King County Democrats 2024 Endorsement Questionnaire

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What type of position are you running for?
Washington Supreme Court
What position are you running for?
Supreme Court, Justice Position 9
Does your campaign have a code of conduct for staff and volunteers?
Yes
Will you share a link to your code of conduct?
https://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=CJC
List your Bar and legal association ratings.
King County Bar Association – Exceptionally Well Qualified Loren Miller Bar Association of Washington – Exceptionally Well Qualified Latina/o Bar Association of Washington – Exceptionally Well Qualified Joint Asian Judicial Evaluation Committee – Exceptionally Well Qualified QLaw – Exceptionally Well Qualified Washington Women Lawyers – Exceptionally Well Qualified Tacoma-Pierce County Bar Association – Exceptionally Well Qualified Pierce County Minority Bar Association – Exceptionally Well Qualified

Cardozo Society of Washington – Exceptionally Well Qualified
Veterans Bar Association of Washington – Exceptionally Well Qualified

How does your lived experience inform your understanding of justice?

I grew up in New York City to parents who both worked in the NYC school system and were UFT members. I went to public schools and the State University of NY at Buffalo for college and spent 5 years in the work force before going to law school. During that time, I was arrested once and stood trial for contempt of court for a courtroom demonstration where the Attica prison trials were proceeding. I was acquitted. These were some of the experiences that prompted me to go to law school. In law school and then as a lawyer, I worked for people who were charged by the government with crimes; for people who had suffered from government misconduct; for a woman who was denied disability leave during her pregnancy; and on amicus briefs for the NACDL, WACDL, ACLU, ACLU-WA. These experiences taught me that I have had incredible advantages in education, health care, and other support systems, that others lacked, but also that I lacked some advantages that others took for granted: the advantages of wealth and being part of the majority national religion. I try to apply all of that and the true historical context in which they arise – to every case.

What role do you see for the judiciary in addressing injustices from the criminal justice system?

The judiciary can address injustices in the criminal justice system in individual cases, through court and administrative rules, and through court education and culture. As an example of the work we do on racial injustice in individual cases, my court has explicitly addressed, and condemned, use of racial and ethnic prejudice to try to inflame jurors against a Latino defendant (State v. Zamora). As an example of our work against race discrimination through court rules, we enacted a Rule – General Rule 37 – barring use of not just explicit race discrimination but also targeting implicit bias in jury selection.

How do you balance adherence to precedents against changes in society?

The purpose of adhering to precedent is to provide stability and predictability in the law. The purpose of change is to take account of not just changes in society (e.g., technological advances) but changes in our view of justice (for example, recognizing the current impact of past institutions of slavery, of keeping women out of the public and political spheres). So, we have taken account of changes brought about by technology by applying state constitutional privacy protections to new technology – we have, for example, recognized a right to privacy in text messages (State v. Hinton, 2014) and a right to privacy from police infrared surveillance of a home (State v. Young, 1994). And we have applied contemporary understandings of the racist underpinnings of some very old cases to overrule them – for example, we overruled our old decision refusing to recognize Indian treaty fishing rights based on racist stereotypes of Native people (State v. Towesnutte), we overruled our old decision that allowed a cemetery to exclude a Black child from burial (Price v. Evergreen Cemetery, 1960), among others.

How will you make sure racial, sexual, gender, and other implicit and explicit forms of discrimination are not responsible for guilty pleas or excessive sentences in criminal cases in your jurisdiction?

As documented by the Gender & Justice Commission's recent report, 2021: How Race and Gender Affect Justice Now, race and gender affect decision-making in the criminal justice system from charging, to diversion, to plea bargaining, to sentencing. The sentencing impacts fall most harshly on men of color, and have for the last 40 years. That trend, however, has decreased over the last ten years – but incarceration of women of color has been growing during that same period. The discrepancy in treatment of people of color varies in our state by county, but it impacts all ages, from juveniles (children) to adults. We have addressed the problems with that paradigm in individual cases (see, for example, State v. Zamora, reversing conviction of Latino man in case where prosecutor appealed to prejudice against Latino immigrants and characterized them as criminals (even though Zamora was an American citizen)); through court education (for example, touching on topics such as the problem of "adultification" of Black girls); through partnerships with DOC on topics of common interest, such as gender-responsive treatment; and by steps at trying to diversify our profession.

