

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

1. On June 27, 2012, you participated in the “Let Religious Freedom Ring” forum at Notre Dame Church in Bethlehem, Pennsylvania. In your questionnaire, you stated that you have no notes, transcripts or recordings of this forum, but you did provide press coverage of the event. This coverage, from a July 12, 2012 article in *The A.D. Times*, quotes you as saying that the health care law is “un-American, unprecedented and blatantly unconstitutional.” The article goes on to say that you mentioned lawsuits filed against the health care law across the country, including suits filed in the Dioceses of Pittsburgh and Erie, Pennsylvania. And then the article reports that you “explained [that] the mandate violated the First Amendment, the Administrative Procedure Act, and the Religious Freedom Restoration Act.”

- a. It appears from this press coverage that these comments were made about the requirement that employers provide health insurance coverage for preventive health services, including contraception, to their employees, and not the individual mandate requiring people to purchase health insurance. During your hearing, Ranking Member Grassley asked you which of the exact elements of the health care law you were referring to in these comments. You responded that you were discussing “the Act overall” and that there was “a specific discussion on the mandate as well.” Please explain more specifically which provisions of law you were referring to when you made each of the comments noted above.**

Response: In making each of the comments noted above, I was referring to the requirement that employers provide to their employees health insurance coverage for preventive health services, specifically the contraception coverage requirement.

- b. In response to a question from Ranking Member Grassley about the statements you made at the June 27, 2012 forum, you said at your hearing:**

I was asked by one of my clients, the Catholic Diocese of Allentown, to represent it at this forum on the subject of the First Amendment and religious liberty. That was the context in which I was representing the client and made those remarks.

In your questionnaire, you state that you participated in this June 27, 2012 forum, but do not mention that you participated as an attorney representing a client. The press coverage of this event also simply states that you “provided the commentary at the Notre Dame session.”

Please describe with specificity in what capacity you provided these comments and any relevant attorney-client relationship you may have had at the time with the Catholic Diocese of Allentown.

Response: I provided the comments in my capacity as an attorney representing one of my clients, the Catholic Diocese of Allentown, a religious nonprofit organization, which has been a client of mine for approximately two decades and remains a client today.

- c. Do these comments reflect your view of the law at the time you made these comments? Do you continue to hold these views today?**

Response: These comments reflected my client's view of the law at the time I made them on June 27, 2012. If confirmed as a judge, I would be bound to apply Supreme Court and U.S. Court of Appeals for the Third Circuit precedents, regardless of any position I previously advocated on behalf of a client. For example, the U.S. Court of Appeals for the Third Circuit currently has pending before it an appeal raising the issue of the constitutionality of the requirement for religious nonprofit organizations to provide coverage for contraceptive services to their employees (*Zubik, et al. v. Burwell, et al.*, Nos. 14-1376 and 14-1377). If confirmed, I would apply any precedent established in this area of the law by the Supreme Court and the U.S. Court of Appeals for the Third Circuit.

- d. Do your comments reflect your view, then or now, of the requirement that employers cover contraceptive services as it applies to a particular employer or type of employer, or were you referring to the contraceptive requirement as applied to all employers?**

Response: The comments reflected my client's view on June 27, 2012 of the applicability to my client, a religious nonprofit organization, of the contraceptive services requirement. I was not referring to all employers. The U.S. Court of Appeals for the Third Circuit currently has pending before it an appeal raising the issue of the constitutionality of the requirement for religious nonprofit organizations to provide coverage for contraceptive services to their employees (*Zubik, et al. v. Burwell, et al.*, Nos. 14-1376 and 14-1377). If confirmed, I would apply any precedent established in this area of the law by the Supreme Court and the U.S. Court of Appeals for the Third Circuit.

- e. Will these past comments, whether they reflect your past or current views, have any effect on your ability to serve as an impartial judge?**

Response: No. No comments I have ever made on behalf of a client nor any arguments I have made on behalf of a client would have any effect on my ability to serve as an impartial judge. If confirmed, 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.

- f. **If the U.S. Court of Appeals for the Third Circuit's decision in *Conestoga Wood v. Burwell*, 724 F.3d 377 (3d Cir. 2013) had remained binding precedent, would you have had any trouble following this decision?**

Response: I would not have had any trouble following the decision if it had remained binding precedent. If confirmed, I would not have any trouble following any precedent from the Supreme Court and the U.S. Court of Appeals for the Third Circuit.

2. On June 30, 2014, the Supreme Court held in *Burwell v. Hobby Lobby* that closely held for-profit corporations can refuse to provide health insurance coverage of a woman's contraceptive services. The opinion of the Court assumed without deciding that the government has a compelling interest in providing contraceptive services to women. In his concurrence, Justice Kennedy states that the contraceptive coverage requirement "furthers a legitimate and compelling interest in the health of female employees." And in her dissent, Justice Ginsburg, joined by Justices Sotomayor, Breyer, and Kagan, also concludes that the contraceptive coverage requirement "furthers compelling interests in public health and women's well being."

- a. **In your view, does the government have a compelling interest in ensuring that women receive contraceptive care?**

Response: If confirmed as a district court judge, any personal views on this or any other issue would be irrelevant. The majority opinion of the Supreme Court, in its entirety in *Burwell v. Hobby Lobby*, is binding precedent, and as such, is entitled to full force and effect by lower court judges unless and until overruled or modified by later Supreme Court decisions. Although the majority opinion did not explicitly decide whether the government has a compelling interest in providing contraceptive services to women, five justices suggested that the government has a compelling interest in the contraceptive coverage requirement (Justice Kennedy in his concurring opinion and Justices Ginsberg, Sotomayor, Kagan and Breyer in their dissenting opinion). If confirmed, I would follow the *Burwell v. Hobby Lobby* majority opinion in its entirety as I would any precedents from the Supreme Court and U.S. Court of Appeals for the Third Circuit.

- b. **As a judge, would you be able to follow binding precedent holding that the government has a compelling interest in requiring that group health plans provide contraceptive coverage without cost sharing notwithstanding your personal views on the matter?**

Response: If confirmed as a district court judge, I would not have any trouble

following any precedent from the Supreme Court and U.S. Court of Appeals for the Third Circuit.

3. At the June 27, 2012 forum, the press coverage states that you “encouraged everyone to . . . vote their conscience.” Judges sometimes have to make difficult decisions to uphold the law even when they personally disagree with the law or the outcome that could result from applying the law. How will you handle cases where the law conflicts with your conscience or personal beliefs?

Response: I would like to reiterate that I made these comments on behalf of a client and I well understand the difference between the role of an advocate and the role of a judge. The oath sworn by a judge to uphold the law requires that a judge respect and follow the law and all binding precedents, whether or not a judge personally agrees with the law or the outcome that could result from applying the law. If confirmed, I will be firmly committed to following that oath.