

**Responses of Richard H. Honaker
Nominee to the U.S. District Court for the District of Wyoming
to the Written Questions of Senator Benjamin L. Cardin**

- (1) **In the Wyoming House of Representatives, you were the author and primary sponsor of the Human Life Protection Act of 1991, which criminalized abortion from the moment of conception, and only provided narrow exceptions for rape, incest, or the life of the woman. The bill contained no health exception, and only allows the rape and incest exceptions to be invoked if the woman reports the incidents to authorities within five days of its occurrence.**

Part of the findings in the bill stated that “this state has a compelling interest in protecting the lives of unborn children throughout pregnancy....Unborn children are human beings, and abortion is the taking of the life of an unborn child who is a member of the human race.”

- (a) **Were these legislative findings consistent with *Roe v. Wade* as you understand the decision?**

Response: No. As I have testified, the legislation, if enacted, was intended to provide a legal challenge to Roe.

- (b) **If not, please discuss which findings and provisions of this legislation are inconsistent with *Roe* and subsequent Supreme Court cases that affirmed *Roe*.**

Response: Because the legislation was intended to provide a legal challenge to Roe, I would readily concede that there were a number of findings and provisions that were inconsistent with Roe and its progeny, including Casey. I have not studied that issue since 1991-92, nor have I studied any Supreme Court cases on the issue after the 1992 Casey case.

If confirmed, I shall apply the letter and spirit of Roe, and of subsequent Supreme Court cases affirming Roe, as the settled law of the land.

My record demonstrates that I have long accepted Roe as settled law. My legislative efforts on the subject of abortion ended on February 20, 1992, when the “Human Life Protection Act” failed introduction in the Wyoming House. Casey was decided by the United States Supreme Court on June 29, 1992, and, in my view,

foreclosed any further attempts to revisit Roe through state legislation.

In 1994, I was retained to represent a group of citizens who sought to put the 1991 bill on the ballot as an initiative. The Wyoming Supreme Court ruled in my clients' favor in Wyoming NARAL v. Karpan, 881 P.2d 281 (Wyo. 1994), and the initiative went on the ballot where it was defeated. As I testified, that vote settled the issue in Wyoming.

(2) You stated in a letter to a Wyoming pro-choice group that if an abortion case came to you as a judge, “the losing party would appeal to the Tenth Circuit, and perhaps on to the U.S. Supreme Court, and nobody would remember what the trial judge did anyhow.”

(a) Does this properly represent your view of the role of a trial judge?

Response: No, it does not. The intent of the March 24, 2007 letter was to convey my commitment to approach each case with an open mind and to decide cases fairly and impartially. I regret the quoted statement, which conveyed an inaccurate impression that federal trial judges do not decide important constitutional questions. A federal district judge, committed to extending the protections and liberties of the Constitution of the United States to citizens who are being denied those protections or liberties, can make substantive constitutional law – subject to review by the higher courts – and does have enormous power to do positive things for our citizens. It is not power, so much as it is duty. If confirmed, I would take that duty very seriously.

I have tried many cases to judges and juries, and also have handled more than 50 appellate matters. The review of an appellate court is limited to the record made in the trial court. I have a great appreciation for the necessity of a complete record, and for how that record ought to be made. First and foremost, the federal district court must be a fair and impartial tribunal in which litigants are given wide latitude to introduce relevant evidence and to thoroughly present their theory of the case, both by evidence and by law. I believe in wide latitude in argument, limited only by the widely accepted boundaries set by case law. The trial judge has an obligation to present a complete and orderly record to the circuit court. At the same time, the federal trial judge has an obligation to apply the precedent of the circuit court and the United States Supreme Court on all issues of federal constitutional and statutory law, both substantive and procedural, and the precedent of his

State's supreme court on all issues of substantive state law. Where there is a lack of applicable precedent, the federal trial judge must exercise wisdom to identify and apply sound rules of law, consulting the precedent of other circuits and of state courts that have considered the particular issue.

- (b) **In your view, what effect does an incorrect decision that is not appealed have on the litigants, the court, the community, and the precedents of the court?**

Response: An unjust effect.

- (c) **How would this view about the role of the trial judge affect an indigent or *pro se* petitioner appearing before you who may be unable to easily appeal your decision?**

Response: If confirmed, I would be the first federal judge in Wyoming who also served as a public defender. I represented indigent criminal defendants and also was appointed to assist *pro se* petitioners. I was committed then and am committed now to ensuring that indigent and *pro se* petitioners receive every measure of due process.

- (d) **How would this view of the role of the trial judge affect a woman appearing before you, who is applying for an emergency judicial bypass order to waive parent consent for an abortion, when the woman needs an expedited decision on the merits based on the law?**

Response: I am committed to faithfully applying the precedent of the United States Supreme Court and the Tenth Circuit on all issues of federal constitutional and statutory law, and the precedent of the Wyoming Supreme Court on all issues of substantive state law. That woman hypothetically appearing before me would receive every measure of justice and expediency. She would receive the benefit of having all binding precedent faithfully applied in her case, including *Roe v. Wade* and its progeny. In Wyoming, the state juvenile courts have exclusive jurisdiction over such judicial bypass procedures, and they must hold an expedited hearing within five days of the filing of an application. Should a state court fail to provide federal constitutional protections to such a litigant, however, and should she then come before a United States District Court for relief, I can promise you that, if confirmed, I would give her all the federal relief to which she is

entitled under the Constitution of the United States as interpreted by the Tenth Circuit and the United States Supreme Court.

