

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

1. As solicitor for the city of Bethlehem, you made public comments regarding a federal lawsuit filed against the city. What concerns me is that you referred to this suit as a “nuisance suit” filed by a “bounty hunter” seeking a cut of the take. Is this an accurate representation of your view of whistleblowers?

Response: No.

a. If not, what in your view is the role of whistleblowers?

Response: Whistleblowers can play an important role in facilitating oversight and strengthening the system of checks and balances, by exposing waste, fraud and abuse. The 1986 update of the False Claims Act to include *qui tam* provisions, together with the 1989 Whistleblower Protection Act, have helped facilitate the recovery of substantial taxpayer funds that would otherwise have been lost to fraud.

b. If confirmed, how would you approach a *qui tam* case if it came before you?

Response: If confirmed, I would apply and give full effect to the *qui tam* provisions of the False Claims Act, Supreme Court precedent interpreting the False Claims Act and Third Circuit Court of Appeals precedent interpreting the False Claims Act.

2. You have been actively involved in local politics for many years. There is certainly nothing wrong with this activity, but should you be confirmed, your political history might concern future litigants.

a. Can you assure this Committee that, if confirmed, your decisions will remain grounded in the precedent and the text of the law rather than any underlying political ideology or motivation?

Response: Yes.

b. What further assurances or evidence can you give the Committee and future litigants that you will be fair to all who appear before you, if confirmed?

Response: Personal opinions, political and otherwise, should play no role in any judicial decision making. The justice system receives trust from the people it serves only when decisions are made based on the fair, impartial and evenhanded application of the law. If I am confirmed as a district court judge, all judicial decision making

would be fair, impartial and based exclusively on the objective application of the law and binding precedent to the facts in the record.

3. What is the most important attribute of a judge, and do you possess it?

Response: The most important attribute of a judge is integrity. This includes a commitment to the rule of law and to ensuring a fair and impartial process in the resolution of cases. I believe I possess this attribute.

4. Please explain your view of the appropriate temperament of a judge. What elements of judicial temperament do you consider the most important, and do you meet that standard?

Response: A judge should be patient, courteous and respectful. A judge's demeanor should promote respect for the rule of law, respect for the process and civility in the courtroom. I believe I meet this standard.

5. In general, Supreme Court precedents are binding on all lower federal courts and Circuit Court precedents are binding on the district courts within the particular circuit. Please describe your commitment to following the precedents of higher courts faithfully and giving them full force and effect, even if you personally disagree with such precedents?

Response: If confirmed, I am committed to following Supreme Court and Third Circuit Court of Appeals precedents, and would give them full force and effect, even if I personally disagreed with such precedents. The obligation of a district court judge is to follow the precedents of higher courts, and this is a fundamental principle of law, which I would faithfully follow.

6. At times, judges are faced with cases of first impression. If there were no controlling precedent that was dispositive on an issue with which you were presented, to what sources would you turn for persuasive authority? What principles will guide you, or what methods will you employ, in deciding cases of first impression?

Response: If the matter in question pertained to the interpretation of a statute, code or regulation, I would utilize the standard rules of statutory construction, beginning with an examination of the statute's plain language. I would also review and utilize any analogous decisions by the Supreme Court and the Third Circuit Court of Appeals. Although such decisions would only provide persuasive authority, I would also review and consider any applicable decisions by the other circuit courts or district courts.

7. What would you do if you believed the Supreme Court or the Court of Appeals had seriously erred in rendering a decision? Would you apply that decision or would you use your best judgment of the merits to decide the case?

Response: I would apply binding Supreme Court or Third Circuit Court of Appeals precedent, regardless of whether I believed the court erred in rendering its decision. District court judges are obligated to follow existing precedent until or unless that precedent is changed by an appellate court.

8. Under what circumstances do you believe it appropriate for a federal court to declare a statute enacted by Congress unconstitutional?

