON POST, May 26, 1978, at C1. Rather, the U.S. Court of Appeals, Fourth Circuit, made the holding alluded to in the article in *Doe v. Kenley*, 584 F.2d 1362 (4<sup>th</sup> Cir. 1978), ruling that states could determine whether they would reimburse indigent women for non-therapeutic abortions, where a federal judge upheld "the state of Virginia's decision to discontinue Medicaid payments for abortions unless a physician determines that the life of the mother is in danger." Any other abortion decisions in Virginia have been federal district court cases within the state of Virginia.

<sup>6</sup> 277 S.E. 2d 194 (Va. 1981).

<sup>7</sup> *Id.* at 194.

<sup>8</sup> *Id.* at 196 (Chris Simopoulos was a medical doctor licensed to practice obstetrics and gynecology).

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provide evidence of maternal health necessity), §§ 18.2-71-73 (causing destruction of a fetus).<sup>9</sup> Justice Poff wrote for a unanimous court that included Chief Justice Carrico and Justices Harrison, Cochran, Compton, and Thomson.<sup>10</sup>

The salient facts of the case show that a 17-year-old, five-and-a-half-month pregnant unmarried female, who was accompanied by her boyfriend and feared telling her parents of her pregnancy, underwent a saline abortion at the office of Simopoulos on Nov. 10, 1979.<sup>11</sup> With defendant's commendation, the dead fetus was later delivered at a motel and discarded, along with the afterbirth, in a bathroom trashcan.<sup>12</sup> "She admitted that she never intended to abort in a hospital. Asked if the defendant had instructed her to abort in a motel, she said that '(h)e told me it was possible, that I didn't have to go to a hospital' and '(h)e made it perfectly clear what he meant.' Responding to another question, she denied that the defendant had promised to meet her at the hospital after the contractions started."<sup>13</sup>

The defendant doctor alleged due process violations (which were dismissed) and the constitutionality of the statutory hospital requirements under which he was indicted and convicted.<sup>14</sup> . Much of the defense consisted of characterizing defendant's office as a hospital, which the court rejected, as the hospital requirement was designed to protect maternal health.<sup>15</sup> His Class 4 felony conviction for destruction of a fetus outside of a hospital was upheld, and he

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<sup>9</sup> *Id.* at 194.

<sup>10</sup> *Id.* All of these justices have since rotated off the bench, except for J. Carrico who remains a Senior Justice to date.

<sup>11</sup> *Id.* at 196. *The Washington Post* piece detailing the incident appeared to herald the bravery of the "obstetrician, gynecologist and stubborn 43-year-old refugee from a mountain village in Greece" in providing abortions to women in his "green-tiled operating room" clinic. Philip Smith, *The Doctor, the Law and a Landmark Case*, WASHINGTON POST, June 20, 1982 at B1. Simopoulos, whose grandfather was a Greek Orthodox priest, was quoted saying "I wish God would stop testing me..." After his conviction, Simopoulos' license was revoked by state medical authorities, then restored, revoked again, and restored again on condition that he did not perform abortions for two years.

<sup>12</sup> *Id.* at 197. Patient "told him that she intended to deliver the fetus in a motel, and the defendant assured her that 'it was okay.'" She later made it clear that she never intended to deliver the fetus in a hospital.

<sup>14</sup> *Id.* The court detailed the statutes at bar in the case at footnote 2 of the opinion. *Id.*

<sup>15</sup> *Id.* at 198-99. The opinion claimed the hospital requirement was likewise designed to enforce the duty to preserve fetal life. Defendant's arguments in part included an attempt to claim his saline injection into the patient's amniotic sac was not the direct cause of the abortion. This was also rejected by the court.

was sentenced to imprisonment for two years.<sup>16</sup> The decision was appealed and upheld by the United States Supreme Court (USSC) in *Simopoulos v. Virginia*, as Virginia's requirement that second-trimester abortions be performed in licensed clinics was not an unreasonable means of furthering the state's interest in protecting a woman's health and safety.<sup>17</sup> The Virginia Supreme Court adhered to a strict constructionist analysis of the statutory guidelines for abortion in Virginia, and that decision was upheld by the highest court in the United States.

### **Protection of the Unborn from Criminal Violence**

Virginia Code §18.2-32.2 protects the unborn from criminal violence in that any person who unlawfully, willfully, deliberately, maliciously, and with premeditation kills the fetus of another is guilty of a Class 2 felony. In the context of this statute, Virginia appears to define the killing of a fetus as a crime, thereby requiring protection of a fetus.<sup>18</sup> Virginia law, however, does not define the term "fetus" in its statutes. That term is used in other parts of the code to protect "the fetus" or its body when it is the subject of a surrogacy agreement,<sup>19</sup> in stillbirth or spontaneous fetal death,<sup>20</sup> or as the subject of medical services.<sup>21</sup> This usage gives protection to the fetus in all contexts except abortion. "Fetus" is always the term used in the Code to refer to the results of an abortion.<sup>22</sup> Even in abortion, however, the fetal body is required to be treated in a statutorily protected manner.<sup>23</sup> This analysis impacts the law and application of the 18.2-32.2 criminal statute by inferring protection of the unborn by statutory construction. None of these statutes, however, have ever been considered by the Virginia Supreme Court in any case law.

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<sup>16</sup> *Id.* at 196. That sentence was suspended on condition of good behavior, and Simopoulos served 30 days in jail.

<sup>17</sup> 462 U.S. 506 (1983). A full history of the case citation is *Simopoulos v. Virginia*, 221 Va. 1059, 277 S.E. 2d 194 (Va. 1981), probable jurisdiction noted by *Simopoulos v. Virginia*, 456 U.S. 988, 102 S. Ct. 2265, 73 L.Ed. 2d 1281 (U.S. Va. 1982), judgment affirmed by *Simopoulos v. Virginia*, 462 U.S. 506, 103 S. Ct. 2532, 76 L. Ed. 2d 755 (U.S. Va. 1983).

<sup>18</sup> VA. CODE ANN. §18.2-32.2 (Michie 2006).

<sup>19</sup> § 20-156 (surrogacy agreements).

<sup>20</sup> §§ 32.1-249-265, 274 (spontaneous abortion as fetal death); §32.1-289(stillborn infant or fetus).

<sup>21</sup> §32.1-92.2 (medical services to a fetus with a physical deformity); §38.2-4300 (HMO concerns for "serious jeopardy to the health of the fetus"); §54.1-2403.01 (duty to counsel HIV patients of dangers to a fetus).

<sup>22</sup> §18.2-76 (the body of an aborted baby); §18.2-71.1 (body of a fetus).

