



October 3, 2008

Dear Judicial Retention Candidate:

Indiana Right to Life regularly surveys candidates for public office seeking feedback on candidate positions on issues of concern to our constituency. Enclosed you will find a candidate survey for you to complete and return so that we might accurately inform our constituents of your views on various political, legal, and social issues.

Your response by October 15, 2008 is requested.

You may reply by faxing your completed survey to Indiana Right to Life at 888-276-5885 or by mailing the completed survey to:

Indiana Right to Life  
8470 Allison Pointe Blvd. Suite 100  
Indianapolis, IN 46250

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Mike Fichter". The signature is written in a cursive, flowing style.

Mike Fichter  
President and CEO

**INDIANA RIGHT TO LIFE JUDICIAL  
CANDIDATE QUESTIONNAIRE**

**INTRODUCTION**

In *Republican Party of Minnesota v. White*, 122 S. Ct. 2528 (2002), the U.S. Supreme Court recently held unconstitutional a canon of judicial ethics that prohibited candidates for elective judicial office from announcing their views on disputed legal or political issues. The canon violated the First Amendment because it prohibited speech on the basis of content and burdened speech of political candidates – a category of speech at the core of First Amendment freedoms. This ruling was recently extended in *Bauer v. Shepard*, No. 3:08-cv-196, where the federal district court for the Northern District of Indiana preliminarily enjoined the enforcement of Canon 5A(3)(d)(i) and (ii)—Indiana’s pledges and promises clause and its commits clause—because the Canon chilled judicial candidates from answering Indiana Right to Life’s 2008 Questionnaire. **Judicial candidates may clearly express their views on legal and political issues without fear of being sanctioned by judicial or legal ethics authorities for doing so.**

Indiana Right to Life, Inc., certainly recognizes that judicial candidates should maintain actual and apparent impartiality. Thus, Indiana Right to Life recognizes that judicial candidates should not pledge or promise certain results in particular cases. Nevertheless, in judicial elections, voters need to know the views of judicial candidates in order to make intelligent and conscientious decisions regarding candidates’ general views on the law and personal values. This questionnaire is intended to elicit candidates’ views on issues of vital interest to the constituents of Indiana Right to Life without subjecting candidates answering its questions to accusations of partiality or requiring candidates to recuse themselves in future cases.

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1. **VALUE OF EARLY HUMAN LIFE.** While recognizing the judicial obligation to follow binding precedents of higher courts and applicable constitutional and statutory provisions, to honor stare decisis, and to decide any future case based on the law and facts of that case, in accord with the position of Indiana Right to Life, **I believe that the unborn child is biologically human and alive and that the right to life of human beings should be respected at every stage of their biological development.**

\_\_\_\_\_ Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Undecided \_\_\_\_\_ Decline\* \_\_\_\_\_ Refuse to Answer

\*By declining to answer, I assert that I would have replied to this question but for the prospect that I may be disciplined for doing so under Indiana Judicial Canon 5A(3)(d)(i) and (ii)—which provides that a judicial candidate “shall not: (i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; [or] (ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court.” I also will not answer because doing so could subject me to mandatory recusal as a judge under Canon 3E(1), which requires “A judge [to] disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.” My response would neither cause me to be biased for or against parties nor affect my ability to be open-minded with regard to any issue.

2. **LEGAL ABORTION.** Indiana Right to Life believes that unborn children should be protected by law and that abortion should be permitted only when necessary to prevent the death of the mother. While recognizing the judicial obligation to follow binding precedents of higher courts and applicable constitutional and statutory provisions, to honor stare decisis, and to decide any future case based on the law and facts of that case, state your personal view on when, if ever, abortion should be legal.

a. **I believe that abortion should be permitted only to prevent the death of the mother.**

\_\_\_\_\_ Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Undecided \_\_\_\_\_ Decline\* \_\_\_\_\_ Refuse to Answer

b. **I believe that abortion should be permitted only to prevent the mother's death, in cases of incest, and in reported cases of forcible rape.**

\_\_\_\_\_ Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Undecided \_\_\_\_\_ Decline\* \_\_\_\_\_ Refuse to Answer

c. **Other (please explain)**

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3. **FEDERAL CONSTITUTIONAL RIGHT TO ABORTION.** In its 1973 ruling in *Roe v. Wade*, 410 U.S. 113 (1973), the U.S. Supreme Court found a "right to abortion" under the U.S. Constitution that invalidated the abortion statutes of all 50 states. While recognizing the judicial obligation to follow binding precedents of higher courts and applicable constitutional and statutory provisions, to honor stare decisis, and to decide any future case based on the law and facts of that case, **I believe that *Roe v. Wade* was wrongly decided.**

\_\_\_\_\_ Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Undecided \_\_\_\_\_ Decline\* \_\_\_\_\_ Refuse to Answer

\*By declining to answer, I assert that I would have replied to this question but for the prospect that I may be disciplined for doing so under Indiana Judicial Canon 5A(3)(d)(i) and (ii)—which provides that a judicial candidate "shall not: (i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; [or] (ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court." I also will not answer because doing so could subject me to mandatory recusal as a judge under Canon 3E(1), which requires "A judge [to] disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." My response would neither cause me to be biased for or against parties nor affect my ability to be open-minded with regard to any issue.

