IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON COUNTY

STATE OF WASHINGTON,

Plaintiff

v.

ARLENE'S FLOWERS, INC., d/b/a ARLENE'S FLOWERS AND GIFTS, and BARRONELLE STUTZMAN,

Third Party Plaintiffs

v.

ROBERT W. FERGUSON, in his official Capacity as ATTORNEY GENERAL for the STATE OF WASHINGTON,

Third-Party Defendant.

No. 13-2-00871-5

Order

THIS MATTER, having come before the Court on June 28, 2013 and on July 17, 2013 on motions of the parties wherein the Court heard arguments on the following three outstanding issues: 1) whether the Court should grant Plaintiff's motion to strike Defendant's affirmative

pm

defenses; 2) whether the Court should grant Plaintiff's motion to dismiss "Third Party" complaint; and 3) whether the Court should grant the defense motion to join Attorney General Ferguson under Civil Rule 20.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Plaintiff's motion to strike affirmative defenses is denied, the Plaintiff's motion to dismiss the "Third Party" complaint is granted, and the Defendant's motion to join is denied. What both parties have essentially asked this Court to do is to overlook the Superior Court Civil Rules (CR). In reviewing the arguments of counsel, I'm reminded by the testimony of Justice Sonia Sotomayor in her confirmation hearings, "The job of a judge is to apply the law. And so it's not the heart that compels conclusions in cases, it's the law." (Hearings on the Nomination of Justice Sonia Sotomayor to be an Associate Justice of the U.S. Supreme Court, 111th Cong. (July 14, 2009)). Thus, while I think both sides have compelling argument as to why one or the other wants to side step the rules, the Court is not inclined to do so. The Plaintiffs have asked this Court to overlook their late filing in violation of CR 12. The Defendants have asked this Court to overlook their improper filing of the "Third Party Complaint" in violation of CR 14. This Court chooses to hold both parties accountable to the rules.

First, the State's motion to strike affirmative defenses fails because their motion does not comply with CR 12. Here, the Defendant's challenge the Plaintiff's motion as untimely. As detailed by the Defendants in this case, the rule requires the Plaintiffs to file their affirmative defenses within 20 days. The Plaintiffs failed to comply with the 20 day rule because they filed the motion to strike on the 23rd day. Even a more generous reading of the rule would still put the time outside of the 20 day limit. As such, the Court will deny the State's motion to strike

affirmative defenses. The Court is not making a decision on the merits of the motion to strike the affirmative defenses nor prohibiting the State from filing the appropriate additional CR 12 motions, their CR 56 summary judgment motion, or other motions if they see fit at a later time. However, under the facts and procedural history presented to the Court, the State's motion must fail.

Likewise, the Defendant's "Third Party Complaint" fails to meet the requirements of CR 14. Here, Defendants filed a "Third Party Complaint" adding Attorney General Ferguson as a third party defendant. As expressed in the hearing on the matter, the Court was puzzled by the filing as it didn't seem to comply with CR 14. After careful consideration of the parties briefing and the motion to join under CR 20, the Court will deny the motion to join and grant the motion to dismiss *without prejudice*. There is nothing in the Court's ruling that prevents the Defendants from filing their 42 U.S.C. §1983 claim against Attorney General Ferguson in another action. This Court will consider the motion to join if and/or when the case and that motion are properly before the Court. The Court appreciates the arguments on judicial economy. However, both parties have argued the importance of this case. It is the foundation of the case that would be unsteady if the Court were to begin the case by ignoring the rules and thereby allowing the motion to join and granting the motion to strike affirmative defenses. This Court will not do that.

DONE BY THE COURT this 17 day of July, 2013.

SALVADOR MENDOZA, JR.
SUPERIOR COURT JUDGE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON COUNTY

STATE OF WASHINGTON,

Plaintiff

v.

ARLENE'S FLOWERS, INC., d/b/a ARLENE'S FLOWERS AND GIFTS, and BARRONELLE STUTZMAN,

Defendants,

ROBERT INGERSOLL and CURT FREED,

Plaintiffs,

v.

ARLENE'S FLOWERS, INC., d/b/a ARLENE'S FLOWERS AND GIFTS, and BARRONELLE STUTZMAN,

Defendants.

