

Written Questions of Senator Jeff Flake

U.S. Senate Committee on the Judiciary

Judicial Nominations

May 18, 2016

Donald K. Schott

Nominee, U.S. Circuit Judge for the Seventh Circuit

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 am confirmed, my approach to statutory interpretation will be based on controlling precedent. In the Seventh Circuit, "[t]he general rule of statutory interpretation is that one must first look to the language of the statute and assume that its plain meaning 'accurately expresses the legislative purpose.'" *United States v. Shriver*, 989 F.2d 898, 901 (7th Cir.1992), *as amended on reh'g* (Apr. 2, 1993), quoting *Park 'N Fly, Inc. v. Dollar Park 'N Fly, Inc.*, 469 U.S. 189, 194 (1985). "[L]egislative history of a statute is of weighty import only when the statute is not clear or when the application of its 'plain language produces absurd or unjust results.'" *Shriver*, at 901, quoting *Trustees of Iron Workers Local 473 Pension Trust v. Allied Products Corp.*, 872 F.2d 208, 213 (7th Cir. 1989). Under the limited circumstances in which reference to legislative history is employed in statutory interpretation, federal courts must be cautious in relying on legislative history as an accurate reflection of legislative intent. *Exxon Mobil v. Allapattah*, 545 U.S. 546, 568 (2005).

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 to the Constitution limits the power of the federal government by explicitly stating that the "powers not delegated to the United States by the Constitution, nor prohibited to the States by it, are reserved to the States respectively, or to the people." As an example, the federal government "'may not compel the States to enact or administer a federal regulatory program.'" *Printz v. United States*, 521 U.S. 898, 926 (1997), quoting *New York v. United States*, 505 U.S. 144, 188 (1992). A court should apply the 10th Amendment when faced with a challenge to a federal statute that is not authorized by the powers granted to the federal government under the Constitution.

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

Response: Standing is an important doctrine designed to ensure that matters being resolved by the federal courts are actual cases or controversies as required by Article III, Section 2 of the Constitution. Among other things, this doctrine "which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches." *Clapper v. Amnesty Int'l*, 133 S. Ct. 1138,

1146 (2013). It is one of many rules that reflect the fact that federal courts are courts of limited jurisdiction. The doctrine can affect litigants in competing ways. It may impede the ability of some litigants to litigate in the federal courts, but this may have the impact of reducing congestion and making those same courts more accessible to other litigants who meet the standing requirements. In addition, in assessing the impact of the standing doctrine on the ability of litigants to obtain relief in our legal system it must be remembered that federal courts are only one part of that overall legal system. Litigants who may not be able to obtain relief in the federal courts because of the standing doctrine may be able to obtain relief in another forum, such as a state court.