



January 6, 2017

The Honorable Charles E. Grassley  
U.S. Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Dianne Feinstein  
U.S. Senate Judiciary Committee  
152 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Feinstein:

***“The most sacred of the duties of government [is] to do equal and impartial justice to all its citizens.” --Thomas Jefferson, as quoted by the United States Department of Justice***

In the description of its [history](#), the Department of Justice (“Department” or “DOJ”) explains to America that it views as its “guiding principle” the responsibility, as stated by Thomas Jefferson, to “do equal and impartial justice to all its citizens.” As “the world’s largest law office and the chief enforcer of federal laws,” the Department plays a critical role in our nation’s ongoing progress toward equal and impartial justice, helping to realize principles embedded in the U.S. Constitution and reflected in a long list of federal laws that help enforce constitutional guarantees.

DOJ executes this charge through its 60 agencies and components, including such notable divisions as the Civil Rights Division, the Office of Violence Against Women, the Executive Office for Immigration Review, the Federal Bureau of Investigation, and the Office of Legal Counsel. In order to carry out the Department’s critical mission, it is axiomatic that the Attorney General—the head of DOJ—must have a deep commitment to the principles of liberty, equality, and fairness at the Constitution’s core, a history of respecting substantive fundamental rights, and a demonstrated willingness to respect the Constitution and its values, whatever his or her own policy preferences, or those of the President. These values are important, as they will guide the Attorney General in exercising one of his greatest powers—determining what issues, laws, regulations, and policies will receive the attention and support of the Department of Justice. As “[the People’s lawyer](#),” the Attorney General must rise above partisan politics and, with independent fortitude and objectivity, enforce the Constitution and the rule of law fairly, even if that means standing up to the President himself.

President-elect Donald Trump has announced his intention to nominate Senator Jefferson Sessions of Alabama as Attorney General. Senator Sessions’s long record, however, demonstrates that he is not fit for this position and cannot be trusted to execute the mission of the Department of Justice. His extreme views, at times defying the fundamental protections written in the text and underscored by the history of the Constitution, demonstrate an unwillingness to respect the rights of all persons as guaranteed by our national charter and run counter to the important mission of the Department of Justice. We focus here on six of the areas in which Sessions’s record is particularly troubling: civil rights, women’s rights, immigrants’ rights, criminal justice, national security, and independence and executive accountability to the rule of law. In each of these areas, Senator Sessions has turned a blind eye to fundamental constitutional principles that ensure liberty and equality for all and prevent abuse of power by the government.

## 1. CIVIL RIGHTS

The Civil Rights Division of the Department of Justice is one of our nation's most powerful governmental entities responsible for combating discrimination in all walks of life and ensuring our Constitution's promise of equality for all. The Division is charged with enforcing federal statutes that prohibit discrimination on the basis of race, sex, disability, religion, and national origin.<sup>1</sup> This includes investigating abuses and seeking relief in cases involving discrimination in the areas of education, credit, employment, housing, public accommodations and facilities, federally funded programs, and voting. It also includes protecting the rights of prisoners, mentally and physically disabled persons, and senior citizens. Notably, the Division recommends observer and examiner activities, and reviews and approves regulatory changes proposed by all federal executive branch agencies as they pertain to civil rights. For women, people of color, people with disabilities, low income people, incarcerated people, abortion providers, victims of police brutality, and immigrants, the Civil Rights Division is of critical importance.

Given his record, Senator Sessions is the wrong person to be put in charge of an agency that is responsible for working to end discrimination; indeed, if confirmed, he would be far more likely to further entrench discrimination in America by ignoring systemic examples of it and by undercutting laws enacted and programs put into place to fight it. Sessions has a long, public record of hostility to the Constitution's protections of liberty and equality for all. In 1986, a Republican-dominated Senate Judiciary Committee rejected President Reagan's nomination of Jeff Sessions to be a federal district court judge—[an extremely rare rejection](#)—because of Sessions's history of racial insensitivity—a history underscored by witnesses who gave direct testimony to the Committee. Alabama Senator Howell Heflin, who had initially strongly backed Sessions's nomination, eventually voted against Sessions's confirmation [because](#) he had “reasonable doubts” Sessions could be “fair and impartial” on the bench.

