

# THE LEGAL CLIMATE IN WASHINGTON FOR PROTECTION OF LIFE

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*Roe v. Wade*<sup>2</sup> has, in large measure, prevented states from developing laws that protect innocent unborn life. As Justice Scalia observed in his dissent from *Planned Parenthood v. Casey*,<sup>3</sup>

By foreclosing all democratic outlet for the deep passions this issue arouses, by banishing the issue from the political forum that gives all participants, even the losers, the satisfaction of a fair hearing and an honest fight, by continuing the imposition of a rigid national rule instead of allowing for regional differences, the Court merely prolongs and intensifies the anguish.<sup>4</sup>

With speculation that the judicial tyranny of *Roe v. Wade* may be close to its end, attention naturally turns to the states. However, giving states the opportunity to defend life does not necessarily mean life will be protected. The purpose of this analysis is to look at the state of Washington and determine what current laws exist and the likelihood new statutes would survive constitutional challenge in the state's supreme court.

## I. LIFE ISSUES

### Abortion

Washington has a paucity of cases addressing the question of abortion in a modern context. This lack of a developed jurisprudence on the question of abortion, however, does not

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<sup>2</sup> 410 U.S. 113 (1973).

<sup>3</sup> *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

<sup>4</sup> *Id.* at 1001 (Scalia, J., dissenting).

mean Washington's law regarding abortion is undefined. Washington was one of the first states to liberalize its abortion laws in the late 1960s and early 1970s. By 1970, the law in Washington regarding abortion rights in general was set in voter's Referendum 20.<sup>5</sup> In that action, voters in Washington ratified a law that permitted a physician to perform an abortion with the consent of the mother in the first trimester of pregnancy. If the mother was a minor, the law required prior consent to the abortion on the part of the mother's legal guardian. This liberalized approach to abortion was re-emphasized in Washington in 1991 with the passage of voter's Initiative 120.<sup>6</sup> That initiative affirmed a strong public policy under Washington's law providing for the right to an abortion and set into place the basic approach to abortion decriminalization found in current state law. Thus, unlike most other states, Washington's legal scheme regarding abortion was not enacted in response to the federal Supreme Court's ruling in *Roe*; it, instead, is a creature of the political process dating from the late 1960s and very early 1970s, with a significant reaffirmation in the early 1990s of the right of a woman to choose an abortion.

The legal rules regarding abortion set up by Initiative 120 are currently codified in the state statutory code and referred to as the Reproductive Privacy Act.<sup>7</sup> The basic approach to abortion policy set out in Washington law recognizes a woman has a right to "choose or refuse" to use birth control or have an abortion, subject to certain limitations. Those limitations, of course, have to be read in light of *Roe*; *Doe v. Bolton*<sup>8</sup>, *Casey v. Planned Parenthood*<sup>9</sup>, and *Stenberg v. Carhart*.<sup>10</sup>

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<sup>5</sup> HISTORYLINK.ORG, WASHINGTON STATE LEGISLATURE SENDS ABORTION RIGHTS REFERENDUM TO VOTERS ON FEBRUARY 4, 1970, [http://www.historylink.org/essays/output.cfm?file\\_id=1284](http://www.historylink.org/essays/output.cfm?file_id=1284).

<sup>6</sup> Feminist Women's Health Center, *The Current Law on Abortion in WA State is Initiative 120*, <http://www.fwhc.org/abortion/120.htm>.

<sup>7</sup> *See id.*

<sup>8</sup> 410 U.S. 179 (1973).

<sup>9</sup> 505 U.S. 833 (1992).

<sup>10</sup> 530 U.S. 914 (2000).

