

Written Questions of Senator Jeff Flake

U.S. Senate Committee on the Judiciary

Judicial Nominations

December 15, 2015

Marilyn Jean Horan

Nominee, U.S. District Judge for the Western District of Pennsylvania

- 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: When performing statutory interpretation, my first step is to ascertain whether there is any precedent that is directly on point with the issue before me. Binding precedent is applied to resolve the issue. If there is no precedent, the next step is to consider the specific language used in the statutory section. Plain meaning of the words and all rules of statutory construction are factored into the interpretive process. Additionally, I review the entire text of the statute, and I carefully consider any statutory recitation of legislative purpose or objective. In addition, if the interpretation is still not clear, I consider any non-precedential decisions interpreting the statute. I also look to similar laws with similar legislative purposes or language for guidance by analogy. Finally, legislative history, for the specific statute at issue, may be helpful, depending upon the clarity and uniformity of such 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 to the United States Constitution reserves to the states those powers which are not constitutionally delegated to the federal government. Federal courts are bound by the Tenth Amendment – as well as any binding precedent issued by higher courts regarding the Tenth Amendment – to construe the federal government’s authority to legislate only for those matters which are constitutionally delegated to the federal government or which are prohibited to the states. The Tenth Amendment ensures that matters reserved for the states are legislated by the states and that those matters delegated to the federal government are federally legislated.

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

Response: Courts are constitutionally structured to interpret and apply law in the context of the cases that come before them. As such, the Constitution, legislation and precedent establish standing parameters by which cases can come before the courts. This process ensures that laws will be applied or interpreted only in relation to actual controversies.