

Senator Jeff Flake
Questions for the Record

Mary McElroy
Nominee, U.S. District Judge for the District of Rhode Island

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 I was fortunate enough to be confirmed, I would follow the controlling precedent from the Supreme Court and the Court of Appeals for the First Circuit when addressing issues of statutory interpretation. If no precedent existed I would apply the basic rules of statutory construction. The basic principle of statutory interpretation is that “if the language of a statute or regulation has a plain and ordinary meaning, courts need look no further and should apply the regulation as it is written.” *Textron Inc. v. Comm’r*, 336 F.3d 26, 31 (1st Cir. 2003). If the words of a statute were ambiguous, I would invoke several standard canons of construction that are set forth in case law, including: looking to the entire statutory scheme to determine its meaning; looking to the intent of the legislature, for which legislative history is sometimes relevant; and reading the statute to have a common sense meaning.

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

Response: The 10th 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.” This Amendment enunciated the intent of the framers to grant limited power to the federal government and the intent to reserve any power not so granted to the States and its people. If I were presented with a case involving the 10th Amendment, I would apply the precedent of the United States Supreme Court and the First Circuit to the case before me.

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

Response: I have no opinion about whether the standing doctrine fosters or impedes the ability of litigants to obtain relief in our legal system. The standing doctrine is contained in Article III of the United States Constitution (requiring a case or controversy) and as such is binding on the courts. As a conceptual matter, the requirement of standing is designed predominantly to avoid advisory opinions. If I were confirmed as a United States District Judge, I would follow the doctrine as written and interpreted by the United States Supreme Court and the Court of Appeals for the First Circuit when determining standing in any case brought before me.