As a general rule, Washington's approach to abortion allows abortion-on-demand prior to fetal viability and allows for abortion after such fetal viability if necessary to preserve the woman's life or health.<sup>11</sup> "Viability" is defined by state law as follows:

"Viability" means the point in the pregnancy when, in the judgment of the physician on the particular facts of the case before such physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.<sup>12</sup>

By statute, if the state offers maternity care to women either directly or via contract, equivalent benefits must be made available to support women who decide to terminate their pregnancies.<sup>13</sup>

Anyone who performs an unauthorized abortion may be charged with a class C felony under the law. However, there is a "good faith" defense available to such a charge:

The good faith judgment of a physician as to viability of the fetus or as to the risk to life or health of a woman and the good faith judgment of a health care provider as to the duration of pregnancy shall be a defense in any proceeding in which a violation of this chapter is an issue.<sup>14</sup>

State regulation of a woman's right to an abortion is permissible, but only within strictly constrained guidelines under the terms of Initiative 120. The state is allowed to regulate abortion, but only if the following conditions are met:

- (1) The regulation is medically necessary to protect the life or health of the woman terminating her pregnancy,
- (2) The regulation is consistent with established medical practice, and
- (3) Of the available alternatives, the regulation imposes the least restrictions on the woman's right to have an abortion[.]<sup>15</sup>

Washington law does recognize the right of medical professionals and institutions to refuse to participate in abortions. The law codifies this right and specifies no discrimination in

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<sup>11</sup> See WASH. REV. CODE § 9.02.110 (1992).

<sup>12</sup> § 9.02.170(1).

<sup>13</sup> § 9.02.160.

<sup>14</sup> § 9.02.130.

<sup>15</sup> § 9.02.140.

employment is permissible against a person who either "participates or refuses to participate" in an abortion.<sup>16</sup>

The most recent judicial decision to mention abortion was the case of *Anderson v. King County*.<sup>17</sup> In that case, the Washington Supreme Court narrowly rejected a claim there was a fundamental right to same-sex marriage. In its decision, a plurality of the court (Justices Madsen, Charles Johnson, and Alexander) examined federal fundamental rights jurisprudence and found there was a liberty interest in abortion guaranteed by the federal constitution.<sup>18</sup> The plurality also connected the fundamental right to marry to "fundamental rights of procreation, childbirth, abortion, and child-rearing."<sup>19</sup>

### **Parental Involvement for Abortion**

There is no existing requirement under Washington law for a minor to obtain parental consent for an abortion or for a minor to provide notification to her parents if she chooses to obtain an abortion. Washington did, at one time, have a statute requiring parental consent for a minor seeking an abortion. However, prior to Initiative 120, the requirement that a minor notify a parent or guardian prior to obtaining an abortion had been struck down by the Washington Supreme Court in *State v. Koome*.<sup>20</sup> In that case, the Washington Supreme Court, in a decision written by the late Justice Robert Utter, ruled minors had a right to choose abortion and efforts to require parental notification constituted an unjustifiable encumbrance on that right. The decision was based largely on federal case law—*Roe v. Wade*<sup>21</sup> and *Doe v. Bolton*.<sup>22</sup> There has been no Washington Supreme Court case post-*Casey v. Planned Parenthood*<sup>23</sup> regarding parental notification or consent requirements regarding a minor's right to abortion.

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<sup>16</sup> § 9.02.150.

<sup>17</sup> 138 P.3d 963 (Wash. 2006).

<sup>18</sup> *Id.* at 975 (citing *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997)).

<sup>19</sup> *Id.* at 978.

<sup>20</sup> 530 P.2d 260 (Wash. 1975).

<sup>21</sup> 410 U.S. 113 (1970).

<sup>22</sup> 410 U.S. 179 (1973).

<sup>23</sup> 505 U.S. 833 (1992).

A dissent was filed in the *Koome* case, written by then-sitting Justice Stafford and joined by three other of the then-sitting justices, which argued that a careful reading of *Roe* did not support the majority's contention that a parental notification requirement for minors seeking an abortion was outside the permissible bounds of legislative enactment regarding the right to privacy.<sup>24</sup>

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

Washington law contains two provisions protecting unborn children from non-abortion related violence inflicted by a perpetrator upon the mother of the child. The first of these classifies the intentional and unlawful killing of an "unborn quick child" as first degree manslaughter if the death of the child is accomplished "by inflicting any injury upon the mother of such child."<sup>25</sup> Under that statute, such a homicide is classified as a class A felony.<sup>26</sup> The second law protects an "unborn quick child" from substantial bodily harm suffered by the child as a result of a perpetrator "intentionally and unlawfully inflicting any injury upon the mother of such child."<sup>27</sup> Under the terms of the statute, such an offense is a class B felony under Washington law.<sup>28</sup>

