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

QUESTIONS FROM SENATOR FEINSTEIN

1. Please respond with your views on the proper application of precedent by judges.

   a. When, if ever, is it appropriate for lower courts to depart from Supreme Court precedent?

   It is never appropriate for a lower court to depart from Supreme Court precedent.

   b. Do you believe it is proper for a district court judge to question Supreme Court precedent in a concurring opinion? What about a dissent?

   No. A district judge is required to fully and faithfully apply all binding Supreme Court precedent. There are rare occasions, however, where a district judge may identify gaps in the law or conflicts among the circuit courts.

   c. When, in your view, is it appropriate for a district court to overturn its own precedent?

   A district judge is bound by precedents of the Supreme Court and the circuit court where the district court sits, but not by decisions of the other district courts. Moreover, a district court does not create precedent. Under the principle of the rule of law, however, a district judge should render similar decisions when faced with similar facts. If the Supreme Court or a circuit court overrules a district court's decision, the district court must faithfully apply that precedent when ruling in the same or subsequent case involving that issue.

   d. When, in your view, is it appropriate for the Supreme Court to overturn its own precedent?

   Only the Supreme Court may overturn its own precedent. Accordingly, it would be improper for me, as a sitting magistrate judge or as a district judge nominee, to comment on how the Supreme Court should or does exercise that authority.

2. When Chief Justice Roberts was before the Committee for his nomination, Senator Specter referred to the history and precedent of *Roe v. Wade* as "super-stare decisis." A text book on the law of judicial precedent, co-authored by Justice Neil Gorsuch, refers to *Roe v. Wade* as a "super-precedent" because it has survived more than three dozen attempts to overturn it. (The Law of Judicial Precedent, Thomas West, p. 802 (2016).) The book explains that "superprecedent" is "precedent that defines the law and its requirements so effectively that it prevents divergent holdings in later legal decisions on similar facts or

induces disputants to settle their claims without litigation." (The Law of Judicial Precedent, Thomas West, p. 802 (2016))

a. Do you agree that *Roe v. Wade* is "super-stare decisis"? Do you agree it is "superprecedent"?

Roe v. Wade is binding Supreme Court precedent, and if confirmed, I will faithfully and fully apply it.

b. Is it settled law?

Yes. All decisions of the Supreme Court, including *Roe v. Wade,* are settled law.

3. In *Obergefell v. Hodges*, the Supreme Court held that the Constitution guarantees same-sex couples the right to marry. **Is the holding in *Obergefell* settled law?**

Yes. All decisions of the Supreme Court, including *Obergefell v. Hodges*, are settled law.

4. In Justice Stevens's dissent in *District of Columbia v. Heller* he wrote: "The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia. It was a response to concerns raised during the ratification of the Constitution that the power of Congress to disarm the state militias and create a national standing army posed an intolerable threat to the sovereignty of the several States. Neither the text of the Amendment nor the arguments advanced by its proponents evidenced the slightest interest in limiting any legislature's authority to regulate private civilian uses of firearms."

a. Do you agree with Justice Stevens? Why or why not?

As a sitting magistrate judge and district judge nominee, it would be improper for me to comment or opine on the correctness of Justice Stevens's dissent in *Heller*. If confirmed, I will fully and faithfully apply *Heller*, which is binding Supreme Court precedent.

b. Did *Heller* leave room for common-sense gun regulation?

In *Heller*, the Supreme Court noted that "the right secured by the Second Amendment is not unlimited." 554 U.S. 570, 626 (2008). The Court went on to state that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Id*. at 626-27.

c. Did *Heller*, in finding an individual right to bear arms, depart from decades of Supreme Court precedent?

Heller does not expressly overrule any prior Supreme Court precedent. Beyond that, as a sitting magistrate judge and district judge nominee, it would be improper for me to comment or opine on Supreme Court decisions.

5. In *Citizens United v. FEC*, the Supreme Court held that corporations have free speech rights under the First Amendment and that any attempt to limit corporations' independent political expenditures is unconstitutional. This decision opened the floodgates to unprecedented sums of dark money in the political process.

   a. Do you believe that corporations have First Amendment rights that are equal to individuals' First Amendment rights?

   In *Citizens United v. FEC*, 558 U.S. 310 (2010), the Supreme Court stated that it had "recognized that First Amendment protection extends to corporations[,]" *id*. at 342, and then held that "the Government may not suppress political speech on the basis of the speaker's corporate identity." *Id*. at 365. As a sitting magistrate judge and district judge nominee, it would be improper for me to comment or opine on Supreme Court decisions. If confirmed, I will fully and faithfully apply Supreme Court and Fourth Circuit precedents regarding the First Amendment.

   b. Do individuals have a First Amendment interest in not having their individual speech drowned out by wealthy corporations?