While the actions at the center of those events took place several decades ago, Sessions's record since then, examples of which are discussed below, indicates that he is not *now* qualified to be put in charge of enforcing our country's civil rights laws, laws enacted to reinforce the [Reconstruction Amendments](#) that, among other things, wrote guarantees of equality for all persons into our Constitution. When Sessions became a U.S. Senator, representing the people of Alabama, he swore to “support and defend the Constitution of the United States... [and] bear true faith and allegiance to the same.” Yet, over the course of his Senate career, Sessions has taken actions that would undermine our enduring charter; he has denied that racial discrimination in voting exists in the South, voted to limit democratic participation, voted to deny civil rights to members of the LGBTQ community, and voted to undercut efforts to empower people with disabilities. Sessions has a long record of hostility toward voting rights, and a DOJ led by an Attorney General Jeff Sessions could not be counted on to ensure that the right to vote—a right protected by more parts of the Constitution than any other right—is actually enjoyed by all citizens.

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<sup>1</sup> The Civil Rights Division of the Department of Justice enforces the Civil Rights Acts of 1957, 1960, 1964, and 1968, as amended; the Voting Rights Act of 1965, as amended; the Equal Credit Opportunity Act, as amended; the Fair Housing Act of 1968 and the Fair Housing Amendments Act of 1988; Executive Order 12250 (inter alia, Title VI, Title IX, and Section 504 of the Rehabilitation Act of 1973, as amended); the Civil Rights of Institutionalized Persons Act; the Freedom of Access to Clinic Entrances Act; the Police Misconduct Provision of the Violent Crime Control and Law Enforcement Act of 1994; the Trafficking Victims Protection Act of 2000; and Section 102 of the Immigration Reform and Control Act of 1986, as amended. In addition, the Division is charged with all departmental responsibilities under the Americans with Disabilities Act of 1990.

- While U.S. Attorney for the Southern District of Alabama, Sessions displayed a lack of willingness to protect the rights of all as required by the Constitution. During his district court nomination hearings in 1986, then-U.S. Attorney Sessions told the Senate Judiciary Committee that the Voting Rights Act was “[a piece of intrusive legislation](#).” In fact, the Voting Rights Act of 1965 made the promise of the Fifteenth Amendment, which guarantees the right to vote regardless of “race, color, or previous servitude,” tangible for many African Americans living in the Jim Crow South. Also during the hearings, it came to light that Sessions had called an African American colleague “[boy](#),” while calling civil rights organizations like the NAACP “[un-American](#)” and “[Communist-inspired](#),” claiming that they were trying to “[force civil rights down the throats of people who were trying to put problems behind them](#).” Sessions also called Jim Blacksher, a white civil rights lawyer who had filed many voting rights and other civil rights suits, a “[disgrace to his race](#).” In 1985, U.S. Attorney Sessions brought [fraud and conspiracy charges](#) against civil rights activists—including Albert Turner, a former aide to Martin Luther King, Jr., who was known as “Mr. Voter Registration”—who had lawfully mailed absentee ballots on behalf of elderly African American voters. Sessions’s investigators [hid behind bushes](#) to monitor the civil rights activists, seized the ballots from the mail, and then forced elderly African American voters to travel hundreds of miles to testify before a grand jury. Following a criminal trial, the jury quickly [acquitted](#) all the defendants of the charges brought by Sessions.
- In the years since his failed district court nomination, Sessions has impeded efforts to eradicate discriminatory policies that make voting difficult for non-white citizens. In 2006, Sessions was one of the Republican Senators who, despite voting to renew the preclearance requirement of the Voting Rights Act, [signed](#) an unusual Senate Judiciary Committee report (published after the vote in the Senate) strongly suggesting that the Act was unconstitutional. In 2013, Sessions cheered the Supreme Court’s 5-4 decision in *Shelby County v. Holder*, gutting a key provision of the Voting Rights Act, calling it “[good news, I think, for the South](#).” He further claimed that “Shelby County never had a history of denying the vote, certainly not now. There is racial discrimination in the country, but I don’t think in Shelby County, Alabama, anyone is being denied the right to vote because of the color of their skin. It would be much more likely to have those things occur in Philadelphia, Chicago, or Boston.” Likewise, Sessions claimed that “if you go to Alabama, Georgia, North Carolina, people aren’t being denied the vote because of the color of their skin.” In 2014, Sessions [opposed](#) efforts to modernize the Voting Rights Act’s coverage formula struck down in *Shelby County*. Sessions claimed that “[t]o pass a law in the U.S. Congress that provides penalties only to some states and not to others can only be justified for the most extraordinary circumstances. And the justification no longer exists.”
- While [denying](#) that racial discrimination in voting still exists in the South, Sessions [maintains](#) that in-person voter fraud is a serious problem that requires states to be able to make it harder for people to vote, despite the overwhelming [evidence](#) showing how rare in-person voter fraud is.
- Sessions has also supported policies that limit access to voting. In 2007, Sessions [voted](#) to require voters nationwide to present photo identification in order to cast their ballot, despite the fact that voter ID laws [make it harder](#) for the poor, the elderly, and people of color to be able to vote. In 2002, he opposed legislation that would have granted ex-felons the right to vote, arguing that “[I don’t think American policy is going to be better informed if we have a bunch of felons in the process](#).”

