

Washington Judicial Elections
Updated 11/11/02

1. Op-ed by John Webster states: “Chief Justice [of the Washington State Supreme Court] Richard Guy’s impending retirement highlights the need for judges of his enlightenment and stature.” Webster speaks out against the growing politicization of judicial campaigns and warns against the Court becoming “a branch office of Seattle’s law firms.” Instead, Webster argues that the Bench must seat “fair-minded persons” who represent the geographical diversity of the state. John Webster, *Some Should Be From Our Region*, The Spokesman Review (Spokane, WA), May 23, 2000.
2. Article reports that, for only the second time since Washington became a state, the November election will include two races for the state supreme court in which no incumbent candidate will be running. The article notes that, for several years, “a majority of justices have gotten onto the court by gubernatorial appointments to vacant seats. That occurs when judges resign before completing their term, allowing the governor the opportunity to appoint a judge to serve until the next election. When election time comes around, the position already has an incumbent, although not an elected one.” There are currently three candidates for of the two races. Neil Modie, *Voters to Pick Two Justices*, Seattle Post-Intelligencer, July 11, 2000.
3. Article reports that the results of two of last week’s Washington Supreme Court primaries have prompted calls for the appointment of judges. In one race, Susan Owens, a county district judge, rated “adequate” by the state bar defeated three other candidates with more experience and whom the bar rated “exceptionally well-qualified.” In another race, James Foley, an attorney who has never served as a judge, defeated a state appellate judge who has served on the bench for 16 years. Observers contend that, in spite of a state-wide mailing to inform voters of the candidates’ qualifications, the familiarity of their names was the reason for Owens’ and Foley’s success. Many voters, apparently, associated Foley with Tom Foley, the former U. S. House Speaker and Owens’ “familiar Anglo surname [seemed to fit] in with the other justices.” Vanessa Ho, *Supreme Court Primary Raises Questions about Electing Judges*, Seattle Post-Intelligencer, September 21, 2000.
4. Op-ed by Franklin W. Shoichet, member of the King’s County, Washington, Bar Association’s Judicial Screening Committee, argues that judicial elections place qualified candidates on the bench. Shoichet asserts, “show me a losing campaign for judicial office. I’ll show you a candidate who deserved to lose -- not because he or she . . . would have made a bad judge but usually because of foolish

- campaign decisions . . . or a failure to understand that real people -- not just lawyers -- cast votes and must be persuaded to vote for you.” Moreover, according to Shoichet, three-quarters of Washington’s judiciary were initially appointed by the governor to fill mid-term vacancies and thus went through an intensive vetting process before taking their seats. He warns that “a shift away from voter election to merit selection does nothing more than shift the politics in the process from the voting booth to the back room.” Franklin Shoichet, *Earning Votes Should be Humbling for a Judicial Candidate*, Seattle Post-Intelligencer, October 22, 2000.
5. Article reports that, with the 2000 Washington Supreme Court elections, “the Washington Supreme Court now has more women than any other state Supreme Court or the U.S. Supreme Court.” Four of the nine justices are women. Justice Susan Owens states that “it’s nice to see the face of the judiciary has changed to reflect the diversity in our society.” Rebecca Cook, *Washington High Court Sets Record for Women*, The Oregonian, January 9, 2001.
 6. Article reports that, with the retirement of Justice Richard Guy from the Washington Supreme Court, state lawmakers are considering proposals to make sure that the Court represents an array of geographical interests. With Guy’s stepping down, the high court currently has no Justices from eastern Washington, while it seats six from the Seattle-Tacoma area. Options include having Justices elected by congressional district or by the divisions of the Court of Appeals. Justice Guy states that “I don’t think there is a great crying need for geographic representation by the public.” For example, defeated 2000 state Supreme Court candidate Jeff Sullivan lost Spokane County even though he was the only candidate from eastern Washington. Sullivan disagrees with Justice Guy, noting that “irrigation . . . is a key factor in eastern Washington’s economy and not just something West-siders do when they hook up their garden hoses.” Newly elected Chief Justice Gerry Alexander has said that he would like to poll the state’s judges for their views before supporting proposals for a geographically based election scheme. Hunter T. George, *No Voice from Eastern Washington*, Seattle Post-Intelligencer, January 16, 2001.
 7. Article reports on reactions in Washington State to the U.S. Supreme Court’s recent decision striking down a Minnesota canon restricting the speech of judicial candidates. Although Washington’s canon is “broader” than Minnesota’s, and so may not be directly affected, state Supreme Court Justice Richard Sanders praised the ruling, saying, “I think we can have more substantial campaigns than talking about our resumes and putting everyone to sleep.” Sarah Duran, *High Court: Judges Have Free Speech, Too*, News Tribune (Tacoma, Wash.), June 28, 2002.

