

Testimony of the Honorable Cedric L. Richmond, Member of Congress  
United States Senate Committee on the Judiciary,  
“Attorney General Nomination”  
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*“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights...”* –Declaration of Independence

*“No State shall ... deny to any person within its jurisdiction the equal protection of the laws”* – Equal Protection Clause of the Fourteenth Amendment

*“...one Nation under God, indivisible, with liberty and justice for all.”* –Pledge of Allegiance

**Jeff Sessions record on issues of civil rights, law, and justice disqualifies him from assuming the position of Attorney General of the United States.**

I would like to thank Chairman Grassley, Ranking Member Feinstein, and the Members of this esteemed Committee for allowing me to testify before you today. The Constitutional duty of the United States Senate to advise and consent to presidential appointees is an essential check on executive power and a fundamental component of American democracy. I know that you do not take lightly the process you all are now undertaking, and I do not underestimate the gravity of the moment before us.

The Founding Fathers, in the Declaration of Independence, set forth the ideal of universal equality that rests at the heart of the most vibrant democracy in the history of the world. When Congress proposed, and the States ratified, the Fourteenth Amendment with its Equal Protection Clause, our nation took a giant step toward fulfilling that foundational principle. The Pledge of Allegiance, recited everyday in grade school classrooms and in the halls of this very Congress, serves as a constant reminder that every one of us bears a solemn duty to continue striving towards the achievement of justice for all Americans. While all of the officials appointed by the President of the United States and confirmed by this body have a tremendous responsibility to recognize, protect, and advance the interests of the American people, there is no office for which the duty to apply the law equally is greater than that of the Attorney General of the United States.

On January 3<sup>rd</sup> of this year, I was sworn in as the 25<sup>th</sup> Chair of the Congressional Black Caucus. For more than 45 years, the Black Caucus, known as the “Conscience of the Congress,”

has worked to improve conditions for African-Americans across the country. The Black Caucus enters the 115<sup>th</sup> Congress with a record 49 Members representing tens of millions of African-Americans from all walks of life. Our constituents live in urban city centers, nearby suburbs, and rural counties. They are doctors and lawyers; schoolteachers and firefighters; football coaches and small business owners. We represent kids leaving home for college prepared to take on the world and parents returning home from prison searching for a second chance at life. The experiences and realities of our constituents are as broad and diverse as America itself. One thing that we all share, however, is that all of our lives have been impacted tremendously by the work and mission of the Department of Justice, and by the many men and women who have been responsible for leading the department's efforts to create a more just and equitable America.

On June 22, 1870, President Ulysses S. Grant signed into law legislation creating the United States Department of Justice, drastically increasing the Attorney General's responsibilities. Amos Akerman, the first Attorney General to lead the Department of Justice, used these expanded powers and resources to vigorously prosecute the Ku Klux Klan's widespread use of violent tactics against African-American voters in the South. Akerman's prosecutions and President Grant's willingness to enforce the law to stop the Klan, created conditions that facilitated massive African-American voting turnout in 1872. For the first time in our nation's history, former slaves were afforded the opportunity to participate in the democratic process, cementing the transition from slave to citizen.

In the late 1950's, President Eisenhower's Attorney General Herbert Brownell, Jr. drafted legislation that eventually became the Civil Rights Act of 1957, which created the Civil Rights Division at DOJ. This represented the first significant effort by the federal government to protect the constitutional rights of African-Americans since the Reconstruction period. In the early

1960's, Attorney General Robert F. Kennedy worked to protect African-Americans from violence, especially those involved in the Civil Rights Movement, and started the process that would eventually produce the Civil Rights Act of 1964 in the next administration.

Nickolas Katzenbach served as Attorney General under President Lyndon B. Johnson, and used his authority as the leader of the Department of Justice to enforce the provisions of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Katzenbach personally enforced the desegregation of the University of Alabama after Governor George Wallace stood in the doorway, refusing the admission of African-American students. Katzenbach also represented the United States in challenges to the Voting Rights Act, and fought for the Supreme Court to uphold the law's provisions which mandated that states with a history of discriminatory voting practices receive federal preclearance before enacting new voting laws.