Response: Statutes enacted by Congress are presumed to be constitutional. Only if Congress clearly exceeded its constitutional authority or if a statute conflicts with another constitutional provision, should a district court judge declare a particular statute unconstitutional.

9. In your view, is it ever proper for judges to rely on foreign law, or the views of the “world community”, in determining the meaning of the Constitution? Please explain.

Response: No. It is not proper for judges to rely on foreign law or the views of the “world community” in interpreting the Constitution.

10. What assurances or evidence can you give this Committee that, if confirmed, your decisions will remain grounded in precedent and the text of the law rather than any underlying political ideology or motivation?

Response: It is never permissible for a judge’s decision to be influenced by any underlying political ideology or motivation. The rule of law is dependent on the judiciary making decisions based on facts and law, and not political ideology or other motivation. I am committed to following the rule of law which demands strict adherence to the principles of *stare decisis*.

11. What assurances or evidence can you give the Committee and future litigants that you will put aside any personal views and be fair to all who appear before you, if confirmed?

Response: For approximately 30 years, I have frequently been requested to serve as an arbitrator in cases, and in some matters as a sole binding arbitrator. Those requests have been made by counsel whom I regularly opposed in litigation matters. I believe that I have established a record of someone who has the ability, experience and integrity to decide cases based on the facts and applicable law, someone who sets aside personal views and someone who is fair to all parties.

12. If confirmed, how do you intend to manage your caseload?

Response: If confirmed, I would undertake to establish a process to promptly resolve cases on my docket. This would include holding a Rule 16 Conference after the filing of each case assigned to me, during which deadlines would be established. It would be my intention to actively monitor my cases, properly reviewing and scheduling any motions for argument or hearing, and disposing of those motions in a timely fashion. I would also seek to work closely and effectively with the United States Magistrate Judges to ensure that all cases are efficiently and properly advanced. An internal calendar alert system would also be established for compliance with the Speedy Trial Act.

13. Do you believe that judges have a role in controlling the pace and conduct of litigation and, if confirmed, what specific steps would you take to control your docket?

Response: Yes. Judges play an important role in controlling the pace and conduct of litigation. The quality of justice in the courts is in part a function of the efficiency and timeliness with which courts operate. I believe a judge should hold prompt Rule 16 Conferences, and establish reasonable deadlines for each case, to facilitate a fair determination on the merits in a timely fashion.

14. You have spent your entire legal career as an advocate for your clients. As a judge, you will have a very different role. Please describe how you will reach a decision in cases that come before you and to what sources of information you will look for guidance. What do you expect to be most difficult part of this transition for you?

Response: As an arbitrator of cases for approximately 30 years, and as a tax hearing officer in cases over the last few years, I have gained experience in decision making that I believe will assist in the transition to judicial service. If confirmed, I would look to the legal briefs and arguments of legal counsel, read the applicable statutes and cases and review the relevant evidence. Because I have practiced primarily in the area of civil litigation I will need to become more familiar with criminal law, and I have already undertaken to read and study in this field in order to become more knowledgeable in this area.

15. President Obama said that deciding the “truly difficult” cases requires applying “one’s deepest values, one’s core concerns, one’s broader perspectives on how the world works, and the depth and breadth of one’s empathy . . . the critical ingredient is supplied by what is in the judge’s heart.” Do you agree with this statement?

Response: I am unfamiliar with the full context in which these remarks were made. Judges are required to decide all cases by applying the law to the facts of the case. District court judges take an oath to decide cases based on the Constitution, applicable statutes, regulations, rules and higher court precedent, and if confirmed, that is what I would do. A judge’s personal views and beliefs must be set aside and play no role in decision making.

16. Every nominee who comes before this Committee assures me that he or she will follow all applicable precedent and give them full force and effect, regardless of whether he or she personally agrees or disagrees with that precedent. With this in mind, I have several questions regarding your commitment to the precedent established in *United States v. Windsor*. Please take any time you need to familiarize yourself with the case before providing your answers. Please provide separate answers to each subpart.