(e) In your view what burdens does your philosophy place on parties who would have difficulty effectively appealing your decision to the Tenth Circuit?

Response: Again, I regret the quoted statement, which conveyed an inaccurate impression. The philosophy I intended to express in the letter was a philosophy of deciding cases fair and impartially. In that letter I wrote:

“I want you to know that I take very seriously the obligation of a United States District Judge to honor the people of Wyoming and the people of the United States by faithfully applying the precedent of the United States Supreme Court and the Tenth Circuit on all issues of federal constitutional and statutory law, and by faithfully applying the precedent of the Wyoming Supreme Court on all issues of substantive state law. That is the essence of the rule of law, and every judge is every bit as bound by the rule of law as is every citizen.

“As a practical matter, it is unlikely that any case involving the abortion issue would ever come before the United States District Court in Wyoming. If it did, I can promise you that I would set aside any personal political opinions I have held in the past, and would listen carefully to the evidence and faithfully apply the law to the issues presented.”

(3) You have stated that “liberty springs from Christianity.”

(a) Does that mean that other religions, in your view, have not contributed to the advancement of liberty?

Response: Absolutely not. Our nation, and its tradition of advancing liberty both at home and abroad, have been strengthened by a broad diversity of religious values and beliefs. Our traditions are enriched and advanced by diversity.

(b) Does liberty, in your view, spring from any non-religious sources? If so, which ones?

Response: Yes. In our country, liberty springs from a constitutional republic ingeniously designed by a Constitution that

is not a religious document. While guaranteeing its citizens the right to freely express diverse religious beliefs, the Constitution also protects its citizens from any government-imposed religious orthodoxy.

(c) As a judge, what type of weight would you give religious sources when making your decision?

Response: I cannot imagine a scenario in which I would consider any religious source in the context of a decision. In my 32-year career as a trial lawyer, I have never relied upon a religious source for the development of any legal argument. I believe that my long record in the courts, and the bi-partisan support my nomination has from Wyoming's legal profession – both lawyers and judges – demonstrates that, as a judge, I would not inject religious matters into the legal decision-making process.

(4) You have stated that “autonomy is the new secular religion sanctioned by the United States Supreme Court. The Supreme Court no longer talks about America as a Christian nation or about the Christian underpinnings of the law.”

(a) How would this view impact your work as a federal district court judge?

Response: When I made that statement 16 years ago, I was a passionate young legislator speaking to a breakfast gathering of Christian lawyers. Looking back with greater maturity and insight, I recognize that some of the statements I made were overly broad and even hyperbolic. I do not believe the United States Supreme Court has sanctioned any religion whatsoever.

I believe America is a nation in which people of all faiths, or of no faith at all, live together as equals under the Constitution and laws of the United States. In my practice I have represented people of many faiths, and people of no faith at all, and as a judge, if confirmed, I pledge to provide a fair and impartial tribunal for people of all or no religious persuasions.

(b) How would you decide a case where your personal religious views conflict with a statute enacted by Congress, or a binding precedent of a court?

Response: It is the absolute duty of a federal trial judge to give full effect to statutes enacted by Congress, and to faithfully apply

all binding precedent. I am committed to fulfilling that duty without equivocation. In my 32-year career as a lawyer, I have never taken my personal religious views into a courtroom, and I would not do so as a judge.

- (c) **Would you faithfully apply rulings of the Supreme Court on church-state separation issues, even if they contradicted your own personal religious views regarding the proper role of religion in the law?**

Response: Absolutely.

- (d) **Based on your previous statements, do you understand that a litigant before you might be concerned that you could issue an impartial ruling based on the law, irrespective of your religious beliefs?**

Response: If confirmed, I will seek to be understanding of the concerns of any litigant appearing in my court. I intend to approach each case with an open mind, and to decide cases fairly and impartially. The appearance of fairness and impartiality is of critical importance to providing an atmosphere in which justice can be done. I would hope that my long record of having represented a wide range of individuals in diverse actions would give that litigant comfort in the fact that I could decide his or her case fairly and impartially.

My commitment to equal justice under the law is best demonstrated by the clients I have represented – people from all walks of life. I have represented women who have been victims of abusive relationships, employment discrimination, medical malpractice, and negligence. I have represented people with diverse racial and ethnic backgrounds, religious beliefs, and sexual orientations. I have represented unions and businesses. I have represented miners and oilfield workers and railroaders and doctors and sheepherders and teachers and children and senior citizens in nursing homes.

I believe that it further testifies to my principled commitment to the rule of law and to equal justice under the law that I was elected by my peers to serve as president of the Wyoming State Bar and the Wyoming Trial Lawyers Association, that I serve on the national board of the American Board of Trial Advocates and am co-chair of its committee on judicial independence, and that I serve as vice-chair of the Board of Professional Responsibility, sitting in judgment on attorney ethics cases. In addition, I have received the

unanimous “Well Qualified” rating of the American Bar Association’s Standing Committee on the Judiciary, and my nomination has received the bi-partisan support of Wyoming’s legal community, and the support of Wyoming’s federal judiciary.