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Anti-Defamation League®

January 9, 2017

The Honorable Chuck Grassley
Chair
Senate Committee on the Judiciary
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein,

In advance of the upcoming confirmation hearings on the nomination of United States Senator Jeff Sessions to the position of Attorney General of the United States, the Anti-Defamation League ("ADL") urges you and your colleagues on the Judiciary Committee to closely examine Senator Sessions' views on the role of the Attorney General and the Justice Department in interpreting and enforcing provisions in the United States Constitution and federal law that guarantee and protect fundamental civil rights and individual liberties.

Specifically, we believe there are seven main areas which deserve the Committee's special attention. These include Senator Sessions' position on the First Amendment's religious liberty clauses, the enforcement of federal civil rights and hate crime laws, the protection of voting rights, criminal justice reform and law enforcement training, LGBT rights, immigration enforcement, and reproductive health.

Separation of Church and State

ADL believes deeply in the importance of preserving and safeguarding freedom of religion in our increasingly pluralistic nation. We strongly believe that government should neither promote nor be hostile to religion. This position reflects a profound respect for religious freedom and recognition of the extraordinary diversity of religions represented in the United States. Both as a matter of law and as a matter of good public policy, the First Amendment should be read to protect minority religious groups from being subject to the coercion and pressure of state-instituted religion.

ADL opposes efforts to post the Ten Commandments in schools, government buildings, and courthouses. While often well-intentioned, we believe that these activities are both unconstitutional and bad policy. Governmental posting of the Ten Commandments flies in the face of the Constitution's guarantee of separation of church and state and may lead to the kind of divisive religious debate that the First Amendment was designed to prevent. Indeed, there is no one version of the Ten Commandments. Rather, there are multiple forms of it within the Christian and Jewish traditions. Therefore, any official posting of the Ten Commandments inevitably prefers one faith to the exclusion of all others within and outside the Christian and Jewish traditions.

In 1997 Sen. Sessions introduced a resolution after Alabama Supreme Court Judge Roy Moore had been ordered to remove a copy of the Ten Commandments that he had posted in his courtroom. The proposed resolution stated that "(1) the Ten Commandments are a declaration of fundamental principles that are the cornerstones of a fair and just society; and (2) the public display, including display in government offices and courthouses, of the Ten Commandments should be permitted."[1] In the speech he gave on the Senate floor, Sen. Sessions said, "The Ten Commandments represent a key part of the foundation of western civilization of our legal system in America. To exclude a display of the Ten Commandments because it suggests an establishment of religion is not consistent with our national history, let alone common sense itself. This Nation was founded on religious traditions that are an integral part of the fabric of American cultural, political, and societal life."[2]

We urge Committee members to ask the nominee questions on these issues:

- **Do you support calls for the posting of the Ten Commandments in courthouses, public buildings, and public schools?**

- **If you support posting the Ten Commandments in public schools, on what basis do you do so, in light of the Supreme Court's clear guidance for public schools in *Stone v. Graham*, 449 U.S. 39 (1980)?**

It is well-settled that government-sponsored prayer in the public school setting, whether in the classroom or at a school event, violates the First Amendment to the United States Constitution.[3] Indeed, the only type of prayer that is constitutionally permissible is private and voluntary student prayer. Prayers at athletic events, graduation ceremonies, and even school board meetings send an exclusionary message to students and community members of favoring one religion over others. In a speech on the Senate floor, Sen. Sessions said, "We take a minute, and somebody says a little prayer that acknowledges something more important than who is the

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[1] Jeff Sessions, *Display of the Ten Commandments,* Floor Statements (Mar. 19, 1997), http://www.sessions.senate.gov/public/index.cfm/floor-statements?ID=adb9120e-7e9c-9af9-7ebe-04856d3931c6

[2] *Id.*

[3] *See, e.g., Engel v. Vitale*, 370 U.S. 421 (1962); *School District of Abington Township, Pa. v. Schempp*, 374 U.S. 203 (1963), *Santa Fe Indep.School Dist. v. Doe*, 530 U.S. 290 (2000).

toughest football player on the field. I don't think there is anything wrong with that. I don't believe it violates anybody's rights."[4]

In a Senate Judiciary Committee hearing on the Religious Liberty Protection Act of 1998, Sen. Sessions said, "This wall of separation, this obsession with eliminating every expression of religious faith in the public sphere is not constitutional and is not historical."[5]

We urge Committee members to ask the nominee questions on these issues:

- **What is your position on the constitutional breadth and parameters of the separation between church and state?**
- **Do you support prayer at public school events, including athletic events?**
- **If so, on what basis do you do so, given the U.S. Supreme Court's clear guidance in *Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000)?**

Hate Crimes Prevention and Prosecution

For more than three decades, ADL has spearheaded the drafting, enactment, and implementation of hate crimes laws, working in partnership with other civil rights and religious organizations, law enforcement groups, civic agencies, and business leaders. Hate crimes merit a priority response because of their special impact on the victim and the victim's community. Failure to address this unique type of crime could cause an isolated incident to explode into widespread community tension. The damage done by hate crimes cannot be measured solely in terms of physical injury or dollars and cents. Hate crimes may effectively intimidate other members of the victim's community, leaving them feeling isolated, vulnerable, and unprotected by the law. Because hate crimes often render members of minority communities fearful, angry, and/or suspicious of other groups – and of the power structure that is supposed to protect them – these incidents can damage the fabric of our society and fragment communities.

