



National Task Force to End Sexual & Domestic Violence

Dear Member of the Judiciary Committee:

We, the steering committee of the National Task Force to End Sexual and Domestic Violence (NTF), a coalition of national, tribal, state, and local leadership organizations and individuals advocating on behalf of victims of sexual assault, domestic violence, dating violence and stalking, write to express our opposition to Senator Jeff Sessions' nomination for Attorney General of the United States of America. We have arrived at this position based upon a review of his record as a state and federal prosecutor, during which he applied the law unevenly, and as a U.S. Senator, during which he supported laws that would afford only some members of our society equal protection of the law. The role of Attorney General requires a demonstrated commitment to providing *equal protection under the law*—particularly to people who face discrimination because of their race, religion, gender, gender identity, sexual orientation, disability or other identities. We respectfully submit that Senator Sessions' record speaks for itself and that his history of differential application of the law carries with it the potential to harm victims and survivors of gender-based violence, particularly survivors from historically marginalized communities. Thirty years ago, this Committee rejected Senator Sessions' nomination to the federal bench due to well-justified concerns regarding his problematic record on civil rights and troubling history of making racially insensitive statements. These aforementioned concerns, combined with his equally troubling comments on the nature of sexual assault and other concerns raised below, make Senator Sessions an unqualified choice to serve as U.S. Attorney General.

The position of Attorney General of the United States of America, created by the Judiciary Act of 1789, bears the responsibility of representing the United States in all legal matters in which the country has an interest.^[1] Chief among those interests is the affording of equal protection under our criminal, civil and civil rights laws to all members of our society. Under 28 U.S.C. §503, the President's appointment of an Attorney General must be with the "advice and consent of the Senate." The process ensures that the person holding the post of Attorney General is one fit for such duty, a person with the intellectual, moral and steadfast ethical capacity to uphold the laws and interests of the United States and to apply the laws equally to all members of society.

Failure to Speak Up for Victims of Violence and Discrimination

A threshold qualification for the position of Attorney General is a deep understanding of the laws s/he is sworn to uphold. Of critical relevance are Senator Sessions' recent comments on the nature of sexual assault in response to the release of a 2005 video in which President-Elect Donald Trump describes grabbing women's genitalia without their consent. When asked whether he would characterize the behavior described by President-elect Trump as sexual assault, Senator Sessions responded, "I don't characterize that as

sexual assault. I think that's a stretch. I don't know what he meant --." [2] Federal statutes enacted prior to Senator Sessions' tenure as U.S. Attorney for the Southern District of Alabama criminalize "abusive sexual conduct." [3] The applicable definition for conduct prohibited by 18 U.S.C. §2244 is clearly stated: "the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person." [4] Thus, the Senator is either unaware that abusive sexual contact is illegal under federal law, or he feigned ignorance of the laws he was sworn to uphold as an officer of the court for the sake of political expedience.

The Department of Justice has the exclusive authority to enforce the United States' criminal statutes, including 18 U.S.C. §2244. The Department of Justice also has exclusive jurisdiction over the prosecution of domestic and sexual violence in the District of Columbia [5], most sexual assaults perpetrated in Indian Country, and concurrent jurisdiction over domestic violence offenses committed in Indian Country. Any candidate for Attorney General of the United States, particularly a former U.S. Attorney, should possess a thorough understanding of the legal definition of sexual assault under federal law and under the laws of the jurisdictions in which the Office of the U.S. Attorney has prosecutorial responsibility. The National Task Force has worked collectively for decades to ensure that legal definitions in the U.S. Code and under state and local laws make it absolutely clear that sexual assault is a crime. The job of the Attorney General is to enforce the law without fear or favor. Thus, we expect the Attorney General to enforce federal laws addressing sexual assault without introducing nonexistent ambiguity, because of the perpetrator's identity. Senator Sessions' cavalier statement about sexual assault leaves us fearful that he will not vigorously prosecute sexual assault crimes, a practice unbecoming of the nation's chief law enforcement officer.

Additionally, Senator Sessions' poor history with respect to fighting for fairness and equity has us justifiably concerned that he will not step in to vindicate the rights of survivors of campus sexual assault and other victims of discrimination. The Justice Department has jurisdiction to enforce a myriad of civil rights statutes, including Title VI of the Civil Rights Act of 1964 [6] and Title IX of the Education Amendments of 1972 [7]. These statutes bar discrimination in education based on race, color and national origin and sex (respectively) by educational institutions that receive federal funding. [8] On college and university campuses alone, we know that 20 percent of women are victimized by sexual assault. [9] Absent an Attorney General's commitment to ensuring that educational institutions root out bias and violence and hold perpetrators accountable, victims of discrimination, harassment or violence based on sex, race and/or national origin will be unable to pursue their education in an atmosphere of educational equity. Teachers surveyed since the election have described thousands of incidents of "bigotry and harassment," stemming from incidents involving "racist, xenophobic or misogynistic comments," and/or "derogatory language directed at students of color, Muslims, immigrants, and people based on gender or sexual orientation." [10] It is imperative that the person nominated to the position of Attorney General possess a demonstrated record of work and support for these impacted communities, including people of color, immigrants, Muslims and religious minorities, members of the LGBT community, and people with disabilities.