While the term "unborn quick child" is not defined in these statutes, a Washington court of appeals decision regarding the applicability of the state's wrongful death statute<sup>29</sup> to unborn children specifically notes that, for criminal law purposes, an unborn child who is quick "is invariably an earlier stage of pregnancy than viability; fetuses less than two months' old have been 'quick' . . . ."<sup>30</sup> In that case, the Washington Division 1 Court of Appeals ruled on a wrongful death claim brought by a mother who had miscarried twins, prior to viability, as a

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<sup>24</sup> *Koome*, 530 P.2d at 272 (Stafford, J., dissenting).

<sup>25</sup> WASH. REV. CODE § 9A.32.060 (1997).

<sup>26</sup> § 9A.32.060(2).

<sup>27</sup> § 9A.36.021.

<sup>28</sup> § 9A.32.021(2)(a).

<sup>29</sup> § 4.24.010.

<sup>30</sup> *Baum v. Burrington*, 79 P.3d 456, 459 n.9 (Wash. Ct. App. 2003).

result of an abortifacient drug given to the mother by her physician.<sup>31</sup> The defendant filed a summary judgment motion arguing Washington law did not "recognize a cause of action for the wrongful death of a nonviable fetus that is not born alive."<sup>32</sup> The trial court granted summary judgment, and the court of appeals upheld the trial court's decision, finding the state statute governing wrongful death claims for children did not provide for recovery for the wrongful death of a non-viable unborn child.<sup>33</sup>

### **Assisted Suicide**

There is no Washington state case law on the topic of physician-assisted suicide. The practice remains illegal under the Revised Code of Washington.<sup>34</sup> In 1991, enough signatures were obtained to place an initiative on the statewide ballot to legalize physician-assisted suicide.<sup>35</sup> The initiative would have permitted a physician to prescribe medication to cause the death of a terminally ill patient. The initiative also would have allowed physicians to administer such medication to the patient if the patient was unable to take the drug him or herself. After a charged campaign, Initiative 119 was rejected by the voters, with 54% opposed to the measure and 46% voting in favor.<sup>36</sup> Other attempts at amending state law to permit physician-assisted suicide have also failed.<sup>37</sup> Former Washington State governor Booth Gardner, a Democrat, is

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

<sup>32</sup> *Id.* at 457.

<sup>33</sup> *Id.* at 459–60.

<sup>34</sup> WASH. REV. CODE § 70.122.100 (1992). "Mercy killing or physician-assisted suicide not authorized. Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing or physician-assisted suicide, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying." *Id.*

<sup>35</sup> Andrew M. Jacobs, *The Right to Die Movement in Washington: Rhetoric and the Creation of Rights*, 36 HOW. L.J. 185 (1993).

<sup>36</sup> *Id.*; Bryan A. Kelly, *The Right to Die: Definitional Inquiry and the Search for Truth*, 2 PEPP. DISP. RESOL. L.J. (2002).

<sup>37</sup> Washington Death with Dignity Act, S.B. 6853 (2006). This Bill was introduced in early 2006 and referred to the Senate Committee on Health & Long Term Care. *Id.* It was never voted out of committee during the 2006 legislative session.

currently leading another initiative campaign to legalize physician-assisted suicide in the state,<sup>38</sup> and there is a proposed bill before the state legislature that would legalize the practice.

### **Healthcare Rights of Conscience**

There is no Washington state case law on the topic of healthcare rights of conscience. As noted previously in the discussion of Washington's law regarding abortion, no medical personnel or institution may be required to perform an abortion.<sup>39</sup> Currently, there is considerable controversy over whether this law extends to protect pharmacists in the performance of their professions from filling prescriptions for drugs that would cause an abortion. The Washington State Board of Pharmacy proposed a conscience clause provision that would have protected pharmacists from having to fill a prescription if doing so would have violated their moral, ethical, or religious beliefs.<sup>40</sup> The proposed conscience clause was strictly limited, requiring pharmacists who refused to fill such prescriptions to provide a customer with a referral to get the prescription filled.<sup>41</sup> The proposed conscience clause created a political firestorm and was denounced by Governor Christine Gregoire, a Democrat.<sup>42</sup> After coming under intensive pressure from Governor Gregoire and several pro-abortion activist organizations, including Planned Parenthood, the Board of Pharmacy retracted its conscience clause proposal. Current proposed rules by the state Board of Pharmacy do not include a specific conscience clause protecting pharmacists.

