

Written Questions of Senator Jeff Flake
U.S. Senate Committee on the Judiciary
Judicial Nominations
May 18, 2016

Answers of Paul L. Abrams

1. What is your approach to statutory interpretation? Under what circumstances, if any, should a judge look to legislative history in construing a statute?

Response: If confronted with a matter of first impression where there is no controlling precedent, I would first look to the relevant statute or regulation to determine if the plain language allows for resolution of the issue. If it does, I would go no further. If not, I would determine if the Supreme Court or Ninth Circuit Court of Appeals has interpreted any analogous statutes or regulations that could afford me guidance. If not, I would then look to cases in other circuits for non-binding guidance. If no guidance exists from any of these sources, I would follow any Supreme Court and Ninth Circuit precedent regarding the application of legislative history.

2. What is the proper scope of the 10th Amendment to the Constitution? In what circumstances should a judge apply it?

Response: The Tenth Amendment provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” U.S. Const. amend. X. In *Printz v. United States*, the Supreme Court held that “[t]he Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or their political subdivisions, to administer or enforce a federal regulatory program.” *Printz*, 521 U.S. 898, 935 (1997). A judge should apply the Tenth Amendment in those cases in which it is implicated or raised, and if I am fortunate enough to be confirmed and am called upon to address this issue, I would follow Supreme Court and Ninth Circuit precedent.

3. Does current standing doctrine foster or impede the ability of litigants to obtain relief in our legal system?

Response: A federal court lacks subject matter jurisdiction if a plaintiff fails to establish Article III standing. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-60 (1992). To establish constitutional standing, a plaintiff must demonstrate each of three “irreducible” core elements: (1) injury-in-fact -- plaintiff must allege “concrete and particularized” and “actual or imminent” harm to a legally protected interest; (2) “causal connection between the injury and the conduct complained of;” and (3) it must be “likely” as opposed to merely “speculative,” that the injury will be redressed by a

favorable decision. *Id.* at 560-61 (citations omitted). I have no opinion on whether the standing doctrine fosters or impedes the ability of litigants to obtain relief in our legal system, and I will continue to apply the doctrine to the matters before me.