- Harkening back to Sessions’s statement revealed at his 1986 hearing that the NAACP was “un-American,” Sessions in 2015 made the astonishing statement that those working to take down [public](#) displays of the Confederate battle flag were seeking to “[delegitimize the fabulous accomplishments of our country.](#)”
- As a Senator, Sessions has advocated for positions that would have denied members of the LGBTQ community equal citizenship status on various fronts. In 2006, he voted to invoke cloture and move to a vote on a constitutional amendment to [ban same-sex marriage](#). In 2009, he [opposed](#) the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, which among other things extended federal hate crime protections to people victimized because of their sexual orientation, gender, gender identity, or disability. In 2010, he [voted against](#) the repeal of “Don’t Ask, Don’t Tell,” the policy that banned gay men and lesbians from serving openly in the military. In 2013, Sessions [voted against](#) the Employment Non-Discrimination Act, which would prohibit employment discrimination on the basis of sexual orientation or gender identity. In 2015, Sessions [voted against](#) an amendment that ensures same-sex couples have access to Social Security and veterans benefits. Later that year, he also [voted against](#) an amendment that would have prohibited public schools from discriminating against any student on the basis of sexual orientation or gender identity.
- Sessions’s record reflects a lack of commitment to equal access to education. As a Senator, he has criticized federal laws providing special education for students with disabilities, calling them perhaps the “[single most irritating problem for teachers throughout America today,](#)” and “very sincerely” suggested that accommodations for students with disabilities are “a big factor in accelerating the decline in civility and discipline in classrooms all over America.” In 2003, Sessions voted against an amendment attempting to [increase funding for Hispanic education programs](#). A year later, Sessions voted against an amendment that would [increase funding for educating students with disabilities](#).
- During the 2009 Senate Judiciary Committee hearing on the nomination of Sonia Sotomayor to the U.S. Supreme Court, Sessions “seemed to question [whether Hispanics were overrepresented](#) among judges.” In fact, Hispanics and other people of color are woefully [underrepresented](#) in the federal judiciary. Additionally, as a member of the Senate Judiciary Committee, Sessions has repeatedly [attacked](#) federal judicial nominees who have been affiliated with or worked for the American Civil Liberties Union, claiming they have an “[ACLU gene](#)” that disqualifies them, for “[\[t\]he ACLU is not mainstream in its positions.](#)” In fact, the ACLU works to defend and preserve the individual rights and liberties guaranteed by the Constitution and laws of the United States.

## 2. WOMEN’S RIGHTS AND REPRODUCTIVE FREEDOM

The Department of Justice is responsible for enforcing several laws that protect the rights of women and guarantee that they are treated as equal citizens, as the Constitution requires. The Civil Rights Division, for example, enforces anti-discrimination laws on the basis of sex, including laws prohibiting sex discrimination in employment. Also, the Special Litigation Section of the Civil Rights Division enforces the civil protections of the Freedom of Access to Clinic Entrances Act of 1994 (FACE), which protects abortion clinics, places of worship, their staff, and visitors from harassment and/or violence. FACE authorizes the Attorney General to seek injunctive relief, damages, and civil penalties against those who violate that statute. Abortion clinic violence [remains a threat](#) across the country, and women continue to rely on law enforcement to keep clinics accessible so they can obtain necessary health care. In addition, DOJ has a component dedicated to reducing violence against women—the

Office on Violence Against Women—which develops policy, protocols, and guidelines to strengthen services to victims of domestic violence, dating violence, sexual assault, and stalking.