<sup>23</sup> §18.2-71.1

Some of these code sections were recently tested at the trial level. Virginia Code §18.2-71 makes a criminal out of any person who administers or causes to be administered, or uses “any drug or other thing” with intent to destroy an unborn child. On February 23, 2006, Tammy Skinner, age 22, shot herself in the stomach in Suffolk, Virginia, across the street from the hospital where the baby was to be delivered that very day.<sup>24</sup> Originally charged with three counts, including “abortion of another,” use of a firearm in the commission of a felony, and filing a false police report,<sup>25</sup> Skinner was convicted of the misdemeanor of filing a false police report. Other counts were dismissed, as the Virginia statute prohibits the violence by “another” but not violence by the mother upon herself or her unborn child. Furthermore, other abortion statutes were not on point to the facts of the case.<sup>26</sup>

The Supreme Court has not had the opportunity to review this case, nor has it reviewed any other case on these statutes.

On the other hand, there are three seminal cases in Virginia relating to unborn children as persons. The 1969 case of *Lawrence v. Craven Tire Co.* determined an action for wrongful death could not be brought for a stillborn child under the then existing Virginia wrongful death statute.<sup>27</sup> Judge Buchanan wrote for a unanimous court, affirming the lower court ruling.<sup>28</sup>

In 1986, the Virginia Supreme Court reviewed *Modaber v. Kelley*, a medical malpractice case presenting the question of whether a mother sustained personal injury when her child passed

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<sup>24</sup> Keith A. Fournier, *The Killing of Baby Girl Skinner*, CATHOLIC ONLINE (May 9, 2006), at <http://www.catholic.org/featured/headline.php?ID=3283>.

<sup>25</sup> Suffolk Criminal Court CR06000825.

<sup>26</sup> *Id.* On Oct. 19, 2006 Circuit Court Judge Westbrook Parker dismissed the “illegally producing and abortion” charge against Skinner. *Id.* The Class 4 felony of illegally inducing an abortion did not apply to mothers. Fournier, *supra* note 29. See also Brad Harrub, *Dead or Alive?* APOLOGETICSPRESS.ORG (Nov. 12, 2006), at <http://www.apologeticspress.org/articles/2926>.

<sup>27</sup> 169 S.E.2d 440 (Va. 1969). “We are unwilling to hold that a child *en ventre sa mere* can maintain a common law action for personal injuries, and it is plain that such a holding would be necessary in order for any right of action to have been transmitted to the present plaintiff. If a child *en ventre sa mere* were held to be able to maintain an action for personal injuries, logic and consistency would require that if such children were injured and subsequently still for reason, wholly related to the injuries, a right of action would survive under code 8-628.1.... We hold that the Virginia wrongful death statute as written does not provide an action for wrongful death of a stillborn.”

<sup>28</sup> *Id.* at 440.

away.<sup>29</sup> Judge Compton delivered the court's unanimous decision. Demonstrating the propensity of the courts of Virginia to strictly adhere to the Virginia Code and prior judicial precedent, the Virginia Supreme Court's analysis is instructive.

[W]e are of opinion that the trial court properly ruled the plaintiff had sustained a direct injury due to injury to the fetus and its eventual stillbirth. In Virginia, the law is established that an unborn child is not a "person" within the meaning of our wrongful death statute.<sup>30</sup>

The court linked the child and mother, seemingly inferring inherent value of the child without calling the child a person but thereby affording greater protection to the mother. It stated its position "in tort litigation that an unborn child is part of the mother until birth."<sup>31</sup> The court ultimately held an injury to the unborn child constitutes an injury to the mother, and allowed for her recovery for physical injury and mental suffering associated with the stillbirth.<sup>32</sup> The Court gave the child value according to the statutory construction of the state statute and prior judicial precedent.

In 1990, the Virginia Supreme Court again considered wrongful death of an unborn child in *Kalafut v. Gruver*.<sup>33</sup> A child who was harmed in a motorcycle accident in the mother's womb was later born alive in a premature delivery and subsequently died.<sup>34</sup> After the father of the child filed a negligence action under Virginia's wrongful death statute<sup>35</sup> and the trial (circuit) court granted the defendant's motion for summary judgment based on *stare decisis* principles in the application of *Lawrence*,<sup>36</sup> the Virginia Supreme Court heard the case on appeal of that summary judgment. Writing for the unanimous court, Justice Compton called this a case of first

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<sup>29</sup> 348 S.E.2d 233 (Va. 1986).

<sup>30</sup> *Id.* at 236, citing the Virginia wrongful death statute.

<sup>31</sup> *Id.* at 237.

<sup>32</sup> *Id.*

<sup>33</sup> 389 S.E.2d 681 (Va. 1990).

<sup>34</sup> *Id.* at 681. The mother was operating the motorcycle which was struck from behind by defendant's vehicle. She gave birth less than three weeks later to a premature child who died an hour later, for which the accident was ruled to be the approximate cause of death of the child.

<sup>35</sup> VA. CODE ANN. §8.01-50(A) (Michie 2006). Death By Wrongful Act.

<sup>36</sup> 389 S.E.2d at 681. The lower court cited "absence of legislation by the Virginia General Assembly or a change in position by the Virginia Supreme Court."

impression<sup>37</sup> and began the opinion with a discussion of “whether an action for a child’s wrongful death may be maintained against a tortfeasor whose negligence occurred when the decedent was in the mother’s womb.”<sup>38</sup> In distinguishing *Modaber* and *Lawrence*, the opinion stated that while harm was caused to the mother, she was not the only one who experienced harm:<sup>39</sup>

Consequently we adopt the following principle in this case, paraphrasing the restatement rule: A tortfeasor who causes harm to an unborn child is subject to liability to the child, or to the child’s estate, for the harm to the child, if the child is born alive. We do not limit the application of this rule to unborn children who are viable at the time of the tortious act. Thus an action may be maintained for recovery of damages for any injury occurring after conception, provided the tortious conduct and the proximate cause of the harm can be established.<sup>40</sup>

The Virginia Supreme Court effectively drew the line “between nonliability and liability for prenatal injury at the moment of live birth of the child.”<sup>41</sup> The court called the unborn child a “decedent” within the meaning of the statute and emphasized *Kalafut* did not overrule *Lawrence* and *Modaber* in that the latter cases involved stillbirths, while the former involved a live birth. The court stated an unborn child, while not a person, is not a non-entity and is protected by the criminal law on abortion under Virginia Code §§ 18.2-71-76.1.<sup>42</sup> Interpretation of the statute as the legislature intended it to be applied was the Court’s primary objective again. These cases demonstrate Virginia’s code will be strictly applied in the protection of unborn life as allowed by the code alone. Often, as demonstrated by these cases, that has operated effectively to protect unborn human life. A federal case also relied upon Virginia law to protect life.<sup>43</sup>

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<sup>37</sup> *Id.*.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 682.

