

Hon. Mitch McConnell, Maj. Leader
U.S. Senate
S230 US Capitol
Washington, DC 20510

The Hon. Charles Schumer, Min. Leader
U.S. Senate
S221 US Capitol
Washington, DC 20510

Hon. Chuck Grassley, Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Hon. Dianne Feinstein, Ranking Member
U.S. Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

January 10, 2017

**RE: THE NATIONAL BAR ASSOCIATION'S OPPOSITION TO SENATOR
JEFFERSON SESSIONS' NOMINATION TO SERVE AS ATTORNEY
GENERAL OF THE UNITED STATES**

Dear Leader McConnell, Leader Schumer, Chairman Grassley, and Senator Feinstein:

On behalf of the National Bar Association (NBA), I write to express our opposition to the nomination of Senator Jefferson Sessions to serve as Attorney General of the United States.

The NBA is the nation's oldest and largest national association of predominantly African-American lawyers, judges, educators and law students. Throughout history, it has served as the nation's legal conscience. Today, the NBA has 84 affiliate chapters throughout the United States and affiliations in Canada, the United Kingdom, Africa, and the Caribbean. It represents a professional network of more than 60,000 lawyers, judges, educators and law students.

As head of the Department of Justice and the nation's top law enforcement official, the position of Attorney General is one of unparalleled power within the Executive Branch and has profound implications for civil rights. The Attorney General must "ensure the fair and impartial administration of justice to all Americans," through zealous monitoring and enforcement of constitutional and statutory rights. Since its inception in 1925, the NBA has been at the forefront of the fight to "protect the civil and political rights of the citizens and residents of the United States." Thus, the nominee's record on civil rights is of the utmost importance in our evaluation of his qualifications to serve as Attorney General of the United States.

Our review of Senator Sessions' record included legislative votes; his statements on civil rights issues and organizations that advocate for civil rights; his record as a federal prosecutor; votes and statements on nominations; and testimony submitted during the 1986 Judiciary Committee hearing on his nomination to become a district court judge. Below we summarize the most compelling and troubling aspects of his public record.

Senator Sessions' 1986 Failed Federal Judicial Nomination

President Ronald Reagan nominated then-Alabama Attorney General Jeff Sessions to serve as a judge on the U.S. District Court for the Southern District of Alabama in 1986. At that time, President Reagan had already appointed approximately 200 judges throughout the federal system, and Republicans constituted the majority of the U.S. Senate Judiciary Committee. Senator Sessions became only the second judicial nominee in fifty years to not be recommended for confirmation. Two Republicans, including Arlen Specter, voted against him. His fellow senator from Alabama, Howell Heflin, also voted against him, citing, "reasonable doubts" over Sessions' ability to be "fair and impartial."¹

Marion Three. In 1985, during his tenure as U.S. Attorney for the Southern District of Alabama, Sessions pressed charges against eight residents from Greene and Perry counties, accusing them of altering absentee ballots. Of the accused, seven of eight were African American. Among the group were longtime civil rights activist Albert Turner, of the Southern Christian Leadership Conference, his wife Evelyn Turner, and fellow activist Spencer Hogue – later known as the Marion Three – who had long conducted voter registration drives throughout rural Black Belt counties, aiming to boost registration rates among poor and elderly African Americans. Turner became known as "Mr. Voter Registration," and was credited with the African American community's gain of political control in many counties in the Alabama Black Belt. On the basis of highly questionable evidence of an effort by the Marion Three and others to commit voter fraud, then-U.S. Attorney Sessions dispatched dozens of FBI agents to repeatedly visit homes of rural black residents. The countless hours of interrogation yielded only 14 allegedly tampered ballots out of more than 1.7 million ballots cast statewide in the 1984 election. When brought to trial for the alleged crimes, Federal District Judge Emmett Cox dismissed 50 counts against the defendants due to lack of evidence and all the remaining counts resulted in an acquittal by the jury. The approach of Senator Sessions in this case is particularly troubling in the context of repeated claims of "voter fraud" when the overwhelming evidence is that there are but a handful of such cases around the country. Furthermore, this type of misguided, politically motivated and overzealous prosecution exhibited by Sessions creates a climate of mistrust and undermines the democratic process U.S. Attorneys are supposed to protect. In the past few Presidential elections, unsubstantiated claims of "voter fraud" and resulting actions by self-proclaimed "voter integrity" activists have not only had chilling effects upon communities of color, but have served to create more barriers to the ballot. As challenges to the electoral process have evolved, the Justice Department has served as a backstop to protect all citizens, particularly those in vulnerable communities and traditionally disenfranchised. Consequently, it is of the utmost importance that the next Attorney General be fair-minded and trusted by the entire country in evaluating these claims.

Racially Insensitive Statements. During the confirmation hearing, the Senate Judiciary Committee heard testimony that Senator Sessions had made a series of remarks that were racially insensitive and/or hostile to the support of civil rights.

¹ Goldman, Sheldon (1999). *Picking Federal Judges*. Yale University Press. p. 309. ISBN 9780300080735.