### **Cloning**

There is no Washington state case law on the topic of cloning.

### **Destructive Embryo Research**

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<sup>38</sup> Carol M. Ostrom, *Gardner, 'I've Thought About the End,'* SEATTLE TIMES, Feb. 10, 2006, available at <http://archives.seattletimes.nwsourc.com/cgi-bin/texis.cgi/web/vortex/display?slug=booth10m&date=20060210&query=booth+gardner>.

<sup>39</sup> WASH. REV. CODE § 9.02.150 (1992).

<sup>40</sup> National Council of Jewish Women, *Washington State Board of Pharmacy Issue: Conscience Clause for Pharmacists*, <http://www.ncjwseattle.org/PharmacyBoard.htm>.

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

There is no Washington state case law directly addressing the issue of destructive embryo research.

As the preceding overview of Washington law demonstrates, the primary origin of law regarding the life issues in Washington is statutory in nature. The courts have done very little pioneering in this area; however, in those areas where the courts have examined placing limitations on the right to abortion or in regard to the legal status of unborn children, the courts have taken a consistent stand against extending the protections of law to unborn, nonviable children.

## II. JUDICIAL RESTRAINT

The Washington Supreme Court, like many courts, is split between those who favor judicial restraint and those either openly or covertly engaging in judicial activism. A bellwether case was the widely reported constitutional challenge to the Washington statute limiting marriage to opposite-sex couples. The plaintiffs (same-sex couples) had filed actions against two different county clerks who refused to issue a marriage license to a same-sex couple. In both cases, the trial courts issued opinions holding the Defense of Marriage Act (DOMA) unconstitutional. The trial courts then stayed any remedy pending appeal of the merits of the ruling to the Supreme Court. After hearing oral argument, the Court spent 17 months deliberating and then issued an opinion in July 2006 narrowly upholding the DOMA. Four of the justices (Bridge, Chambers, Fairhurst, and Owen) dissented and would have recognized a right to same-sex marriage as a matter of state constitutional law; while two justices (Jim Johnson and Sanders) held Washington's restriction of marriage to opposite-sex couples was perfectly constitutional; and three justices (Alexander, Charles Johnson, and Madsen) held the constitutional ground asserted by the plaintiffs did not justify invalidating the statute.<sup>43</sup> Even though five members of the court (Jim Johnson, Sanders, Alexander, Charles Johnson, and

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<sup>42</sup> Daniel Vock, *FDA Ruling Puts Pharmacists in Crossfire*, STATELINE.ORG, Sept. 6, 2006.

<sup>43</sup> *Andersen v. King County*, 138 P.3d 963 (Wash. 2006).

Madsen) refused to utilize its power to impose same-sex marriage, the plurality opinion written by three of the five members who rejected the constitutional claim for same-sex marriage explicitly observed that

Plaintiffs have affirmatively asked that we not consider any claim regarding statutory benefits and obligations separate from the status of marriage. We thus have no cause for considering whether denial of statutory rights and obligations to same-sex couples, apart from the status of marriage, violates the state or federal constitution.<sup>44</sup>

Thus, only two of the justices (Jim Johnson and Richard Sanders) could be said to have upheld the principle of judicial restraint; four (Bridge, Chambers, Fairhurst, and Owen) clearly ignored it; and three (Alexander, Charles Johnson, and Madsen) could be said to be “on the fence.”