Criminal activity motivated by bias is distinct and different from other criminal conduct. These crimes occur because of the perpetrator's bias or animus against the victim on the basis of actual or perceived status – the victim's race, color, religion, national origin, sexual orientation, gender, gender identity, or disability is the reason for the crime. In the vast majority of these incidents, no crime would have occurred at all were it not for the victim's personal characteristic. Statistics recently released by the FBI[6] show that in 2015 the nation's law enforcement agencies reported that there were 5,850 hate crimes in the United States, which reflects a 7% increase from 2014.

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[4] Jeff Sessions, *Under God*, Floor Statements (Jun. 26, 2002), http://www.sessions.senate.gov/public/index.cfm/floor-statements?ID=A3AF7243-7E9C-9AF9-784D-C587FDF755E7.

[5] Religious Liberty Protection Act of 1998: Hearings on S. 2148 Before the Senate Judiciary Comm., 105th Cong. 40 (1998).

[6] *2015 Hate Crimes Statistics,* FBI: Uniform Crime Reporting (2016), https://ucr.fbi.gov/hate-crime/2015.

In 2015, as in every year over the past 25 years, race was the most frequent hate crime—2,754 incidents (more than 47% of the total). Crimes against African-Americans made up the vast majority of that category, 1,745 incidents (almost 30%). Crimes directed against individuals and institutions on the basis of religion were second most frequent (1,244, over 21%). Crimes against Jews and Jewish institutions accounted for more than 50% of the religion category and there was a substantial increase in anti-Muslim crimes – from 154 in 2014 to 257 in 2015. In addition, 1,053 (18%) of the victims were targeted because of their sexual orientation and another 114 (about 2%) were targeted because of their gender identity.

The FBI has been collecting this hate crime data from law enforcement authorities across the country since 1991 under the Hate Crime Statistics Act.[7] In 2015, the most recent data available, 87 cities over 100,000 in population either did not report any data to the FBI or affirmatively reported zero (0) hate crimes. The state of Alabama reported ten hate crimes. By contrast, in 2015, the city of Phoenix, Arizona reported 231 hate crimes, the city of Columbus, Ohio reported 137 hate crimes, and the city of Boston, Massachusetts reported 139 hate crimes.

We respectfully request that the Committee question the nominee with respect to the following:

- **What steps would you take as Attorney General to ensure that police departments are well trained to identify, report, and respond to hate crimes that occur in their jurisdictions?**

The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA), signed into law on October 28, 2009, is the most important, comprehensive, and inclusive hate crime enforcement law enacted in the past 40 years.[8] Among other things, the HCPA extended federal hate crimes protections to victims targeted because of their sexual orientation, gender or gender identity, or disability. It also closed gaps in federal enforcement authority, encouraged partnerships between state and federal law enforcement officials to address hate violence more effectively, and provided limited expanded authority for federal hate crime investigations and prosecutions when local authorities are unwilling or unable to act.

Under the HCPA, the Attorney General or a designee must sign off on all criminal prosecutions brought under the Act. Federal hate crimes cases have significant national import. Hate crimes charges filed by the Department of Justice in recent years include cases involving organized hate groups, cases with special community or national impact, and cases in which local authorities lacked the resources, or the will, to vindicate justice.

In addition, since passage of the HCPA, lawyers at the Department of Justice have worked with FBI officials, U.S. Attorneys, and professionals from the Community Relations Service to organize a series of dozens of training programs on the tools the Act provides, enforcement strategies, and community engagement – including training programs in each of the five states with no hate crime laws.[9] Several thousand state and local law enforcement officials have been trained at these sessions. In addition, the Justice Department, in coordination with several lead

[7] 28 U.S.C. § 534.
[8] Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, 18 U.S.C. § 249 (2009).
[9] The five states without hate crimes laws are Arkansas, Georgia, Indiana, South Carolina, and Wyoming.

U.S. Attorneys, has vigorously defended the HCPA in both facial and as applied constitutional challenges.

