

Responses of Louis B. Butler, Jr.
Nominee to the U.S. District Court for the Western District of Wisconsin
to the Written Follow-up Questions of Senator Jeff Sessions

- 1. In response to Questions 1(a)(i), (c)(i), and (c)(ii), you stated “if confirmed as a District Court Judge, I would apply settled precedent of the United States Supreme Court and Seventh Circuit Court of Appeals.” While I appreciate your commitment to follow precedent if confirmed to the district court, this statement does not answer any of the above-listed questions. Please provide a response to those questions.**

- a. Do you agree with the dissent in *Paris Adult Theatre*? Please explain why or why not.**

Response: As a judge, I read opinions of the United States Supreme Court to determine how to apply those opinions to cases that come before the court. The Court in *Paris Adult Theatre* held, among other things, that obscenity may be banned in public places even if confined to consenting adults. I fully accept that as precedent to be followed, and will do so if confirmed. Beyond that, having not reviewed the briefs filed by the parties, having not read all of the decisions cited within the majority and dissenting opinions, and having not heard the oral arguments in the action, I am not in a position to agree or disagree with any viewpoint taken by a dissenting justice.

- b. Do you agree with the dissent in *Marsh*? Please explain your answer.**

Response: The Supreme Court held that the Nebraska practice of opening legislative sessions with a prayer did not violate the establishment clause. I fully accept that as precedent to be followed, and will do so if confirmed. Beyond that, having not reviewed the briefs filed by the parties, having not read all of the decisions cited within the majority and dissenting opinions, and having not heard the oral arguments in the action, I am not in a position to agree or disagree with any viewpoint taken by a dissenting justice.

- c. Do you agree that America’s history and heritage as a Judeo-Christian nation should inform interpretation of the First Amendment?**

Response: In response to the claim in *Marsh* that prayers at the beginning of the legislative session are in the Judeo-Christian tradition, the Court stated: “The content of the prayer is not of concern to judges where, as here, there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief. That being so, it is not for us to embark on a sensitive evaluation or to parse the content of a particular prayer.” I fully accept that as precedent to be followed, and will do so if confirmed. Beyond that, having not reviewed the briefs filed by the parties, having not read all of the

decisions cited within the majority and dissenting opinions, and having not heard the oral arguments in the action, I am not in a position to agree or disagree with any viewpoint taken by a dissenting justice.

2. In response to Question 1(a)(ii), you stated: “The Supreme Court has recognized that all obscenity is not beyond the reach of government regulation. If confirmed as a District Court Judge, I would apply settled precedent of the United States Supreme Court and Seventh Circuit Court of Appeals.” While I appreciate your commitment to follow precedent if confirmed to the district court, your statements do not answer this question. Please provide a response to this question.

- a. Do you agree with Justices Brennan and Marshall that all obscenity is beyond the reach of government regulation? Please explain why or why not.

Response: The Court held to the contrary in *Paris Adult Theatre*. I fully accept that as precedent to be followed, and will do so if confirmed. Beyond that, having not reviewed the briefs filed by the parties, having not read all of the decisions cited within the majority and dissenting opinions, and having not heard the oral arguments in the action, I am not in a position to agree or disagree with any viewpoint taken by a dissenting justice.

3. In response to Question 1(b)(i), you stated: “The Supreme Court has held that the death penalty is not *per se* unconstitutional. If confirmed as a District Court Judge, I would apply settled precedent of the United States Supreme Court and Seventh Circuit Court of Appeals.” While I appreciate your commitment to follow precedent if confirmed to the district court, your statements do not answer my question. Please provide a response to this question.

- a. Do you agree that the death penalty is *per se* unconstitutional? If not, do you agree that it is settled law that the death penalty is constitutional?

Response: The Court has held that the death penalty is not *per se* unconstitutional. Beyond that, having not reviewed the briefs filed by the parties, having not read all of the decisions cited within the majority and dissenting opinions, and having not heard the oral arguments in the action, I am not in a position to agree or disagree with any viewpoint taken by a dissenting justice. As to whether it is settled law that the death penalty is constitutional, for a United States District Court Judge, any decisions by the United States Supreme Court are settled law, and would be binding precedent.

4. In response to Question 1(d)(i), you stated: “The Supreme Court has held that illegal aliens do not have a constitutional right to free public education. If confirmed as a District Court Judge, I would apply all settled precedent of the United States Supreme Court and Seventh Circuit Court of Appeals.” While I appreciate your

commitment to follow precedent if confirmed to the district court, your statements do not answer my question. Please provide a response to this question.

- a. Do you believe that illegal aliens have a constitutional right to taxpayer-funded benefits? Please explain your answer.**

Response: I believe your question asks for a response not decided in *Plyler v. Doe*. The Court decided, among other things, that “public education is not a ‘right’ granted to individuals by the Constitution,” but any further discussion calls for me to give an answer on a question that may come before the district court that I believe has not been squarely decided by the United States Supreme Court. That is why I responded that I would follow established precedent if confirmed. Of course, if either the United States Supreme Court or the Seventh Circuit Court of Appeals has decided the question of taxpayer-funded benefits, I would be bound by those decisions, and would follow that precedent.

- 5. Question 3(c) asked you to “provide an example of a case where the outcome did not comport with your view of ‘what’s right’ and/or ‘what’s just.’” You answered: “*Ableman v. Booth*, 62 U.S. 506 (1858). I disagree with the court’s decision to uphold and enforce the Fugitive Slave Act.” To clarify, please give an example of a case *in which you participated as a judge* where the outcome did not comport with your view of “what’s right” and/or “what’s just.”**

Response: I have no such examples. The goal is to provide each litigant with a fair, neutral, detached and impartial decision in each case. Whether I agreed with the result of an individual case or not, each individual litigant was provided with due process and a fair and impartial decision. Thus, each case comported with my view of what is right and just.