   Please see my response to question 5(a).

   c. Do you believe corporations also have a right to freedom of religion under the First Amendment?

   In *Burwell v. Hobby Lobby Stores, Inc*., 573 U.S. 682 (2014), the Supreme Court held that a closely held for-profit corporation has rights under the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et. seq*., but also noted certain limits to its holding. Since there may be further litigation on this issue, as a sitting magistrate judge and district judge nominee, it would be improper for me to comment or opine on this issue. *See* Cannon 3(A)(6) of the Code of Conduct for United States Judges.

6. Does the Equal Protection Clause of the Fourteenth Amendment place any limits on the free exercise of religion?

   The Supreme Court has recognized that the Fourteenth Amendment to the Constitution guarantees equal protection in a variety of contexts. The Court has also determined that the Constitution protects the free exercise of religion. Because there may be litigation involving the intersection of these constitutional protections, it would be improper for me, as a sitting magistrate judge and district judge nominee, to comment or opine on this issue. *See* Cannon 3(A)(6) of the Code of Conduct for United States Judges.

7. Would it violate the Equal Protection Clause of the Fourteenth Amendment if a county clerk refused to provide a marriage license for an interracial couple if interracial marriage violated the clerk's sincerely held religious beliefs?

   The Supreme Court held in *Loving v. Virginia*, 388 U.S. 1 (1967) that the freedom to marry is a fundamental right that may not be deprived on the basis of race and that state laws prohibiting the same violate the Equal Protection Clause of the Fourteenth Amendment. Please also refer to my response to question 6.

8. Could a florist refuse to provide services for an interracial wedding if interracial marriage violated the florist's sincerely held religious beliefs?

   Please refer to my answer in question 7. Additionally, various federal laws, including 42 U.S.C. § 1981, have for many years prohibited discrimination of the basis of race in nongovernmental commercial transactions.

9. Have you had any contact with anyone at the Federalist Society about your possible nomination to any federal court? If so, please identify when, who was involved, and what was discussed.

   No.

10. On February 22, 2018, when speaking to the Conservative Political Action Conference (CPAC), former White House Counsel Don McGahn told the audience about the Administration's interview process for judicial nominees. He said: "On the judicial piece … one of the things we interview on is their views on administrative law. And what you're seeing is the President nominating a number of people who have some experience, if not expertise, in dealing with the government, particularly the regulatory apparatus. This is different than judicial selection in past years…"

    a. Did anyone in this Administration, including at the White House or the Department of Justice, ever ask you about your views on any issue related to administrative law, including your "views on administrative law"? If so, by whom, what was asked, and what was your response?

    No.

    b. Since 2016, has anyone with or affiliated with the Federalist Society, the Heritage Foundation, or any other group, asked you about your views on any issue related to administrative law, including your "views on administrative law"? If so, by whom, what was asked, and what was your response?

    No.

    c. What are your "views on administrative law"?

As a sitting magistrate judge and district judge nominee, I believe it would be improper for me to comment or opine on this issue. However, if confirmed, I will fully and faithfully apply all binding precedents of the Supreme Court and the Fourth Circuit concerning administrative law, as well as all applicable statutes and regulations.

11. Do you believe that human activity is contributing to or causing climate change?

As a sitting magistrate judge and district judge nominee, I believe it would be improper for me to comment or opine on this issue. *See* Cannon 3(A)(6) of the Code of Conduct for United States Judges.

12. When is it appropriate for judges to consider legislative history in construing a statute?

The Supreme Court has held that legislative history may be considered when the text of a statute is ambiguous. *See Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546, 567-71 (2005).

13. At any point during the process that led to your nomination, did you have any discussions with anyone — including, but not limited to, individuals at the White House, at the Justice Department, or any outside groups — about loyalty to President Trump? If so, please elaborate.

No.

14. Please describe with particularity the process by which you answered these questions.

I received these questions on Wednesday, July 1, 2020. I personally drafted responses after reviewing my Senate Judiciary Questionnaire, conducting limited legal research, and reviewing the responses of prior judicial nominees, which are publicly available on the Senate Judiciary Committee's website. I submitted a draft of my responses to lawyers within the Department of Justice Office of Legal Policy, reviewed their feedback, and made revisions as appropriate. I then authorized submission of my answers to the Senate Judiciary Committee. Each answer contained herein is my own.