Senator Sessions’s record demonstrates his clear opposition to protecting women’s fundamental rights and equal citizenship. As shown below, he has opposed legislative efforts that would help end pay discrimination, support women’s bodily autonomy, and support survivors of violence. Sessions’s consistently extreme views and actions related to women and women’s rights indicate that he cannot be trusted to lead an agency responsible for the enforcement of laws vindicating women’s equal citizenship.

- Sessions [voted](#) in 2009 against the Lilly Ledbetter Fair Pay Act, which amended Title VII of the Civil Rights Act of 1964 to help ensure that women who are paid less than men for the same work can obtain legal remedies for this discrimination.
- In [2000](#) and again in [2005](#), Sessions voted to allow perpetrators of violence or harassment at reproductive health clinics to evade financial responsibility for their illegal activities. He also [voted](#) in 2015 against a measure establishing a fund for clinic security and women’s health services.
- Even though the right to an abortion is, as the U.S. Supreme Court has consistently recognized, guaranteed by the U.S. Constitution, Sessions is a fierce opponent of that right. If he were to be confirmed as Attorney General, the right to access abortion and abortion clinics would be imperiled. Sessions has said “[that \*Roe v. Wade\* and its descendants represent one of the worse, colossally erroneous Supreme Court decisions of all time](#)” and that “[sanctity of life begins at conception.](#)” Sessions twice [voted against](#) resolutions in support of *Roe v. Wade* and in [1997](#), [1998](#), [1999](#), and [2003](#), he voted in favor of the Federal Abortion Ban (also known as the so-called Partial-Birth Abortion Ban), which criminalized some abortion services, penalizing doctors with up to two years in prison. In 2004, Sessions [voted](#) for the Unborn Victims of Violence Act, which grants legal status to an embryo or fetus. In 2015, he [voted](#) for cloture to proceed with a vote on a nationwide ban on abortion at 20 weeks. And in [2007](#), [2008](#), and [2009](#), Sessions voted to codify the “unborn child” regulation that allows states to make an embryo or fetus—but not a pregnant woman—eligible for health care coverage.
- Sessions has voted consistently to make accessing abortion all but impossible for low-income people. In [1997](#), [1998](#), [1999](#), [2000](#), [2002](#), and [2003](#), he voted to deny servicewomen in our Armed Forces the right to use their own private funds for abortion care at military treatment facilities. In [1997](#) and [1999](#), he voted to ban federal employees from choosing health insurance that includes coverage of abortion care. In [1997](#) he voted to block low-income people from getting abortion care in most cases. In 2011 he [voted](#) to prevent the District of Columbia from using its own tax revenues to provide funding for abortion care to Medicaid-eligible recipients. In 2008, he [voted](#) to recodify the Hyde Amendment for all Indian Health Service clinics. In 2015, Sessions [voted](#) to impose the Hyde Amendment on human-trafficking survivors and [voted](#) to reiterate the Amendment in a bill reforming Medicare and reauthorizing the Children’s Health Insurance Program. And in 2009, he [voted](#) to deny abortion coverage to women under the Affordable Care Act. In keeping with his goal of making it difficult, if not impossible, for people to access abortion, Sessions voted in [1998](#), [2006](#), [2008](#), and [2013](#) in favor of imposing a complex national patchwork of parental-notification of abortion laws. Also, in 2009, he [supported](#) making anti-choice crisis pregnancy centers, which [mislead, misinform, harass, and intimidate pregnant people](#), expressly eligible for federal funding. The discriminatory funding of other

methods of family planning to the exclusion of abortion has the practical effect of taking this fundamental right away from significant classes of people in a manner that cannot be squared with the Fourteenth Amendment's guarantees of equal protection and citizenship.

- In 2013, Sessions [voted](#) against reauthorization of the [Violence Against Women Act](#). In 2014, he [voted against](#) a bill that would have provided more protection to military personnel who have been sexually assaulted, removing prosecution of such crimes from the military chain of command. Considering such votes, it may not be surprising that during the recent presidential election campaign, Sessions expressed doubt that the disgusting act described in Trump's comments about women (that he can "Grab them by the p---y") constitutes [sexual assault](#). Understanding the basic definition of sexual assault is deeply disqualifying in a candidate to lead the Department of Justice.

### 3. IMMIGRANTS' RIGHTS

The Justice Department plays an important role in our country's immigration system, and the Attorney General has considerable influence over how the government's power to detain and charge undocumented immigrants is exercised.