No. 13-2-00871-5
(Consolidated with 13-2-00953-3)

Opinion
and
Order of the Court

THIS MATTER having come before the Court on October 4, 2013, on motion by Defendant Arlene's Flowers for partial summary judgment challenging the Consumer Protection

Act (CPA) claim made by Plaintiffs Ingersol and Freed; and the Court having considered the briefing and declarations in support of their respective motions;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendants motion is denied. To prevail on a private CPA claim, the Washington Supreme Court has laid out clear guidance indicating that the following five factors must be proven by the plaintiff, "...(1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) affecting the public inters, (4) injury to a person's business or property, and (5) causation." Hangman Ridge Stables, Inc. v. Safeco Title Ins. Co., 105 Wash.2d 778, 784 (1986). The Washington Law Against Discrimination (WLAD) indicates that, "...any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is for the purposes of applying the chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade and commerce." RCW 49.60.030(3). Discrimination on the basis of sexual orientation is a violation of the WLAD. 49.60.030(1).

Here the Plaintiffs argue that the violation of the WLAD satisfies the requirements as set out in Hangman Ridge. This Court does not agree. The Washington Supreme Court recently addressed the issue in Panag v. Farmers Ins. Co. of Wash., 166 Wn.2d 27 (2009). The Court indicated, "...plaintiff's injury, the fourth element, is an element distinct from occurrence of a violation in trade or commerce... ". Id. at 45. Thus, while the Plaintiffs have satisfied the first three elements of Hangman Ridge, they must also satisfy the fourth (injury) and fifth (causation) elements. Toward that end, the Plaintiffs argue that they have established an injury sufficient to

support a CPA claim. Among other things, Plaintiffs indicate that the expenses associated with the wasted travel to and from Arlene's (gas and mileage) and the costs associated with selecting a new florist are a sufficient basis to meet the injury element of Hangman Ridge. While this injury may be minor in terms of actual quantifiable dollars, the case law establishes that these losses occasioned by the inconvenience of having to obtain a different florist and the cost of gas and mileage are sufficient to meet the injury element for a CPA claim. Moreover, at this stage of the proceeding, where the Court must view the facts in a light most favorable to the non-moving party, this Court concludes that the fourth and fifth elements as required by Hangman Ridge are established. As such, the Defendant's Motion for Partial Summary Judgment is denied.

DONE BY THE COURT this 7 day of October, 2013.

SALVADOR MENDOZA, JR.
SUPERIOR COURT JUDGE

CERTIFICATE OF MAILING

I hereby certify that on the 7th day of October, 2013, I caused to be delivered the following document(s) by US Mail, E-Mail, Hand-Delivery **OR** Inter-City Legal Processing & Messenger Service.

CASE NUMBER: 13-2-00871-5

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Tiffany A Husom

TIFFANY HUSOM
Administrative Assistant

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

ARLENE'S FLOWERS, INC., d/b/a ARLENE'S FLOWERS AND GIFTS; and BARRONELLE STUTZMAN,

Defendants.

ROBERT INGERSOLL AND CURT FREED,

Plaintiffs,

V.

ARLENE'S FLOWERS, INC., D/B/A ARLENE'S FLOWERS AND GIFTS; AND BARRONELLE STUTZMAN,

Defendants.

No. 13-2-00871-5
(Consolidated with No. 13-2-00953-3)

Amended Oct 7, 2013 Opinion
and
Order of the Court

THIS MATTER having come before the Court on October 4, 2013, on motion by Defendant Arlene's Flowers for partial summary judgment challenging the Consumer Protection

Act (CPA) claim made by Plaintiffs Ingersoll and Freed; and the Court having considered the briefing and declarations in support of their respective motions, including the following:

1. Defendants' Motion for Partial Summary Judgment on CPA Claim by Ingersoll and Freed;

2. Defendants' Memorandum of Authorities in Support of Partial Summary Judgment on CPA Claim by Ingersoll and Freed;

3. Declaration of Alicia M. Berry in support of Defendants' Motion for Partial Summary Judgment on CPA Claim by Ingersoll and Freed;