<sup>40</sup> *Id.* at 683-684, citing RESTATEMENT (SECOND) OF TORTS § 869(1).

<sup>41</sup> *Id.* at 684.

<sup>42</sup> *Id.* at 685.

<sup>43</sup> The federal district court case of *Bolen v. Bolen*, 409 F. Supp. 1371 (Va. 1976) relied on Virginia rules to allow recovery by a mother who gave birth to twin boys who were harmed in the delivery by negligence of the attending doctor: “In a case such as the one at bar where the children are born with defects, there is no particular difficulty in estimating the damages involved. Furthermore there are compelling reasons in favor of allowing an action in a case

## Assisted Suicide

Assisted suicide is prohibited by the Virginia Code, which provides not only an injunction on such activity but imposes damages and professional sanctions as well.<sup>44</sup> The Code of Virginia, however, does allow for the use of Durable Powers of Attorney and life-prolonging treatment or refusal under §54.1-2981, the Health Care Decisions Act. This Act also allows for the right to make and have enforced one's living will provisions for end of life decisions.<sup>45</sup> Mercy killing and euthanasia are also prohibited under the Virginia Code.<sup>46</sup>

The Supreme Court of Virginia has not ruled on any cases in this area of law, but a Virginia Circuit Court did so in the 1986 case of *Hazelton v. Powhatan Nursing Home, Inc.*, where a family was refused the removal of a nasogastric tube from the comatose patient by her nursing home.<sup>47</sup> In the opinion written by Circuit Court Judge Thomas A. Fortkort, the court ruled the actions taken by the petitioners in the case met the criteria of the Virginia statute, allowing the spouse of a comatose patient the right to invoke the clearly expressed wishes of his terminally ill wife.<sup>48</sup> Though the medical experts differed on the use of morphine and the

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such as this. Foremost among these reasons is the belief that if these children must endure life with physical and mental handicaps which proximately resulted from the negligence of others, fundamental notions of justice dictate that they be compensated. Secondly the fact that these children may become wards of society or at the very least, be a substantial financial burden to their parents, supports the allowance of this suit." The federal court dismissed the action without prejudice to allow the plaintiffs to cure the defects. It is noted here not as a Virginia Supreme Court case, but as a federal case relying upon Virginia law that indeed protected life.

<sup>44</sup> VA. CODE. ANN. §8.01-622.1 (Michie 2006).

<sup>45</sup> §8.01-622.1

<sup>46</sup> §§54.1-2990, 2991. No act is permitted other than allowing the natural process of dying. Acting in accordance with the Health Care Decisions Act, does not constitute suicide.

<sup>47</sup> 6 Va. Cir. 414, 1986 Va. Cir. LEXIS 133 (1986).

<sup>48</sup> *Id.* at 415-16. The patient had no written declaration. The court admitted testimony of Hazelton "family policy that no family members would wish to continue artificial life support after all hope of recovery was gone." Though the medical experts differed on the use of morphine and the recovery from a comatose state, the court clearly made every attempt to follow the state code in these matters. Detailing the legislative distinctions between life-prolonging procedures and treatment necessary to provide comfort, the court reasoned that comfort care was allowed under the Natural Death Act of Virginia, and "the concern of the Legislature for care and comfort of this terminal patient can be safely left in the hands of her attending physician with the provision that medication for pain be continued to the moment of death."

patient's recovery from a comatose state, the court seemed to make every attempt to follow the state code in these matters.<sup>49</sup>

### **Healthcare Rights of Conscience**

Va. Code § 18.2-75 protects health care rights of conscience, stating any health care facility may refuse to perform an abortion, and any person who so states in writing his or her desire to refuse to perform an abortion may do so and shall not be punished for those beliefs. The Supreme Court of Virginia, however, has never heard a case on this statute. Likewise, there have been no cases regarding pharmacists either dispensing or refusing to dispense abortion related drugs.

### **Cloning and Destructive Embryo Research**

Va. Code §§ 32.1-162.21-22 prohibits human cloning or any attempt to initiate a pregnancy in a "uterine environment," both offenses punishable at law with a \$50,000 fine. There are no significant cases dealing with this statute either.

Title 20, §156, of the Domestic Relations Code of Virginia defines embryo as "the organism resulting from the union of a sperm and an ovum from first cell division until approximately the end of the second month of gestation."<sup>50</sup> The Virginia Code on its face appears to hold human embryo life begins to be afforded protection at conception, though the definitions do not *per se* afford personhood to embryo life.<sup>51</sup>

Virginia has established, by statute, a Biotechnology Commercialization Loan Fund to finance biotechnology research but strictly prohibits loans made to any entity conducting human

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<sup>49</sup> *Id.*

<sup>50</sup> This is a marked difference from pro-abortion definitions that claim a pregnancy doesn't occur until implantation (see Lynne Marie Kohm, *From Eisenstadt to Plan B: A Discussion of Conscientious Objections to Emergency Contraception*, 1 WM. MITCHELL L. REV. \_\_ (forthcoming 2007) at 3-7, (specifically at note 20).

<sup>51</sup> VA. CODE ANN. § 20-156 (Michie 2006). This section is based on §1 of the Uniform Status of Children of Assisted Conception Act (1988), and the Virginia adaptation of that act at chapter 9 of Title 20. The Virginia Code provides for surrogacy contracts and the protection of the parties to such contracts and the child.

stem cell research from human embryos.<sup>52</sup> This code section does allow for funding of research conducted with adult stem cells.<sup>53</sup>

The Supreme Court of Virginia, however, has not reviewed any cases pertaining to these code sections.

## II. JUDICIAL RESTRAINT

The reasoning and analysis in case law by the Supreme Court of Virginia and their general view from a public perspective appear to be models of judicial restraint.

*Arlington County v. White*<sup>54</sup> is a prime example of a case that clearly indicates judicial intent to follow statutory construction and legislative intent, even when the various justices do not completely agree with each other's rationale.

Arlington County had allowed domestic partner benefits from its self-funded health benefit plan under the analysis that, since the Virginia statute did not define "dependent," it was reasonable for the board of supervisors to include domestic partners as dependents.<sup>55</sup> Writing the court's opinion, Justice Koontz declared Arlington County had no statutory authority to expand the definition of dependent.<sup>56</sup> Justice Kinser, concurring and building on the opinion, pointed out that domestic partners are not afforded special protection under any law in Virginia.<sup>57</sup> Justices Hassell, Compton, and Carrico (at that time chief justice) also dissented in

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<sup>52</sup> §2.2-2233.2.

