

**Nomination of Roderick C. Young**  
**United States District Court for the Eastern District of Virginia**  
**Questions for the Record**  
**Submitted July 1, 2020**

**QUESTIONS FROM SENATOR BOOKER**

1. Do you consider yourself an originalist? If so, what do you understand originalism to mean?

I resist identifying with labels of this sort as they tend to be open to interpretation and have the effect of oversimplifying complex issues. If confirmed, I will rely on the original public meaning of constitutional or statutory texts in an effort to ascertain their meaning. I will also faithfully follow all binding precedents issued by the Supreme Court and the Fourth Circuit. The Supreme Court has analyzed constitutional provisions by looking to the original public meaning. For example, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), both Justice Scalia’s majority opinion and Justice Stevens’s dissenting opinion were based on their respective understanding of originalism.

2. Do you consider yourself a textualist? If so, what do you understand textualism to mean?

For reasons similar to my answer in question 1, I do not label myself a textualist because that term can be interpreted in many different ways. If confirmed, it will be my obligation to follow Supreme Court and Fourth Circuit precedents to determine the meaning of any statutory term. The Supreme Court has determined that statutory interpretation begins with the text, and where the text is clear, that is the end of the inquiry. *See, e.g., Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992).

3. Legislative history refers to the record Congress produces during the process of passing a bill into law, such as detailed reports by congressional committees about a pending bill or statements by key congressional leaders while a law was being drafted. The basic idea is that by consulting these documents, a judge can get a clearer view about Congress’s intent. Most federal judges are willing to consider legislative history in analyzing a statute, and the Supreme Court continues to cite legislative history.

- a. If you are confirmed to serve on the federal bench, would you be willing to consult and cite legislative history?

Yes. If confirmed, I will follow Supreme Court and Fourth Circuit precedents in order to determine the meaning of statutes. Specifically, the Supreme Court has held that when a statute is ambiguous, it is permissible for a court to examine legislative history. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 567-71 (2005).

- b. If you are confirmed to serve on the federal bench, your opinions would be subject to review by the Supreme Court. Most Supreme Court Justices are willing to consider

legislative history. Isn't it reasonable for you, as a lower-court judge, to evaluate any relevant arguments about legislative history in a case that comes before you?

If confirmed, I will evaluate all arguments advanced by the litigants before me. If a litigant advances an argument based on legislative history and Supreme Court or Fourth Circuit precedents direct that I consult legislative history in an effort to interpret the statute, then I will do so.

4. Do you believe that judicial restraint is an important value for an appellate judge to consider in deciding a case? If so, what do you understand judicial restraint to mean?

Yes. I believe judicial restraint is an important value for both appellate and district judges to follow. I understand judicial restraint to mean that a judge will apply the law to the facts without passion, prejudice, or injecting any other personal views into the decision-making process.

- a. The Supreme Court's decision in *District of Columbia v. Heller* dramatically changed the Court's longstanding interpretation of the Second Amendment.<sup>1</sup> Was that decision guided by the principle of judicial restraint?

As a sitting magistrate judge and a district judge nominee, it would be improper for me to comment or opine on *Heller*. However, if confirmed, I will fully and faithfully follow *Heller* and all other Supreme Court and Fourth Circuit precedents.

- b. The Supreme Court's decision in *Citizens United v. FEC* opened the floodgates to big money in politics.<sup>2</sup> Was that decision guided by the principle of judicial restraint?

As a sitting magistrate judge and a district judge nominee, it would be improper for me to comment or opine on *Citizens United*. However, if confirmed, I will fully and faithfully follow *Citizens United* and all other Supreme Court and Fourth Circuit precedents.

- c. The Supreme Court's decision in *Shelby County v. Holder* gutted Section 5 of the Voting Rights Act.<sup>3</sup> Was that decision guided by the principle of judicial restraint?

As a sitting magistrate judge and a district judge nominee, it would be improper for me to comment or opine on *Shelby County*. However, if confirmed, I will fully and faithfully follow *Shelby County* and all other Supreme Court and Fourth Circuit precedents.

