

Senator Lee

Questions for the Record Nominations Hearing (10:30 AM, Sept. 11, 2013)

James Donato

- 1. It is my understanding that while you were serving as a board member of the Bar Association of San Francisco, the Association sent a letter to Senators Feinstein, Boxer, Specter, and Leahy in opposition to the confirmation of Justice Alito to the Supreme Court of the United States.**

- a. Did you oppose confirmation of Justice Alito to the U.S. Supreme Court and, if so, on what basis?**

Response: The referenced letter was submitted on behalf of the Bar Association of San Francisco in January 2006. I did not prepare the letter and did not take a personal position for or against the confirmation of Justice Alito.

- b. Did you participate in the drafting of the letter?**

Response: No.

- c. Did you agree with the contents of that letter?**

Response: I did not prepare the letter or undertake any research or analysis of the issues discussed in it, and consequently have no views on the contents of the letter.

- d. Did you express any opposition or support within the association with respect to the contents of that letter?**

Response: The letter reports that 23 directors voted to approve it, two voted against it, one abstained and two did not vote. I do not recall specifically how I voted, but it is likely I voted to send the letter out of deference to the committee that researched and prepared it.

- 2. The Bar Association letter asserts that Justice Alito does not properly understand “the Court’s role to protect the personal rights of individuals and a respect for and sensitivity to the respective powers and reciprocal responsibilities of the Congress,**

the Court, and the Executive, federal-state relations, and limits on governmental power.”

- a. What is your understanding of Justice Alito’s understanding of “the Court’s role to protect the personal rights of individuals and a respect for and sensitivity to the respective powers and reciprocal responsibilities of the Congress, the Court, and the Executive, federal-state relations, and limits on governmental power”?**

Response: I did not prepare the letter or undertake any research or analysis of Justice Alito’s opinions on those issues, nor have I studied Justice Alito’s record on the Supreme Court. Although I do not have a substantive understanding of Justice Alito’s views on these issues, if confirmed, I will follow any binding Supreme Court precedent reflecting Justice Alito’s views on these or any other issues.

- b. What are your views on “the Court’s role to protect the personal rights of individuals and a respect for and sensitivity to the respective powers and reciprocal responsibilities of the Congress, the Court, and the Executive, federal-state relations, and limits on governmental power”?**

Response: The United States Supreme Court has addressed these issues. For example, the Supreme Court has established that Congress’s authority under the Commerce Clause is broad but not unlimited. *See United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995). The Supreme Court has also recognized that the President’s powers to issue executive orders or take executive actions are circumscribed by the Constitution and acts of Congress. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). With respect to federal-state relations, the Supreme Court has held that “the Tenth Amendment confirms that the power of the Federal Government is subject to limits that may, in a given instance, reserve power to the States.” *New York v. United States*, 505 U.S. 144, 157 (1992). The Supreme Court has applied this important constitutional limitation to hold that the authority to determine qualifications for state-court judges and other state government officials is, among other powers, “a power reserved to the States under the Tenth Amendment and guaranteed them by that provision of the Constitution under which the United States ‘guarantee[s] to every State in this Union a Republican Form of Government.’” *Gregory v. Ashcroft*, 501 U.S. 452, 463 (1991). If I am confirmed as a District Judge, I will faithfully follow Supreme Court and Ninth Circuit precedent on these issues.

c. How do your views on these issues differ from those of Justice Alito?

Response: I have not undertaken any research or analysis of Justice Alito's views on these issues. If I am fortunate enough to be confirmed as a District Judge, I will follow Supreme Court precedent on these and all other issues, without regard to any personal views I may or may not have.