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December 12, 2016

**Re: Sessions Confirmation Hearings**

Senator Chuck Grassley, Chairman  
Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, D.C. 20510-6050

Senator Dianne Feinstein, Ranking Member  
Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, D.C. 20510-6050

Dear Senators Grassley and Feinstein:

Intense disagreement is a hallmark of vibrant democracies, all the more so after elections as passionate as the one we've just had. For this reason, and at times like now in particular, democracies must take special care to avoid the use of character assassination and misinformation in place of meaningful policy debate.

I am writing to the Committee because the line between debate and slander is being grievously crossed in the case of the Sessions nomination.

My name is Michael Horowitz and I currently serve as President of 21<sup>st</sup> Century Initiatives, a think tank focused on the promotion of domestic and international human rights. As such, I have played leadership roles in the drafting, left-right coalition building and passage of such laws as the International Religious Freedom Act, the Trafficking Victims Protection Act, the North Korea Human Rights Act, the Sudan Peace Act and, of special importance to this letter, the Prison Rape Elimination Act. I have also engaged in a lifetime of active opposition to racial discrimination in all of its forms – an effort including time spent teaching the first racially integrated classes at the University of Mississippi Law School. (While there, I taught a civil rights law course and actively recruited students from all-black colleges, and was attacked and threatened by the state's most virulent racists, including such Klan activists as Byron de la Beckwith, the murderer of Medgar Evers.)

From these and similar experiences, I have developed a useful sensitivity to bigotries and bigots, to racism and racists, and to people who genuinely care about the vulnerable and oppressed and those who offer them little but lip service.

From my time in Mississippi and during my service as OMB General Counsel during the Reagan administration, I have also had much experience with persons willing to subordinate rule of law principles to policy and political preferences, and leaders committed to rule-of-law governance.

Based on that background, and based on having worked with Senator Sessions during the time it took to enact and enforce the Prison Rape Elimination Act – legislation for which he was the prime Senate sponsor -- I can unqualifiedly state that any charges against him of racism or indifference to the needs of the vulnerable are maliciously or, at best, blindly false.

How lucky our prison reform coalition was to have Senator Sessions as our leader:

- He played a key role in crafting a strong bill able to bypass the political landmines which had long blocked the passage of all prison reform legislation – doing so, I saw, out of deep concern about the evils and effects of prison rape and violence;
- Despite the fact that Senator Ted Kennedy led the fight against his confirmation as a Federal Circuit judge, Senator Sessions enthusiastically embraced him as the prime cosponsor of his bill, and worked to pass it in cordial, respectful and effective partnership with Senator Kennedy;
- Senator Sessions was implacable in taking on and overriding the Bush Justice Department's opposition to the bill;
- He likewise took on the Obama Justice Department's failure to issue timely prison rape elimination standards, and its effort to construe a Sessions provision barring the issuance of prison performance standards that imposed substantial costs as barring standards that imposed nominal costs – a construction that would have gutted the bill;
- He took on strong criticism from many conservatives, and from nearly all state prison officials, who alleged that his bill was an intrusive Federal intervention in state affairs – a charge first

negated by his bill's focus on effective reform strategies that imposed no significant costs and created no bureaucracies;

- Of special significance, Senator Sessions cited the Supreme Court's decision *Farmer v. Brennan* to critics who argued that his bill was inconsistent with his strongly professed belief in principles of federalism. He noted *Farmer's* holding that deliberate indifference to the rape of a transsexual prisoner violated the Cruel and Inhuman Punishment provision of the Constitution, thus creating a constitutional right and a Federal duty to see that *Farmer*-like conduct was eliminated. In so doing, Senator Sessions displayed a strong determination to follow the law wherever it led and to take political heat from his supporters for doing so. (I predict that, in the tradition of our best Attorneys General, Senator Sessions will at times disappoint his Executive Branch colleagues by ruling that the law does not permit them to engage in policy actions that they – and he – would otherwise favor);
- By his concern for the well-being of vulnerable prisoners and his attentiveness to the concerns of all coalition members, Senator Sessions played a key role in keeping our broad coalition together. The remarkable character of that coalition is indicated a partial list of its members:

Amnesty International  
Concerned Women for America  
Focus on Family  
Human Rights Watch  
Institute for Religion and Democracy  
La Raza  
Mennonite Church  
NAACP  
National Association of Evangelicals  
Open Society Forum of the Soros Foundation  
Penal Reform International  
Religious Action Center of Reform Judaism  
Salvation Army  
Southern Baptist Convention  
Stop Prison Rape  
United Methodist Church

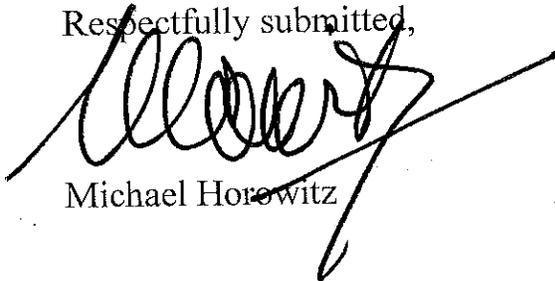
- Senator Sessions' leadership helped create previously non-existent bipartisan, religious-secular trust on prison reform issues and has played a key role in making possible the left/right prison reform alliances that now exist;
- Critically, and as time has told, Senator Sessions' PREA bill has been extraordinarily effective in bringing about prison reform and in holding federal, state and local prison officials accountable for failures to take significant steps to eliminate prison rape.

Based on my experience with human rights issues and as a life-long opponent of racial discrimination -- and having seen Senator Sessions in action -- I believe it clear that:

- there is not a racially biased bone in his body;
- he respects and complies with the law, wherever it leads;
- political pressure will not cause him to do otherwise; and that
- his personable manner and respect for those he disagrees with is joined with a principled determination to make the law an instrument that serves persons who badly need its protections.

Senator Sessions is a political conservative with whose policy views many can honorably disagree. At the same time, any attempt to describe him as in any way biased against any minority group disserves the country and should discredit those who say so. I therefore hope that Senator Sessions' decency and integrity will make his confirmation hearings a turning point event that produces bipartisan condemnation of "basket of deplorables" efforts to substitute character assassination for the merits-based policy debates that the country -- and its minority members most of all -- so badly need.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Horowitz", written over a horizontal line.

Michael Horowitz

cc: Senator Jeff Sessions