

## **The Difficulty in Evaluating the Life Positions of State Judges**

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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have not issued any rulings on life-related issues, whether such rulings are published opinions of appellate judges or unpublished rulings of trial judges.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**

#### **Courts and Judges**

#### **Appointed By:**

#### **Missouri Supreme Court**

Zel Fischer

Matt Blunt, 2008

#### **Court of Appeals – Eastern District**

Mary Kathryn Hoff

Ashcroft, - Circuit Judge, 1989  
Carnahan – Court of Appeals, 1995

#### **Court of Appeals – Southern District**

Bob Barney  
Don E. Burrell, Jr.

Carnahan, 1995  
Blunt, 2008

#### **Court of Appeals – Western District**

Victor Howard  
James Edward Welsh  
Alok Ahuja  
Mark Pfeiffer  
Karen Mitchell

Carnahan, 1996  
Blunt, 2007  
Blunt, 2007  
Nixon, 2009  
Nixon, 2009

#### **Circuit No. 7**

Shane T. Alexander  
Elizabeth K. Davis

Blunt, 2008  
Carnahan - Assoc. Circuit, 1997  
Blunt – Circuit Judge, 2007

#### **Circuit No. 16**

Sandra Midkiff  
David Byrn  
Dale J. Youngs  
Joel F. May  
Charles E. Atwell  
Brent W. Powell  
Edith L. Messina  
Jay A. Daugherty  
Kathleen A. Forsyth

Holden, 2002  
Blunt, 2008  
Nixon, 2009  
Blunt, 2008  
Carnahan, 1996  
Blunt, 2008  
Bond, 1984  
Ashcroft, 1991  
Holden, 2003

### **Circuit No. 21**

Thomas J. Prebil  
Carolyn C. Whittington  
Ellen Levy Siwak

Nixon, 2009  
Holden, 2001  
Holden, Assoc. Circuit, 2002  
Blunt, Circuit, 2008  
Carnahan, 1995  
Bond, 1983  
Nixon, 2009

Barbara W. Wallace  
James R. Hartenbach  
Gloria Clark Reno

### **Circuit No. 22**

Michael K. Mullen

Holden, Assoc. Circuit, 2001  
Blunt, Circuit Judge, 2008  
Holden, 2002  
Carnahan, Assoc. Circuit, 1995  
Holden, Circuit Judge, 2003  
Carnahan, 1996  
Blunt, 2008  
Carnahan, Assoc. Circuit, 1994  
Carnahan, 1997  
Blunt, 2008  
Ashcroft, 1991  
Holden, 2003  
Ashcroft, 1991

Mark H. Neill  
Angela Turner Quigless

Philip D. Heagney  
Bryan L. Hettenbach  
Dennis M. Schaumann

Robin Ransom Vannoy  
David C. Mason  
Lisa S. Van Amburg  
Thomas J. Frawley

### **Associate Circuit No. 6**

James W. Van Amburg

Carnahan, 1993

### **Associate Circuit No. 7**

David P. Chamberlain  
Don Norris

Blunt, 2008  
Holden, 2004

**Associate Circuit No. 16**

Richard T. Standridge  
Gregory Burnett Gillis  
Margaret L. Sauer  
Twila Kay Rigby  
Christine Theresa Sill-Rogers  
Jeffrey L. Bushur

Carnahan, 1993  
Holden, 2001  
Carnahan, 2000  
Carnahan, 1997  
Carnahan, 1993  
Carnahan, 2000

**Associate Circuit No. 21**

Mary Elizabeth Ott  
Brenda Stith Loftin  
Ellen Hannigan Ribaud  
Lawrence J. Permuter  
Patrick Clifford  
Dennis Neil Smith  
Judy Draper

No Info Available, likely a Nixon appt.  
Carnahan, 1993  
No Info Available, likely a Nixon appt.  
Nixon, 2009  
Teasdale, 1979  
Carnahan, 1995  
Holden, 2004

**Associate Circuit No. 22**

Theresa Counts Burke  
Michael F. Stelzer  
Paula Perkins Bryant  
Elizabeth Byrne Hogan  
Barbara T. Peebles

Blunt, 2008  
Holden, 2004  
Holden, 2004  
Blunt, 2005  
Carnahan, 2000