



January 9, 2017

Chairman Chuck Grassley
Senate Judiciary Committee
United States Senate

Ranking Member Dianne Feinstein
Senate Judiciary Committee
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Dear Chairman Grassley and Ranking Member Feinstein,

Dēmos, a national, non-partisan public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy, submits this letter in strong opposition to the confirmation of Senator Jefferson B. Sessions (R-AL) to be the 84th Attorney General of the United States.

Dēmos' name means "the people." It is the root word of democracy, and it reminds us that in America, the true source of our greatness is the diversity of our people. Our nation's highest challenge is to create a democracy that truly empowers people of all backgrounds, so that we all have a say in setting the policies that shape opportunity and provide for our common future. Examination of Senator Sessions' decades-long record in public life reveals a pattern of hostility to these values and to the very civil rights laws that he would be responsible for enforcing which disqualifies him from serving in the office of Attorney General.

As the Leadership Conference on Civil and Human Rights has written:

Senator Sessions has a 30-year record of racial insensitivity, bias against immigrants, disregard for the rule of law, and hostility to the protection of civil rights that makes him unfit to serve as the Attorney General of the United States. In our democracy, the Attorney General is charged with enforcing our nation's laws without prejudice and with an eye toward justice. And, just as important, the Attorney General has to be seen by the public – every member of the public, from every community – as a fair arbiter of justice. Unfortunately, there is little in Senator Sessions' record that demonstrates that he would meet such a standard.¹

The Senate's rejection of then-U.S. Attorney Jeff Sessions for an appointment as a United States District Judge for Alabama in 1986 creates a heavy presumption against Senator Sessions' fitness to serve in the much more important post of Attorney General of the United States. The evidence of Mr. Sessions' hostility to civil rights at that time included his criticism of groups such as the NAACP and American Civil Liberties Union as "un-American" for "trying to force

¹ Open Letter To The United States Senate, Leadership Conference on Civil and Human Rights, December 1, 2016 (available at <http://www.civilrights.org/press/2016/coalition-opposes-sessions.html>).



civil rights down the throats of people who were trying to put problems behind them.” When asked about rumors that a federal judge in Alabama had referred to a white lawyer as a “traitor to his race” because of his representation of black clients, Mr. Sessions responded “Well, maybe he is” – as confirmed by testimony before the Senate by J. Gerald Hebert, then an attorney in the Civil Rights Division of the U.S. Department of Justice, to whom Mr. Sessions made these remarks.²

As U.S. Attorney in Alabama, Mr. Sessions also improperly sought to prosecute three African-American voting rights activists, including Albert Turner, who risked his life on the Edmund Pettus Bridge with John Lewis on the infamous Bloody Sunday march in Selma, Alabama, which directly led to the passage of the Voting Rights Act of 1965.³ Mr. Sessions abused his powers as a U.S. Attorney in Alabama to charge Mr. Turner and his colleagues with multiple counts of federal crimes, every one of which was rejected by the jury that heard the case, resulting in complete acquittal on all charges. The evidence heard by the Senate in 1986 –which was Republican-controlled – resulted in Mr. Sessions’ being turned down by the Senate Judiciary Committee. This was only the second instance of such a rejection in nearly 50 years.⁴

Since his election to the U.S. Senate in 1996, instead of overcoming the record of his hostility to civil rights and voting rights protections, Senator Sessions has unfortunately continued to reinforce it. As Senator Patrick Leahy (D-VT) has observed:

When I pushed in 2009 to advance the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, a bill championed by [then-Senator Edward M.] Kennedy, it was Sessions who sought to derail it. He asserted at a Judiciary Committee hearing on the bill that he was ‘not sure women or people with different sexual orientations face that kind of discrimination.’⁵

By opposing this critical law for fighting hate crimes, and also denying the very reality of such discrimination and hate crimes, Senator Sessions has disqualified himself from serving in the office that bears the chief responsibility for protecting our most vulnerable citizens from such crimes. This aspect of his record should be particularly disqualifying in light of the fact that over

² J. Gerald Hebert, “Why I told the Senate that Jeff Sessions thought civil rights groups were ‘Un-American’”, Washington Post, November 22, 2016 (available at https://www.washingtonpost.com/posteverything/wp/2016/11/22/my-testimony-about-jeff-sessions-racist-remarks-kept-him-from-becoming-a-judge/?utm_term=.2f0b290d3ca9).