Sen. Sessions ardently opposed passage of the HCPA.[10] In 2009 Senator Sessions condemned the Act as "a broad power that we give to the Attorney General and a broad statute I don't believe is compelled by the facts [about hate crime] that are happening in America today."[11] After the law had passed, he said, "The hate crimes amendment is unwarranted, possibly unconstitutional—certainly, I believe it is unconstitutional in certain parts—and it violates the basic principle of equal justice under the law. The hate crimes amendment to this bill has been said to cheapen the civil rights movement."[12]

Given Sen. Sessions' opposition to the HCPA, and the fact that as Attorney General he would be required to sign off on all federal hate crimes prosecutions, we believe it is imperative to ask the nominee about his positions on hate crimes prosecutions and hate crimes laws. We respectfully request that the Committee question the nominee with respect to the following:

- **Will you sign off on charges brought pursuant to the HCPA, including for crimes targeting members of the lesbian, gay, bisexual and transgender (LGBT) community?**

- **Will you continue the Department of Justice's training programs, including in the five states that have no hate crimes laws, and ensure that U.S. Attorneys, FBI agents, and local law enforcement agents all have the tools they need to prevent bias crimes and to prosecute them diligently and effectively?**

- **In light of the U.S. Supreme Court's unanimous 1993 *Wisconsin v. Mitchell* decision upholding a similar state hate crimes law against a First Amendment challenge, will you defend the constitutionality of the HCPA in court should it be challenged, as the current Justice Department has done on several occasions[13]?**

Voting Rights

Voting rights are the keystone of our democracy, and ADL believes that the necessity of securing and safeguarding the right to vote for all eligible Americans cannot be underscored enough. Recognizing the Voting Rights Act of 1965 (VRA) as one of the most important and most effective pieces of civil rights legislation ever enacted, the League has strongly supported the VRA and its extensions since its passage almost 50 years ago. ADL has consistently filed briefs before the U.S. Supreme Court supporting the constitutionality of the VRA, including in *Shelby County v. Holder.*[14]

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[10] Brandon Ellington Patterson, *Jeff Sessions Fought Against Hate Crime Protections for LGBT Victims*, Mother Jones (Nov. 22, 2016), http://www.motherjones.com/politics/2016/11/jeff-sessions-hate-crime-law.

[11] Brian Levin, *Jeff Sessions Will Be In Charge of Enforcing the Federal Hate Crime Law He Vehemently Opposed,* Huffington Post (Nov. 18, 2016), http://www.huffingtonpost.com/brian-levin-jd/trumps-attorney-general-nominee-was_b_13080004.html.

[12] Jeff Sessions, *Sessions Expresses Concern About the Hate Crimes Act,* Floor Statements (Jul. 20, 2009), http://www.sessions.senate.gov/public/index.cfm/2009/7/sessions-expresses-concern-about-the-hate-crimes-act.

[13] *Hate Crimes,* Department of Justice, https://www.justice.gov/crt/hate-crimes-0.

[14] *Shelby County v. Holder,* 133 S. Ct. 2612 (2013).

Sen. Sessions' record on voting rights can be described, at best, as deeply concerning. In 1985, when Mr. Sessions was U.S. Attorney for the Southern District of Alabama, he brought a case against Albert Turner – leader of the Perry County Civic League and a voting rights advocate who had walked directly behind Representative John Lewis during the Bloody Sunday march in Selma – and two others who had helped elderly black voters in Alabama with their absentee ballots. Mr. Sessions charged the "Marion Three" with 29 counts of mail fraud, altering absentee ballots, and conspiracy to vote more than once. The defendants faced more than 100 years in prison on criminal charges, including violations of the VRA that had seldom been used even to prosecute white officials who had systematically disenfranchised black voters for decades. Evidence showed that the defendants were helping elderly black voters complete mail-in ballots. The jury deliberated for less than three hours before returning not guilty verdicts on all counts.[15]

The following year, during his confirmation hearings for a federal judgeship in 1986, the then-nominee told the Senate that he had considered the VRA a "piece of intrusive legislation."[16] At those same hearings J. Gerald Hebert, who worked in the Department of Justice's Voting Section, testified that, when a federal judge called James Blacksher, who is white, "a disgrace to his race" for representing black clients in voting rights cases, Sessions responded, "Well, maybe he is."[17]

Sen. Sessions' opposition to the VRA and troublesome record on voting rights did not end in the 1980s. Before running for a U.S. Senate seat, in 1996 Mr. Sessions argued that the VRA was a tool to engineer particular political outcomes, not to protect access to the ballot box. Sen. Sessions voted for the extension of the VRA in 2006, but he later said he had misgivings: "I wanted to vote for it, but at the very last minute I was very uneasy, because all of a sudden they expanded it to 25 years, and that probably wasn't justified." After the Supreme Court's decision in *Shelby County v. Holder* in 2013, which essentially gutted the heart of the Act, Sen. Sessions called it, "Good news, I think, for the South."[18]

In the role of Attorney General, the nominee would be tasked with protecting the right to vote for all Americans. We would urge the Committee to ask the nominee questions in this area:

- **Do you believe you made a mistake in prosecuting the Marion Three?**

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[15] Robert Pear, *Judge Nomination Stirs Opposition,* New York Times (Dec. 1, 1985), http://www.nytimes.com/1985/12/01/us/judge-nomination-stirs-opposition.html; Ari Berman, *Jeff Sessions, Trump's Pick for Attorney General, Is a Fierce Opponent of Civil Rights,* The Nation (Nov. 18, 2016), https://www.thenation.com/article/jeff-sessions-trumps-pick-for-attorney-general-is-a-fierce-opponent-of-civil-rights/.