5. Since the Supreme Court's *Shelby County* decision in 2013, states across the country have adopted restrictive voting laws that make it harder for people to vote. From stringent voter ID laws to voter roll purges to the elimination of early voting, these laws

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<sup>1</sup> 554 U.S. 570 (2008).

<sup>2</sup> 558 U.S. 310 (2010).

<sup>3</sup> 570 U.S. 529 (2013).

disproportionately disenfranchise people in poor and minority communities. These laws are often passed under the guise of addressing purported widespread voter fraud. Study after study has demonstrated, however, that widespread voter fraud is a myth.<sup>4</sup> In fact, in-person voter fraud is so exceptionally rare that an American is more likely to be struck by lightning than to impersonate someone at the polls.<sup>5</sup>

- a. Do you believe that in-person voter fraud is a widespread problem in American elections?

I am aware that this issue has been debated in Congress and that there is pending and impending litigation about this issue in federal court. Hence, it would be improper for me, as a sitting magistrate judge and as a district judge nominee, to discuss any personal views that I may have about this issue. See Canons 3(A)(6) and 5(C) of the Code of Conduct for United States Judges.

- b. In your assessment, do restrictive voter ID laws suppress the vote in poor and minority communities?

Please see my response to question 5(a).

- c. Do you agree with the statement that voter ID laws are the twenty-first-century equivalent of poll taxes?

Please see my response to question 5(a).

6. According to a Brookings Institution study, African Americans and whites use drugs at similar rates, yet blacks are 3.6 times more likely to be arrested for selling drugs and 2.5 times more likely to be arrested for possessing drugs than their white peers.<sup>6</sup> Notably, the same study found that whites are actually *more likely* than blacks to sell drugs.<sup>7</sup> These shocking statistics are reflected in our nation's prisons and jails. Blacks are five times more likely than whites to be incarcerated in state prisons.<sup>8</sup> In my home state of New Jersey, the disparity between blacks and whites in the state prison systems is greater than 10 to 1.<sup>9</sup>

- a. Do you believe there is implicit racial bias in our criminal justice system?

Yes. I believe there is implicit racial bias in many areas of American society, including in our criminal justice system.

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<sup>4</sup> *Debunking the Voter Fraud Myth*, BRENNAN CTR. FOR JUSTICE (Jan. 31, 2017), <https://www.brennancenter.org/analysis/debunking-voter-fraud-myth>.

<sup>5</sup> *Id.*

<sup>6</sup> Jonathan Rothwell, *How the War on Drugs Damages Black Social Mobility*, BROOKINGS INST. (Sept. 30, 2014), <https://www.brookings.edu/blog/social-mobility-memos/2014/09/30/how-the-war-on-drugs-damages-black-social-mobility>.

<sup>7</sup> *Id.*

<sup>8</sup> Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, SENTENCING PROJECT (June 14, 2016), <http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons>.

<sup>9</sup> *Id.*

- b. Do you believe people of color are disproportionately represented in our nation's jails and prisons?

Yes.

- c. Prior to your nomination, have you ever studied the issue of implicit racial bias in our criminal justice system? Please list what books, articles, or reports you have reviewed on this topic.

I have not studied the issue in depth, but I have read articles over the years, though I have not maintained a list of said articles. Additionally, I have attended training on implicit bias sponsored by the Federal Judicial Center (FJC) during my tenure as a magistrate judge.

- d. According to a report by the United States Sentencing Commission, black men who commit the same crimes as white men receive federal prison sentences that are an average of 19.1 percent longer.<sup>10</sup> Why do you think that is the case?

I have not read this particular study, however if confirmed, I would treat all litigants with fairness and impartiality, applying equal justice under the law, which are fundamental principles in our justice system.

- e. According to an academic study, black men are 75 percent more likely than similarly situated white men to be charged with federal offenses that carry harsh mandatory minimum sentences.<sup>11</sup> Why do you think that is the case?

Please see my answer to question 6(d).

- f. What role do you think federal appeals judges, who review difficult, complex criminal cases, can play in addressing implicit racial bias in our criminal justice system?

All federal judges should be aware of the potential for racial bias and must ensure that every litigant is treated fairly and impartially.