A more extensive analysis of the opinions of the members of the Washington Supreme Court was recently promulgated by the Federalist Society.<sup>45</sup> That white paper examines approximately thirty cases decided by the Supreme Court and describes the extent to which individual justices either deferred to statutory and constitutional constraints or else substituted the individual justice's assessment of what would be good public policy. Many of the cases involved property rights issues, in which some members of the court permitted deviations from constitutional requirements, where a governmental agency appeared to be doing something that was in the public interest, while other members of the court regarded the constitutional protections to property owners as more inflexible. For example, in *HTK Management, LLC v. Seattle Popular Monorail Authority*,<sup>46</sup> the Washington Supreme Court upheld the Seattle Monorail's condemnation of the Sinking Ship garage in downtown Seattle for the construction of a monorail station. Although the Monorail Authority conceded that only one-quarter to one-third of the parcel would be permanently needed for the station, it initiated condemnation proceedings

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<sup>44</sup> *Id.* at 985.

<sup>45</sup> David K. DeWolf, Andrew C. Cook, & Seth L. Cooper, *The Washington Supreme Court: A Special Issue Report*, available at <http://www.fed-soc.org/Publications/White%20Papers/Washington%20Special%20Issue%20Report-FINAL.pdf>.

for the property owners' entire parcel. The property owners presented evidence to the trial court that the Monorail sought to use the remainder of the parcel for its own profit by selling the remaining property at an increased price following construction of the station. A 7-2 majority of the Washington Supreme Court voted to uphold the Monorail's condemnation of the entire parcel. Writing for the majority, Justice Barbara Madsen concluded the Monorail's determination of whether the entire parcel's condemnation proceeded in furtherance of a "public use" was entitled to "great weight."<sup>47</sup> Justice Madsen also wrote that a local authority's determination of whether condemnation proceedings are supported by a "public necessity" is a "legislative question," and not a judicial one.<sup>48</sup> Chief Justice Gerry Alexander and Justices Susan Owens, Charles Johnson, Bobbe Bridge, and Mary Fairhurst joined Justice Madsen's opinion. Writing in dissent for himself and Justice Richard Sanders, Justice James Johnson concluded the taking of the portions of the parcel not needed for the station violated Article I, Section 16, of the Washington Constitution. He emphasized the plain terms of that provision mandated that whether private property be taken for public use "shall be a judicial question . . . without regard to any Legislative assertion that the use is public."<sup>49</sup> Justice Johnson maintained an easement for use of the entire parcel during construction of the station, coupled with just compensation for rent use, was appropriate. However, once construction concluded, the excess land should be returned to the owners.

Similar conflicts arose over claims government agencies had exercised powers not granted to them by the constitution. For example, in *Larson v. Seattle Popular Monorail Authority*,<sup>50</sup> the Washington Supreme Court again upheld the taxing authority of the Monorail Authority in the face of constitutional and statutory challenges. Justice Barbara Madsen's opinion, joined by Chief Justice Gerry Alexander and Justices Susan Owens, Charles Johnson,

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<sup>46</sup> 121 P.3d 1166 (Wash. 2005).

<sup>47</sup> *Id.* at 629.

<sup>48</sup> *Id.* at 630, 635.

<sup>49</sup> *Id.* at 648.

<sup>50</sup> 131 P.3d 892 (Wash. 2006).

Bobbe Bridge, Tom Chambers, and Mary Fairhurst, held the Monorail's Board could wield taxing power even though only two of the nine Board members were subject to popular elections. Only Justice James Johnson and Justice Richard Sanders dissented, since they concluded the Monorail Board could not exercise taxing power since it was not subject to popular elections. Citing the principle of "no taxation without representation," the dissenters asserted taxing power is an exclusively legislative power and that, accordingly, the Monorail Board's wielding of taxing power violated the separation of powers.<sup>51</sup>