4. Declaration of Barronelle Stutzman in Support of Defendants' Motion for Partial Summary Judgment on CPA Claim by Ingersoll and Freed;

5. Plaintiffs Robert Ingersoll and Curt Freed's Opposition to Defendants' Motion for Partial Summary Judgment on CPA Claim by Ingersoll and Freed;

6. Declaration of Curt Freed in Support of Opposition to Defendants' Motion for Partial Summary Judgment on CPA Claim by Ingersoll and Freed;

7. Declaration of Robert Ingersoll in Support of Opposition to Defendants' Motion for Partial Summary Judgment on CPA Claim by Ingersoll and Freed;

8. Defendants' Reply to Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment on CPA Claim by Ingersoll and Freed.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendants' motion is denied. To prevail on a private CPA claim, the Washington Supreme Court has laid out clear guidance indicating that the following five factors must be proven by the plaintiff, " ... (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) affecting the public interest, (4) injury to a person's business or property, and (5) causation." Hangman Ridge Stables, Inc. v. Safeco Title Ins. Co., 105 Wash.2d 778, 784 (1986). The Washington Law Against Discrimination (WLAD) indicates that, " ... any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in

the Consumer Protection Act, chapter 19.86 RCW, is for the purposes of applying the chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade and commerce." RCW 49.60.030(3). Discrimination on the basis of sexual orientation is a violation of the WLAD. 49.60.030(1).

Here the Plaintiffs argue that the violation of the WLAD satisfies the requirements as set out in Hangman Ridge. This Court does not agree. The Washington Supreme Court recently addressed the issue in Panag v. Farmers Ins. Co. of Wash., 166 Wn.2d 27 (2009). The Court indicated, " ... plaintiffs injury, the fourth element, is an element distinct from occurrence of a violation in trade or commerce ... ". Id. at 45 . Thus, while the Plaintiffs may satisfy the first three elements of Hangman Ridge by establishing a violation of the WLAD, they must also satisfy the fourth (injury) and fifth (causation) elements. Toward that end, the Plaintiffs argue that they have established an injury sufficient to support a CPA claim. Among other things, Plaintiffs indicate that the expenses associated with the wasted travel to and from Arlene's (gas and mileage) and the costs associated with selecting a new florist are a sufficient basis to meet the injury element of Hangman Ridge. While this injury may be minor in terms of actual quantifiable dollars, the case law establishes that these losses occasioned by the inconvenience of having to obtain a different florist and the cost of gas and mileage, if proven to the trier or fact, may be sufficient to meet the injury element for a CPA claim. Moreover, at this stage of the proceeding, where the Court must view the facts in a light most favorable to the non-moving party, this Court concludes that the facts are sufficient to defeat Defendants' Motion for Partial Summary Judgment. As such, the Defendants' Motion for Partial Summary Judgment is denied.

DONE BY THE COURT this 16 day of December, 2013.

SALVADOR MENDOZA, JR.
SUPERIOR COURT JUDGE

SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR BENTON AND FRANKLIN COUNTIES

INGERSOLL, ROBERT .et al

Plaintiff(s),

v.

ARLENE'S FLOWERS INC .et al

Defendant(s).

Case No. 13-2-00953-3
1st Amended
CIVIL CASE SCHEDULE ORDER
(ORACS)

I. SCHEDULE

		DUE DATE
1	Cancellation/Confirmation of Status Conference	02/03/2014
2	Last Date for Filing Motions to Change Trial Date	03/03/2014
3	Status Conference (telephonic)	**03/06/2014**
4	Plaintiff's Disclosure of Lay and Expert Witnesses	03/03/2014
5	Defendant's Disclosure of Lay and Expert Witnesses	04/28/2014
6	Disclosure of Plaintiff's Rebuttal Witnesses	05/12/2014
7	Disclosure of Defendant's Rebuttal Witnesses	05/27/2014
8	Discovery Completed	08/04/2014
9	Last Date for Filing Statement of Arbitrability	08/04/2014
10	Last Date for Filing Jury Demand	08/18/2014
11	Settlement Position Statements filed by all parties	08/18/2014
12	Last Date for Filing Dispositive Pretrial Motions	08/18/2014
13	Settlement Conference (in person)	**09/04/2014**
14	Last Date for Filing and Serving Trial Management Report	09/29/2014
15	Pretrial Management Conference (in person)	**10/02/2014**
16	Trial Memoranda and Motions In Limine to be filed	09/29/2014
17	Trial Date and Motions in Limine	**10/13/2014**

II. ORDER

IT IS ORDERED that all parties comply with the foregoing schedule.