[16] Osita Nwanevu, *Jeff Sessions, Defender of the Muslim Ban, Is Trump's Pick for Attorney General,* Slate (Nov. 18, 2016), http://www.slate.com/blogs/the_slatest/2016/11/18/jeff_sessions_is_trump_s_pick_for_attorney_general.html.

[17] Mary Troyman and Brian Lyman, *Black Belt Voter Fraud Case in Alabama Shaped Sen. Jeff Sessions' Career,* USA Today (Nov. 18, 2016), http://www.usatoday.com/story/news/politics/2016/11/18/black-belt-voter-fraud-case-alabama-shaped-sen-jeff-sessions-career/94088186/.

[18] Tierney Sneed, *Why Jeff Sessions as Attorney General Horrifies Voting Rights Advocates*, Talking Points Memo (Nov. 18, 2016), http://talkingpointsmemo.com/dc/why-trump-s-choice-of-jeff-sessions-as-ag-is-alarming-voting-rights-advocates.

- **Given your history of prosecuting African-American voting rights advocates while you were U.S. Attorney, what reassurance can you provide that you will fairly enforce the Voting Rights Act?**

- **You have expressed support for the *Shelby County v. Holder* decision. How broad do you believe the Justice Department's authority is now to enforce the Voting Rights Act?**

- **Why do you support voter ID requirements when the overwhelming evidence is that in-person voter impersonation is almost non-existent, and clear evidence exists that these restrictions limit access for minority, poor, old, disabled, and young voters?**

Criminal Justice Reform and Law Enforcement Training

In recent years, there have been multiple proposals at the federal and state levels to reform criminal justice and police policies, including reforming pretrial detention; adopting alternatives to arrest and incarceration for minor, non-violent offenses; appointing special prosecutors in cases of police involvement in fatalities of unarmed civilians and allegations of serious police misconduct; requiring law enforcement officers to wear body cameras; expanding FBI and Justice Department data collection on police use of lethal force; providing treatment, rather than incarceration, for substance abuse and mental health; limiting mandatory minimum sentences to the most serious offenses; ensuring fairness in the selection of jurors and grand jurors; focusing prisons on rehabilitation efforts; and promoting best practices to ease reentry and reduce recidivism.

ADL supported the Sentencing Reform and Corrections Act of 2015, as well as other reform efforts designed to reduce mass incarceration, oppose racism, reform practices that disproportionately impact communities of color, create safe environments for all communities, and build trust between law enforcement and the communities they serve and protect.

ADL is the largest non-governmental provider in the United States for law enforcement training on hate crimes, extremism and terrorism. In recent years, we have welcomed a number of well-crafted police reform initiatives, including the President's Task Force on 21st Century Policing.[19] The League has strongly supported the work of the Task Force and an ADL representative presented testimony before the Task Force focused on our flagship Law Enforcement and Society (LEAS) core values program and a range of other policing practices designed to promote effective crime reduction while building public trust and collaborative relationships between law enforcement officials and the communities they serve and protect.[20]

The Department of Justice has also engaged in leadership work to accomplish police reform and promote improved police-community relations and trust through the Civil Rights Division's

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[19] President's Task Force on 21st Century Policing 2015, *Final Report of the Task Force on 21st Century Policing*, Office of Community Oriented Policing Services (May 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

[20] Press Release, Anti-Defamation League, President Obama's Task Force on 21st Century Policing Consults with ADL on Law Enforcement Training (Feb. 14, 2015), http://www.adl.org/press-center/press-releases/miscellaneous/presidents-task-force-21st-century-policing-consults-adl.html?referrer=https://www.google.com/#.WG-EvCMrKM4.

active enforcement of its civil "pattern or practice" authority to address policing that violates the Constitution or other federal laws. According to a report released earlier this month, the Division has opened 11 new pattern or practice investigations and negotiated 19 new reform agreements since 2012, often with the substantial assistance of the local U.S. Attorney's Offices.[21]

These cases focus on systemic police misconduct and involve very substantial investigations. If the Department does find a pattern or practice of police misconduct, it works with local government and police authorities to address and remedy the situation, usually through a consent decree overseen by a federal court and an independent monitoring team.

In June, 2016 the Justice Department announced that every federal law enforcement official and every federal prosecutor would participate in implicit bias training in the coming months. ADL applauded this announcement;[22] the League had recommended such core values training initiatives in its submissions to the President's Task Force on 21st Century Policing.

Sen. Sessions has disregarded evidence about diminishing crime rates[23] and has strongly opposed bipartisan criminal justice reform efforts.[24] In another context, Sen. Sessions has harshly criticized consent decrees as "an end run around the democratic process."[25]

We would urge the Committee to probe the nominee's views on criminal justice issues.