A final case, touching on the state's authority with respect to family decisions, is *In re Parentage of L.B.*<sup>52</sup> The plaintiff, Carvin, was the former same-sex partner of the mother of L.B., who had ended her relationship with Carvin when L.B. was six and decided to marry the father of L.B. Carvin sought permission to continue parenting L.B., and when permission was denied, she sued for recognition of her parental rights.<sup>53</sup> The trial court denied Carvin's petition, but the Court of Appeals reversed, finding the Washington Uniform Parentage Act did not constitute the exclusive basis for establishing parentage but instead could be supplemented by the category of common law or "de facto" parentage.<sup>54</sup> The case was then appealed to the Washington Supreme Court, which by a 7-2 majority affirmed the Court of Appeals' finding that "de facto" parentage could be established outside the categories recognized under the statute.<sup>55</sup> Justice Bobbe Bridge wrote the court's opinion on behalf of the majority and was joined by Chief Justice Gerry Alexander and Justices Susan Owens, Charles Johnson, Barbara Madsen, Tom Chambers, and Mary Fairhurst.<sup>56</sup> Bridge's opinion cited recent cases in Wisconsin and Massachusetts recognizing "de facto" parents as persuasive authority supporting her opinion for the majority.<sup>57</sup> The majority remanded the case to the trial court to determine whether Carvin

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<sup>51</sup> *Id.* at 900.

<sup>52</sup> 122 P.3d 161 (Wash. 2005).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

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

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

met the standard for "de facto" parent. However, the majority rejected the alternative holding of the Court of Appeals that, if Carvin failed to establish parentage, she could still be entitled to visitation under a Washington statute permitting a court to order visitation when it would "serve the best interest of the child."<sup>58</sup> Justice James Johnson, joined by Justice Richard Sanders, dissented. They rejected the majority's judicial amendment to the UPA, noting that, in specifying the methods by which one can be granted the status of parent, the legislature was not only specifying the means by which individuals can achieve the status of parents but was also protecting parents from intrusion upon their rights as parents by persons whose claims did not meet the statutory requirements.<sup>59</sup> By creating a new category of parent, the majority was not only usurping the power of the legislature but also imperiling the security of the parent-child bond.

To summarize, the Washington Supreme Court has, at best, a mixed record of observing the principle of judicial restraint. Under intense public scrutiny, only four of the nine members of the court have been willing to take a position that could fairly be called judicial activism. But in other less visible cases, the justices' fidelity to the rule of law has been inconsistent.

### **III. THE COURT**

The Washington Supreme Court consists of nine members who are elected to staggered six-year terms. There is no limitation on the number of times a justice can be re-elected. If a justice dies or retires before the expiration of his/her term, the governor may appoint a replacement to serve until the next general election. Until recently, most elections were either uncontested or were considered pro forma. In 1990, then-Chief Justice Keith Callow was opposed by a Tacoma attorney named Charles Johnson, who paid a \$650 filing fee and did not campaign. To everyone's surprise, Johnson emerged as the winner. Most observers attributed his victory simply to the more pleasing sound of "Charles Johnson" compared with "Keith

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<sup>58</sup> WASH. REV. CODE § 26.10.160(3) (2004).

<sup>59</sup> *HTK Management, LLC*, 122 P.3d 161.

Callow." Since then, there have been contested elections, but the last year featured significant campaign expenditures on behalf of both the incumbents and challengers to sitting justices. Campaign spending totaled approximately \$5 million.

In one race, John Groen, an attorney from Bellevue whose practice emphasized representation of property owners, challenged Chief Justice Gerry Alexander. He announced his candidacy in April 2006, before the Washington Supreme Court had announced its decision in the same-sex marriage case, *Andersen v. King County*.<sup>60</sup> Groen's supporters emphasized his commitment to judicial restraint and protection of property rights and spent more than \$1 million to purchase advertising. Alexander voted with the majority in *Andersen* and won re-election 53% to Groen's 47%. In another contested race, Justice Susan Owens was challenged by Stephen Johnson, an attorney known for his defense of property rights and commitment to judicial restraint. Based upon his superior performance in candidate forums, Johnson was endorsed by approximately half of the state newspapers. Owens had been one of the dissenting votes in the same-sex marriage case and did not shy away from her reputation as a judicial activist. In addition to receiving endorsements from many mainstream groups, such as law enforcement, she emphasized her commitment to individual rights. She was re-elected by a margin of 60% to 40%.

In summary, the Supreme Court elections have, in recent years, received much more attention, and much of the attention has focused on the question of whether judges should resist the temptation toward judicial activism. However, the recent results are not encouraging. Given the dominance of "progressive" voices in the electoral process, a reputation for judicial restraint is not necessarily an asset.