<sup>53</sup> §2.2-2233.2

<sup>54</sup> 528 S.E.2d 706 (Va. 2000).

<sup>55</sup> *Id.* at 708.

<sup>56</sup> *Id.* at 708-09. Justices Carrico, Lacy, Hassell, Keenan, and Compton joined this opinion.

<sup>57</sup> *Id.* at 707. At that time, Virginia's laws included a criminal statute against sodomy and fornication. These laws have since be ruled to be unconstitutional under *Lawrence v. Texas*, 539 U.S. 558 (2003), and the Virginia Supreme Court held accordingly, though seemingly unwilling, in *Martin v. Zierhl*, 607 S.E. 2d 367 (Va. 2005)(where the court was forced to find Virginia's fornication statute unconstitutional under *Lawrence*, causing the court to dismiss a young woman's suite for damages resulting from fornication, unmarried cohabitation and contraction of a sexually transmitted disease).

part to state the case was an effort by the Arlington County board to legalize same-sex unions as domestic partnerships in a clear attempt to usurp legislative authority.<sup>58</sup>

Certainly the General Assembly did not intend by its enactment of Code §§ 15.2-1517(A) and 51.1-801, to grant counties, like Arlington, the power to recognize common law marriages or ‘same-sex unions.’ ... There can be no question or doubt that Arlington County seeks to recognize, tacitly, relationships that are violative of the public policy of this Commonwealth.<sup>59</sup>

The justices, in differing ways, clearly expressed their collective judicial objective to strictly following legislative intent. “[W]here a power is conferred and the mode of its execution is specified, no other method may be selected; any other means would be contrary to legislative intent, and therefore unreasonable.”<sup>60</sup> *Arlington County* is a clear example of how the Virginia Supreme Court has given every formidable indication of its intent to strictly interpret its state’s constitution and statutes and afford the legislature its proper authority.

The justices of the Supreme Court of Virginia honor the rule of law. None have taken positions one way or the other on life issues in any judicial opinions. The justices do not appear to be judicial activists in any way.

This does not mean, however, they do not wish to influence state statutory law. In October 2006, Chief Justice Leroy Hassell asked the legislature to revamp Virginia’s Mental Health Laws, a move which the majority of Virginians appear to support.<sup>61</sup> State Senator Kenneth W. Stolle objected, however, telling *The Washington Post* Justices should not be asking

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<sup>58</sup> *White*, 528 S.E.2d 706. “Does Arlington County have the legal authority to recognize common law marriages or ‘same-sex unions’ by conferring certain health insurance benefits upon domestic partnership of County employees who are engage in these relationships? Even though a review of the briefs and record filed in this appeal demonstrates that this question is the primary issue raised in this appeal, the majority decides this case on another legal basis. ... This Court has a duty, as well as an obligation, to decide issues of great importance to the citizens of this Commonwealth when, as her, those issue are properly presented to this Court.” Justice Kinser plainly stated in her concurrence that she did not agree with this analysis but would rule on a more narrow statutory interpretation.

<sup>59</sup> *Id.* at 713.

<sup>60</sup> *Id.* at 712. Upon his weekly spring visit in residence to Regent University School of Law, Chief Justice Hassell routinely reviews *Arlington County* in classes where he guest lectures on the role of the court, as he has done each of the past 3 years in my Family Law class.

<sup>61</sup> Tom Jackman, *Commission Targets How State Treats Mentally Ill*, WASHINGTON POST, Oct. 11, 2006, at B02 (discussing that C.J. Hassell was leading the way in the formation of a commission that most mental health experts welcomed).

the legislature to change laws.<sup>62</sup> It would seem, though, that a request by the Chief Justice of the State Supreme Court to form a commission is quite different than legislating from the bench. The Virginia General Assembly has responded positively and since formed the commission to review the Mental Health Statutes.<sup>63</sup> Chief Justice Hassell's judicial philosophy was very apparent when he was quoted by the University of Virginia student newspaper as saying "[t]he great thing about being a justice is there are many things you cannot discuss. As a jurist it is my responsibility to apply laws even though I think they are unwise."<sup>64</sup> The Chief Justice expressed with clarity his respect for the rule of law, even if he might personally disagree with a law. That attitude seems to permeate the court and appears to be reflected in each of the cases reviewed here.

Although the Supreme Court of Virginia possesses both original and appellate jurisdiction, its primary function is to review decisions of lower courts. The Court is respectful of lower court decisions but views itself as under obligation to review the rulings of the Court of Appeals and other lower courts when such decisions are in contravention of statutory construction of the Code of Virginia.<sup>65</sup> Its original jurisdiction is limited to cases of *habeas corpus*, *mandamus*, prohibition, and *writs* of actual innocence.<sup>66</sup> The Supreme Court also has original jurisdiction in matters filed by the Judicial Inquiry and Review Commission relating to judicial censure, retirement, and removal of judges.<sup>67</sup> There is no appeal to the Supreme Court as a matter of right except in cases involving the State Corporation Commission, the disbarment

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<sup>62</sup> Bill McKelway, *Stolle questions Court's role in Mental Health, GOP Senator says legislature has say-so in state reform effort*, RICHMOND-TIMES DISPATCH, Oct. 18, 2006, at B4, citing to remarks by Stolle.

<sup>63</sup> The Chief Justice also undertook to establish an Advisory Committee on the establishment of a New Family Court in Virginia, which did not result in legislation.

<sup>64</sup> Ben Sellers, *Justice Hassell Visits Sabato's Class, University alumnus, Virginia Supreme Court member addresses students about judicial system*, THE CAVALIER DAILY, March 7, 2002, at A1.

<sup>65</sup> See *Arlington County*, *infra* note 86. For further detail of the procedure in Virginia for appellate review by the Supreme Court see The Supreme Court of Virginia, Procedure, <http://www.courts.state.va.us/scv/cover.html> (last modified April 21, 2004).

<sup>66</sup> Pursuant to VA. CODE ANN. §19.2-327.2 (Michie 2006).

<sup>67</sup> The Supreme Court of Virginia, Jurisdiction, *supra* note 71.

of an attorney, and review of the death penalty.<sup>68</sup> The Supreme Court of Virginia has always adhered to these rules.