The Department's Executive Office for Immigration Review (EOIR) administers our nation's immigration courts by conducting immigration court proceedings, reviewing immigration court proceedings, and holding administrative hearings. Immigration judges determine whether individuals the government is trying to deport have a legal basis to remain in the country. Administrative hearings involve employer sanctions, anti-discrimination provisions, and document fraud under the Immigration and Nationality Act. EOIR appoints the judges who preside over immigration and administrative cases, and overseas appeals of deportation orders. The Attorney General may fire sitting immigration judges and replace them with judges he finds more suitable. As a result, the Attorney General has great power over how our nation's immigration laws are interpreted and are enforced. For example, who qualifies for asylum under U.S. law is a determination over which the Attorney General and [the judges he appoints](#) have purview.

The Department's Office of Immigration Litigation (OIL) oversees all civil immigration litigation and coordinates national immigration matters before the federal district and circuit courts. Such matters may include detention, employment-based immigration, denaturalization, or terrorism-related immigration issues. OIL can influence how the government handles appeals of its actions, and it represents and advises government agencies on a wide range of matters related to the immigration system. Through OIL, the Attorney General determines the government's willingness to defend challenges to its interpretations of immigration law. For example, during the Administration of President George W. Bush, the "expedited removal" of undocumented immigrants decreased dramatically after the Justice Department "[became frustrated with having to defend the government from charges that immigration enforcement officers were abusing their authority.](#)" Given his record, an Attorney General Sessions might be willing to dedicate OIL's time to defending such a policy and reviving this problematic practice.

Other divisions of DOJ can also play an important role in ensuring the fair application of our nation's immigration laws. For example, the Civil Division [successfully sued](#) the state of Arizona when the state passed S.B. 1070, which attempted to preempt the federal government's jurisdiction over immigration policy, disrupted federal enforcement priorities and resources, and ignored some of the humanitarian concerns of the Obama Justice Department. And the Civil Rights Division won a [civil rights](#)

[lawsuit](#) against former-Sheriff Joe Arpaio of Maricopa County, Arizona. An Attorney General who supports worksite raids might be less inclined to act as a check against members of local law enforcement who carry out their duties with the same anti-immigrant zeal as Sheriff Arpaio did.

It is apparent from Sessions's record that he would be that sort of Attorney General who would set civil liberties aside to execute an anti-immigrant agenda. As Chair of the Senate Judiciary Subcommittee on Immigration and the National Interest, Sessions has long enjoyed a platform from which to spout his extreme views on immigration. His record is firmly anti-immigrant, and particularly anti-immigrants of color. As Attorney General, Sessions would be able to effectuate many of his policy positions through the Attorney General's power to appoint immigration judges and power to modify, adjust, and decide how our immigration law is implemented. Sessions's consistent and extreme views suggest he would be neither fair nor impartial regarding our nation's immigrants, legally present or otherwise. For example:

- Sessions has called for the [end of birthright citizenship](#), in direct [contradiction](#) to the plain text of the U.S. Constitution. Sessions has spoken out against immigrants of all kinds: he wrote an [op-ed](#) in *The Washington Post* decrying skilled immigration, has [consistently spoken out](#) against [accepting refugees](#) from war zones, and [supports](#) the President-elect's proposal to impose a "temporary" ban on immigration from majority-Muslim countries. Sessions has attempted to justify a ban on Muslim immigrants by [claiming](#) they "don't have a constitutional right to come to America" and the President may deny "[any class of persons](#) who may pose a threat to us."
- Sessions has supported "vetting" prospective immigrants by asking questions about their religion, [claiming](#), "We need to use common sense with the who-what-where of the threat. It is the toxic ideology of Islam." In 2015, Sessions was one of only four Senators on the Senate Judiciary Committee to vote against a [symbolic measure](#) expressing the sense of the Senate that "the United States must not bar individuals from entering the United States based on their religion, as such action would be contrary to the fundamental principles on which this Nation was founded." Sessions rejected the idea that immigrants have rights at all, describing those rights as "[so-called](#)."
- In 2013, Sessions [voted against](#) the Senate's bipartisan immigration reform bill that would have toughened border security while giving more protections to undocumented individuals already in the country. After the measure passed in the Senate, Sessions published the "[Immigration Handbook for the New Republican Majority](#)" to aid House colleagues in defeating the House version.
- Sessions has [threatened](#) sanctuary cities with prosecution, a promise on which he could make good if he were confirmed as Attorney General.
- Sessions also has "[longstanding and extensive ties](#) to both anti-immigrant and anti-Muslim extremist groups."
  - One of these groups, the Federation for American Immigration Reform (FAIR), has been named as a hate group by the Southern Poverty Law Center since 2007. Sessions regularly attends an annual FAIR event and in 2007 was the keynote speaker at an advisory board meeting where he was [awarded](#) FAIR's Franklin Society award.