### **Members of the Court**

The following chart describes the members of the court, their educational and professional background, current and past affiliations, and other salient information that might bear on the likelihood they would enforce laws defending life.

<b>Member</b>	<b>First Elected</b>	<b>Term Expires</b>	<b>Miscellaneous</b>
Chief Justice Gerry Alexander	1994	2011 (due to mandatory retirement age)	- Biographical Information: U. of Washington Law School, J.D., 1964 - Civic/Social Affiliations: American Bar Association Member, Judicial Administration Division; SBA & Thurston County Bar Association, Judicial Member; University of Seattle School of Law, Member, Board of Visitors (Emeritus); Puget Sound Inn of Court; Statute Law Committee, Chair
Associate Chief Justice Charles W. Johnson	1991	2008	- Biographical Information: University of Puget Sound (now Seattle University), J.D., 1976 - Professional Affiliations; American Bar Association, Member; American Judicature Society, Member; Washington State Bar Association, Member; Tacoma Pierce County Bar Association, Member - Past Affiliations: Superior Court Mental Health Commitment; Public Defender Prosecutor and Defender; Pro Tem Judge
Barbara	1992	2010	- Biographical Information: Gonzaga Law

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<sup>60</sup> Andersen v. King County, 138 P.3d 963 (Wash. 2006).

Madsen		<p>School, J.D., 1977; Municipal Court, Appointed Commissioner and Judge, 1985–1992; Seattle City Attorney, Special Prosecutor, 1984–1985; Seattle City Attorney, Assistant City Attorney, 1982–1985; Snohomish County Public Defender, Everett District Court, Snohomish County Superior Court, Felony Attorney, 1980–1981; Airport, Roxbury, Federal Way, Aukeen District Courts, Seattle Municipal Court, Kent Municipal Court, Associated Counsel for the Accused; Misdemeanor/Felony Attorney, 1977–1980; Seattle District Court, Superior Court, Administrative Review Hearings Before the Parole Board, Felony Attorney, 1977–1980; Gonzaga University Legal Assistance, 1976–1977</p> <p>- Civic/Social Affiliations: American Judges Association, Member; National Association of Women Judges, Member; A.J.S., Member; Whittier Elementary PTA, Member; Tacoma Public Schools, Volunteer</p> <p>- Past Affiliations: Production Staff, Catholic Northwest Progress Newspaper, 1972–1974</p>
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Richard B. Sanders	1995	2010	<p>- Biographical Information: University of Washington School of Law, J.D. 1969; Private Practice, 1969–1995</p> <p>- Other: Prior to joining the court his legal practice specialized in representing property owners in disputes with government agencies. The day he was sworn in as a justice he walked from the Supreme Court building to a March for Life rally held at the capitol and told the crowd that the legal system's "top duty" was to protect human life. For his one-minute speech he was declared in violation of the Judicial Code of Conduct, a finding that was later unanimously overturned by the state supreme court. He has been a maverick on the court, emphasizing individual rights both in the context of criminal procedure as well as in property rights cases.</p>
Bobbe Bridge	Governor or Locke/ 1999 (re-elected,	2008	<p>- Biographical Information: University of Washington School of Law, J.D. 1976</p> <p>- Professional Affiliations: Washington State Bar Association, Member, Committee of Law Examiners Area: Constitutional &amp; Family Law, 1984–1986; Washington State Bar Association,</p>