8. Editorial discusses the impact on Washington State of the U.S. Supreme Court's recent ruling striking down Minnesota's canon restricting the speech of judicial candidates. (See Court Pester, July 2.) Noting that "Washington's judicial candidates should be more forthcoming before voters this fall," the editorial criticizes judicial candidates who have "quickly retreat[ed] behind poorly understood rules if they find them convenient." "If a candidate is not nimble enough for the campaign trail, he or she might want to rethink a job making decisions in a courtroom." The editorial praises the U.S. Supreme Court for giving voters in states that elect judges "enough information to make an informed choice." *Taking the Masks Off Judicial Elections*, Seattle Times, July 2, 2002.
9. Editorial criticizes the U.S. Supreme Court's decision striking down Minnesota's canon restricting judicial speech. "The obvious risk of freeing the political debate in this way is that the next crop of judicial candidates will include individuals in pursuit of specific electoral constituencies" who will "offer hints of predisposition, if not outright campaign promises, to rule in certain ways on certain issues." *Speech Rights for Judges Suggest Different Elections*, Seattle Post-Intelligencer, July 5, 2002.
10. Syndicated columnist Marianne Means argues that the U.S. Supreme Court's decision striking down Minnesota's canon restricting judicial speech "has reinforced the lack of respect for our judicial system" by creating the potential for the judiciary to become "a bunch of black robes in the courtroom publicly committed in advance to specific ideological outcomes of cases to be tried before them." Means asserts that judicial elections themselves are the root of the problem: "How can citizens expect a judge to be impartial when he's been running around rattling the proverbial tin cup begging for campaign donations?" Marianne Means, *Judges Who Beg Don't Inspire Public Confidence*, Seattle Post-Intelligencer, July 7, 2002.
11. Article reports that, despite a U.S. Supreme Court ruling striking down a Minnesota canon restricting judicial candidate speech, voters shouldn't "look for an outbreak of campaign rhetoric on any controversial issues from state Supreme Court candidates in Washington." "All four candidates on the Sept. 17 ballot for a vacant seat created by the retirement of Justice Charles Z. Smith say they will voluntarily restrain their campaign remarks" out of regard for professional values, as well as uncertainty about the ruling's impact on Washington. King County Superior Court Judge Michael Spearman, one of the candidates, said, "The critical issue for a judge at all times is to be fair and unbiased. Once you start making promises, it's gone." Another candidate, senior assistant state attorney general Mary Fairhurst, said, "It's a challenging issue because we want to protect the independence of the judiciary and the integrity of the judiciary." George Erb,