Judicial review occurs via the Judicial Inquiry and Review Commission, which investigates complaints of judicial misconduct or serious mental or physical disability that interferes with a judge's duties.<sup>69</sup> The General Assembly is responsible, however, for reelection of a sitting judge. Circuit court judge Verbena Askew was not reelected when she was considered possibly to be violating crimes of nature when it became public that she was a lesbian.<sup>70</sup>

### III. THE COURT

The Supreme Court of Virginia is composed of seven judgeships that are legislatively elected for terms of twelve years.<sup>71</sup> Each judge may be retained by reelection for an additional twelve years. Selection of the chief justice is accomplished by peer vote of the seven, and the chief justice serves for a term of four years. He or she must be a Virginia state resident, a Virginia State Bar member for at least five years, and cannot be older than seventy years of age.<sup>72</sup>

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<sup>68</sup> *Id.*

<sup>69</sup> Judicial Selection, *supra* note 8. "The commission may conduct hearings and gather evidence to determine whether the charges are substantial, if the commission finds the charges to be significant, a formal complaint is filed with the Supreme Court of Virginia. The Supreme Court may dismiss the complaint or it may retire, censure, or remove the judge.

<sup>70</sup> Terry Scanlon and Jessie Halladay, *Sex Life May be Used Against Judges, Key Lawmaker Says Virginia Anti-Sodomy Law a Factor*, THE DAILY PRESS, Jan. 15, 2003, at A1, also available at <http://www.sodomylaws.org/usa/virginia/vanews98.htm> (last edited Feb. 15, 2005). Then Del. Robert F. McDonnell, now Attorney General of Virginia, stated that judges need to follow the law. This situation was pre-*Lawrence v. Texas*, 539 U.S. 558 (2003)(finding a constitutional right to sodomy).

<sup>71</sup> Judicial Selection in the States, Virginia, available at [http://www.ajs.org/js/VA\\_methods.htm](http://www.ajs.org/js/VA_methods.htm). (last visited Nov. 1, 2006)[hereinafter JUDICIAL SELECTION]. The courts of justice committees of the House of Delegates and the Senate interview candidates who seek reelection, and the full house and senate then vote.

<sup>72</sup> *Id.* Further information regarding judicial inquiry, review, impeachment, and removal is also available from this source. Vacancies of the Court occurring between Sessions of the General Assembly may be filed by the Governor for a term expiring 30 days after the commencement of the next General Assembly Session. By statute the Chief Justice is chosen by a majority vote of the seven justices. See The Supreme Court of Virginia, Jurisdiction, available at <http://www.courts.states.va.us/scov/cover.htm> (last modified April 21, 2004).

The current Chief Justice of the Virginia Supreme Court, Leroy Rountree Hassell, Sr., was appointed in 1989 by Governor Gerald L. Baliles and elected in 1990.<sup>73</sup> Chief Justice Hassell was reelected in 2002, and his term expires in 2014.<sup>74</sup> Justice Hassell stood apart when he wrote a separate concurrence in the case of *Martin v. Zierhl* (where the Virginia Supreme Court found Virginia's fornication statute unconstitutional under *Lawrence v. Texas*), seemingly to separate his opinion from that of the majority.<sup>75</sup> He is the youngest justice and Virginia's first African American chief justice,<sup>76</sup> an historic point in Virginia's history.<sup>77</sup>

Justice Elizabeth B. Lacy, was also appointed in 1989 by Governor Baliles, elected that same year, reelected in 2001, and her current term expires in 2013.<sup>78</sup> Justice Lacy has been a deputy attorney general in both Texas and Virginia. Most significantly, she has held a lead role in the Virginia Task Force on Gender Bias in the Judiciary,<sup>79</sup> a project of the National Center for State Courts designed to examine judicial bias in the courtroom.<sup>80</sup> Her judicial philosophy is reflected in her concern for this issue as she stated it in a *Washington and Lee Law Review*

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<sup>73</sup> *Id.* See also Hon. Leroy Rountree Hassell Sr., State of Virginia, Supreme Court, at <http://www.court.state.va.us/scv/home.html> (last visited Oct. 17, 2006). Chief Justice Hassell earned his J.D. at Harvard University Law School (1980), and his B.A. at University of Virginia (1977). He is a Norfolk, Virginia, native and was admitted to practice law in Virginia in 1980.

<sup>74</sup> Judicial Selection, *supra* note 1. Prior to becoming the Chief Justice of the Court, Justice Hassell served as a jurist in residence at Regent University School of Law. He continues to do so as the Chief Justice, spending one week each spring residing and teaching on campus, being available to assist students and faculty in accomplishing the University's mission of developing Christian leadership to change the world.

<sup>75</sup> 607 S. E. 2d 367 (Va. 2005); see also *supra* note 69. The Chief Justice viewed his judicial duty as that of being required to follow the U.S. Supreme Court's ruling in *Lawrence*, even though he may not have been convinced of the wisdom of that ruling.

<sup>76</sup> *Virginia's first black chief justice, Speaking Of People, Leroy Rountree Hassell, Sr.*, EBONY, May, 2003, at 12.

<sup>77</sup> *Historic moment, Law & Justice, swearing in of Virginia Supreme Court Chief Justice Leroy Rountree Hassell, Sr.*, JET, March 3, 2003, at 20, also available at [http://www.findarticles.com/p/articles/mi\\_m1355/is\\_10\\_103/ai\\_98415754](http://www.findarticles.com/p/articles/mi_m1355/is_10_103/ai_98415754) (March 3, 2003).

<sup>78</sup> *Id.* See also Hon. Elizabeth B. Lacy, State of Virginia, Supreme Court, *supra* note 72. Justice Lacy received her BA from St. Mary's College, Notre Dame (1966), her J.D. from The University of Texas School of Law in Austin (1969), and her LL.M. (Master of Laws) from University of Virginia in 1992. She was admitted to practice law in Texas in 1969 and in Virginia in 1976. She is also admitted to practice before the U.S. Court of Appeals, Fourth and Fifth Circuits, and the U.S. Supreme Court. She has previously served as a judge for the Virginia State Corporation Commission (1985-89) and the Virginia Office of the Attorney General as the Deputy Attorney General (1982-85). *Id.*

<sup>79</sup> See Elizabeth B. Lacy, *Gender bias task force: Comments on the final report*, 58 WASHINGTON & LEE L. REV. 1085 (Summer 2001).