Dated this 24th day of January ,2014.

SALVADOR MENDOZA, JR.
SUPERIOR COURT JUDGE

Questions for the Record
Senator Ted Cruz

Response from Salvador Mendoza, Jr.
Nominee, U.S. District Court Judge for the Eastern District of Washington

Describe how you would characterize your judicial philosophy, and identify which U.S. Supreme Court justice's judicial philosophy from the Warren, Burger, or Rehnquist Courts is most analogous with yours.

Response: My judicial philosophy as a state judge is guided by the principles of patience, respect for the rule of law, and humility. I decide cases by applying the statutory authority and case precedent to the facts presented. If confirmed, I would continue to follow this philosophy. With regard to the philosophies of the Supreme Court justices, I have not studied them. As such, I am unaware of whose philosophy would be most analogous to mine.

Do you believe originalism should be used to interpret the Constitution? If so, how and in what form (i.e., original intent, original public meaning, or some other form)?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), for example, the Supreme Court looked to the constitutional text in its original common meaning at the time of its adoption. I would follow this and all other Supreme Court and Ninth Circuit binding precedent on the principles of constitutional interpretation.

If a decision is precedent today while you're going through the confirmation process, under what circumstances would you overrule the precedent as a judge?

Response: None. If I am confirmed as a District Court Judge, I could not and would not overrule a binding case precedent.

Explain whether you agree that "State sovereign interests…are more properly protected by the procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power." Garcia v. San Antonio Metro Transit Auth., 469 U.S. 528, 552 (1985).

Response: The quote is from the holding in the Supreme Court binding precedent of *Garcia v. San Antonio Metro Transit Auth.*, 469 U.S. 528 (1985) regarding the extent of Congress' power under the Commerce Clause. I would follow *Garcia* and all other binding case precedent without regard to whether I personally agree or disagree with the decision.

Do you believe that Congress' Commerce Clause power, in conjunction with its Necessary and Proper Clause power, extends to non-economic activity?

Response: In evaluating Congress' power to regulate non-economic activity, I would apply the Supreme Court case precedent as stated in cases such as *United States v. Lopez*, 514 U.S. 549

(1995). In that case, the Court indicated that there are, "… three broad categories of activity that Congress may regulate under its commerce power." *Id*. at 558. "First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce." *Id*. at 558-59 (internal citations omitted); *see also United States v. Morrison*, 529 U.S. 598 (2000).

What are the judicially enforceable limits on the President's ability to issue executive orders or executive actions?

Response: The Supreme Court has indicated that when the President issues executive orders or actions that are not authorized by an act of Congress or under the Constitution, the judiciary can invalidate said action as exceeding the President's authority. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). If confirmed and asked to decide the issue, I would follow this and all other binding precedent.

When do you believe a right is "fundamental" for purposes of the substantive due process doctrine?

Response: For purposes of substantive due process analysis, the Supreme Court has held that a right is "fundamental" when it is "…objectively, deeply rooted in the Nation's history and tradition, ... and implicit in the concept of ordered liberty." *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997) (internal citation and quotation marks omitted). I would apply this precedent and all other Supreme Court precedents in that determination.

When should a classification be subject to heightened scrutiny under the Equal Protection Clause?

Response: The Supreme Court has applied heightened scrutiny under the Equal Protection Clause to classifications of gender, race, religion, national origin, and ethnicity. Additionally, the Court has also applied heightened scrutiny to classifications when legislation encroaches on a "fundamental" right. *See, e.g., City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 439-41 (1985). I would apply this Supreme Court holding all other case precedents if confirmed.

Do you "expect that [15] years from now, the use of racial preferences will no longer be necessary" in public higher education? Grutter v. Bollinger, 539 U.S. 306, 343 (2003).