- **What is your view on efforts to address mass incarceration?**

- **Do you support the use of consent decrees and settlement agreements to address a pattern and practice of police misconduct? Are there specific police misconduct consent decrees entered into by the Obama Justice Department with which you disagree?**

- **Would you commit to continuing the Justice Department's important implicit bias training initiative?**

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[21] Civil Rights Division U.S. Dept. of Justice, *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present* (Jan. 2017), https://www.justice.gov/crt/file/922421/download.

[22] Press Release, Anti-Defamation League, ADL Applauds Department of Justice Commitment ot Implicit Bias Training (Jun. 27, 2016), http://www.adl.org/press-center/press-releases/civil-rights/justice-dept-applauded-commitment-to-implicit-bias-training.html?referrer=https://www.google.com/#.WG-JbiMrKM4.

[23] News Releases, Jeff Sessions, *Sessions: Don't Weaken Criminal Law in Middle of Crime Wave* (Oct. 13, 2015), http://www.sessions.senate.gov/public/index.cfm/2015/10/sessions-don-t-weaken-criminal-law-in-middle-of-crime-wave.

[24] Carl Hulse, *Why the Senate Couldn't Pass a Crime Bill Both Parties Backed,* New York Times (Sept. 16, 2016), http://www.nytimes.com/2016/09/17/us/politics/senate-dysfunction-blocks-bipartisan-criminal-justice-overhaul.html?_r=0.

[25] Jeff Sessions, *Foreword* to *Consent Decrees in Institutional Reform Litigation: Strategies for State Legislatures* (Michael E. DeBow, Gary J. Palmer, and John J. Park, Jr.)(2008), http://www.alabamapolicy.org/wp-content/uploads/API-Research-Consent-Decrees.pdf.

LGBT Equality

In recent years, the Justice Department has been a powerful voice in support of LGBT equality and it was a strong supporter of the constitutionality[26] and importance[27] of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (HCPA), legislation that, among other things, provided authority for FBI investigations and Justice Department prosecutions of certain bias-motivated crimes, including crimes directed at individuals because of their sexual orientation or gender identity. The FBI updated its excellent Hate Crime Training Manual with thoughtful definitions and scenarios to aid police in understanding hate crimes directed against members of LGBT communities.[28] As previously mentioned, Sen. Sessions voted against the HCPA.

In 2011, then-Attorney General Eric Holder announced that the Department would no longer support the constitutionality[29] of the ill-conceived Defense of Marriage Act.[30] Sen. Sessions strongly disagreed with that decision, saying he was "very troubled" by the step and calling it "unacceptable."[31] He has supported a constitutional ban on same-sex marriage.[32]

The Justice Department has strongly supported[33] the Employment Non-Discrimination Act (ENDA), legislation designed to ensure workplace anti-discrimination protections for LGBT people. In 2013, Sen. Sessions voted against Senate consideration of ENDA.[34] In addition, Sen. Sessions is a cosponsor of the misnamed "First Amendment Defense Act,"[35] legislation which

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[26] Robert Raben, *Constitutionality of the Matthew Shepard Hate Crimes Prevention Act: Memorandum Opinion for the Assistant Attorney General Office of Legislative Affairs* (Jun. 16, 2009), https://www.justice.gov/sites/default/files/olc/opinions/2009/06/31/shepard-hate-crimes_0.pdf.

[27] Eric Holder, *Attorney General Eric Holder Before the Committee on the Judiciary United States Senate at a Hearing Entitled, 'The Matthew Shepard Hate Crimes Prevention Act of 2009,'* (Jun. 25, 2009), https://www.justice.gov/ag/justice-news-3.

[28] Law Enforcement Support Section, *Hate Crime Data Collection Guidelines and Training Manual* (Feb. 27, 2016), https://ucr.fbi.gov/hate-crime-data-collection-guidelines-and-training-manual.pdf.

[29] Press Release, Department of Justice, *Statement of the Attorney General on Litigation Involving the Defense of Marriage Act* (Feb. 23, 2011), https://www.justice.gov/opa/pr/statement-attorney-general-litigation-involving-defense-marriage-act.

[30] Defense of Marriage Act, 1 U.S.C. § 7 and 28 U.S.C. § 1738c (1996), https://www.gpo.gov/fdsys/pkg/PLAW-104publ199/html/PLAW-104publ199.htm.

[31] Senator Sessions Sharply Questions Nominee for Solicitor General (Mar. 30, 2011), https://www.youtube.com/watch?v=LRSxQnmo_lk&feature=youtu.be.

[32] On the Cloture Motion (Motion to Invoke Cloture on the Motion to Proceed to the Consideration of S.J. Res. 1), U.S. Roll Call Votes 109th Congress—2nd Session (Jun. 7, 2006), http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=109&session=2&vote=00163.

[33] Thomas E. Perez, *Statement of Thomas E. Perez, Assistant Attorney General, Department of Justice, Before the Committee on Health, Education, Labor and Pensions, U.S. Senate, Entitled "Employment Non-Discrimination Act: Ensuring Opportunity for All Americans,"* Dept. of Justice (Nov. 5, 2009), https://www.justice.gov/sites/default/files/crt/legacy/2009/11/05/perez_testimony_11509.pdf.