<sup>80</sup> National Center for State Courts, *Trends in the State Courts 1998-99*, published by the State Justice Institute, and available at [www.ncsconline.org/WC/Publications/KIS\\_CtFutu\\_Trends98-99\\_Pub.pdf](http://www.ncsconline.org/WC/Publications/KIS_CtFutu_Trends98-99_Pub.pdf) (1999).

piece. “When judges and lawyers engage in any type of biased activity, the credibility of our courts as neutral decision makers is called into question.”<sup>81</sup>

Justice Barbara Milano Keenan was elected in 1991, was reelected in 2003, and her current term expires June 30, 2015.<sup>82</sup> In 1982, she became the first woman elected by the Virginia General Assembly to the Circuit Court, and three years later she was elected as one of the first ten judges of the newly created Court of Appeals, being the first woman to serve as a state appellate court judge.<sup>83</sup> Justice Keenan was quoted in *GW Magazine* for her judicial philosophy, showing a strong concern for balance of powers among the three branches of government and due deference to be accorded to the judiciary.<sup>84</sup> In her view, it appears a judge’s sense of responsibility to the law may be needed to fend off legislative power.

Justice Lawrence L. Koontz, Jr. was elected in 1995, and his term expires in 2007.<sup>85</sup> Justice Koontz has been quite involved in the Virginia State Bar and was a Richmond lawyer in private practice prior to his judicial appointment.<sup>86</sup> Judge Koontz has a judiciary style that adheres to the law, but he does not shy away from controversy. In the case of *Atkins v.*

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<sup>81</sup> Lacy, *supra* note 78.

<sup>82</sup> Hon. Barbara Milano Keenan, State of Virginia, Supreme Court, *supra* note 72.

<sup>83</sup> Biography of Barbara Milano Keenan, available at [www.en.wikipedia.org/wiki/Barbara\\_Milano\\_Keenan](http://www.en.wikipedia.org/wiki/Barbara_Milano_Keenan) (last modified Feb. 18, 2007).

<sup>84</sup> Kathleen Kocks, *Justices Supreme*, *GW Law School, A Magazine for Alumni and Friends*, Summer 2005, also available at [http://www.gwu.edu/~magazine/archive/2005\\_law\\_summer/docs/feat\\_justices.html](http://www.gwu.edu/~magazine/archive/2005_law_summer/docs/feat_justices.html) (published Summer 2005): “Every session of court hears cases that affect people in our state; so in that regard, whatever happens in our court is the biggest issue. However, Virginia is a death penalty state, and the fair application of the death penalty is an issue that always weighs heavily on our court. Looking at the greatest challenge, I’d say that all courts today face the issue of judicial independence and pressure from the executive and legislative branches. In terms of seeking people who have defined political philosophies, that’s always been a prerogative of the person who selects judges. But the Terri Schiavo case is a recent example of the pressure that can be put improperly on judges. In such instances, judges have to stand our ground, be very clear about our decisions and be very mindful of what is at stake if we do not.”

<sup>85</sup> Judicial Selection, *supra* note 71. Justice Koontz received his Bachelor of Laws with honors from the Richmond Law School in 1965, and his B.S. (Biology) from Virginia Polytechnic Institute in 1962. He was admitted to practice law in Virginia in 1965, admitted to practice before the U.S. Court of Appeals, Fourth Circuit, in 1966, and admitted to practice before the U.S. Supreme Court in 1971. See Hon. Lawrence L. Koontz, Jr., State of Virginia, Supreme Court, *supra* note 8. He moved up the ranks in the Virginia judicial system since 1968 and has been honored with several outstanding and distinguished service awards.

<sup>86</sup> Lawrence L. Koontz, Jr., Find Law, at [http://pview.findlaw.com/view/2394156\\_1?noconfirm=0](http://pview.findlaw.com/view/2394156_1?noconfirm=0) (last modified Jan. 11, 2007).

*Commonwealth*,<sup>87</sup> a retarded man was convicted of capital murder<sup>88</sup> and sentenced to death.<sup>89</sup> Justice Kinser wrote the opinion for the majority, and Justices Koontz and Hassell dissented from that opinion. Justice Koontz's dissent (along with that of Justice Hassell) was quoted by the majority opinion by the USSC in a reversal of the Supreme Court of Virginia holding. Specifically the USSC cited Justice Koontz's following observation:

[I]t is indefensible to conclude that individuals who are mentally retarded are not to some degree less culpable for their criminal actions. By definition, such individuals have substantial limitations not shared by the general population. A moral and civilized society diminishes itself if its system of justice does not afford recognition and consideration of those limitations in a meaningful way.<sup>90</sup>

Justice Koontz is not afraid of controversy but is for the most part a judge who adheres to the strict construction of a statute.

Justice Cynthia D. Kinser was appointed in 1997 by Governor George Allen, elected in 1998, and her term expires in 2010.<sup>91</sup> At a ceremony announcing her appointment, then Governor Allen said of her, "She believes the purpose of judges is to interpret the law, not to make it." In her remarks, Kinser responded, "It is for the legislature to pass laws and, as a judge, it is not for me to agree or to disagree, but to apply the law to the facts of the case."<sup>92</sup> When Democratic Assemblymen Clifton "Chip" Woodrum learned of her appointment, he said he was not familiar with her views but noted that "Given the source, I would assume that she's no screaming liberal, and reflects Governor Allen's point of view."<sup>93</sup> Justice Kinser wrote a separate concurring opinion in *Arlington v. White*, in disagreement with Justice Hassell's

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<sup>87</sup> *Atkins v. Virginia*, 536 U.S. 304 (2002).

<sup>88</sup> *Atkins v. Commonwealth*, 510 S.E.2d 445 (Va. 1999)(opinion written by J. Koontz).

<sup>89</sup> *Atkins v. Commonwealth*, 534 S.E.2d 312 (Va. 2000).

<sup>90</sup> *Id.*

<sup>91</sup> Judicial Selection, *supra* note 71. Justice Kinser received her J.D. from University of Virginia in 1977 and graduated from The University of Tennessee in 1974 and The University of Georgia in 1971. She was admitted to practice law in Virginia in 1977 and has a host of Virginia Bar and judicial affiliations. See Hon. Cynthia D. Kinser, State of Virginia, Supreme Court, *supra* note 72.

<sup>92</sup> Biography of Cynthia D. Kinser, [http://en.wikipedia.org/wiki/Cynthia\\_D\\_Kinser](http://en.wikipedia.org/wiki/Cynthia_D_Kinser) (last visited Jan. 5, 2007). She holds the 4-H motto "to make the best better."

<sup>93</sup> *Id.*

separate opinion.<sup>94</sup> Justice Kinser's opinion indicates her desire to limit the ruling to the facts of that case rather than to "call into question other sections of Virginia's laws."<sup>95</sup> Justice Hassell's dissenting opinion in *Arlington* was joined by then Chief Justice Carrico and Senior Justice Compton and indicates clearly these justices believed the court was skirting the primary issue in the appeal - whether a county has legal authority to recognize same-sex unions by conferring benefits. The dissenters stated their sense of responsibility and obligation in that "this court has a duty, as well as an obligation, to decide issues of great importance to the citizens of this Commonwealth when as here, those issues are properly presented to his court."<sup>96</sup> Justice Kinser was possibly less interested in focusing on the potential controversy of the facts and used a very narrow strict constructionist approach. Each of these opinions indicates a respect for the rule of law, a theme that is carried throughout the court's jurisprudence.