How will you ensure people have equal access to the law, considering the prohibitive cost of civil litigation?

My court has been seeking legislative funding for programs that have historically been dependent on court user fees. We have also been taking lessons learned during the pandemic – which prompted the judiciary to embrace the technology to operate remotely, making it easier and cheaper for everyone to "come to court" – and applying them now. Remote access is not necessarily the gold standard – it is important for parties to maintain the right to be present, in person, for decisions that affect their lives. But it's a critical adjunct to in person appearances. Our court has therefore published for comment the most recent version of stakeholders' suggestions for rules concerning remote appearances. These proposed rules greatly expand the availability of remote appearances and provide rules to make sure that they proceed in a respectful and professional manner. The people it is intended to help include the litigants, lawyers, potential jurors, and witnesses to take advantage of these lower cost options.

To address language barriers, our court recently requested legislative funding for major changes to enable interpreters to work meaningfully with lawyers and clients.

What public interest work have you done in the last five years?

I have been a Justice on the Washington Supreme Court since 2012, so I no longer do the public interest work that I did as a lawyer (at that time, my main pro bono public interest work was for NACDL, WACDL, and the ACLU). My work for the public good now – other than my work on cases – is mainly through my role as co-Chair of the Court's Gender & Justice Commission, as my Court's liaison to the WSBA's Council on Public Defense (main project right now is work on public defender caseload standards), and as a long time member of my Court's Rules Committee (responsible for procedural rules in all state courts, such as our rule targeting race discrimination in jury selection).

As a member of the legal profession, what accomplishments are you most proud of?

I authored the Supreme Court's unanimous decision in State v. Arlene's Flowers, The main question in this case was

whether Washington's Law Against Discrimination (WLAD) protects a gay couple's right to buy wedding flowers from a store that was in the business of selling flowers – including wedding flowers – to the public and, if so, whether federal or state constitutional protections of free speech, freedom of association, or free exercise of religion nevertheless barred application of the WLAD in this situation. It ruled that the WLAD did apply to protect this couple; that this protection did not infringe on state or federal constitutional rights to freedom of speech or to refrain from speaking; and that this protection did not infringe on state or federal constitutional rights to free exercise of religion. This decision upheld the power of the government to enact public accommodation laws – like the original Civil Rights Act of 1964 – despite the fact that adherents to certain religions claimed then, as well as now, that such laws infringed on their rights to freedom of speech, association, and religion.

One of the criteria for accepting a case is that it concerns a matter of substantial public importance. What issues meet that bar for you?

This is one of several alternative reasons for accepting review, including conflict in appellate court decisions or our decisions. The cases that I have treated as warranting review due to their substantial public importance include: the McCleary education case, in which we ruled that the state has a paramount duty to amply support public education and that the state was violating that duty; the Quinn tax case, in which a state trial court had ruled that the statute creating Washington's capital gains tax was unconstitutional; public employee retirement cases, which have affected public employees throughout the state; and decisions addressing race discrimination in the conduct of trials.

As a Supreme Court Justice, how will you decide when and how to change the law or create new law?

My court can, and should, overrule prior decisions if they are "incorrect and harmful."
We have therefore overruled cases enforcing adult sentences on juveniles and instead ruled that the federal constitution's bar on cruel punishment applies to children, so trial court judges must have complete discretion to go below otherwise applicable adult sentence ranges (State v. Houston-Sconiers, which I authored); we ruled that our state law criminalizing possession of drugs, even when the defendant didn't know the drugs were on them or in their possession, violates the constitution (State v. Blake, which I authored); we overruled Indian treaty fishing right cases denigrating Native Americans, their tribes, and their rights (e.g., State v. Towesnutte).

CERTIFICATION: The candidate hereby certifies that, to the best of their knowledge, the provided information is true and accurate.

Yes

Created on: March 9th, 2024