Then-Attorney General Sessions' former deputy, Thomas Figures testified before the Senate Judiciary Committee that Sessions told him to be careful about what he said "to white folks" after Figures got into a heated argument with a white colleague. Figures also testified that then-Attorney General Sessions called him "boy" on multiple occasions. Figures also testified that then-Attorney General Sessions joked about the Ku Klux Klan, saying he thought its members were "okay, until he learned that they smoked marijuana." The NBA interviewed Mr. Figures in the month prior to the hearing, where he again stated the same allegations he made during the confirmation hearing.²

Then-Attorney General Sessions' colleague J. Gerald Hebert, who was a Justice Department lawyer, also testified that Sessions told him the NAACP and ACLU were "un-American" and "Communist-inspired." Hebert also testified that then-Attorney General Sessions said a white attorney who represented black clients might be a disgrace and that the NAACP and ACLU did more harm than good by trying to force civil rights "down the throats of people."

Senator Sessions Legislative Record as Senator

Senator Sessions was elected to the United States Senate in 1996. Over the past 20 years, he has developed a voting record that further demonstrates his hostility towards the support of civil rights.

- In 2015, Senator Sessions supported the Stop Sanctuary Policies and Protect Americans Act, which would have prohibited sanctuary jurisdictions from receiving federal grant money.³
- In 2013, Senator Sessions voted against the 2013 reauthorization of the Violence Against Women Act.⁴
- In 2013, Senator Sessions opposed the bipartisan immigration reform bill that passed the Senate.⁵
- In 2013, Senator Sessions supported an amendment to the Employer Non-Discrimination Act of 2013.⁶
- In 2012, Senator Sessions did not support The Convention on the Rights of Persons with Disabilities.⁷

² National Bar Association May 1986 letter to the Senator Joseph Biden.

³ <https://www.congress.gov/bill/114th-congress/senate-bill/2146>

⁴ <https://www.govtrack.us/congress/bills/113/s47/text>

⁵ http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=113&session=1&vote=00168

⁶ <https://www.congress.gov/amendment/113th-congress/senate-amendment/2013>

⁷ <https://www.congress.gov/treaty-document/112th-congress/7/>

- In 2011, Senator Sessions opposed the reauthorization of the Violence Against Women Act of 2012.⁸
- In 2010, Senator Sessions voted against a motion for cloture on a bill to amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.⁹
- In 2009, Senator Sessions voted against the Lilly Ledbetter Fair Pay Act of 2009.¹⁰
- In 2006, Senator Sessions supported a federal constitutional amendment to ban same-sex marriage.¹¹
- Although, Senator Sessions voted with a unanimous Senate to reauthorize the Voting Rights Act of 1965, he has criticized the landmark civil rights law as "intrusive," and he later agreed with the Supreme Court's 2013 decision, *Shelby County, Alabama v. Holder*, which struck down key provisions of the law.
- In 2002, Senator Sessions voted against a bill that would have expanded the definition of hate crimes to incorporate acts committed because of a victim's sex, sexual orientation or disability and permit the federal government to help states prosecute hate crimes even if no federally protected action was implicated.¹²
- In 1997, Senator Sessions co-sponsored the Civil Rights Act of 1997, a bill which would eliminate affirmative action by the federal government in connection with federal contracts, employment, or other programs by the activities.¹³

The Federal Judiciary

No African American from Alabama has ever served as a judge on the United States Court of Appeals for the 11th Circuit. Earlier this year, President Obama nominated NBA member Judge Abdul Kallon to serve on the 11th Circuit. If confirmed he would have become the first African American federal court of appeals judge from Alabama. However, even though the vacancy on the Court of Appeals was declared a judicial emergency and Judge Kallon was previously confirmed to his district judgeship by unanimous consent,¹⁴ Senator Sessions refused to support the nomination. Furthermore,

⁸ <https://www.congress.gov/bill/112th-congress/senate-bill/1925/text>

⁹ <https://www.congress.gov/bill/111th-congress/senate-bill/3772>

¹⁰ http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=109&session=2&vote=00163

¹¹ http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=109&session=2&vote=00163

¹² http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=107&session=2&vote=00147

¹³ <https://www.govtrack.us/congress/bills/105/s950/text>

¹⁴ <http://www.uscourts.gov/judges-judgeships/judicial-vacancies/judicial-emergencies>

of the six federal judicial vacancies in Alabama, three of them have been vacant since 2013 and are deemed judicial emergencies. As a former Attorney General, Senator Sessions possesses first-hand knowledge of the impact these judicial vacancies have on the administration of justice and historically marginalized communities. However, for the past three years Senator Sessions has simply refused to submit potential nominees for consideration. His willingness to leave these seats unfilled demonstrates an intentional undermining of the federal judiciary and abuse of the administration of justice.

Given the Justice Department's critical role in evaluating judicial nominees and advising the President on nominations for Article III judgeships, we are not convinced that Senator Sessions is committed to ensuring that the judiciary is a true representation of the communities it serves.

Conclusion

In our democracy, the Attorney General is charged with enforcing our nation's laws without prejudice and with an eye toward justice. Senator Sessions has a 30-year record of racial insensitivity, disregard for the rule of law, and hostility to the protection of civil rights which makes him unfit to serve as the Attorney General of the United States. For these reasons and many more, the NBA opposes his nomination to serve as s Attorney General of the United States.

A handwritten signature in blue ink that reads "Kevin Judd". The signature is written in a cursive, flowing style. The first name "Kevin" is written in a larger, more prominent script, and the last name "Judd" is written in a similar but slightly more compact script. The ink is a vibrant blue color.

President, National Bar Association