³ Ari Berman, “The first senator to endorse Donald Trump is a longtime opponent of civil rights,” The Nation, February 29, 2016 (available at <https://www.thenation.com/article/the-first-senator-to-endorse-donald-trump-is-a-longtime-opponent-of-civil-rights/>).

⁴ See *supra* n. 2.

⁵ Senator Patrick Leahy, “Jeff Sessions: An Extremist Then and Now,” Boston Globe, January 8, 2017 (available at <https://www.bostonglobe.com/opinion/columns/2017/01/08/jeff-sessions-extremist-then-and-now/PAuCCurFRbxoQlpHEGgTOL/story.html>).



1,000 new hate incidents have been reported in our country in the month following the November election.⁶

Senator Sessions also has maligned the Voting Rights Act of 1965 – the passage of which cost the lives and bodies of countless of our nation’s heroes – people such as James Chaney, Andrew Goodman, and Michael Schwerner, who were murdered in Mississippi for their work on behalf of voting rights for African Americans in Mississippi, and Congressman John Lewis (D-GA), whose head still bears the scars of the beating he received at the Edmund Pettus Bridge in 1965, in a non-violent march to ask for the right to vote for blacks in Alabama and across the South.

In callous disregard of this history, and what it cost to achieve the right to vote for African Americans and other dispossessed people in our country, Senator Sessions praised the Supreme Court ruling in *Shelby County v. Holder* (2013) that gutted a key part of the Voting Rights Act of 1965 – consistent with his long-held view that the Voting Rights Act is “intrusive” in its efforts to protect eligible voters of color.⁷

Because of our mission to create a democracy that truly empowers people of all backgrounds, Dēmos is also particularly troubled by Senator Sessions’ record on immigrants and immigration, and his stated desire to defy the U.S. Constitution in order to carry out his anti-immigrant agenda. The Attorney General of the United States has a key role in immigration enforcement and adjudication. Senator Sessions has a record that displays unacceptable bias against immigrants which disqualifies him from serving as Attorney General.

One clear example of this is Senator Sessions’ public position questioning the Constitution’s protection of birthright citizenship. He has suggested that people who are born in the United States should not be considered U.S. citizens if their parents were citizens of another country at the time.⁸

This position directly conflicts with the U.S. Constitution, which the Attorney General is uniquely responsible for obeying and enforcing. The Citizenship Clause of the 14th Amendment states: “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”⁹ Senator Sessions’ position questioning this clear constitutional command directly undermines his fitness to serve as Attorney General.

⁶ Southern Poverty Law Center, *Hatewatch: Update: 1094 Bias-related Incidents in the Month Following the Election, December 16, 2016* (available at <https://www.splcenter.org/hatewatch/2016/12/16/update-1094-bias-related-incidents-month-following-election>)

⁷ See *supra* n. 3.

⁸ Statement of the American Immigration Lawyers Association, Submitted to the Committee on the Judiciary of the U.S. Senate, January 10, 2017 (available at http://www.aila.org/advo-media/whats-happening-in-congress/congressional-updates/aila-statement-for-senate-judiciary-hearing-?framed_parent_url=http://www.aila.org/takeaction&frame_is_responsive=true).

⁹ U.S. Const., Amend. XIV, Sec. 1.