- Judicial Candidate Likely to Stay Mum on Issues*, Puget Sound Business Journal, August 16, 2002.
12. Column asserts that, despite the U.S. Supreme Court decision striking down a Minnesota canon limiting judicial candidate speech, “a breeze through Washington state’s 2002 Judicial Voter Pamphlet suggests we are in no danger of having a free-for-all. Staying awake may still be the challenge.” In general, the candidates rely on “pablum,” usually “a weigh-in of resumes and recitation of clichés.” Washington Supreme Court candidates Jim Johnson and Doug Schafer “say quite a bit more than is standard,” with Johnson calling for “judicial restraint” and Schafer suggesting “more emphasis on ethics for lawyers and judges.” Still, the campaign rhetoric so far suggests that judicial candidates “keep their campaigns boring not because they have to but because they want to, since it’s safer,” and that “despite warnings to the contrary, candidates won’t pander to voters because voters want something different in judges than they want in politicians.” Peter Callaghan, *Wanna-be Judges Proudly Expound Pure Pablum*, News Tribune (Tacoma, Wash.), September 1, 2002.
 13. Article reports that “the balance” of the Washington State Supreme Court is at stake this election. The race between Senior Assistant Attorney General Mary Fairhurst (D.) and appellate attorney Jim Johnson is “becoming a showdown in the long-running tussle between the state’s labor unions and the building industry,” in part because the court is likely to judge the constitutionality of Referendum 53, which challenges a law raising unemployment taxes for industries reliant on seasonal labor. “There are some [party members] who think this is the most important race of the year,” said Chris Vance, chairman of the state Republican Party. In the other contested race, incumbent Charles Johnson has “drawn endorsements from builders and labor, Democrats and Republicans,” in his bid to fend off challenger Pamela Loginsky, former Kitsap Deputy Prosecutor. Ray Rivera, *Judicial Races May Change Court’s Balance*, Seattle Times, October 6, 2002.
 14. Article reports on the “weird twists” in the two races for seats on the Washington State Supreme Court, in which voters “will have to sort out who’s who in a pair of contests that pit two fairly well-known men named Johnson, who aren’t related, against two little-known women who are government lawyers.” In another complication, candidate Jim Johnson would likely have to recuse himself from two high-profile cases if elected: his private practice clients “have included sponsors of two propositions” that are currently on the ballot and are almost certain to be challenged if they succeed. His race against Mary Fairhurst “has become one of the most politically partisan ‘non-partisan’ Supreme Court races ever.” The state Republican and Libertarian parties, as well as “conservative and business groups,” have endorsed Johnson, while the state Democratic Party,

- organized labor, and environmentalists have endorsed Fairhurst. Neil Modie, *Strange Twists in Races for 2 High Court Seats*, Seattle Post-Intelligencer, October 14, 2002.
15. Article reports that Washington State Supreme Court candidate Jim Johnson has “received more than \$180,000 from groups and individuals connected” to the building industry, an amount that is the bulk of the \$250,000 he has raised. His opponent, Mary Fairhurst, has raised about \$86,000, from groups including labor organizations, Indian tribes, and a firefighters’ organization. State ethics rules “prevent Jim Johnson from knowing who his contributors are,” thus avoiding conflicts of interest, said Alex Hays, Johnson’s campaign manager. Johnson said that “nobody is going to predict how I vote.” Bobbi Krebs-McMullen, Fairhurst’s campaign manager, called it “concerning to see one industry paying for a candidate’s efforts so strongly.” Trent Matson, an executive of the Building Industry Association of Washington, said that “businesses have a lot to lose in this election if the right person with a balanced approach isn’t elected.” Angela Galloway, *Builders Backing Top-Court Candidate*, Seattle Post-Intelligencer, October 25, 2002.
16. Article reports that Pierce County (Wash.) Prosecutor Gerald Horne and two law-enforcement groups have withdrawn their endorsements of Washington Supreme Court Justice Charles Johnson, “citing his deciding vote on a controversial ruling in a murder case.” Justice Johnson voted with the majority “in a 5-4 ruling exempting assault from the law that makes death resulting from specified felonies, including robbery and arson, punishable as felony murder regardless of whether the perpetrator intended to kill.” Calling the ruling shocking, Horne said, “I can no longer support a justice who joined in a decision that shows no respect for past precedent, no respect for the acts of the Legislature, and no respect for survivors of hundreds of victims whose killers will now be freed.” The ruling stated that sentencing a defendant for murder “makes no sense, since the conduct constituting the assault and the homicide are the same.” Associated Press, *High-Court Justice Loses Endorsements*, Seattle Times, October 27, 2002.
17. Article reports that “more and more state medical societies are getting involved in” state Supreme Court races. Tim Maglione, the Ohio State Medical Association’s senior director for government relations, said, “It’s important for physicians to know that courts are equally as important as the governor’s office or the legislative branch. . . . The court’s decisions have an effect not only on the practice of medicine, but property taxes we pay and other issues.” In recent years, “doctors in Illinois, Michigan, Ohio, Pennsylvania and Washington have stepped up their efforts to promote judicial candidates,” often in response to the issue of tort reform. Troy Alexander, the director of TEXPAC, the Texas Medical Association’s political action committee, said that doctors “were getting killed in



the courtrooms.” In Texas, “doctors hand out 1.5 million bright red ‘vote smart’ slate cards that contain the names of judges” endorsed by doctors. Tanya Albert, *Reorder in the Court: Which Judges Will Serve Medicine Best?*, American Medical News, November 4, 2002.