Eric Holder was nominated by President Barack Obama in 2009 to serve as the nation's first African-American Attorney General. Holder led the Department of Justice's Smart On Crime Initiative which reversed practices that created disparities within the criminal justice system disproportionately impacting African-Americans and other minority communities. Holder also worked to create accountability measures for law enforcement entities that historically targeted minorities and were known for policing misconduct.

The bottom line is that personnel matters. A great leader in the position of Attorney General can mean the difference between a robust effort to protect the rights of the aggrieved or a decision to neglect them. The office of Attorney General must be willing to uphold the banner of justice for all Americans, including those who have been underserved and underrepresented in our nation's pursuit for justice and equal rights. It is through this context that we must

thoroughly examine the nomination of Sen. Jefferson Beauregard Sessions III to serve as the 84<sup>th</sup> Attorney General of the United States of America.

In 1986, President Reagan nominated Jeff Sessions, a young U.S. attorney from Mobile, Ala., for the U.S. District Judge for the Southern District of Alabama. Due to his insensitivity on the questions of race, Sessions ultimately became only the second nominee in 50 years to be rejected by this very committee. Despite the fact that a Republican-controlled Judiciary Committee deemed Sessions too regressive on issues of race and civil rights to serve as a district court judge, now-Senator Sessions has been nominated to serve as Attorney General.

Let me be clear. Sen. Sessions should not be disqualified from assuming this position simply because of a failed confirmation 30 years ago. The opposition of groups who have advocated on behalf of underserved communities for generations such as the National Association for the Advancement of Colored People; the NAACP Legal Defense Fund; the Leadership Conference on Civil and Human Rights; and the National Urban League among others, also should not, in and of itself, block this nomination from moving forward.

As with any nominee, Sen. Sessions should be confirmed or denied based on his record and the policies he can be expected to pursue upon taking office. When it comes to issues of justice, equality, and civil rights, Sen. Sessions' record is simply abhorrent. In a career spanning more than three decades in public service, he has sought to advance an agenda that will do great harm to African-American citizens and communities. It is for this reason that the CBC and its members believe Sen. Sessions should be disqualified for the post he now seeks to assume.

**Jeff Sessions has demonstrated a total disregard for the equal application of justice and protection of the law as it applies to African-Americans.**

Police Accountability

In November 2015, Sen. Sessions said “it is a real problem when we have Black Lives Matter making statements that are really radical, that are absolutely false, and then being invited to the White House.” The Senator’s callous dismissal of the legitimate complaints expressed by young activists in the Black Lives Matter movement is no surprise given his record on the issue of police accountability. In 1995, Sen. Sessions, in his capacity as Alabama’s Attorney General, filed an amicus brief urging reversal of a federal court’s decision that police officers were not shielded from a civil lawsuit alleging that they brutally wounded a suspect simply because they were working in their capacity as public officials. The Supreme Court ultimately affirmed the decision, but if Sen. Sessions had had his way, private citizens would be severely limited in their ability to seek retribution for police brutality.

The possibility that an individual who holds these views would run the agency with direct responsibility for oversight of law enforcement departments throughout the country has dire consequences for African-Americans, who are 3 1/2 times more likely than whites to experience the use of force. African-Americans account for 24 percent of police killings despite being just 13 percent of the U.S. population. Unarmed African-Americans are five times more likely than unarmed white Americans to be shot and killed by a police officer. While some have attributed these disparities to higher levels of violence in African-American neighborhoods, police reform advocates and researchers have consistently concluded that there is no correlation between violent crime and who is killed by police officers. Given these stark realities, it should come as no surprise that African-Americans are only about half as likely as whites to have a positive view of the job their local police are doing when it comes to holding officers accountable when misconduct occurs.

