

The Stranger

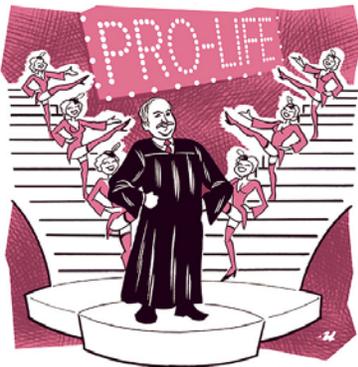
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FEATURES

He's Back!

Undaunted by defeat two years ago, former state supreme court justice Richard B. Sanders wants to reclaim a seat on the bench. Last election cycle, he was in deep trouble over allegedly racist comments and marriage hypocrisy. This time, he'll have some explaining to do on women's rights, too.

BY [ELI SANDERS](#)



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You have to admire the sheer tenacity of Richard B. Sanders, who at age 67 is presently trying to climb back on to the Washington State Supreme Court after voters booted him off in 2010.

It's not like some great injustice led to his defeat last time around. People had very good reasons for dumping the guy, and those reasons are sure to matter again this year, even if Sanders has somehow convinced himself otherwise. As the *Seattle Times* revealed just before the 2010 election, Sanders had shocked colleagues by scoffing at the idea that racism sometimes causes minorities to get unfair treatment in our legal system, and by asserting that African Americans are overrepresented in our state's prisons simply because "they have a crime problem."

On top of that, as *The Stranger* reported just before the 2010 election, Sanders signed an opinion denying marriage rights to same-sex couples in a landmark 2006 case—because they have "more sexual partners" and because other courts have found that monogamy is "the bedrock upon which our culture is built"—even though Sanders himself has been

divorced twice and was dating multiple women simultaneously during the 2010 election season.

Nevertheless, a determined Sanders, no doubt helped by residual name familiarity, managed to become one of the two candidates to make it through the low-turnout August 7 primary election.

Now, in what will be the only contested supreme court race on the November ballot, Sanders faces the highly respected appellate lawyer Sheryl Gordon McCloud. She's 56 years old, worked on civil rights cases early in her career, is perfectly positioned to go toe-to-toe with Sanders as a defender of constitutional rights, and is also well-suited to bring up an issue that didn't get much traction in Sanders's 2010 run but could help sink him again this time around: his stances on women's rights.

"The fact that women's health is being attacked makes people more sensitive to women's issues," McCloud says, referencing the current political environment, in which a Republican Senate candidate thinks he can define "legitimate rape" and the Republican Party platform declares that life begins at conception. McCloud proudly notes her work on a US Supreme Court case that upheld California's pregnancy disability leave law, among other cases; "I've got a track record of fighting for women's issues," she says.

Sanders? Not so much. He drove around sporting a pro-life bumper sticker on his Mercedes during the 1995 run that launched his high court career. Then, after he won, he marched directly from his January 1996 swearing-in ceremony at Olympia's Temple of Justice over to a pro-life rally where he addressed the crowd, reportedly holding a red rose, a symbol of the pro-life movement. (As he explained the situation to *The Stranger* in the fall of 2010, "I walked across the street to a March for Life event and thanked my supporters.") Sanders was hauled before the state Commission on Judicial Conduct for the incident and eventually admonished—a first in state history for a high court justice—for not showing enough concern for the appearance of impartiality. The admonishment was later overturned on appeal.

Sanders wouldn't comment for this piece. ("I don't think so," he said via e-mail. "But thanks for asking.") However, he's said in the past that he was "unfairly attacked" for his speech to the pro-life rally.

Which is typical Sanders. He doesn't see anything wrong with crossing lines other justices wouldn't—such as in 2003, when he visited dangerous sex offenders imprisoned on McNeil Island who had cases pending before the court and subsequently received a formal admonishment from the Commission on Judicial Conduct (this time it stuck). He also brags

about how often he found himself in the minority on court opinions, though his language in some of his more famous dissents—warning about the supposed problem of young girls seducing their schoolteachers, pooh-pooing the behavior of a stalker as just overzealous flirting—has raised alarm among opponents. They ask: Is this really the kind of person you want on a court that's likely to hear plenty of cases relating to women's rights in the future?

McCloud, looking for the high road, insists that on the campaign trail, "I'm going to be talking about my record, but the distinction I'm going to draw is that while we're both in favor of constitutional rights, I'm in favor of constitutional rights for *all*,"—hint, hint—"regardless of race or gender."

Women's rights advocates are more direct about the situation. "Richard Sanders has made it abundantly clear that he does not trust women to make the private medical decisions that are best for them and their families," says Alison Mondi, a spokeswoman for NARAL Pro-Choice Washington, which endorsed McCloud.

Planned Parenthood agrees. "Activist judges like Sanders who advocate for criminalizing safe and legal abortion are wrong for women and wrong for Washington," says spokeswoman Sara Kiesler.

It's not just Sanders's pro-life posturing that concerns backers of women's rights. As current state supreme court justice Charlie Wiggins pointed out during his winning 2010 campaign against Sanders in the race for Supreme Court Position No. 6, "Sanders is inexcusably insensitive on women's issues."

Wiggins highlighted a dissent Sanders had written that year in a stalking case, *State v. Kintz*, in which a seven-member majority of the court ruled that a man named Clarence Kintz had been correctly convicted of stalking two women in the Bellingham area. In one of the incidents, Kintz had driven his white van on five separate occasions past a woman who was out for a jog, asking her for directions, then inviting her into the van (an invitation she rebuffed), and continuing to make her feel "really scared" to the point that she hid in a nearby yard, according to the court record. Eventually, some bicyclists picking berries spotted the woman, saw the van coming toward her, and stayed with her until she got out of the area and contacted police. Sanders did not view this as stalking.

It was, he wrote in his dissent, more like "a man who uses an ill-considered pickup line, is rebuffed, but again attempts to woo the object of his affection later."

In another case highlighted by Wiggins, *Christensen v. Royal School District No. 160*, Sanders again dissented from a seven-member majority, this time in a case involving a

middle school teacher who'd had a sexual relationship with a 13-year-old student. Sanders, noting that the girl had at one point lied about the relationship, suggested she was partly to blame for what transpired. "She may be below the age of consent, but not below the age of honesty," Sanders wrote in his dissent, warning that the majority's ruling could encourage girls below the age of consent to "seduce" their teachers.

For people who want to see Sanders defeated (again) now that he's gunning for Supreme Court Position No. 9, one of the most encouraging things about the primary results is how well McCloud did against him in conservative rural counties that one might expect to be Sanders strongholds. McCloud beat Sanders—as well as two other male Democrats in the race—even in places like Eastern Washington's Klickitat and Asotin Counties.

This suggests a truth to something the few people who are closely following this race chatter about: In a year in which women's issues are at the fore, McCloud benefits not just by being the only woman in the race, but by being an extremely qualified "constitutional rights" female candidate who can establish such a clear contrast on reproductive rights with her opponent.

She's raised \$127,000 to his \$125,000, which leaves her with just one major vulnerability going forward: She personally donated \$700 to Sanders in his 2010 run because, she says, as an appellate lawyer, she admired his well-known commitment to protecting the rights of criminal defendants.

How will she respond on the campaign trail when Sanders points out that McCloud supported his candidacy last time around?

"The answer is: one, timing," McCloud says of her donation. "I donated the money before he made those comments about race two weeks before the election. Two, context: Richard Sanders had a history of writing decisions upholding constitutional rights in many—though not all—cases."

But, she continued, getting back to the contrast: "If you want to know if I agree with everything he has ever done, the answer is that I'm running against him now." ★