



### Wendy Williams Berger

President Trump nominated Wendy Williams Berger to serve on the U.S. District Court for the Middle District of Florida on April 10, 2018. Berger is anti-choice.

#### Career<sup>1</sup>

- Bachelor of Science, Florida State University, 1990
- Juris Doctorate, Florida State University, 1992
- Assistant State Attorney, Office of the Florida State Attorney, Seventh Judicial District, 1993-2000
- Assistant General Counsel & Clemency Aide, Executive Office of Gov. Jeb Bush, 2001-2005
- Circuit Judge, Florida's Seventh Judicial Circuit, 2005-2012
- District Judge, Florida's Fifth District Court of Appeal, 2012-present

#### Record on Choice-Related Issues

##### Court Cases

- Berger and a co-counsel attempted to use a woman's prior history of accessing abortion care as evidence that she killed her newborn. The woman maintained her innocence and claimed she had delivered a stillborn. The prosecution team, including Berger, called the woman's assertions of innocence "a calculated tale to protect herself after seeking late-term abortions."<sup>2</sup> The woman was convicted of manslaughter after a one-week trial, but that conviction was rightfully thrown out and a new trial was ordered when an appellate court held that evidence of prior abortion care was "inflammatory and shouldn't have been admitted in the first trial."<sup>3</sup>
- Berger heard an appeal of a trial court order that compelled a pregnant woman to submit to any medical treatment deemed necessary by her doctor in order to keep her fetus healthy. Under the trial court's order, the care she could be compelled to submit to included "detention in the hospital for the enforcement of bed rest, administration of intra-venous medications, and anticipated surgical delivery of the fetus," even if this care was against her wishes.<sup>4</sup> The facts of that case were rendered moot when the woman gave birth to a stillborn before Berger's court could issue its decision. However, the majority of the court decided to rule anyway, overturning the trial court order and creating a precedent for any similar cases that recognizes "the

fundamental right to privacy” and the “right to determine what shall be done with [one’s] own body.”<sup>5</sup>

Berger dissented from the majority, writing that she would have dismissed the appeal since the case was then moot, rather than create a precedent respecting the right to privacy.<sup>6</sup> She used anti-choice language throughout her dissent, repeatedly referring to the fetus at issue as a “child” or “unborn child.”<sup>7</sup>

### Notable Information

- Berger is a member of the Federalist Society.<sup>8</sup> The Federalist Society is led by Leonard Leo, the anti-choice activist who is heavily involved in selecting Trump’s Supreme Court and lower court nominees. Leo has been outspoken in his anti-choice views, calling abortion “an act of force” and “a threat to human life,”<sup>9</sup> and serves as co-chairman of Students for Life,<sup>10</sup> a group whose mission is to “abolish abortion.”<sup>11</sup>

### Record on Other Key Issues

- Berger is a member of the National Rifle Association.<sup>12</sup>
- Berger has been a member of the Republican Women’s Club of Duval Federated.<sup>13</sup>
- Berger made insensitive comments that were dismissive of the severity of drug addiction and of social justice issues in general. Of Florida’s drug court, she said, “Initially I went in there thinking to myself ‘we’re not going to be clapping for a bunch of drug addicts’... I mean, it was a sort of social justice that I just didn’t – I wasn’t all that into it.”<sup>14</sup> She later said that her viewpoint changed after working as part of the drug court.
- Berger once ordered a defendant in her court room, alleged to have sold \$20 worth of crack cocaine, to sit with a piece of duct tape on his mouth during his trial.<sup>15</sup> He ended up with a 20-year sentence.

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<sup>1</sup> *Questionnaire for Judicial Nominees: Wendy Williams Berger*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY, <https://www.judiciary.senate.gov/imo/media/doc/Berger%20SJQ.pdf>

<sup>2</sup> Alexa Jaworski, *Convicted Baby Killer Pleads for a New Life*, THE FLORIDA TIMES UNION, <https://www.questia.com/newspaper/1G1-75408721/convicted-baby-killer-pleads-for-a-new-life-tanya> (last visited October 15, 2018)

<sup>3</sup> Dana Treen, *Retrial in Baby’s Death to Open after Offer Fails*, THE FLORIDA TIMES UNION, <https://www.questia.com/newspaper/1G1-63950533/retrial-in-baby-s-death-to-open-after-offer-fails> (last visited October 15, 2018)

<sup>4</sup> *Burton v. Florida*, 49 So.3d 263 (Dist. Ct. App. Fla., 1<sup>st</sup> Dist.)

<sup>5</sup> *Ibid.*

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<sup>6</sup> *Burton v. Florida*, 49 So.3d 263 (Dist. Ct. App. Fla., 1<sup>st</sup> Dist.) (Berger, A.J., Dissenting)

<sup>7</sup> *Ibid.*

<sup>8</sup> *Questionnaire for Judicial Nominees: Wendy Williams Berger*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY, <https://www.judiciary.senate.gov/imo/media/doc/Berger%20SJQ.pdf>

<sup>9</sup> Jeffrey Toobin, *The Conservative Pipeline to the Supreme Court*, THE NEW YORKER (April 17, 2017), <https://www.newyorker.com/magazine/2017/04/17/the-conservative-pipeline-to-the-supreme-court>

<sup>10</sup> *Board of Directors*, STUDENTS FOR LIFE, <http://studentsforlife.org/supporters/board-of-directors-1> (last visited July 5, 2018)

<sup>11</sup> *Mission Statement*, STUDENTS FOR LIFE, <http://studentsforlife.org/about/mission-statement/> (last visited July 5, 2018)

<sup>12</sup> *Questionnaire for Judicial Nominees: Wendy Williams Berger*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY, <https://www.judiciary.senate.gov/imo/media/doc/Berger%20SJQ.pdf>

<sup>13</sup> *Questionnaire for Judicial Nominees: Wendy Williams Berger*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY, <https://www.judiciary.senate.gov/imo/media/doc/Berger%20SJQ.pdf>

<sup>14</sup> Nick Evans, *Gov. Scott to choose among three supreme court nominees*, WLRN (Dec. 14, 2016), <http://www.wlrn.org/post/gov-scott-choose-among-three-supreme-court-nominees>

<sup>15</sup> Stuart Korfhage, *Judge Berger recounts some of her memorable cases*, THE ST. AUGUSTINE RECORD (Nov. 11, 2018), <http://www.staugustine.com/article/20121111/NEWS/311119973>