It is unclear if Sen. Sessions believes that police officers should ever be held accountable for any level of misconduct. In a 2008 paper published by the Alabama Police Institute, Sen. Sessions called consent decrees a “dangerous exercise of raw power” and an “end run around the democratic process.” Under President Obama, DOJ began 23 investigations into law enforcement agencies accused of violating civil rights and entered 11 consent decrees to bring much-needed reforms to policing in Chicago, Baltimore, Cleveland, and other cities. Without this level of federal intervention, it is unlikely that the citizens of Ferguson, MO would ever see relief from a police department that DOJ found to be engaged in a “pattern or practice of unlawful conduct that violates the First, Fourth, and Fourteenth Amendments to the United States Constitution, and federal statutory law.” The Department’s report found that the Ferguson Police Department was targeting African-American residents and treating them as revenue streams for the city by striving to continually increase the money brought in through fees and fines. If this is Sen. Sessions’ idea of the democratic process at work, he should be disqualified from consideration as the country’s top law enforcement official.

#### Alabama Judicial Elections

In 1994, Sessions filed a federal court objection to a plan that would add black judges to state appeals courts. The plan was agreed to by his predecessor in the Alabama AG’s office in order to settle a federal Voting Rights Act lawsuit filed by the Alabama Democratic Conference. The lawsuit claimed that the state appeals courts violated the Voting Rights Act because the statewide elections for judges make it difficult for blacks to be elected. The settlement would have allowed the state’s governor to appoint black appeals court judges, but the judges would later have to run in statewide elections to retain the new appellate court slots. Sessions, a former U.S. attorney in Mobile, said the settlement created a ‘racial quota’ for the courts, took away

voters' rights to elect judges and protected incumbent judges. Once he was elected as Attorney General, Sessions told the 11th U.S. Circuit Court of Appeals that he couldn't defend the plan because it improperly focused on race and sent the message that race matters in the administration of justice. The Appeals Court ultimately voided the settlement. To this day, there has not been a single African-American judge on Alabama's appellate courts despite the fact that African-Americans make up more than one-fourth of the state's population. Only two African-Americans have ever served on the Alabama Supreme Court. Both of them were appointed by a governor.

#### Central Park Five/Death Penalty

As recently as August, Sen. Sessions praised President-Elect Trump's 1989 campaign to bring back the death penalty for the "Central Park Five," a group of Black and Latino children accused of raping a white woman who were later exonerated by DNA evidence. According to Sen. Sessions, this showed President-Elect Trump's strength and his belief in law and order. The Government Accountability Office (GAO) has found "a pattern of evidence indicating racial disparities in the charging, sentencing, and imposition of the death penalty." A defendant is several times more likely to be sentenced to death if the murder victim was white. While whites make up 46 percent of murder victims, 76 percent of victims in death penalty verdicts since 1976 are white. African-Americans make up 50 percent of murder victims, but only 15 percent of victims in death penalty verdicts are black. Given that death penalty proceedings have a proven racial bias, it should come as no surprise that African-Americans represent 63 percent of those exonerated by DNA testing. The fact that Sen. Sessions has voiced his support for a campaign calling for the execution of five American citizens in the face of exonerating evidence should give this Committee pause. In addition, Sen. Sessions' willingness to ignore this dark legacy of



the death penalty, a lasting vestige of Jim Crow-era lynching, calls into question his ability to apply the law in a manner that serves the interests of all Americans.

### Felon Disenfranchisement

Today, nearly 6 million Americans are unable to vote because of a past felony conviction. African-Americans are four times more likely to be impacted by felony disenfranchisement laws than the rest of the adult population, with one out of every 13 African-Americans currently unable to access to the ballot due to a prior conviction. Despite making up only 13 percent of the population, African-Americans make up more than 30 percent of those impacted these laws. In 2002, Sen. Sessions opposed legislation that would have restored felons' right to vote after they had completed their sentences.

