

46<sup>th</sup> District Democrats Judicial Questionnaire

Candidate Information

Candidate Name: Barbara Madsen

Office sought: Supreme Court Justice, position 5

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Consultant(s): John Wyble, Cathy Allen

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Have you read the 46<sup>th</sup> LD Democrats Draft 2016 Platform? Yes , No   
(Go to [http://www.46dems.org/2016\\_ld\\_caucus](http://www.46dems.org/2016_ld_caucus) and click "Draft Platform")

Why are you running for this office?

In 1992 I watched the confirmation hearings for Clarence Thomas. I was appalled at the Senate's treatment of Anita Hill, who worked for Clarence Thomas and had the courage to talk about the sexual harassment that she suffered in his office. I decided that I had to stand up against the unfair treatment of Ms. Hill, and of many other women in the workplace, including myself. Since I could not expect to join the Congress or the U.S. Supreme Court, I decided to run for the state Supreme Court, ensuring that women in the legal profession would have a voice in shaping the profession. Since my election in 1992 I have helped create the Gender and Justice Commission, the Minority and Justice Commission, the Access to Justice Board, the Office of Civil Legal Aid, the Interpreter Commission and the Commission on Children in Foster Care. All of these commissions and boards are designed to break down barriers for people to use the justice system—whether its immigrants without English skills, victims of domestic violence, people from marginalized communities or neglected and abused children. We have made a good start on making courts work for people, instead of the other way around. I would like to continue to evolve these efforts into a permanent and robust part of the justice system. Additionally, I want to see the McCleary case through to its completion.

Please briefly describe your qualifications for this office and your personal and professional background.

B.A. Political Science U.W.; J.D. Gonzaga Law School; Interned for Spokane Legal Services and University Legal Clinic; Public defender in King and Snohomish Counties; Seattle City Attorney, Special Prosecutor for Child Abuse and Domestic Violence; Commissioner Seattle Municipal

Court; Judge Seattle Municipal (elected Presiding Judge—2 of 4 years); Wa. Supreme Court since election in 1992; Chair of Wa. Supreme Court Gender and Justice Commission since 1989. Elected twice as Chief Justice.

What's your plan to win?

I have focused on endorsements and fundraising. I have been endorsed by many labor unions, democratic organizations, the Woman's Political Caucus of the Northwest, all members of the Supreme Court and Court of Appeals as well as many trial judges, and law enforcement. I am consulting with John Wyble and Cathy Allen. I have hired a fundraiser and have had many fundraising events. I attend candidate forums across the state and have reached out to many county bar associations. I have the advantage of being a 24 year incumbent and the chief justice.

What do you see as the most important functions of the position you are running for? What qualities do you possess that make you the candidate best suited to this role?

The Supreme Court is the leader of the Judicial Branch. The court is responsible for attorney discipline, setting the rules for the courts, overseeing the administration of the courts and, most importantly, deciding the difficult cases that significantly impact the people of Washington. This position requires integrity, courage, the ability to listen and keep an open mind, and compassion for others. The position also requires an understanding of different cultural, racial, ethnic, gender, and ability perspectives, and an understanding that the public must be the focus of courts. A justice of the Supreme Court must appreciate the specific role courts play in a democratic form of government and that the branches can, and should, work together where it is ethical to do so. I believe my record as a justice and as Chief Justice demonstrates that I have these qualities and attributes after nearly 30 years of hard work, self-reflection and making many mistakes.

Have you engaged in pro-bono work in recent years? If so, please describe that activity and if/how that was meaningful to you.

I judge Moot Court at Gonzaga, U.W. and S.U. law schools; I am a member of Judicial Institute, training persons of color and women to become judges; I am a Co-chair on the ABA commission on the future of legal services, regulatory opportunities committee; I am an emeritus member of Robert J. Bryan Inns of Court; I serve on the Conference of Chief Justices, chair of Tribal Courts Committee; I was co-chair of the former Crystal Brame Committee; I am a fellow of American Law Institute; a member Wa. Women Lawyers. I was previously active in Campfire Boys and Girls; and PTA.

These activities allowed me the opportunity to give back in a small way to the community that has supported me and my family. Service is a way to build the future and enhance the community that we live in. Many people do not have the luck, good fortune, good health or support system that I have had—these activities allowed me to bring my energy and ideas to the table and, in return, I have a chance to meet amazing people and learn about life from the experience of others.

It has often been said that it is the duty of legislatures to pass laws and the duty of courts to enforce them. However, courts at all levels have invoked principles of interpretation to adapt legislation and

constitutional provisions to a myriad of controversies. Two such principles are "public interest" and "original intent". Please now respond to the following questions based on your legal and personal experience. Include specific examples to illustrate your answers where possible.

When reviewing cases, how do you define what is in the "public interest"?

Public interest has many meanings in the law. Courts, first and foremost, carry out the public interest through interpreting the laws that are passed by the elected representatives of the people. Public interest is a part of the test for deciding whether to accept review in the Supreme Court, which is a court of discretion. It is also a part of the test for standing to bring a lawsuit.

With special regard to our state constitution, should the "original intent" of the document be considered when addressing modern legal disputes? If so, how do you balance it against arguments that the constitution is a "living", not static, document?

When interpreting the constitution the court looks at the words of the provision, the history of the provision, cases close in time to the drafting of the constitution and constitutions of others states that are similar in language and drafted around the same time as our own. In addition, the court considers precedent interpreting the provision in other contexts. We know that society and law are not static, but principles to be protected by the constitution are constant. By using the tools described above and remembering the principles that the constitution is written to protect, constitutional interpretation attempts to be true to fundamental principles while remaining relevant to modern needs. An example was a case I wrote several years ago involving a GPS device placed on a vehicle without a warrant. The court agreed that a warrant is required based on the privacy that is implicated by a GPS device. Another example is the court's opinion addressing a new police procedure called "knock and talk". This procedure was designed to get consent to enter a person's home without a warrant. Because of the value that the constitution attaches to the home, the court imposed a requirement on officers to advise the dweller that they have a right to refuse consent to enter. An old principle, the home as castle, applied to a new police procedure.