[34] On the Cloture Motion to Proceed (Motion to Invoke Cloture on the Motion to Proceed to S. 815), U.S. Senate Roll Call Votes 113th Congress—1st Session (Nov. 4, 2013), http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=113&session=1&vote=00229.

[35] First Amendment Defense Act, S. 1594, 114th Cong. (2015), https://www.congress.gov/bill/114th-congress/senate-bill/1598/cosponsors?q=%7B%22search%22%3A%5B%22first+amendment+defense+act%22%5D%7D&r=2

would prevent the government from taking action against businesses that discriminate against LGBT people based on their "religious belief or moral conviction."

In light of this consistent record of opposition to LGBT equality, we would urge Committee members to question Sen. Sessions on the following:

- **Do you believe same-sex marriage equality is the settled law of the land?**
- **Do you believe that individuals should be able to violate federal civil rights laws if their non-compliance is grounded in religious or moral objections?**
- **Will you enforce existing protections against transgender discrimination?**

Immigration

ADL has advocated for fair and humane immigration policies since its founding in 1913. The League has helped expose anti-immigrant hate that has been a fixture of the recent immigration debate, and has called for a responsible public discourse that will honor America's history as a nation of immigrants.

The Attorney General and the Department of Justice have tremendous power over immigration law. The Department of Justice has the power to prosecute immigration violations and the responsibility to administer immigration courts. As head of the Department of Justice, the Attorney General oversees the Executive Office for Immigration Review and the Board of Immigration Appeals, giving him or her broad authority over the enforcement of immigration laws and the fate of asylum seekers, which are often life-and-death decisions. The nominee's views on immigration, therefore, are exceptionally consequential and deserve in-depth questioning.

During his time in the Senate, Sen. Sessions has led efforts to defeat immigration reform and bills that would include a pathway to citizenship for undocumented immigrants, has championed the creation of a fence along the U.S.-Mexico border and has supported zero-tolerance policies for unlawfully crossing the border, advocating for more aggressive prosecution. He has consistently voted to restrict immigration, increase funding for border patrol, and expand border barriers. Sen. Sessions has supported legislation that would require local law enforcement to report "any undocumented immigrants to the Department of Homeland Security"[36] and has insisted that it is "a violation of the criminal code to enter our country illegally." He introduced a bill that would make unlawful presence in the United States a crime, mandating jail time for people who overstayed their visa,[37] and voted to invoke cloture on a bill that would increase

[36] Mary Troyan, *Jeff Sessions, a Deficit Hawk, May Need to Spend Big on Immigration,* USA Today (Dec. 6, 2016), http://www.usatoday.com/story/news/politics/2016/12/06/jeff-sessions-deficit-hawk-may-need-spend-big-immigration/94756084/.

[37] Carolyn Lochhead, *Republicans Hardening Stance on Immigration,* San Francisco Gate (Aug. 4, 2007), http://www.sfgate.com/politics/article/Republicans-hardening-stance-on-immigration-3416115.php.

penalties for those who unlawfully reentered the United States after removal.[38] A memo that Sen. Sessions wrote in 2015 outlined his thoughts on immigration. Among other things, he argued in favor of cancelling federal funds to so-called "sanctuary cities," establishing criminal penalties for visa overstays, and "ending catch-and-release on the border with mandatory detention and expedited deportations."[39]

Sen. Sessions has also supported legal changes to the 14th Amendment to deny citizenship to American-born children of undocumented immigrants. In 2010 he called for hearings on whether the 14th Amendment should be amended to deny birthright citizenship to children of undocumented immigrants[40] and said that birthright citizenship has been "clearly abused."[41] The Fourteenth Amendment to the U.S. Constitution states that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state in which they reside."[42] Section 301(a) of the Immigration and Nationality Act similarly codifies that "a person born in the United States, and subject to the jurisdiction thereof," is a national and citizen of the United States at birth.[43] It is long-settled law that "the Fourteenth Amendment affirms the fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens."[44] The right, commonly referred to as "birthright citizenship," extends equally to all persons born in the United States, regardless of their parents' citizenship or immigration status.

The adoption of the Fourteenth Amendment expressly overturned the tragic and infamous *Dred Scott* decision, widely regarded as among "our most shameful failures to discharge our duty of defending constitutional civil liberties against the popular hue and cry that would have us abridge them."[45] In *Dred Scott*, the Supreme Court had held that "a negro, whose ancestors were imported into this country and sold as salves [sic]" was "not intended to be included, under the word 'citizens' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States."[46] At least in part, *Dred Scott* has been so reviled in the history books because it created an underclass of people born in the United States but unable to gain full and equal access to the rights to "Life, Liberty

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[38] United States Roll Call Votes 114th Congress—2nd Edition (Jul. 6, 2016), http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=114&session=2&vote=00120.

