

Responses of Jon S. Tigar
Nominee to be United States District Judge for the Northern District of California
to the Written Questions of Senator Mike Lee

1. How would you describe your judicial philosophy?

Response: My judicial philosophy is to treat all litigants with respect; to consider the litigants' arguments carefully and with an open mind; to apply the law to the facts before me, without prejudgment or bias; to rule only on the issues properly before the court; and to resolve all matters promptly.

a. To what sources would you look in deciding a case that turned on interpretation of a federal statute?

Response: When faced with a case of first impression involving the interpretation of a statute, I would start with the plain language of the provision in question. If that text was unambiguous, I would apply it as written. If it was ambiguous, I would apply precedent from the Supreme Court, the Ninth Circuit, and other Circuit and District Courts (in that order) concerning that provision or related provisions.

b. To what sources would you look in deciding a case that turned on interpretation of a constitutional provision?

Response: I would apply precedent from the Supreme Court, the Ninth Circuit, and other Circuit and District Courts (in that order). I would also consider the plain language of the provision, the history of the drafting of the provision, and the relationship between the provision in question and the other provisions of the constitution.

2. In your view, what are the constitutional requirements for standing and how robustly should those requirements be applied to novel assertions of standing?

Response: As a state court trial judge for the last ten years, I have not been called upon to consider or study the federal law of standing. My general understanding is that all plaintiffs in federal court must show that (1) they have suffered an injury in fact; (2) the injury is due to the defendant's conduct; and (3) the injury would be redressed by the relief sought in the complaint. These requirements apply in all cases, and the court has a *sua sponte* obligation to ensure that all plaintiffs have standing, whether the claims before the court are novel or the subject of prior judicial decisions.

3. What role do the text and original meaning of a constitutional provision play in interpreting the Constitution?

Response: The text of a constitutional provision and the intent of the framers in drafting that provision are of paramount importance in interpreting the Constitution.

4. In the case of the Commerce Clause, apart from circumstances present in *Lopez* and *Morrison*, what are the limits on Congress's Commerce Clause power?

Response: As a state court trial judge for the last ten years, I have not had occasion to consider the limits on Congress's Commerce Clause power, although I am familiar with the test articulated in *United States v. Lopez*, 514 U.S. 549, 558-59 (1995), which provides that Congress may regulate: (1) "the use of the channels of interstate commerce"; (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce"; and (3) "those activities that substantially affect interstate commerce." I am also generally aware that in *National Federation of Independent Business v. Sebelius*, five justices concluded that the Commerce Clause does not authorize Congress to require uninsured individuals to obtain health insurance.

a. Do you believe that Congress has at any time overstepped its authority under that provision since *Wickard*, other than in *Lopez* and *Morrison*?

Response: I have not evaluated any federal statute with regard to Congress' Commerce Clause power, and do not have a view as to whether Congress overstepped its authority with respect to any statute.