Regrettably, Senator Sessions' career is replete with actions taken and statements made in opposition to equitable educational access. While Attorney General of Alabama, Senator Sessions fought equitable educational access for poor, minority and disabled students in Alabama even after being ordered by a federal court to remedy the yawning financial disparities between Alabama's richest (and whitest) and poorest school districts.[11] Additionally, his mischaracterization of the Individuals with Disabilities in Education Act as creating "special treatment for certain children," and being responsible for "accelerating the decline of civility and discipline in classrooms across America," is appalling.[12] In light of these remarks, we are concerned not only about the Senator's willingness to use the civil rights statutes to protect survivors of both campus sexual assault and other forms of harassment and violence in the education context, but also his commitment to ensuring equal access and safety under certain programs in the Violence Against Women Act for victims of sexual and domestic violence who have disabilities.

Fair Application of Law

We have additional concerns regarding the Attorney General's role with respect to the fair, even and unbiased application of the law. Victims and survivors come from all racial or ethnic backgrounds, faith practices, sexual orientations, and gender identities: 33.5% of multiracial women have been raped, as have 27% of American Indian and Alaska Native women, 15% of Hispanic, 22% of Black, and 19% of White women.[13] Additionally, 53.8% of multiracial women and 39.3% of multiracial men experience intimate partner physical violence, intimate partner sexual violence and/or intimate partner stalking in their lifetimes, as do 46.0% of American Indian and Alaska Native women, 45.3% of American Indian and Alaska Native men, 19.6% of Asian and Pacific Islander women (data for Asian and Pacific Islander men is not available), 43.7% of Black women, 38.6% of Black men, 37.1% of Hispanic women, 26.6% of Hispanic men, 34.6% of White women and 28.2% of White men.[14] We know firsthand that many survivors from vulnerable populations hesitate to contact law enforcement or do not trust the court system to address their victimization because they fear, based on prior experience, that any justice system response may not help them. We expect anyone who serves as Attorney General to create a Justice Department accessible to all; the 5th and 14th Amendments of the U.S. Constitution demand no less.

Senator Sessions' well-documented prosecutorial record[15], as U.S. Attorney for the Southern District of Alabama and as Attorney General for the State of Alabama, demonstrate his propensity to inequitably apply the law to the disadvantage of historically marginalized populations. Senator Sessions' history leads us to question whether he will vigorously seek to ensure that all victims and survivors of gender-based violence, particularly vulnerable populations and those at the margins of society, have access to vitally needed services and legal protections.

Senator Sessions' Opposition to Protections for the Immigrant and LGBT Communities

We are concerned that the positions that Senator Sessions has taken on immigration and LGBT individuals pose grave threats to vulnerable victims of gender-based violence. His

consistent support of immigration policies that increase the barriers to safety for undocumented victims of sexual and domestic violence victims pushes immigrant victims further into the shadows and harms families and communities by allowing perpetrators (batterers and rapists) to abuse, traffic and assault with impunity. During the consideration of two major comprehensive immigration reform bills, as well on various other occasions, Senator Sessions has sponsored amendments and stand-alone legislation to limit the availability of critical safety net assistance for immigrants and increase barriers to protections from abuse and exploitation by penalizing local jurisdictions that fail to engage in immigration enforcement activities. He has made no subsequent statement that indicates that he would rethink these punitive policy positions were he to be confirmed.

His failure to support, and sometimes active opposition to, progress and protections for the LGBT community leave us gravely concerned that if confirmed, he would not stand up for the rights of the LGBT community generally, and particularly with respect to LGBT victims of violence. He opposed the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which is of particular concern as we witness a spike in harassment of minorities and bias crimes over the last several months. Additionally, he supported a constitutional amendment to ban same-sex marriage. He also opposed the repeal of “Don’t Ask Don’t Tell.” Senator Sessions’ record sends the message to marginalized survivors that their experiences will not be understood, nor will their rights be protected, if he is confirmed as the Attorney General.

Opposition to the Violence Against Women Act

We are also concerned that the nominee voted against the Violence Against Women Act (VAWA) Reauthorization of 2013. Seventy-eight out of one hundred senators supported the bipartisan bill; Senator Sessions was in the distinct minority. The 2013 Act addresses the gaps in law that were uncovered through outreach to and surveys of programs and service providers and domestic and sexual violence victims themselves.

