

**ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL**

**NOMINEE:** Dawn Johnsen

**Education:** *summa cum laude* B.A. in economics and political science, Yale, 1983; J.D. Yale, 1986, Article & Book Review Editor, *Yale Law Journal*

**Family:** N/A

**Experience:** law professor, Indiana University School of Law–Bloomington, 1998-present; Acting Assistant Attorney General, Office of Legal Counsel, United States Department of Justice, Washington, D.C., 1997-1998; Deputy Assistant Attorney General, 1993-1996;

**Legal Director, National Abortion & Reproductive Rights Action League (currently NARAL Pro-Choice America), Washington, D.C., 1988-1993;** Law Clerk to the Hon. Richard D. Cudahy, United States Court of Appeals for the Seventh Circuit, Chicago, Illinois, 1986-1987

**Clinton White House:** From 1993 to 1998 she worked in the Office of Legal Counsel (OLC), including a stint as Acting Assistant Attorney General heading the OLC

**Obama Campaign:** After election, named to Obama transition’s Department of Justice Review Team.

**Affiliations:** American Constitution Society for Law and Policy, National Board Member; National Co-Chair of Project on *The Constitution in the 21st Century*; Co-Chair of Separation of Powers/Federalism Issue Group. NOTE: This group is the relatively new Leftist answer to the Federalist Society.

**From her article on fetal rights:**

“In recent years, however, courts and state legislatures have increasingly granted fetuses rights traditionally enjoyed by persons. Some of these recent ‘fetal rights’ differ radically from the initial legal recognition of the fetus in that they view the fetus as an entity independent from the pregnant woman with interests that are potentially hostile to hers.” D. Johnsen, “The Creation of Fetal Rights:...”, 95 YALE L.J. 599 (1986).

“Until recently, the law did not recognize the existence of the fetus except for a few very specific purposes.” D. Johnsen, “The Creation of Fetal Rights:...”, 95 YALE L.J. at 601.

“In thus treating the fetus, courts have glossed over crucial differences between fetuses and persons, and have lost sight of the interests that narrow legal recognition of the fetus traditionally has attempted to protect. They have ignored alternatives to equating the fetus with a person that would have more appropriately served their goals.” D. Johnsen, “The Creation of Fetal Rights:...”, 95 YALE L.J. at 610.

Granting rights to fetuses in a manner that conflicts with women’s autonomy reinforces the tradition of disadvantaging women on the basis of their reproductive capability. By subjecting women’s decisions and actions during pregnancy to judicial review, the state simultaneously questions women’s abilities and seizes women’s rights to make decisions essential to [\*625] their very personhood. The rationale behind using fetal rights laws to control the actions of women during pregnancy is strikingly similar to that used in the past to exclude women from the paid labor force and to confine them to the “private” sphere. D. Johnsen, “The Creation of Fetal Rights:...”, 95 YALE L.J. at 624-25.

### **On Alito Hearings:**

We have squandered a rare opportunity for public education. The Senate's focus on the formal status of *Roe*, while understandable, masks the extent to which the court has already gutted the right to choose and what the confirmation of Alito most immediately would mean for reproductive liberty.

D. Johnsen, *Slate*, "[The Outer Shell: The hollowing out of \*Roe v. Wade\*](#)," Jan. 25, 2006.

### **On Reducing the Number of Abortions:**

My point was that the kind of legislative initiatives that come out of the "Republican coalition" you were discussing does not actually accomplish a reduction in abortions. (And that the primary prochoice organizations do work hard toward that goal.) That may also well reveal that some (not all) such political forces are *more* interested in objectives other than reducing the number of abortions. Among them may be controlling the nature and understanding of motherhood and diminishing women's equality and sexual freedom (and even where those are not objectives, they may provide strong influences). For the many who sincerely would like to reduce the number of abortions, that desire provides the basis for education about the true effects of the legislation and the possibility for instead forging common ground policies that promote pregnancy prevention and healthy childbearing.

D. Johnsen, *Slate*, "[Reducing Abortions](#)," March 22, 2008.

In his book, [Bearing Right](#), William Saletan notes that in the late 1980s, Dawn Johnsen and Marcy Wilder, top lawyers at NARAL, "drew a hard line on parental involvement" in abortion decisions. Saletan quotes an internal NARAL memo by Johnsen and Wilder: "In practice, both consent and notification laws amount to a parental veto power over a minor's decision to an abortion. Do not, as part of an affirmative legislative strategy, introduce even a liberalized version of a parental consent or notification law."

William Saletan, [Bearing Right](#), p. 289 (Memo, Dawn Johnsen and Marcy Wilder to NARAL Staff and Consultants, "Pro-Choice Legislative Strategy for Minor's Access to Abortion Services," 9/5/89).

### **On National Security Issue**

In 2009 in regard to a legal opinion that supported regressive interrogation tactics the New York Times states that she was: "outraged" and she called the opinion "bogus." Eric Lichtblau, *New York Times*, "[Obama Pick to Analyze Broad Powers of President](#)," Jan 27, 2009.

Johnsen opposed the National Security Administration's (NSA) wiretapping program. She said the NSA program violated the requirements of the Foreign Intelligence Surveillance Act, "hardly a triumph for the rule of law." D. Johnsen, *Slate*, "[Law and Orders](#)," June 8, 2007.

In 2007, she published an article in the *UCLA Law Review* criticizing President Bush claiming that he justified "policies that would otherwise violate applicable legal constraints... The Bush Administration has engaged in a host of controversial counter terrorism actions that threaten civil liberties and even the physical safety of those targeted: enemy combatant designations, extreme interrogation techniques, extraordinary renditions, secret overseas prisons, and warrantless domestic surveillance." D. Johnsen, *UCLA Law Review*, "[Faithfully executing the laws: Internal legal constraints on executive power](#)."