	2002)	<p>Member, Committee of Law Examiners, Screening Committee; King County Superior Court, Chair, Family Law Committee; Family/Juvenile Law, Chair; Washington Women Lawyers, Member; Northwest Women's Law Center, Member; DSHS Children, Youth and Family Services, Member, Advisory Committee, 1992–present; Governor's Juvenile Justice Advisory Committee, Member, 1992–present</p> <p>-Civic/Social Affiliations: Office for Women's Rights, Chair, Executive Director Search Committee, 1980–1985; Greater Seattle Chamber of Commerce, Member, Board of Trustees, 1987–1990; University of Washington Arts and Sciences Development Board, Member, Advisory Committee, 1987–present; Privacy Fund, Member, Board of Directors, 1988–1990; Governor Booth Gardner's Transition Team, Chair, Public Safety, 1984–1985; American Jewish Committee, Member, Board of Directors, 1978–present; American Jewish Committee, Member, National Board of Governors, 1983–1989; Alki Foundation, Member, Board of</p>
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		<p>Trustees, 1983–1990; Women's Funding Alliance Advisory Board, Member, 1985–1988; Washington Council on Crime and Delinquency, Member, Board of Directors, 1986–1990; Woodland Park Zoological Society, Member, Board of Directors, 1985–1988; Seattle-King County Municipal league, Member, 1978–1981; Northwest Medication Service, Member, Board of Directors, 1982– 1985; Seattle Office of Women's Rights, Member, Search Committee for Director, 1980; League of Women Voters, Member, 1979–present; Superior Court Judges' Association, Member, Board of Directors; State Task Form on Juvenile Issues, Chair, Subcommittee on Families at Risk; Governor's Council on Families, Youth, and Justice, Co-Chair; Child Protection Roundtable, Member; Seattle Youth Symphony, Board Member; Seattle Children's Home, Board Member</p> <p>- Past Affiliations: Garvey, Schubert &amp; Barer, Partner, 1976–1990; Seattle Women's Commission, Commissioner, 1979–1985; Seattle Women's Commission,</p>
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			<p>President, 1981–1983; Seattle Women's Commission, Secretary, 1980–1981</p> <p>- Other: Bridge was arrested for driving under the influence in 2003 but entered a diversion program that avoided criminal conviction. She remained on the bench despite criticism, and voted with the dissent in the same-sex marriage case. It is rumored that she is unlikely to seek re-election when her term expires in 2008.</p>
Tom Chambers	2001	2012	<p>- Biographical Information: University of Washington School of Law, J.D., 1969</p> <p>- Articles: TOM CHAMBERS TRIAL NOTEBOOK</p> <p>- Professional Affiliations: American College of Trial Lawyers; Washington State Bar Association, President (1997–1998); Washington State Trial Lawyers Association, President (1985–1986)</p>
Susan Owens	2001	2012	<p>- Biographical Information: University of North Carolina, J.D., 1975; Private Practice, 1978–present; Evergreen Legal Services, 1976–1978; Trial Judge, 1987–1992; 1994–present</p> <p>- Professional Affiliations: District and Municipal Judges' Association, Member;</p>

			<p>Board of Governors, Vice President, 1992–present; Supreme Court Rules Committee  Court Interpreter Certification Advisory  Commission Board for Court Education  - Other: Owens dissented in the same-sex marriage case and won re-election by a wide margin in 2006.</p>
Mary Fairhurst	2003	2010	<p>- Biographical Information: Gonzaga Law School, J.D., 1984  - Professional Affiliations: Washington State Bar Association (President, 1997–1998); Gonzaga Law School Board of Advisors  - Other: Fairhurst was first elected in 2003, narrowly defeating James Johnson, who was elected two years later. She worked either for the Washington Attorney General's office or the State Bar Association until her election to the court. Although she stresses on her web page that she "comes from a large, loving family which places great value on fairness, service and the dignity of every man, woman and child," and her family was known to the community as a strong Catholic family, she voted with the dissent in the same-sex marriage case and she was</p>

			endorsed by NARAL during her 2003 campaign.
James Johnson	2004	2011	- Biographical Information: University of Washington School of Law, J.D., 1975; Washington Attorney General's Office, 1973–1993 - Other: Since his election Johnson has been one of the more consistent defenders of judicial restraint, writing a concurring opinion in the same-sex marriage case (joined by Justice Sanders) that affirmed the constitutionality of the Washington DOMA.

## CONCLUSION

In summary, it would be difficult to characterize Washington as an especially promising venue for statutory or judicial initiatives to enhance the legal protection of innocent life. However, initiatives have the greatest chance of surviving judicial scrutiny if they engage well-established public interests and attract enough attention to minimize the risk of judicial policymaking.

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