[39] Jeff Sessions, *Immigration Handbook for the New Republican Majority* (Jan. 2015), http://www.sessions.senate.gov/public/_cache/files/67ae7163-6616-4023-a5c4-534c53e6fc26/immigration-primer-for-the-114th-congress.pdf.

[40] Louis Jacobson, *Fact-checking the Claims About 'Anchor Babies' and Whether Illegal Immigrants 'Drop and Leave,'* Politifact (Aug. 6, 2010), http://www.politifact.com/truth-o-meter/statements/2010/aug/06/lindsey-graham/illegal-immigrants-anchor-babies-birthright/.

[41] Devin Dwyer and Jonathan Karl, *Republicans Eye Change to Birthright Citizenship,* ABC News (Aug. 3, 2010), http://abcnews.go.com/Politics/birthright-citizenship-14th-amendment-republican-senators-explore-change/story?id=11313973.

[42] U.S. Const. amend. XIV, § 1.

[43] 8 U.S.C. §1401(a).

[44] *United States v. Wong Kim Ark*,169 U.S. 649, 693 (1898)

[45] *United States v. Zapata-Ibarra*, 223 F.3d 281, 282 (5th Cir. 2000).

[46] *Dred Scott v. Sandford*, 60 U.S. 393, 403, 404 (1857).

and the pursuit of Happiness" boldly set forth as a guarantee in the Declaration of Independence.[47]

In December 2015, after President-elect Trump proposed a "total and complete shutdown of Muslims" entering the United States, Sen. Sessions said, "It's time for us to think this through and the classical, internal American religious principles I don't think apply providing constitutional protections to persons not citizens who want to come here."[48] Soon thereafter Sen. Patrick Leahy introduced a "sense of the Senate" resolution to reaffirm that the United States should not bar people from this country because of their religion. Sen. Sessions voted against the resolution, giving a 30-minute speech about why others should reject it.[49] In addition to his apparent support for a ban on Muslim immigration, Sen. Sessions has made derogatory comments about immigrants from the Dominican Republic. In a speech on the Senate floor, Sen. Sessions said, "Almost no one coming from the Dominican Republic to the United States is coming because they have a skill that would benefit us and that would indicate their likely success in our society."[50]

Given the Attorney General's power over immigration and Sen. Sessions' record on the issues, ADL believes it would be appropriate to question the nominee in-depth about his intentions. In particular, we respectfully request that the Committee question him with regard to the following:

- **How—and to what extent—do you intend to use Department of Justice resources to prosecute immigration cases?**

- **Are there any cases from the Board of Immigration Appeals that you have flagged for reconsideration?**

- **Do you believe that immigrants, including undocumented immigrants, have due process rights? Do you believe that people who have overstayed their visas should be prosecuted and sentenced to time in jail or prison? Do you believe that people who reenter the country unlawfully after a removal should be prosecuted and sentenced to time in jail or prison?**

- **What is your position regarding the status of people who received Deferred Action for Childhood Arrivals?**

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[47] The Declaration of Independence para. 2 (U.S. 1776).

[48] Jennifer Jacobs and Steven T Dennis, *Trump Names Senator Jeff Sessions to Be His Attorney General,* Bloomberg Politics (Nov. 18, 2016), https://www.bloomberg.com/politics/articles/2016-11-18/trump-said-to-pick-senator-jeff-sessions-for-attorney-general.

[49] Sari Horwitz and Ellen Nakashima, *Jeff Sessions Is Expected to Bring Sweeping Changes to the Justice Department,* The Washington Post (Nov. 18, 2016), https://www.washingtonpost.com/world/national-security/jeff-sessions-is-expected-to-bring-sweeping-changes-to-the-justice-department/2016/11/18/f480019c-ad93-11e6-8b45-f8e493f06fcd_story.html?utm_term=.e6a904b69430.

[50] Jeff Sessions, *Sen. Sessions on Immigration,* Floor Statements (May 22, 2006), http://www.sessions.senate.gov/public/index.cfm/floor-statements?ID=ee49e505-7e9c-9af9-731c-006d27095530.

- **If the federal government were to pass a law withholding federal funding from so-called "sanctuary cities," how would you prioritize Department of Justice resources to file charges against cities that did not comply?**

- **Would you defend the civil rights of people with undocumented parents who had received citizenship by virtue of being born in the United States? If so, would that include the rights of those children to attend public schools? If not, on what basis do you hold that view, given the Supreme Court's clear guidance in *Plyler v. Doe*, 457 U.S. 202 (1982)?**

- **Do you believe that banning entry of Muslims into the United States would be constitutional? Would you defend an Executive Order to that effect if the President were to promulgate one?**

Reproductive Health

As a national Jewish civil rights and human relations organization dedicated to principles of religious and individual liberty, including the right to privacy, ADL views reproductive choice as an issue of personal and religious freedom. Accordingly, we believe that government should not unnecessarily intrude on a woman's decision about abortion. Rather, the decision should be made in consultation with a doctor and in accordance with a woman's own religious and moral convictions.