Justice Donald W. Lemons was elected in 2000, and his term expires in 2012.<sup>97</sup> Justice Lemons serves on the faculty of University of Richmond's T.C. Williams School of Law.<sup>98</sup> He has been very involved with the Virginia State Bar, and his publications indicate his admiration of Justice Marshall, his focus on judicial pedagogy regarding federalism and state court conflicts, and his viewing the judiciary as guardians of the law on equal footing with the other two branches of government.<sup>99</sup> He has taught a Sunday school class at the Third Presbyterian

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<sup>94</sup> Wikipedia, *Arlington County v. White*, at [http://en.wikipedia.org/wiki/Arlington\\_County\\_v.\\_White](http://en.wikipedia.org/wiki/Arlington_County_v._White) (last updated Jan. 8, 2007): "Justice Cynthia D. Kinser, while joining in the majority's opinion, wrote separately to emphasize that the case was not about whether a county had the power to recognize same-sex unions through the extension of benefits, as Justice Leroy Rountree Hassell, Sr. asserted in his dissent/concurrence. Kinser pointed out that the court had not granted review on that issue, but rather on the statutory interpretation and Dillon rule argument by which the majority had resolved the case. Though she asserted that she did not support same-sex unions or question that they contravened Virginia public policy, she believed that the dissent's rationale would cause the court to question other sections of Virginia law that incidentally conferred benefits upon those involved in same-sex unions as 'disguised efforts' to legitimize those unions."

<sup>95</sup> 528 S.E.2d at 710.

<sup>96</sup> *Id.* at 711.

<sup>97</sup> Judicial Selection, *supra* note 71.

<sup>98</sup> Donald W. Lemons, John Marshall Professor of Judicial Studies Justice, University of Richmond, at [http://law.richmond.edu/faculty/lemons\\_bio.htm](http://law.richmond.edu/faculty/lemons_bio.htm) (last visited Nov. 11, 2006).

<sup>99</sup> See, for e.g., *John Marshall Revisited on Marbury's 200th Anniversary: Reflections on the Life and Character of The Great Chief Justice*, THE VIRGINIA BAR ASSN. J. (Dec. 2003); "John Marshall Made Landmark Ruling," Commentary Section, RICHMOND TIMES DISPATCH, September 28, 2003, at F1; *From Trial to Appeal: A Judge's*

Church in Richmond (a conservative PC USA church) and seems to exhibit an evangelical position on life issues.

Justice G. Steven Agee was elected in 2003, and his term expires in 2015.<sup>100</sup> Prior to joining judicial ranks, Justice Agee was a representative to the Virginia House of Delegates for the 15<sup>th</sup> District from 1982-1993 and also served as a judge advocate in the U.S. Army Reserves.<sup>101</sup> Justice Agee made six donations to various Republican party campaigns in Salem, Virginia, in 1991 in the amount of \$1,150.<sup>102</sup>

The Virginia Code § 17.1-302 provides for senior justices to serve the Court as necessary from time to time, each of whom have served previously as a Supreme Court of Virginia justice. These justices serve in a partial capacity when conflicts arise, or in the event a regular Supreme Court Justice is unable to serve for some reason. Currently, Virginia has three senior justices: Harry O. Carrico, Charles S. Russell, and Roscoe B. Stephenson. By statute, the number of senior judges is limited to five, each of whom serves an annual appointment, without limit on such appointments. Senior justices hear only a handful of cases each term and, depending on the nature of the case, may or may not be included in a Supreme Court decision, Virginia Code §17.1-106 provides for the temporary recall of retired judges, and is referred to in Code § 17.1-302.

The justices' biographical information contained in this section is set forth in a table format as follows:

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*Transition*, VIRGINIA STATE BAR, EDUCATION AND PRACTICE, Volume VII, No.2, 1999; Co-author, *Civil Discovery in Virginia, Judicial Supervision and Enforcement*, Virginia Law Foundation (1999).

<sup>100</sup> Judicial Selection, *supra* note 71. Justice Agee graduated from New York University School of Law in 1978 with an LL.M., received his J.D. from University of Virginia in 1977, and his B.A., *magna cum laude*, from Bridgewater College in 1974. He is admitted to practice in Virginia (1977), D.C. (1978) the U.S. Court of Appeals, Fourth Circuit, and various other federal courts. He is a U.S. Army Reserve Captain, a Bridgewater College Trustee, and still serves on the Free Clinic of Roanoke Valley. See Hon. Justice G. Steven Agee, State of Virginia, Supreme Court, *supra* note 8. The official Supreme Court of Virginia website lists the rules of the court, the seven sitting judges as previously listed, and three senior judges: Hon. Roscoe B. Stephenson, Jr., Hon. Harry L. Carrico (past chief justice) and Hon. Charles S. Russell. See Justices of the Supreme Court of Virginia, available at <http://www.courts.state.va.us/supreme.htm> (May 2, 2006).

<sup>101</sup> *Id.*

<sup>102</sup> Donor Profile for Agee, G. Steve, VPAP.org, available at [http://www.vpap.org/donors/results\\_level2.cfm?key=INH000200002](http://www.vpap.org/donors/results_level2.cfm?key=INH000200002), (last visited Nov. 11, 2006).

<b>Member</b>	<b>Appointed by/ Year</b>	<b>Term Expires</b>	<b>Miscellaneous</b>
Leroy Rountree Hassell, Sr., Chief Justice	Governor Baliles/ 1989; Elected in 1990; Reelected in 2002.	2014	- Biographical information: J.D. Harvard University 1980; B.A. University of Virginia 1977; Private practice with McGuire Woods; Jurist in Residence, Regent University School of Law. - Noteworthy opinions/dissents: <i>Arlington County v. White</i> , (court has a duty to confront obvious attempts to usurp authority even in controversial matters); <i>Martin v. Zierhl</i> (extremely brief concurrence). - Speeches/Articles: “As a jurist it is my responsibility to apply laws even though I think they are unwise.” <sup>103</sup> - Other: Virginia’s 1 <sup>st</sup> African American Chief Justice.
Elizabeth B. Lacy	Governor Baliles/ 1989; Elected in 1989; Reelected in 2001.	2013	-Biographical Information: J.D. University of Texas, Austin 1969; LL.M. University of Virginia 1992; BA St Mary’s College Notre Dame 1966; Chair, Virginia Gender Bias in the Courts Task Force, National Center of State Courts; Judge, Virginia State Corporation Commission 1985-89; Deputy Attorney General 1982-85. -Speeches/Articles: “When judges and lawyers engage in any type of biased activity, the credibility of our courts as neutral decision makers is called into question.” <sup>104</sup>
Barbara Milano Keenan	Elected 1991; Renewed in	2015	- Biographical Information: J.D. George Washington; B.A. Cornell

<sup>103</sup> Sellers, *supra* note 63.