Sen. Sessions justified his opposition by stating the he “[doesn’t] think American policy is going to be better informed if we have a bunch of felons in the process.” In making this incredibly insensitive and uninformed statement, Sen. Sessions was not merely ignoring the tremendous negative impact these polices have on political participation in African-American communities. He was also willingly ignoring the 1985 decision in *Hunter v. Underwood*, in which the Supreme Court struck down his home state of Alabama’s felon disenfranchisement law after finding evidence that it was passed to intentionally exclude African-Americans from the ballot.

### Education

In 1956, as a way to sidestep the Supreme Court’s ruling in *Brown v. Board of Education*, Alabama voters amended the state Constitution to deprive students of a right to public education. As Alabama’s Attorney General, Sen. Sessions led the battle against an Alabama circuit court ruling that determined the State’s inequitable funding was unconstitutional and ordered the state

to come up with a system to remedy the inequity. 20 years later, the condition of Alabama's public schools stand as perhaps the darkest stain on Sen. Sessions' putrid civil rights legacy. In 1972, due to strong federal enforcement, only about 25 percent of African-American students in the South attended intensely segregated schools in which at least nine out of 10 students were racial minorities. In districts released from desegregation orders between 1990 and 2011, 53 percent of black students now attend such schools. In Alabama, thanks in part to the efforts of Sen. Sessions, nearly a quarter of African-American students now attend apartheid schools—meaning schools whose white population is 1 percent or less. This trend has devastating lasting effects as the achievement gap for African-American students grows the longer they spend in segregated schools. When they start 8<sup>th</sup> grade, African-American students are already three years behind their white counterparts in math and reading.

**Jeff Sessions supports a system of mass incarceration that has disproportionately targeted African-Americans citizens and devastated African-American communities.**

In 1971, President Nixon declared a War on Drugs, which he labeled as "public enemy number one in the United States." At the time of this declaration, America's prisons and jails held fewer than 200,000 people. Today that number sits at over 2,000,000. The burdens of this failed war have fallen overwhelmingly on African-American communities. African-Americans make up 13.2 percent of the U.S. population but make up 35 percent of jail inmates, and 37 percent of prison inmates. African-American males are incarcerated at more than six times the rate of white males, and African-American females are incarcerated at more than double the rate of white females.

These disparities can largely be attributed to the fact that police have targeted poor African-American neighborhoods, funneling more of those residents into the criminal justice system. African-American adults use drugs at similar or even lower rates than white adults, yet

African-Americans are more than two-and-a-half times more likely to be arrested for drug possession, and nearly four times more likely to be arrested for simple marijuana possession. In 2014, African-American adults accounted for just 14 percent of those who used drugs but close to a third of those arrested for drug possession. Once in court, judges are tougher on African-American drug offenders every step of the way. For example, nearly half of the counties in Florida sentence African-Americans convicted of felony drug possession to more than double the time of whites, even when their backgrounds are the same. In 2014, African-Americans were nearly six times more likely than white people to be in prison for drug possession.

In recent years, leaders on both sides of the aisle, including many of the Members of this Committee, have found common ground on the need to reform our broken criminal justice system. The Justice Department, on August 2013, instructed federal prosecutors to charge and lock up fewer low-level drug offenders. This was central to then-Attorney General Eric Holder's Smart on Crime Initiative. Both the House and Senate made strides towards the passage of bipartisan criminal justice reform legislation in the most recent Congress. Everyone from the ACLU to the Koch Institute supported this effort. Unfortunately, the legislation ultimately stalled due in large part to the opposition of the most conservative members of the Senate led by Sen. Sessions. Sen. Sessions questioned whether the legislation would "send a message to judges and prosecutors that we're not interested in people serving sentences anymore" as "the crime rate is beginning to go up." This is a strange reason to oppose relatively modest, bipartisan legislation given that the U.S. crime rate is at a historic low.