- Another such group, the Center for Immigration Studies (CIS), has called immigrants “[Third-World gold-diggers](#),” postulated that Haiti is “[so screwed up because it wasn’t colonized long enough](#),” and that “[being hung, drawn and quartered is probably too good for \[President Barack Obama\]](#).” Sessions [participated](#) in a CIS panel discussion in 2006, [spoke](#) at one of its teleconferences in 2013, and [spoke](#) at one of its 2016 receptions.
- In 2012, Sessions put into the Congressional Record a [congratulations](#) on the 15<sup>th</sup> anniversary of NumbersUSA, a xenophobic organization dedicated to keeping immigration to the U.S. as low as possible, claiming it saves the environment and combats poverty. Roy Beck, the founder and executive director of that organization, has spoken twice to the white nationalist Council of Conservative Citizens, whose online propaganda [influenced](#) Charleston shooter Dylann Roof, and has referred to Black people as a “[retrograde species of humanity](#).”
- The [David Horowitz Freedom Center](#) attempts to “combat[] the efforts of the radical left and its Islamist allies to destroy American values and disarm this country as it attempts to defend itself in a time of terror.” In 2014, the Center [gave](#) Sessions its Daring the Odds: The Annie Taylor Award. Sessions also attended the Center’s “Restoration Weekend” in [2003](#) and [2013](#).
- In 2015, the anti-Muslim hate group, the Center for Security Policy (CSP), [awarded](#) Sessions its Keeper of the Flame award. CSP released a [report](#) last year calling for a ban on Muslim immigration.

#### 4. CRIMINAL JUSTICE

The Department of Justice plays an extremely broad and critical role in our nation’s criminal justice system. Among other things, it is responsible for enforcing [more than 5000](#) federal laws dealing with such varied problems as organized crime, drug trafficking, white-collar crime, cybercrime, and much more. At the heart of this work are the Department’s Criminal Division and the 93 United States Attorneys throughout the country, appointed by the President. Among their responsibilities, these attorneys prosecute criminal cases brought by the federal government. Together, the Criminal Division and U.S. Attorneys determine who will be charged for federal crimes and face the full power of the U.S. government in court. They can also recommend to judges the length of sentences guilty defendants should serve. The Attorney General plays an important role here through “charging memos,” which set the guidelines that federal prosecutors follow in deciding what charges to bring and the length of sentences for which to advocate.

In addition to prosecuting federal offenders, DOJ also has the power to investigate local law enforcement agencies accused of a “pattern or practice” of violating civil rights. Among its other responsibilities, the Special Litigation Section of the Civil Rights Division (SLS) helps protect the civil rights of the institutionalized and the rights of people who interact with local law enforcement—both prisoners and communities at large. Recently, SLS [found](#) that the Baltimore Police Department has engaged in a pattern or practice of unlawful stops, searches, and arrests that disproportionately harm African Americans and that it has engaged in a pattern or practice of excessive force and discrimination against people with mental health disabilities. In 2015, SLS issued a [report](#) regarding the Ferguson, Missouri Police Department, finding that both the “police and municipal court practices systematically violate[d] the First, Fourth and Fourteenth Amendments.” Especially in the wake of high-profile



shootings and killings of unarmed Black people by local police, it is imperative that the Department continue to use its power to investigate law enforcement in order to help determine how to address police brutality. Senator Sessions, however, [has made clear](#) that he believes such much-needed investigations are an abuse of federal authority.