<sup>104</sup> Lacy, *supra* note 78.

	2003.		University; Circuit Court 1982-93; Court of Appeals 1985-91. - Speeches/Articles: “Judges have to stand our ground, be very clear about our decisions and be very mindful of what is at stake if we do not.” <sup>105</sup>
Donald W. Lemons	Elected in 2000.	2012	- Biographical Information: J.D. University of Richmond, T.C. Williams School of Law; Law faculty University of Richmond, John Marshall Professor of Judicial Studies Justice; - Other: federalist judicial philosophy; views judiciary as guardians of the law; taught Sunday school, long time member of an evangelical Presbyterian church in Richmond
Lawrence L. Koontz, Jr.	Elected in 1995.	2007	- Biographical Information: Bachelor of Law, Richmond Law School, 1965, B.S. Virginia Polytechnic Institute, 1962; An original member of Virginia Court of Appeals; Moved up through the ranks of the Virginia Judicial system since 1968: Court of Appeals Judge 1985-95; Chief Judge 1986-94; Circuit Court Judge 1976-85; Juvenile & Domestic Relations District Court Judge 1968-76; Roanoke Asst. Com. Attorney 1967-68; Police Science Instructor 1969-74; Distinguished Service Award, Virginia State Bar 1980, 1989; Distinguished Service Award, Family Law Section 1989. - Noteworthy opinions/ dissents; <i>Arlington County v. White</i> opinion;

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<sup>105</sup> *Justices Supreme, supra* note 83.

			His dissent in <i>Atkins v. Commonwealth</i> was cited in the Supreme Court of the United State’s reversal of that Virginia Supreme Court case
Cynthia D. Kinser	Governor George Allen/ 1997; Elected in 1998.	2010	- Biographical Informaiton: J.D. University of Virginia, 1977; University of Tennessee 1974; University of Georgia, 1971. - Professional/Social Affiliations: Federal Magistrate Judges Association; U.S. Bankruptcy Court, Chapter 7 Panel Trustee 1979-90; Private Practice 1978-90; Lee County Commonwealth’s Attorney 1980-83; Law Clerk with law school classmate George Allen to Hon. Glenn M. Williams 1977-78, U.S. District Court. – Acceptance speech: “It is for the legislature to pass laws and, as a judge, it is not for me to agree or to disagree, but to apply the law to the facts of the case.” <sup>106</sup>
G. Steven Agee	Elected 2003.	2015	- Biographical Information: J.D. University of Virginia 1977; LL.M. NYU School of Law 1978; B.A. Bridgewater College 1974. - Professional/ Social Affiliation – Republican; Virginia House of Delegates 15 <sup>th</sup> District 1982-93; Pres., Salem-Roanoke Bar Assn. 1990-91; U.S. Army Reserve Captain, JAGC; Bridgewater College Trustee; Serves at Free Clinic of Roanoke Valley - Noteworthy opnions: <i>McNeil v. Kingrey</i> , 377 S.E. 2d 430 (VA 1989); <i>Creasy v. Coleman Furniture</i>

<sup>106</sup> Kinser, *supra* note 91.

Senior Judges:

Member	Appointed by/ Year	Term Expires	Miscellaneous
Harry L. Carrico	Elected 2003 as Senior Justice; Chief Justice 1981-2003; Originally appointed to the Court in 1961.	Annually	- Biographical Information: George Washington Univ. Doctor of Jurisprudence, 1942; George Washington Univ. Jr. Certificate 1938; Tenure at Supreme Court of Virginia is the longest is the Court's history at more than 45 years; Conference of Chief Justices, Pres. 1989-90; National Center for State Courts, Chair 1989-90; National Judicial Council for State and Federal Courts, Co-Chair 1992-97; Holds honorary LL.D.s from University of Richmond (1973), George Washington University (1987), College of William & Mary (1993), Order of the Coif, G.W. U., and many other honors; Circuit Court 1956-61, Trial Court Fairfax County 1943-51; U.S. Naval Reserve, Ensign 1945-46; Private Practice 1941-43, 1951-56.
Charles S. Russell	Appointed in 1982; Retired from the Supreme Court of Virginia in 1982; Returned to service as a Senior Justice in 2004.	Annually	- Biographical Information: LL.B. University of Virginia 1948; Appointed to Circuit Court in 1967; Private Practice 1951-67 in Arlington and Fairfax - Professional/Social Affiliations: Member Omicron Delta Kappa; Member of the Raven Society - Other: Attended Congressional Pages School (secondary education)
Roscoe B. Stephenson	Senior Justice since 1997 when he retired from the SC of Virginia.	Annually	- Biographical Information: Doctor of Jurisprudence 1947; B.A. 1943; both at Washington & Lee University; VSB Former Council Member, VBA Former VP; Honorary LL.D. from Washington & Lee (1983), Order of the Coif; Circuit Court 1973-81; Private practice,

			Covington and Clifton Forge 1947-73; Commonwealth's Attorney Alleghany County 1952-64; U.S. Army, Private 1942-43.
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## CONCLUSION

All the members of the Supreme Court of Virginia appear devoted to following the rule of law, principles of judicial restraint, and adhering to legislative authority in their judicial rulings. These points are clear in the cases reviewed here, as the Court is very respectful of the state legislature without abdicating its own responsibilities.

The Supreme Court of Virginia is not an activist court. As the opinions reviewed here demonstrate, the court has given every indication of its intent to strictly interpret its state's constitution and state statutes. It appears moderate and disciplined. In no opinions does it appear the justices wish to advance personal agendas. The Court does not appear to view itself as a player in the pro-life movement, but neither does it exhibit an attitude of not respecting life. Rather, when the law respects life, this Court will uphold those laws.

The Court upholds laws the citizens and elected legislators of Virginia have made and strictly adheres to those rules and regulations. This respect for the rule of law reveals a court that honors not only judicial restraint but a very high respect for the proper role of the judiciary – in interpreting law rather than making it. This is a court characterized by honoring the rule of law.