Sen. Sessions has consistently opposed abortion access. In 2003, for example, Sen. Sessions voted for the Partial-Birth Abortion Ban Act, which created a fine and up to two years' imprisonment for physicians who knowingly performed such an abortion.[51] The following year, he voted in favor of the Unborn Victims of Violence Act.[52] In 2008, he voted yes on an amendment that would have removed pregnant women's health insurance coverage on the State Children's Health Insurance Program and instead provide coverage to the unborn fetus.[53] He also voted to make it a federal crime to transport a minor across state lines in order to obtain an abortion to circumvent parental notification laws[54] and to bar the use of funds or facilities of the Indian Health Services to provide abortions or cover costs of health plans that included abortion

[51] United States Roll Call Votes 108th Congress—1st Edition (Mar. 13, 2003), http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=108&session=1&vote=00051#state.

[52] United States Roll Call Votes 108th Congress—2nd Edition (Mar. 25, 2004), http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=108&session=2&vote=00063.

[53] Pema Levy, *This Is the Only Recent Time Jeff Sessions Voted to Expand Health Care Coverage,* Mother Jones (Nov. 19, 2016), http://www.motherjones.com/politics/2016/11/senator-sessions-voted-expand-health-care-coverage-fetuses.

[54] United States Senate Roll Call Votes 109th Congress—2nd Edition (Sept. 29, 2006), http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=109&session=2&vote=00263.

access.[55]Sen. Sessions has voted to defund Planned Parenthood and called on Attorney General Loretta Lynch to open an investigation about Planned Parenthood.[56]

The Freedom of Access to Clinic Entrances Act (commonly referred to as the "FACE Act") protects access to reproductive health services and criminalizes acts of physical force, threats of physical force, or physical obstructions to block access to reproductive health services as well as intentional damage or destruction of a reproductive health facility.[57] The Attorney General has the right and the responsibility to initiate federal criminal prosecutions under the FACE Act, as well as civil actions.[58]

In light of Sen. Sessions' positions on abortion access and the responsibilities of the Attorney General, we respectfully urge the Committee to question Sen. Sessions with regard to the following:

- **Will you comply with the FACE Act and protect access to reproductive health facilities? Will you protect the safety of the clinics?**

- **Do you intend to use the resources of the Department of Justice to initiate an investigation of Planned Parenthood?**

- **Given longstanding Supreme Court precedent on the constitutionality of abortion as defined by *Roe v. Wade* and continuing through *Whole Woman's Health v. Hellerstedt,* would you defend the constitutionality of abortions?**

The Role of the Attorney General and the Department of Justice

In addition to the specific issue areas enumerated above, we believe it is appropriate to probe the nominee's views on how the Attorney General should make decisions and exercise prosecutorial discretion. We respectfully request that members of the Committee question the nominee with respect to the following:

First, on July 21, 2009 Sen. Sessions published an op-ed in the *Fort Wayne Journal Gazette* entitled "Supreme Court Must Not Show Empathy in Rulings." In it he wrote, "Empathy-based rulings, no matter how well-intentioned, do not help society but imperil the legal system that has been so essential to our liberties and so fundamental to our way of life." As the nation's top law enforcement officer and as the head of the Department of Justice, the Attorney General has the authority to exercise prosecutorial discretion.

- **Do you believe that empathy has a role in determining which cases to bring, and which laws to enforce zealously?**

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[55] United States Senate Roll Call Votes 110th Congress—2nd Edition (Feb. 26, 2008), http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=110&session=2&vote=00030.

[56] Bradford Richardson, *Sessions Urged to Investigate Planned Parenthood if He Succeeds Lynch as Attorney General,* Washington Times (Nov. 22, 2016), http://www.washingtontimes.com/news/2016/nov/22/jeff-sessions-planned-parenthood-investigation-urg/.

[57] 18 U.S.C. § 248 (1994).

[58] *Id.*

Second, in a speech Sen. Sessions gave on the Senate floor, he quoted Professor Van Alstyne of Duke University, who said of the Constitution, "If you respect the document, you will enforce it, the good and bad parts. You will enforce the parts you do not agree with, if you love, respect and revere the Constitution."[59]

- **Are there parts of the Constitution with which you disagree? Are there parts of the Constitution with which you disagree that you would refuse to enforce as Attorney General?**

We know you share our view of the importance of the Senate's "advise and consent" role in the nomination process and we very much appreciate your leadership in promoting the important views expressed in this letter. We trust that the nominee's answers to Committee members' questions on these areas of interest and concern will help in the Committee's overall evaluation of Sen. Sessions for the important position of United States Attorney General.

Sincerely,

Marvin D. Nathan
National Chair

Jonathan A. Greenblatt
CEO and National Director

[59] Jeff Sessions, "Under God," Floor Statements (Jun. 26, 2002), http://www.sessions.senate.gov/public/index.cfm/floor-statements?ID=A3AF7243-7E9C-9AF9-784D-C587FDF755E7.