For this and other reasons, including Senator Sessions's disrespect for basic constitutional principles of due process and equality, he is the wrong person to be put in charge of and set priorities for a Department charged with bringing to bear the awesome power of the federal government to prosecute and punish. For example,

- In 2016, Sessions [mocked efforts](#) to reform the criminal justice system, particularly the Obama Administration's clemency toward federal prisoners serving excessively long sentences, as well as DOJ's role in the reforms. He has frequently [cited a rise in crime](#) for his positions, though the crime rate is actually [down](#). Sessions is a [vocal opponent](#) of the bipartisan effort to end mandatory minimum sentencing for drug crimes, a practice that [disproportionately harms African Americans](#). Sessions has been [a vocal skeptic](#) of recent DOJ efforts to make the criminal justice system less punitive, especially toward people accused of violating drug laws that have a [disproportionate impact](#) on people of color.
- During a 2015 Senate Judiciary Committee hearing on "The Need to Reform Asset Forfeiture," Sessions made clear his disregard for procedural due process, [arguing](#) the process "is not wrong," especially since, he claimed, the program mostly takes money from people who have "done nothing in their lives but sell dope."
- In 2008, Sessions described DOJ consent decrees, which provide an efficient and effective means of achieving long-term reform of institutions that have been engaging in illegal, often discriminatory, practices as "[an end run around the democratic process](#)." Consent decrees have been particularly [helpful](#) in fighting systemic discrimination perpetrated by local police departments.
- Sessions [doubted the impartiality](#) of a 2015 federal judicial nominee, Paula Xinis, insinuating that she would not be sufficiently pro-police because she was a Public Defender, representing indigent clients, and particularly because her firm represented Freddie Gray's family in a wrongful death civil suit against the City of Baltimore. She was not involved in the case.
- In August 2016, DOJ [announced](#) that the Bureau of Prisons, a subdivision responsible for the administration of the federal prison system, would phase out the use of private, for-profit prisons, after an inspector-general [report](#) found deficiencies in safety, security, and the protection of inmates' rights. While campaigning in June, Trump [said](#), "I do think we can do a lot of privatizations and private prisons. It seems to work a lot better." POLITICO Influence [reported](#) in October that GEO Group, one of the largest private prison corporations, hired two former aides to Sessions to "to advocate on federal government use of contract correctional facilities." Since the increase in privatized prisons in the 1980's, the [constitutionality](#) of such prisons has [come into question](#). Sessions's judgment regarding prison administration is suspect, given his [blessing](#) the use of [chain gangs](#) while Attorney General of Alabama.

## 5. NATIONAL SECURITY

The Department of Justice also plays a role in promoting our nation's security. The Federal Bureau of Investigation ("FBI"), whose director reports to the Attorney General, conducts domestic

surveillance as part of carrying out its law enforcement responsibilities. The National Security Division (“NSD”) combats domestic and international terrorism and other threats to national security, such as espionage and sabotage. Of note, the Oversight Section of NSD oversees the foreign intelligence, counterintelligence and other national security activities of the United States intelligence community to ensure compliance with the Constitution, statutes and Executive Branch policies.

Courts have [identified](#) potential constitutional infirmities in some of the government’s use of electronic surveillance methods in criminal investigations. As a Senator, Sessions has supported broad surveillance powers for use by both domestic law enforcement agencies and U.S. intelligence services; as Attorney General, Sessions would be able to roll back several of the restrictions on surveillance imposed by the Obama Administration. Sessions’s record indicates that he cannot be trusted to respect constitutional limits on abuse of power by the government. For example:

- In 2015, Sessions [voted against](#) Senator John McCain’s bipartisan amendment reaffirming the prohibition of torture.
- In [2006](#) and [2010](#), Sessions voted to extend the Patriot Act’s roving wiretaps to remove the need to obtain a court warrant for wiretapping abroad.
- Sessions has claimed that the President has the authority to allow the NSA to [wiretap conversations involving foreign countries](#) in order to protect national security and that there should be no restrictions on that power.
- In 2013, Sessions [opposed](#) reforms to the Foreign Intelligence Surveillance Act, which included increasing transparency in the Foreign Intelligence Surveillance Court and halting bulk metadata collection.
- In 2016, Sessions unsuccessfully proposed an [amendment](#) to the Electronic Communications Privacy Act that would have [required](#) technology companies to turn over sought-after data without a warrant if federal, state, or local law enforcement agencies merely declared that an emergency existed.

