The Difficulty in Evaluating the Life Positions of State Judges

James S. Cole, General Counsel
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Missouri election ballots contain choices for judges as well as candidates for other positions. Often, Missouri Right to Life is asked to provide some type of guidance on the pro-life position of judges and judicial candidates. Unfortunately, such guidance is often beyond anyone's capability, for the necessary information is not available.

There are few if any reliable sources of information on the philosophies or beliefs of individual judges on life issues. Until the last few years, decisions on life issues were extremely rare in state courts. Pro-abortionists have preferred to file lawsuits in federal courts. Thus, most state judges have not issued any rulings on life-related issues, whether such rulings are published opinions of appellate judges or unpublished rulings of trial judges.

In those rare cases where a state judge has made a ruling on a life issue, one must consider the level on which the judge served at the time the decision was rendered. All judges are bound by applicable decisions of the U. S. Supreme Court on questions of federal law. All Missouri judges on lower levels are bound by applicable decisions of the Missouri state courts at higher levels as well. The subordinate role of intermediate and trial judges presents a difficult problem in how to evaluate their rulings. Assume, for example, that a circuit judge who is quite pro-life in his beliefs is presented with a case in which a party seeks to define the proper scope of a statute that regulates abortion procedure in some way, the precise question being, does it apply before viability? The circuit judge (trial judge), reacting to some of the arguments by the parties, takes an unexpected turn in the case and rules that a health exception must be found in the statute before he can say it is valid at all, whether before or after viability. He writes that the governing precedents of the U. S. Supreme Court require a health exception, but he further finds that such an exception is implied in general language in the statute, so the law is valid. He then rules it applies to all stages of development. Does that ruling mean the judge is pro-abortion (because a health exception under Supreme Court rulings is so broad that it effectively "guts" the statute) or pro-life (because he found the law to apply at all stages)?

Assume further that the Court of Appeals hears an appeal from the circuit judge's ruling. The appellate judges rule that the trial judge went too far by adjudicating a question that was not really presented to him; he should not have written anything about a health exception because addressing a federal constitutional question was not necessary for a decision on the scope of the statute. The Court of Appeals reverses the circuit judge in part and affirms in part. It says that whether the statute is constitutional is not before the state courts, and says that the statute applies to all stages of an unborn baby's development, without a health exception. So in this hypothetical situation, is the trial judge to be considered as pro-life or pro-abortion? Are the appellate judges who overturned the trial judge to be considered pro-life or pro-abortion? The hypothetical situation above is a simplified version of what went on in a real Planned Parenthood case that was tried in Missouri state courts. There are no simple answers to these questions.

For all of these reasons, it is quite difficult to evaluate judges in a fashion similar to how legislators are evaluated. A different approach, using a rule of thumb, appears to be the best we can do. For judges on retention ballots (i.e., "Should Judge X be retained in office?") one should consider which governor first appointed the incumbent to the bench. If it was Governor Carnahan, Holden, or Nixon it is more probable than not that the judge is pro-abortion ("pro-choice"). If the judge was first appointed by Governor Blunt, Ashcroft, Bond, or
Teasdale, it is more probable than not that the judge is pro-life. The Missouri Blue Book (paper or on-line versions) contains biographies of judges, when they were first appointed, and the years of each governor's term. One can identify who was the sitting governor during the year of the judge's first appointment to the bench and gauge his or her positions on life issues accordingly. The rule is "rough justice" at best, and it may perhaps be unfair to one or another individual judge, but it is as accurate a measure as any that is available at the present time.

Missouri Supreme Court and Appeals Court Judges are appointed. Circuit and Associate Circuit judges in the Kansas City area (Platte, Clay, Jackson Counties) and St. Louis area (St. Louis City and St. Louis Co.) are also selected by the governor.

### List of Judges on Missouri Ballots With Appointing Governor

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<tr>
<th>Courts and Judges</th>
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<tr>
<td><strong>Missouri Supreme Court</strong></td>
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<tr>
<td>Zel Fischer</td>
<td>Matt Blunt, 2008</td>
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<td><strong>Court of Appeals – Eastern District</strong></td>
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<td>Mary Kathryn Hoff</td>
<td>Ashcroft, - Circuit Judge, 1989</td>
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<td>Bob Barney</td>
<td>Carnahan, 1995</td>
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<td><strong>Court of Appeals – Western District</strong></td>
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<td>Victor Howard</td>
<td>Carnahan, 1996</td>
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<td>James Edward Welsh</td>
<td>Blunt, 2007</td>
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<td>Alok Ahuja</td>
<td>Blunt, 2007</td>
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<td>Mark Pfeiffer</td>
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<td>Karen Mitchell</td>
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<td><strong>Circuit No. 7</strong></td>
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<td>Shane T. Alexander</td>
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<td>Elizabeth K. Davis</td>
<td>Carnahan - Assoc. Circuit, 1997</td>
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<td><strong>Circuit No. 16</strong></td>
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Sandra Midkiff  Holden, 2002
David Byrn  Blunt, 2008
Dale J. Youngs  Nixon, 2009
Joel F. May  Blunt, 2008
Charles E. Atwell  Carnahan, 1996
Brent W. Powell  Blunt, 2008
Edith L. Messina  Bond, 1984
Jay A. Daugherty  Ashcroft, 1991
Kathleen A. Forsyth  Holden, 2003

Circuit No. 21

Thomas J. Prebil  Nixon, 2009
Carolyn C. Whittington  Holden, 2001
Barbara W. Wallace  Blunt, Circuit, 2008
James R. Hartenbach  Carnahan, 1995
Gloria Clark Reno  Bond, 1983

Circuit No. 22

Mark H. Neill  Blunt, Circuit Judge, 2008
Angela Turner Quigless  Holden, 2002
Philip D. Heagney  Carnahan, Assoc. Circuit, 1995
Bryan L. Hettenbach  Carnahan, Circuit Judge, 2003
Dennis M. Schaumann  Carnahan, 1996
Robin Ransom Vannoy  Blunt, 1994
David C. Mason  Carnahan, Assoc. Circuit, 1994
Lisa S. Van Amburg  Carnahan, 1997
Thomas J. Frawley  Blunt, 1994

Associate Circuit No. 6

James W. Van Amburg  Carnahan, 1993

Associate Circuit No. 7

David P. Chamberlain  Blunt, 2008
Don Norris  Holden, 2004
Associate Circuit No. 16

Richard T. Standridge                  Carnahan, 1993
Gregory Burnett Gillis               Holden, 2001
Margaret L. Sauer                  Carnahan, 2000
Twila Kay Rigby                      Carnahan, 1997
Christine Theresa Sill-Rogers         Carnahan, 1993
Jeffrey L. Bushur                    Carnahan, 2000

Associate Circuit No. 21

Mary Elizabeth Ott             No Info Available, likely a Nixon appt.
Brenda Stith Loftin             Carnahan, 1993
Ellen Hannigan Ribaudo         No Info Available, likely a Nixon appt.
Lawrence J. Permuter            Nixon, 2009
Patrick Clifford                Teasdale, 1979
Dennis Neil Smith               Carnahan, 1995
Judy Draper                      Holden, 2004

Associate Circuit No. 22

Theresa Counts Burke            Blunt, 2008
Michael F. Stelzer             Holden, 2004
Paula Perkins Bryant           Holden, 2004
Elizabeth Byrne Hogan           Blunt, 2005
Barbara T. Peebles             Carnahan, 2000