As noted by the American Association of Immigration Lawyers:

The Citizenship Clause makes clear that citizenship based on place of birth is a fundamental right inextricably tied to our liberty and equal rights, and that each person is born equal with no disadvantage or exalted status arising from the circumstance of their parentage. Any restrictions on the rights of citizenship guaranteed in the 14th Amendment would offend this country's most sacred values and Constitutional principles. Sen. Sessions has proposed re-establishing the very same discriminatory exclusion that the 14th Amendment was intended to remedy[.]¹⁰

Senator Sessions also has articulated anti-immigrant bias in many other ways. As noted by Asian Americans Advancing Justice (AAJC), "Senator Sessions has emerged as the lead anti-immigration voice in the United States Senate over the course of his 20-year tenure."¹¹ He has supported President-elect Trump's proposal to ban people from entering the United States based on their religious affiliations as Muslims and has received awards from anti-Muslim organizations and spoken at their events, including the David Horowitz Freedom Center and the Center for Security Policy.¹² AAJC also reports that Senator Sessions has maintained a close relationship with the Federation for American Immigration Reform (FAIR), which is labeled a hate group, and has received FAIR's Franklin Society award for his anti-immigrant leadership.¹³

In addition, a critically important function of the Attorney General is to ensure that everyone in the Administration, from the president on down, is abiding by the rule of law. President-elect Donald J. Trump has authoritarian tendencies, a troubling array of conflicts of interest, and according to experts, will be in violation of the U.S. Constitution the moment he assumes office,¹⁴ which makes the role of the Attorney General as the top enforcer of the law even more important. The Attorney General oversees the Department of Justice' Office of Legal Counsel, which is supposed to provide the President with independent legal advice and hold the Administration accountable by enforcing laws against government abuse, including appointing a special prosecutor if necessary. Senator Sessions is not the right person to carry out those responsibilities. As People for the American Way has pointed out:

Sessions was the first U.S. Senator to back Trump in his bid for the presidency and bought into the campaign whole hog. He served as a close advisor, coached Trump on his VP pick, used a top aid to help craft Trump's stance on immigration, and took the public

¹⁰ *Id.*

¹¹ Asian Americans Advancing Justice, "The Facts on Senator Jeff Sessions," January 2017 (available at <http://advancingjustice-aaajc.org/sites/default/files/2017-01/Sessions%20Fact%20Sheet%20Affiliation%20-%20Final.pdf>).

¹² *Id.*

¹³ *Id.*

¹⁴ Norman Eisen, Richard Painter and Laurence Tribe, "The Emoluments Clause: Its Text, Meaning and Application to Donald J. Trump," December 16, 2016 (available at <https://www.brookings.edu/research/the-emoluments-clause-its-text-meaning-and-application-to-donald-j-trump/>).



position that grabbing a woman’s genitals is not sexual assault....Session’s political loyalty to Trump and his insider status with the campaign raise serious questions about whether he can faithfully serve as “the people’s lawyer,” not Trump’s, in the face of thorny and inevitable ethics issues.¹⁵

In sum, Senator Sessions’ record opposing civil rights and expressing deep insensitivity on issues of racial justice, civil rights and immigrant rights, including his rejection of constitutional and legal requirements for which he would bear enforcement responsibility as Attorney General, disqualifies him from confirmation to this critical position. His hostility to civil rights, voting rights, racial justice and immigrant inclusion are not a distant relic of his past but have continued to mark his public record up to the present day. In addition, there are serious doubts that Senator Sessions will exercise the independent judgment that is needed in the role of Attorney General of the United States. Dēmos strongly urges the Committee to oppose Senator Jeff Sessions for Attorney General of the United States.

Respectfully submitted,

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¹⁵ Arn Pearson, “Will Attorney General Jeff Sessions and the Department of Justice Drain Donald Trump’s Swamp?” Salon, December 15, 2016 (available at <http://www.salon.com/2016/12/15/will-attorney-general-jeff-sessions-and-the-department-of-justice-drain-donald-trumps-swamp/>).