

Response of Joseph F. Leeson, Jr.
Nominee, United States District Judge for the Eastern District of Pennsylvania
To the Written Questions of Senator Dianne Feinstein

1. The Supreme Court reiterated in *Gonzales v. Carhart*, 550 U.S. 124, 146 (2007): “Before viability, a State ‘may not prohibit any woman from making the ultimate decision to terminate her pregnancy.’ It also may not impose upon this right an undue burden, which exists if a regulation’s “purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.” (quoting *Planned Parenthood Casey*, 505 U.S. 833, 878-79 (1992) (internal citations omitted)).

Thus, the Ninth Circuit has held that Arizona may not “prohibit abortion beginning at twenty weeks gestation, before the fetus is viable.” *Isaacson v. Horne*, 716 F.3d 1213, 1217 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 905 (2014). Concurring, conservative Judge Andrew Kleinfeld wrote: “The question for us is whether the current state of constitutional law prohibits the states from imposing that restriction. It does.” *Id.* at 1233 (Kleinfeld, J., concurring).

Will you faithfully apply the Supreme Court’s precedent on the issue of a woman’s right to choose, including the rule that any law the “purpose or effect [of which] is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability” is unconstitutional?

Response: Yes.

2. I would like to ask you some questions about some of your remarks from 2012, which I found very troubling.

An article from 2012 quotes you as stating: “The HHS mandate is ‘un-American, unprecedented and blatantly unconstitutional.’” The article also states: “[A]s Leeson explained, the mandate violated the First Amendment, the Administrative Procedure Act and the Religious Freedom Restoration Act, a federal law.”

In response to a written question from Senator Franken about these remarks, you stated:

“I was referring to the requirement that employers provide to their employees health insurance coverage for preventive health services, specifically the contraception coverage requirement.”

- a. As a strong supporter of the Women’s Health Amendment to the Affordable Care Act, I am gratified that, at your hearing, you acknowledged that your use of the word “un-American” was inappropriate.

Will you commit to showing an appropriate judicial temperament in which all parties who come before you are treated with respect and dignity, if you are confirmed?

Response: Yes.

- b. In your responses to Senator Franken’s questions, you state that five justices of the Supreme Court in the recent *Hobby Lobby* decision “suggested that the government has a compelling interest in the contraceptive coverage requirement.”**

Coverage for contraceptives can be critically important for women not only in the area of family planning, but also for critical health reasons.

Can you assure me that, if you are ever confronted with a case in which the necessity of contraception or contraceptive coverage is an issue, that you will take the time to understand the medical importance of contraception for women?

Response: Yes.

- c. You state in your written responses to Senator Franken: “I provided the comments in my capacity as an attorney representing one of my clients, the Catholic Diocese of Allentown, which has been a client of mine for approximately two decades and remains a client today.”**
- i. Have you ever handled a case for this client, or any other client, challenging the validity of the requirement of the Affordable Care Act to which you were referring in your remarks, or any other provision of the Affordable Care Act? If so, please provide specifics of those cases.**

Response: No.

- ii. You state in your responses to Senator Franken that your remarks “reflected my client’s view of the law at the time I made them on June 27, 2012.”**
- 1. Please describe the process by which you arrived at the view about the contraceptive requirement that you expressed in these remarks.**

For example, did you evaluate the importance of contraception for women’s health, and how did you do so? Did you review pertinent statutes, regulations, Supreme Court precedent, and Third Circuit precedent?

Response: The comments were made at a gathering of approximately thirty people. I did not conduct legal research because this was not a court hearing or legal proceeding. A short time before the gathering, I reviewed materials supplied to me by my client setting forth the client's position on the law. I based my comments on a review of these client materials. If I were fortunate enough to be confirmed, no comments or arguments I have ever made on behalf of a client during my time in private practice would have any effect on my ability to serve as an impartial judge. I would apply the law impartially to the facts of each case and apply precedent established by the Supreme Court and the U.S. Court of Appeals for the Third Circuit.

2. Did you make clear in your remarks at the time that your comments were given as an attorney on behalf of a client, and not as your personal views?

Response: Yes.

- d. The recusal statute, 28 U.S.C. § 455, provides in pertinent part that “[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”**

You have publicly stated that the legal requirement to which you were referring in your remarks is “unprecedented and blatantly unconstitutional.” If any challenge to that requirement (or any regulations applying that requirement) were to be before you if you are confirmed, would you recuse yourself from the case?

Response: In order for the public to have confidence in our courts, judges must adhere to the highest ethical standards – and that includes careful consideration and application of the rules governing recusal. If confirmed and confronted with a case involving this law (or any regulations applying it), I would carefully review and address any real or potential conflict in accordance with the provisions of 28 U.S.C. §455, the Code of Conduct for United States Judges, including Canon 3 of the Code, as well as all applicable laws, orders and rules of the United States Courts. If my impartiality might reasonably be questioned on this or any other issue, I would recuse.