Sen. Sessions' opposition should come as no surprise given his career record on issues of crime and justice. In his time as Alabama's Attorney General and his time in the Senate, Sessions has supported the harsh truth-in-sentencing laws and mandatory minimums that have been

identified as the primary drivers of mass incarceration. In a 2002 floor statement, Sen. Sessions expressed his belief that our country has benefited from the War on Drugs. In a 2015 interview with PBS, Sen. Sessions reaffirmed his belief that the war on drugs is a “success.” Sen. Sessions has called marijuana reform a ‘tragic mistake’ and criticized FBI Director James Comey and Attorneys General Eric Holder and Loretta Lynch for not vigorously enforcing a the federal prohibition. He has characterized the unwillingness to oppose successful marijuana legalization ballot measures in the states as one of President Obama’s “great failures.” The fact that Sen. Sessions has remained steadfast in his wrongheaded views in spite of the fact that John Ehrlichman, counsel and Assistant to the President for Domestic Affairs under President Nixon, has admitted that the War on Drugs was an effort to vilify African-American leaders and disrupt African-American communities is troubling. His willingness to declare drug enforcement policies that have devastated African-American communities across the country a “success” should be disqualifying.

**Jeff Sessions cannot be relied upon to enforce the Voting Rights Act and protect the voting rights of all Americans.**

As a U.S. Attorney, Sen. Sessions was the first federal prosecutor in the country to bring charges against civil rights activists for voter fraud since the passage of the Voting Rights Act of 1965 (VRA). In January 1985, Sen. Sessions, then the US Attorney for the Southern District of Alabama, charged three African-American activists with 29 counts of voter fraud. The group, known as the “Marion Three”, faced over 100 years in prison. At trial, the jury deliberated for less than three hours before returning a not guilty verdict on all counts.

The Marion Three case marked the beginning of Sen. Sessions’ role in the conservative-led effort to undermine the VRA, which he admitted to calling a "piece of intrusive legislation." Although he joined every other Senator in voting for a 2006 extension of the VRA, he did so

while criticizing the bill's critical Section 5 pre-clearance provisions. When the Supreme Court gutted these same provisions in *Shelby County v. Holder*, Sen. Sessions hailed the decision as "good news ... for the South." He stated, "if you go to Alabama, Georgia, North Carolina, people aren't being denied the vote because of the color of their skin." In the wake of that ruling, every single one of the states Sessions mentioned passed voting restrictions that disproportionately affected racial minorities.

In 2016, 14 states had new voting restrictions in place for the first time in a presidential election. The new laws range from strict photo ID requirements to early voting cutbacks to registration restrictions. This is part of a broader movement to curtail voting rights, which began after the 2010 election, when state lawmakers nationwide started introducing hundreds of harsh measures making it harder to vote. Six of the 16 states that have passed voter ID laws since 2010 have a documented history of discriminating against minority voters. All but one of those states' laws were put in place after the Supreme Court's decision in *Shelby County*. In July 2016, a U.S. circuit court struck down North Carolina's law, calling it "the most restrictive voting law North Carolina has seen since the era of Jim Crow." The judges charged that Republican lawmakers had targeted "African-Americans with almost surgical precision."

Voter ID laws have all been sponsored by Republicans and passed overwhelmingly by Republican legislatures. These laws have all been justified based on a need to guard against alleged voter fraud. As Alabama's Attorney General, Sessions supported legislation that would force voters to show identification at the polls. In a June, 2012 Senate Judiciary hearing, Sen. Sessions criticized AG Holder for challenging state election laws, claiming that the laws were necessary to guard against voter fraud. In March 2013, Sen. Sessions voted to support requiring Americans to show a photo ID to vote in federal elections. While claims of widespread fraud are

rampant amongst those on the Right, the evidence to support such claims is scant. Researchers have found about 31 incidents of voter fraud in the more than 1 billion ballots that were cast in elections at all levels of government from 2000 through 2014. Of the more than 137.7 million ballots cast in the 2016 election, election and law enforcement officials in all 50 states have yet to report any indications of widespread fraud.