Response: If confirmed I would apply the Supreme Court holding in *Grutter v. Bollinger*, 539 U.S. 306 (2003), and all other binding case precedents on affirmative action in public higher education regardless of what my personal expectation might be.

Senator Grassley
Questions for the Record

Salvador Mendoza, Jr.,
Nominee: U.S. District Judge for the Eastern District of Washington

1. You are the judge currently presiding in the *State of Washington v. Arlene's Flowers* case. This case involves a flower shop's denial of services to a same-sex couple for their ceremony. I recognize this case is currently pending.

a. I understand that you have ruled on several pre-trial motions. Please describe the issues presented, your ruling, and the reasons therefore.

Response: On June 28, 2013, I decided a defense motion for recusal and a defense motion to withdraw an affidavit of prejudice filed against another judge. I denied both motions. I have detailed the issues presented, the rulings and the reasons for the decisions in my response to Senate Judiciary Committee Questionnaire (SJQ) question 14 (d) as follows: The defendants in State of Washington v. Arlene's Flowers Inc., et al., No. 13-2-00871-5, Benton County Superior Court, filed a motion requesting that I recuse myself from the case. They did so after I disclosed that I had previously served (prior to my appointment to Superior Court) as a trustee for Columbia Basin College (CBC), the employer for one of the plaintiffs. As a trustee I did not have any duties to supervise any employees of CBC except the President of the college. That plaintiff had presented data and other scholastic information to the Board of trustees in the past. I did not have a personal friendship with the individual and had not recognized him when I initially reviewed the file. Nonetheless, pursuant to Comment 5 of the Cannon of Judicial conduct 2.11, I felt it was important to disclose the information even when I did not feel it was a conflict of interest. I also noted on the record that my wife had purchased flowers on a few occasions from Arlene's Flowers in the past, but I also did not feel that was a conflict of interest. The defendants had already filed two affidavits of prejudice against other judges. I pointed out that under Revised Code of Washington 4.12.050, the parties were only entitled to file one affidavit per case. The defense attorneys then filed a motion attempting to withdraw an affidavit in order to file one against me. I denied the motion because it was not authorized by statute, court rule, or case law. The ruling has not been appealed.

On July 17, 2013, I filed an order addressing three pretrial motions: 1) Plaintiff's motion to strike Defendant's affirmative defenses; 2) Plaintiff's motion to dismiss "Third Party" complaint; and 3) Defense motion to join Attorney General Ferguson under Civil Rule 20. I outline the issues presented, my ruling and the reason for the ruling in my order filed on July 17, 2013. Copy supplied.

On July 24, 2013, I granted in part Defendant's motion to consolidate *Ingersoll, et al. v. Arlene's Flowers, et al.*, 13-2-00953-3 with *State of Washington v. Arlene's Flowers, et al.*, 13-2-00871-5. The motion was granted in part for pretrial discovery and dispositive motions pursuant to Superior Court Civil Rule 42(a) because both actions

presented common questions of law and fact and did not result in prejudice to the parties. I also concluded the decision is consistent with the court's principles on judicial economy. I reserved for later motions the issue of whether the cases should be tried together.

In an order dated October 7, 2013 and amended on December 16, 2013, I denied Defendant's motion for partial summary judgment. The Defendants challenged the Plaintiff's Consumer Protection Act (CPA) claim. I outlined the issues presented, my ruling and the reasons for the ruling in said order. Copy supplied.

b. Other than those orders already provided, have you issued any other orders since you were nominated? If so, please provide them.

Response: Yes. I authorized the first amended civil case scheduling order on January 24, 2014. Copy supplied.

2. According to press reports you said this about the case, "Believe me, ladies and gentleman, if there was a way ethically that I could not hear this case, I wouldn't." What did you mean by this statement?

Response: I don't remember the specific context of this statement. I believe I was referencing the fact that I had been a Superior Court judge for less than two months when I was assigned a high profile case. However, I was not going to skirt my ethical responsibility to hear the cases that come before me.

3. As a judge, you have only handled state matters and as an attorney, you indicated that the majority of your practice was in federal court.

a. Have you handled any trials in federal court?