7. According to a Pew Charitable Trusts fact sheet, in the 10 states with the largest declines in their incarceration rates, crime fell by an average of 14.4 percent.<sup>12</sup> In the 10 states that saw the largest increase in their incarceration rates, crime decreased by an average of 8.1

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<sup>10</sup> U.S. SENTENCING COMM'N, DEMOGRAPHIC DIFFERENCES IN SENTENCING: AN UPDATE TO THE 2012 *BOOKER* REPORT 2 (Nov. 2017), [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114\\_Demographics.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf).

<sup>11</sup> Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, 122 J. POL. ECON. 1320, 1323 (2014)

<sup>12</sup> Fact Sheet, *National Imprisonment and Crime Rates Continue To Fall*, PEW CHARITABLE TRUSTS (Dec. 29, 2016), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/12/national-imprisonment-and-crime-rates-continue-to-fall>.

percent.<sup>13</sup>

- a. Do you believe there is a direct link between increases in a state's incarcerated population and decreased crime rates in that state? If you believe there is a direct link, please explain your views.

I have not studied this issue or reached any conclusion about the link between incarceration and crime rates.

- b. Do you believe there is a direct link between decreases in a state's incarcerated population and decreased crime rates in that state? If you do not believe there is a direct link, please explain your views.

I have not studied this issue or reached any conclusion about the link between incarceration and crime rates.

8. Do you believe it is an important goal for there to be demographic diversity in the judicial branch? If not, please explain your views.

Yes.

9. Would you honor the request of a plaintiff, defendant, or witness in a case before you who is transgender to be referred to in accordance with that person's gender identity?

Yes.

10. Do you believe that *Brown v. Board of Education*<sup>14</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

Yes.

11. Do you believe that *Plessy v. Ferguson*<sup>15</sup> was correctly decided? If you cannot give a direct answer, please explain why and provide at least one supportive citation.

No.

12. Has any official from the White House or the Department of Justice, or anyone else involved in your nomination or confirmation process, instructed or suggested that you not opine on whether any past Supreme Court decisions were correctly decided?

Lawyers from the Department of Justice Office of Legal Policy have provided guidance on questions that have been raised at past hearings, the Code of Conduct for Judges, and the manner in which nominees have understood and applied that code. However, the answers I have provided, and that I am providing now, are my own.

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<sup>13</sup> *Id.*

<sup>14</sup> 347 U.S. 483 (1954).

<sup>15</sup> 163 U.S. 537 (1896).

13. As a candidate in 2016, President Trump said that U.S. District Judge Gonzalo Curiel, who was born in Indiana to parents who had immigrated from Mexico, had “an absolute conflict” in presiding over civil fraud lawsuits against Trump University because he was “of Mexican heritage.”<sup>16</sup> Do you agree with President Trump’s view that a judge’s race or ethnicity can be a basis for recusal or disqualification?

As a sitting magistrate judge and district judge nominee, it would be improper for me to comment or opine on the political statements made by any elected official, including President Trump. *See* Canons 5(A)(2) and 5(C) of the Code of Conduct for United States Judges.

14. President Trump has stated on Twitter: “We cannot allow all of these people to invade our Country. When somebody comes in, we must immediately, with no Judges or Court Cases, bring them back from where they came.”<sup>17</sup> Do you believe that immigrants, regardless of status, are entitled to due process and fair adjudication of their claims?

Please see my answer to question 13. Additionally, the Supreme Court has held that the Due Process Clause applies to all persons in the United States (*see Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). Hence, if confirmed, I would faithfully follow the holding in *Zadvydas* and other precedents of the Supreme Court and the Fourth Circuit.

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<sup>16</sup> Brent Kendall, *Trump Says Judge’s Mexican Heritage Presents ‘Absolute Conflict,’* WALL ST. J. (June 3, 2016), <https://www.wsj.com/articles/donald-trump-keeps-up-attacks-on-judge-gonzalo-curiel-1464911442>.

<sup>17</sup> Donald J. Trump (@realDonaldTrump), TWITTER (June 24, 2018, 8:02 A.M.), <https://twitter.com/realDonaldTrump/status/1010900865602019329>.