- a. **In the penultimate sentence of the Court’s opinion, Justice Kennedy wrote, “This opinion and its holding are confined to those lawful marriages.”¹**

¹ *United States v. Windsor*, 133 S. Ct. 2675 at 2696.

- i. **Do you understand this statement to be part of the holding in *Windsor*? If not, please explain.**

Response: Yes.

- ii. **What is your understanding of the set of marriages to which Justice Kennedy refers when he writes “lawful marriages”?**

Response: The reference to “lawful marriages” is limited to those same-sex “marriages that are made lawful by the state”. *United States v. Windsor*, 133 S. Ct. 2675, 2695 (2013).

- iii. **Is it your understanding that this holding and precedent is limited only to those circumstances in which states have legalized or permitted same-sex marriage?**

Response: Yes.

- iv. **Are you committed to upholding this precedent?**

Response: Yes.

- b. **Throughout the Majority opinion, Justice Kennedy went to great lengths to recite the history and precedent establishing the authority of the separate States to regulate marriage. For instance, near the beginning, he wrote, “By history and tradition the definition and regulation of marriage, as will be discussed in more detail, has been treated as being within the authority and realm of the separate States.”²**

- i. **Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes.

- ii. **Will you commit to give this portion of the Court’s opinion full force and effect?**

Response: Yes.

- c. **Justice Kennedy also wrote, “The recognition of civil marriages is central to state**

² *Id.* 2689-2690.

domestic relations law applicable to its residents and citizens.”³

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes.

- ii. Will you commit to give this portion of the Court’s opinion full force and effect?**

Response: Yes.

- d. Justice Kennedy wrote, “The definition of marriage is the foundation of the State’s broader authority to regulate the subject of domestic relations with respect to the ‘[p]rotection of offspring, property interests, and the enforcement of marital responsibilities.’”⁴**

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain**

Response: Yes.

- ii. Will you commit to give this portion of the Court’s opinion full force and effect?**

Response: Yes.

- e. Justice Kennedy wrote, “The significance of state responsibilities for the definition and regulation of marriage dates to the Nation’s beginning; for ‘when the Constitution was adopted the common understanding was that the domestic relations of husband and wife and parent and child were matters reserved to the States.’”⁵**

- i. Do you understand this portion of the Court’s opinion to be binding Supreme Court precedent entitled to full force and effect by the lower courts? If not, please explain.**

Response: Yes.

³ *Id.* 2691.

⁴ *Id.* (internal citations omitted).

⁵ *Id.* (internal citations omitted).

- ii. **Will you commit to give this portion of the Court’s opinion full force and effect?**

Response: Yes.

17. According to the website of American Association for Justice (AAJ), it has established a Judicial Task Force, with the stated goals including the following: “To increase the number of pro-civil justice federal judges, increase the level of professional diversity of federal judicial nominees, identify nominees that may have an anti-civil justice bias, increase the number of trial lawyers serving on individual Senator’s judicial selection committees”.

- a. **Have you had any contact with the AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ regarding your nomination? If yes, please detail what individuals you had contact with, the dates of the contacts, and the subject matter of the communications.**

Response: No.

- b. **Are you aware of any endorsements or promised endorsements by AAJ, the AAJ Judicial Task Force, or any individual or group associated with AAJ made to the White House or the Department of Justice regarding your nomination? If yes, please detail what individuals or groups made the endorsements, when the endorsements were made, and to whom the endorsements were made.**

Response: No.

18. Please describe with particularity the process by which these questions were answered.

Response: I received these questions on Thursday, July 31, 2014, drafted my answers to these questions and discussed them with the Department of Justice, Office of Legal Policy. I then made some revisions and finalized my answers for submission to the Committee.

19. Do these answers reflect your true and personal views?

Response: Yes.