Richard Posner, a conservative U.S. circuit court judge appointed by President Reagan, has called the concerns about fraud a “a mere fig leaf” intended to justify laws that “appear to be aimed at limiting voting by minorities, particularly Blacks.” An analysis of voting laws nationwide found that only six of the 31 states that require ID at the polls apply those standards to absentee voters, who are generally whiter and older than in-person voters and thus are more likely to vote Republican. If, as Judge Posner suggests, these laws are intended to suppress voting among African-Americans, preliminary evidence suggests that they are working. A 2014 GAO study found that turnout dropped among both young people and African-Americans in Kansas and Tennessee after new voter ID requirements took effect in 2012. Given Sen. Sessions’ support for these laws, it is no wonder that Gerald Hebert, a former DOJ attorney who testified against Sessions in his 1986 confirmation hearing, recently deemed his nomination as Attorney General as “a threat to voting rights for all minorities.”

**In his decades-long career in public life, Sen. Jeff Sessions has proven himself unfit to serve in the role of Attorney General of the United States of America.**

I would not have the opportunity to testify before this Committee if not for men like John Lewis who was beaten within an inch of his life in pursuit of the right to vote for African-Americans in the South. It’s a shame that he must sit here more than 50 years later to defend the rights he fought so hard to gain. We sit here as the progeny of men and women who were bought, sold, enslaved, raped, tortured, beaten, and lynched. In the early

days of our nation, Black people were bought as chattel and considered three-fifths of a human beings. However, we have been able to endure and largely overcome that history thanks in part to brave men and women, both Democrat and Republican, who sat where you sit and cast often difficult votes for freedom and equality. These courageous legislators were often required to stand up to their friends, families, neighbors, and even members of their own party to do what they knew was right. I come before you today asking you to do the same.

On April 8, 1864, the Senate passed the Thirteenth Amendment to the Constitution abolishing slavery in the United States. On June 4, 1919, the Senate approved the Woman Suffrage Amendment, clearing the way for state ratification of the Nineteenth Amendment and universal suffrage for women throughout the country. On June 10, 1964, for the first time in the history of this illustrious body, the Senate was able to muster enough votes to cut off a filibuster on a civil rights bill. Nine days later the Senate approved the Civil Rights Act of 1964, one of the 20th century's towering legislative achievements. On August 4, 1965, the Senate passed the Voting Rights Act ensuring that America, for the first time in its history, would be a true democracy for all its citizens. As recently as November 7, 2013, Republican Members of this Committee joined your Democratic colleagues to pass the Employment Non-Discrimination Act, landmark legislation that would have barred most employers from discriminating against lesbian, gay, bisexual, and transgender people. While each of these bills was approved by a different collection of Senators facing a different national climate and different sets of political realities, they all share one thing in common. History will always look back fondly on each and every aye vote, knowing that it was cast by a courageous individual who found him or herself on the right side of history.

Now you all must face a choice: be courageous or be complicit. If you vote to confirm Jeff Sessions, you take ownership of any and everything he may do in office. Long after the headlines have passed, history books will remember the choice you make. I understand the political incentive to support your Senate colleague and the nominee of a President-Elect who has returned control of the White House to your party. However, a vote to confirm Sen. Sessions as Attorney General is not simply run-of-the mill DC politics. Jeff Sessions has no track record of fighting for justice for minorities. Far more often than not he has found himself on the wrong side of history on issues of equality and equal protection. Jeff Sessions is to equal justice what George Wallace was equal access to education, what Bull Connor was to equal protection of the law. Each and every Senator who casts a vote to confirm Sen. Sessions will be permanently marked as a co-conspirator in an effort to move this country backwards towards a darker period in our shared history. So I ask you all, where do you stand? It is clear from Sen. Sessions' record where he stands. Will you stand with him and allow history to judge you for doing so? If the tables were turned, do you believe he would stake his legacy on your record as he's asking you to stake your legacy on his? I implore you all to take these questions seriously and weigh them properly as you prepare to cast what will be one of the most consequential votes in your time as a United States Senator.