4. **STATE CONSTITUTIONAL RIGHT TO ABORTION.** Aside from the federal constitutional “right to abortion” recognized in *Roe v. Wade*, several *state* courts have held that there is a *state* right to abortion under their *state* constitutions. Thus far, the courts of Indiana have not recognized a “right to abortion” under the Indiana Constitution. While recognizing the judicial obligation to follow binding precedents of higher courts and applicable constitutional and statutory provisions, to honor stare decisis, and to decide any future case based on the law and facts of that case, **I believe that there is no provision in our current Indiana Constitution which is intended to protect a right to abortion.**

\_\_\_\_\_ Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Undecided \_\_\_\_\_ Decline\* \_\_\_\_\_ Refuse to Answer

5. **STATE RIGHT TO ABORTION FUNDING.** In several decisions, the U.S. Supreme Court has upheld under the U.S. Constitution the decisions of federal, state, and local governments to prohibit the use of public funds or facilities for abortion when the mother’s life was not at stake. However, several *state* courts have held under *state* constitutions that public funds and facilities must be made available to fund and facilitate abortion when a physician deems abortion “necessary” for any reason. State Supreme Courts in New Jersey and Alaska have held that under state law abortion must be provided in even private non-religious facilities that serve the public at large or when abortion would otherwise be unavailable in a locale.

The Indiana Supreme Court, in *Humphreys v. Clinic for Women*, 796 N.E.2d 247 (Ind. 2003), held that the Indiana Medicaid program must pay “for abortions to preserve the lives of pregnant women and where pregnancies are caused by rape or incest, [and] it must also pay for abortions for Medicaid-eligible women whose pregnancies create serious risk of substantial and irreversible impairment of a major bodily function.” *Id.* at 260.

While recognizing the judicial obligation to follow binding precedents of higher courts and applicable constitutional and statutory provisions, to honor stare decisis, and to decide any future case based on the law and facts of that case, **I believe that *Hunphreys v. Clinic for Women* was wrongly decided.**

\_\_\_\_\_ Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Undecided \_\_\_\_\_ Decline\* \_\_\_\_\_ Refuse to Answer

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6. **STATE RIGHT TO ASSISTED SUICIDE.** In *Washington v. Glucksberg*, 117 S. Ct. 2258 (1997), the U.S. Supreme Court held that there is no right to assisted suicide under the U.S. Constitution. In a companion case, *Vacco v. Quill*, 117 S. Ct. 2293 (1997), the Supreme Court also held that equal protection of law under U.S. Constitution was not violated by a ban on physician assisted suicide for the terminally ill, although the law permits life-sustaining treatment to be withheld or withdrawn from the terminally ill. The state Supreme Courts of Florida and Alaska have held that their state constitutions do not protect a right to assisted suicide. While recognizing the judicial obligation to follow binding precedents of higher courts and applicable constitutional and statutory provisions, to honor stare decisis, and to decide any future case based on the law and facts of that case, **I believe that there is no provision of the current Indiana Constitution which is intended to protect a right to assisted suicide.**

\_\_\_\_\_ Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Undecided \_\_\_\_\_ Decline\* \_\_\_\_\_ Refuse to Answer

7. **DISPOSITION OF HUMAN BEINGS IN VITRO.** While recognizing the judicial obligation to follow binding precedents of higher courts and applicable constitutional and statutory provisions, to honor stare decisis, and to decide any future case based on the law and facts of that case, in accord with the position of Indiana Right to Life, **I believe that human beings whose lives begin by in vitro fertilization or cloning and who exist outside the body of a woman are not personal property and should be treated in accord with their best interests in any dispute over their disposition.**

\_\_\_\_\_ Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Undecided \_\_\_\_\_ Decline\* \_\_\_\_\_ Refuse to Answer

8. **WRONGFUL LIFE.** Suits have been brought in several states by infants born with disabilities through their parents, claiming that those responsible for maternal health care during pregnancy are financially liable for their “wrongful lives” because their mothers were not afforded the opportunity to abort them by being told that they would be born with a disability. While recognizing the judicial obligation to follow binding precedents of higher courts and applicable constitutional and statutory provisions, to honor stare decisis, and to decide any future case based on the law and facts of that case, **I do not believe that a person should be able to sue another because he or she was born alive with a disability rather than aborted.**

\_\_\_\_\_ Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Undecided \_\_\_\_\_ Decline\* \_\_\_\_\_ Refuse to Answer

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9. **WRONGFUL BIRTH.** Suits have been brought in several states by parents of children born with disabilities against maternal health care providers for the care and upkeep of their disabled children because the mothers were not provided the opportunity to have their unborn children tested for disabilities so that a “wrongful birth” could have been avoided by aborting any disabled child.

The Indiana Supreme Court has accepted the following definition: “Wrongful birth’ claims are generally described as causes of action brought by the parents of a child born with birth defects alleging that due to negligent medical advice or testing they were precluded from making an informed decision about whether to conceive a potentially handicapped child or, in the event of a pregnancy, to terminate it.” *Bader v. Johnson*, 732 N.E.2d 1212, 1216 n.3 (Ind. 2000) (citation omitted). The *Bader* court held that “we have determined that this case should be treated no differently than any other medical malpractice case.” *Id.* at 1220.

While recognizing the judicial obligation to follow binding precedents of higher courts and applicable constitutional and statutory provisions, to honor stare decisis, and to decide any future case based on the law and facts of that case, **I believe that *Bader v. Johnson*, 732 N.E.2d 1212 (2000) was wrongly decided.**

\_\_\_\_\_ Agree \_\_\_\_\_ Disagree \_\_\_\_\_ Undecided \_\_\_\_\_ Decline\* \_\_\_\_\_ Refuse to Answer

**CANDIDATE NAME:** \_\_\_\_\_

**OFFICE SOUGHT:** \_\_\_\_\_

**PHONE NUMBER:** (\_\_\_\_) \_\_\_\_\_

**E-MAIL:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_ **DATE** \_\_\_\_/\_\_\_\_/\_\_\_\_

PLEASE RETURN BY **October 15, 2008** TO:

Indiana Right to Life 8470 Allison Pointe Blvd. Ste. 100 Indianapolis, IN 46250

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