## **6. MAINTAINING INDEPENDENCE AND HOLDING THE EXECUTIVE ACCOUNTABLE TO THE RULE OF LAW**

One of the most important components of the Department of Justice is the Office of Legal Counsel (“OLC”), which provides legal advice to the Executive Branch on constitutional and other legal questions, and reviews all proposed executive orders to ensure that they comply with existing law. Therefore, it is critically important that OLC, and DOJ as a whole, have leaders who not only have respect for the Constitution and the rule of law, but also the independence to stand up to the President if he or another Executive Branch official is contemplating engaging in unconstitutional or illegal activity. As Senator Sessions himself [said](#) during the Judiciary Committee’s hearings on the nomination of Judge Michael Mukasey to be Attorney General:

“[T]he Attorney General has got to say no to the President if he wants to do something, just like a good corporate lawyer has to tell the CEO sometimes, ‘We can’t do it that way, Mr. CEO’ or ‘Mr. President, you can do it this way, but you can’t do it that way.’ And then you’ve got to be able to articulate and defend the legitimate actions of your President, the head of the executive branch.”

Senator Sessions's record indicates that he would fail his own test for Attorney General. Among other things, he lacks the necessary respect for fundamental constitutional principles to be trusted to serve as a check against any President, let alone one who, as a candidate, proposed if elected to engage in conduct that would violate the Constitution and has thus far proven unwilling to take steps to address the [constitutional violations](#) posed by his business holdings. His record raises serious concerns that Sessions would be willing to set the Constitution aside in order to rubber stamp unconstitutional proposals that further the Administration's agenda, regardless of their legal compliance.

These serious concerns are further heightened by Sessions's extremely close ties to the President-elect, which provide reason to doubt that he would bring the necessary impartiality to the job of Attorney General. Notably, Sessions was the first sitting U.S. Senator to endorse the President-elect; he was brought into the campaign, stumped for Trump before the election, served as a close advisor throughout, and was a co-chair of the transition team. It is not a leap to fear that Sessions would be unable or unwilling to distance himself from the President in order to provide dispassionate and independent counsel should the President propose to violate the law. Indeed, Sessions chose to side with the President-elect over the rule of law when Sessions claimed it was "[a stretch](#)" to call Trump's "grab them by the p---y" claims sexual assault.

Additionally, Sessions's disturbing silence in the face of extremely troubling aspects of Trump's candidacy, such as Trump's [promises](#) to take actions that would violate the civil liberties of American Muslims, and his silence about the fact that Trump is [on a collision course](#) with the Emoluments Clauses, cast a further doubt on his independence, and whether he would place his loyalty to Trump over the rule of law.

## CONCLUSION

Senator Sessions himself, during the confirmation hearing for Attorney General Loretta Lynch, [stated](#) that:

*"The Senate must never confirm an individual to [Attorney General] who will support and advance... scheme[s] that violate[] our Constitution and eviscerate[] established law and Congressional authority. No person who would do that should be confirmed. And we don't need to be apologetic about it. ... We have a duty to this institution, and to the American people not to confirm someone who is not committed to those principles but rather who will continue to violate them."*

We agree with that test for confirmation. And applying that test to Senator Sessions, it is clear that he does not satisfy it. Sessions's record over the span of decades flies in the face of the critical [mission](#) of the Department of Justice—to ensure "*fair and impartial* administration of justice for all Americans." Over the course of his career, Sessions has worked to obstruct civil and human rights, deny women their autonomy and dignity, limit immigration through a racial or religious test, advance criminal justice policies that negatively affect communities of color, and support security measures that would violate civil liberties.

The Constitution must be the Attorney General's guide as he advises the President and enforces federal law, and he must read and apply it in whole to ensure its promises reach everyone in America, regardless of income, complexion, gender, or status. It is the responsibility of the Department of Justice to ensure that the Constitution's guarantees are upheld and enjoyed equally by all persons. Sessions's positions on a range of issues—positions that have been consistent over decades—make clear that he is not qualified to lead the Department in fulfilling those responsibilities.

We realize that when the Committee is considering one of its own colleagues, there may be a tendency to engage in some amount of senatorial courtesy. But that tradition cannot substitute for the careful and objective scrutiny required of the record of anyone nominated to the position of United States Attorney General. For the reasons stated herein, upon such review, the Committee should conclude that Senator Sessions is not fit to hold that position, and should not forward his nomination to the full Senate.

Sincerely,

A handwritten signature in blue ink, appearing to read 'E. Wydra', with a long horizontal flourish extending to the right.

Elizabeth B. Wydra  
President

cc: All Members, Senate Judiciary Committee