Response: Yes. I have handled two federal criminal trials.

b. You questionnaire indicates that approximately twenty percent of your legal practice has been in federal court. Please elaborate on the type of legal work this has included (e.g., motions practice, trials, etc…).

Response: When I was a practicing lawyer in federal court, my legal practice included handling both privately retained and court appointed federal criminal felony cases. Many of the cases I handled involved complex cases with alleged large conspiracies spanning multiple states and countries. I handled cases in federal court in Washington, Montana, Illinois, and Michigan. The work involved all facets of courtroom litigation from initial appearances through trial. The motion practice included case budgeting and management of complex cases, bail motions, suppression hearings, sentencing hearings, and discovery motions.

c. What steps do you plan to take to prepare yourself to handle federal matters, if confirmed?

Response: Since my practice in federal court exclusively involved criminal cases, if confirmed, my focus would be on mastering federal civil cases. Although there are differences between state and federal civil law, my current role as the presiding civil judge in Benton and Franklin counties would likely benefit me if I were to transition to the federal bench. If I am confirmed as a Federal District judge, I will demonstrate the same level of commitment that I give to the cases that I currently preside over as a state Superior Court judge. Additionally, I would note that the Federal Rules of Evidence are the same for both criminal and civil cases. I have substantial familiarity with these based on my previous practice. I am committed to applying my strong work ethic to the areas of law that I am less familiar with.

4. During law school you wrote a comment that criticizes the Supreme Court's decision in *Hernandez v. New York* saying that it was "wrongly decided because it fails to take into account the effects of racism in our justice system, the anti-immigrant hysteria gripping the country, and the practical effect on Latinos."

a. What is your current understanding of the law in this area?

Response: In *Batson v. Kentucky*, 476 U.S. 79, 97-98 (1986), the Supreme Court held that the use of peremptory challenges on the basis of race violated the Equal Protection Clause of the Fourteenth Amendment. The Court established the following three-part test in analyzing these peremptory challenges: 1) the party objecting to the peremptory challenge must establish a prima facie case that the totality of the facts illustrate a racial discriminatory purpose; 2) the non-moving party has the burden of stating a race-neutral reason for the peremptory challenge; and 3) if the non-moving party meets its burden, the burden then shifts again to the moving party to show purposeful discrimination. *Id*. at 96. In *Hernandez v. New York*, 500 U.S. 352, 361 (1991), the Supreme Court concluded that use of peremptory challenges on the basis of fear that a bilingual juror would not follow the official English translation, was a race-neutral reason that did not violate the Equal Protection Clause of the Fourteenth Amendment. *Hernandez* and *Batson* are the binding case precedents in this area.

b. What assurances can you give the Committee that you will faithfully apply Supreme Court precedent in this area, if the matter was to arise before you?

Response: I can assure the Committee that if I am confirmed, I will base my decisions entirely on the facts presented and the binding case precedents of the Supreme Court and the Ninth Circuit. I believe my record as state court judge demonstrates that I fairly and impartially apply the laws to the facts of any given case. Any opinion that I may have had when I was a law student, will have no bearing on the decisions I will make as a U.S. District Court judge if I am fortunate enough to be confirmed.

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

Response: The most important attribute of a judge is the adherence to the rule of law. As a Superior Court judge I have followed this important principle. If I am confirmed, I will continue to do the same.

6. 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 must be able to treat all the parties appearing before him or her with great respect and dignity. Good temperament from the judge will engender respect for the process and system of justice. I believe I meet this standard.

7. 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: My personal beliefs on any case precedent will have no bearing on my decision in a case. I am committed to follow both the Supreme Court's and the Ninth Circuit's binding precedents.

8. 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]

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

Response: I do believe that the statement is part of the Court's holding.

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

Response: In *United States v. Windsor*, Justice Kennedy's reference to "lawful marriages" are those "marriages that are made lawful by the State." 133 S. Ct. 2675, 2695 (2013). Justice Kennedy writes that the definition and regulation of marriage has been traditionally within the authority of the individual states. *Id*.

