

**Responses of Richard H. Honaker
Nominee to the U.S. District Court for the District of Wyoming
to the Written Questions of Senator Dianne Feinstein**

1. In a 1992 speech to the Christian Legal Society, you said that “the most basic question for those who would define justice in this society” is, “are we one nation under God, or are we a nation under men?”

- ***What did you mean by this statement?***

Response: The quoted statement was meant to communicate the American political ideal articulated best in the Declaration of Independence: that certain unalienable rights come not from men – in that they could be taken away by men or by government – but from an absolute source. President Kennedy reiterated the same ideal in his Inaugural Address, saying that “...the rights of man come not from the generosity of the state but from the hand of God.” An integral part of American political philosophy has always been that citizens have certain fundamental rights that cannot be arbitrarily taken away by government. Those rights are guaranteed by the Constitution of the United States, and in particular, the Bill of Rights.

- ***Do you support the Supreme Court’s precedent on the separation of church and state? Do you believe it is settled law?***

Response: Yes, I do. And yes, I believe it is settled law.

2. In the same speech to the Christian Legal Society, you said that “the Supreme Court no longer talks about America as a Christian nation or about the Christian underpinnings of the law.” You spoke approvingly of 19th-century Supreme Court cases that said this country is a “Christian nation,” and harshly criticized the Supreme Court for its more recent rulings that require government to be neutral toward religion.

- ***Given your strong support of outdated Supreme Court cases and your criticism of prevailing Supreme Court precedent, what in your record demonstrates that you will follow current Supreme Court precedent on church-state issues?***

Response: Our country has changed demographically and in many other ways since those early Supreme Court opinions in *Church of the Holy Trinity v. United States*, 143 U.S. 457 (1892) and *United States v. MacIntosh*, 283 U.S. 605 (1931). Our country’s religious heritage has broadened, has deepened, and has become much more rich and diverse. In that 1992 speech, I traced some of those historical changes as chronicled by Supreme Court opinions, but did not propose – and would not propose now -- that the Court should revert to its earlier opinions. I do not believe America is a “Christian nation” or should be a “Christian nation.”

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.

What I was attempting to communicate in my speech was a concern that the Court's Establishment Clause tests, including the neutrality test, not be interpreted so as to justify hostility toward religious believers. Justice Breyer, for one, has also taken up this concern, articulating it in his recent concurrence in Van Orden v. Perry, 545 U.S. 677, 699 (2005):

“[T]he Court has found no single mechanical formula that can accurately draw the constitutional line in every case. Where the Establishment Clause is at issue, tests designed to measure ‘neutrality’ alone are insufficient, both because it is sometimes difficult to determine when a legal rule is ‘neutral,’ and because ‘untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious.’” (citations omitted).

I have not litigated an Establishment Clause case, and I do not claim to fully understand the complexities of the various Establishment Clause “formulas” -- as Justice Breyer calls them -- that the Court has used in detail. One thing, however, is crystal clear: that my duty, as a trial judge, would be to apply the precedent of the Supreme Court in Establishment Clause cases. Were such a case to come before me, I would do my very best to study the Court's Establishment Clause jurisprudence, and apply it as accurately and completely as possible.

You ask what in my record demonstrates that I will follow precedent. I would hope that members of the Committee will carefully consider my record as a lawyer in the federal and state courts and as a leader of my state's Bar. That record demonstrates a lifelong commitment to the rule of law, including respect for the precedent of higher courts and for all litigants. Applying legal precedents is what I have done for 32 years as a lawyer, and I am absolutely committed to applying legal precedents as a judge. I respect our system of law, and recognize that a judge, too, is subject to the rule of law.

I believe that it further testifies to my principled commitment to the rule of 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.

3. In a 1994 speech you criticized the Democratic party for favoring “hiring quotas for minorities” and “special interests for gays.” You also derided what you call “fringe anti-family groups which seek special rights.”

- ***What did you mean by “hiring quotas for minorities”?***

Response: This was a partisan political speech given at a Republican rally during a 1994 Republican primary campaign for a state legislative seat. Many of the phrases used were purely rhetorical. I cannot now recall whether there were specific issues in 1994 that would have provided a context for my use of this phrase. My understanding of a “hiring quota” is that it is a rigid, inflexible program in which a fixed number of jobs are exclusively reserved for a certain group, without consideration of any factor other than the group's race. I expect that is the sense in which I used the phrase in 1994, and that is the sense in which the Supreme Court has condemned the use of quotas, both before and after 1994. See, for example, *Richmond v. Croson*, 488 U.S. 469 (1989), and *Adarand Constructors v. Peña*, 515 U.S. 200 (1995).

- ***What are your current views on affirmative action?***

Response: My views are consistent with the views expressed by Justice O'Connor in her opinion for the Court in *Grutter v. Bollinger*, 539 U.S. 306 (2003).

- ***If confirmed, will you adhere to the Supreme Court's precedent in Grutter v. Bollinger?***

Response: Yes, I will.

- ***What “special rights” were you referring to?***

Response: I do not recall.

- ***Do you believe that gay and lesbian Americans are entitled to the same rights under the law as all other Americans?***

Response: Absolutely. In the course of my career, I have represented gays and lesbians in seeking redress of their legal rights, and it has been my honor to do so. I am committed to the principle of equal justice under the law for all citizens.

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.

4. You testified that the issue of abortion was “one issue that came up during my service as a legislator.” It would be useful to know about the other issues that you worked on as a State representative. Presumably, you drafted and sponsored various other pieces of legislation.

- ***Will you commit to providing the Committee the text of all bills of which you were the author, sponsor, or lead co-sponsor in the Wyoming House of Representatives?***

Response: Upon receiving this request, I promptly requested complete textual data from the Wyoming Legislative Service Office. The director of that office, Dan J. Pauli, has written to me and explained why the LSO cannot satisfy my request. I attach Mr. Pauli’s letter to me of February 27, 2008, and include it as a part of my response.

I have done the next best thing in order to be responsive to the request. Attached are the complete digest entries from the House Journal and Senate Journal of the Wyoming Legislature for each bill I authored, sponsored or co-sponsored during the years I served in the Wyoming House of Representatives. The subject of each bill is expressed in its title. With this data, I have also included a list of the bills for each year.

- ***If you are unable to provide the text of all bills, will you provide a list and a summary of all legislation of which you were the author, sponsor, or lead co-sponsor?***

Response: Please refer to the response above.