Our analysis revealed that many survivors were not able to access services and justice to the extent they needed. Of particular note, we found that LGBT survivors often lacked access to justice and support based on their gender identity or their sexual orientation. We also learned of the deplorable lack of access to justice faced by survivors of domestic violence and sexual assault on tribal lands. VAWA 2013 included provisions that removed one of many barriers that prevent access to justice for American Indian and Alaska Native domestic violence survivors. The 2013 statute’s provisions expand and ensure that immigrant survivors can access VAWA protections, allowing survivors to come out of the shadows, help hold batterers and abusers accountable, and enable law enforcement to protect community safety. VAWA 2013’s goal of ensuring equal protection of the law was rejected by Senator Sessions, who cast the bill’s advancements toward inclusion and equal protection as political maneuvering and, in that light, voted against the bill. The Attorney General is tasked with ensuring that VAWA’s protection and programs are available and accessible to all. Senator Sessions’ opposition to the VAWA protections and his prosecutorial record leave us gravely concerned that he would not vigorously or consistently apply these protections.

Conclusion

The 14th Amendment provides the inalienable right that every person receive equal protection under the law.[16] Senator Sessions' senate record of strenuous objection to protections for historically marginalized populations, coupled with his record of selective prosecutions, demonstrate his unwillingness to protect marginalized victims' access to justice and disqualify him from holding the position of Attorney General of the United States, a position charged with the responsibility of securing justice for all. Selective application of the law and outward hostility towards victims of sexual and domestic violence in historically marginalized populations has a chilling effect on their willingness and ability to seek services and protection. It drives sexual violence, domestic violence, dating violence and stalking underground, something we have made great strides to avoid. The Attorney General of the United States must be an individual committed to protecting the inalienable right of equal protection under the law to *all* within United States' jurisdiction. Moreover, his minimizing comments about the nature of sexual assault call into question his dedication to enforcing the law and providing justice to victims of this serious crime.

In short, we oppose Senator Sessions' confirmation as Attorney General of the United States and we ask you, as a member of the Senate Judiciary Committee, to ask him direct questions regarding the concerns raised in this letter, and to advise the President, pursuant to the prescription of 28 U.S.C. §503, that Senator Sessions' is unqualified to hold this post.

Yours truly,
The National Task Force to End Sexual and Domestic Violence

[1] See 28 U.S.C. §§ 516, 519.

[2] The Weekly Standard, "Jeff Sessions: Behavior Described by Trump in 'Grab Them By the P---y' Tape Isn't Sexual Assault," (October 10, 2016). Retrieved from http://www.weeklystandard.com/jeff-sessions-behavior-described-by-trump-in-grab-them-by-the-p-y-tape-isnt-sexual-assault/article/2004799?custom_click=rss

[3] 18 U.S.C. §2244.

[4] 18 U.S.C. §2246(3).

[5] Within the District of Columbia, §22-3001(9) defines sexual contact, applicable to the sexual abuse statutes §22-3002 through 22-3006, as "the touching with any clothed or unclothed body part or any object, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person."

[6] 42 U.S.C. §2000d

[7] 20 U.S.C. §1681

[8] See 34 C.F.R. §100.8 (permits a failure to comply with Title VI that cannot be resolved informally to be referred to the Department of Justice for enforcement); 28 C.F.R. §54.605 (which adopt the investigative, compliance and enforcement provisions of Title VI for application to Title IX).

[9] Fisher, B.S., Cullen, F.T., & Turner, M.G. (2000) *The Sexual Victimization of College Women: National Institute of Justice, Bureau of Justice Statistics*.

[10] New York Magazine, "Ninety Percent of Teachers Say Trump's Win Has Had a Negative Effect in Classrooms," (November 29, 2016) Retrieved from <http://nymag.com/thecut/2016/11/90-percent-of-teachers-say-trumps-win-is-bad-for-students.html>

[11] New York Times, “Jeff Sessions’ Other Civil Rights Problem, (November 21, 2016), Retrieved from http://www.nytimes.com/2016/11/21/opinion/jeff-sessions-other-civil-rights-problem.html?_r=0

[12] See <http://www.sessions.senate.gov/public/index.cfm/2000/5/education-discipline-and-idea->

[13] Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. (2011). *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

[14] *Ibid.*

[15] See transcript of the 1986 Senate Judiciary hearing on the nomination of Jeff Sessions for US District Court Judge for the Southern District of Alabama

[16] U.S. Const. amend. XIV §1; U.S. Const. amend. V; *Bolling v. Sharpe*, 347 U.S. 497 (1954).