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

at 2689-90. He notes that in addition to New York, 11 other states and the District of Columbia have recognized same-sex marriages as lawful marriages. *Id*. at 2689.

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: The Court's holding only apples to § 3 of DOMA. *Id*. at 2679. This section amends the Dictionary Act in Title 1, §7, of the United States Code to provide a federal definition of "marriage" and "spouse." *Id*. The specific holding of the Court is that as applied to states where same-sex marriage has been legalized, DOMA is unconstitutional as a deprivation of the liberty of the person protected by the Due Process Clause of the Fifth Amendment of the Constitution. *Id*. at 2695.

iv. Are you committed to upholding this precedent?

Response: I am committed to upholding this and all other Supreme Court and Ninth Circuit binding case precedents.

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. The whole *Windsor* opinion along with all other cited U.S. Supreme Court precedents are binding authority.

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 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.

[2] *Id.* 2689-2690.
[3] *Id.* 2691.

Response: Yes. The whole *Windsor* opinion along with all other cited U.S. Supreme Court precedents are binding authority.

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. The whole *Windsor* opinion along with all other cited U.S. Supreme Court precedents are binding authority.

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. The whole *Windsor* opinion along with all other cited U.S. Supreme Court precedents are binding authority.

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

Response: Yes.

9. 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?

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[4] *Id.* (internal citations omitted).
[5] *Id.* (internal citations omitted).

Response: If there are no controlling precedents from either the Supreme Court or the Ninth Circuit, then I would be guided by accepted principles of statutory construction. I would first look at the text of the governing statute. If the language is clear, then my inquiry would be over. If it were not clear, I would look for guidance from the Ninth Circuit's and Supreme Court's related cases on the issue. If there were no such cases, I would then turn to other federal appellate court opinions on the subject at issue for persuasive authority.

10. 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: If I am confirmed as a District Court judge, my responsibility would be to follow all case precedents by both the Supreme Court and the Ninth Circuit. Any personal opinion I might have about the decision would play no role in the decision-making process.

11. 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. Thus, the statute will only be declared unconstitutional if it is clear that Congress has exceeded its authority to enact the statute or when the statute violates a provision of the Constitution.

12. 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. District judges should be guided by domestic law as authorized by the Supreme Court precedents. If I am confirmed, I would not be guided by foreign law or take the view of the "world community" in deciding the cases that I handle.

13. 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: As a Superior Court judge, I have been guided by the same principles that I would be guided by as a District Court judge if confirmed: that I would decide cases based upon the facts presented, the statutory text and the case law authority that apply. No other factors will guide my decisions.

14. 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: I can assure the Committee that my personal opinions have no place in deciding any cases that I am asked to preside over. I believe an important hallmark of our system of justice is the ability of our judges to treat all litigants that appear before them equally and

with respect. I am committed to these principles as a Superior Court judge and would be guided by the same if confirmed as a District Court judge.

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

Response: My general practice would be to file a case scheduling order at the beginning of each case. At the first scheduled hearing, I would discuss with the litigants any unique or unusual issues that may modify the scheduling order. On large and complex cases, the discussion would be more in depth and particularized to the specific needs of the case. The aim of these discussions would be to both promote efficiencies in the case and meet the needs of the litigants.

16. 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 ensuring that cases are adjudicated in a timely manner. In my current position as a Superior Court judge for Benton and Franklin Counties, we have developed case management procedures to handle the large caseloads. If confirmed, I would work with the clerk of the court and the other judges in our district to ensure a case management system is in place to expeditiously handle matters in our district.

17. As a judge, you have experience deciding cases and writing opinions. Please describe how you reach a decision in cases that come before you and to what sources of information you look for guidance.

Response: In deciding cases, I look at the facts presented and the specific issue I am called to decide. I first look to the statutory authority and case precedent, conducting my own independent legal research as needed. The relevant sources may be Washington State statutory authority, case precedent from Washington state appellate courts or the U.S. Supreme Court, the rules of evidence, the criminal or civil rules, or the Washington State or U.S. Constitution.

18. 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.

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

Response: I received these questions on March 19, 2014 and drafted responses. I then discussed my responses with representatives from the Department of Justice. I then finalized my responses.

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

Response: Yes.